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International Politics and the Right to Self-Determination: The Case of Iraqi Kurdistan

Ali Kareem Nore

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UNIVERSITY of CLERMONT AUVERGNE

École doctorale Sciences Économiques, Juridiques, Politiques et de Gestion

DOCTORATE in POLITICAL SCIENCE

Ali Kareem NORE

INTERNATIONAL POLITICS AND THE RIGHT TO SELF-DETERMINATION

The Case of Iraqi Kurdistan

Thesis supervised by

Frederic CHARILLON, Professor of Political Science at the University of Clermont Auvergne, and
Marie-Elisabeth BAUDOIN, Professor of Public Law at the University of Clermont Auvergne.

Defended on May 23, 2022.

JURY:

- **Mrs. Marie-Elisabeth BAUDOIN,**
Professor of public Law, University of Clermont Auvergne, Thesis Director
- **Mr. Frederic CHARILLON,**
Professor of political science, University of Clermont Auvergne, Thesis Director
- **Mr. Jean -Vincent HOLEINDRE,**
Professor of political science, University of Paris II, Rapporteur
- **Mr. Pierre RAZOUX,**
Academic director, Fondation Méditerranéenne d'Etudes Stratégiques (FMES), Member
- **Mr. Jean-Jacques ROCHE,**
Professor of political science, University of Paris II, Rapporteur

Dedication

This thesis is dedicated to those who are respecting the right to self-determination of peoples and those who are struggling for a just cause on this globe.

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Abbreviations

APF	Asia Pacific Forum of National Human Rights Institutions
AFESD	Arab Fund for Economic and Social Development
ASIQ	Action socialiste pour l'indépendance du Québec
CERDS	Charter of Economic Rights and Duties of States
CIA	Central Intelligence Agency
CPA	Coalition Provisional Authority
CPA	Comprehensive Peace Agreement
DLK	Democratic League of Kosovo
EU	European Union
FLQ	Front de libération du Québec
FAS	Federation of American Scientists
GD	General Directorate
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICSR	The International Centre for the study of radicalisation and political violence

ICTY	International Criminal Tribunal for the Former Yugoslavia
IGC	Iraq Governing Council
IKR	Iraqi Kurdistan Region
ISIS	Islamic State of Iraq and Syria
ISIS	Islamic State of Iraq and Syria
KDP	Kurdistan Democratic Party
KLA	Kosovo Liberation Army
KR	Kurdistan Region
KRG	Kurdistan Regional Government
LoN	League of Nations
LSE	The London School of economics and political science
NATO	North Atlantic Treaty Organisation
NGOs	Non-governmental Organisations
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PKK	Kurdistan Workers' Party
PUK	Patriotic Union of Kurdistan
RCAP	Royal Commission on Aboriginal Peoples
RSDLP	Russia Social Democratic Labour Party

SPLM	Sudan People's Liberation Movement
TAL	Transitional Administrative Law
TV	Television
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGAR	United Nations General Assembly Resolution
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolutions
UNTAET	The United Nations Transitional Administration in East Timor
US	United States
USA	United States of America
USKBC	United States Kurdistan Business Council
USSR	Union of Soviet Socialist Republics
VDPA	Vienna Declaration and Programme of Action
WWI	World War I
WWII	World War II

INTRODUCTION

The twentieth century was the century of wars, international conflicts, major events and changes in the history of mankind. It was also the time of the evolution and achievement of the right to self-determination, legally and practically. Accordingly, we can call it the century of self-determination. Throughout this century, through the struggle different peoples has achieved this right. Although there have been many successes, there have also been failures in realizing the rights of many peoples, and failing to resolve various ethnic-national issues, foremost of which is the Kurdish question.

After the First World War, loud voices emerged from the leaders of the victorious countries in WWI, in particular, Wilson and Lenin, affirming the importance the right to self-determination for all the peoples of the world. Through this period various peoples have succeeded in achieving their independence and establishing their independent states. In the post-World War II era, the United Nations stage, the international community promoted the development of self-determination as a key tenet of international law,¹ by making self-determination a right of peoples in international instruments, and making it a basis for the goals of the UN which are linked to international peace and security. The principle emerged from two popular demands: independence from colonialism and

¹ Karen Knop, *Diversity and Self-Determination in International Law* (Cambridge: Cambridge University Press, 2002), 53-54; Helen Quane, "The United Nations and the Evolving Right to Self Determination", *International and Comparative Law Quarterly* 47, no. 3(1998):537-538.

secession from existing sovereign entities.² Through the decolonization process, several peoples were liberated from colonialism, obtained the right to self-determination, and built their own entity. Furthermore, after the Cold War, several other peoples gained independence, including Republics of the former Soviet Union, Yugoslavia, East Timor and South Sudan, as despite the reaffirmation of state sovereignty and territorial integrity within the international community, in the last twenty-five years, 36 new states have been created as the result of national self-determination movements. In 1945 there were only 55 nation-states, while today there are 195.³

Despite all these developments, throughout the 20th century until the present day, the Kurdistan people have remained victims of international politics. After their homeland "Kurdistan" was divided among four different countries, Turkey, Iran, Iraq, and Syria, according to the Sykes-Picot Agreement during WWI, due to the interests of the great powers,⁴ the Kurdistan people were exposed to the most heinous oppression, violations of basic rights and crimes of genocide in those countries.⁵ "Since then the Kurdish fight for self-determination has been repressed by all four states with genocide, ethnic cleansing,

² Anne Bayefsky, *Self-determination in International Law: Quebec and Lessons Learned: Legal Opinions* (The Hague, London, Boston: Kluwer International Law, 2000), 283; Milena Sterio, *The Right to Self-determination under International Law: "selfistans", Secession and the Rule of the Great Powers* (Abingdon: Routledge, 2013), 9-21.

³ Paul Williams, "Creating a Strategic Framework for Addressing the Conflict between Sovereignty and Self-Determination: Earned Sovereignty," *U. S. House of Representatives Document Repository*, accessed June 14, 2018. <https://docs.house.gov/meetings/FA/FA14/20160315/104672/HHRG-114-FA14-Wstate-WilliamsP-20160315.pdf>

⁴ David McDowall, *A Modern History of the Kurds*, 3rd Edition (London, New York: I. B. Tauris & Co. Ltd, 2004), 115-121.

⁵ McDowall, *A Modern History of the Kurds*, 331-332, 357-358.

linguicide and ethnocide.”⁶ Moreover, Kurds are still the largest stateless people in the world.⁷

The right to self-determination is a fundamental principle of international law. According to this principle, people have the right to freely determine their future or choose their sovereignty and international political status without interference.⁸ This concept has evolved through different stages from a political idea and revolutionary slogan to a principle then finally to a right of peoples according to international law. Now it is a key principle for UN purposes. The application of this right can be seen as a peaceful form of ethno-national conflict resolution, as it has an organic link with national and international stability. Since 1990, almost half of the world’s conflicts have been related to self-determination movements that seek greater autonomy or statehood.⁹ Unaddressed self-determination movements yield a considerable death toll. It is estimated that from 1945 to 2014, over 20 million people around the world have died in the fight to gain independence.¹⁰

The exercise of this right is dependent not only on the legal principle but also on the political situation and the balance of power. Therefore, the gap between theory and

⁶ Shahrzad Mojab, “Vengeance and Violence: Kurdish Women Recount the War,” *Canadian Women's Studies Journal* 19 no. 4 (2000): 89–94; Basuli Deb, *Transnational Feminist Perspectives on Terror in Literature and Culture* (New York & London: Routledge, 2014), 25.

⁷ Bahar Baser, *Diasporas and Homeland Conflicts: A Comparative Perspective* (London & New York: Routledge, 2016), 51.

⁸ Dietrich Rauschnig, Katja Wiesbrock, Martin Lailach, *Key Resolutions of the United Nations General Assembly 1946-1996* (Cambridge, Cambridge University Press: 2007), 5.

⁹ Monica Duffy Toft, “Self-Determination, Secession, and Civil War,” *Terrorism and Political Violence* 24, no. 4 (2012): 581.

¹⁰ Williams, “Creating a Strategic Framework for Addressing the Conflict between Sovereignty and Self-Determination: Earned Sovereignty.”

practice is a key problematic of the right to self-determination. Moreover, the emergence of a number of new states in the post-Cold War era after solving national conflicts through the exercise of the right to self-determination in many cases outside the traditional colonial context, like Kosovo and South Sudan, illustrates the vital role of international politics in supporting or neglecting this right, which has a direct impact on national and international stability. The fact that many ethno-national issues remain without a solution, like the Kurdish issue in the Middle East, proves the gap between theory and practice in the exercise of the right to self-determination, and the double standards of international politics in dealing with ethno-national issues according to the superpowers' interests and the balance of power.

Since 2014 separatist movements have increased, like those of Tamil Eelam in Sri Lanka, Donetsk in Ukraine, Flanders in Belgium, Catalonia in Spain, Kurdistan in Iraq, Taiwan and Tibet in China, etc.¹¹ while several ethnic issues and claims to self-determination in different regions remain unsolved.

In many theories of modernisation as well as in Marxism, ethnicity is perceived as an old-fashioned concept and its demise as a source of political mobilisation and self-identification has been predicted. Nonetheless, if modernisation had seen the demise of ethnic consciousness for identification purposes, then the number of countries troubled by ethnic unrest ought to be on the wane. But history has proved otherwise; ethnic nationalist

¹¹ Ashleigh Bennett, "When is secession legitimate?" Victoria University of Washington, 2014, *VUW Research Archive*. accessed March 12, 2019. <https://researcharchive.vuw.ac.nz/xmlui/handle/10063/4623>

consciousness has not declined as a political movement.¹² Ethnic self-awareness is on the rise and national boundaries are continually being challenged by this force. Its presence is felt in Africa, the Middle East and across Asia along with demands for political recognition. Even the developed economies have not been immune to the impacts of ethnic force, particularly in Europe. The present-day claims to self-determination have revealed that ethnicity has retained its significance in politics among numerous states and that ethnic groups question their integration within states.¹³ Ethnic groups are likely to seek for the right to self-determination based on their perceptions of injustice, neglect and discrimination. In such situations, they have organised themselves to pursue greater independence. In Europe and Eurasia, there are currently over sixty national self-determination movements.¹⁴ In more than a dozen African countries, we can identify significant secession movements as we can in over twenty European states.¹⁵ What has become apparent through the cases of Northern Ireland, East Timor and Kosovo is the importance of the legitimacy to rule. When an existing political system does not reflect the views of a particular ethnic group, that group's claim to self-determination and independence is understood to be more legitimate.¹⁶ Moreover, after the end of the Cold

¹² Christian Walter, *Antje von Ungern-Sternberg, and Kavus Abushov, Self-determination and secession in international law* (Oxford, Oxford University Press: 2014), 1.

¹³ Klant, "Catalonia: the right to self-determination and the rule of law," *Eyes on Europe*, Nov. 11, 2017, accessed January 12, 2019. <https://www.eyes-on-europe.eu/catalonia-the-right-to-self-determination-and-the-rule-of-law/>,

¹⁴ Williams, "Creating a Strategic Framework for Addressing the Conflict between Sovereignty and Self-Determination: Earned Sovereignty."

¹⁵ Sebastian Reltz, *De facto states in the European neighbourhood: between Russian domination and European (DIS) engagement. The case of Abkhazia, Eurint proceedings* (Romania: Centre for European studies - Alexandru Ioan Cuza - University of IASI: 2016), 97.

¹⁶ Akihisa Matsuno, "Ethnic Groups' Right to Independence: Self-determination, Secession and the Post-Cold War International Relations," *Asia Peacebuilding Initiatives*, 2014-01-07, accessed October 12,

War era, populations, and especially those living under dictatorships, began demanding their political rights to good governance and democracy. Democracy thereby became the gold standard for the right to self-determination.¹⁷

Struggles for self-determinations have often involved armed conflicts, as the dissatisfied ethnic groupings seek to secede, as in the case of the Kachins in Burma and Tamils in Sri Lanka. Ultimately, shaky autonomous treaties are sometimes signed as a compromise between warring states. In many cases, for example in Southern Sudan, Kosovo and Bosnia, secession and self-determination are achieved through the help of the international community.¹⁸ Ethnic conflicts can emerge in a country especially when the ethnic minorities are not permitted access to resources they perceive as important to preserving, developing and expressing their identities. This is due to the fact that historically, the state is an ordering system dependent on the symbols of the dominant culture to depict what is true, desirable and best, in opposition to cultures considered to be subordinate. Hence, the political, social or economic boundaries of a nation are established by the dominant groups.¹⁹ Struggles over ethnic self-determination, the maintenance of cultural, political and economic rights as well as the protection of ethnic identities have been experienced in territories where ethnic minorities are concentrated. The problem of territorially concentrated ethnic groups occurs when the borders of a state are believed not

2018. <http://peacebuilding.asia/ethnic-groups-right-to-independence-self-determinationsecession-and-post-cold-war-international-relations/>

¹⁷ Simone van den Driest, "Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom," *Netherlands International Law Review* 57, no. 3 (2010): 29-30; Jure Vidmar, "The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin?" *Human Rights Law Review* 10, no. 2 (2010): 239-268.

¹⁸ Sterio, *The Right to Self-determination Under International Law*, 130-161.

¹⁹ Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars' Press, 2006), 29-31.

to coincide with ethnic identity, particularly when boundaries are utilised as barriers instead of bridges, since the reigning leadership model is guided by the sovereignty of the nation-state. In states where "ethnicity" or "national culture" is the bond recognised by the state as uniting the majority, ethnic and national forms of exclusion are common, as is the case in countries relevant to the Kurdish issue.²⁰ Therefore, the borders are developed to offer cognitive structures and legal boundaries. Such a predicament can escalate when the minority ethnics live in undemocratic states dominated by an ethnic majority which does not confer special rights on the ethnic minorities but seeks to impose institutions, values and practices. In general, the ethnic majority dictatorship against minorities and self-determination, lead to violence and instability. One underlying problem is that the modern nation-state was founded on the theoretical presumption of "one people, one state". the state becomes an ethnocracy instead of a democracy. This means that the interests and rights of minorities become subordinated to the will of one ethnic majority, leading to social and political tensions and often outbreaks of violence.²¹

In the Kurdish case, Except the post-2003 period in Iraq, in the relevant countries (Iraqi, Iran, Turkey and Syria), where the majority or dominant ethnic groups have controlled all aspects of the state, have neglected Kurdish rights and the Kurds' desire to participate in directing the state, forming its dimensions and its policies. These processes have led to national conflicts in all these countries since the start of the Kurdish issue until the present day.

²⁰ Nadine Lyamouri-Bajja, et al., *Youth Transforming Conflict* (Strasbourg: Council of Europe, 2013), 86.

²¹ Lyamouri-Bajja, et al., *Youth Transforming Conflict*, 86.

The denial of economic, political or cultural rights to an ethnic group can result in the minority group lacking a sense of belonging to the state which it inhabits, and an unwillingness to be under the control of the ethnic majorities. This can result in conflicts in multi-ethnic states, particularly when there is a history of hostility with little trust among the diverse ethnic groups. Consequently, the major aspiration of many ethnic minorities is to persuade their autonomous nations to represent their identities and safeguard their interests. Such aspiration might spring from their belief that they have a right to self-determination and secession as argued by international law. Nonetheless, enforcement of this right depends on an affirmative political environment, and the interests of different sides as well as the balance of power. Claims to self-determination are unwelcome to many states, which see the recognition of new nations as a problematic process which might include realigning boundaries and which might lead to instability and set a precedent for secession.

In the case of Iraqi Kurdistan, war and national conflicts, campaigns of genocide, oppression and injustice had been perpetrated by successive Iraqi governments against the Kurdish people until 2003; the Iraqi government had failed to fulfil its promises towards the Kurdistan region in relation to its real participation in state administration, wealth and power, and the resolution of the problem of disputed areas described in Article 140 of the Iraqi Constitution. The result was a lack of trust among the main actors, lack of loyalty to the concept of Iraq as a state for all equally, and led to the decision to exercise the right to self-determination and the separatist policy of the Kurdistan region. As Masoud Barzani, President of the Kurdistan Region commented in relation to the motives and goals of the Kurdistan Region Independence Referendum Resolution 2017, "Iraq's Kurds will go ahead

with a referendum on independence ... because their partnership with Baghdad has failed”.²² According to the KRG, Baghdad’s lack of commitment to its promises, the cuts made to the Kurdistan Region’s budget, the injustice and tyranny meted out to the Kurdistan people in the past and the fear of a possible repetition of these crimes prompted them to hold the independence referendum of the Kurdistan Region.²³

Despite these factors, currently the international policy is not in the favour of the Kurdistan region moving towards complete independence and separation from Iraq. The developments following the referendum proved decisively that international politics, especially the American strategy in Iraq and the region, is focused on denying independence for the Kurdistan Region and separation from Iraq, although it affirms the IKR as a strong, secure and prosperous region within the framework of a united democratic and federal Iraq.²⁴ In addition, the regional countries, (Iraq, Turkey, Iran and Syria) are categorically opposing the secession of Iraqi Kurdistan since they believe it will affect their national security and encourage further calls for secession in the region.²⁵

²² Maher Chmaytelli and Daren Butler, “Kurds Stick with Independence Vote, 'Never Going Back to Baghdad': Barzani,” *Reuters, World News*, Sep. 24, 2017, accessed February 24, 2018, <https://translate.google.iq/?hl=en&authuser=0#view=home&op=translate&sl=en&tl=ar&text=accessed>

²³ Alireza Nader, et al, *Regional implications of an independent Kurdistan* (Santa Monica, Calif: RAND Corporation, 2016), 29-43.

²⁴ Ramzy Mardini, “Relations with Iraq's Kurds: Toward a Working Partnership,” *Institute for the Study of War, Background*, April 3, 2012, accessed October 20, 2018. http://www.understandingwar.org/sites/default/files/Backgrounder_RelationswithKurds_0.pdf

²⁵ Maher Chmaytelli and Daren Butler, “Kurds Stick with Independence Vote, 'Never Going Back to Baghdad': Barzani.”

Background: the Kurdish Question and self-determination

The Kurds are the world's largest stateless nation.²⁶ They are form the fourth largest ethnic group in the Middle East with over 40 million people divided between Turkey, Syria, Iraq and Iran, according to the Sykes-Picot Agreement in 1916.²⁷ As one of the largest ethnic groups without a nation-state, the Kurdish people have relentlessly striven to establish their own political entity for several decades.²⁸ The ‘Kurdish Question’ in the Middle East is one of the most complicated questions of nationhood, and has a direct impact on politics and developments in neighbouring and relevant countries (Iraq, Turkey, Iran and Syria).²⁹ While it might seem premature to expect a new country to include all parts of Kurdistan in the near future, it is impossible to ignore the de facto state in the Iraqi Kurdistan region.³⁰ Such developments have put the Middle East under continuous pressure, and for pundits speculating about the creation of new states in the Middle East, the Kurdistan region is high on the list.³¹

While the Kurdistan region is a part of Iraq constitutionally, it is increasingly supported politically by different countries, in particular the US. Kurds seek to implement

²⁶ Ramazan Aras, *The Formation of Kurdishness in Turkey: Political Violence, Fear and Pain* (London: Routledge, 2013), 194.

²⁷ McDowall, *A Modern History of the Kurds*, 115-121.

²⁸ McDowall, *A Modern History of the Kurds*, 3.

²⁹ Kevin McKiernan, “Turkey's war on the Kurds,” *Bulletin of the Atomic Scientists* 55, no. 02 (1999): 26-37.

³⁰ Johannes Jude, “Contesting borders? The formation of Iraqi Kurdistan’s de facto state,” *International Affairs* 93, no. 4 (2017): 847–849.

³¹ Philip S. Hadji, “The Case for Kurdish Statehood in Iraq. Case Western Reserve,” *Journal of International Law* 41, no. 2 (2009): 513.

their policies autonomously without reference to the will of the Iraqi government. Accordingly, Kurdish rule has turned the territory into a secure region, especially after the 2003 Iraq war, allowing the economy to flourish. On the other hand, other regions of Iraq have experienced continued turmoil since the American-led invasion, and their political systems have proved too poorly equipped to survive the upheaval.³² While efforts to reconstruct Iraq have been unavailing, the Kurdish attempt at de facto state formulation has been comparatively successful.

The contemporary history of the Kurdish population is mainly centred on the struggle for national liberation, betrayal, war and abuse. The 20th century was an era of betrayal, abuse and false promises for the Kurds. The national aspirations began when the Ottoman Empire began to wane. They sought political protection and support from the great super powers. The effect of World War I is central to understanding Kurdish history. The breakup of the Ottoman Empire in the year 1922 offered the Kurds an opportunity to seek a homeland. However, in secret agreements, especially the Sykes-Picot Agreement, France and Britain as the two colonial powers had drawn up borders in 1916 for the Post-Ottoman Middle East that separated the region into two zones of influence, without regard to the Kurds will.³³

Before the declaration of victory by the allied forces in the summer of 1918, Woodrow Wilson, in his Fourteen Points, indicated that the conditions of the post-War period required a focus on self-determination as well as the safety of nations that were

³² Zalmay Khalilzad, *The Envoy: From Kabul to the White House, My Journey Through a Turbulent World* (New York: St. Martin's Press, 2016), 8-12.

³³ McDowall, *A Modern History of the Kurds*, 115-121.

affected by the war. In another speech, the president refuted the points advanced by the Sykes-Picot Agreements, indicating that each territorial settlement involved in the war ought to be made in the interests and for the benefit of the population, but not as part of any minor adjustment or compromise of claims amongst rival nations.³⁴ This gave the Kurds hope that they might soon be released from colonial arrangements and celebrating self-determination.

When global leaders came together in the Paris Peace Conference of 1919, their deliberations focused on how to ensure peace prevailed after the war, including the formation of a border in the Middle East. In the absence of the major powers as well as Russia, several issues were agreed upon. The Kurdish delegation sought partition and overruled the idea of operating under Turkish rule and being divided by Britain and France. Some Kurdish leaders mobilized themselves in order to assert their territorial claims. Led by General Sherif Pasha, the Kurdish delegation in Paris proposed an independent Kurdistan and legitimized the proposal by citing Wilson's principle of self-determination. In the Claims of the Kurdish People, presented to the Paris Peace Conference, Pasha argued that "in virtue of the Wilsonian principle everything pleads in favour of the Kurds for the creation of a Kurd state, entirely free and independent".³⁵ Nevertheless, due to the lack of international support, autonomy and self-determination remained impossible goals. France and Britain failed to offer the Kurds an alternative path than that offered by the "Sykes-Picot agreement". In the shadow of outrages committed against the Armenians by the

³⁴ Henry J. Steiner and Philip Alston, *International Human Rights in Context* (New York: Oxford University Press, 2000), 1252-1253.

³⁵ Alexander C. Diener and Joshua Hagen, *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-state* (London, Boulder, New York, Toronto, Plymouth: Rowman & Littlefield, 2010), 110.

Ottomans, coupled with the future of the Mosul province (the majority of the present-day Kurdistan region of Iraq), once again, hopes of autonomy and self-determination began to arise, as can be seen in articles 62-64 of the “Treaty of Sevres” of 1920 that recognised the Kurds and their right to autonomy.³⁶ They were promised the right to independence and their issues would be presented in the League of Nations and Mosul Province via a referendum, so that they could decide whether they wanted to be part of a new nation.

However, Mustafa Ataturk, the founder of post-Ottoman Turkey, regarded the treaty as null and void, and did not allow the Kurds to implement it. After rebellion and threats from Turkey, Turkey and its Allies signed the “Treaty of Lausanne” in 1923. In this resolution, Turkey was recognised while Kurdish self-determination was abandoned by the western powers.³⁷ Consequently, the Kurdish independence narrative was altered from the quest for self-determination and statehood to the story of a minority Middle East group. After receiving a request from Faysal I, installed Saudi King of Iraq, indicating the Mosul Province could balance power struggles as well as the sectarian fight between Shiites and Sunnis, Britain agreed to giving the Kurds an artificial state of Iraq. The Kurdish aspirations towards nationhood and self-determination were ultimately brutally suppressed by Britain and the Iraqi King, the French in Syria, Ataturk in Turkey and the Shah in Iran.³⁸ Due to the lack of commitment shown by the superpowers, difficult national conditions and regional suppression, the Kurds realised that self-help through autonomy was the only viable solution to their survival. Hence, during the interwar era, several Kurdish self-

³⁶ David Formkin, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East* (New York: Henry Holt and company, 2009), 7.

³⁷ Jesse Russell and Ronald Cohn, *Treaty of Lausanne* (UK: Book on Demand, 2012), 12-24.

³⁸ McDowall, *A Modern history of the Kurds*, 151-173.

proclaimed nations came into existence. For instance, between 1922 and 1924, Sheikh Mahmud established a Kurdistan Kingdom. Nonetheless, because of a lack of legitimacy, material capabilities and global recognition, the Kingdom was soon demolished after several air and ground offensive undertakings by the British military that led to thousands of civilian deaths and casualties. Rebellions led by Sheikh Said followed in 1925 in the Northern Kurdistan region.³⁹ The Kurds called for the League of Nations and superpowers to intervene and recognise the Republic. However, international calls went unheard and in 1930 the Turkish military reclaimed control of the region.

After the defeat of Mahmud's new kingdom, the living conditions of Kurds, particularly in Iran, worsened. Earlier attempts to gain recognition for the rights of the Kurds had been undertaken by the leaders of the Barzan tribe. The efforts of Sheikh Abdul-Salam Barzani led to uprisings between 1909 and 1914, but he was executed in the year 1914 in Mosul. Between 1931 and 1932, Sheikh Ahmed Barzani, working with Mustafa Barzani, triggered a rebellion against the British and Iraqi authorities.⁴⁰ While the Peshmerga (Kurdish fighters who face death) during the era were successful to some extent, the rebellion was countered and Sheikh Ahmed was arrested. After Sheikh Mahmud exile to Sulaymania, Qazi Mohammed began a new era in the modern history of the Kurds by focusing on their liberation. Consequently, in 1945, after an agreement with the Soviet Union, Qazi declared the Kurdish Republic of Mahabad, with himself as commanding general. Nonetheless, within a short time, the Soviet Union withdrew her support from the

³⁹ Robert Olson, "The Kurdish Rebellions of Sheikh Said (1925), Mt. Ararat (1930), and Dersim (1937-8): Their Impact on the Development of the Turkish Air Force and on Kurdish and Turkish Nationalism," *Die Welt des Islams* 40, no. 1 (2000): 67-70.

⁴⁰ Jamal Jalal Abdulla, *The Kurds: A Nation on the Way to Statehood* (Bloomington: AuthorHouse, 2012), 91-96.

newly established republic, causing the Iranian military to invade it and execute Qazi Mohammed, leading to the dissolution of the state after ten months.⁴¹

However, after Abdul-Karim Qasim rose to become prime minister of Iraq, Iraq itself was weakened. Qasim consequently decided to cultivate relationships with the Kurds. Nonetheless, after a period of friendly encounters between Kurds and Abdul Karim Qasim from 1958-1960, Qasim broke ties with the Kurds, leading to an air force attack on Kurdistan; the Kurds restarted their revolution and their attempts to obtain their rights.⁴² The era between 1961 and 1970 involved constant fighting between Iraqi soldiers and the Kurds (Iraq-Kurdish War). A military coup of 1963 spearheaded by Ahmed Hassan-Bakr and Abdul-Salam Arif saw the end of Qasim's reign in Iraq. Like its predecessors, the new military administration came up with an array of promises and treaties with the Kurdish liberation movement. Nonetheless, once again the new Iraqi leaders only used the Kurds to pursue their personal interests. After atrocities committed by Iraq against the Kurdish, most joined Barzani, and subsequently the Kurdistan region was controlled by the Peshmerga. The Kurds began demanding autonomy and self-determination as the Baghdad government suffered from political uproar after the death of Arif in 1966.⁴³ The Baathist coup of 1968 ushered in a new era for Iraq. The Baath party realised that without gaining support from the Kurds, it was impossible to remain in power. Thus, they rapidly communicated their wish to resolve the Kurdish question. Subsequently, in March 1970 March, Iraq and the Kurds established an agreement whereby the Kurds would enjoy

⁴¹ Abdulla, *The Kurds: A Nation on the Way to Statehood*, 96-99.

⁴² McDowall, *A Modern History of the Kurds*, 306-311.

⁴³ Edmund A. Ghareeb and Beth Dougherty, *Historical Dictionary of Iraq* (Lanham: Scarecrow Press, 2004), 21.

meaningful autonomy: the “Agreement of 11 March” Nevertheless, such treaties were short-lived. As Saddam Hussein’s power became apparent, the Kurds’ support was no longer needed. The tipping point was when the Iraqis ordered the assassination of Barzani in 1971. Once again, the Kurds were forced to look for means of survival, including moving to the mountains and rebelling against the Iraqi government.⁴⁴

The Kurds have for a long time remained a significant entity in power politics in the Middle East. For instance, during border disputes and rivalry between Iran and Iraq, the Iranians supported Kurdish movements against the government of Iraq, which led to the Algiers agreement in 1975 between Iraq and Iran.⁴⁵

On March 6, 1975, in an Algerian-brokered agreement between Iraq and Iran, signed under the mediating auspices of Henry Kissinger, former US Secretary of State, Iraq agreed to conclude a treaty that granted Iran sovereignty over half of the Shatt al-Arab in exchange for Iran's termination of assistance to the Kurds.⁴⁶ Saddam Hussein and the Shah of Iran settled that Iran would end its support for the Kurds against Iraq in order to gain the Shatt al-Arab River, which is considered to be geostrategically significant. This agreement has led to the failure of the Kurdish revolution and a great political loss for the Kurdish people.⁴⁷ Then, Iraq unilaterally terminated the agreement in September 1980 before the

⁴⁴ McDowall, *A Modern History of the Kurds*, 327-329.

⁴⁵ Abdulghani, *Iraq and Iran the years of crises*, 234.

⁴⁶ Jasim M Abdulghani, *Iraq and Iran the years of crises* (London and New York: Routledge, 2012), 234.

⁴⁷ Gérard Chaliand, *A People Without a Country: The Kurds and Kurdistan* (London: Zed Books Ltd, 1993), 7.

outbreak of the Iran-Iraq War.⁴⁸ Such a move offered the Baath regime an opportunity to suppress Kurdish ambitions for self-determination and autonomy.

As the Iraqi administration increased in power it commenced genocidal campaigns in different forms, such as Arabization in Kurdistan, the destruction of villages and countryside in Kurdish cities, the mass killing of citizens, field executions, the live burial of citizens in mass graves, the displacement of indigenous peoples and confiscation of their movable and immovable property and other atrocities. After the destruction of 4000 villages and cities, some of their inhabitants were deported to the Arabian regions in Southern Iraq with others fleeing their homes, and thousands of civilians were massacred. Nonetheless, this uprising was short-lived as Saddam Hussein started the Anfal-Campaign of 1986-89 that acknowledged the genocide against the Kurdish people. The Iraqi soldiers massacred over 182,000 Kurdish civilians particularly, in the Garmian region, and 8000 Barzani men, and employed chemical weapons which killed more than 5000 civilians in Halabja alone.⁴⁹ These crimes by the Iraqi government against Kurdish people have been condemned in some statements and personal positions. But the international community has remained silent, as well as, there was no any country in the world which worked to protect Kurdish people and ending Iraqi violations and operations against them at that time, due to the interests of the superpowers with the Iraqi government.

⁴⁸ Phillip C. Naylor, *Historical Dictionary of Algeria*, 4th Ed (Lanham, Boulder, New York, London: Rowman & Littlefield, 2015), 73.

⁴⁹ McDowall, A Modern History of the Kurds, 331-332, 357-358; Human Rights Watch, "Introduction: GENOCIDE IN IRAQ: The Anfal Campaign," *Human Rights Watch*, accessed February 13, 2018. <https://www.hrw.org/reports/1993/iraqanfal/ANFALINT.htm>

For example, in the Anfal-Campaign, just some NGOs condemned the Iraqi crimes and actions towards the Kurdish people. Nonetheless, after Iraqi annexed Kuwait as a strategic oil nation, America and other Western nations attacked Saddam Hussein. Consequently, the Bush administration encouraged the rise of Kurds and Shiites. The Kurds were pleased by such support and took control of the Kurdistan area. But soon history repeated itself; Americans abandoned the Kurds and instead chose to support their military, fearing that Iraq would be divided into three regions. After the one-Iraq Policy by America came to an end, the Baath regime began remobilising and launched several attacks against the Kurds. The operation led to a humanitarian crisis, forcing 1.5 million Kurds to flee to Turkey, Europe and the borders of Iran. France asked UN and the global community to act in order to minimise suffering in northern Iraq.⁵⁰ The notable assistance the Kurds gained from the international community included Operation Provide Comfort, initiated by the UK and America and supported by the United Nations Security Council (UNSC) 688 resolution (no-fly zone).⁵¹ In the meantime, the Kurds continued with their resistance against the regime and drove the Iraqi army in 1992 from the region. For the first time, they obtained their de facto autonomous area by creating the Kurdistan Regional Government (KRG) as well as other institutions.⁵²

The Kurdish de facto state, supported by the US and international community, continued in the north of Iraq until American intervention in Iraq in 2003, after which the

⁵⁰ Ferhad Ibrahim, *The Kurdish Conflict in Turkey: Obstacles and Chances for Peace and Democracy* (Germany: LIT Verlag, 2000), 46-47.

⁵¹ UNSCR, "Resolution 688 (1991) of 5 April 1991," *Search engine for the United Nations Security Council Resolutions*, accessed june12,2018. <http://unscr.com/en/resolutions/688>

⁵² KRG-Department of Foreign Relations, "Kurdistan Regional Government," *Department of Foreign Relations – KRG*, accessed june12,2018, <http://dfr.gov.krd/p/p.aspx?p=88&l=12&s=030400&r=403>

Kurdistan region was constitutionally recognised in 2005 according to the Iraqi permanent constitution.⁵³ From 2003 -2013 the Iraqi Kurdistan region developed at all levels;⁵⁴ Kurds were decision-makers in Baghdad at the same time that the KRG became an active non-state actor in international relations. Furthermore, with the beginning of the war against ISIS, there was a new opportunity for the Kurdistan region to cultivate good relations with different regional and international forces without returning to Baghdad.

As the Iraqi state continued to fail at different levels, Iraqi Kurdistan decided to hold the self-determination referendum in 2017. This referendum was unilateral and without agreement with the parent state or Baghdad. Although more than 90% of Kurds voted yes to independence for Kurdistan and separation from Iraq, the result ended in failure. It caused many problems economically and politically for the Iraqi Kurdistan region. The battle between the Iraqi army and the Peshmerga forces proceeded in several areas. The Iraqi forces took control over the disputed areas including the city of Kirkuk, then the Kurdistan Region retreated from declaring independence, and the Federal Court of Baghdad decided to nullify the referendum.⁵⁵ After that, a new phase of the conflict between Baghdad and Erbil began. Because of the imbalance of power, the Kurds postponed the declaration of independence, returned to Baghdad and participated in the Iraqi government. Now Iraqi Kurdistan politics focuses on implementing the constitution

⁵³ BBC, "Iraqi Kurdistan profile - timeline," *BBC*, October 17, 2017, accessed February 15, 2018, <https://www.bbc.com/news/world-middle-east-15467672>

⁵⁴ David Romano and Mehmet Gurses, *Conflict, Democratization, and the Kurds in the Middle East: Turkey, Iran, Iraq, and Syria* (New York: Palgrave Macmillan, 2014), 273.

⁵⁵ Jude, "Contesting borders? The formation of Iraqi Kurdistan's de facto state, 847– 849."

and solving complex problems with Iraq.⁵⁶ The Kurdistan Regional Government accepted the ruling of the Constitutional Court on the referendum.⁵⁷

Finally, the inability of the Kurds to establish their own state reflects the lack of abalance of power in favour of their goal, the nature of their opponents, and the lack of a supportive position from superpowers during the tangled international situation of the twentieth century. It also testifies to the significant disadvantages that the Kurds have suffered internally, particularly in terms of Kurdish political unity.

The statement of the problem and research questions

This thesis examines the impact of international politics and the political balance of power on implementing the right to self-determination. It will present a new understanding of international politics and the right to self-determination, and from that, develop an original way of evaluating the role of international politics as the core of the balance of power in determining the future of contemporary claims to self-determination.

The problematic of the thesis is the legal principle of self-determination facing the political balance of power. In all cases of claims to self-determination, there is a gap

⁵⁶ Masrou Barzani, "Why the Kurdistan region of Iraq is making a new start," *The Washington Post*, July 18, 2019, accessed November 15, 2019. <https://www.washingtonpost.com/opinions/2019/07/18/why-kurdistan-region-iraq-is-making-new-start/#comments-wrapper>

⁵⁷ Joanne Stocker, "Kurdistan Regional Government Accepts Nullification of Independence Referendum," *The Globe Post*, November 14, 2017, accessed September 22, 2019. <https://theglobepost.com/2017/11/14/iraqi-kurdistan-supreme-court-referendum/>

between the legal text or the legal basis of this right and the political situation in which it can be exercised, due to different factors.

Implementing self-determination, secession and the creation of independent states in the post-Cold War era is totally dependent on the balance of power and international politics. On the one hand, the enforcement of the right to self-determination in different cases, inside and outside the context of traditional colonialism, has led to the settling of many ethno-national self-determination conflicts. On the other hand, the continuance of dozens of different ethno-national self-determination conflicts in different regions⁵⁸ proves that respect for this right and its implementation does not depend on the legal text and the legitimacy of this demand only, but on the political balance of power, which is related to the position of the superpowers.

What does the right to self-determination mean today? Self-determination refers to the right claimed by a 'people' to control its destiny, or determine its political state internally and externally.⁵⁹ The normative scope of the right of the principle of self-determination continues to lack precision. The definition of the concept of self-determination and of "people" is vague enough to arouse controversy in the international arena. The lack of a specific definition of the content of self-determination, as well as the lack of specific criteria to determine who the "people" are as the titleholder of this right, renders the concept

⁵⁸ Williams, "Creating a Strategic Framework for Addressing the Conflict between Sovereignty and Self-Determination: Earned Sovereignty."

⁵⁹ Berman, "Sovereignty in Abeyance: Self-Determination and International Law," quoted in Marija Batistich, "The Right to Self-Determination and International Law," *Auckland University Law Review* 7, no. 4 (1995):1013.

subject to different political interpretations; it makes the scope of the right and its application subject to the interests of superpowers and the balance of power.

The international law instruments, as well as the international community practices, have clearly articulated that colonised peoples have a right to self-determination.⁶⁰ However, these instruments are not clear about the right to self-determination of peoples outside the context of colonialism, or the role of peoples of the existing and sovereign states. There is a kind of contradiction between legal texts and what is going on on the ground. As previously mentioned, international law instruments provide that for a group to be entitled to exercise its right to self-determination, it must qualify as a ‘people’ and be under colonial rule.⁶¹ At the same time, it stresses that the sovereignty and territorial integrity of states must be respected.⁶² Both are fundamental principles of the international order. However, there are people existing outside this characterization, or outside the context of traditional colonialism, who have exercised self-determination and achieved their independence, or have separated from the mother country, due to the balance of power and international politics, and then the international community deals with them formally, as in the cases of South Sudan, Kosovo, and Bangladesh.

⁶⁰ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples,” G. A. Res. 1514 (XV), *UN, Advisory library of international law*, ccessed December 12, 2015. <https://legal.un.org/avl/ha/dicc/dicc.html?r=1&l=ri&fst=0>; UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, October 24, 1970, 2625 (XXV).” *United Nations*. Accessed December 12, 2015. <http://www.un-documents.net/a25r2625.htm>

⁶¹ Jamie Trinidad, *Self-Determination in Disputed Colonial Territories* (Cambridge: Cambridge University Press, 2018), 1-5.

⁶² UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

Does the IKR have a legal right to external self-determination? Is it possible for the people of Kurdistan to depend on international law to legalise and assert their right to self-determination and separation from Iraq? The key question that remains to be answered is how the population can exercise the right to self-determination. Traditionally, as noted above, international law and legal principles allow for the right of self-determination to embrace the colonised people, while, from the viewpoint of oppressed peoples, exercising external self-determination through secession needs to be investigated.

The decisive role of the balance of power in implementing the right to self-determination leads to political interpretation and double standards in dealing with the right of peoples in practice, and denies many peoples their legitimate right to determine their status freely; consequently, their issues will continue. The case of the Iraqi Kurdistan people is a significant example of this problem. According to international law, the people of Kurdistan have the right to determine their own destiny, depending on several legal foundations, while in practice, due to the lack of a political balance of power in favour of KR independence, or because of the negative position of the superpowers and regional powers toward the independence of Kurdistan and secession from Iraq, a century on, the people of Kurdistan remain deprived of the right to free self-determination, and accordingly their ethno-national issue, and its effects on the whole region continue.

Due to national and ethnic suppression in the past, Kurdistan has fallen victim to marginalisation, mass killings, persecution and discrimination by the dominant groups and Iraqi governments. Kurds have suffered many years of oppression by the Iraqi state, with no adequate rights to internal self-determination. This could constitute an important legal

foundation for claiming the right to self-determination for Kurdistan, as a remedial solution.

The present-day Iraqi constitution has shown a willingness to offer the "Kurdistan people" many rights, and recognise the IKR as a federal region within Iraq. Additionally, the Kurds nowadays are among the decision-makers in the federal government of Iraq. Given the existence of complex existential problems between Baghdad and Erbil, and fear of clashes and the repetition of violations against Kurdistan peoples in the future, the Iraqi constitution and Kurdish positions in Baghdad are not enough to guarantee the Kurdistan Region.⁶³

The IKR might have relied on the many legal foundations, especially the remedial right theory, which has appeared in different cases including those of Kosovo, Southern Sudan, and Quebec. In the case of Kosovo, the International Court of Justice declared that the declaration of independence of Kosovo was not inconsistent with international law.⁶⁴ The Canadian Supreme Court in the Quebec case declared that minorities and ethnic groups have the right to external self-determination without the consent of the state, in extreme circumstances involving grave breaches of fundamental human rights.⁶⁵ Legally there are two problems with the IKR case. First, the people of Iraqi Kurdistan are part of the Iraqi people. Second, according to international law, the Kurdistan region is not currently

⁶³ Nader, et al, *Regional implications of an independent Kurdistan*, 29-43.

⁶⁴ ICJ, "Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010," *International Court of Justice*, accessed July 14, 2018. <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>

⁶⁵ Supreme Court of Canada, "Supreme Court Judgments, Reference re Secession of Quebec," *Supreme Court of Canada*, August 20, 1998, accessed September 12, 2018. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

colonised by any country but is a part of the Republic of Iraq. On the political level, the lack of a balance of power in favour of Kurdistan's independence due to international policy that does not support Kurdistan's independence is the core of the issue.

If the Iraqi Kurdistan region wishes to exercise the right to self-determination and secession from Iraq, legally, it must depend on the crimes and genocide that have been perpetrated by the successive Iraqi governments in the past, in order to justify claims to independence, as well as remedial right theory. However, the IKR must also rely on the balance of power, by obtaining the support of the United States of America and the suitable national and regional political circumstances; it must rely on politics more than the law. Consequently, it has to depend on support by superpowers, to strengthen its position and ensure the balance of power is in favour of its independence.

In 2003 the U.S forces invaded Iraq,⁶⁶ and this offered Iraqi Kurdistan a new opportunity to evolve rapidly and realise a long-standing dream of self-determination and independence. However, the continuing failures of the Iraqi state in post-2003 years, and the development of the Kurdistan region of Iraq at all levels compared to other regions in Iraq, and the strengthening of its position by the support of the international community nationally, regionally and internationally, because of the role played by the IKR in the war on ISIS, encouraged the IKR to move towards separation through the exercise of self-determination. The KR held an independence referendum in 2017, and although the majority (93%) voted in favour of independence,⁶⁷ this referendum triggered an

⁶⁶ Thomas R. Mockaitis, *The Iraq War Encyclopedia* (Santa Barbara, California:ABC CLIO,2013), xiii.

⁶⁷ BBC, "Iraqi Kurds decisively back independence in referendum," *BBC*, 27 September 2017, accessed June 14, 2018. <https://www.bbc.com/news/world-middle-east-41419633>

internationally supported counter-action by the Iraqi government, that sent forces north in mid-October against the KRG and to retake Kirkuk and most of the other disputed territories.⁶⁸ This military response set the stage for future conflict. In sum, this referendum ended in a political disaster for Kurdistan, proving that the balance of power in the Middle East is not in the interest of the Kurds. International and regional politics are not yet ready to accept a new Kurdish state in the Middle East, and the international community clearly intends to support a strong and prosperous Kurdistan region within the federal and democratic Iraqi state.

This question has become a complicated issue in international law and international politics, which needs to be scientifically evaluated according to an academic approach.

The study focuses on answering the following questions: what is the contemporary context of the right to self-determination? How could the relationship between the political balance of power and the right to self-determination be determined, and what is the impact of international politics on the balance of power in this context? Do the Iraqi Kurdistan people have a right to external self-determination and independence, according to law? Is the United States' support for the Iraqi Kurdistan region evolving to make it an independent country? Are the politics of Iraqi Kurdistan moving towards federalism or secession?

⁶⁸ ICG, *Reviving UN Mediation on Iraq's Disputed Internal Boundaries, Report No. 194 / Middle East and North Africa* (ICG, Brussels, 2018),3.

Scope of the study

This thesis is centred around the legal principle of the right to self-determination and the test of the political balance of power. It discusses the role of international politics in exercising the right to self-determination with the exploration of the Iraqi Kurdistan Region as a case study. The thesis evaluates the Kurdish ethno-national issue and claims to exercise the right to self-determination in accordance with international law instruments and international politics. The thesis analyzes how the principle was constructed in a historical and political context and how its current use may depend on political situations and the political balance of power.

The main argument is that the legal principle of self-determination is faced with the political balance of power. Accordingly, the realization of the right to self-determination depends on the balance of power and international politics.

The thesis will develop an original way of evaluating the role and impact of international politics and the political balance of power in implementing the right to self-determination, and in determining the future of contemporary ethno-national self-determination conflicts. Due to the limited nature of space, we specifically examine the right to self-determination and the Kurdish Question in the Middle East, with a focus on the case of the Iraqi Kurdistan region. Within this perspective, it studies the Kurdistan Region, its position, and its international relations, particularly with the United States, and the role of the US in this regard.

Statement of hypothesis

The main argument is that the legal principle of self-determination is faced with the political balance of power. Accordingly, the realization of the right to self-determination depends on the balance of power and international politics more than the legitimacy legal of this right.

Consequently, I argue that the people of Kurdistan have the right to self-determination, but due to the lack of balance of power, and unsupportive international politics, they cannot exercise this right yet.

The people of Iraqi Kurdistan have the right to external self-determination, as a remedial right, but achieving this right depends on the balance of power and international politics, which are not in favour of IKR independence at this stage.

In addition, I argue that the United States of America has a crucial role in determining the future of the Kurdistan Region, and despite the special US-Kurd relationship, US policy does not support the independence of the Kurdistan Region.

This thesis takes up the argument of ‘remedial right’ as a fresh way of looking at the content of the right to self-determination, and providing grounds for overcoming the default presumption of territorial integrity.⁶⁹ This theory devised by Alan Buchanan focused on justified self-determination and secession as a remedial right if important harms have been suffered by the seceding people or entity.⁷⁰ Buchanan stipulated that a ‘people’

⁶⁹ Seymour, “Internal self-determination and secession.”

⁷⁰ Allen Buchanan, “Theories of secession,” *Philosophy & Public Affairs* 26, no. 1 (1997): 31-32.

entitled to the right to self-determination are also entitled to secede unilaterally when confronted with the parent state's persistent violation of previous agreements affording them some limited form of self-government.⁷¹ Thus, systematic violations by the parent state may provide justification for self-determination and secession.

By accepting and building on Buchanan's remedial right argument, and arguments raised by the Supreme Court of Canada in the case of Quebec,⁷² also the opinion of the ICJ in the case of Kosovo,⁷³ it could be argued that the people of the Kurdistan region have a right to self-determination. These arguments form the foundations of a new method for assessing the legality and legitimacy of external self-determination claims within international law but outside the context of colonialism. Realistically, the application of this theory, or respect for the right of the people of Kurdistan to free self-determination, despite all the violations, crimes, and genocide that have been committed by the Iraqi state, depends on the balance of power and the interests of the superpower, not on the legal framework and the legitimacy of the demands only.

Achieving the right to self-determination and independence does not depend on a legal foundation in international law alone, but also on the balance of power and status of both sides, which are created by different internal and external factors, particularly international politics. The enforcement of this right in a suitable political context, and in a peaceful way and with the acceptance of both sides has helped to resolve several ethno-religious conflicts and to achieve peace and stability for all sides in the post-Cold War era.

⁷¹ Michel Seymour, "Secession as a Remedial Right," *Inquiry* 50, no. 4 (2007): 395–401.

⁷² Supreme Court of Canada, "Supreme Court Judgments, Reference re Secession of Quebec."

⁷³ ICJ, "Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010."

Thus, if there is a prior agreement between parties on self-determination, a positive dynamic and increased peace and stability will be achieved. Otherwise, the balance of power and the positions of superpowers are key factors in implementing or neglecting this right.

In many cases, apart from colonial models, which provide a legal framework for exercising self-determination, the non-consensual self-determination, or a situation where either party unilaterally invokes self-determination or a declaration of unilateral independence is much more problematic and is likely to increase tensions and cause a threat to national stability, but the end of the conflict will be determined in the light of the balance of power.

The exercise of the right to self-determination in the Iraqi Kurdistan region in a peaceful way with consensus on both sides, (the Iraqi federal government and the Kurdistan Regional Government), with a supportive international politics, or an affirmative regional and international political environment, will lead to national conflict resolution and increasing permanent peace in Iraq. Preventing this right, or non-consensual self-determination, and the unilateral declaration of independence without an agreement, and without the balance of power and international supportive politics in favour of the KR, will lead to the undermining of the Kurdistan Region and national stability.

The Kurdistan Region is now at a crossroads between federalism and independence. The independence of Kurdistan is the main goal of the IKR, while Kurdistan's independence depends on the balance of power, and national, regional and international conditions, and these are not in favour of this option at this stage. More specifically, the United States of America supports the Iraqi Kurdistan Region as a region within a unified

federal and democratic Iraq, and does not agree with full independence for it yet. Despite all that has occurred in Iraqi Kurdistan, the regional and international politics, until now, are not supportive of the independence of Iraqi Kurdistan and the establishment of the Kurdistan state as a new country in the Middle East.

Significance of the Study

An extensive review of existing literature indicates that insufficient research has been conducted on international politics and the right to self-determination, when exploring the legal principle of the right to self-determination faced with the political balance of power, focusing on the Kurdistan Case. This study contributes to existing literature through a theoretical analysis of the implementation of the right to self-determination and the role of the political balance of power and international politics, while focusing on the Kurdish Question and the case of the Iraqi Kurdistan region.

The topic under exploration is important because it relates to an important principle of international law and is linked to the liberty and the future of peoples. Also, the question is significant in political science, since it is directly linked to practices in international law for solving ethno-national conflicts and international politics, as well as to national and international peace and security.

This study considers international politics, the right to self-determination and the political balance of power in addressing the Kurdish Question. This is an important topic

that requires academic investigation, because of the complexity of the subject, and its future implications for at least four countries: Iraq, Turkey, Iran and Syria, and because of events in the Middle East since the Arab spring and its future dimensions. The 'Kurdish Question' is a key ethno-national issue in the world today, the issue of the largest nation without a state, and concerning more than 40 million people. This issue remains unsolved due to various reasons, and due to the importance of Kurdistan in terms of geo-strategy, geopolitics, and economy, many regional and international powers are involved in dealing with this issue. Moreover, following WWI, there have been many periods of instability and conflict in the Middle East because of the failure to resolve the Kurdish issue.⁷⁴ Above and beyond, Iraqi Kurdistan is strategically and geopolitically significant to the wider Middle East region. The 'Iraqi Kurdistan Region' has a direct influence on four countries in the Middle East: Iraq, Iran, Turkey and Syria. This impact is due to its geopolitical position, its demographics, its wealth and its role in the Kurdish issue in other parts of greater Kurdistan.

Iraqi Kurdistan is currently the main candidate to be a state, and any political development of the Iraqi Kurdistan region has far-reaching effects on the political map of the region, particularly its neighbouring nations; consequently, a study of Iraqi Kurdistan which has been struggling for the right to self-determination is a study of international and regional politics in this sensitive region. At a macro level, the study contributes to the understanding of the possibilities for resolution of the claims of ethnic groups who are

⁷⁴ Michael M. Gunter, "The Kurdish Question in Perspective," *World Affairs* 166, no. 4 (2004): 197-205

determined to achieve self-determination. The thesis attempts to discover a viable way forward in addressing the national interests and political future of Iraqi Kurdistan.

Study Objectives

The main objective of this thesis is to provide a scientific interpretation and analysis of the right to self-determination and international politics and the political balance of power, focusing on the Kurdistan Region case. It aims to present an analytical viewpoint of the right of the people of the Kurdistan region to self-determination and the possibility of implementing this right in light of international law, the balance of power, and regional and international politics. The thesis aims to explore the factors and obstacles which mean that the Kurdistan people cannot exercise this right and build their own state, despite a century of struggle towards this goal.

This thesis addresses the gap in the existing literature on international politics and the right to self-determination focusing on the Kurdistan case in the Middle East, as an important example for ethno-national issues globally. It contributes to the existing literature by consolidating theoretical knowledge, examining scientific discourses within the field and clarifying conceptual attributes and empirical referents.

This thesis aims to investigate how the concept of self-determination has evolved from a political idea and a revolutionary slogan to a principle and then a legal right for peoples in international law. The thesis explains the definition of self-determination, its

dimensions and problematics, and its impact on the right of oppressed peoples. It also aims to understand and identify the concept of 'peoples' as a titleholder of self-determination according to UN documents and explore how the will of the peoples in the context of self-determination may be respected by rules of international law.

The thesis also aims to analyze the Kurdish issue in the light of new theoretical developments in international law and policy, and especially investigate Iraqi Kurdistan's demand for the right to self-determination in light of "remedial right theory" as well as "realism theory".

The study intends to offer a novel understanding of the right to self-determination for peoples outside the context of colonialism as the legal principle of the right to self-determination is faced with the political balance of power. The IKR claims to the right to self-determination in the context of international law and international politics are analysed with particular attention to US policy in the region. Consequently, the study aims to evaluate the real US policy toward the Kurdish issue and the independence of the Kurdistan Region.

Finally, the thesis analyzes the question of the future of the Kurdistan Region in the light of the internal, regional and international politics, and suggests the appropriate option for shaping the future.

Research Methodology

This thesis draws on different approaches (e.g., case study, historical approach, comparative approach) but primarily uses a qualitative case study design. The methods used in the investigation follow three approaches: first, the historical approach - investigating the evolving nature of the right to self-determination theoretically and practically, and the explanation of the historical background of the Kurdish Question as a case study. Second, a comparative approach to exploring various relevant cases and models is adopted. Third, the case study approach is used to examine the Iraqi Kurdistan Region case.

A historical approach was utilised to obtain, verify and synthesize evidence from the past accounts in order to establish facts that defend or refute the hypotheses. This approach employs secondary sources and a variety of primary documentary evidence, such as diaries, official records, reports, archives, and non-textual information [maps, pictures, audio and visual recordings]. Although the interpretation of historical sources can be time consuming, the historical sources can add important contextual background required to more fully understand and interpret a research problem. Additionally, historical sources can be used many times to study different research problems or to replicate a previous study.⁷⁵

Conventionally, comparative analysis emphasized the “explanation of differences, and the explanation of similarities.” This helps to establish relationships between two or

⁷⁵ University of Southern California, “Research Guides,” *USC Libraries*, accessed December 8, 2019. <https://libguides.usc.edu/writingguide/researchdesigns>

more phenomena and provide valid reasons for research.⁷⁶ Comparative research can take various forms, for example, cross-sectional or historical comparison, in which comparisons are made across various cultures, ethnics or countries. The use of comparative research was vital in discovering self-determination approaches utilised by various nations or ethnic groups including their effectiveness in conflict resolution.⁷⁷ The present study undertook both cross-national and historical comparison, whereby different time-frames and different countries, administration and ethnic groups were compared.

Additionally, the study embraced a case study design. A case study is an in-depth study of a particular research problem rather than a sweeping statistical survey or comprehensive comparative enquiry. It is often used to narrow down a broad field of research into a few easily researchable examples. The case study research design is also useful for testing whether a specific theory and model actually applies to phenomena in the real world. It is a useful design when not much is known about an issue or phenomenon. This approach helps us to understand a complex issue through detailed contextual analysis of a limited number of events or conditions and their relationships. A researcher using a case study design can apply a variety of methodologies and rely on a variety of sources to investigate a research problem, extend experience or strengthen what is already known through previous research. Thus, the design can provide detailed descriptions of specific and rare cases.⁷⁸

⁷⁶ Michael Adiyia and William Ashton, *Comparative Research* (Brandon: Rural Development Institute-Brandon University,2017),1.

⁷⁷ Monika Palmberger & Andre Gingrich, *Qualitative comparative practices; Dimensions cases and strategies. in: Uwe Flick, The SAGE Handbook of Qualitative Data Analysis* (Los Angeles, London, New Delhi, Singapore, Washington DC.: SAGE, 2013), 97-106.

⁷⁸ University of Southern California, "Research Guides."

A case study entails an empirical enquiry that explores contemporary issues in a realistic context. Since this exploration involved Iraqi Kurdistan, a case study design allowed the researcher to focus on the issue of self-determination in a realistic context. Also, a case study helped in understanding the complex issues of Kurds through an in-depth exploration of the factors for self-determination including national-building and national, regional and international politics, and the role of US in this context. Additionally, the use of a case study allowed the researcher to explore the views of participants concerning the subject matter.

The qualitative case study uses different approaches due to the extensive parameters of the thesis, which incorporates questions of law and politics, drawn from both domestic and international fields. The thesis draws on extensive literature and sources that incorporate a wide variety of primary and secondary data, including international law, scientific sources, national constitutions, official documents, public records and published memoirs of senior officials and political leaders. Also, data was fetched from relevant books, academic articles and papers, scientific journals and conference papers, academic websites and published literature. International treaties and conventions, laws, the United Nations Charter, international instruments and UN General Assembly resolutions, and reliable reports of international human rights organisations were also examined.

Additionally, the thesis draws on interviews conducted with 8 persons from different sides; leaders, experts, researchers. The reason for using more than one method and several data sources was to achieve data triangulation. Triangulation employs various methods and data source in order to crosscheck findings, providing confirmation and corroboration of a single piece of research, as triangulation mixes data sources and methods

to strengthen the credibility as well as the applicability of findings. It enhances the reliability and validity of an exploration as well as enabling the researcher to expand or modify a research methodology. Consequently, it ensures academic rigour as well as richness of detail, resulting in in-depth understanding of a given issue under exploration. Therefore, triangulating ensured a better understanding of the issue of Kurdish self-determination, providing a better opportunity to present diverse views.

The nature of knowledge produced by the research was exploratory. Exploratory research involves examining, exploring and investigating a phenomenon. Additionally, in an exploratory study a researcher starts with a general idea and uses this research as a medium to identify issues that can be the focus for future research. It is often referred to as interpretive research, as it is used to answer questions like what, why and how.⁷⁹ The present study was exploratory since it was undertaken in order to gain a better understanding of the self-determination of the Kurds by gathering new information from secondary sources as well as through interviews.

State of the art

As Wolfgang Danspeckgruber stated: “No other concept is as powerful, visceral, emotional, unruly, as steep in creating aspirations and hopes as self-determination”.⁸⁰

⁷⁹ Adi Bhat, “Exploratory Research: Definition, Methods, Types, and Examples,” *question pro*, accessed December 13, 2019. <https://www.questionpro.com/blog/exploratory-research/>

⁸⁰ Wolfgang F. Danspeckgruber, *The Self-determination of Peoples: Community, Nation, and State in an Interdependent World* (Boulder Co: Lynne Rienner Press,2002),305.

Antonio Cassese noted that “self-determination has been one of the most important driving forces in the new international community. It has set in motion a restructuring and redefinition of the world community’s basic rules of the game.”⁸¹

An extensive literature is available about the right to self-determination, its content, its evolution, its legal legitimacy and political implications.⁸² Recent literature has explored the right to self-determination as a general principle of international relations or as a fundamental principle also of international law⁸³. Besides, international law instruments explained clearly that self-determination is a right for peoples, especially colonised peoples.⁸⁴ Some scholars have examined the theory and philosophical basis of the idea of self-determination, while other research has been focused on the implementation of principles in one of two directions: ideologically and according to self-interest, or according to scientific standards.⁸⁵

According to various sources, the concept of self-determination has a long history, which can be traced back to the Treaty of Westphalia. It has grown from a political slogan to a legal principle. In the 18th century, despite the difference between them in terms of

⁸¹ Antonio Cassese, *Self-Determination of People, A legal Reappraisal* (New York: Cambridge University, 1995), 1.

⁸² For instance: Pau Bossacoma Busquets, *Morality and Legality of Secession: A Theory of National Self-Determination* (Switzerland: Springer Nature, 2020); Jorge Valadez, *Deliberative Democracy, Political Legitimacy, And Self-determination In Multi-cultural Societies* (New York: Routledge, 2018); Cassese, *Self-Determination of People, A legal Reappraisal*; Danspeckgruber, *The Self-determination of Peoples: Community, Nation, and State in an Interdependent World*; Allen Buchanan, “Theories of Secession,” *Philosophy and Public Affairs* 26, no. 1 (1997): 31-61.

⁸³ Juan Francisco and Escudero Espinos, *Self-Determination and Humanitarian Secession in International Law of a globalized world Kosovo v. Crimea* (gewerbestrasse: Springer, 2018), 18.

⁸⁴ For instance: UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”; UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

⁸⁵ Cassese, *Self-Determination of People, A legal Reappraisal*, 1-3.

motivations, objectives and results, both the American, (1776) and French (1789) revolutions played important roles in helping to evolve the principle of self-determination.⁸⁶ In the 20th century the concept was developed as a right for all peoples according to international law. In World War I the Allies accepted self-determination as one of the aims of peace⁸⁷, a result of the efforts by different peoples for independence and liberty, and many presidents of superpowers, particularly US president Woodrow Wilson⁸⁸ and the former Soviet Union president Vladimir Lenin,⁸⁹ in addition to the United Nations' important efforts through the UN charter⁹⁰, UN activities, UN instruments including UN decisions, UN declarations, UN decisions and different international Treaties and conventions.⁹¹

⁸⁶ Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation", *Yale Journal of International Law*, 16, no. 1 (1991):180; Daniel Thürer and Thomas Burri, "Self-Determination," *Oxford Public International Law*, accessed December 11, 2016, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873>; Edward James Kolla, The French Revolution, the Union of Avignon, and the Challenges of National Self-Determination, *Law and History Review*, 31, No. 4 (2013), 717-747.

⁸⁷ Editors of Encyclopaedia Britannica, "Self-determination Political Philosophy," *Encyclopedia Britannica*, accessed March 12, 2016. <https://www.britannica.com/biography/Henry-Howard-Molyneux-Herbert-4th-earl-of-Carnarvon>

⁸⁸ Steiner and Alston, *International Human Rights in Context*, 1252-1253; Michael H. Hunt, *Crises in U. S. Foreign Policy* (New Haven: Yale University Press, 1996), 47-48; Stephen Wertheim, "The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914-1920," *Diplomatic History, The Society for Historians of American Foreign Relations* 35, no. 5 (2011):818-830; Donald Clark and Robert Williamson, *Self-Determination: International Perspectives* (London: Macmillan press ltd, 1996), 13.

⁸⁹ Vladimir Lenin, *The Right of Nations to Self-Determination* (USA: International Publishers Co. :1951), 10; Othmar A Brunner, *iHuman* (Union city:Writers Republic LLC,2019),44; Kalishwar Das, *Devil's Ultimate Claim* (Bloomington: AuthorHouse,2019),146; Borislav Chernev, "The Brest-Litovsk Moment: Self-Determination Discourse in Eastern Europe before Wilsonianism," *Journal Diplomacy & Statecraft* 22, no. 3 (2011): 369-387; *University of Richmond, UR Scholarship Repository*, accessed November 13, 2016. <https://pdfs.semanticscholar.org/f9a9/4f096b8da263dd4bf266b1a6e74b46779445.pdf>

⁹⁰ UN, "Charter of the United Nations." *United Nations*, accessed November 04, 2016. <http://www.un.org/en/sections/un-charter/chapter-i/>

⁹¹ UN, "UNGA1654, General Assembly Resolution, Special Committee on Decolonization, 1654 (XVI)," *The United Nations and Decolonization*, accessed February 12, 2017, http://www.un.org/en/decolonization/ga_resolutions.shtml; UN, "International Covenant on Civil and Political Rights,"

International politics and self-determination require further detailed and comprehensive study in the context of national and international law. In the international arena, international politics is in conflict with international law in many cases of self-determination. Secession claims are not sufficiently dealt with by international law. Similarly, theoretical analyses of the moral justifications for secession differ widely, with little scholarly agreement about, for example, whether there is a primary right to secede, a remedial right only, or no right to secede at all.⁹² Thus, a thesis about self-determination needs to incorporate different models and cases of international politics and the intervention of superpowers to support certain groups to obtain this right, to understand the balance of political power and the political environment, as well as evaluating the international law in regard to self-determination.

The notion that the right of self-determination has a legal basis has been explored by various scholars but has not been coherently formulated.⁹³ During the colonial era, the idea of having a legal right to self-determination was widely resisted by the colonial powers. Consequently, based on their resistance, the legal right was muted and considered as a mere political aspiration. Nonetheless, nations and international communities agreed that it was essential to help dependent peoples to independence and self-determination. While self-determination started to be recognised as a legal right in the context of

United Nations Human Rights. Office of the High Commissioner, accessed December 12, 2015. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; UN, "International Covenant on Economic, Social and Cultural Rights," *United Nations Human Rights. Office of the High Commissioner*, accessed December 12, 2015. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>; UN, "Documents," *United Nations*, accessed November 18, 2016.: <http://www.un.org/en/documents/index.html>

⁹² Bennett, When is secession legitimate?

⁹³ Ingrid Barnsley and Roland Bleiker, "Self-determination: from decolonization to deterritorialization, Global Change," *Peace & Security* 20, no. 2 (2008): 121-125.

decolonisation, it was not only understood as a means of gaining independence. During the post-colonial period, the legality of self-determination has increasingly proven to be controversial but it can never be doubted; a bridge between colonial ideals and modern ideas has been built by the evolution of the notion of self-determination as initially a human right, then as a right for all peoples.

In general, the international instruments of the right to self-determination represent a decisive step forward towards the legalization of this right in the United Nations era. These instruments form a legal basis for the right to self-determination in international law, as a right of peoples. They emerged from the Charter of the United Nations and include various UN declarations, decisions and recommendations, and judicial provisions.

With the formation of the United Nations after World War II, self-determination was finally established as a defining principle of the international system and eventually gained significance as a legal right, under the auspices of the UN.⁹⁴ Moreover in each stage, many national conflicts have been solved and various colonial peoples have gained their independence, while several countries have been created as a result of the implementation of the right to self-determination: “The impact of decolonization in creating a large number of new states is one of the most significant developments since 1945”.⁹⁵

The United Nations has helped to codify the right to self-determination as part of international law and a key objective of the organisation. The UN Charter sited self-

⁹⁴ Kristina Roepstorff, *The Politics of Self-determination: Beyond the Decolonisation Process, Volume 95 of Routledge Advances in International Relations and Global Politics* (London: Routledge, 2013), 12.

⁹⁵ April Carter, *Peace Movements: International Protest and World Politics Since 1945, The Postwar World* (London and New York: Routledge, 2014), 27.

determination as a main objective of the United Nations in the first article: “The Purposes of the United Nations are: to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.⁹⁶ Hence, from this time onward, there is repeated reference to self-determination within legal frameworks in the UN resolutions and conventions.

In 1960, the United Nations General Assembly came up with two famous resolutions, including 1541⁹⁷ and 1514,⁹⁸ that refined the classical right of self-determination within colonial environments. Later in 1966, the assertions of the International Covenant on Civil and Political Rights⁹⁹ as well as the International Covenant on Economic, Social and Cultural Rights¹⁰⁰ were concluded. In article 1, it is clearly articulated that “all people have the right of self-determination.” Therefore, by the virtue of this right, people “can freely determine their political status as well as freely pursue their cultural, economic and social developments.” Subsequently, the UN Declaration on Friendly Relations at first seemed to support self-determination but increasingly restricted it to decolonisation events. It advocated that non-self-governing peoples could continue to exist separately until such peoples exercised their right to self-determination to avoid being

⁹⁶ UN, “Charter of the United Nations, Chapter I: Purposes and Principles,” *United Nations*, accessed November 05, 2016. <https://www.un.org/en/sections/un-charter/chapter-i/index.html>

⁹⁷ UN, “UNGA Res. 1541, Defining the Three Options for Self-Determination, 1541 (XV),” *United Nations, United Nations and Decolonization*, accessed February 8, 2016. [https://undocs.org/en/A/RES/1541\(XV\)](https://undocs.org/en/A/RES/1541(XV))

⁹⁸ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

⁹⁹ UN, “International Covenant on Civil and Political Rights.”

¹⁰⁰ UN, “International Covenant on Economic, Social and Cultural Rights.”

tioned to their colonisers.¹⁰¹ Furthermore, Resolution 2526 stated that: By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status."¹⁰² This is a significant base of UN instruments which could be used to deal with the cases of self-determination outside the context of colonization, like the case of Kurdistan.

On the other hand, the political hegemony of the superpowers over the resolutions and declarations of the United Nations has also continued, and has led to the UN dealing selectively with cases related to the right to self-determination. Since the founding of the United Nations, there have been many cases of national conflicts in different regions around the world, which were also present before and during the same period of drafting United Nations instruments and steps towards ending the occupation and granting independence to colonised peoples. But the political balance of power, international politics, and the interests of the great powers have determined the position of the United Nations in dealing with these issues, and then determining the future of those issues and conflicts. For instance, Kashmir in India, was not one of the territories covered by the nomination list to exercise the right to self-determination,¹⁰³ despite its size and its impact on regional and international stability. While Western Sahara was authorised by the UN

¹⁰¹ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, October 24, 1970.

¹⁰² UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, October 24, 1970.

¹⁰³ UN, "Non-Self-Governing Territories," *The United Nation and Decolonization*, accessed August 4, 2017. <https://www.un.org/dppa/decolonization/en/nsgt>

nominations to exercise self-determination according to the UN declaration on colonization, the political situation and international politics presented obstacles, and the case remains unresolved to this day.¹⁰⁴ Moreover, there are other cases, including East Timor, 1999¹⁰⁵ Kosovo, 2008¹⁰⁶ and southern Sudan, 2011¹⁰⁷, which were not covered by the United Nations list at that time as colonised territories which could exercise the right to self-determination, but have exercised self-determination and achieved independence in the post-Cold War era.

While the right to self-determination was promoted through the instruments and procedures of the United Nations, the case of Kurdistan has been neglected. This neglect has led to the unresolved continuation of this issue and its continued effects on the related countries and the region as a whole. This proves again that; international politics and the political balance of power have a decisive role in determining the future of cases and claims to the right of self-determination.

In addition, there are many judicial decisions and international human rights instruments, which are also important supportive documents for the development of self-determination legally and practically.

¹⁰⁴ UN, “Non-Self-Governing Territories.”

¹⁰⁵ UNTAET, “East Timor, The United Nations Transitional Administration in East Timor (UNTAET),” *Completed Peacekeeping Operations*, accessed July 12, 2018. <https://peacekeeping.un.org/mission/past/etimor/etimor.htm>

¹⁰⁶ ICJ, “Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010.”

¹⁰⁷ Nicolas Levrat, et al. “Catalonia's legitimate right to decide. Paths to self-determination. A report by a commission of international experts,” *Université de Genève*, accessed May 24, 2018. https://www.unige.ch/gsi/files/9315/0461/7440/CATALONIAS_LEGITIMATE_RIGHT_DECIDE.pdf

The ICJ has set out provision in relation to the right of self-determination including interpreting peoples' right to self-determination. Based on the past cases by the court, the focus was on the external aspect of self-determination, as the right of peoples to determine freely their political status and their place in the international community. That has to be distinguished from the internal aspect of this right, or the rights of all peoples to pursue freely their economic, social and cultural development within the political and legal framework of a given state. Therefore, cases largely fall under the rubric of decolonisation and external self-determination. A close look at the relevant judgments and decisions demonstrates the important role of the court in the development of the concept of self-determination and its recognition as a legal right. However, in the case of Western Sahara in 1975,¹⁰⁸ also in the case of South Africa in Namibia,¹⁰⁹ and the declaration of Kosovo's independence¹¹⁰ the court declared that this right is a right for all peoples. In the case of East Timor, the International Court of Justice stated that self-determination has been acknowledged by the UN Charter and within the jurisprudence of the Court as well as enunciating one of the vital principles of modern international law:

"The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court; it is one of the essential principles

¹⁰⁸ ICJ, "Report of Judgment, Advisory Opinions and Orders, Western Sahara, Advisory Opinion of 16 October 1975," *International Court of Justice*, accessed August 12, 2016. <https://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf>

¹⁰⁹ ICJ, "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)," *International Court of Justice, Reports of Judgment, Advisory Opinions and Orders*, Advisory Opinion, July 21, 1971, pp: 31-32, accessed December 22, 2015. <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf>

¹¹⁰ ICJ, "Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010."

of contemporary international law. However, the Court considers that the erga omnes character of a norm and the rule of consent to jurisdiction are two different things." ¹¹¹

Other international instruments are evident in advancing the right to self-determination. The instruments explored in this regard include human rights declarations, the Helsinki Final Act of 1975, the Africa Charter on Human and People's Rights, and the Vienna Declaration and Programme of Action.

The adoption of the Universal Declaration of Human Rights (UDHR) on 10 December 1948¹¹² marked another stage in the evolution of self-determination. Although the UDHR did not state the right to self-determination directly, it referred to rights and fundamental freedoms affirmed equally for all humans on the basis of brotherhood and common dignity, and the prevention of oppression and violation of rights at all levels. As UDHR Article (21/3) stated that: "The will of the people shall be the basis of the authority of government."¹¹³

The right of peoples to self-determination in international law is succinctly stated in the first paragraph of common PART I / Art 1 of the International Covenant on Civil and Political Rights, (CCPR)¹¹⁴ and the International Covenant on Economic, Social and

¹¹¹ ICJ, "Case Concerning East Timor (Portugal v. Australia)," *International Court of Justice*. Accessed May 10, 2017. <https://www.icj-cij.org/en/case/84>; Antonito Cassese, *Self-Determination of People*, 171.

¹¹² UN, "Universal Declaration of Human Rights," *United Nations*, accessed September 02, 2016. <https://www.un.org/en/universal-declaration-human-rights/>

¹¹³ UN, "Universal Declaration of Human Rights."

¹¹⁴ UN, "International Covenant on Civil and Political Rights," ICCPR, *United Nations Human Rights. Office of the High Commissioner*, cessed December 12, 2015. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Cultural Rights (ICESCR).¹¹⁵ According to these covenants, all peoples and nations have the right to self-determination. By virtue of that right, they are free to determine their political status and to develop their economic, social and cultural situation¹¹⁶:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹¹⁷

According to this article and the instruments of the United Nations, the final objective of the right to self-determination is political independence, possibly including secession and the building of an independent state.

The Africa Charter on Human and Peoples' Right 1979, is also called the Banjul Charter is an international human rights instrument devised with the aim of promoting and protecting human rights as well as basic freedoms within the African Continent.¹¹⁸ In

¹¹⁵ UN, "International Covenant on Economic, Social and Cultural Rights," ICESCR, *United Nations Human Rights. Office of the High Commissioner*, accessed December 12, 2015. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹¹⁶ UN, ICCPR and ICESCR, stated as follows:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

¹¹⁷ UN, "International Covenant on Civil and Political Rights.,"; UN, "International Covenant on Economic, Social and Cultural Rights."

¹¹⁸ African Union, "African Charter on Human and Peoples' Rights," *African Union*, accessed November 18, 2016. <https://au.int/en/treaties/african-charter-human-and-peoples-rights>.

determining the right to self-determination, Article 20 of the Charter indicated that all people have a right to existence including an indisputable and unquestionable right to self-determination. Furthermore, indicated that all people have a right to international and state security and peace.¹¹⁹

The Helsinki Final Act, also known as the Helsinki Accords (Helsinki Declaration) was the result of a conference held in 1975 attended by 35 nations, intended to enhance relations between the West and the Communists.¹²⁰ Nonetheless, Article VIII was intended to promote equal rights and self-determination of people. Part VII supported Article VIII but sought respect for human rights.¹²¹

The Vienna Declaration and Programme of Action (VDPA) was adopted by the World Conference on Human Rights in Vienna on 25 June 1993.¹²² It called upon the people and all nations to rededicate themselves to promoting and safeguarding all human rights as well as fundamental freedoms in order to secure the enjoyment of human rights.¹²³ In relation to the right of self-determination, VDPA called on UN member nations to consider the changes takings place on the global scene as well as the aspirations of peoples for international order. It articulated that all people have the right of self-determination. Therefore, by virtue of this right, they needed to freely determine their political status as

¹¹⁹ African Union, “African Charter on Human and Peoples' Rights.”

¹²⁰ Sir Michael Wood and Daniel Purisch, “Helsinki Final Act (1975),” *Oxford Public international law*, accessed May 15, 2017. <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1051>

¹²¹ Wood and Purisch, “Helsinki Final Act (1975).”

¹²² Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on June 25, 1993, *United Nations, Human Rights, Office of the Higher Commissioner*, Accessed 14 May, 2017. <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

¹²³ Urfan Khaliq, *International Human Rights Law Documents* (Cambridge University Press, 2018), 405.

well as freely pursue their cultural, economic, social and political development.¹²⁴ The Conference considered any denial of the right to self-determination as a violation of fundamental human rights and further underlined the significance of effective realisation of the right to self-determination.¹²⁵

Thus, the right to self-determination according to contemporary international law instruments is a core principle of international law, and it is a legal right for peoples. The UN Charter set the right to self-determination as the main UN objective, also as a guaranty for maintaining international peace and security, friendly relationships among states and nations, and a way of solving national conflicts and problems peacefully.

In *Self-Determination of People, A Legal Reappraisal*, Antonito Cassese indicated that the right to self-determination is broadly recognised in the international law conventions, which can be perceived as the general principles of international law that confers on people the right to self-determination. He concluded that a generic right to self-determination exists. Accordingly, the right to self-determination cannot be ensured if fundamental human rights and freedoms are not guaranteed to all the people involved. He argued that “internal political self-determination does not imply generic independence, instead, the right to choose freely a government that allows the people all the freedom of choice. Such freedoms should never be despotic or dictatorial. Therefore, one can conclude from this debate that the right of a people who include a state that has chosen their form of government has a legal foundation. Such right is restricted by and weighed against the

¹²⁴ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on June 25, 1993.

¹²⁵ Khaliq, *International Human Rights Law Documents*, 405-406.

principle of territorial integrity of nations and can be consummated within the internal, or It is an exercise that in some time ultimately lead to a new state being established but in narrow circumstances".¹²⁶

Allen Buchanan, author of seven books on self-determination and secession, supports territorial integrity as a moral and legal aspect of constitutional democracy. However, he also advanced a "Remedial Rights Only Theory" where a group has a general right to secede if and only if it has suffered certain injustices, for which secession is the appropriate remedy of last resort. He also would recognize secession if the state grants, or the constitution includes, a right to secede.¹²⁷

One of the controversies that emerges is whether the right to self-determination can be equated to the right of secession. Koskenniemi¹²⁸ offered an alternative perspective, indicating that secession was compliance, and opposing the rupture of the conventional colonial nation was illegitimate. Furthermore, he added that the UN International Law Commission Article 19 (3) (b) regarded this as *jus cogens*. He argued that there is no proposition that the conventional colonial leaders should stay in nation X with the people who were seceding but instead the colonial leaders need to depart. Viewed in this context, secession is considered not to be an issue. However, in the post-colonial context, secession is perceived to be irrelevant to the ongoing entitlement of people wishing to gain the right of self-determination. Therefore, confusion has been on the increase when the stated

¹²⁶ Cassese, *Self-Determination of People, A legal Reappraisal*, 71-99.

¹²⁷ Vita Gudeleviciute, "Does the principle of selfdetermination prevail over the principle of territorial integrity?" *International Journal of Baltic Law* 2, no. 2 (2005): 62-64.

¹²⁸ Martti Koskenniemi, "National self-determination today: Problems of legal theory and practice," *International & comparative law quarterly* 43, no. 2 (1994): 241.

minorities are seen to be entitled to the right of self-determination, which may imply a right to secede.

From the legal perspective, it remains to be clarified whether minority rights allow for secession or the right for self-determination. In the 1992 Joint Opinion that was prepared in relation to Quebec by Professors Tomuschat, Shaw, Pellet, Higgins and Frank, they stated that we must recognize that all peoples theoretically enjoy the right to self-determination. International practice since 1945 has been to apply this principle predominantly, if not exclusively, in favour of colonial peoples and some other peoples, who in very rare cases are classified, at least since the adoption of the UNGA Resolution on December 14, 1960 1514(XV) containing the Declaration on the granting of independence to colonial countries and peoples.¹²⁹ However, the Declaration stressed that no legal basis and right existed favouring secession, on the grounds that the entity concerned consisted of a minority group within a country.¹³⁰ Thus, whereas in the framework of decolonisation the principle of self-determination served as a legal basis for statehood, it emerges from this second body of practice that peremptory norms could also play a negative role, since their violation would obviate statehood by prohibiting secession.¹³¹

¹²⁹ Thomas M. Franck, et al., " The Territorial Integrity of Québec in the event of the attainment of sovereignty, Part 3 Rights of Peoples and Minority Groups," *The fourth world - Nations without a state*, Tamilnation.org, accessed may 17, 2019: <https://tamilnation.org/selfdetermination/countrystudies/quebec/quebec2c.htm#3.16>

¹³⁰ Thomas M. Franck, et al., " The Territorial Integrity of Québec in the event of the attainment of sovereignty, Part 3 Rights of Peoples and Minority Groups,"

¹³¹ Antonello Tancredi, "A normative 'due process' in the creation of States the Report prepared for Québec's Ministère des relations internationales," 1992, rough secession, quoted in: Marcelo G. Kohen, *Secession International Law Perspectives* (New York: Cambridge University Press, 2006), 182.

The question here at issue is closely linked to the general debate regarding the criteria for statehood. The doctrine examined above affirms the existence, in addition to the traditional triad (population, territory and an independent government), of a fourth element, namely the lawfulness of the process of State creation. If this process is the product of a breach of cogent norms, then the de facto entity would be prohibited from claiming statehood.¹³²

Other scholars have voiced different opinions. According to Frank, in extreme conditions, peoples may have a legal right to secede if the minorities have been oppressed in an unbearable and irredeemable manner. For instance, in Kosovo, there was pervasive global support as the general public sympathised with the unbearable situation in the country. Countries should not give territorial unity a priority with the evolution of situations and with the passage of time. However, the challenge of allowing self-determination is demonstrated by the disregarded claims of several ethnic and minority groups based on the idea that their identities were not being protected and respected by the parent states.¹³³ Accordingly, the minority approach is increasingly curtailed and their right to claim is a matter of continued ambiguity. Brilmayer proposed an imaginative solution to this long-standing challenge and a tension between two ideological legal norms involving doubtful computability: a) the rights of peoples for self-determination, and b) the right of countries to preserve their territorial integrity. The new proposed framework focuses on the relative legality of competing territorial claims and the ideal manner to be

¹³² Tancredi, "A normative 'due process' in the creation of States the Report prepared for Québec's Ministère des relations internationales."

¹³³ Stephen Tierney, "The Search for a New Normativity: Thomas Franck, Post-modern Neo-tribalism and the Law of Self-determination," *European Journal of International Law* 13 no. 4 (2002):945-948.

utilised in analysing and resolving secessionist conflicts.¹³⁴ Brilmayer argued that, contrary to popular assumptions, the difficult normative issues arising out of secessionist claims do not involve an incompatibility of the territorial integrity and rights of peoples arguments. In fact, these arguments do not pose the inconsistencies normally assumed of them.¹³⁵ Accordingly, a legal or legitimate basis for secession ought to be founded on the territorial dispute. The unique culture arguments do not represent a legitimate case for secession according to Brilmayer. Nonetheless, what remains debatable are the rights of the minority and the groups which are entitled to such claims, as he believes that secessionist claims involve, first and foremost, disputed claims to territory. Ethnicity primarily identifies the people making the disputed territorial claims. The two supposedly competing for principles of people and territory actually work in tandem.¹³⁶ Therefore, the right to self-determination remains largely ambiguous and uncertain, and increasingly an indeterminate concept.

The Kurds form one of the oldest communities in the Middle East. They had to undergo a prolonged historical struggle to achieve their independence. They are the largest nation in the Middle East and in the world still without their own state. Numerous books and articles have been written about Kurds, their race, their language, their culture and their struggle for independence.¹³⁷ Books have been written in different languages on the topic; for instance, the bibliography of *Kurdology: Kurd and Kurdistan in French sources*

¹³⁴ Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," 178.

¹³⁵ Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," 178.

¹³⁶ Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," 178.

¹³⁷ Basil Nektan, *Kurds Sociological and Historical study*, (In Arabic) trans. to Arabik: Nory Talabany (Sulaymaniyah, Office of Thought and Awareness, 3rd ed, 2007)

includes a brief description of about 883 sources which are available in French.¹³⁸ The literature review for this dissertation includes important works and books about Kurds and their issues: David McDowall, *The Kurds: A nation Denied* (1992)¹³⁹, McDowall and Chaliand's (eds) *A People without a Country: The Kurds and Kurdistan* (1993)¹⁴⁰, and David McDowall's *A Modern History of the Kurds* (2004)¹⁴¹. Another valuable resource for this dissertation was Martin Van Bruinessen's *Agha, Sheikh and State: the social and political Structure of Kurdistan* (1992).¹⁴² These and other academic studies have become important sources for the study of Kurds and their problems.

The Iraqi Kurdistan Region was added to the state of Iraq in 1926, five years after the foundation of Iraq as a new state in 1921, in the aftermath of the breakdown of the Ottoman Empire and the redrawing of borders by the victorious powers, in order to form zones of influence and to keep a balance among different local ethnic groups and states.¹⁴³

This study evaluates and employs the existing literature in the field that addresses regional and international policy, particularly US policy towards the 'Kurdish Question' within the context of the Middle East. It uses new sources that address the Kurds, their race, their language, their culture and their struggle for independence in a country riven by

¹³⁸ Najaty Abdullah, *Bibliography of Kurdology Kurd and Kurdistan in French sources*. (in Kurdish) "translated by the author" (Erbil, Kurdish academy:2009).

¹³⁹ David McDowall, *The Kurds: A nation Denied* (London: Minority rights publication. 1992).

¹⁴⁰ David McDowall and Gerard Chaliand, *A People without country: The Kurds and Kurdistan*. Translator: Michael Pallis (London: Zed Books,1992).

¹⁴¹ David McDowall, *A Modern History of the Kurds*, 3ed ed. (London, New york: I. B. Tauris & Co Ltd, 2004).

¹⁴² Martin Van Bruinessen, *Agha, Sheikh and State: the social and political Structure of Kurdistan* (london: Zed books,1992).

¹⁴³ Michael M Gunter, queted in Fonkem Achankeng, *Nationalism and Intra-State Conflicts in the Postcolonial World* (Lanham: Lexington Books, 2015), 262.

national conflicts, government collapse, coups and continuous devastating wars, as subsequent history shows. The Kurds in Iraq, started a struggle politically and militarily, to obtain their rights and self-determination since the beginning of their issue. In 1991 the circumstances changed dramatically due to the establishment of the Kurds' self-autonomy within the Iraqi state.¹⁴⁴

Here, in order to understand the Kurdish issue and its background in the context of the politics of the Middle East, it is necessary to reflect on key events and the influence of the international and regional treaties that affected the region. From this perspective, the thesis will use the provisions of some of the most important treaties, particularly the Sykes-Picot Treaty (1916)¹⁴⁵, the Sevres Treaty (1920)¹⁴⁶, the Lausanne Treaty (1923).¹⁴⁷ The researcher returned to the text and provisions of those treaties to accurately determine dilemmas faced by the Kurdish people. Furthermore, the thesis uses recent international reports by the international institutions about Iraqi Kurdistan, and about the rights of minorities and democracy in Turkey, Iraq, Iran and Syria. This thesis also uses new official and declassified documents relating to the policies of superpowers towards the countries under consideration.

¹⁴⁴ Golf news, "Iraq's Kurdistan region, autonomous since 1991," *Golf news*, September 28, 2018, accessed March 14, 2019. <https://gulfnews.com/world/mena/iraqs-kurdistan-region-autonomous-since-1991-1.2283784>

¹⁴⁵ Edward Peter Fitzgerald, "France's Middle Eastern Ambitions, the Sykes-Picot Negotiations, and the Oil Fields of Mosul, 1915-1918," *The Journal of Modern History* 66, no. 4 (1994): 718.

¹⁴⁶ The Editors of Encyclopaedia Britannica, "Treaty of Sèvres, Allies-Turkey [1920]", Encyclopaedia Britannica, accessed March 14, 2017. <https://www.britannica.com/event/Treaty-of-Sevres>

¹⁴⁷ *Russell and Cohn and Treaty of Lausanne*, 12-24.

The Kurdish question concerns the largest nation without a state in the world. It is at the centre of politics in the Middle East; it began after the Sykes–Picot Agreement¹⁴⁸ and the division of Kurdistan into four countries: Turkey, Iraq, Iran and Syria. Its boundaries were approved in the San Remo conference in April, 1920.¹⁴⁹ The conference approved the final framework of a peace treaty with Turkey which was later signed at Sèvres in August, 1920.¹⁵⁰

Thus, the Kurdish problem can be traced back to the 1916 Sykes-Picot treaty.¹⁵¹ After WWI and the collapse of the Ottoman Empire, many promises were made to the Kurds about the creation of a Kurdish entity, like other nations. The right to self-determination for the Kurdish people was clearly stated in the Sevres Treaty of 1920¹⁵². Due to the superpowers' politics in the region, this opportunity was ended with the Treaty of Lausanne in 1923 between Turkey and the Great Powers¹⁵³. According to Neiberg, in 1919, the British envisaged a series of autonomous Kurdish states, to be advised by British political officers, which the French were to be asked to concede to in the Wilsonian spirit of self-determination for the Kurdish people. However, the attempt to organise them resulted in three uprisings, which in turn resulted in the British leaving the area.¹⁵⁴ Since

¹⁴⁸ Michael D. Berdine, *Redrawing the Middle East: Sir Mark Sykes, Imperialism and the Sykes-Picot Agreement* (London, New York: Bloomsbury Publishing, 2018), 69.

¹⁴⁹ Spencer C. Tucker, *Persian Gulf War Encyclopedia: A Political, Social, and Military History: A Political, Social, and Military History* (Santa Barbara – Calif.: ABC-CLIO, 2014), 372.

¹⁵⁰ Lawrence Martin, *The Treaties of Peace, 1919-1923, Volume 1* (Clark-New Jersey: The Law book Exchange, Ltd., 2007), 779.

¹⁵¹ Abdulrahman Qasmlu, *Kurd and Kurdistan*, 6th ed. (in Kurdish) “translated by the author” (Erbil: Rozhalat Publisher, 2012), 52.

¹⁵² Heather Lehr Wagner, *The Division of the Middle East: The Treaty of Sèvres* (Philadelphia: Infobase Publishing, 2004), 65.

¹⁵³ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 960-1022.

¹⁵⁴ Michael S. Neiberg, *The World War I Reader* (New York: New York University Press: 2007), 405.

then until the present day, the great powers have deprived the Kurdish people from establishing a Kurdish entity in the region, and Kurdish people have become victims of international politics.

The Kurdish issue in Iraq started after the merging of the Vilayat of Mosul, "the current Kurdistan Region," with Iraq in 1926, five years after the creation of the Iraqi state.¹⁵⁵ In order to maintain the sectarian balance (Shiite- Sunni balance) in a new country, where the majority of Iraqis were Shiites, and to control oil resources in this rich area,¹⁵⁶ they merged the province of Mosul without any regard for the Kurdish majority in the region. This led to a long and bloody conflict between the Kurds and Iraq for about one century. Moreover, the Kurdish issue was the reason for all the wars and conflicts in Iraq, particular the Iraq-Iran war, internal wars and genocide campaigns against Kurdistan people by Iraqi governments throughout the twentieth century.

The Kurdish national movement in Iraqi Kurdistan began at the start of the First World War, and then evolved into its current form after the 1950s, according to the political developments in all levels of Iraq, regional and global.¹⁵⁷

In the Cold War era, the Kurdish issue was neglected by both East and West. Thus, the Kurds remained victims of international politics during the twentieth century.¹⁵⁸ Iraqi

¹⁵⁵ Sarah Shields, "Mosul, the Ottoman Legacy and the League of Nations," 217.

¹⁵⁶ Erik Goldstein, *The First World War Peace Settlements, 1919-1925* (London and New York: Routledge, 2013), 64.

¹⁵⁷ Michael M. Guanter, *The Modern Organs of Kurdish Nationalism*, quted in Wirya Rehmany, *Kurdish Nationalism and Western World*. (in Kurdish) "translated by the author" (Sulaemanyah: Sardam Publisher,2012),82.

¹⁵⁸ Hamed Mahmud Issa, *Kurdish issue in Iraq*, trans. Swara Qaladzaee (Erbil: KRG- Ministry of Culture, Printing and Publishing: 2014): 414-481.

Kurdistan is more developed than other parts of Kurdistan, but was also the victim of more repressive and bloody crimes and genocidal campaigns. These campaigns reached an unprecedented level during the rule of the Baath Party in Iraq, while the international community remained silent.¹⁵⁹

Various sources have noted that during the last century, until 1991, international politics were not favourable towards the Kurdish issue in Iraq. The positions of different countries including Western countries were not supportive of the Kurds in the Middle East, in contrast, the international community sympathised with the politics and interests of Iraq, Turkey, Syria and Iran, especially Iraq.¹⁶⁰ This situation is continued in the majority of Kurdistan, with the exception of the Kurdish people in Syria and the Kurdistan region of Iraq.

During this period, the Kurdish people in Iraqi Kurdistan were subjected to the most severe violations and crimes against humanity by the Iraqi state, including genocidal campaigns such as the Anfal campaign, bombing by chemical weapons, ethnic cleansing, demographic change, forced displacement, and the destruction of thousands of Kurdish cities and villages. Through these criminal processes, hundreds of thousands were killed to international silence.¹⁶¹ Besides, there is considerable evidence, including secret documents exchanged between the UK and the US, that Britain like America, was not

¹⁵⁹ Marf Omer Gool, *Geocoding Kurdish people in lighting of new international law*, 5th Ed. (in Kurdish) "translated by the author" (Erbil, Aras Publisher: 2010): 35-71.

¹⁶⁰ Hussein Madani, *Kurdistan and Strategy of powers, Book 2* (Erbil: Rojhalat printing house:2009):435-458.

¹⁶¹ Michael J. Kelly, *Ghosts of Halabja: Saddam Hussein and the Kurdish Genocide* (Westport, Connecticut, London: Praeger Security International, 2008), 20-40.

supportive of the Kurds during the Cold War era. For instance, Britain added Mosul Velayat to the new Iraq last century, and continues to neglect Kurdish rights.¹⁶²

However, after the collapse of the Berlin Wall, and the victory of the West, led by the United States, the Kurdish issue was more favourably regarded by the international community, particularly in Western countries. American foreign policy towards the Kurds in Iraq changed significantly.¹⁶³ This new policy of the US and its allies led to the establishment of the Kurdistan Regional Government, and Kurdish claims to the right of self-determination was continued.

After the American intervention in Iraq 2003, Kurdistan developed more, as it participated as the second-largest army with the Americans in liberating Iraq from Saddam's regime.¹⁶⁴ Then Kurds participated as a major partner in rebuilding and governing Iraq, and for the first time a Kurdish leader, Jalal Talabani, became President of Iraq in national elections in 2005.¹⁶⁵ In 2005 Kurdistan became a constitutional region according to the Iraqi constitution.¹⁶⁶ However the outstanding issues between Erbil and Baghdad remained, including disputed territories, partnership in the state, and commitment to the constitution.

¹⁶² Wirya Rehmany, *Kurd and Kurdistan in American Secret Documents*, Iraqi Kurdistan. (in Kurdish) "translated by the author" (Erbil: Rojhalat publisher:2012); Osman Ali, *Kurd in British Documents*, (in Kurdish) "translated by Kamaran Baban Zada" (Erbil, Mukiryani house for printing:2013).

¹⁶³ Wirya Rehmany, *History of Kurd-America Relations* (In Kurdish) (Erbil: Rojhalat publisher:2012), 292; Wirya Rehmany, *Kurd and Kurdistan in American Secret Documents*, Iraqi Kurdistan, 358-800.

¹⁶⁴ McDowall, *A Modern History of The Kurds*, 376.

¹⁶⁵ Barry Turner, *The Statesman's Yearbook 2006: The Politics, Cultures and Economies of the World* (New York: Springer, 2017), 911.

¹⁶⁶ Iraqi Constitution, Art. 121, Quoted in *Ace*, *aceproject*, accessed September 16, 2016. <http://aceproject.org/eroen/regions/mideast/IQ/Full%20Text%20of%20Iraqi%20Constitution.pdf/view>

The investment in and export of oil independently by the Kurdistan Region was another key development, which affirmed Kurdistan's desire for independence.¹⁶⁷ After Baghdad had cut the Kurdistan region's share (17%) from the state budget in 2014,¹⁶⁸ Kurdistan lost hope of staying with Iraq. Despite strong opposition from Iraq, regional countries and great powers, the IKR held the Kurdistan independence referendum in 2017. Although the majority (93%) voted in favour of independence,¹⁶⁹ the consequences of this referendum were very difficult for Kurdistan. The Kurdistan Region faced severe punitive measures by Iraq and neighbouring countries, with all land and air borders blocked, a military attack on the Kurdistan Region by Iraqi forces, and control by Iraq of disputed areas equivalent to the size of the current Kurdistan region. After the situation calmed down and the government changed in Baghdad, the Kurds returned to Iraqi government, but the issue continued with the problems unresolved.

Currently, the Kurds are at a crossroads: federalism and continuing with Baghdad, or moving towards independence, which is unacceptable at the Iraqi, regional and international level, at least at the current time.

According to the summary of the opinions of the experts and officials whom the researcher interviewed, the right to self-determination stems from a belief in the freedom of peoples and choice of political future without intervention by others. This is a legal right of any people and any group which has the characteristics of a people the implementation

¹⁶⁷ Kane, *Iraq's Oil Politics Where Agreement Might be Found*, 15.

¹⁶⁸ Anwar Anaid and Emel Elif Tugdar, *Iraqi Kurdistan's Statehood Aspirations: A Political Economy Approach* (Cham, Switzerland: Springer, 2018), 127-128.

¹⁶⁹ Zhao Changfeng and Otenia Temitayo, "2017 Iraqi Kurdistan's Referendum for Independence: Causes and Impacts," *Humanities and Social Sciences* 2, no. 6 (2018): 59-61.

of this right must be within peaceful and legal frameworks, and through dialogue and coordination between both sides.¹⁷⁰

While there are various perspectives on the objectives, forms and methods of self-determination and national conflict resolution, the majority of participants in the interviews emphasise the significance of the Kurdish right to self-determination in resolving the Middle East conflict. They examine how the IKR is likely to stabilise or destabilise the region. Although, for some experts, the referendum was unconstitutional, according to the Iraqi constitution,¹⁷¹ the participants have presented extraordinary aspects of Kurdish national movements that become obvious when the many challenges they face in reaching the goal of self-determination are assessed. There are several aspects of the Kurdish question which make it exclusive among other national movements.¹⁷² One of these factors involves the worst situations, particularly when the Kurdish people are divided among four nations: Iraq Iran Turkey and Syria. Hence, any demand for self-determination made by the Iraqi Kurds is perceived to be part of a national struggle for separation from Iraq and a promise of instability in the region. As a result, the reactions and operations of these neighbouring countries will be extreme in nature.¹⁷³ Experts believe Iraqi Kurdistan is a special case, and the people of Iraqi Kurdistan have the full right to self-determination because they have the characteristics of a people that have enjoyed this right¹⁷⁴. This right must be exercised in a peaceful framework, in cooperation and coordination with the

¹⁷⁰ Abobkr Kawany, *Interview by the Researcher*. Erbil. April 12, 2018.

¹⁷¹ Gazy Janaby, *Interview by the Researcher*. Baghdad, April 10, 2019.

¹⁷² Raed Fahmy, *Interview by the Researcher*. Baghdad, April 12, 2019.

¹⁷³ Fahmy, *Interview by the Researcher*.

¹⁷⁴ Khamosh Omer, *Interview by the Researcher*. Erbil, April 12, 2019.

government of Iraq.¹⁷⁵ In addition, preventing this right means that the Kurdish issue will not be solved in a democratic and peaceful manner, and it will keep Iraq in a state of deep crisis, from which it has suffered since its inception.¹⁷⁶ Nevertheless, the interest of the Iraqi Kurdistan Region lies in remaining within a democratic and federal Iraq, strengthening and developing itself in all fields, because regional and international politics do not allow for the establishment of a Kurdish state at the present time.¹⁷⁷ Therefore, working towards Kurdistan's independence without agreement with the Baghdad government will complicate matters further and increase violence and instability for Iraq and the entire region.¹⁷⁸

Various scholars have adopted particular approaches in exploring the role and importance of the Kurdish right to self-determination plus the opportunities and limitations of the Kurds, coupled with future perspectives.¹⁷⁹ A large number of scholarly works have mostly explored nationalism and national identity¹⁸⁰ or the Kurdish straggle for their rights.

Many academic works have concentrated on the political Kurdish parties plus the Kurdish insurgency against their governments.¹⁸¹ A problem emerging from such

¹⁷⁵ Karwany, Fahmy, Interview by the Researcher.

¹⁷⁶ Ismail Hadidiy, *Interview by the Researcher*. Baghdad, April 15, 2019.

¹⁷⁷ Fahmy, *Interview by the Researcher*.

¹⁷⁸ Aiden Maarouf, *Interview by the Researcher*. Erbil. April 12, 2019.

¹⁷⁹ Fadaee, Simin, and Camilla Brancolini." From national liberation to radical democracy: Exploring the shift in the Kurdish liberation movement in Turkey," *Ethnicities* 19 no. 5 (2019): 858–865.

¹⁸⁰ Rasim Donmez, "Racism. Nationalism in Turkey: Political violence and identity," *Ethno politics* 6, no. 1 (2007): 43-65; David Romano, *The Kurdish nationalist movement: opportunity, mobilization and identity* (Cambridge: Cambridge University Press, 2006).

¹⁸¹ Michael M Gunter, "De Facto Kurdish state in Northern Iraq," *Third World Quarterly* 14, no. 2 (1993):295-302.

conceptualisation is the neglect that the Kurdish question has suffered. Studies have also focused on Kurdish nationalism in relation to separatism. Nonetheless, there have been a significant amount of studies regarding political and cultural rights from the viewpoint of critical social science, which entails exploring the theoretical and ideological foundations of the Kurdish political movements, especially the right to self-determination, autonomy or federalism. Such studies have attempted to capture the ideological shift of Kurdish political parties in their desire to move from national independence to the formation of an autonomous state.¹⁸² From this period, the image of Kurdish leadership changed significantly as well as the legitimacy of the Kurdish right to self-determination. For instance, Gambetti described the Kurdish question as a potential social movement intended to change the power structure in a particular polity.¹⁸³

The emergence of this new viewpoint of the Kurdish question resulted in a proliferation of literature regarding radical democracy and the right to self-determination, with two publications that specifically concentrate on such a shift. Gunes attempted to trace the historical developments as well as the transformation of the Kurdish political identity via discourse analysis. He revealed how and why the discourse of a Kurdish nationalistic movement was replaced by a democratic narrative and examined the implications of such changes in transforming mainstream democracy.¹⁸⁴ White demonstrated the shift from national liberation to a radical democracy by concentrating on the historical changes of the

¹⁸² Fadaee, Simin, and Camilla Brancolini." From national liberation to radical democracy: Exploring the shift in the Kurdish liberation movement in Turkey," 858-870.

¹⁸³ Zeynep Gambetti, "Politics of place/space: The spatial dynamics of the Kurdish and Zapatista movements," *New Perspectives on Turkey* 41, no. Fall (2009): 43-87.

¹⁸⁴ Cengiz Gunes, *The Kurdish national movement in Turkey: From protest to resistance* (London, New York: Routledge, 2013), 2-25.

PKK as a Kurdish political party, and the manner in which such changes impact on its internal operations.¹⁸⁵

Hiltermann noted that the Kurds are victims of history, geography, and, on the occasions, they overreach, their own ambitions. For almost a century, they have struggled for freedom and self-determination.¹⁸⁶ Additionally, he touched on the relationship of Iraqi Kurdistan with its neighbours, stressing relationships between KRG and Ankara founded on trade and economics. He believes today, a rapidly changing region is presenting them with new allies and fresh opportunities. Yet there is good reason to think that the Kurds will have to defer their quest for statehood once again, at most trading Baghdad's suffocating embrace for a more amenable dependence on Turkey.

For some scholars unresolved claims to self-determination are among the biggest challenges in global politics today. A large number of different minorities and ethnic groups in all parts of the world are seeking independence or determining their futures. A group seeking self-determination is one which feels that it has been unjustifiably excluded from the community of states recognised by international law.¹⁸⁷ One of the biggest challenges many states face is the claim to self-determination for ethnic minorities. Most nations have responded to such claims through violent strategies, repression and the use of force. However, several problems associated with the conceptualization of self-determination are limiting opportunities for the peaceful resolution of such claims. The

¹⁸⁵ White Paul, *The PKK: Coming down from the Mountains* (London: Zed Books Ltd., 2015)12-20; 60-80.

¹⁸⁶ Joost R. Hiltermann, "Revenge of the Kurds: breaking away from Baghdad." *Foreign Affairs* 91, no. 6 (2012): 16-22

¹⁸⁷ Batistich, *The Right to Self-Determination and International Law*,1013.

international community lacks a coherent legal framework for extending the right of self-determination to all peoples, as the issue of self-determination remains linked to a deeply entrenched concept of state sovereignty which revolves around an artificial link between nations, states and territorial integrity. That makes it difficult to see this right as a right for all peoples, particularly peoples outside the context of decolonization.¹⁸⁸ Accordingly, the establishment of the right to self-determination in accordance with international law in the Iraqi Kurdistan region faces legal obstacles, and needs to be studied further.

In addition, texts have been written in Kurdish by Kurdish researchers and leaders and by those who have participated in the Kurdish liberation movement. These Kurdish leaders are knowledgeable about the history of the Kurdish issue, and they have published reliable information. These sources have enriched this dissertation by portraying the events from different viewpoints and through a neutral analysis. Usually, Kurdish politics and relations were exercised through Kurdish political parties, because of the non-existence of a Kurdish state. The publications of these parties provide valuable source material. This thesis will evaluate studies of Kurds and their claims for self-determination in Kurdish and Arabic. Further texts, some written in Kurdish, by those who participated in the Kurdish liberation movement are useful sources of information¹⁸⁹, although these also require careful analysis. Usually, these sources conclude that the Kurdish people have a right to

¹⁸⁸ Batistich, *The Right to Self-Determination and International Law*, 1013.

¹⁸⁹ Jalal Talabany, *Kurdistan and Kurdish National Movement* (In Kurdish, translated by researcher) (Erbil: PUK, 2014).

self-determination and full independence, and they argue that the Kurdish people have been victims of the international politics and the interests of the superpowers.¹⁹⁰

To study the case of Iraqi Kurdistan and explore the conditions in which the people of Kurdistan have the right to self-determination, and whether it can be applied at the present time, it is necessary to discuss the issue from different angles. We have discussed the issue of the right to self-determination for the people of Kurdistan in the light of three trends and perspectives: first the perspective of international law and international law instruments related to self-determination, second in the light of basic theories related to the right to self-determination in law and international politics, third in the light of international politics and the impact of this politics on the achievement of this right in other cases, such as in the case of Kosovo. The result that we have reached is that the people of Kurdistan have the right to self-determination, at least as a remedial solution, but practising this right is difficult at this stage due to the national, regional and international politics, or the lack of a balance of power in favour of Kurdistan's independence.

With regard to the right to self-determination of the Kurdish people in the light of the basic theories in international politics and law, the thesis will focus on liberal and realist theories.

Primary rights theory is an example of the permissive liberal view.¹⁹¹ According to the primary rights theorists, injustice must not be the prerequisite for a group to seek the right of self-determination or decide unilaterally if they want to secede from a bigger polity.

¹⁹⁰ Jalal Talabany, *Kurdistan and Kurdish national movement*, 12,33,76; Qasmlu, *Kurd and Kurdistan*,52-56.

¹⁹¹ Harry Beran, *A Democratic Theory of Political Self-Determination for a New World Order*, quoted in Percy Blanchemains Lehning, *Theories of Secession* (London: Routledge, 1998), 42 – 43.

The plebiscitary framework of these theorists upholds self-determination and secession as universal rights which any group can claim through viable and legitimate means.¹⁹² According to this theory any group that can constitute a majority (or, in some accounts, a "substantial" majority) in favor of secession within a portion of the state has the right to secede¹⁹³.

According to this theory, the right to self-determination is a primary right for all nationalities, peoples, and ethno-religious groups. Moreover, it is a primary right related to the population of a certain region.¹⁹⁴ The right of self-determination is an inherent and fundamental right for all peoples regardless of population size, religion, race and location, regardless of whether there is occupation, injustice or persecution. From this standpoint, the right of the people is more important than the sovereignty and territorial integrity of the existing state.¹⁹⁵ Notable recent cases of the primary rights theory include Scotland's referendum on secession from the UK in 2014,¹⁹⁶ the Catalonia independence referendum of 2017 that the Spanish government declared illegal¹⁹⁷, and the 2017 Iraqi Kurdistan self-

¹⁹² Nicolás Brando and Sergi Morales-Gálvez, "The right to secession: Remedial or primary?" *Ethnopolitics* 18, no. 2 (2019): 107-118.

¹⁹³ Buchanan, "Theories of secession," 30-42.

¹⁹⁴ Brando and Morales-Gálvez, "The right to secession: Remedial or primary?" 107-118.

¹⁹⁵ Christopher H. Wellman, "A defense of secession and political self-determination," *Philosophy & public affairs* 24, no. 2 (1995): 165-171.

¹⁹⁶ Benjamin Levites, "The Scottish Independence Referendum and the Principles of Democratic Secession," *Brooklyn Journal of International Law*, 41, no. 1 (2015): 373.

¹⁹⁷ Turp Daniel, et al., *The Catalan Independence referendum: An assessment of the process of self-determination* (Zurich: Main Library, 2018),4.

rule plebiscite that received overwhelming support with a 93 % vote¹⁹⁸ but evoked lukewarm support outside the country.

This theory is important in establishing the right to self-determination for peoples outside the framework of occupation and colonialism, and within the existing states in a democratic and peaceful manner. This theory has typically been used as a framework of justification, the doctrine for all national movements, peoples, and groups demanding self-determination and independence at the global level, including the Kurdish liberation movement. The Kurds used this theory as a conceptual basis for their address to the Iraqi state and the world, to assert their right to self-determination and independence. As well as, the common belief in Kurdistan society is that the people of Kurdistan have all the components and elements of a “people” like any other people in the world. Accordingly, the same rights granted to other peoples should be granted to them, including the right to self-determination and independence.¹⁹⁹ Besides, most of those who were interviewed for this study, believed that the Kurdish people have a right to self-determination in principle like all other peoples in the world, but differ in their opinion of the circumstances, time and the Kurdish and Iraqi interests in this matter.²⁰⁰ According to some, it is in the interest of the Kurds to remain with Iraq as a strong, prosperous and safe region and to strengthen Iraq also.²⁰¹

¹⁹⁸ Changfengand and Temitayo, “2017 Iraqi Kurdistan’s Referendum for Independence: Causes and Impacts,” 59.

¹⁹⁹ Fred Halliday, *Can we write a modernist history for the Kurdish national movement?* In *Ethnicity and State, Kurds in Iraq, Iran, and Turkey*, edited by Faleh Abdul-Jabbar and Hisham Dawood (Baghdad - Beirut: Institute for Strategic Studies, 2006), 11.

²⁰⁰ Karwany, *Interview by the Researcher.*; Hadidiy, *Interview by the Researcher.*; Fahmy, *Interview by the Researcher.*

²⁰¹ Fahmy, *Interview by the Researcher.*

The key question here: is the admission that the Kurdish people, like all the peoples in the world, have the right to self-determination, sufficient to justify the exercise of this right and deciding its destiny freely? Or there are other factors in the matter?

In conclusion, the balance of power and supportive international politics are key factors in achieving the right to self-determination for the Kurdish people, just as they have played a key role in different self-determination cases including Kosovo and southern Sudan.

As well as the primary right theory, there is another important theory, "Remedial Right Theory," which was developed by Allen Buchanan,²⁰² which is used in this study to investigate the right to self-determination of the Kurdistan people.

The remedial rights theory concerns itself with last resort solutions to long-held grievances that groups may have, spurring them to assert self-determination as a means of diffusing historical justice. The remedial nature of this theory places the rights of oppressed peoples above existing states.²⁰³ According to this theory, violation of rights, injustice and crimes against any people, gives them a justification to external self-determination and secession.²⁰⁴ This theory is a new theory about the legal framework surrounding the exercise of the right to self-determination. It could be utilised to explain and justify cases of practicing self-determination and resolving ethno-national issues in the post-Cold War era.²⁰⁵

²⁰² Buchanan, "Theories of secession," 31.

²⁰³ Seymour, "Internal self-determination and secession."

²⁰⁴ Seymour, "Internal self-determination and secession."

²⁰⁵ Allen Buchanan, *Secession: the morality of political divorce, from Fort Sumter to Lithuania and Quebec* (Boulder, Colorado: Westview Press, 1991), ix.

In short, according to this theory, all peoples and distinct groups have the right to determine their own destiny internally, or internal self-determination, but for the external form of self-determination, there must be a clear justification associated with a severe violation of the essential rights of this people or group by the existing state.²⁰⁶

In the Kurdish case, all forms of injustice, persecution, and genocide were practiced against the Kurdish people by the Iraqi state to international silence during the last century. The Kurds have been the group most plagued under Saddam and for years, Saddam repressed the Kurds with genocidal policies to further Arab nationalism. By 1990, Iraq had demolished approximately 4,500 Kurdish villages. Saddam also used chemical weapons against the Kurds; more than 5000 people were killed in Halabja city alone. An estimated 182,000 died between 1987 and 1990 in the Anfal genocide campaign.²⁰⁷

According to remedial rights theory the tragic history of the Kurdish people can justify their claims to exercise their right of self-determination, and it can also justify the demands of the Kurdistan Region for independence.

The Kurdistan Region relied on this theory, besides the basic right theory, to justify its decision to hold a referendum on the independence of the Kurdistan Region in 2017. As former President of IKR Masoud Barzani has repeatedly stressed “Kurdistan’s share of partnership with Baghdad was genocide, oppression, and killings,” therefore "only independence would guarantee Kurds the past atrocities would not reoccur. " As he

²⁰⁶ Buchanan, *Secession: the morality of political divorce, from Fort Sumter to Lithuania and Quebec*, ix.

²⁰⁷ BusinessNews Publishing, *Summary: The End of Iraq: Review and Analysis of Peter W. Galbraith's Book* (Brussels: Primento,2017),24-26; David L. Phillips, *The Kurdish Spring: A New Map of the Middle East* (New York: Routledge, 2017), xvii.

observed, "the Kurds lost hope in a renewed relationship and decided to hold a referendum." which according to him should lead to independence.²⁰⁸

The Kurdistan Region can depend on a continuance of this bloody history resulting from the imposition of Iraqi control on Kurdistan. Anxiety, fear and lack of confidence about not repeating these crimes and problems pushed the Kurdistan Region to decide on self-determination and a belief that no future was possible except the creation of an independent entity.

These crises in recent years demonstrate the impossibility of the Kurdistan Region continuing within Iraq forever. Factors include the crisis of the disputed territories between Baghdad and Erbil²⁰⁹, the investing in oil by the Kurdistan Region independently by KRG without regard to Baghdad, the Kurdistan Region's share cut from the state general budget since 2014 by the central government²¹⁰, the direction of the Iraqi army and forces against the Kurdistan Region, which led to military clashes between the Iraqi army and Iraqi militias and the Kurdistan Region's forces, the "Peshmerga", after the Kurdistan Region's independence referendum in October 2017, military control by the Iraqi forces over the disputed areas,²¹¹ and attempts to end the authority and existence of the Kurdistan Region

²⁰⁸ Karzan Sulaivany, "President Barzani: I believe Kurdistan referendum will lead to independence," *Kurdistan 24*, September 24-2017, accessed August 12, 2018. <https://www.kurdistan24.net/en/news/84a24fe7-4284-4ffb-96aa-84259042ca3f>

²⁰⁹ International Crisis Group, *Reviving UN Mediation on Iraq's Disputed Internal Boundaries*, Report No. 194 / Middle East and North Africa, i-ii.

²¹⁰ Roula Khalaf, "Baghdad and Kurds reach budget deal-First sign of breakthrough in a fraught relationship," *Financial Times*, November 13 2014, accessed April 12, 2018. <https://www.ft.com/content/ecfe1e42-698c-11e4-9f65-00144feabdc0>

²¹¹ Joseph Daher, "The Kurdish Struggle and Self-Determination." *Socialistworker.org*, February 23, 2018, accessed May 12, 2019. <https://socialistworker.org/2018/02/23/the-kurdish-struggle-and-self-determination>

by a military attack,²¹² even after the results of the referendum were frozen by the KRG authorities, although it is a constitutional region according to the Iraqi constitution.²¹³ These factors confirm the argument of this theory.

No matter how important the solution is, its implementation is more important. Hence, the application of this theory or the exercising of the right to self-determination by the people of the Iraqi Kurdistan Region, a legitimate right according to liberal theories, primary rights theory and remedial rights theory, is dependent on political factors. Its application does not depend on this principle and scientific understanding only, but on the internal and external political situation. It depends mainly on the balance of power and international politics.

A different perspective is provided by realist theory. Indeed, realism has dominated the academic study of international relations since the end of World War II. Realists claim to offer both the most accurate explanation of state behaviour and a set of policy prescriptions (notably the balance of power between states) for ameliorating the inherent destabilizing elements of international affairs. Realism (including neorealism) focuses on abiding patterns of interaction in an international system lacking a centralized political authority.²¹⁴ This theory in international politics stresses its competitive and conflictual side. It is usually contrasted with idealism or liberalism, which tends to emphasize

²¹² Josie Ensor, "Iraq rejects Kurds' offer to suspend independence drive as it launches new push for territory," *The Telegraph*, 26 October, 2017, accessed May 12, 2019. <https://www.telegraph.co.uk/news/2017/10/26/iraq-rejects-kurds-offer-suspend-independence-drive-launches/>

²¹³ Iraqi constitution, Article 117: First, state: This Constitution, upon coming into force, shall recognize the region of Kurdistan, as a federal region.

²¹⁴ Duncan Bell, "Realism International Relations," *Encyclopedia Britannica*, accessed December 12, 2019. <https://www.britannica.com/topic/realism-political-and-social-science>

cooperation. Realists consider the principal actors in the international arena to be states, which are concerned with their own security, act in pursuit of their own national interests, and struggle for power. The negative side of the realists' emphasis on power and self-interest is often their skepticism regarding the relevance of ethical norms to relations among states. National politics is the realm of authority and law, whereas international politics, they sometimes claim, is a sphere without justice, characterized by active or potential conflict among states.²¹⁵

The realist theory insists on the primacy of territorial sovereignty over a people's right to self-determination. Consequently, the realist theory supports the policy of containment of self-determination within the boundaries of existing states. This policy was implemented during the Cold War and the resulting bipolar balance of power, since each superpower restrained the other from supporting claims to self-determination that would have led to the fragmentation of existing states. However, the demise of the bipolar balance of power removed these restraints and thus opened up the possibility of the unchecked expansion of national claims to self-determination.²¹⁶ From a realist perspective, all nations are self-reliant, and to preserve peace and rights use the balance of power.²¹⁷ One of the central strategies of realism in the management of world affairs is the idea of 'the balance of power'. This describes a situation in which states are continuously making choices to

²¹⁵ Stanford Encyclopedia of Philosophy, "Political Realism in International Relations," *Stanford Encyclopedia of Philosophy*. accessed December 12, 2019. <https://plato.stanford.edu/entries/realism-intl-relations/>

²¹⁶ Pavkovic and Radan, "In Pursuit of Self-Sovereignty and Self-Determination: Peoples, States and Secession in the International Order," *Macquarie Law Journal*, accessed December 12, 2019. <http://www.austlii.edu.au/au/journals/MqLJ/2003/1.html>

²¹⁷ Duncan Bell, "Realism International Relations."

increase their own capabilities while undermining the capabilities of others.²¹⁸ Moreover, some realist scholars have shown the persistent relevance of realist thinking in international relations with regard to the rise of ISIS. To this end, they have adopted an updated version of realism: post-realism, which seeks to offer a much more accurate account of the immaterial and cultural aspects of international politics.²¹⁹

The realist view of self-determination favours sovereignty and the territorial integrity of existing states. The only and essential requirement for national self-determination is the presence and proper functioning of statal procedures.²²⁰ Claims of self-determination within the state borders are dealt with as claims for the entitlement of minority rights such as participation in public life on an equal footing with other individuals.²²¹ The underlying argument of realism in relation to external self-determination is that the states refer to the immoral arguments of self-interest in ensuring their own survival, preservation of goods and their unwillingness to endanger their own territorial boundaries.²²²

It also focuses on reconciling claims for self-determination and territorial integrity internally in various forms including higher degrees of effective participation in public affairs, economic progress and development, minority rights and the possibility of local or

²¹⁸ Sandrina Antunes and Isabel Camisao, "Realism," quoted In Stephen McGlinchey, Rosie Walters and Christian Scheinflug, *International Relations Theory* (Bristol: Michael Tang, 2017), 15-22.

²¹⁹ Davide Orsi, J. R. Avgustin and Max Nurnus, "The Practice of Realism in International Relations," *E-International Relation*, accessed December 04, 2019. <https://www.e-ir.info/2018/01/09/the-practice-of-realism-in-international-relations/>

²²⁰ Koskeniemi, "National self-determination today: Problems of legal theory and practice," 249.

²²¹ Ulrike Barten, *Minorities, Minority Rights and Internal Self- Determination* (New York: Springer,2015),199-200.

²²² Buchanan, "Theories of Secession," 46-47.

autonomous administrations.²²³ However, if the proper functioning of these procedures is questionable and the existence of the state itself becomes uncertain, the principle of external self-determination becomes applicable to reconstitute the political normality of statehood.²²⁴ It must be emphasised that these newly established entities must be founded not on self-determination claims based on ethnic or cultural nationalism, but may only emerge as states if they are capable of effective authority and promoting stability internally and externally.²²⁵

International politics, including US politics, has dealt with the Kurds through a realistic perspective, not according to the principles of morality, as Henry Kissinger, former US Secretary of State, noted. Kissinger railed against the Wilsonian crusade for self-determination as an ineffective approach; he framed his own policymaking within “America’s traditional quest for a world [where] the weak are secure.”²²⁶ This goal could be secured without the right to self-determination.

Consequently, Realism is a suitable theory for analyzing US politics toward the Kurdish question in the Middle East, in the context of questions about the right to self-determination. This theory has long been adopted by every superpower including the US, and notably by the arch-realist Kissinger, whose policy had a negative effect on the Kurdish issue during a sensitive time. During the 1970s, when the UN and the international

²²³ Barten, *Minorities, Minority Rights and Internal Self-Determination*, 253-254.

²²⁴ Koskeniemi, “National Self-Determination Today- Problems of Legal Theory and Practice,” 246.

²²⁵ Natia Kalandarishvili-Mueller, “Guest Post: The Status of the Territory Unchanged: Russia’s Treaties with Abkhazia and South Ossetia, Georgia,” *Opinio Juris*, April 20, 2015, accessed May 17, 2018. <http://opiniojuris.org/2015/04/20/guest-post-the-status-of-the-territory-unchanged-russias-treaties-with-abkhazia-and-south-ossetia-georgia/>

²²⁶ Henry Kissinger, *Years of Renewal* (New York: Simon & Schuster, 1999), 1078.

community were trying to promote people's freedom and independence, by decolonisation and implementing self-determination, the US government including Kissinger worked to end the Kurdish movement by the agreement of Algeria, 1975, between Iran and Iraq, cutting all support for this movement and ignoring the Kurdish issue.²²⁷ These actions led to the failure of yet another Kurdish nationalist revolt at that stage.²²⁸

When realistic theory is applied to the Kurdistan case, the conclusion could be that the option of independence and the declaration of a state at this stage is a catastrophe for the Kurds at both levels: regional and international.

The silence of the great powers and international community about all crimes, violations and genocides committed against the people of Kurdistan in all four parts of Kurdistan by those four countries, especially in Iraqi Kurdistan,²²⁹ is evidence that international politics is transacted according to the logic of power and interests and not the rights of oppressed peoples or the ethics and principles of international law.

In regional politics, the policies of the neighbouring countries are based on the same trend, maintain their current status and suppress any attempt to change the regional map or create a Kurdish state. Therefore, it is very difficult for the Kurds in this closed area, as

²²⁷ Richard W. Cottam, *Iran and the United States: A Cold War Case Study* (London: University of Pittsburgh Press, 1988), 150.

²²⁸ Alex Danilovich, *Iraqi Kurdistan in Middle Eastern Politics* (London and New York: Routledge, 2017), 17.

²²⁹ Paul R. Bartrop and Steven Leonard Jacobs, *Modern Genocide: The Definitive Resource and Document Collection* (Santa Barbara, California. Colorado. Oxford, England: ABC-CLIO, 2014), 1640.

realism's core belief affirms that international affairs are a struggle for power among self-interested states.²³⁰

The US remains the key superpower with regard to the Kurdish issue and the policy behind its dealings with the Iraqi Kurds is clear. Despite US support for the Kurdistan Region and protecting Iraqi Kurds since 1991, there is American insistence on the unity and territorial integrity of Iraq.²³¹

The central question here is: why is international politics dealing with the claims of the Kurdistan people to the right to self-determination in this way?

In the politics of international society, power and interest take precedence, not legality or morality. The actions of states are determined not by moral principles or legal commitments but by considerations of "interest and power."²³² These superpowers are dealing with the Kurdish issue according to this realistic doctrine, and are not ready to sacrifice their interests in and strategic relations with those important regional states in this significant region, for the right of self-determination for the people of Kurdistan, even if their rights are legitimate.

There is another important question: can the Iraqi Kurdistan region impose itself as a de facto state on Iraq and the region? Realistically, especially after the Kurdistan Region independence referendum of 2017, and the internal political and economic situation, the

²³⁰ Jack Snyder, "One World, Rival Theories," *Foreign Policy*, October 26, 2009, accessed May 18, 2018. <https://foreignpolicy.com/2009/10/26/one-world-rival-theories/>

²³¹ Marianna Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East Since 1945* (New York: Routledge, 2011), 13-15.

²³² Jack Donnelly, *Realism*, in *Theories of International Relations*, edited by Scott Burchill & et al, 3rd ed (Hampshire: Palgrave Macmillan, 2005), 48.

option of an independent state is not currently a suitable solution for the Iraqi Kurdistan Region. The majority of the problems between Baghdad and Erbil are still outstanding, in particular the disputed territories problem, which is almost equal to the size of the current Iraqi Kurdistan Region.

Thus, Although the Kurdish people have a right to self-determination and independence, according to both theories, primary right theory and remedial right theory, by reading the internal and external reality of the Kurdistan Region, and by evaluating the balance of power and the internal, regional and international political situation, it can be seen that independence is not possible for the Kurdistan Region at this stage.

With regard to the Kurdistan people's right to self-determination in the light of international law instruments the thesis addresses a wide range of literature.

It is clear that Kurdistan falls outside the framework of colonization, so it is not easy to acknowledge its right to external self-determination in accordance with traditional international law. There are some legal foundations which help to establish this right. The Kurdistan case is a unique issue, not simply the case of a part of a people within a sovereign state which wants to secede. It is the cause of the people that merged unwillingly with a country created by an occupied country.

In order for a group to have the right to determine its political destiny, it must possess an adequate identity to achieve distinction as a "people". The "people", is determined according to certain criteria, or characterised by the presence of some moral and material elements. The moral element lies in the loyalty of individuals to their collective identity as a "people". Materially, the group must have some elements such as a

specific geography, shared ethnic background, language, religion, history, cultural heritage and territorial integrity for the region that the group claims.

The UNESCO experts have described ‘people’ as a mutable concept, possibly capable of bearing different meanings with regard to different rights:

1. A group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition;(b) racial or ethnic identity;(c) cultural homogeneity;(d) linguistic unity;(e) religious or ideological affinity;(f) territorial connection; (g) common economic life;
2. The group must be of a certain number which need not be large (e.g. the people of micro States) but which must be more than a mere association of individuals within a State;
3. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have that will or consciousness; and
4. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity.”²³³

Despite all the different nuances, and according to the opinion of UNESCO experts the concept of the people can be defined according to existing material and moral elements together in a group. A people is a group of individual human beings who enjoy some or all of the following common features: a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, common economy: " the material elements." Also, the group as a whole must have the will to be identified as a people or the consciousness of being a people: " the moral elements."

²³³ UNESCO, “International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations,” *UNESCO*, Paris, November 27-30, 1989, accessed September 22, 2016. <https://unesdoc.unesco.org/ark:/48223/pf0000085152?posInSet=2&queryId=N-EXPLORE-7a145a15-1832-4b3f-9b09-171ba6485aae>

In order for a group to have the right to determine its political destiny, it must possess an adequate identity to achieve distinction as a "people".²³⁴ Consequently, the "people" is determined according to certain criteria, or characterised by the presence of some moral and material elements together. The moral elements lies in the loyalty of individuals to their collective identity as a "people".²³⁵ The group must have some material elements such as a specific geography, shared ethnic background, language, religion, history, cultural heritage and territorial integrity for the region that the group claims.²³⁶ Dinstein has suggested that the link must express itself, inter alia, in a common territory, religion, or language, but these requirements are excessively tough.²³⁷ Significantly, under the principle of self-determination, a group with a common identity and link to a defined territory is allowed to decide its political future in a democratic fashion.²³⁸

The Kurdistan population is a "people"; it has all the moral and material characteristics. In term of material elements, Kurds have their own language, distinct geography, different race, distinctive culture, and long history as they are indigenous peoples in the region, and have their own institutions for governance and management.²³⁹ In terms of moral elements, Kurds as a whole have the will to be identified as a people, and

²³⁴ Michael P. Scharf, "Earned Sovereignty: Juridical Underpinnings," *Denver Journal of International Law & Policy* 31, no. 3 (2003): 373-385.

²³⁵ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations,"

²³⁶ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations,"; Scharf, "Earned Sovereignty: Juridical Underpinnings,"379.

²³⁷ Yoram Dinstein, "Collective Human Rights of Peoples and Minorities," *International & Comparative Law Quarterly* 25, Issue 1(1976):118-120.

²³⁸ Scharf, "Earned Sovereignty: Juridical Underpinnings,"379.

²³⁹ Lungthuiyang Riamei, *The Kurdish Question: Identity, Representation and the Struggle for Self-Determination* (KW Publishers Pvt Ltd, 2015), 13-15.

they describe themselves as a people. “The Kurds’ quest for independence is 100 years old”²⁴⁰. They have a common loyalty to their cause and have wanted to be independent since the beginning of their issue in the last century. As long as the population of the Kurdistan region are a "people", they have the right to self-determination like all other peoples according to the international instruments.²⁴¹

In addition, UNISCO report referred to only three kinds of peoples who have the right to self-determination: "The right of peoples to self-determination is now well established by international law in the case of colonial peoples, peoples in dependent territories and peoples living under racist regimes."²⁴²

According to the third point, at least, of these criteria it could be argued that the population of the Iraqi Kurdistan Region are "people" and they have the right to self-determination. This region is dependent territory to the Iraqi state and since the beginning of the Kurdish issue the will of the people has not been respected. In addition, successive Iraqi governments have perpetrated acts of extreme racial discrimination and numerous crimes against Kurdish people including genocide, ethnic cleansing, demographic change, forced displacement, bombardment with chemical weapons.²⁴³

²⁴⁰ Joost Hiltermann, “The Kurds Are Right Back Where They Started,” *International Crisis Group*, accessed August 12, 2018. <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/kurds-are-right-back-where-they-started>

²⁴¹ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

²⁴² UNESCO, “International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations,” 2.

²⁴³ UNPO and KRG, “The Kurdish Genocide. Achieving Justice through EU Recognition,” *Euro Parliament*, accessed June 08, 2017. https://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-iq/dv/03_kurdishgenocidesofanfalandhalabja_/03_kurdishgenocidesofanfalandhalabja_en.pdf

In addition, Kurdistan has always been different from Iraq. It is different in terms of name and geographical origins.²⁴⁴ Moreover, Kurdistan is a distinct geographical region. The most important difference between Kurdistan and Iraq lies in international law, Iraq and other countries were candidates for statehood through a mandate system detailed in Article 22 of the League of Nations, according to A-B-C rankings; Iraq was in the A category,²⁴⁵ without Kurdistan. Also, in the Treaty of Sevres, Kurdistan has a special named section: (SECTION III. KURDISTAN. ARTICLE 62, ARTICLE 63, ARTICLE 64).²⁴⁶ Kurdistan was separated in accordance with Article 63, but Iraq was separated according to Article 94²⁴⁷; Kurdistan and Iraq differ in race, language, cultural identity, loyalty.

In August 1921 King Faisal I was crowned as a king of Mesopotamia "Iraq now officially" by the British.²⁴⁸ For 5 years after the creation of Iraq by the British, Kurdistan was not part of Iraq. Kurdistan was the "Mosul Vilayet" under the rule of the Ottoman Empire. After 5 years, as a result of the pressure exerted by the British colonial power, Kurdistan was merged with Iraq state. In 1926, the League of Nations decided to merge the Mosul Vilayet with the Iraqi new state,²⁴⁹ without regard for the will of the Kurdish

²⁴⁴ Ahmad Mirza Mirza, "The most famous leader of the conquest of Kurdistan in the first Islamic Era," *Journal of the College of Islamic Sciences* (in Arabic) 8, no. 15/2 (2014):725-755; Skyscraper City, "Kurdistan Historical Real Maps 1074 and 1893." *Skyscraper City*, January 5, 2011, accessed April 11, 2017. <https://www.skyscrapercity.com/threads/kurdistan-historical-real-maps-1074-and-1893.1292619/>.

²⁴⁵ Charles Howard Ellis, *The Origin, Structure & Working of the League of Nations* (Clark, New Jersey: The Lawbook Exchange, Ltd., 2003), 107.

²⁴⁶ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 787.

²⁴⁷ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 787-788.

²⁴⁸ Nadia Atia, *World War I in Mesopotamia: The British and the Ottomans in Iraq* (London and New York: I. B. Tauris, 2016),1.

²⁴⁹ Shields, "Mosul, the Ottoman Legacy and the League of Nations," 217.

people, who were the indigenous peoples of this region and formed the vast majority of the population. The Kurdish people have been forced by British colonial power to join up with Arab Iraq to create a sectarian balance between Shiites and Sunnis and ensure access to oil.²⁵⁰

Kurdistan underwent a process of compulsory annexation to another country. This process was illegal, as it is not permissible for any side according to international law to annex any lands from any state or region to another state under any circumstance of compulsion,²⁵¹ except with the consent of its owners.

Brilmayer explored the "historical grievance" as "the most intuitively appealing and direct" method:²⁵² "It has been claimed that secessionist claims to independence are only convincing if the secessionist group can prove that their territory was illegally annexed into the parent State, and they have a legitimate and historical claim over the territory". Accordingly, she built her opinion upon a claim to territory; people must have a 'legitimate historical claim' to the territory.²⁵³ This was a union forced upon the Kurdish population of the Vilayet of Mosul by the British and confirmed by the League of Nations, without the will of the Kurdish people, who have fought against it for the last 100 years.

In general, It is clear that the Iraqi Kurdistan region falls outside the traditional colonial context, and its status is not clear according to traditional international law.

²⁵⁰ Saad b. Eskandar, *from planning to partition: Great Britain's policy towards the future of Kurdistan 1915-1923* (KRG. Zheen establishment: Erbil,2004),41.

²⁵¹ Heiko Krüger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (London: Springer Science & Business Media, 2010), 97.

²⁵² Daniel Philpott, "In Defense of Self-Determination," *Ethics* 105, no. 2 (1995): 369.

²⁵³ Philpott, "In Defense of Self-Determination," 370-371.

However, there are many legal foundations for the IKR's right to self-determination, including the UN charter's principle of equal rights for all peoples, UNGA Res.2526, comparison with other cases, new theoretical perspectives like the remedial right theory, and some judicial decisions in international and national courts. With reference to all these points and the legal basis of the claim, we will prove that the Kurdistan people have a right to self-determination, although its implementation is dependent on the balance of power and international politics.

The UN General Assembly implemented a key resolution "2625" in 1970 called 'The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations', which affirmed that all peoples have the right to self-determination without distinction as to race, creed or color. Here, the UN General Assembly detailed further what features of self-determination it deemed essential to warranty so as to execute the Charter and to maintain international peace and security. The resolution stated that:

“By virtue of the principles of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the charter”.²⁵⁴

These words can be regarded as a legal basis for self-determination for situations like that of Iraqi Kurdistan.

²⁵⁴ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

Besides, there are two other important legal foundations for the Kurdistan claim to self-determination. The first can be found in the judicial decisions of the International Court of Justice in the case of the Kosovo independence declaration, which was found to be legal and consistent with the United Nations Charter.

The Kosovo case fell outside the colonial context and most of the people of Kosovo were part of the existing state or within the border of an independent state, but it has exercised external self-determination and proclaimed independence. Moreover, the International Court of Justice decided in favour of it; it gained wide international support and broad recognition. This decision inaugurated a new stage in international law, and it could make a legal basis for the claims of the Kurdistan region.²⁵⁵

Similarly, the decision of the Canadian Supreme Court in the Quebec case is important, since it decided that any minority or ethnic group that suffered from injustice and grave violations has a right to external self-determination. The Canadian Supreme Court indicated that it may be possible to argue that international law recognizes the right to external self-determination for a people who have been repressed within the border of the current state or blocked from the meaningful exercise of their right to self-determination internally. The Canadian Supreme Court rejected the claims of Quebec to secession because it decided that the people of Quebec had not been denied self-determination rights within Canada, and were not repressed in the context of the Canadian state.²⁵⁶

²⁵⁵ ICJ, “Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010.”

²⁵⁶ Supreme Court of Canada, “Supreme Court Judgments, Reference re Secession of Quebec.”

Through this, when the study focused on the comparison between in the case of Kosovo and the case of Kurdistan, it can conclude that the main factor is the political balance of power, depending on international politics.in the case

There are many similarities between the case of Kosovo and the case of the Kurdistan region, in terms of background, political situation, legal context, and colonialism. These features shared between the cases of Kosovo and the Kurdistan region can be relied upon to explain the state of Iraqi Kurdistan, and are important in helping to justify its steps towards independence.

If we compare the two cases in terms of the fundamental elements of the state, background, people, authority, and recognition, it can be concluded that the Kurdistan Region is more qualified from Kosovo to be a state given its continuity in terms of government, people and land, but it is lacking international support and recognition.²⁵⁷ Kosovo had widespread international support which led to formal recognition when it announced independence. The United States and the majority of European states and other allies strongly supported Kosovo's statehood and sovereignty and its campaign for international recognition.²⁵⁸ This result is a legal political matter and it is the outcome of the regional and international political situation.

²⁵⁷ Be in Kosovo, "Countries that have recognized Kosovo as an independent state," *Be in Kosovo*, accessed June 12, 2018, <https://www.beinkosovo.com/countries-that-have-recognized-kosovo-as-an-independent-state/>; Kosovo Thank you, "Thank you From the Kosovar People," *Kosovo Thank you*, accessed June 12, 2018. <https://www.kosovothanksyou.com/>

²⁵⁸ Edward Newman and Gewezim Visoka, "The Foreign Policy of State Recognition: Kosovo's Diplomatic Strategy to Join International Society," *Foreign Policy Analysis* 14, no. 3 (2018):367–387.

Thus, according to many legal foundations and in comparison with other cases, the people of Kurdistan have the right to self-determination, while practically, achieving this right and obtaining independence is difficult due to the lack of the balance of power, and unsupportive international politics, particularly US policy, in favour of the Kurdistan Region.

Regarding US policy and the right to self-determination of the Kurdistan people, there are different sources, which focus on presenting and analyzing a historical development of US policy toward the Kurdish issue, the role and position of the United States in political developments in Iraqi Kurdistan for the last 30 years, and the impact of US policy on the status of Iraqi Kurdistan. According to the sources US policy toward Kurdish issue has playing a vital role in maintaining and strengthening the IKR position in Iraq since 1991.²⁵⁹ There are also many important sources of information about the US-Kurdish partnership during the US intervention in Iraq in 2003²⁶⁰ and in all political developments after this including the war on ISIS.²⁶¹ Accordingly, this study focuses on the literature about US policy toward the Iraqi Kurdistan region and its claims to self-determination, and analyzing the role and position of the United States in political developments in Iraqi Kurdistan for the last 30 years, clarifying the relationship and the

²⁵⁹ Rehmany, *History of Kurd-America Relations*, 292-300.

²⁶⁰ Phillips, *The Kurdish Spring: A New Map of the Middle East*, xvii.

²⁶¹ Rand Corporation, "The Islamic State (Terrorist Organization)," *Rand Corporation*, accessed September 12, 2017. <https://www.rand.org/topics/the-islamic-state-terrorist-organization.html>; Martin Chulov, "The rise and fall of the Isis 'caliphate'," *theGuardian*, March23,2019, accessed November, 18,2019. <https://www.theguardian.com/world/2019/mar/23/the-rise-and-fall-of-the-isis-caliphate>; Glenn Swann, et al., "Visual guide to the raid that killed Isis leader Abu Bakr al-Baghdadi," *theGuardian*, October 28,2019, accessed November, 18,2019. <https://www.theguardian.com/world/2019/oct/28/visual-guide-to-the-raid-that-killed-isis-leader-abu-bakr-al-baghdadi>

US-Kurdish partnership in Iraq, and its impact on the status of Iraqi Kurdistan as well as on the future of the Kurdistan Region.

United States foreign policy has been theorized by several philosophical schools and scholars. Realism provides a scientific interpretation of US foreign policy toward the Kurdish issue in the Middle East. In this context, realists believe that US strategic interests must be preserved and protected regardless of who runs the administration. They believe that sustaining US interests requires maintaining regional stability and prevailing power balances.²⁶²

Realists argue that the foreign policy of superpowers is tested only by their ability to manipulate their national security interests, which include protecting and supporting friends and allies and preserving a benevolent balance of power between the different actors.²⁶³ Realist theory emerged from a belief that the state is the key actor in international politics, and that relations among states lie at the core of real international relations. Solving ethno-national issues like the Kurdish issue is not as important as exchanging interests between the US and related countries like Iraq, Iran, Turkey, and Syria.

Morgenthau justified the call for self-interest as being the ultimate goal of every nation and argued that “survival” is the highest moral principle of a state. The state has no right to risk its national interest for the sake of certain moral principles: by implication, national interest overpowers morality.²⁶⁴ To confirm this, Holsti stated that, “regardless of

²⁶² James Mann, *Rise of the Vulcans: The History of Bush's War Cabinet* (New York: Penguin Group, 2004), 134.

²⁶³ Samuel Charles Patterson, Roger H. Davidson, Randall B. Ripley, *A More Perfect Union: Introduction to American Government, revised edition* (Homewood, IL: The Dorsey Press, 1982), 595.

²⁶⁴ Hans. J. Morgenthau, “Another Great Debate: The National Interest of the United States,” *The American Political Science Review* 46, no. 4 (1952):961-988.

reasons of conscience, prestige, and self-interest, governments in most cases conduct their relations with each other in accordance with the commonly accepted rules of the game.”²⁶⁵

It is obvious that US foreign policy and national security have been adopted at the expense of principles and values. This fact also explains why the Kurdish issue was not a part of US foreign policy and the national security circle before the Cold War period.

According to US foreign policy there are priorities in the region that are more important than supporting the Kurds in their struggle for self-determination. For example, Kurdistan is an ally of America and Turkey is an ally of America, but for the US, the importance of the US- Turkish alliance is much greater than that of the US alliance with the Kurdistan region.²⁶⁶ This situation has come about because of many related factors, including geopolitics, geo-strategy, history of relations, agreements, assignments and international alliances, international and regional conflicts, the influence of each ally on regional and international situations, the securing of the interests of the United States in the region.

This proves that realistic US policy deals with whoever has the power to secure its interests and achieve its goals. The US does not care about the rights of the Kurdish people in Turkey and Iran, due to their political realism.²⁶⁷ In sum, US foreign policy is based on

²⁶⁵ K. J. Holsti, *International Politics: A Framework for Analysis*, 5th ed. (Englewood Cliffs, NJ: Prentice- Hall International Inc.,1988), 393.

²⁶⁶ Michael Gunter, “Introduction,” quoted in Rehmany, *History of Kurd-America Relations*. (Erbil: Rojhalat publishers, 2012), 14.

²⁶⁷ Marianna Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945* (In Kurdish translated by Mam Kak) (Erbil: Aras Publisher, 2012),431-448,472-490,499-503

continuing the map of the Middle East as it is, and does not support Kurdistan independence at the current stage.

US policy towards the Kurdish issue can be divided into two parts and two different stages: during the Cold War and after the Cold War. In her study on US-Kurdish relations is extensive, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*,²⁶⁸ Marianna Charountaki concluded that US-Kurdish relations are dependent on four factors: US relations with the regional states; the Kurdish situation; the situation of regional states; and internal progress in the US and the Middle Eastern states.²⁶⁹

The book about US Foreign policy toward the Kurdish issue by Lokman I. Meho, *The Kurdish Question in U.S. Foreign Policy: A Documentary Sourcebook*, includes many important US documents about US policy toward Kurdish issue. It mentioned that US policy toward the Kurdish issue was negative during the Cold War era.²⁷⁰

US policy related to the Kurdish issue in the 1970s operated according to double standards, and divided into two parts: initially, the US supported Kurds in Iraq, but has neglected them since the Algeria Convention was ratified between Iraq and Iran under US supervision. Following the Convention, the US and its ally Iran have blocked all support for the Kurdish movement and this has led to a great setback for the Kurdish self-determination struggle.

²⁶⁸ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 15-28.

²⁶⁹ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 436.

²⁷⁰ Lokman I. Meho, *The Kurdish Question in U. S. Foreign Policy: A Documentary Sourcebook* (Westport. Connecticut. London: Praeger, 2004), 12-30, 74-112.

US foreign policy has long neglected the Kurds issue. Arguably the main reason for this is the fact that the Kurds live in four separate states (Turkey, Iraq, Iran, and Syria), and, from the pragmatic US viewpoint, each of these countries is more important for the US than the Kurds themselves. This thesis includes analysis of official documents and several documents from the US State Department archives which have been unclassified, and which relate to the Kurds and Kurdish issues. Among other important sources of information are documents and books by Henry Kissinger US former Secretary of State, including US-State department archive documents (1975)²⁷¹, *White House Years* (1979)²⁷², *The Years of Renewal* (1999)²⁷³, and *Diplomatic Policy: part of Henry A. Kissinger memoir* (2012)²⁷⁴. Kissinger dominated US foreign policy for much of the last century. Additionally, Kissinger talked about the reality of US foreign policy in relation to the Middle East region, both in secret and in public. He maintained a double standard with regard to the Kurds in the 1970s, and deceived them in order to pursue US interests in Middle Eastern countries. The Algiers agreement between Iraq and Iran under the supervision of the US resulted in the end of the Kurdish revolution and the marginalization of the Kurds by the US.²⁷⁵

Some scholars have argued that the US involvement in Kurdistan and the first US foreign policy concerns relating to the Kurds can be traced back to World War One and

²⁷¹ Henry Kissinger, "US-State Department Archive Documents," (1975), *The George Washington University*, accessed January 03, 2019. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB107/iraq04.pdf>

²⁷² Henry Kissinger, *White House Years* (Boston: Little Brown and Company, 1979).

²⁷³ Henry Kissinger, *The Years of Renewal* (New York: Simon & Schuster, 1999)

²⁷⁴ Henry Kissinger, *Diplomatic Policy: Part of Henry A. Kissinger Memory* (In Kurdish translated by Shwan Ahmed) (Erbil: Aras Publisher, 2012).

²⁷⁵ Kissinger, *Diplomatic Policy: Part of Henry A. Kissinger Memory*, 40-65.

President Woodrow Wilson's famous Fourteen Points. The twelfth of Wilson's Points concerned a forlorn promise of autonomy for the other nationalities of the Ottoman Empire which are now under Turkish rule,²⁷⁶ but because of opposition by Turkish Kemilists and the British policy in Iraq which sought to control the sources of oil in the north of Iraq, the nascent Kurdish hopes for building a new nation state or any type of independence were squashed.²⁷⁷

According to other sources, the Sykes-Picot plan of 1916 and its implementation after World War I, which dispersed the Kurds throughout the Middle East, did not clarify US Foreign policy toward the Kurds.²⁷⁸ Arnold Wolfers has argued that the United States has an ambiguous set of principles with which to guide their foreign policy.²⁷⁹ The US neglected the Kurds' rights during the Cold War and dealt with the Kurds according to US interests, not according to the principles of friendship. In other words, the pragmatic policy of the US was dictated by the US' and regional countries' interests, and not what was promised to the Kurds.

The US' attempts to build relationships with Iraqi Kurds go back to the early 1950s during the Cold War era. According to declassified Department of State documents dated April 5 1954, diplomats from the American embassy in Baghdad started to visit Kurdistan to introduce propaganda to influence the Kurds against the Soviets (State Department

²⁷⁶ Rehmany, *History of Kurd-America Relations*, 19.

²⁷⁷ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 25-30.

²⁷⁸ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 25-30.

²⁷⁹ Arnold Wolfers, "National Security as an Ambiguous Symbol," *Political Science Quarterly* 67, no. 4, (1952): 481- 488.

Documents, 1954) with the objective of, as Kissinger put it in his memoirs, “reducing the Soviet influence”²⁸⁰. At the beginning of the 1970s, the United States supported the Kurds in their war against the Iraqi government and established good relations with them. According to some scholars, the United States continued this policy for several reasons: (1) as a favour to its then-ally, the Shah of Iran; (2) to prevent the creation of an Iraqi-Soviet Union Alliance; (3) as a means of relieving pressure on Israel so Iraq would not join future Arab attacks on the Jewish state; and (4) to obtain oil from Kurdistan if it achieved independence.²⁸¹

According to many sources²⁸², the Cold War era, and in particular the 1970s, were sensitive times for US policy towards the Kurdish issue. President Nixon first encouraged the Iraqi Kurds to wage war against the Iraqi government, but then failed to support the Kurds. As Kissinger noted in his memoirs, “the benefit of Nixon’s Kurdish decision was apparent in just over a year: Only one Iraqi division was available to participate in the October 1973 Middle East War.”²⁸³ After that Kissinger explained this double standard in US foreign policy: “Covert action should not be confused with missionary work”²⁸⁴, although he admitted that, “for the Kurdish people, perennial victims of history, this is, of course, no consolation.”²⁸⁵ Kissinger concluded: “As a case study, the Kurdish tragedy

²⁸⁰ Kissinger, *Years of Renewal*, 578.

²⁸¹ Michael M. Gunter, “The Five Stages of American Foreign Policy towards the Kurds,” *Insight Turkey* 13 no. 2(2011): 96.

²⁸² Rehmany, *History of Kurd-America Relations*, 100-109.

²⁸³ Kissinger, *White House Years*, 1265.

²⁸⁴ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 35.

²⁸⁵ Kissinger, *White House Years*, 579.

provides material for a variety of conclusions: the need to clarify objectives at the outset; the importance of relating goals to available means; the need to review an operation periodically; and the importance of coherence among allies.”²⁸⁶ In other words, support for the Kurds was not a strategic policy of the US; on the contrary, the Kurds had played the role of dispensable pawns for US foreign policy in this period.

The US-foreign policy towards the Kurds changed according to its strategic interests and alliances with regional countries, particularly Iran, and it neglected the principles of friendship and promises of support it had made to the Kurds. Kurds subsequently lost all trust in US promises; the Kurdish leaders proclaimed that the US has never stopped worrying about American constancy. As Massoud Barzani explained, “We have had bitter experience with the U.S. government. In 1975. It changed its alliances purely in its own interest at the expense of our people’s suffering and plight.”²⁸⁷

On 3 October 1975, Mustafa Barzani, the leader of the Kurdish movement in Iraq, wrote a letter to Secretary of State Kissinger, in which he stated: “Our movement and people are being destroyed in an unbelievable way, with silence from everyone. We feel, your Excellence, that the United States has a moral and political responsibility towards our people, who have committed themselves to your country’s policy”²⁸⁸ Needless to say, his call was never answered.

²⁸⁶ Kissinger, *White House Years*, 577.

²⁸⁷ Gunter, “The Five Stages of American Foreign Policy towards the Kurds,” 93.

²⁸⁸ Daniel Schorr, “Ten days that shook the White House,” *Columbia Journalism Review* 30, no. 2 (1991), Accessed 23 Jan. 2017. <https://go.gale.com/ps/anonymous?id=GALE%7CA10966676&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=0010194X&p=AONE&sw=w>

According to many sources regional countries played a vital role in pushing the US to neglect the Kurds²⁸⁹. There are similarities with the US-Turkish relationship. During this period the US-Turkish relationship grew closer and Turkey became a vital NATO member by maintaining the second largest army in the alliance and playing a major role in the overall defense of Europe.²⁹⁰

If we describe US foreign policy as a policy where “means and ends are intended and designed to promote positive relations and maintain stability in those nations with whom the United States seeks to foster amicable and cooperative relationships”²⁹¹, then a question regarding the support of the Kurdish state arises: if Iraq, Iran or Turkey are against Kurdish independence will the US continue to side with these states or will it support the Kurds? The key concept of US foreign policy is known as the rule of principle: ‘we have no permanent friends, we have permanent interests’.

From the end of the 1970s to the beginning of the 1990s, or the end of the Cold War and Iraqi occupation of Kuwait, there was no direct relationship between the Kurds and United States. There are some unclassified documents of the US State Department about the tragedies of the Kurds and the genocide perpetrated against the Kurds by the Iraqi government. The documents recorded the crimes against Kurds as well as American internal efforts to assume responsibility in stopping the crimes and genocide against the Kurds; more specifically, the Kurdish Genocide, Operation Anfal, or simply Anfal, and the

²⁸⁹ Jonathan C. Randal, *After Such Knowledge, What Forgiveness? My Encounters With Kurdistan* (Boulder: Westview Press, 2018), 54.

²⁹⁰ Spencer P. Boyer and Brian Katulis, *The Neglected Alliance Restoring U. S. –Turkish Relations to Meet 21st Century Challenges* (Washington: Center for American Progress, 2008), 6.

²⁹¹ James David Meernik, *U. S. Foreign Policy and Regime Instability* (Pennsylvania: Strategic Studies Institute, U. S. Army War College, 2008), vi.

bombing of Halabja with chemical weapons. However, the public policy of the United States was to remain silent on these issues, and no-one exerted pressure on Iraq to stop the war and its crimes against the Kurdish people.²⁹²

US administrations in the post-WWII era have considered the Kurds no more than actors to be used in political games. Therefore, it should not be too difficult to understand why Gur-Arieh argued: “No nation in the 20th century has been made the pawn of regional and global powers as often as the Kurds.”²⁹³

After the liberation of Kuwait and the UN Resolution 688 ratified in 1991 (resolution of no-fly zone)²⁹⁴ and the establishment of the Kurdistan regional government in the South of Kurdistan or north of Iraq, US policy towards the Kurds changed markedly; a relationship was built with the Kurdistan Regional Government. This relationship led to a strong partnership during Operation Iraqi Freedom in 2003.²⁹⁵

In the post-Cold War era, US foreign policy changed positively toward Iraqi Kurds and supported them in many stages, although it did not support them to establish an independent Kurdistan.

The main question here is: what were the main reasons behind this dramatic change in US policy towards Iraqi Kurdistan in the early 1990s?

²⁹² Rehmany, *Kurd and Kurdistan in American Secret Documents*, Iraqi Kurdistan, 293-329.

²⁹³ Danny Gur-Arieh, *Kurds: The Elusive Quest. New Outlook, Volumes 34-35* (Tel Aviv: Hashkafah Hadashah, 1991), 6.

²⁹⁴ UNSCR, “Resolution 688 (1991) of 5 April 1991,” *Search engine for the United Nations Security Council Resolutions*, accessed June 12, 2018. <http://unscr.com/en/resolutions/688>

²⁹⁵ David L. Phillips, *The Great Betrayal: How America Abandoned the Kurds and Lost the Middle East* (I. B. Tauris & Co. Ltd: London, New York: 2019), 64.

There were several reasons behind this change, the most important of which was the end of the Cold War and the demise of the Soviet Union in the early 1990s,²⁹⁶ as it was the main global competitor of the United States, and its end also meant the demise of fear of its effects on Iraq and the region.²⁹⁷ Another reason for this change was simply hostility toward the Iraqi Regime. The Kurds and the United States were enemies of Iraq at the same time. Besides, protecting Israel's security and removing the Iraqi threat is one of the other reasons behind the shift in US policy toward the Kurds in Iraq. The former US Secretary of State, James Baker, noted that the idea of containing Saddam started at the beginning of 1990 when he began to threaten Israel and announced that he possessed weapons of mass destruction.²⁹⁸

Another reason for the change in US policy in the 1990s towards the Kurds in Iraq was humanitarian. After the American president "Bush" encouraged the Iraqi people to rise up against Saddam's regime, after the uprising of the Kurds in the north and the Shi'ites in the south, in March 1991, the US allowed the Iraqi government to suppress them. This led to a bloody crackdown in the south and north and led to two million Kurds migrating to the borders of Turkey and Iran for fear of reprisals from Saddam's forces.²⁹⁹ The growing humanitarian crisis gained the attention of the media and humanitarian NGO organizations in Western countries. That led to popular pressure and stirring up public opinion in America

²⁹⁶ Chris Miller, *The Struggle to Save the Soviet Economy: Mikhail Gorbachev and the Collapse of the USSR* (Chapel Hill, North Carolina, University of North Carolina Press, 2016), 7.

²⁹⁷ Monica L. Belmont and Edward C. Keffer, *Foreign Relations of the United States, 1969-1976, Volume 27, Iran; Iraq, 1973-1976* (U. S. Government Printing Office, Washington: 2012), 817.

²⁹⁸ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 336.

²⁹⁹ Meho, *The Kurdish Question in US Foreign Policy*, 73.

and Western countries to put pressure on their governments to move towards protecting Kurdish refugees on the borders. France and Turkey proposed a safe haven in Iraq for the Kurds, which could be imposed by force if necessary³⁰⁰. All these efforts led to the passing of the UNSC Resolution 688 to protect the Kurdish people, and to establish a no-fly zone.³⁰¹ This humanitarian intervention was very helpful for the development of the political situation in Iraqi Kurdistan and subsequently evolved into relations and cooperation between the two sides, USA and Iraqi Kurdistan.

Another reason for the change in US policy towards the Iraqi Kurds and its move to protect them was the Turkish government's position.³⁰² As the Turks feared the migration of millions of Iraqi Kurds to Turkey would lead to chaos or an uprising by the Kurds there, they pressed America to act to stop the flow of refugees to Turkey and to put an end to the then Iraqi government.³⁰³

Besides, "since the gulf war in 1991 when the US enforced the no-fly-zone, Kurdish compatriots have made the most of their opportunity to consolidate de facto independence."³⁰⁴ In fact, the allied campaign against Iraq following its invasion of Kuwait gave the Kurds an opportunity to launch an insurrection and US has become the de facto security guarantor to Iraq's Kurds. The development of a formal relationship between the

³⁰⁰ David Bradshaw, "After the Gulf War: The Kurds," *The World Today* 47, no. 5 (1991): 78-80.

³⁰¹ Stephen Zunes, "The United States and the Kurds: A Brief History, Foreign Policy In Focus," *Common Dreams*, October 26, 2007, accessed June 11, 2017. <https://www.commondreams.org/views/2007/10/26/united-states-and-kurds-brief-history>

³⁰² Robert Olson, "The Kurdish Question in the Aftermath of the Gulf War, Geopolitical and Geostrategic Changes in the Middle East", *Third World Quarterly* 13, no. 3 (1992): 475-499.

³⁰³ Koshy Ninan, "The United Nations, the US and Northern Iraq," *Economic and Political Weekly* 31, no. 40 (1996):2760-2765.

³⁰⁴ Phillips, *The Great Betrayal: How America Abandoned the Kurds and Lost the Middle East*, 5.

American government and Iraq's Kurdish population began as a response to the humanitarian crisis after the First Gulf War. The response mission was named Operation Provide Comfort.³⁰⁵

Then, a year after Resolution 688, the Kurds held a general election successfully in the areas under their control, and for the first time, Kurds established their own governance, in the form of the Kurdistan Government.³⁰⁶

Directly following the elections, the Kurds started to create their administrative institutions. The US supported the parliamentary elections in the Kurdish region in 1992 as an important democratic stage. On 15 May 1992 the State Department expressed support; spokeswoman Margaret Tutwiler stated that the US hoped the elections would help lead to a better life for all the people of northern Iraq.³⁰⁷

These successful elections which were conducted in 1992 according to democratic standards for the first time in the history of the Kurds and Iraq represented a new chapter in the history of the Kurdish people in Iraq.

In his explanation of the situation, Lawrence stated: “The Kurdish safe haven was supposed to serve Washington’s Iraq containment strategy, a launching pad for the harassment of Saddam Hussein. On the other hand, it was one of the most successful nation-

³⁰⁵ U. S. Military, Department of Defense (DoD), “U. S., Providing Government, Comfort to Iraq's Kurds: Forming a de Facto Relationship,” *Independently Published*, 2017, *Google books*, accessed June 14, 2017. https://books.google.co.uk/books?id=7KYmtAEACAAJ&dq=first+gulf+war+and+kurd&hl=en&sa=X&ved=0ahUKEwj_3_DUiZr pAhXEsKQKHSsgD4YQ6AEIMDAB

³⁰⁶ KRG - Department of External Relations, “Kurdistan Regional Government.”

³⁰⁷ Kareem Yildiz, *The Kurds in Iraq The Past, Present and Future* (London: Pluto Press, 2004), 44.

building projects in American history. The Kurds held elections, set up their own social services.”³⁰⁸

The Kurdistan region's share of the Oil-for-Food program which was overseen by the UN through Resolution 986, under the influence of the United States, was itself further support for the semi-autonomous Kurdish region, and gave material and moral support to the Kurdistan Government.³⁰⁹

Another important positive step which contributed to improving and developing the US policy towards the Kurdish issue was to end the civil war between the Patriotic Union of Kurdistan (PUK) led by the former Iraqi president Jalal Talabani and the Kurdistan Democratic Party (KDP) led by the former president of the Kurdistan region Masoud Barzani. The Peace Agreement was monitored by the US Secretary of State, Madeleine Albright.³¹⁰ The achievement of the Washington peace treaty under the supervision of the US Secretary of State marked a significant change in US policy toward the Kurds and US-Kurdish relations. Also, the Accord led to instability in Iraqi Kurdistan, which allowed the KRG to progress more, and Kurdistan to become more powerful and more developed than the other Iraqi areas at all levels.

Following an in-depth study of many US Official Documents from 1958 to 2000 which are related to the Kurdish Question and kept by a range of different US institutions

³⁰⁸ Quill Lawrence, *Invisible Nation: How The Kurds' Quest For Statehood Is Shaping Iraq and The Middle East* (New York: Walker Publishing Company, 2009), 4.

³⁰⁹ UNSCR, “SC Res. 986, Authorization to Permit the Import of Petroleum and Petroleum Products Originating in Iraq, as a Temporary Measure to Provide for Humanitarian Needs of the Iraqi People,” *Search engine for the United Nations Security Council Resolutions*, accessed September 12, 2016. <http://unscr.com/en/resolutions/986>

³¹⁰ Madeleine Albright, Quoted in FAS, “Transcript: Albright, Talabani, Barzani.” September 17, 1998, *FAS, USIS Washington File*, Remarks, September 27, 1998, Accessed April 8, 2017. <http://www.fas.org/news/iraq/1998/09/980908db-1.html>.

(such as the US Government, Congress, the White House, the Ministry of Defense, and the Department of State),³¹¹ it can be concluded that there have been significant changes in the US policy towards Kurds, but the US still supports the “Iraqi Kurdistan Region”, not “independent Kurdistan”. The need to protect Iraqi Kurds and strengthen the Kurdistan Government were important factors in the formation of US foreign policy in Iraq.

After the Washington Accord of 1998 between the PUK and KDP, Kurd-US relations evolved dramatically, which led to a real partnership in the war to liberate Iraq from Saddam Hussein in 2003 by the Americans and their allies.

Operation Iraqi Freedom was launched on 20 March 2003. The immediate goal, as stated by the Bush Administration, was to remove the regime, including destroying its ability to use weapons of mass destruction or to make them available to terrorists. The broad, longer-term objective included helping Iraqis build “a new Iraq that is prosperous and free.”³¹² The end of Saddam Hussein's rule and salvation from the Ba'th party's repressive regime were the main goals for the Kurds, as they were linked to their security, their protection and the strengthening of their government in Iraqi Kurdistan. Accordingly, Kurds participated with the United States as an essential partner in the war of 2003 and all post-2003 key developments in Iraq. The Kurds participated as the key force behind the United States during the US intervention in Iraq in 2003,³¹³ and as a main partner during the post-war state-rebuilding in Iraq, in the management of Iraq, and in the war against

³¹¹ Rehmany, *Kurd and Kurdistan in American Secret Documents*, Iraqi Kurdistan,61-816; Rehmany, *History of Kurd-America Relations*,559-583.

³¹² Gorg. W. Bush, “Text: Bush's Speech on Iraq,” *The New York Times*, March 18, 2003, accessed June 15, 2017. <https://www.nytimes.com/2003/03/18/politics/text-bushs-speech-on-iraq.html>

³¹³ Joel D. Rayborn and Frank K. Sobchak, *The U. S. Army in the Iraq War: Volume 1, Invasion. Insurgency. Civil War 2003-2006*, (Pennsylvania: US Army war College press,2019),81-85.

ISIS.³¹⁴ This development is considered one of the most important steps taken to develop Kurdish-American relations, since the political situation in Iraq was going through a chaotic situation which continues to the present day. “The intervention thus provided not merely emergency humanitarian aid, but long-term military assistance that shifted the balance of power within Iraq, effectively rewarding the Kurds with political autonomy that also promoted their human rights.”³¹⁵

In assessing Kurdish–US relations in the run-up to the war, it is necessary to look at the role of Turkey, as a triangular relationship existed between the three countries. When Turkey refused to allow US forces to use its territory to intervene in Iraq, Kurdish claims appeared stronger to the US.³¹⁶ Then, the Iraq’s Kurds have consistently been America’s closest allies in Iraq. Peshmerga forces fought alongside the U.S. military to liberate the country, “suffering more casualties than any other U.S. ally.”³¹⁷

A book by Paul Bremer, the governor of Iraq, published after the intervention in Iraq in 2003 entitled “My Year in Iraq: The Struggle to Build a Future of Hope” describes the Kurd-US relationship at this stage. Bremer appreciated the help given to him by Kurdish politicians’ and US rule in Iraq.³¹⁸ Even former US president George W. Bush in his book

³¹⁴ ICG, “Arming Iraq’s Kurds: Fighting IS, Inviting Conflict,” *International Crisis Group report*, May 12, 2015, accessed June 13, 2017. <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/arming-iraq-s-kurds-fighting-inviting-conflict>

³¹⁵ Copperman, “Humanitarian Intervention,” quoted in Michael Goodhart, *Human Rights: Politics and Practice* (Oxford: Oxford University Press, 2016), 338.

³¹⁶ Michael Gaunter, Introduction, quoted in Wiray Rehmani, *A History of Kurdish and American Relations*, 13-14.

³¹⁷ Masoud Barzani, Kurdistan is a Model for Iraq, Our path to a secular, federal democracy is inspired by the US, *The Wall Street Journal*, November 12., June 15, 2017.

³¹⁸ L. Paul Bremer III, *My Year in Iraq: The Struggle to Build a Future* (New York: Simon and Schuster, 2004), 376.

(Decision Points) noted the positive relationship between the Kurdish leaders in particular Jalal Talabani and the US.³¹⁹

Yet the United States maintained its position, rejecting the independence of Iraqi Kurdistan and emphasizing the unity of Iraq.

Most of the literature about Kurd-US relations after US intervention in Iraq has noted the important developments that occurred in the United States policy towards the Kurds which did not offer support for the independence of Kurdistan. The following chapters explore how Kurd-US relations developed, what this relationship was founded on and what it will look like in the future. The thesis also seeks to answer the question: how did the United States avoid supporting the independence of Kurdistan?

In her book, *Iraqi Kurds building State inside the state*, Ofra Bengio discussed the progress in Iraq Kurdistan at all levels, especially political, and the strengthening of the Kurdistan government step by step after American intervention in Iraq 2003. She concluded that this stage was an important opportunity for self-building in Iraqi Kurdistan.³²⁰ In addition, The books and works of Michael M. Gunter who has written seven books on the Kurdish struggle, including: Gunter, *Out of Nowhere: The Kurds of Syria in Peace and War* (2014); Gunter, *The Kurdish Predicament in Iraq: A Political Analysis* (1992); Gunter, *Historical dictionary of the Kurds* (2011),³²¹ are important

³¹⁹ George w. Bush, *Decision Points*, trans. Sana Harb (in Arabic) “translated by the author” (Beirut: Publications and Distribution Company, 2012), 333-339.

³²⁰ Ofra Bengio, *Iraqi Kurds Building State Inside the State*. (In Kurdish) “translated by Soran Mustafa Kurdy” (Erbil: Aras Publisher, 2013): 325-387.

³²¹ Michael Gunter, *Out of Nowhere: The Kurds of Syria in Peace and War* (London: Hurst, 2014); Michael Gunter, *The Kurdish Predicament in Iraq: A Political Analysis* (New York: Palgrave MacMillan 1992); Michael M. Gunter, *Historical dictionary of the Kurds, 2nd ed* (Plymouth: Scarecrow Press, 2011).

sources about Kurdish issue in scientific viewpoint, therefore they will be a source for this thesis.

After Operation Iraqi Freedom, the KRG continued but as the strongest part of Iraq, more sophisticated and prosperous, and a semi-independent state. Kurdistan was a safe area while the Iraqi situation was deteriorating and very dangerous. The American-Kurdish partnership was strengthened day after day.³²²

During the last three decades, the American policy in Iraq focused on the Kurdistan region remaining inside Iraq, but as a strong, secure and prosperous region. The US has helped the KR, but has not provided any official support for the Kurdistan Region in its attempts at self-determination and independence.

In recent years, as mentioned above, there has been a dramatic evolution in Kurd-U.S. relations since 1990, as US President Joseph Biden actually described them as “special relations.”³²³ On the other hand, the US-Kurd relationship has been significant for both parties. Barzani highlighted the fact that: Today, the Kurds seek to retain a bilateral relationship with the United States because of their Kurdish fears of abandonment and a lack of trust, not from mutual interests and partnership. These sentiments are ingrained in the thinking of the KRG’s leaders, who lived through a time when Kurds were a casualty of the Cold War’s Great Game in the Middle East.³²⁴ The Kurds have consistently been America’s closest allies in Iraq, well before Operation Iraqi Freedom.

³²² Gunter, “Introduction,” quoted in Rehmany, *History of Kurd-America Relations*,14.

³²³ Mardini, *Relations with Iraq's Kurds: Toward a Working Partnership*,1.

³²⁴ Mardini, *Relations with Iraq's Kurds: Toward a Working Partnership*,2.

Although so far, officially, the U.S. is dealing with the Kurdistan Region as a region within Iraq and does not have any serious desires to formally support an independent Kurdistan state, U.S. policy towards the Iraqi Kurds has always been inseparable from U.S. policy towards Iraq as a whole.

This situation intensified after the 2017 Iraqi Kurdistan Independence Referendum and the US position in support of Iraqi unity, or opposition to the Kurdistan referendum and independence. The Kurds are looking to Washington to assuage some of their doubts. The U.S.-Kurd relationship needs more formality, balance and, most importantly, a positive settlement of the Kurdistan claim to self-determination.

In spite of this, as we pointed out earlier, one of the main obstacles to the development of American policy towards the independence of the Kurdistan region is Turkey. This country is a strategic ally of America, and since the 1950s, Turkey has benefited from constant US political, financial, and military support.³²⁵ Both countries are members of NATO, and consequently Turkey is important to the USA, and US concerns to Turkey's interests. US policy has taken note of Turkey's negativity toward Kurdistan's self-determination and independence, due to its fears of a Kurdish revolution within its borders, or the fear of Kurds in Turkey being encouraged to seek secession.³²⁶

³²⁵ Sotiris Rizas, *Realism and Human Rights in US Policy toward Greece, Turkey, and Cyprus* (Lanham: Lexington Books, 2018), 156.

³²⁶ Mahmoud Othman, "Introduction," quoted in Wirya Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*. (in Kurdish translated by researcher) (Erbil, KRG- ministry of culture, 2011), 23.

³²⁶ Thomas Carothers, "U. S. Democracy Promotion During and After Bush," *Carnegie Endowment for International Peace*, accessed June 16, 2017. <https://carnegieendowment.org/2007/09/05/u.-s.-democracy-promotion-during-and-after-bush-pub-19549>

One of the most important goals of U.S. strategy in the Middle East, as announced by different US administrations, was democratization,³²⁷ and ending terrorism and ISIS.³²⁸ These goals are shared by the Kurds, who proved their ability and progress in these areas, promoting democracy and fighting terrorism. US- Kurdish relations evolved despite problems and differences, and without discussion of KR independence.

US cooperation and partnership with the Kurdistan Region during the war against ISIS was important for both sides. The political, military and financial implications of US aid helped the Kurdistan Region to face its difficult situation since 2014,³²⁹ due to the ISIS war and the asylum of a huge number of refugees and displaced persons, and the fact that the budget of the Kurdistan region was cut by Baghdad. The United States continued its policies regarding the unity of Iraq, as it was before the ISIS war.

The consistent US strategy that focuses on maintaining the unity of Iraq and keeping the Kurdistan region within Iraq has emerged again through the position of the United States towards the Kurdistan Region's independence referendum in 2017, as affirmed in the letter of Rex Tillerson, a former US Secretary of State, to the President of the Kurdistan Region, Masoud Barzani, in order to postpone the Kurdistan independence referendum.³³⁰

³²⁷ Carothers, "U. S. Democracy Promotion During and After Bush."

³²⁸ The president of the United States, *National Strategy for Counterterrorism of the United States of America* (Washington: white house, 2018), 3.

³²⁹ ICG, "Arming Iraq's Kurds: Fighting IS, Inviting Conflict."

³³⁰ Tillerson to Barzani, *Bloomberg*, delivered on 23 September, accessed October 12, 2017. <https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rsJkyXsgEaig/v0>

Since the decision to hold a referendum in June 2017 by the Kurdistan Region Presidency,³³¹ attempts have been made by the Americans to withdraw the referendum decision or at least postpone the referendum. They announced officially that the United States rejected this referendum and did not recognize it and its results.³³² Yet despite Iraqi, regional,³³³ international, and American opposition,³³⁴ the Kurdistan Region conducted the Kurdistan Region independence referendum on September 25, 2017, and the majority (93%) voted for independence.³³⁵

This was the main difference in positions between the Kurdistan Region and the United States in the last 30 years. American policy in its refusal of the IKR referendum relied mainly on three points: first, success in the fight against ISIS, as a priority for both sides (US and IKR), and for the international community, second, keeping the Kurdistan region within Iraq and maintaining the unity of Iraq, and third, resolving the outstanding problems between Baghdad and Erbil, which they see as a major motivation to push the IKR toward referendum and independence.³³⁶

³³¹ Rudaw, “Kurdistan Region to hold independence referendum on Sept 25,” *Rudaw*, accessed October 12, 2017. <https://www.rudaw.net/english/kurdistan/070620171>

³³² Heather Nauert, “Spokesperson,” *Department Press Briefing*, Washington, DC September 26, 2017, accessed September 27, 2017. <https://www.state.gov/briefings/department-press-briefing-september-26-2017/>

³³³ AFP, “Turkey warns Iraqi Kurdish referendum will ‘have a cost,’” *AFP quoted in Al-Arabia, news*, September 14, 2017, accessed June 12, 2018. <https://english.alarabiya.net/en/News/middle-east/2017/09/14/Turkey-warns-Iraqi-Kurdish-referendum-will-have-a-cost-.html>

³³⁴ Tillerson to Barzani.

³³⁵ Bethan McKernan, “Kurdistan referendum results: 93% of Iraqi Kurds vote for independence, say reports,” *Independent*, accessed June 12, 2018. <https://www.independent.co.uk/news/world/middle-east/kurdistan-referendum-results-vote-yes-iraqi-kurds-independence-iran-syria-a7970241.html>

³³⁶ Heather Nauert, “Spokesperson,” *Department Press Briefing*, Washington, DC September 26, 2017.

Thus, the United States reaffirmed its policies in the Middle East based on the consideration of the desire and interests of its allies from the countries of the region, particularly Iraq and Turkey.³³⁷ In the perceptions and realpolitik of the Americans, the interests of the United States with these countries are more important than their interests with the Kurdistan Region. Accordingly, it is not possible to foresee American acceptance of Kurdistan's independence at the present time.³³⁸

American policy has consistently been that the independence of Kurdistan will lead to the end of Iraq and instability in the Middle East, so the US will not support it.³³⁹ This policy does not prevent them from supporting the constitutional rights of Kurdistan people and developing and enhancing the position of the Kurdistan Region in the political process in Iraq.³⁴⁰

There are many new sources of information about self-determination and the independence referendum in Iraqi Kurdistan 2017. The subject has been discussed in different perspectives with regard to international law and the balance of power. Even putting aside the complex legal basis of this referendum, the lack of recognition by the international community meant that the balance of power was not in the interest of KRG.³⁴¹

³³⁷ William Bell, quoted in Wirya Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars* (in Kurdish translated by researcher) (Erbil, KRG- ministry of culture, 2011), 105.

³³⁸ Gunter, "Introduction," quoted in Rehmany, *History of Kurd-America Relations*, 14.

³³⁹ Gunter, "Introduction," quoted in Rehmany, *History of Kurd-America Relations*, 14.

³⁴⁰ Charountaki, quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 26-29.

³⁴¹ Khamosh omer, *The right to self-determination of Kurdistan region in the light of tests in other countries* (in Kurdish translated by researcher) (Erbil, KPU publikations:2017).

After investigating a wide range of literature about the right to self-determination and international politics and the Kurdistan Region's demand to exercise self-determination, it could be argued that although self-determination is a core principle of international law and a legal right of "peoples" to determine their political status freely, the achievement of this legal right requires a realistic political environment and appropriate conditions. The legal principle faces the balance of power, and international politics have a critical role in achieving this right.

In addition, the people of the Kurdistan region have a right to self-determination in accordance with the legal principle and depending on many legal foundations, while the current international and regional politics will not serve Kurdistan's independence. American policy will not accept the creation of an independent country for Kurds in Iraq. The United States of America has helped the Iraqi Kurdistan region since the 1990s, but its strategy is to maintain a secure and prosperous Kurdistan region within a federal and democratic united Iraq. This policy is still pursued, alongside the policy of many Western countries and countries in the region who are continuing the approach of supporting the unity of Iraq. If Iraqi Kurdistan continues to insist on demanding independence, it should focus on the political side more than the legal. It must focus on dealing and agreeing with Baghdad, creating suitable regional political conditions and gaining acceptance from neighboring countries and important regional states in the Middle East before adopting the legal principle and legal arguments for exercising the right to self-determination and the trend towards independence. These are difficult goals to achieve at this stage.

Theoretical framework

Due to the complexity of the issue and lack of a specific theory concerning international politics and the right to self-determination, we need more than one theory to explain the study. There are many theories which the study can draw upon, like Realism Theory, Primary Right Theory and Remedial Right Theory.

Pavkovic and Radan have described three theories of international relations relevant to self-determination, one of which is Realism. They have argued that the realist theory of international relations insists that territorial sovereignty is more important than national self-determination. This policy was pursued by the major powers during the Cold War.³⁴²

Realism, also known as political realism, is a view of international politics that stresses its competitive and conflictual side. It is usually contrasted with idealism or liberalism, which tends to emphasize cooperation. Realists consider the principal actors in the international arena to be states, which are concerned with their own security, act in pursuit of their own national interests, and struggle for power. The negative side of the realists' emphasis on power and self-interest is often their skepticism regarding the relevance of ethical norms to relations among states. National politics is the realm of authority and law, whereas international politics, they sometimes claim, is a sphere without justice, characterized by active or potential conflict among states.³⁴³

³⁴² Pavkovic and Radan, "In Pursuit of Self-Sovereignty and Self-Determination: Peoples, States and Secession in the International Order."

³⁴³ Stanford Encyclopedia of Philosophy, "Political Realism in International Relations."

Realism has dominated the academic study of international relations since the end of World War II. Realists claim to offer both the most accurate explanation of state behaviour and a set of policy prescriptions (notably the balance of power between states) for ameliorating the inherent destabilizing elements of international affairs. Realism (including neorealism) focuses on abiding patterns of interaction in an international system lacking a centralized political authority.³⁴⁴

Hans J. Morgenthau's *Politics Among Nations* (1948) helped to meet the need for a general theoretical framework. Not only did it become one of the most extensively used textbooks in the United States and Britain, but it also continued to be republished over the next half century, and was an essential exposition of the realist theory of international relations. Numerous other contributors to realist theory emerged in the decade or so after World War II, including Arnold Wolfers, George F. Kennan, Robert Strausz-Hupé, Kissinger, and the theologian Reinhold Niebuhr.³⁴⁵

The realist theory of international relations insists on the primacy of territorial sovereignty over peoples right to self-determination. Consequently, the realist theory supports the policy of containment of self-determination within the boundaries of existing states. This policy was successful during the Cold War and the resulting bipolar balance of power, since each superpower restrained the other from supporting claims to self-determination that would have led to the fragmentation of existing states. However, the

³⁴⁴ Duncan Bell, "Realism International Relations."

³⁴⁵ Encyclopedia Britannica, "The postwar ascendancy of realism," *Encyclopedia Britannica*, Accessed December 12, 2019. <https://www.britannica.com/topic/international-relations/Scholarship-and-policy>

demise of the bipolar balance of power removed these restraints and thus opened up the possibility of the unchecked expansion of national claims to self-determination.³⁴⁶

Remedial Right Theory was shaped by the post-Cold War era to deal with claims of self-determination and secession.³⁴⁷ The Remedial Right theorists argue that injustice and violations are needed as justification for a group seeking external self-determination; it is a solution to decide on unilaterally if an ethnic group wants to secede from a large group. Self-determination is a legal right, but only peoples who have faced difficult situations can exercise it.³⁴⁸ This theory considers that peoples, as such, have a collective right to self-determination and are entitled to secession in this case only.³⁴⁹ Consequently, if the majority of a population of a certain area exercised self-determination and decided on a process of secession, it must be respected by the parent state and the international community, unlike the primary right theory, by which the right to self-determination is regarded as a right for all peoples in all cases.³⁵⁰

On the other hand, the Remedial Right Theory affords a way of assessing post-Cold War era breakaway models and their various manifestations.³⁵¹ It explains how a peaceful solution for external self-determination can be achieved and how a new entity may lawfully

³⁴⁶ Pavkovic and Radan, “In Pursuit of Self-Sovereignty and Self-Determination: Peoples, States and Secession in the International Order.”

³⁴⁷Ryan D. Griffiths, “Admission to the sovereignty club: the past, present, and future of the international recognition regime,” *Territory, Politics, Governance* 5, no. 2 (2017): 177-178.

³⁴⁸ Harry Beran, “A liberal theory of secession,” *Political Studies* 32, no. 1 (1984): 21-31.

³⁴⁹ Seymour, “Secession as a Remedial Right,” 395–423.

³⁵⁰ Allen Buchanan, *Uncoupling Secession from Nationalism and Intrastate Autonomy from Secession*, In *Negotiating Self-Determination*, edited by Hurst Hannum and Eileen F Babbitt (Oxford: Lexington Books, 2006), 83.

³⁵¹ Seymour, “Secession as a remedial right,” 395.

come into being through a negotiated and consensual constitutional process. Remedial Right Theory suggests that unilateral secession can only be justified if significant harm has been caused to the seceding group by the encompassing parent state.³⁵² According to Remedial Right Theory any group has a right to self-determination and secession if they have faced difficult conditions, such as serious and ongoing human rights violations, the occupation of their land or the unjust annexation of a legitimate state's territory and the state's persistent violations of intrastate autonomy agreements or the denial of their internal independence.³⁵³ In this view, self-determination and secession must seek a Remedial Right in order to find a solution to the national problem.³⁵⁴ Remedial Right Theory asserts that a group has a general right to secede if, and only if, it has suffered certain injustices, for which secession is the remedy or the last resort.³⁵⁵

Thus, the above theories (Realism Theory and Remedial Right Theory) form a useful approach that can be applied to Kurdish claims towards exercising self-determination. In the subsequent sections, we detailing it through the structure of the thesis.

³⁵² Seymour, "Secession as a remedial right," 395.

³⁵³ Amandine Catala, "Remedial theories of secession and territorial justification," *Journal of Social Philosophy* 44, no. 1 (2013): 74-94.

³⁵⁴ Catala, "Remedial theories of secession and territorial justification," 74-94.

³⁵⁵ Buchanan, "Theories of Secession," 59-61.

Structure of the thesis

The subject of the thesis is the legal principle of self-determination and its relationship to the political balance of power.

The thesis is divided into two parts. Part one, entitled ‘The right to self-determination and ethno-national issues’, dwells on the content and evolution of the right to self-determination, the Kurdish Question and its progression in Iraq. It addresses how the principle was created in a historical and political context and how its current use may depend on political situations and the political balance of power. This part analyses the conceptualisation of the right to self-determination based on different contexts and definitions in both international politics and international law. It addresses the concept of the “people” as a titleholder of the right to self-determination. It also focuses on the location and importance of the right to self-determination in the light of the establishment of the principles of the United Nations and its purposes. ((PART I))

The second part, entitled ‘Kurdistan’s claim to self-determination in the international context’, investigates the IKR’s claim to self-determination in the light of international law and international politics and key theories, to understand why the people of Kurdistan have not so far been able to exercise the right to self-determination and do not have their own state, despite 100 years of struggle for this goal. This part of the thesis analyzes the content and dimensions of US policy toward the Kurdish issue and the independence of the Kurdistan region. Finally, it discusses the political future of Iraqi Kurdistan, followed by a broader conclusion ((PART II)).

PART I

The right to self-determination and ethno-national issues

The right to self-determination is a central issue in current international law, and international politics. Generally, the right applies to all peoples and nationalities, and it can be a to deal with national and issues. However, the implementation of this principle is complex from a legal and political perspective. The principle is not specific and is further related to other non-specific concepts such as the “people” as the holder of the right to self-determination. The fact that there is no unified and inclusive standard for defining the concept, and its content, creates many problems and complications regarding the principle and demands for its implementation at the legal level.

The principle of self-determination is the result of long and intense effort by different peoples, leaders and international organisations with different motivations, and has gradually mutated from a political slogan into a legal right. political reality plays a decisive role in its application; while many groups can prove their eligibility in principle to decide their political future, the implementation of this right depends on the balance of power and the orientation of international politics. The Kurdish issue is a case in point; international politics has been a decisive factor in creating a political balance of power. Since the establishment of the nation-states and the collapse of the old empires, nationalism has been a key factor. The essence of a national idea and its goal is that every nation or

ethnic group should have an independent state, in order to secure their rights and preserve their existence, land, resources and sovereignty. (Title I)

The Kurdish issue is one of the most complex national issues in the world today. The Kurds are the fourth largest nation in the Middle East and the largest ethnic group without a state. Kurdistan is currently divided into four parts, a legacy of the Sykes-Picot Agreement and the division of the region according to the plan and interests of the victorious superpowers in World War I. Kurds became minorities in the four countries they inhabited, meaning that this issue is directly related to those countries, and there are many internal and external factors that influence the problem and its solution. Kurdish claims to the right to self-determination date from the end of WWI and continue today. Kurds have not been supported by the international community and as a result their issue and its impact on the related countries are also ongoing. (Title II)

Title I

The right to self-determination from theory to practice

The subject of the right to self-determination is both a national and international question with multiple dimensions. This title will focus on presenting and analyzing the evaluating of the historical development of the right to self-determination through various stages, and then addressing its definition and content and related concepts. (Chapter I)

In addition, this title analyzes the right to self-determination at both national and international levels, and its role in resolving national issues and guaranteeing independence for different peoples. It evaluates the extent to which the application of this principle relies on the political environment and the real power of the relevant parties. There are sharp differences between the reality and theories of international law and international politics related to the principle of self-determination, and the difference between the legal principle and political enforcement of this principle has itself evolved.

The right to self-determination at the national level is related to the political situation of any nation or country that wants to build a political future according to their internationally recognized will. The exercise of this right might encompass a change in actors in international relations, international borders and international responsibility, and international law addresses this point: for example, the UN charter includes this principle as a goal of the UN and as a means of ensuring international stability. (Chapter II)

Chapter I

The principle of self-determination: historical evolution

The right to self-determination has passed through different stages with different actors until it was formulated in its current state. The idea was gradually developed from a political idea and revolutionary slogan to a legal right according to international law, and through difficult conditions, revolutions, demonstrations, the efforts of international organisations, international and regional conventions and agreements, and the works of scholars and experts. The historical development of the principle through different political events around the world, especially the American and French revolutions, shows how the principle has evolved through a political as well as a legal process (Section I).

In this chapter, the historical evolution of the principle is explored in relation to international political events that had a direct impact on the development of the right to self-determination at both a theoretical and practical level. The multitude of actors involved, and the lack of universally agreed standards with which to define and enforce the principle provide further problems. In each stage, there are different ideas and different ways to discuss the concept depending on different backgrounds, which makes the specific definition of the principle very difficult. This factor has led to double standards, or no specific standards, with which to deal with the cases of self-determination and enforcement of the principle. The principle of self-determination has evolved to mean a guarantee of

independence for any country or people to determine their political state, but this process depends on the balance of political power (Section II).

SECTION I: Historical evolution of the principle of self-determination in pre-WWI era

The principle of self-determination has a long history, and has evolved from a political and revolutionary slogan to a legal right of peoples according to international law. Today, the principle of self-determination is central to political thought and one of the core principles of international law. It has exercised an important influence over international relations throughout the 20th century, particularly in the post-WWII era. In this section, the background to the principle, its evolutionary stages, and its interaction with important political events and developments in history are discussed, in order to explain how the principle has developed from a political slogan to a legal right. This is followed by an analysis of its impact on solving conflicts, achieving freedom for peoples and maintaining peace internally and internationally, from its creation until the present day.

This concept has incrementally evolved from a political principle to an enforceable right of law. Nowadays, the right of self-determination lies at the core of the rights of peoples, according to contemporary international law. Some scholars believe that the term "self-determination" was associated with Western liberal democratic ideals and the aspirations of European nationalists, and formed an important part of international political

discourse around the time of WWI.³⁵⁶ However, the idea of ‘self-determination’ has a far longer history. Groups of people have always distinguished their own identity from that of others. For example, the ancient Greeks made a clear distinction between their own civilization and the barbarians. They also identified certain ancient Greek tribes (like the Macedonians, the Boeotians etc.), who, they believed," should be excluded from the Hellenic community, for they were considered to be inferior compared with the general Hellenic civilization."³⁵⁷ The ancient Greeks believed that this right was more than simple ethnocentrism, but referred to culture and language, and this factor gave them some claim to being a unique civilization, not merely one nation among others or distinct from barbarians.³⁵⁸ The ancient Greek belief helps to formulate the idea of a nationalism based on the collective interests of a certain group in a certain place, and provides a starting point for ideas about the rights of peoples.

This thesis will not cover the early foundation of the principle and its evolution in detail, as there is extensive literature on the topic, but an outline of the main stages of development provides a useful starting point. The section starts with a discussion of the evaluation of the right to self-determination from the Peace of Westphalia to the Congress of Vienna (1648- 1815) (§I); it then discusses the evolution of the self-determination principle with reference to the balance of power in the international system (1815-1914) (§ II).

³⁵⁶ Anaya S. James, *Indigenous Peoples in International Law* (New York: Oxford University Press, 1996), 76.

³⁵⁷ Michael Bakaoukas, "Tribalism & Racism among the Ancient Greeks A Weberian Perspective," *Anistoriton Journal* 9, no. E0501 (2005):1, Accessed November 22, 2015. <http://www.anistor.gr/english/enback/AGRacism.pdf>

³⁵⁸ Bakaoukas, "Tribalism & Racism among the Ancient Greeks A Weberian Perspective," 1.

§I: The right to self -determination from the Peace of Westphalia to the Congress of Vienna (1648- 1815)

Each stage has its own peculiarities and advantages, and in every stage, there are different great powers and a different international system. Moreover, during each period there are some issues, movements and global political developments, which have affected, directly or indirectly, the development of the right to self-determination. This paragraph discusses the right to self -determination from the Peace of Westphalia to the Congress of Vienna (1815-1914), by focussing on some crucial political developments.

A. The right to self -determination and the Peace of Westphalia

The origins of self-determination as a legal and political principle can be traced back to the period between the Peace of Westphalia and the Congress of Vienna (1648-1815).³⁵⁹ The term ‘Peace of Westphalia’ refers to the peace treaties of Osnabrück and Münster (signed on October 14/24, 1648). The treaty ended both the Thirty Years War in the Holy Roman Empire and the Eighty Years War between Spain and the Republic of the Seven United Netherlands.³⁶⁰ The most powerful leaders of European countries

³⁵⁹ Hedley Bull, *The Anarchical Society. A Study of Order in World Politics* (London: Macmillan, 1977), 33-38.

³⁶⁰ Derek Croxton, *Westphalia the Last Christian Peace* (New York: Palgrave Macmillan, 2013), 55-57.

participated in the signing, and the treaty established the modern concept of sovereign statehood. This event marked a new stage in relations between European countries.³⁶¹

The aforementioned period marked an external level of self-determination in which international relations were based on respecting the sovereignty of existing states and resolving problems through peaceful tools. The Peace of Westphalia can be regarded as the starting point in the evolution of the modern state system. The Peace resulted from the first modern diplomatic congress and initiated a new order in Europe based on the concept of state sovereignty. From then on until the American and French revolutions, the foreign policy of European countries was based on the principles and concepts of this treaty. It functioned both as an international principle and a way of solving problems in international relations and maintaining international peace and stability. In brief, it had been applied to the foreign affairs of existing states, their relations and their policies, but not to the rights of peoples to determine their own destiny.

This period of history was characterised by many wars, multiple occupations and problems among different countries.³⁶² These can be attributed to the imposition of power logic and the self-interest of states, instead of respect for the sovereignty and independence of countries, especially weaker states. The implementation and respect for the principle relied mainly on the balance of power in existing states.

³⁶¹ Croxton, *Westphalia the Last Christian Peace*, 58-62.

³⁶² The Editors of Encyclopaedia Britannica, "List of wars," *Encyclopaedia Britannica*, accessed May 19, 2017. <https://www.britannica.com/topic/list-of-wars-2031197>

B. Self-determination and the American and French Revolutions

Self-determination was further refined by two revolutions which had a conclusive impact on world history: the American Revolution of 1776,³⁶³ and the French revolution of 1789.³⁶⁴ These revolutions encouraged nationalism as a slogan and as an ideology. The principle of self-determination evolved with the emergence of nationalism, which led to the modern nation-state in Europe, and the dissolution of empires globally.

Antonio Cassese has pointed out that the concept of self-determination has often been traced back to the American Declaration of Independence (1776) and to the French Revolution of 1789. When it was first introduced, its main purpose was to allocate territories between the existing states,³⁶⁵ But the right to self-determination evolved.

The French revolution imposed the idea that sovereignty belongs to the nation and approved “self-determination” and the “right of resistance” or regime change in the event of a violation of the social contract enacted between the state and citizens as vested interests.³⁶⁶

The political concept of self-determination can be traced to the American Revolution (and in particular to the Declaration of Independence). However, the

³⁶³ The Society of the Cincinnati, *New Hampshire in the American Revolution* (Washington: The Society of the Cincinnati, 2010),1.

³⁶⁴ Pëtr Kropotkin, *The Great French Revolution, 1789–1793*, trans. N. F. Dryhurst (New York: Vanguard Printings, 2009), 5.

³⁶⁵ Cassese, *Self-Determination of People, A legal Reappraisal*, 11-13.

³⁶⁶ Hüsamettin İnaç & Feyzullah Ünal, “The Construction of National Identity in Modern Times: Theoretical Perspective,” *International Journal of Humanities and Social Science* 3, no. 11(2013): 223.

development of the idea is more often attributed to the French Revolution.³⁶⁷ The Declaration of Independence of the United States of America of 4 July 1776 proclaimed that governments derived ‘their just powers from the consent of the governed’ and that ‘whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it. The principle of self-determination was further shaped by the leaders of the French Revolution, whose doctrine of popular sovereignty, at least initially, required renunciation of all wars of conquest and contemplated annexation of territory to France only after plebiscites.³⁶⁸

The first examples of self-determination under the label of a ‘nationality principle’ date back to the separation of the American colonies from British rule in the late eighteenth and early nineteenth centuries. This process was not achieved peacefully. The American colonies fought a protracted war against Britain from 1775 until 1783, seeking independence from the mother country.³⁶⁹

One consequence of both the French and the American revolutions was that the legitimacy of government was totally changed. Legitimacy was transferred from religion to the people, to the will and choices of individuals instead of the will of the Catholic Church and the Pope. Sovereignty was now owned by the people, who decided who had the right to take power, how to exercise this power, and for how long. The French revolution focussed on the principle of popular sovereignty and required the renunciation

³⁶⁷ Heather A. Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford: Oxford University Press: 1988), 55-56.

³⁶⁸ Daniel Thürer and Thomas Burri, “Self-Determination,” *Oxford Public International Law*, accessed December 11, 2016. <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873>

³⁶⁹ Thomas P. Athridge, *American Presidents at War* (USA: Lulu.com, 2017), 245.

of all wars of conquest. The annexation of regions to France could only be contemplated after a referendum had taken place. The nation became the source of state sovereignty, which meant it had the right to independent self-determination. From this point onwards, many scholars have assumed that the idea of self-determination spread during the revolutionary turmoil in Europe from one state to another, and eventually to the colonized areas and to the Third World.³⁷⁰

These revolutions established respect for the fundamental rights of peoples, including the right to self-determination both internally and externally. The selection of the form of government was for the first time regarded as a people's right, and this outcome has had a conclusive impact on the movement of rights and freedoms. The revolutions radically changed the political and intellectual structure in Western society, leading to the founding of a secular democratic political system, subject to the law and the will of people.

Yet the principle remains problematic. The concept and its content are lacking in clarity on a theoretical and practical basis. Different historical perspectives have impacted on the meaning of self-determination. The concept was formulated as a principle for regulating relations between sovereign states in the European continent. Additionally, the concept is perceived as a revolutionary slogan and a popular demand for liberation in the American and French Revolutions, and as a right of the people to determine the shape of their future. There is no uniform definition of the concept, and it remains a hostage to ideology and competing interests. Yet despite such caveats, the principle of self-determination evolved as an instrument for solving problems, on the grounds that

³⁷⁰ Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," 180.

respecting this right would lead to peace and stability, and obstructing this right would cause instability and conflicts.

Since the Peace of Westphalia, the principle of self-determination has been used in this way; respecting this principle as an external form or as a policy of non-intervention in the foreign policy of sovereign states was a guaranty of peace and international stability. The French and the American revolutions can be regarded as outcomes of the will of the people, which then guaranteed state sovereignty for the French, and independence from Britain for Americans.

During this period, the Kurds in the Middle East, like all the different peoples in the region, lived under the rule of the Ottoman Empire, the idea of nationalism had not yet emerged in their region, and although they had some emirates under the rule of the Ottoman Empire,³⁷¹ they did not claim the right to self-determination.

§II: The right to self -determination during the balance of power (1815-1914)

This period of the evolution of self-determination started with the Congress of Vienna in 1815, which introduced a new philosophy and the role of self-determination in

³⁷¹ Michael Eppel, "The Demise of the Kurdish Emirates: The Impact of Ottoman Reforms and International Relations on Kurdistan during the First Half of the Nineteenth Century," *Middle Eastern Studies* 44, no. 2 (2008): 237-258.

maintaining international stability. This period ended with the beginning of WWI 1914.³⁷² During this time European state politics was relatively harmonious, and despite later changes and diplomatic breakdowns a few decades later, the basic framework for European international politics remained until the outbreak of the First World War in 1914. This period saw the emergence of the theory of balance of power in international relations, which states that national security is enhanced when military capability is distributed so that no one state is strong enough to dominate all others.³⁷³ In this phase, self-determination served as the right of sovereign states to exercise foreign policy. Self-determination was considered to be effective in guiding the organization of international relations; it has been a political and revolutionary principle and became a legal right, in its later stages.

During the nineteenth century and the beginning of the twentieth century, the principle of self-determination was interpreted by nationalist movements to show that each nation and people had the right to constitute an independent state, and that only nation-states are legitimate.³⁷⁴ Throughout this period, the principle of self-determination and the legitimacy of a government and rulers was promoted as a basis for international peace and stability. The borders of the homeland were strengthened on the basis of national sovereignty rather than religious or sectarian issues. Many governments faced secessionist movements and dealt only with existing rulers of territories. This policy allowed for the secession and partitioning of the regions of sovereign states without consulting the peoples

³⁷² Lumen, "The Congress of Vienna. Post-Napoleonic Europe, Boundless World History," *Lumen*, accessed March 13, 2017. <https://courses.lumenlearning.com/boundless-worldhistory/chapter/the-congress-of-vienna/>

³⁷³ Lumen, "The Congress of Vienna. Post-Napoleonic Europe, Boundless World History."

³⁷⁴ Thürer and Burri, "Self-Determination," *Oxford Public International Law*."

concerned. Opposition to the principle of nationality was institutionalized at the Congress of Vienna, where the prevailing doctrine was that the uncontrolled implementation of self-determination could threaten international peace and security.³⁷⁵

In Greece, self-determination was exercised in its secessionist form, particularly after the armed struggle against the Ottomans in 1820. The result was that the states which supported secessionist movements did so either primarily or exclusively for economic, political and other instrumental motives, and rarely, if ever, for affective reasons such as ideological, ethnic, or religious affinity.³⁷⁶ The suppression of the revolution in Greece was seen from the outset as an essential step forward to protect general stability and peace in Europe. However, the successful Greek secession shook the international system and exposed the weaknesses of the Ottoman Empire.³⁷⁷ Such significant events led to the progress of the self-determination movement at both a theoretical and practical level, especially in Europe and amongst the peoples under the rule of the Ottoman Empire.

On 15 November 1831, the great powers decided to establish an independent and neutral Belgium, when they signed the Treaty of London.³⁷⁸ But it was German unification which transformed the balance of power in Europe from 1815 onward. It was proclaimed (tactlessly) by the Prussian leadership on January 18, 1871, in the Hall of Mirrors of Versailles.³⁷⁹

³⁷⁵ Elizabeth Chadwick, *Self-Determination: Terrorism and International Humanitarian Law of Armed Conflict* (The Hague: Martinus Nijhoff Publishers, 1996): 20-21.

³⁷⁶ Alexis Heraclides, "Secessionist Minorities and External Environment' International Organization," *International Organization* 44, no. 3 (1990): 343.

³⁷⁷ Norman Rich, *Great Power Diplomacy: 1814-1914* (New York: McGraw Hill Inc., 1992), 49.

³⁷⁸ Rich, *Great Power Diplomacy: 1814-1914*, 61.

³⁷⁹ Henry Kissinger, *Diplomacy* (New York, Touchstone: 1994), 119.

During and after the 1840s, there were a series of revolutions in Europe.³⁸⁰ The revolutions can be classified as either liberal-national or “social- democrat.”³⁸¹ These revolutions promoted the principle of self-determination. Furthermore, the revolutions promoted the right to self-determination internally by supporting democratic reform and formulating democratic and constitutional governance. Externally, the revolutions enhanced self-determination by strengthening nationalist movements, drawing national borders and building nation-states. Nonetheless, the collective urge of governments to maintain the balance of power was a drawback to the development of an effective nationalist movement and the independence of peoples through exercising self-determination in Europe. Meanwhile, countries worked to protect their own interests and the great powers attempted to maintain the status quo; rebellions or liberation movements which called for change and self-determination were delayed or put down.

In sum, at all these stages, the right to self-determination has been exercised, not as a legal matter or a right for peoples, but by the power of related parties. It is a result of a balance of power and a definite result in favour of the strongest. Hence, the state, as the owner of the power, was imposing its will on others, and has freely exercised its sovereignty in its decisions and powers internally and externally.

Even in the people's revolutions, especially the American and French revolutions, after the will of the people was imposed by force, the people have been freed from the force imposed on them, in order to exercise self-determination freely. In other words, these two

³⁸⁰ Rich, *Great Power Diplomacy*, 99.

³⁸¹ A Robert Caponigri, *History and Liberty: The Historical Writings of Benedetto Croce*, (London, New York: Routledge, 2016), 219.

revolutions by force paved the way for the exercise of the right of self-determination by peoples. This proves the main argument of this thesis that respecting and implementing the right to self-determination for peoples depends on a balance of power.

SECTION II: The right to self-determination from the First World War to the post-Cold war era

Over the course of the twentieth century, the concept of “self-determination” evolved into a “right of self-determination” for all peoples according to international law. As stated in multiple instruments of the United Nations, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”³⁸² This process has faced numerous challenges, especially during the period between the two world wars, before evolving into its current form. In the subsequent paragraphs, we examine how the concept of self-determination has evolved since 1914 (when WWI commenced) until 1990 (post-Cold War era) when the Soviet Union was dissolved. In brief, the first paragraph, investigates the evaluation of the right to self-determination in the period between WWI and WWII, (§ I) then the second paragraph, discusses the evolution of the self-determination principle from WWII to the post-Cold War era. (§ II)

³⁸² UN, “International Covenant on Civil and Political Rights.”

§I: The right to self -determination in the period between WWI and WWII (1914-1945)

The beginning of the twentieth century gave rise to new hopes and aspirations. The old empires of Europe had crumbled, and the majority of European nation-states had emerged. For some, the idea of self-determination emerged in the context of the Treaty of Versailles where there was an attempt to establish the right of nations to rule themselves.³⁸³ The European peoples decided their future in establishing independent nation states and practised their right to self-determination. The modern nation state emerged as a result of a growing awareness of national identity in Europe during the nineteenth century, not only from bourgeois nationalism but also by virtue of socialist forces. The continuation of European colonialism in different areas was reflected in the expression of this right, during WWI. Self-determination justified the division of Germany and the Austro-Hungarian and Ottoman empires.³⁸⁴ This process of re-mapping the empires can be seen as an early implementation of the principle of self-determination in the international context.

Several events between 1914 and 1945 acted as catalysts in the evolution of the right to self-determination, including the establishment of the League of Nations, the rise of Lenin and the Soviet Union, the presidency of Woodrow Wilson, and the Aland Island Dispute. In this section, the events are examined chronologically, emphasising the impact on the formulation of the right to self-determination.

³⁸³ Linden Lewis, *Caribbean Sovereignty, Development and Democracy in an Age of Globalization* (New York and London Routledge, 2013), 8.

³⁸⁴ Anaya S. James, *Indigenous Peoples*, 76.

As the first intergovernmental organisation designed to maintain global peace, the League of Nations (LoN) was established in 1920. Some scholars believe that the principle of self-determination made its first appearance during WWI.³⁸⁵ The term “self-determination” was first used in Britain in 1916.³⁸⁶ But first the major events before the establishment of the League listed in the previous paragraph require analysis. This paragraph divides into three points:

A) Lenin and Wilson and the evolution of the self-determination principle

Despite their ideological differences, the two world leaders, who were presidents of two superpowers and victorious countries in the First World War, both played a significant role in promoting the principle of the right to self-determination at the beginning of the twentieth century. The Kurds had high hopes of both East and West, as embodied by Lenin in Soviet Union, and Woodrow Wilson in America. But these efforts did not match Kurdish ambitions to solve their issues and build their own state. Despite the efforts of Lenin and Wilson, Kurdish hopes were never fully realised, and the Kurdish issue continued in the Middle East.

³⁸⁵ Malcolm N. Shaw, *International Law*, 7th ed. (Cambridge: Cambridge University Press, 2003), 225.

³⁸⁶ Yonah Alexander and Robert A. Friedlander, *Self-Determination: National, Regional, and Global Dimensions* (Boulder: Westview Press, 1980), 308.

1) Lenin and the Soviet Conception of Self-Determination

Vladimir Lenin was a Russian politician, theorist and revolutionary who served as the head of state for Soviet Russia between 1917 and 1922. Soon after he moved to Western Europe, he turned into a prominent theorist in the Marxist Russia Social Democratic Labour Party (RSDLP).³⁸⁷ In the year 1903, he played a major role in RSDLP, leading the Bolshevik faction to fight against Julius Martov. Further, he encouraged insurrection after the failed revolution of 1905, arguing that WWI should be converted into a Europe-wide proletarian revolution that could result in the overthrowing of capitalism and its subsequent replacement by socialism. His understanding of the oppressor states' attitude toward national movements led to his composition of "The Right of Nations to Self-Determination" in 1914.³⁸⁸

In the context of socialist struggle, Lenin and Stalin used self-determination to further the goal of class liberation.³⁸⁹ They also supported self-determination as the right of all peoples to liberation from colonialism. In 1916, Lenin published his thesis "The Socialist Revolution and the Right of Nations to Self-Determination" in which he stated that "Victorious socialism must achieve complete democracy and, consequently, not only

³⁸⁷ Brunner, *ihuman*, 44.

³⁸⁸ Das, *Devil's Ultimate Claim*, 146.

³⁸⁹ Chernev, "The Brest-Litovsk Moment: Self-Determination Discourse in Eastern Europe before Wilsonianism," 385-387.

bring about the complete equality of nations, but also give effect to the right of oppressed nations to self-determination, i.e., the right to free political secession."³⁹⁰

Lenin promoted the application of the right to ethnic or national groups; colonial peoples; and populations subject to territorial redistribution. He had no qualms about criticizing the presence of outside forces within other nations.³⁹¹ For Lenin, self-determination was a right for all nations, and in particular the right of oppressed nations to separation and the formation of an independent national state; self-determination was a collective rather than an individual right.³⁹²

As a result of his belief, Lenin granted the Kurdish minority autonomy in the former Soviet Union under the name "Red Kurdistan", which existed for 6 years between 1923-1929. Red Kurdistan's capital was Lachin, now Azerbaijan, but it was occupied by Armenian separatists.³⁹³ Although this development was important in the evolution of the Kurdish political movement, it was of short duration and did not result in the establishment of an independent state. Consequently, the Kurdish issue remained unresolved and it has become progressively more complicated in its later stages.

³⁹⁰ Robert L. Musick, *The development of Lenin's theory of imperialism* (Thesis, University of Richmond: 1969), 35.

³⁹¹ Lenin, *The Right of Nations to Self-Determination*, 10.

³⁹² Vladimir Ilyich Lenin, "The Right of Nations to Self-Determination," Marxists, accessed November 13, 2016: <https://www.marxists.org/archive/lenin/works/1914/self-det/ch01.htm>

³⁹³ Harun Yilmaz, "The Rise of Red Kurdistan, Iranian Studies, The Kurds and their History," *New Perspectives* 47, No. 5 (2014): 799-812.

2) Wilson and self-determination

During the First World War and in its immediate aftermath, US President Woodrow Wilson advocated the adoption of the self-determination of peoples as a key principle to systemize relations between nations. President Wilson described national self-determination as “an imperative principle of action”. For the first time self-determination was brought to the international arena at the close of WWI.³⁹⁴ On 22 January 1917, Wilson sent a message to the US Senate containing an implicit definition of self-determination: “No peace can last, or ought to last, which does not recognize and accept the principle that governments desire all their just powers from the consent of the governed and that no right anywhere exists, to hand people about from sovereignty to sovereignty as if they were property.”³⁹⁵

Wilson was a strong advocate of the principle, and was among the first to give the concept substance in the context of international relations. On January 8, 1918, Wilson presented his “Fourteen Points” before a joint session of Congress. The “Fourteen Points” synthesized an array of changes to diplomatic practice, the last being a “general association of nations. for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.” Wilson’s program was unquestionably visionary, but international law was peripheral to the vision.³⁹⁶ Wilson's “Fourteen Points”

³⁹⁴ Steiner and Alston, *International Human Rights in Context*, 1252-1253.

³⁹⁵ Michael H. Hunt, *Crises in U. S. Foreign Policy* (New Haven: Yale University Press, 1996), 47-48.

³⁹⁶ Wertheim, *The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914-1920*, 818.

reads like a declaration of self-determination although he did not use the term in the speech itself. According to his statement, international peace and security included the right of all peoples to liberty, justice, self-determination and sovereignty. Due to the impact of this announcement, the right to self-determination evolved more globally. A month after the speech, Wilson proclaimed: "Self-determination" is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril."³⁹⁷

However, the concept of self-determination as conceived by Wilson was rejected by the international community.³⁹⁸ Various delegations at the Paris Peace Conference, 1919, rejected the concept of self-determination as a right to political independence for every ethnic group no matter how small as a principle of international law.³⁹⁹ Wilson's views mark an important stage in the evolution of the right to political self-determination, but the negativity shown by the international community meant that the Kurds' hopes of implementing the right were dashed. The Kurds, as one of the peoples under the control of the Ottoman Empire built hopes on the Wilson World Declaration regarding self-determination for all peoples. However, the international community refused Wilson's ideas, and reneged on its promises to support the Kurds and solve their problems, through building an entity for them like other peoples in the region. Consequently, Kurdish hopes were dashed and the issue continued.

³⁹⁷ Clark and Williamson, *Self-Determination: International Perspectives*, 13.

³⁹⁸ Thomas D. Musgrave, *Self-determination and National Minorities* (Oxford: Oxford University Press, 1997), 30-31.

³⁹⁹ Morton H Halperin, David J. Scheffer and Patricia L. Small, *Self-determination in the New World Order* (Washington D. C.: Carnegie Endowment for International Peace, 1992), 16-17.

B) The League of Nations and the right to self-determination

Over the course of the twentieth century, the "principle of self-determination" has evolved into a "right of self-determination" for all peoples according to international law. This process has passed through different stages and faced numerous challenges, especially during the period between the two world wars. The founding of the League of Nations is an important stage for establishing the foundations and strengthening efforts to formulate the legal framework for the right to self-determination of peoples. This section discusses the Mandate System, and then it discusses the case of Åland Island as the first experience of the international community in legal dealings with the right of self-determination dispute.

1) The League of Nations and Mandate system and the right to self-determination.

On February 14, 1919, the first draft of the Covenant of the League of Nations emerged from Paris.⁴⁰⁰ Despite Wilson's efforts, self-determination was excluded from the final draft. Wilson tried to add the principle of self-determination into the Covenant of the League of Nations in order to "universalize the principle applied in the post-war

⁴⁰⁰ Wertheim, *The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914–1920*, 821.

settlements,” but his attempt failed.⁴⁰¹ Wilson’s advocacy of “self-determination” for civilized peoples demonstrated another aspirational dimension of his vision. In contrast, US Presidents Roosevelt and Taft, as well as Secretary of State Elihu Root criticized Wilson’s promotion of self-determination because the principle would not be applied everywhere or reduced to enforceable rules. Accordingly, Wilson was issuing “impossible promises for self-determination for everybody in the future”.⁴⁰² Roosevelt believed that the implementing of the right to self-determination would lead to grievance against government and could encourage demands for independence.

Although self-determination was not stated in the Covenant of the League of Nations, the League implicitly espoused and supported the right to self-determination through the mandate system, the protection of national minorities and its claim to protect international peace and stability. The mandate system is particularly relevant to this dissertation, as Iraq was one of the countries under the mandate system at that time. The mandate system was created by the victorious countries after WWI by the League of Nations, and marked significant progress in the self-determination movement. The purpose of the mandate system was to improve the economic conditions of states which were badly affected by WWI. Also, it was intended to assist such countries in moving towards eventual political independence. It was an authorization granted by the League of Nations to a member nation to govern a former German or Turkish colony. The territory was called a mandated territory, or mandate. Following the defeat of Germany and Ottoman Turkey in WWI, their colonies, which were judged not yet ready to govern themselves, were

⁴⁰¹ Steiner and Alston, *International Human Rights in Context*, 1254.

⁴⁰² Wertheim, *The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914–1920*, 831.

distributed among the victorious Allied powers, following Article 22 of the Covenant of the League of Nations.⁴⁰³

The mandate system was a qualitative development to codify the rights of the occupied peoples under the control of the colonial powers. It specified the authorities and borders for the colonial powers during the mandate rule. According to Article (22) of the Covenant of the League of Nations: “The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.”⁴⁰⁴

The system asserted the rights of mandated peoples and the protection of minorities, as a legal responsibility, although it was a temporary measure to control occupied peoples. The first paragraph of Article 22 of the Covenant emphasizes the well-being and development of peoples and nations living in Ottoman and German colonies which had lost their former colonial sovereign after WWI. The states administering the system were accountable to the League for the well-being of the colonized people as a part of “trust of civilization”, as stated:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of

⁴⁰³ Encyclopedia Britannica, “Mandate League of Nations,” *Encyclopedia Britannica*, accessed November 30, 2016. <https://global.britannica.com/topic/mandate-League-of-Nations>.

⁴⁰⁴ UNHCR, “League of Nations, Article (22) of Covenant of the League of Nations, 28 April 1919,” *UNHCR*, accessed November 15, 2016. <http://www.unhcr.org/refworld/docid/3dd8b9854.html>.

civilization and that securities for the performance of this trust should be embodied in this Covenant.⁴⁰⁵

This notion of "sacred trust" was central to the legal concept of the Mandate System according to the second paragraph of Article (22):

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.⁴⁰⁶

The third paragraph of Article (22) of the Mandate System took account of the specific circumstances of people under mandatory rule:

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.⁴⁰⁷

The retention or cancellation of the mandate system depended on the decision of occupied peoples and their ability to persuade the superpowers of their readiness for self-government. Over time many mandated peoples gained political independence, as Iraq did

⁴⁰⁵ UNHCR, "League of Nations, Article (22) of Covenant of the League of Nations, 28 April 1919."

⁴⁰⁶ UNHCR, "League of Nations, Article (22) of Covenant of the League of Nations, 28 April 1919."

⁴⁰⁷ UNHCR, "League of Nations, Article (22) of Covenant of the League of Nations, 28 April 1919."

in 1932,⁴⁰⁸ and Lebanon in 1934⁴⁰⁹. The mandate system was a staging post on the journey towards independence for many peoples.⁴¹⁰

The fourth paragraph of Article (22) referred to the former Ottoman colonies that were perceived to have progressed enough to only require some assistance by a Mandatory until “they are able to stand alone” and recognized their national independence on a temporary basis. However, the difference between different territories and different peoples’ rights to self-determination could lead to discrimination, inequality and arbitrary judgements made against many peoples.

In sum, the mandate system recognized the right of peoples to decide the external political form for their country. Respecting the claims of mandated people “must be a principal consideration in the selection of the Mandatory” as noted in Article (22):

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.⁴¹¹

The International Court of Justice affirms on that, the mandates system established by Article 22 of the Covenant of the League of Nations was based upon two principles of paramount importance: the principle of non-annexation and the principle that the well-

⁴⁰⁸ Toby Dodge, *Inventing Iraq: The Failure of Nation Building and a History Denied* (New York: Columbia University Press, 2005), 40.

⁴⁰⁹ Meir Zamir, *Lebanon's Quest: The Search for a National Identity, 1926-39* (London & New York: I. B Tauris Publishers, 2000), 161-163.

⁴¹⁰ UNHCR, “League of Nations, Article (22) of Covenant of the League of Nations, 28 April 1919.”

⁴¹¹ UNHCR, “League of Nations, Article (22) of Covenant of the League of Nations, 28 April 1919.”

being and development of the peoples concerned formed a sacred trust of civilisation. "Taking the developments of the past half century into account, there can be little doubt that the ultimate objective of the sacred trust was self-determination and independence."⁴¹² as well as, in the opinion of the ICJ, the mandatory was to observe a number of obligations, and the Council of the League was to see that they were fulfilled. The rights of the mandatory as such had their foundation in those obligations.⁴¹³

Article (22) indirectly dealt with the right of self-determination for mandated peoples even though the Covenant of the League of Nations did not include the principle explicitly. In the post-war context, although self-determination did not obtain the status of a legal principle,⁴¹⁴ it started to gain importance and to take the form by which it is known today, as an international principle and later as a right of peoples under international law. Additionally, the Mandate System distinguished different stages of development and linked them to potential self-determination for the most developed peoples, thus allowing a process of gradual self-government to at least some societies.⁴¹⁵ The League of Nations' mandate system for the administration of colonial territories of the defeated states in WWI played a pivotal role in the liberation of colonised territories and peoples.⁴¹⁶ While, Identification of the mandates and implementation of the system was wholly dependent on

⁴¹² ICJ, "Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia," *refworld*, *UNHCR*, accessed February 18, 2016. <https://www.refworld.org/cases/ICJ,4023a2531.html>

⁴¹³ ICJ, "Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia".

⁴¹⁴ Shaw, *International Law*, 225.

⁴¹⁵ David Raic, *Statehood & the Law of Self-Determination* (Leiden, Boston: Martinus Nijhoff Publishers, 2002), 196.

⁴¹⁶ Charles Townshend, *The League of Nations and the United Nations*, BBC History, 2011-02-17. accessed January 12, 2016. http://www.bbc.co.uk/history/worldwars/wwone/league_nations_01.shtml

politics, not law. It could be concluded that respecting the right of peoples to self-determination, in a peaceful context, could lead to the maintenance of national and international peace and security, and resolving problems through peaceful and democratic ways. Preventing peoples from exercising this right and denying the right to independence, by imposing the will of nation states or superpowers, has led to instability and many national conflicts and revolutions in different regions around the world. Some of them continue to this day, including the Kurdish issue in the Middle East.

On the other hand, the political balance of power had a decisive role in implementing this principle and respecting the desire of the occupied peoples for independence. Iraq was under the British mandate at the time, and Iraqi Kurdistan was subject to the British mandate from the collapse of the Ottoman Empire onwards, and then forced to merge with Iraq in 1926⁴¹⁷, until the declaration of Iraqi independence. Despite their promises at the beginning of the twenties, the British did not fulfil their promises to the Kurds and refrained from giving them any opportunity to decide their destiny peacefully.⁴¹⁸ British interests and international politics did not support Iraqi Kurdish wishes to build their own national entity. The British continued to insist that the Kurds must remain with Iraq, despite the protests, conflicts and appeals by the Iraqi Kurds. Consequently, the Kurdish issue has continued without a solution until the present day.

⁴¹⁷ Shields, "Mosul, the Ottoman Legacy and the League of Nations," 217.

⁴¹⁸ Peter Sluglett, *Britain in Iraq: Contriving King and Country, 1914-1932* (New York: Columbia University Press, 2007), 124-143.

2) The Åland Island dispute

The Åland Islands, located at the entrance to the Gulf of Bothnia, have always been of strategic importance in the Baltic region. In the aftermath of the First World War the islands – inhabited by a Swedish-speaking population but belonging to Finland - became the subject of a territorial dispute between Finland and Sweden.⁴¹⁹ The population of the Åland Islands claiming Swedish ethnicity wanted to become part of Sweden. This separatist movement was supported by Sweden but opposed by Finland, which insisted on its sovereignty over the archipelago and was only willing to offer it an autonomous status. In order to facilitate a peaceful resolution of the status of the Islands and prevent destabilisation of the Baltic region, the matter was referred in June 1920 to the newly founded League of Nations.⁴²⁰

The first issue that needed to be resolved was the competence of the international organisation to settle the dispute. But in addition, self-determination as a political concept rather than a legal principle was confirmed by the League of Nations' Council and its expert advisors, the Commission of Jurists and the Commission of Rapporteurs⁴²¹.

In its final reports, the expert advisors of the League of Nations stated that in revolutionary situations, such as the dissolution of a state, the principle of national self-determination is

⁴¹⁹ Patricia O'Brien, *The Åland Islands Solution A precedent for successful international disputes settlement*, (United Nations Headquarters, Delegates Entrance Lobby, 17 January 2012) 1.

⁴²⁰ Patricia O'Brien, *The Åland Islands Solution A precedent for successful international disputes settlement*, 2.

⁴²¹ Commission of Rapporteurs of League of Nations, *The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B7/21/68/106, Commission of Rapporteurs, 1920. in: Cassese, *Self-Determination of People, A legal Reappraisal*, 27-33.

important, although not the sole principle affecting the creation of a new state. The Commission of Rapporteurs found that the Ålanders had no right to secession because they had not been oppressed by Finland.⁴²²

Both the Commission of Jurists and the Commission of Rapporteurs noted the possibility of applying self-determination as a necessary solution to protect minorities from oppression within the state. By contrast the Commission of Jurists upheld that under international law: “it pertains exclusively to the sovereignty of any definitely constituted state to grant to, or withhold from, a fraction of its population the right of deciding its own political destiny by means of plebiscite, or in any other way”⁴²³

The Commission of Rapporteurs confirmed that the population of the Åland Island had a right to autonomy under Finland and that only if Finland refused them that right could they separate from Finland: “The separation of a minority from the state of which it forms a part and its incorporation in another state can only be considered as an altogether exceptional solution, a last resort when the state lacks either the will or the power to enact and apply just and effective guarantees.”⁴²⁴

Based on the Commission’s report and on hearing the parties, the Council adopted a resolution in June 1921, which recognized Finland's sovereignty over the Åland Islands but recommended autonomy for the territory and guarantees for the local population that would preserve its Swedish language, culture and local traditions. The islands were also to

⁴²² Radan Peter, *The Break-up of Yugoslavia and International Law* (London: Routledge, 2002), 30.

⁴²³ Cassese, *Self-Determination of People, A legal Reappraisal*, 28-31.

⁴²⁴ Commission of Rapporteurs of League of Nations.

remain demilitarised, non-fortified and neutral. The recommendations of the League of Nations were accepted by the parties to the conflict and fully complied with.⁴²⁵

Thus, the right to self-determination was suggested as an instrument for protecting minorities and a solution to the ethno-national issues around who could claim self-determination. The result of this case marks an important stage in the evolution of the right to self-determination.

As Patricia O'Brien has pointed out, the recent exhibition on the Åland Islands solution provides a welcome occasion to reflect upon the legal nature of the principle of peaceful settlement of disputes and its transformation from a mere political option to a binding legal obligation.⁴²⁶

§II: The right to self-determination from WWII to the post-Cold War era

This period was dominated by the intervention of the United Nations. Consequently, the right to self-determination became clearer, and a key principle of the UN objective to maintain international peace and security. The UN has worked to form the legal context in developing the principle of self-determination, and then defining it as a

⁴²⁵ O'Brien, *The Åland Islands Solution A precedent for successful international disputes settlement*, 2.

⁴²⁶ O'Brien, *The Åland Islands Solution A precedent for successful international disputes settlement*, 3.

right of peoples through UN different instruments including the UN Charter, UN practice and declarations as well as UN Resolutions.⁴²⁷

In the decade preceding the Second World War, there was relatively little exercise of self-determination in international law.⁴²⁸ Nonetheless, the principle of self-determination was invoked on many occasions during WWII, even before the formation of the United Nations. As scholars have noted, the crimes and atrocities committed during WWII stimulated deeper consideration of the principle of self-determination and prompted its incorporation into the 1941 "Atlantic Charter" and the Dumbarton Oaks proposals, which evolved into the United Nations Charter.⁴²⁹ The Atlantic Charter consisted of the Declaration of Principles of 14 August 1941, in which Roosevelt and Winston Churchill declared 8 principles as a basis for the post-WWII era.⁴³⁰ These included the desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned (Principle 2);⁴³¹ Respect for the right of all peoples to choose the form of government under which they will live; and the wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them (Principle 3).⁴³²

⁴²⁷ For example: UN, "UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples."; UN, "International Covenant on Civil and Political Rights."; UN, "International Covenant on Economic, Social and Cultural Rights."; UN, "UN GA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

⁴²⁸ Shaw, *International Law*, 225.

⁴²⁹ Achankeng, *Nationalism and Intra-State Conflicts in the Postcolonial World*, 34.

⁴³⁰ Richard D. Heffner and Alexander Hefner, *A Documentary History of the United States*. 9th Edition (New York: Penguin Publishing Group, 2013), 400-435.

⁴³¹ UN, The Yearbook of the United Nations, Atlantic Charter, *The Yearbook of the United Nations*. Accessed December 10, 2016. <https://www.unmultimedia.org/searchers/yearbook/page.jsp?volume=194647&page=37&searchType=advanced>

⁴³² UN, "The Yearbook of the United Nations, Atlantic Charter."

This first legal attempt to initiate a process of decolonization later found further elaboration in the UN Charter and its instruments.

The principle of self-determination remained essentially a political concept until WWII. Following World War II and the establishment of the United Nations in 1945⁴³³, self-determination was enshrined in the United Nations Charter. Through this process, self-determination was developed as a legal right for all peoples, and respecting this right has been a peremptory norm in international law. It was associated with the right of peoples to create their states independently according to their national interests.

The principle has evolved through different and difficult stages. In the San Francisco Conference of 1945, the concept of self-determination took shape and was incorporated into the United Nations Charter. However, during the writing of the UN Charter,⁴³⁴ debate raged over the explicit insertion of the right to self-determination into the UN Charter, after opposition from some colonial superpowers. Finally, after the agreement among the victorious powers and thanks to Soviet pressure, self-determination was included in the UN Charter.⁴³⁵

In the Post-1945 era, there was a significant shift in the evolution of self-determination. After the establishment of the United Nations, the principle became a part of international law and UN documents. The United Nations introduced the principle of self-determination into the arena of international law by incorporating it into the

⁴³³ Adam Szirmai, *Socio-Economic Development*, 2nd Edition (Cambridge: Cambridge university press, 2015), 550.

⁴³⁴ Achankeng, *Nationalism and Intra-State Conflicts in the Postcolonial World*, 34-35.

⁴³⁵ Raic, *Statehood and the Law of Self-Determination*, 199-200.

constitutional document of the UN. The Charter of the United Nations clearly stated the right to self-determination in different Articles, as one of the essential rights of all peoples, such as Articles 1(2), and 55.⁴³⁶ Article 1(2) stated its aim: To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.⁴³⁷

Additionally, Article (55) of the UN charter explicitly advanced the principle of self-determination. This article promotes international cooperation and evolving conditions of stability and welfare based on respect for the principle of equal rights and self-determination. Article (55) stated:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote....⁴³⁸

The UN’s use of self-determination in declaring the end of occupation, developed this right theoretically, legally and also practically. The UN documents which include the right of self-determination have become a byword for the struggles of stateless peoples.

On August 13, 1948, the United Nations, through its Commission for India and Pakistan (UNCIP) passed its resolution on the right of the people of Jammu & Kashmir to determine their future freely. This resolution comprised three parts; (1) it dealt with the establishment of a ceasefire, (2) with the truce agreement, and (3) with the determination

⁴³⁶ UN, “Charter of the United Nations, Chapter I: Purposes and Principles.”

⁴³⁷ UN, “Charter of the United Nations, Chapter I: Purposes and Principles.”

⁴³⁸ UN, “Charter of the United Nations. Chapter IX — International Economic and Social Cooperation”, *United Nations*, accessed November 04, 2016. <https://www.un.org/en/sections/un-charter/chapter-ix/index.html>

of “the future status of Jammu and Kashmir in accordance with the free and impartial will of the people.”⁴³⁹ As the UN Security Council affirmed on 14 March 1950 (470th meeting):

“Commending the Governments of India and Pakistan for their statesmanlike action in reaching the agreements embodied in the United Nations Commission’s resolutions of 13 August 1948 and 5 January 1949 for a cease fire, for the demilitarization of the State of Jammu and Kashmir and for the determination of its final disposition in accordance with the will of the people through the democratic method of a free and impartial plebiscite.”⁴⁴⁰

The adoption of the Universal Declaration of Human Rights (UDHR)⁴⁴¹ on 10 December 1948 marked another stage in the evolution of self-determination. Although UDHR has not explicitly included the right to self-determination, it referred to rights and fundamental freedoms and affirmed the respect for these rights and freedoms equally for all humans.⁴⁴² Between the early 1950s and late 1960s, international law was focused mainly on colonial peoples as the holders of the right to self-determination.⁴⁴³

The Declaration on the Granting of Independence to Colonial Countries and Peoples, (UN General Assembly Resolution 1514(XV), 14 December 1960)⁴⁴⁴ marked the further progress of self-determination, UN General Assembly Resolution 1541(XV), 15 December 1960 (General Assembly Resolution defining the three options for self-

⁴³⁹ UN, “Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948. *mtholyoke. edu*, accessed November 04, 2016. <https://www.mtholyoke.edu/acad/intrel/uncom1.htm>

⁴⁴⁰ UNSC, In Karel Wellens, *Resolutions and Statements of the United Nations Security Council: (1946 - 1989); a Thematic Guide* (Dordrecht: Martinus Nijhoff publisher, 1990), 331.

⁴⁴¹ UN, “Universal Declaration of Human Rights.”

⁴⁴² UN, “Universal Declaration of Human Rights.”

⁴⁴³ Cassese, *Self-Determination of People, A legal Reappraisal*, 70.

⁴⁴⁴ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

determination),⁴⁴⁵ and UN General Assembly Res. 1654 (XVI) (Resolution of establishing the Special Committee on Decolonization), 27 November 1961,⁴⁴⁶ were other important measures which promoted self-determination as a right for all peoples equally.

After six years, the adoption of the International Covenant on Civil and Political Rights (ICCPR), 1966⁴⁴⁷ as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966,⁴⁴⁸ constituted important milestones. In addition, UN General Assembly Res. 2625(XXV), 24 October 1970 (Declaration on Friendly Relations)⁴⁴⁹ and other UN actions marked significant steps in the development of the right of self-determination systematically (legally and practically).

In addition to the UN instruments,⁴⁵⁰ during the post-Cold War era, the right to self-determination of peoples was recognized in many other international and regional instruments, such as the Helsinki Final Act 1975, the Conference on Security and Cooperation in Europe,⁴⁵¹ the African Charter on Human and Peoples Rights, 1981⁴⁵², the Vienna Declaration and Programme of Action, 1993,⁴⁵³ the CSCE Charter of Paris for a

⁴⁴⁵ UN, “UNGA Res. 1541, Defining the Three Options for Self-Determination.”

⁴⁴⁶ UN, “UNGA1654, General Assembly Resolution, Special Committee on Decolonization, 1654 (XVI).”

⁴⁴⁷ UN, “International Covenant on Civil and Political Rights.”

⁴⁴⁸ UN, “International Covenant on Economic, Social and Cultural Rights.”

⁴⁴⁹ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

⁴⁵⁰ UN, “Documents,” *United Nations*, accessed November 18, 2016. : <http://www.un.org/en/documents/index.html>

⁴⁵¹ Oliver Bange and Gottfried Niedhart, *Helsinki 1975 and the Transformation of Europe* (New York, Oxford: Berghahn books, 2008), vii.

⁴⁵² African Union, “African Charter on Human and Peoples' Rights.”

⁴⁵³ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on June 25, 1993.

New Europe adopted in 1990,⁴⁵⁴ and the Jurisprudence and the decisions of the International Court of Justice such as its decisions in cases like Namibia,⁴⁵⁵ Western Sahara⁴⁵⁶, and East Timor in which its ‘erga omnes’ character was confirmed.⁴⁵⁷

During the Cold War era, self-determination evolved into an anti-colonial norm of international law which announced that colonial territories had the right to independence.⁴⁵⁸ The framework of these actions of the United Nations included the right to self-determination at both internal and external levels. External self-determination dominated the development of international law dealing with colonial peoples. These international instruments defined colonial peoples as titleholders of self-determination, and also determined the practical steps which would help to achieve it, such as independent statehood, integration, union with another state, and the mechanisms and procedure to be used, such as referendums.

Currently there are a broad range of self-determination claims as well as claimants.⁴⁵⁹ World events that occurred after the end of the Cold War and the collapse of the Soviet Union and Yugoslavia led to the claim to the right to self-determination in a new context. The federal entities which broke away from them formed a number of smaller,

⁴⁵⁴ Organization for Security and Co-operation in Europe, Charter of Paris for a New Europe, *OSCE*, 1990, accessed November 18, 2016. <https://www.osce.org/mc/39516?download=true>

⁴⁵⁵ ICJ, “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).”

⁴⁵⁶ “Report of Judgment, Advisory Opinions and Orders, Western Sahara, Advisory Opinion of 16 October 1975.” *International Court of Justice*, accessed August 12, 2016. <https://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf>

⁴⁵⁷ ICJ, “Case Concerning East Timor (Portugal v. Australia).”

⁴⁵⁸ Hurst Hannum and Eileen Babbitt, *Self-Determination in the Twenty-First Century. Negotiating self-determination* (New York: A division of Rowman & Littlefield Publishers, 2006), 61.

⁴⁵⁹ Andrea Muehlebach, “What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism,” *Identities, Global Studies in Culture and Power* 10, no. 2 (2003): 243.

independent states.⁴⁶⁰ Many peoples from different areas have exercised their right since WWII. The UN transformed the concept of self-determination from a political claim to a legal right and part of international law.

Despite this important legal development of the right to self-determination through documents, works and steps taken by the United Nations, the basic problems continued with the principle of the right to self-determination on the practical and theoretical level. The term itself remained unclear and inadequately defined; equally no uniform criteria existed for defining the concept of the "people" who were to enjoy this right, or how they should implement it. In addition, the problems associated with the difference between the legal text and the actual application of the right also remain. The political environment and balance of power, and the direction of international politics in supporting or rejecting any demands for self-determination, have a decisive role in the implementation of this right and the attainment of the will of peoples. Without appropriate political circumstances, and support from one or more superpowers, it is not possible to implement this principle with which to solve national and ethnic problems, many of which including the Kurdish question, continue today.

Although self-determination was exercised in several new regions and countries, the right itself remained an obscure and complex concept in terms of content, implementation and legality. Yet, the self-determination principle became a way of maintaining stability and democratic relationships between different peoples and sovereign states.

⁴⁶⁰ Paul Tsougarou, "The Continued Relevance of Sovereignty in a Globalising World: Yugoslavia and its Successor States," *Alternatives: Turkish Journal of International Relations* 1, no. 3 (2002):64.

The Kurds make up the largest stateless people in the world, and the Middle East's fourth-largest ethnic group, and despite the evolution of the right, the Kurdish issue has continued. During the twentieth century, after the Sykes-Picot agreement and the collapse of the Ottoman Empire, and the emergence of the Kurdish issue in the Middle East, when the Kurds were divided, the Kurdish issue was also divided among four newly established countries: Turkey, Iran, Iraq and Syria. The Kurds have become an ethnic minority in these four countries. Over the last 100 years, the Kurdish struggle for the right to self-determination has continued, with the Kurds unable to create their own state, due to the superpowers' politics and its interests in the region. Despite the developments of the right to self-determination at a legal, theoretical and practical level, the Kurdish issue still remains without a peaceful and equitable solution. Kurdish claims to self-determination have been exercised in different forms, including armed conflicts and peaceful strategies, without acceptance from related countries, and other regional and international powers. This factor has led to the continuing of the Kurdish issue as a complicated ethno-national issue that affects the region and the world.

The right to self-determination has been dealt with through the political balance of power rather than the legal principle. The principle does not have a specific definition. It has remained a a complex concept, controlled by political circumstances and balance of powers. Therefore, it could be argued that the political situation and the balance of power with the struggle of different peoples to form their future freely had a significant role in granting independence for different countries and peoples at this stage. Due to the lack of a balance of power, or the lack of supportive international politics for the independence of Kurdistan, the superpowers' interests and relations with states related to the Kurdish issue,

and the belief that the Kurdish issue was an internal issue, not an issue of the right of occupied people, ethnic and political crises in the Middle East have been exacerbated and the Kurdish self-determination conflict has persisted to this day.

CONCLUSION OF CHAPTER I

The right to self-determination evolved during different and difficult stages, in which different peoples, countries and international organizations, including the American and French revolutions, the League of Nations and the United Nations have participated. International leaders, like Lenin and Wilson, judicial rulings and courts decisions, and many scholars and experts have been instrumental in developing self-determination from a political idea and revolutionary slogan into a legal principle and a right of peoples according to the current international law.

The twentieth century, in particular after founding the United Nations in 1945, represented a decisive stage in the evolution of self-determination and the formulation of the form and legal basis for the right as we know it today. Through its instruments, such as the UN Charter, declarations, decisions and actions, the UN formulated the legal basis for the right to self-determination and promoted it in the international context. Despite all evolutions of the principle of the right to self-determination, the concept remained unclear. The problematics concerning the definition and content, and the criteria to determine the titleholder of this right specifically continue, as will be discussed in the next chapter.

Despite its legal and practical evolution, the right to self-determination has been exercised according to the power of related parties. The result has been in favour of the strongest. Hence, any people or nation which had real power exercised its right to self-determination and imposed its will and decisions internally and externally. This proves the main argument of this thesis that respecting and implementing the right to self-determination for peoples depends on a balance of power. International politics, the positions of the great powers and the political balance of power play a crucial role in respecting and implementing or denying this right, and the different outcomes of these opposed strategies are clear. There are many cases where the right has been implemented; many national issues have been resolved through it and independence guaranteed for many peoples and countries. However, many ethnic and national problems and demands for the right to self-determination still remain without an answer.

However, during the last century, superpowers and victorious countries in both World Wars, including the United States, implemented their politics according to their interests in the Middle East without respect for the Kurds' demands for self-determination.

Finally, after addressing the historical background of the right to self-determination, in order to evaluate the content of this right, the next chapter examines the problematics concerning the definition of self-determination, the titleholders of this right, its dimensions and other related concepts.

Chapter II

Contextualisation of the right of self-determination: content and dimensions

One of the basic problems concerning the self-determination principle lies in the difficulty of defining and describing its content. There is no standard and agreed definition of the concept of self-determination. There are various perspectives on its content according to different backgrounds and different stages, while the core concept is about the right of people to determine their future freely without interference by others. Nonetheless, it is generally agreed that there are two types of self-determination: internal and external. The difference between the political dimension and the legal basis of self-determination has increased over time. In general, enforcement of the legal basis of self-determination depends on the political environment and the political balance of power. Since the political balance of power may be unstable, and changes and developments occur constantly, the enforcement of the legal definition of the concept becomes more complex and encounters various obstacles (Section I). In addition, the definition of the people as a titleholder of the right to self-determination is equally problematic; there is no legally agreed definition and no specific criteria for determining the “people” (Section II).

In this chapter, the study discusses these problems of self-determination by presenting different perspectives on the definition and evaluating them scientifically. It

clarifies the current definition of the right to self-determination and its content. It also focuses on analyzing related concepts of self-determination and evaluating its key dimensions as a right for peoples.

SECTION I: Definition of the right of self-determination, differences and problematic

As Wolfgang Danspeckgruber has stated: "No other concept is as powerful, visceral, emotional, unruly, as steep in creating aspirations and hopes as self-determination."⁴⁶¹ Antonio Cassese noted that "self-determination has been one of the most important driving forces in the new international community. It has set in motion a restructuring and redefinition of the world community's basic rules of the game."⁴⁶² The collapse of empires and emergence of nation-states have been instrumental in the evolution of the right of self-determination. The principle of self-determination and its definitions continued to evolve significantly through different and difficult stages before its establishment in international law and the United Nations documents.

This section details various conceptualisations of self-determination based on different perspectives. The first paragraph discusses the different definitions of the right to

⁴⁶¹ Danspeckgruber, *The Self-determination of Peoples: Community, Nation, and State in an Interdependent World*, 305.

⁴⁶² Cassese, *Self-Determination of People, A legal Reappraisal*, 1.

self-determination, including the United Nations definition. Self-determination as a concept has been approached from diverse disciplinary viewpoints, including those of international relations, law, politics and economics. Hence, the concept has gained various meanings and interpretations even in the same discourses. For instance, it has been described as the way a community can control its future at all levels politically, economically and culturally, or as a right of peoples to self-government or to determine their political status.⁴⁶³ There is a debate about the legal status of the concept, as to whether self-determination is a legal principle or a legal right in international law.⁴⁶⁴ What is clear is that self-determination is a right for all peoples, and the idea centres on the freedom of people to determine their political status internally and externally. In what appears to be a global definition, the International Covenant on Civil and Political Rights Article 1 of 1966 defined self-determination as a legal right and specified how it can be practically realised. Accordingly, all peoples have a right to self-determination, by which right they can freely determine their political status as well as freely pursue cultural, economic and social development.⁴⁶⁵ There is a further problem concerning the definition of the concept legally or defining the concept of self-determination in a decisive context, which made it subject to different interpretations by different parties according to the balance of power. From these few definitions, it is evident that self-determination can be conceptualised differently.

⁴⁶³ Linden Lewis, *Caribbean Sovereignty, Development and Democracy in an Age of Globalization*, 2-8.; Schachter, *Sovereignty. Then and Now*, Quoted in Karen Knop, *Diversity and Self Determination in International Law* (Cambridge: Cambridge University Press, 2002), 45-51.

⁴⁶⁴ Obed Y. Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations* (Martinus Nijhoff, the Hague, 1966), 82-83.

⁴⁶⁵ UN, "International Covenant on Civil and Political Rights."

Nonetheless, it is generally agreed that there are two types of self-determination: internal and external (§I).

The second paragraph investigates the concept of people as titleholders of the right to self-determination. The concept of people has also been subject to different interpretations and different criteria. The argument about which type of groups have the right to self-determination is the main subject of discussion. The criteria for defining the people who may exercise the right to self-determination is not clear enough according to international law, particularly for the peoples outside the traditional context of colonialism (§II).

§I: Self-determination: meaning and political dimensions

In any debate on the concept of self-determination, there are two main questions: what is the definition and content of the right to self-determination, and who are the titleholders of this right? In the following paragraphs, the thesis aims to answer these questions.

There are multiple sources in which the concept is defined and legal and epistemological foundations formed. Some of these sources are personal works such as studies by scholars and experts in this field, or collective works, such as those undertaken by expert committees and groups. Other sources for defining the concept of the right to self-determination are found in international law that derives from the international

instruments, starting from the United Nations charter, and including the two international covenants, the political and civil rights convention and the economic, social and cultural rights convention, and other United Nations documents. Other definitions of the concept stem from judicial jurisprudence, court judgments and interpretations of subordinate judges.

In general, self-determination lacked legal standing in international law and remained ill-defined and was thus open to appropriation and redefinition to suit diverse need it.⁴⁶⁶ The definitions, clauses, paragraphs, and articles related to the principle of the right to self-determination that are derived from these various sources, especially those mentioned in the United Nations instruments, form the legal basis for defining the concept.

A. Different Definitions

Self-determination is a fundamental norm in international law and politics.⁴⁶⁷ The principle of self-determination is a complex legal and political concept and has been subject to diverse interpretations. During the debate on the concept of self-determination with regard to human rights in the UN, Corley Smith (UK representative) noted, “the term self-determination lacked clarity and doubted whether it could ever have the same meaning in

⁴⁶⁶ Martin Thomas and Andrew Thompson, *The Oxford Handbook of the Ends of Empire* (Oxford: Oxford University Press, 2018), 419.

⁴⁶⁷ Roepstorff, *The Politics of Self-determination: Beyond the Decolonisation Process, Volume 95 of Routledge Advances in International Relations and Global Politics*. 9.

both English and French". Self-determination is perceived as a collective right: "it will be a serious error to assume that a collective principle like self-determination could be transformed into an individual right." To do so would be to imply that each individual could claim to be a sovereign state.⁴⁶⁸ The fear was that translating the right into legal terms through a mandatory instrument would result in problems of interpretation, as well as sensitive issues such as the rights of minorities and the right of secession.⁴⁶⁹

For Kristina Roepstorff, the right to self-determination is a pathway to secession, and the only acceptable outcome is full political independence for occupied countries and territories.⁴⁷⁰ Alternatively, self-determination refers to a nation's right to determine its own future, and remain as free as possible from external interference or domination by another nation or nation-state.⁴⁷¹ According to some legal viewpoints, self-determination means self-governing, and the right should be given to non-self-governing territories to manage a people's traditional lands free from external interference.⁴⁷² For other theorists, the right to self-determination means organising the relationship between different entities on the basis of a degree of autonomy or federalism within one state.⁴⁷³ Self-determination

⁴⁶⁸ Invoking Tony Evans, *US Hegemony and the Project of Universal Human Rights* (London: Palgrave Macmillan press, 1996),134.

⁴⁶⁹ Aureliu Cristescu, "*The Right to Self-determination - historical and current development on the basis of United Nations instruments*", *Study prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, (New York: United Nations,1981),8.

⁴⁷⁰ Roepstorff, *The Politics of Self-determination: Beyond the Decolonisation Process, Volume 95 of Routledge Advances in International Relations and Global Politics*, 4.

⁴⁷¹ Michael Murphy, "The Limits of Culture in the Politics of Self-Determination," *Ethnicities* 1, no. 3 (2001):368.

⁴⁷² Phil C. W. Chan, *China, State Sovereignty and International Legal Order* (Leiden, Boston: Brill. Nijhoff, 2015), 199.

⁴⁷³ Jane A. Hofbauer, *Sovereignty in the Exercise of the Right to Self-Determination* (Leiden, Boston: Brill. Nijhoff, 2016), 163-166.

can be viewed as the “autonomy that enables individuals or collectivities to shape their own economic, social, cultural, and political destiny”.⁴⁷⁴ For others still, self-determination is part of the process of democracy and simply “an act of by a people is a democratic act.”⁴⁷⁵

The right to self-determination means to choose a form of the political system and government democratically, and the legitimacy of government rests on the will of the people. The Longman dictionary of language states that the concept of self-determination is the right of the people who live in a country to make a free decision about a form of their government, especially whether or not to be independent of another country.⁴⁷⁶ As the Canada Royal Commission on Aboriginal Peoples (RCAP) has stated, self-determination is the “collective power of choice.”⁴⁷⁷

Traditionally, self-determination refers to the national independence of people, and it has been employed to advance the cause of decolonization or to overcome other forms of external occupation.⁴⁷⁸ Self-determination is the principle primarily concerned with the right to be a state. Patrick Thornberry explained self-determination as the right of all peoples to govern themselves.⁴⁷⁹ It has been described as the most fundamental of all

⁴⁷⁴ Yale D. Belanger, *First Nations Gaming in Canada* (Manitoba: University of Manitoba Press, 2011), 274.

⁴⁷⁵ Jörg Fisch, *The Right of Self-Determination of Peoples: The Domestication of an Illusion*, trans. Anita Mage (New York: Cambridge University Press, 2015), 53.

⁴⁷⁶ Addison Wesley Longman, *Longman dictionary of English language and culture* (Harlow: Addison Wesley Longman, 1998), 1220.

⁴⁷⁷ RCAP, *Report of the Royal Commission on Aboriginal Peoples: Restructuring the Relationship, Vol. 2, Part I* (Ottawa, Ontario: Canada Communication Group, 1996), 164.

⁴⁷⁸ Philip Alston and Ryan Goodman, *International Human Rights, Text and Materials* (Oxford (UK): Oxford university press, 2013), 624.

⁴⁷⁹ Patrick Thornberry, *The principle of self-determination* (Manchester: Manchester University Press, 2002), 175.

human rights.⁴⁸⁰ Philip Alston and Ryan Goodman, who are both international human rights scholars, have pointed out that the most fundamental of all human rights is that of self-determination and no other right overrides it.⁴⁸¹ Yet, self-determination has attracted criticism from those that claim it creates instability, and reactionary, essentialist, and segregationist politics.⁴⁸²

Both the content of the principle and its enforcement remain problematic. The right of self-determination is based on a particular idea which states that nations and peoples should take ownership of sovereignty both internally and externally. Nations have a right to determine their status in all aspects, political, economic, social and cultural, internally and externally. But who are the persons who own this right, and what are the criteria for determining the boundaries of this right internally or externally? The enforcement of this right depends on the political situation, not only on the legal definition.

Self-determination is a broad political legal concept, which includes the collective rights of different groups to determine their future. The principle was indispensable to the decolonization process⁴⁸³, but the political situation dictated whether it was implemented effectively or not. While the principle may be articulated politically or legally according to the standards of international law, national constitutions or different ideologies and theories, its implementation has been dependent on the balance of power for all of the

⁴⁸⁰ Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002),108.

⁴⁸¹ Alston and Goodman, *International Human Rights, Text and Materials*, 624.

⁴⁸² Muehlebach, "What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism, Identities," 245.

⁴⁸³ UN, "United Nation and Decolonization, Declaration on the Granting of Independence to Colonial Countries.

parties concerned. Self-interest and ideology also play their parts. As Cassese pointed out, “In the hands of would-be States, self-determination is the key to opening the door and entering into that coveted club of statehood. For existing States, self-determination is the key for locking the door against the undesirable from within and outside the realm.”⁴⁸⁴ Thus depending on different definitions and perspectives, for some self-determination will be a solution for their problems but for others, it will be the start of problems and conflicts, especially with existing states.

B. United Nation definition

The UN has exercised an important role in formulating the legal perspective on the right to self-determination. Its charter describes it as a right for all peoples and a key purpose of the United Nations, affirmed in different instruments including: the UN Charter;⁴⁸⁵ International Covenant on Civil and Political Rights;⁴⁸⁶ International Covenant on Economic, Social and Cultural Rights;⁴⁸⁷ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States;⁴⁸⁸ as well as the UN

⁴⁸⁴ Cassese, *Self-Determination of People, A legal Reappraisal*, 6.

⁴⁸⁵ UN, “Charter of the United Nations.”

⁴⁸⁶ UN, “International Covenant on Civil and Political Rights.”

⁴⁸⁷ UN, UN, “International Covenant on Economic, Social and Cultural Rights.”

⁴⁸⁸ UN, UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

Declaration on the Granting of Independence to Colonial Countries and Peoples;⁴⁸⁹ UN General Assembly resolution 1803 on Permanent sovereignty over natural resources.⁴⁹⁰

Debate at the UN has focused on two questions: (i) to whom should self-determination be granted? and (ii) what should self-determination entail?⁴⁹¹

In the UN Charter, Article 1(2) and Article 55 emphasised the “respect for the principle of equal rights and self-determination of peoples” in the context of developing "friendly relations among nations" and in conjunction with the principle of "equal rights of peoples." Article 1(2) stated the aim of the organisation: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”⁴⁹² Additionally, Article (55) of the UN charter explicitly advanced the principle of self-determination. This article promoted international cooperation and evolving conditions of stability and welfare based on respect for the principle of equal rights and self-determination, “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...”⁴⁹³

⁴⁸⁹ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

⁴⁹⁰ UN, “UNGA Res. 1803 (XVII), Permanent Sovereignty over Natural Resources,” December 15, 1962, *United Nations Digital Library*, accessed August 14, 2016. <https://digitallibrary.un.org/record/57681?ln=en>

⁴⁹¹ Muehlebach, “What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism, Identities,” 247.

⁴⁹² UN, “Charter of the United Nations.”

⁴⁹³ UN, “Charter of the United Nations, Chapter I: Purposes and Principles.”

The United Nations General Assembly Resolution 1514 (1960) stated that: “All peoples have the right to self-determination; by virtue of that right they may freely determine their political status and freely pursue their economic, social and cultural development.”⁴⁹⁴ According to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), the right to self-determination is a collective right and a right for all peoples.⁴⁹⁵ These stated that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁴⁹⁶ This statement can be seen as the core of self-determination, and a historic and decisive development in the definition of the right to self-determination as a collective right for all peoples, for any human group described as a people, regardless of population size, geography, political and social situation, race, and religion. Moreover, it described the content of this right as allowing every people to freely determine their destiny and political, social and economic status without interference by others.

According to the United Nation instruments, the definition of the right to self-determination has evolved to be one of the *jus cogens* in international law, which cannot be set aside at any time. As Ronald Niezen has pointed out, self-determination is “indisputably entitled to treatment as *jus cogens*, a peremptory norm from which no derogation is to be tolerated beyond the reach of negotiation or modification through

⁴⁹⁴ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

⁴⁹⁵ UN, “International Covenant on Economic, Social and Cultural Rights.”

⁴⁹⁶ UN, “International Covenant on Civil and Political Rights.”

treaties.”⁴⁹⁷ This statement is evidence of the interest of the United Nations in developing this concept and affirming it as one of its goals and a right for all peoples, and a guarantee of stability and peace.

According to the International Court of Justice the right of self-determination is a legal right for all peoples, as it has affirmed in its judgments and decisions at different times. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court as is one of the essential principles of contemporary international law.⁴⁹⁸ According to the ICJ, the right to self-determination is a right held by people rather than a right held by governments alone.⁴⁹⁹ This right is a right “*erga omnes*”⁵⁰⁰ and an essential principle of contemporary international law.⁵⁰¹ Moreover, the ICJ affirmed this principle with respect to the will of peoples in non-self-governing territories. In different judgments like the 1971 Advisory Opinion on Namibia⁵⁰²

⁴⁹⁷ Ronald Niezen, *Public Justice and the Anthropology of Law* (New York, Cambridge University Press:2010), 109.

⁴⁹⁸ ICJ, “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),” pp. 31- 32; ICJ, “Report of Judgment, Advisory Opinions and Orders, Western Sahara, Advisory Opinion of 16 October 1975”; ICJ, “Case Concerning East Timor (Portugal v. Australia),” *International Court of Justice*, accessed May 10,2017. <https://www.icj-cij.org/en/case/84> 16.

⁴⁹⁹ ICJ, “Report of Judgment, Advisory Opinions and Orders, Western Sahara, Advisory Opinion of 16 October 1975.”

⁵⁰⁰ The term “*erga omnes*” as (ICJ) identified means international obligations," namely obligations owed by states to the international community as a whole, intended to protect and promote the basic values and common interests of all". Accordingly, the State’s “*erga omnes*” obligations are a mandatory duty for each state, and it has to respect this norm regionally and internationally. See: Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford: Oxford University Press, 2007):4.

⁵⁰¹ ICJ, “Report of Judgment, Advisory Opinions and Orders, Western Sahara, Advisory Opinion of 16 October 1975,” 4.

⁵⁰² ICJ, “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),” 52.

and the 1975 Advisory Opinion on Western Sahara,⁵⁰³ the principle of the right to self-determination included the need to take account of the freely expressed will of peoples.

In 1976 the International Law Commission of the United Nations agreed that violation of the right of peoples to self-determination is a serious offence and an international crime, and has thus tacitly admitted that this principle is one of the cases which in contemporary international law can be characterized as *jus cogens*. The Commission affirmed the state's responsibility in this regard, and it characterized the denial of the right of peoples to self-determination as a serious breach of an international obligation of essential importance for safeguarding the right of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination.⁵⁰⁴

Concerning the titleholder of this right according to UN doctrine, UNESCO International Meeting of experts have pointed out that "The right of peoples to self-determination is now well established by international law in the case of colonial peoples, peoples in dependent territories and peoples living under racist regimes."⁵⁰⁵ Besides, it concluded that peoples' rights are recognized in international law, and the hard laws included the right to self-determination and the right to existence in line with the Genocide Convention.⁵⁰⁶

⁵⁰³ ICJ, "Report of Judgment, Advisory Opinions and Orders, Western Sahara, Advisory Opinion of 16 October 1975."

⁵⁰⁴ UN, "The Question of Palestine, Right of peoples to self-determination." Special Rapporteur study (excerpts). *United Nations*, The Question of Palestine. Accessed May 13, 2016. <https://www.un.org/unispal/document/auto-insert-186956/>

⁵⁰⁵ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations."

⁵⁰⁶ Abdul Haseeb Ansari, Abdulfattai O. Sambo and Shehu Usman Yamusa, "Right to Self-Determination, Democracy and the Shari'ah: An Expository Study," *Australian Journal of Basic and Applied Sciences* 6, no. 11 (2012): 122.

However, the United Nations also emphasised territorial integrity and state sovereignty as important issues that cannot be overlooked, legal exceptions that challenge and problematise the enforcement of self-determination. Paragraph Six of Resolution 1541 stated:

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the Purposes and Principles of the Charter of the United Nations.⁵⁰⁷

Furthermore, self-determination, if exercised contrary to the international law principles of state sovereignty and territorial inviolability, undermines these very principles. In 1970, the Secretary General of the UN stated that: "... as far as the question of secession of a particular section of a Member State is concerned, the United Nations attitude is unequivocal. As an international organisation, the United Nations has never accepted and does not accept and I do not believe it will ever accept a principle of secession of a part of a Member State."⁵⁰⁸ Furthermore, Resolution 2526 stated that:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.⁵⁰⁹

⁵⁰⁷ UN, "UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples."

⁵⁰⁸ U. Thant, "Secretary General's Press Conferences" (1970) 7:2 UN Monthly Chronicle 34 at 36, quoted In Gnanapala Welhengama, *Minorities' Claims: From Autonomy to Secession: International Law and State* (New York: Routledge, 2017), 287.

⁵⁰⁹ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."; UN, "UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples."

This is a significant base of UN instruments which could be used to deal with all cases of self-determination, even cases outside the context of colonization.

However, while the UN definition is clear in its general import, but the concept remains nebulous. Moreover, the social, economic, and cultural situation must be understood alongside the political situation. According to UN doctrine, the right to self-determination is an integrated process, which includes the freedom of peoples to choose the form and the situation that they wish, even if people decided on secession via self-determination externally, or union with other countries or regions to build a new state. This right is extended to all peoples and nations, as the UN has stated in many different instruments.

Despite the efforts of the United Nations to define the right to self-determination and determine its content, there is still no definitive definition of the specific meaning of the concept, its limits, mechanisms for its application, and the true owners of this right. It has remained a vague concept which has meant various interpretations at the legal, theoretical, and practical levels have been possible. Accordingly, enforcement has been problematic, as each side has interpreted the concept according to its interests, so that the majority of the self-determination conflicts and cases have continued without a solution.

In sum, the principle of self-determination could be defined in the following way: self-determination is a fundamental right of peoples according to international law, which allows them to freely determine their political, social, economic and cultural status, internally and externally. Thus, self-determination could mean the right of any nation, ethnic, linguistic, or religious group to redefine existing national borders to achieve a separate national sovereignty. It could be a means of achieving a greater degree of

autonomy and linguistic or religious identity within a sovereign state, or a way of exercising this right internally, within existing borders.⁵¹⁰ Self-determination is a collective and fundamental legal right of all peoples without reference to race, colour, language, size and religion, and whether or not they inhabit independent states. According to this right, people should freely determine their political condition and have the right to develop their economy and manage their resources freely, as well as to form policy to manage and develop their society and culture, without interference from others.

Self-determination is expressed by independence, free association, and integration with an existing state.⁵¹¹ It usually leads to the establishing of an independent state. As Casias has pointed out, “self-determination has provided the legal tools for establishing the demands of the seceding peoples to achieve independent statehood.”⁵¹²

The main reason why the right to self-determination has not been specifically defined in international law is to be found in international politics. The differences between the great and victorious countries in the WWII, who formulated the UN Charter in a manner that guarantees their control over the decisions, laws and positions of the United Nations, especially the permanent members of the Security Council, has led to the continued definition of the right to self-determination in a flexible and indefinite manner. Since a specific definition would mean a specific legal framework and obligation in international law, perhaps this is not in the interest of those countries. In the literature of the United Nations, the description and definition of self-determination has been as a right of peoples,

⁵¹⁰ Betty Miller Unterberger, “Self-Determination,” *Encyclopedia.com*, accessed December 12, 2016. <http://www.encyclopedia.com/social-sciences-and-law/law/law/self-determination>.

⁵¹¹ UN, “UNGA Res. 1541, Defining the Three Options for Self-Determination.”

⁵¹² Cassese, *Self-Determination of People, A legal Reappraisal*, 270.

especially colonized peoples, to achieve their independence and freely determine their future.

Finally, the right rests on the decision of the people and the result of a people's decision should not affect the existence of the right to make a decision. Practically, the possible outcome of exercising self-determination will often determine the real attitude of governments towards the claim of peoples. The claims of peoples to independence through exercising the right to self-determination are more likely to be rejected by governments, except in cases where there are advance agreements between both sides. The balance of power has a definitive effect on determining the content of the concept, and respecting and implementing this right.

§II: Titleholders of the right to self-determination: defining the concept of 'people'

Self-determination concerns people. Therefore, in a framework that seeks to clarify the right to self-determination, it is vital to describe the "people" to whom the international law and theories assign the right. However, 'people' is as complex a concept as self-determination. Does 'people' in the context of self-determination mean a group of citizens of a recognised state or independent countries? Does it mean the populations of countries formerly under the dominion of colonial powers? Or does it mean a group of individuals united in their belief in a common race who share ethnicity or religion or language or geography? Does the population of the Iraqi Kurdistan region count as a 'people' according to UN criteria, and can it exercise its right to self-determination?

A. What is a "people"?

Evidently, most authors have found it challenging to come up with a univocal and simple description of 'people.' The problems perhaps stem from the fact that there are several types of peoples, and it is difficult to come up with a definitive list of shared characteristics representing people. One might see oneself as belonging to a diasporic, ethnic, multi-societal, multi-territorial, cultural, socio-political and civic people. Furthermore, the concept of the 'nation' must also be distinguished from that of the people.

According to the Oxford English Dictionary the nation is "a large aggregate of people united by common descent, history, culture, or language, inhabiting a particular country or territory."⁵¹³ The national character depends mainly on race, a common origin, language and geography more than anything else, but the character of the people depends on the legal political identity for a certain group, and the concept of people is not specified exactly in international law.

'People' attracts different views. For some, peoples living, for example, in a region geographically distinct and ethnically and culturally different from the rest of a state's territory should be allowed, with appropriate safeguards, to exercise their right to self-determination. But for others, a claim that any tribal, racial, ethnic or religious group has a right to self-determination would widen the scope of the principle to the point of absurdity.⁵¹⁴ To claim self-determination, a people should have significant ties of a racial,

⁵¹³ English Oxford living dictionaries, "Definition of nation in English: Nation," LEXICO, accessed November 15, 2016. <https://en.oxforddictionaries.com/definition/nation>

⁵¹⁴ Cristescu, *The Right to Self-determination - historical and current development on the basis of United Nations instruments*, 12.

linguistic, religious, cultural, economic and/or historical nature as well as a common economic base within a certain geographic area. While it is sometimes difficult to distinguish between peoples and minorities, only the former are entitled to the right to self-determination.⁵¹⁵

In general, the concept of 'people' remains contentious. The Longman dictionary states that 'people' means: persons, human beings, persons in general, persons other than oneself.⁵¹⁶ Furthermore, H. Wilson has pointed out that the UN Charter does not clarify specifically "who the 'self' is that enjoys this principle which should be respected by nations."⁵¹⁷ According to James Summers, "it is well-established that peoples represent the basic unit entitled to exercise self-determination as a legal right."⁵¹⁸

International law generally agree that whatever else the term people may mean, it means the colonial categories of trust territories and non-self-governing territories established by the United Nations Charter. Trust territories covered by the chapter XII of the UN charter were primarily territories held previously under the League of Nations mandate system.⁵¹⁹

Cristescu has pointed out that according to Chapters XI, XII, and XIII of the UN Charter and United Nations practice, "the term "peoples" meant peoples who did not have equality of rights with the people of the administering authority. That is people who had

⁵¹⁵ Connie de la Vega, *Dictionary of International Human Rights Law* (Cheltenham and Northampton: Edward Elgar; 201),131.

⁵¹⁶ Addison Wesley Longman, *Longman dictionary of English language and culture*, 998.

⁵¹⁷ Wilson, *International Law and the Use of Force*, 59.

⁵¹⁸ James Summers, *Peoples and International Law* (Leiden-Boston: Martinus Nijhoff Publishers, 2007), 1.

⁵¹⁹ Knop, *Diversity and Self-Determination in International Law*,51.

been unable to exercise their right to self-determination".⁵²⁰ In general, the UN has opted for the territorial over the ethnic criterion, respecting the boundaries of the formal colonies and the principle of territorial integrity.⁵²¹ Reference to "peoples" in the UN Charter clearly encompasses groups beyond states and includes at least non-self-governing territories "whose peoples have not yet attained a full measure of self-government."⁵²²

According to this criterion, the equality between peoples within one state, the Iraqi Kurds should have the right to determine their future and self-determination freely. The Kurds in Iraq have suffered injustice, policies of ethnic cleansing and racial discrimination for decades at the hands of the Arabic governments in Iraq. In the history of Iraq, there has been no real equality and balance between the entities in Iraq, especially between the Kurds and the Arabs. Rather, the political and legal situation has been designed to support military control and the dictatorship of the Arab majority, compelling the Kurds to continue the struggle to get rid of Iraq, its regime, and its governments.

Oriol Casanovas, who examined the concept of self-determination of peoples from different perspectives, claimed that historically, politically and legally the term 'people' has changed significantly during the past few decades. He identified three aspects of the term: universalist, nationalist and internationalist. First, the principle of self-determination is a democratic principle directed against dictatorship or totalitarianism in the government. Thus, people would be governed by their own elected government. Second, self-

⁵²⁰ Cristescu, *The Right to Self-determination - historical and current development on the basis of United Nations instruments.* "12.

⁵²¹ Michael Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (The Hague: Martinus Nijhoff, 1982), 18.

⁵²² UN, "Charter of the United Nations," Art. 73.

determination means that every people or nation has the right to establish its own government. Thirdly, people once established as a state have the right to be governed without any external intervention, which will mean non-intervention.⁵²³

On the other hand, Antonio Cassese discussed the concept of people and offered various definitions: (1) entire populations living in independent and sovereign States, (2) entire populations of territories that have yet to attain independence, and (3) populations living under foreign military occupation.⁵²⁴ This is a wide definition and will cover various groups.

For some scholars, "properly understood, the principle of self-determination, commensurate with the values it incorporates, benefits groups. That is, 'peoples' in the ordinary sense of the term- throughout the spectrum of humanity's complex web of interrelationships and loyalties, and not just peoples defined by existing or perceived sovereign boundaries"⁵²⁵

With reference to the concept of people in the African Charter, Kiwanuka noted that there are four parts to the definition depending on the context: (A) all persons within the geographical limits of an entity yet to achieve political independence or majority rule; (B) all groups of people with certain common characteristics who live within the geographical limits of an entity referred to in (A), or in an entity that has attained independence or majority rule (i.e., minorities under any political system); (C) the state

⁵²³ Oriol Casanovas, *Unity and Pluralism in public international law* (The Hague: Martinus Nijhoff Publishers, 2001), 138.

⁵²⁴ Cassese, *Self-Determination of People, A legal Reappraisal*, 59.

⁵²⁵ James, *Indigenous Peoples*, 79.

and the people as synonymous (however, this is only an external definition of "people"); and (D) all persons within a state.⁵²⁶ The resistance in South Africa continued despite the fact that apartheid there was successfully countered with self-determination.⁵²⁷

However, legally, the constant affirmations of national sovereignty and the territorial integrity of states in the UN instruments, and the lack of clear definitions of self-determination and the people, as well as the restriction of the application of this right outside the context of traditional colonisation has led to the limited application of the right of self-determination for all peoples, so that it could no longer be considered absolute in the face of a plethora of exceptions. Many peoples outside the context of traditional colonialism have implemented the right to self-determination and achieved their right to independence, like the people of South Sudan and of Kosovo, and the international community deals with them. This means that the definition of the people, like the definition of the right to self-determination is subject to the logic of the political balance of power more than the legal foundations and the theoretical framework of the concept.

⁵²⁶ Richard N. Kiwanuka, "The Meaning of "People" in the African Charter on Human and Peoples' Rights," *The American Journal of International Law* 82, No. 1 (1998): 86.

⁵²⁷ Muehlebach, "What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism, Identities," 248.

B. The foundations of defining the Kurdistan population as a “people”

There have been two different directions taken in the defining of people entitled to exercise the right of self-determination. At the close of WWI, according to Woodrow Wilson, ethnic communities were authorized to disrupt the existing states for the purpose of freedom from alien subjugation, domination, and exploitation. In the post-WWII era, the inhabitants of colonial territory, however randomly assembled by the colonial power have the right to self-determination by taking over pre-existing political units as independent states.⁵²⁸

‘People’ is a legal rather than a natural category.⁵²⁹ There is no fully accepted definition of the concept of ‘peoples’ but there are some foundations for defining the concept of people. Significantly, a number of scholars have agreed that distinct 'racial groups' are generally entitled to qualify as a people.⁵³⁰ The Iraqi Kurdistan people are not formally recognized as a " people under colonialism", or oppressed or subject people formally in the UN documents. For instance, the UN Security Council resolution 688 referred to a "Kurdish population", not “Kurdish people” or “Kurdistan oppressed people”. This historic resolution concerned humanitarian intervention to stop Iraqi government crimes and to create a no-fly zone in the north of Iraq. It was designed to end the suffering

⁵²⁸ Rupert Emerson, “Self-Determination,” *The American Journal of International Law* 65, no. 3 (1971):459-475.

⁵²⁹ Zeinullah Gruda, “Some Key Principles for a Lasting Solution of the Status of Kosova: Uti Possedetis, The Ethnic Principle, and Self-Determination.” *Chicago-Kent College of Law* 80, no. 1 (2005): 353.

⁵³⁰ See for example, Paul H. Brietzke, *Self-Determination, or Jurisprudential Confusion: Exacerbating Political Conflict*, Quoted in Robert McCorquodale, *Self-Determination in International Law* (Ashgate: Dartmouth, 2000) 77.

of the Kurdish population after the Iraqi army attacked Iraqi Kurdistan and refugees crossed en masse to neighbouring countries, fearing reprisals from Saddam's regime after the 1991 uprising.⁵³¹ This fact can be considered a reflection of international politics, and the superpowers' consistently negative positions toward the Kurdish issue.

The development of a new conception of 'people' has evolved with the development of the concept of self-determination as a legal right according to international law. In this context, the definition of 'peoples' encompasses both the population of a fixed territorial entity, indigenous groups and even potentially some minorities. Reference is frequently made to the definition proposed by Martínez Cobo, UN Special Rapporteur, in his study of discrimination against indigenous populations:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.⁵³²

The UNESCO experts have described 'people' as a mutable concept, possibly capable of bearing different meanings with regard to different rights:

5. A group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition;(b) racial or ethnic identity;(c) cultural homogeneity;(d) linguistic unity;(e) religious or ideological affinity; (f) territorial connection; (g) common economic life;

⁵³¹ UNSCR, "Resolution 688 (1991) of 5 April 1991."

⁵³² OHCHR and ASP, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions* (Sydney. Geneve: ASP. UNHR,2013), 6.

6. The group must be of a certain number which need not be large (e.g. the people of micro States) but which must be more than a mere association of individuals within a State;

7. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have that will or consciousness; and

8. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity.”⁵³³

In order for a group to have the right to determine its political destiny, it must possess an adequate identity to achieve distinction as a "people".⁵³⁴ Consequently, the "people" is determined according to certain criteria, or characterised by the presence of some moral and material elements. The moral element lies in the loyalty of individuals to their collective identity as a "people".⁵³⁵ Materially, the group must have some elements such as a specific geography, shared ethnic background, language, religion, history, cultural heritage and territorial integrity for the region that the group claims.⁵³⁶ Dinstein has suggested that the link must express itself, inter alia, in a common territory, religion, or language, but these requirements are excessively tough.⁵³⁷ Significantly, under the principle of self-determination, a group with a common identity and link to a defined territory is allowed to decide its political future in a democratic fashion.⁵³⁸

⁵³³ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations," 8.

⁵³⁴ Michael P. Scharf, "Earned Sovereignty: Juridical Underpinnings," *Denver Journal of International Law & Policy* 31, no. 3 (2003): 373-385.

⁵³⁵ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations," 8.

⁵³⁶ UNESCO, International Meeting of Experts, 8., Scharf, "Earned Sovereignty: Juridical Underpinnings," 379.

⁵³⁷ Dinstein, "Collective Human Rights of Peoples and Minorities," 102-120.

⁵³⁸ Scharf, "Earned Sovereignty: Juridical Underpinnings," 379.

The Kurdistan population is a “people”; it has all the moral and material characteristics. Moreover, it has elements that exist in the other peoples of the world, such as the French, Arab, Spanish or Swedish people. In term of material elements, Kurdistan people have their own language, distinct geography, different race, distinctive culture, and long history as they are indigenous peoples in the region, and have their own institutions for governance and management.⁵³⁹ As well as, they have institutions or other means of expressing its common characteristics and will for identity. Besides, in terms of moral elements, Kurdistan people as a whole have the will to be identified as a people, and they describe themselves as a people. “The Kurds’ quest for independence is 100 years old”⁵⁴⁰. They have a common loyalty to their cause and have wanted to be independent since the beginning of their issue in the last century. As long as the population of the Kurdistan region are a "people", they have the right to self-determination like all other peoples according to the international instruments.⁵⁴¹

In addition, UNISCO report referred to only three kinds of peoples who have the right to self-determination: "The right of peoples to self-determination is now well established by international law in the case of colonial peoples, peoples in dependent territories and peoples living under racist regimes."⁵⁴²

⁵³⁹ Riamei, *The Kurdish Question: Identity, Representation and the Struggle for Self- Determination*, 13-15.

⁵⁴⁰ Hiltermann, “The Kurds Are Right Back Where They Started.”

⁵⁴¹ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

⁵⁴² UNESCO, “International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations,” 2.

According to the third point of these criteria it could be argued that the population of the Iraqi Kurdistan Region is a "people" and has the right to self-determination. This region is dependent territory to the Iraqi state and since the beginning of the Kurdish issue the will of the people has not been respected. In addition, successive Iraqi governments have perpetrated acts of extreme racial discrimination and numerous crimes against the Kurdish people including genocide, ethnic cleansing, demographic change, forced displacement, bombardment with chemical weapons.⁵⁴³

Despite the different definitions of the concept of people, it can be concluded that people are communities with a distinct character and clear identity. Territory is of relevance, even if in the past they have been expelled from it. They share loyalty to their region and their community, and they aim to decide their future together. The population of the Iraqi Kurdistan region constitutes a people, and accordingly, they have the right to self-determination, depending on many legal foundations like UN GA Resolution 2526, which concluded that this right is a right for all peoples: "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status."⁵⁴⁴

⁵⁴³ UNPO and KRG, "The Kurdish Genocide. Achieving Justice through EU Recognition."

⁵⁴⁴ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

SECTION II: Self-Determination; dimensions and concepts

The concept of self-determination is virtually as old as the concept of statehood itself.⁵⁴⁵ Since its inception self-determination has undergone dramatic alterations in many aspects, from a concept initially applied to issues such as decolonisation, to a justification for the break-up of multi-ethnic states. The concept may now extend towards indicating a right of self-determination for different peoples. Moreover, the principle of the right to self-determination has different dimensions. It is essentially interrelated with some other fundamental principles of international law including human rights, territorial sovereignty, the acquisition of sovereignty over territory, and recognition. The circumstances and extent to which these principles directly affect the status of the right to self-determination, and are applied, set out the parameters of this right.

While it is generally agreed that people have a right to self-determination, it is important to distinguish between the various dimensions of self-determination. In this section, we explore the arguments about self-determination from a human rights perspective, the important relationship between self-determination and human rights, or respecting self-determination as a part of respecting human rights. In addition, the section discusses the relationship between self-determination and decolonization, and explains internal and external self-determination (§ I). The second paragraph discusses the modes of self-determination: internal and external self-determination. The aim is to understand the most suitable form of the right to self-determination that can be applied to the

⁵⁴⁵ Batistich, "The Right to Self-Determination and International Law," 1013–1017.

population of the Iraqi Kurdistan region, including the legal right they have as a people who demand self-determination, but also taking account of what rights they are able to achieve in light of their political circumstances and the current regional and international policy orientations, particularly the attitude of the United States of America towards their cause (§ II).

§I: The Right to self-determination and Related Concepts

The principle of the right to self-determination has different dimensions, which are interrelated, and is essentially joined with a set of fundamental concepts and principles, such as human rights, decolonization, self-government, territorial integrity and commitment to international law. Respect for and application of each of these principles, or the lack of respect for them, directly affects the status of the right to self-determination, negatively or positively.

A. Respect of the right to self-determination and respect for human rights

Self-determination has been described as the most fundamental of all human rights.⁵⁴⁶ Philip Alston and Ryan Goodman, who are both international human rights scholars, have pointed out that the most fundamental of all human rights is that of self-determination and no other right overrides it.⁵⁴⁷

Self-determination is a part of the universal principles of human rights. While there are several hortatory references to the right of self-determination in the UN General Assembly resolutions and other declarations, the major and legally binding documents where the right of self-determination are decreed precisely involve two international covenants. The right is grounded in the idea that all peoples and nations are equally entitled to manage their own futures. The Adoption of the Universal Declaration of Human Rights (UDHR) on 10 December 1948 marked a significant development in favor of the concept of self-determination. Although this declaration did not include the right to self-determination directly, indirectly it ported promoting the right to self-determination for all humankind. UDHR affirmed rights and fundamental freedoms equally for all humans. The right to political freedom and to form the future without interference by others is a core principle of self-determination, which is also a fundamental principle of international human rights law. It has been stated in many UN documents, initially in UDHR in Article (21/3) that: "The will of the people shall be the basis of the authority of government."⁵⁴⁸

⁵⁴⁶ Makau Mutua, *Human Rights: A Political and Cultural Critique*, 108.

⁵⁴⁷ Alston and Goodman, *International Human Rights, Text and Materials*, 624.

⁵⁴⁸ UN, "Universal Declaration of Human Rights."

Additionally, it has been stated in both the International Covenant on Civil and Political Rights (ICCPR), 1966⁵⁴⁹ and International Covenant on Economic, Social and Cultural Rights and (ICESCR), 1966.⁵⁵⁰

Decolonisation gained momentum when the international community determined that colonialism impeded the enjoyment of human rights, by, for example, preventing representative government emerging through the free election of officials.⁵⁵¹

While the UN formulation quoted above may have failed to stand up to interrogation, some issues regarding this right have become clearer in the subsequent resolutions, interpretations and declarations. The first clarification is that the right to self-determination is a right belonging to collectivities called the “peoples” but not individuals.⁵⁵² Hence, as the Committee of Human Rights has relentlessly made clear, indications that the right to self-determination has been breached cannot be raised by the First Optional Protocol that applies to individuals alone. Moreover, self-determination belongs to peoples but not to minorities. Such a truism might seem to shift the debate to descriptions and semantics but the difference between peoples and minorities remains a question debated by states as well as international agencies concerned with monitoring the rights.⁵⁵³

⁵⁴⁹ UN, “International Covenant on Civil and Political Rights.”

⁵⁵⁰ UN, “International Covenant on Economic, Social and Cultural Rights.”

⁵⁵¹ Evans and Olidge, “What can the Past Teach the Future? Lessons from Internationally Supervised Self-Determination Elections 1920-1990,” *NYUJ Intl L & Pol* 24,1731, quoted In Marija Batistich, “The Right to Self-Determination and International Law,” 1524.

⁵⁵² Hurst Hannum, “The right of self-determination in the twenty-first century,” *Washington and Lee law review* 55, no. 3 (1998): 773-780.

⁵⁵³ Hurst Hannum, “The right of self-determination in the twenty-first century,” 773-780.

The other core document for the principle of self-determination is UN General Assembly Resolution 1514, which linked self-determination with human rights and fundamental freedoms for all without distinction. As the first paragraph of the Resolution made clear, self-determination is a fundamental human right: “Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom.”⁵⁵⁴ One of the important results of the Declaration was that it included self-determination as a fundamental human right, bringing it within the scope of the Universal Declaration of Human Rights 1948. Furthermore, the African Union Charter made clear that nothing could justify the domination of one people by another, as stated in Article 19:

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.⁵⁵⁵

The right to self-determination lies at the heart of fundamental human rights. It is the freedom to determine the future of any human being, individually or as part of a collective entity, without regard to race, colour, religion, region, ideology. Respect for human rights is an obligation for all countries. Hence, respecting the right to self-determination as an essential part of basic human rights is equally obligatory for all countries in order to guarantee freedom for people to determine their future internally and externally. Respect for human rights leads to stability, coexistence and development, as

⁵⁵⁴ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

⁵⁵⁵ African Union, “African Charter on Human and Peoples' Rights.”

can be seen in many European and western countries. By contrast, lack of respect for human rights causes national instability and underdevelopment, as is the case in many countries in the Middle East and Africa.

Human rights might appear to be related to individual issues, but they form a legal basis for the right to self-determination of peoples, as collective rights. Moreover, outside political equations and strategic interests and the orientation and interference of international politics, it is inconceivable that a democratic state that respects the rights of individuals according to the United Nations documents and international standards could prevent its people or other people from deciding their destiny democratically. Peoples and democratic countries allow their peoples, or other peoples living with them, to exercise their rights freely in deciding their future, as Britain did with Scotland, and also as the European Union countries did when Britain voted to leave the European Union. Therefore, respect for the right to self-determination is ultimately respect for human rights collectively, in accordance with the principles and standards of international law.

In the case of the Iraqi Kurdistan region, there were wide violations and serious crimes practised against the Kurdistan people during the last century by the Iraqi state. The successive Iraqi governments have perpetrated acts of extreme racial discrimination and numerous crimes against Kurdistan people including crimes and violation of fundamental human rights, genocide, ethnic cleansing, demographic change, forced displacement, bombardment with chemical weapons.⁵⁵⁶ This constitutes a strong additional basis and

⁵⁵⁶ UNPO and KRG, "The Kurdish Genocide. Achieving Justice through EU Recognition."

justification for the Kurdistan Region's demands for the right to self-determination and secession from Iraq.

On the other hand, there is an important relationship between Respect of the right to self-determination and the recognition of statehood and respect for human rights, in the viewpoint of international community.

In the case of the South African Homelands, the violation of the right of self-determination and the pursuance of racist policies marked the illegality of the state-creation.⁵⁵⁷ An entity unwilling or unable to respect human rights and the right to self-determination should be barred from statehood.⁵⁵⁸

Serious and persistent violations of the human rights of any minority or ethnic group, even within the borders of existing and independent states, justifies their right to exercise the right to self-determination and secession, as a remedial right. The Canadian Supreme Court confirmed this in the case of Quebec,⁵⁵⁹ as well as the remedial right theory.⁵⁶⁰ At the same time, the giving of guarantees by secessionist groups about the commitment to respect human and minority rights is one of the conditions of the international community to recognize any process of self-determination and statehood. State practice provides examples of the link between compliance with basic human rights and the recognition of new states. At the time of the dissolution of the Soviet Union, the Members of the then European Commission (EC), made clear that they saw the respect for

⁵⁵⁷ Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice* (Oxford and Portland, Oregon: Hart Publishing, 2013), 61.

⁵⁵⁸ Jure Vidmar, *Democratic Statehood in International Law*, 61-62.

⁵⁵⁹ Supreme Court of Canada, "Supreme Court Judgments, Reference re Secession of Quebec."

⁵⁶⁰ Seymour, "Secession as a Remedial Right," 395.

certain human rights as a precondition for the recognition of the claims to independence of various republics of the former Soviet Union.⁵⁶¹ A similar policy was followed when the Socialist Federal Republic of Yugoslavia began to collapse.⁵⁶²

B. The right to self-determination and decolonization

Since World War II there has been a strong argument for the right to self-determination, as can be seen in the international instruments like the UN Charter, UNGA Resolutions, decisions of the International Court of Justice, state practice, and the writings of commentators. The post-1945 UN era marks an important phase in the development of self-determination, and this principle is generally linked to the de-colonization process after the declaration of the UN Charter of 1945. Many foundational documents of international law have stated that people have a right to govern themselves as an essential right, and as a part of the right to self-determination. These documents include different UN instruments⁵⁶³. In addition, these documents have explained the lawfulness of the claims to the right to self-determination for all peoples.

⁵⁶¹ Daniel Högger, *The Recognition of States* (Zurich: LIT Verlag Münster, 2015), 53-55; Jessica Almqvist, "EU and the Recognition of New States," *Euborders Working Paper* 12, September 2017, accessed September 22, 2018. https://www.ibei.org/working-paper-12-euborders_145144.pdf

⁵⁶² Högger, *The Recognition of States*, 59-63.

⁵⁶³ UN, "United Nations and decolonization," *United Nations*, accessed September 22, 2016. <https://www.un.org/dppa/decolonization/en/about>

However, the UN Charter provisions, (for example Chapter (XI)),⁵⁶⁴ even in the colonialism context, did not refer to statehood directly as an option for the people in colonised territories. Instead, the provisions focussed on the practical enforcement of self-determination as a UN objective, leading to the guarantee of independence in determining the future for peoples by themselves. Conventionally, the right to self-determination existed for all peoples, but was limited in its scope with respect to colonised peoples, and was limited in its enforcement in colonised territories. Article 73 required that:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, ... (and) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.⁵⁶⁵

As mentioned previously, the right to self-determination is the right of all peoples to choose their future, and to decide how it will be governed, whether through a parent State or through a new state. Self-determination refers to the collective power of choice, and self-government is one possible result of that choice.⁵⁶⁶ This indicates a role for political conditions in the application of this right externally, and permissibility by

⁵⁶⁴ UN, "Charter of the United Nations," XI.

⁵⁶⁵ UN, "Charter of the United Nations," Ar. 73.

⁵⁶⁶ RCAP, *Report of the Royal Commission on Aboriginal Peoples, Vol. 2, Restructuring the Relationship*, 175.

superpowers and international politics, particular if a new state is established as a result of respecting the will of a people.

In the 1960s, the right to self-determination as a legal right became increasingly invoked as a right of dependent peoples. Thus, the concept of self-determination was historically bound up with decolonization. It was intended to help dependent peoples towards independence if they choose it. The right was granted to Trust Territories and Non-Self-Governing Territories, and was applied to all inhabitants of a colonial territory. The ICJ, for instance, in the Western Sahara Advisory Opinion supported the UN. The ICJ referred to the right to self-determination as a right held by people rather than a right held by governments alone. Consequently, the legal concept of self-determination as a right of peoples in territory under colonial rule to determine their own future was firmly established. The ICJ stated that “in doing so it reiterates the basic need to take account of the wishes of the people concerned. The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.”⁵⁶⁷ In the Declaration on the Granting of Independence to Colonial Countries and Peoples,⁵⁶⁸ which confirmed the right of all people to self-determination, self-determination was not limited to colonial territories, but might have a wider application. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States of 1970 affirmed the will of peoples

⁵⁶⁷ ICJ, “Report of Judgment, Advisory Opinions and Orders, Western Sahara, Advisory Opinion of 16 October 1975,” 25.

⁵⁶⁸ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

including self-determination as a legal right for all peoples, including those in colonized territories, as it referred to the "subjection of peoples to alien subjugation, domination, and exploitation."⁵⁶⁹

The articles in the Charter related to self-determination provided the legal basis for this right, as they led to many resolutions and declarations including UN GA Resolutions 1514, 1541 and 2526. In the former, the UN role was expanded into a call for the speedy granting of independence to non-self-governing territories, and for state abstention from the use of force against groups campaigning for such independence,⁵⁷⁰ while the latter described the United Nation's role in respect of non-self-governing territories as applying in particular to colonies.⁵⁷¹

The basics of self-determination in Articles I and 55 of UN Charter were accompanied by Chapters XI and XII, which focussed on non-self-governing territories and the international trusteeship system, and article 76, concerning the international trusteeship system, which referred to development in the Trust Territories towards "self-government or independence".⁵⁷² A general definition of the right of self-determination can be framed accordingly: self-determination is a right of peoples who do not govern themselves, for example the East Timorese in Indonesia. Additionally, the identity and desires of such peoples may be ascertained through various means, such as international commissions of inquiry, and facts, such as the actual struggle of a people to assert its

⁵⁶⁹ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

⁵⁷⁰ UN, "UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples."

⁵⁷¹ UN, "UNGA Res. 1541, Defining the Three Options for Self-Determination."

⁵⁷² UN, "Charter of the United Nations."

identity. The International Court of Justice has recognised the validity of a flexible approach in determining the "freely expressed wishes of the territory's peoples".⁵⁷³

Respect for the right to self-determination guarantees self-governing for a people in order to control their future, manage their political, economic and social affairs, and control their natural resources by themselves. Respect for self-determination is a guarantee of decolonization, as established in the instruments and actions of the United Nations. The exercise of the principle of the right to self-determination is essential, and a result of the process of ending colonialism and independence and establishing self-government for any people.

Yet there is no direct discussion in the literature of the United Nations on state-building and the right to external self-determination for peoples outside the context of colonial rule and non-self-governing peoples. In other word, the UN instruments are not clear in recognising the right to self-determination outside the context of colonies and non-self-governing territories. This is one of the problems related to the content and definition of the self-determination concept. Accordingly, this vagueness is not in favour of solving ethno-national issues and respecting the right for all peoples, including the people of the Iraqi Kurdistan Region.

⁵⁷³ Marija Batistich, "The Right to Self-Determination and International Law," 1015.

§II: Modes of self-determination: Internal and external self-determination

It is commonly agreed that there are two kinds of self-determination: internal and external self-determination. Internal self-determination involves a process directed internally to a country in which a given cultural, religious or ethnic group is perceived to be oppressed. On the other hand, external self-determination concerns a separatist entity that can seek autonomy as a nation or full recognition by other countries under international law.⁵⁷⁴ In most contexts, particularly in relation to people living in a democratic nation, the usage of the right to self-determination is comprehended and utilised in internal terms. Nevertheless, there is nothing to stop a group from attempting to secede from a larger group as long as this process is undertaken in a peaceful manner. Recently, South Sudan and Kosovo have been dependent on the right to external self-determination in pursuing their independence.⁵⁷⁵ Similarly, Iraqi Kurdistan could seek to secede from Iraq. When the right to self-determination is classified as internal or external, these classifications refer not to two different rights but to two aspects of the same right.⁵⁷⁶

⁵⁷⁴ Frederic L. Kirgis, "The degrees of self-determination in the United Nations era," *American Journal of International Law* 88, no. 2 (1994): 304-310.

⁵⁷⁵ Ralph Wilde, "Accordance with international law of the unilateral declaration of independence in respect of Kosovo." *American journal of international law* 105, no. 2 (2011): 301-307.

⁵⁷⁶ Raic, *Statehood and the Law of Self-Determination*, 227.

A. Internal self-determination

A general definition of the right to self-determination may be framed as a right of peoples who do not govern themselves, while self-determination may take various forms, including continued association with an existing state, with a strong preference for the bestowal of statehood on the people in question.⁵⁷⁷

Internal self-determination is described as the right of people to establish themselves culturally, socially and economically within the realms of what is meant by a state, and to determine their political status. Internal self-determination allows a people broader control over their political, economic, social and cultural development. It allows people to choose their political leaders and legislators without interference from the domestic authorities.⁵⁷⁸ The implementation of the right of self-determination gives rise to remedies that tear at the legacies of empire, discrimination, the suppression of democratic participation, and cultural suffocation.⁵⁷⁹ The internal dimension of the right to self-determination refers to the exercise of sovereignty by people inside the country concerning internal issues, political, social, economic, and cultural. It also determines forms of governance such as federalism or confederalism or self-governance.

Internal self-determination can take various forms. It can be formulated in a weak sense to allow people the right to take part in the electioneering process. Based on this assertion, the Court of Canada has described internal self-determination in relation to the

⁵⁷⁷ Marija Batistich, "The Right to Self-Determination and International Law," 1015.

⁵⁷⁸ Cassese, *Self-Determination of People, A legal Reappraisal*, 53.

⁵⁷⁹ James, *Indigenous Peoples*, 75.

Secession of Quebec. The Canadian supreme court has argued that the Quebecois have not been denied meaningful access to governmental services and resources including their ability to pursue their economic, cultural, political and economic development.⁵⁸⁰ This response can be termed a canonical interpretation of internal self-determination and can also imply the right to self-government. This situation is one of the most common forms of internal self-determination whereby people have political control of their institutions in the states.

Internal self-determination can also imply a sophisticated kind of self-government like a special constitutional status. In this context, a special asymmetric constitutional arrangement can be created to meet the specific needs of the people.⁵⁸¹ The right to internal self-determination can be understood to mean the right of the people to access a special constitution in their state. For instance, the demands made by the Province of Quebec seeking special juridical status and a constitutionalised type of asymmetric federalism entails a distinct distribution of power between the province and the federal state.⁵⁸²

Ian Brownlie has noted that the principle of self-determination has a core of reasonable certainty, which "consists in the right of a community which has a distinct character to have this character reflected in the institutions of government under which it lives."⁵⁸³ The rights related to internal rights of self-determination are essentially provided

⁵⁸⁰ Supreme Court of Canada, "Supreme Court Judgments, Reference re Secession of Quebec."

⁵⁸¹ Jean-François Gaudreault-DesBiens, "The Quebec Secession Reference and the judicial arbitration of conflicting narratives about law, democracy, and identity." *Vt. L. Rev.* 23 (1998): 793.

⁵⁸² Gaudreault-DesBiens, 793.

⁵⁸³ Ian Brownlie, "The Rights of Peoples in Modern International Law," quoted in Helen O'Nions, *Minority Rights Protection in International Law: The Roma of Europe* (London, New York: Routledge, 2016), 226.

for the people to have a full voice in the legal system of the whole nation state, to control natural resources, to protect their culture and way of life and to be able to participate in national polity.

Therefore, the concept of internal self-determination can be understood as increasing peaceful relationships between numerous groups and identities, and free as well as effective participation of peoples in shared policies. It includes allowing all parties to share in the designing of their collective future in the context of one country. It does not necessarily mean separation, nor should it produce enmity and conflicts among different peoples. When exercised in a peaceful way, it can lead to regional and international stability and permanent peace. Respect for the right to self-determination would be an effective way to maintain national and international peace and security as part of the goals of the United Nations which are stated in the first article of the UN Charter.

B. External Self-Determination

When rights are not fully respected, external self-determination is necessary. The principle of self-determination complements the principles of sovereignty, the equality of states, the principles of territorial integrity and non-use of force or non-intervention.⁵⁸⁴ It is "a complex of closely woven and inextricably related rights which are interdependent, where no one aspect is paramount over any other. It is a right that forms the basis of all

⁵⁸⁴ Ian Brownlie, *Public International Law* (New York: Oxford University Press, 2003), 555.

other rights."⁵⁸⁵ Different declarations and resolutions of the UN are important instruments for exercising this mode of self-determination, like the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, since they expand the scope of the right to self-determination to an external level. Decolonization is an important aspect of the right of self-determination:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.⁵⁸⁶

According to international law instruments the implementing of external self-determination can take various forms, including the establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people.⁵⁸⁷

The principle of the right to self-determination in the external context consists of several dimensions, depending on the particular case. External self-determination can mean freedom from occupation and colonialism. It can result in peoples announcing national independence, as happened after WWII in Africa, Asia and Europe. The external dimension of this principle can refer to separation from a certain country and the creation of a new independent state through the exercising of the right to self-determination, as happened in

⁵⁸⁵ Muehlebach, "What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism, Identities," 241-268.

⁵⁸⁶ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

⁵⁸⁷ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

many countries during the twentieth century, for example, Czechoslovakia, East Timur and South Sudan. The situation was different in each case, but the goal was the same. Secession was intended to enable the new states to exercise the right of self-determination and the peaceful formation of a new independent state. This definition is useful in situations where the government does not represent the governed, which creates a category of peoples possessing a right of self-determination outside the colonial context.⁵⁸⁸

In addition, the external aspect of self-determination entails the independence of external decision-making and policy which allows any country to establish its own international relations and play an effective role in the regional and international context.

CONCLUSION OF CHAPTER II

The concept of the right to self-determination evolved through different stages until it was described in international instruments as a right for peoples, while the concept remained unclear in its definition and it was difficult to determine the titleholders of this right specifically.

There are different perspectives on the definition and the content of self-determination, as well as the "people" as a titleholder of this right. As previously noted, despite considerable progress in the definition of self-determination, as seen in

⁵⁸⁸ Halperin, Scheffer and Small, *Self-determination in the New World Order*, 24.

international instruments, there is still a lack of clarity regarding the definition and content of the right to self-determination and the specific criteria for determining the titleholders of this right. It is now generally agreed that the concept includes freedom from colonial control. The United Nations affirmed territorial integrity and national unity as well as affirming the right to self-determination for peoples. This stance challenges the enforcement of the right to self-determination, particularly when a part of "people" of sovereign states demands independence or where ethno-national issues are concerned.

The right to self-determination is the right of peoples to determine their own destiny freely. It allows people to determine independently their own political status and to decide their own form of economic, cultural and social development. Exercising this right can lead to different results ranging from political dependence within a state to secession and the building of an independent state. Moreover, UN instruments have emphasized that self-determination is an essential part of current international law. According to its charter, the right of self-determination is a central principle of the UN and is a basis for the goals of the UN, which all members are obliged to respect in order to assist the development and achievement of independence for non-self-governing territories and territories under colonial rule, as well as maintaining international peace and security. Obligations to members were created in the UN Charter, but the Charter did not define specifically what self-determination and "peoples" were. Therefore, the concept was plagued by challenges to its scope and enforcement.

The right to self-determination can be divided into two types, internal and external. Internal self-determination aims to design the state for any particular group in a democratic way, including self-governance, federalism and relations with other entities, with equal

rights for all groups within the same country. External self-determination means the determining of the political status freely, including independence, secession and the establishment of a new state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people.

In UN instruments external self-determination has been recognised only for "peoples", not for all groups which demand this right, and clearly only for the "peoples" whose territories are recognised by the United Nations as colonies, or peoples living in colonies, or non-self-governing peoples and peoples under racist regimes that lack representative governments. The United Nations instruments are not clear in recognizing the right to self-determination for peoples outside the context of colonialism, and the part of the peoples of independent states, and related ethno-national issues.

Respecting the right to self-determination is a commitment to respect fundamental human rights. Hard violations of human rights justify the secession of any people, minority or ethnic group. During the last century, the Iraqi government has perpetrated widespread violations and grievances against the Kurds including crimes of genocide, ethnic cleansing, demographic change, forced displacement, bombardment with chemical weapons, denial of representation, the right to internal self-determination, and fundamental human rights. This constitutes a strong additional basis and justification for the Kurdistan Region's demands for the right to self-determination and secession from Iraq.

A general definition of the right of self-determination may be framed as a right of peoples to determine its political status freely, internally and externally. The population of the Kurdistan region are a "people", although they are formally part of the Iraqi people, and are not colonised currently. Moreover, the Kurdistan region is not under colonial rule

and is not within the non-self-governing territories which are recognized formally by the United Nations.

Yet according to different criteria, it could be argued that the population of the Iraqi Kurdistan region is a "people", by relying on the foundations of the definition of the people, which includes the material and moral aspects. Materially they have elements: distinct language, distinct ethnicity, history, geography and clear borders, even their own administration, the KRG. In terms of the moral aspect, they also have the requisite elements: they are aware that they are a "people", and they have a common affiliation and collective loyalty to their issue. Accordingly, they have the right to self-determination similar to any other people. Many legal foundations, like UNGA Resolution 2526, affirm that the right of self-determination is a right for all peoples to determine their political status without interference by others.

The recognition of the population of the Iraqi Kurdistan Region as a "people", which would give them the right to self-determination, and allow them to exercise this right in a peaceful context, does not depend on the legal framework and international law only but on the international politics and political balance of power.

In the next chapter, the study discusses the right to self-determination as a core principle of the United Nations and examines the understanding of self-determination by evaluating the key instruments of this right in international law.

CONCLUSION OF TITLE I

The right to self-determination has evolved from a political idea and a revolutionary slogan to a principle and then a legal right during various stages and as a result of the efforts of different parties in which peoples, states, international organizations like the League of Nations and the United Nations, and international leaders like US President Woodrow Wilson, experts and scholars, participated until it reached what we know today. After the end of WWII and the founding of the United Nations, the concept evolved into the principle and then a right we know today. The United Nations in its Charter, practices and its advertisements has established the principle of the right of self-determination clearly.

The content of the principle of self-determination is one of the most controversial issues of international law. However, there is still no specific definition for both concepts: 'self-determination' and the 'people', the content and scope, leaving both terms a potential prey to political interpretation, ideology and self-interest, as a result of the political hegemony of the great powers over the Nations and its resolutions, laws and documents, starting with the UN Charter and then all its bodies and its instruments. This made for discrimination and the use of double standards in dealing with issues relating to the right to self-determination, which led to the neglect of many issues, including that of the Kurdistan people, which have remained unresolved until now. This proves that the legal principle faces a balance in power, and hence the achievement of the right to self-determination mainly depends on the balance of power and international politics.

A general definition of the right of self-determination may be framed as a right of peoples to determine their political status freely, internally and externally. The principle of equal rights and self-determination of peoples enshrined in the UN Charter embraces the right of all peoples freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and it is the duty of every state to respect this right in accordance with the provisions of the Charter. Domestically, the choice of the people can be in forms such as autonomy, federalism, confederation, or any other form of democratic political participation in the national decision and administration of the country, based on equal rights for all. The exercise of external self-determination can lead to the establishment of a sovereign and independent state, the free association or integration with an independent state, or the emergence into any other political status freely determined by a people.

In sum, respect for this right is the duty of the international community, as it is the foundation of the United Nations goals and is directly related to international peace and security.

Title II

Ethno-national issues and the right to self-determination in the light of international law

Ethno-nationalists are relatively large and regionally concentrated ethnic groups that live within the boundaries of one state or several adjacent states. Their political movements are directed towards achieving a greater autonomy or an independent statehood. Most have historical traditions of autonomy or independence that are used to justify these contemporary demands. These peoples with nationalist aspirations live in different places, and include Kurds, Tibetans and Kashmiris.⁵⁸⁹ In order to understand their impact on international peace and stability in the light of international instruments related to self-determination, it is important to understand the complex nature and intractability of these issues, especially the Kurdish issue.

Ethno-national issues, by their very nature, can be durable and destabilizing. International instruments typically affirm the right to self-determination equally for all peoples. However, there are many exceptions, as this right is sometimes reserved only for peoples under colonial rule. These instruments usually deal with cases clearly related to colonialism, inasmuch as they decide the right to self-determination for all peoples under colonial rule or who are non-self-governing. At the same time, the way these instruments

⁵⁸⁹ Riamei, *The Kurdish Question: Identity, Representation and the Struggle for Self-Determination*, 260.

deal with the cases in non-colonial contexts is not clear. Practically there is no agreement among the superpowers and existing states as to how to resolve these ethno-national issues, and state sovereignty and territorial integrity are typically reaffirmed. In the post-Cold War era, many new states have been created as the result of solving ethno-national issues through the implementation of self-determination.

The right to self-determination, which has become a part of international law in the post-WWII era, for the first time, has been stated in international instruments as a legal right of peoples, and a central principle of the fundamental purpose of the United Nations on the basis of equal rights, and organically related to international stability. This progress is the result of the United Nations doctrine and its efforts in support of decolonization, besides the global political developments and struggles of different peoples for freedom and independence.

The international instruments are clear about recognizing the right to self-determination internally and externally, for the cases of peoples under colonial rule.⁵⁹⁰ However the UN instruments are not clear about how to deal with cases outside of the context of colonialism, which include various cases of ethno-national issues, like that of the Kurdistan region.

The case of the Iraqi Kurdistan region is one of the most important cases of self-determination in the world; the region has significant claims to statehood, and there are continuous developments and repercussions related to this issue. The Kurdish Question as an ethno-national issue is complicated, as it concerns the largest people and nation without

⁵⁹⁰ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

a state in the world, and it is linked to four countries at the same time: Iraq, Iran, Turkey and Syria. This issue started in the early twentieth century, specifically after the Sykes-Picot treaty in 1916,⁵⁹¹ which divided the regions under the Ottoman Empire between superpowers, in particular France and Britain. According to this agreement Kurdistan was divided into four parts, between Turkey, Iran, Iraq and Syria, and its boundaries were approved in the San Remo conference in April 1920.⁵⁹² The conference approved the final framework of a peace treaty with Turkey which was later signed at Sèvres in August, 1920.⁵⁹³ The Kurd became a minority in four countries.

After the First World War and the collapse of the Ottoman Empire, although many promises were made to the Kurds about their right to self-determination, like the Treaty of Sevres in 1920,⁵⁹⁴ the Treaty of Lausanne in 1923 between Turkey and the Great Powers sealed their fate.⁵⁹⁵ Since then, because of the negative attitude expressed in international politics, regional settlements and the militaristic approach of related countries in dealing with this question, and the lack of a balance of power, the Kurdish people have been deprived of the right to self-determination and the establishment of an independent Kurdistan in the region.

⁵⁹¹ Berdine, *Redrawing the Middle East: Sir Mark Sykes, Imperialism and the Sykes-Picot Agreement*, 69.

⁵⁹² Spencer C. Tucker, *Persian Gulf War Encyclopedia: A Political, Social, and Military History: A Political, Social, and Military History*, 372.

⁵⁹³ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

⁵⁹⁴ Wagner, *The Division of the Middle East: The Treaty of Sèvres*, 65.

⁵⁹⁵ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 960-1022.

This militaristic policy of countries involved in the Kurdish issue, and the superpowers' permanent support for these countries, has led to a situation in which the Kurdish issue continued unresolved and the effects on these countries and the region as a whole continue to be felt. From the twentieth century onwards, Kurdish people have struggled in different forms to freely determine their own destiny. The main objective of the Kurdish struggle has been self-determination, and the establishment of an independent state. This long and unremitting conflict has resulted in hundreds of thousands of victims.

This thesis addresses the main international instruments of self-determination, and examines the right of different peoples to determine their status freely according to contemporary international law, as a solution to ethno-national issues. The first chapter analyzes international instruments of self-determination and ethno-national issues, and the right of peoples. It demonstrates the relationship between self-determination and the rights of peoples in the light of UN principles and objectives (Chapter I). The second chapter analyzes the Kurdish issue in the Middle East with a focus on the case of the Iraqi Kurdistan Region, as well as the evolution of Iraqi Kurdistan's de facto state in the post-Cold War era. It thus addresses the multifaceted nature of the Kurdish issue from past to present, its implications and new dimensions, in light of the main developments and perceptions in international politics (Chapter II).

Chapter I

International instruments of self-determination and ethno-national issues

The international instruments of the right to self-determination represent a decisive step forward towards the legalization of this right in the United Nations era. These instruments form a legal basis for the right to self-determination in international law, as a right of peoples. They emerged from the Charter of the United Nations and include various declarations, decisions and recommendations, and judicial provisions.

Despite these instruments and various attempts by the United Nations to develop and promote the right to self-determination, there are many problematics related to this right at both the legal and practical level. At the legal level, there are problems related to the content, definition and scope of self-determination, as well as with the fact that there are no specific criteria for determining "people". Furthermore, despite the consensus that the right to self-determination is a right for all peoples, at the same time, many exceptions have been made in addition to the continued affirmation of territorial integrity and national sovereignty. Consequently, there has been a focus on some peoples as "colonized peoples", while other cases outside the colonial context have been neglected.

The first section of this chapter focuses on international instruments, their impact on developing the right to self-determination legally, and also its enforcement practically. In addition, the chapter analyzes the concepts and legal basis for various demands for self-determination in the light of these international instrument. (Section I).

The second section addresses the right of peoples to self-determination under United Nations objectives and principles, particularly concerning equal rights for all, permanent sovereignty over natural resources, and maintaining international peace and security. There is also a discussion of international stability and the prevention of the right to self-determination. (Section II).

SECTION I: International instruments and the right of peoples to self-determination

The right to self-determination initially emerged as a political idea and revolutionary slogan, then developed into a political and legal principle through different stages, and only gradually grew into a legal right for peoples according to international law during the UN period in the post-1945 era. With the formation of the United Nations after World War II, self-determination was finally established as a defining principle of the international system and eventually gained significance as a legal right, under the auspices

of the UN.⁵⁹⁶ This development started after WWII when the self-determination principle was stated as a UN purpose in the UN Charter. It became a right of peoples in different UN instruments, and through its implementation in decolonization processes in the different regions. During each stage of the evolution of the UN in the last century, many instruments and steps for promoting the right to self-determination have been adopted. Moreover, in each stage, many national conflicts have been solved and various colonial peoples have gained their independence, while several countries have been created as a result of the implementation of the right to self-determination: “The impact of decolonization in creating a large number of new states is one of the most significant developments since 1945”.⁵⁹⁷

These instruments express the United Nations’ doctrine and strategy, and they made a legal basis for the right to self-determination in contemporary international law. In this section, the thesis examines various instruments: the United Nations Charter, the UN Declarations and Resolutions, the International Covenant on Civil and Political Rights (CCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other instruments. Then the section focuses on analysing Kurdistan’s claim to self-determination in the light of these instruments. It is intended to enhance the understanding of how the principle of self-determination evolved from a legal context during the UN period and how it was to be implemented in specific political contexts (§I). In the second paragraph, the section addresses the right of peoples to self-determination

⁵⁹⁶ Roepstorff, *The Politics of Self-determination: Beyond the Decolonisation Process, Volume 95 of Routledge Advances in International Relations and Global Politics*, 12.

⁵⁹⁷ Carter, *Peace Movements: International Protest and World Politics Since 1945, The Postwar World*, 27.

according to various international judicial decisions and regional and international human rights instruments (§II).

§I: UN instruments and self-determination

This section addresses key UN instruments of the right to self-determination, including the United Nations Charter and UN Declarations and Resolutions, before addressing the judgments, decisions and consultations of the International Court of Justice, and key human rights instruments, including the International Covenant on Civil and Political Rights (CCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

A. Self-determination in the United Nation Charter

The content of the right to self-determination as well as the question of who could exercise this right have long been subjects of debate and controversy. The right to self-determination and equal rights for all peoples were first enshrined in the UN Charter,⁵⁹⁸ which established an important legal basis for the right to self-determination for peoples.

⁵⁹⁸ UN, “Charter of the United Nations, Chapter I: Purposes and Principles.”

It referred to self-determination as a principle and then as a legal right for all peoples. Its appearance in the conventional instruments establishing an international organization marked a significant stage in the progression of self-determination into a legal right according to international law.

In Article (1), the UN Charter stated that one of the UN objectives⁵⁹⁹ was to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."⁶⁰⁰

Some scholars believe that the concept of self-determination in the UN charter was given status, but not legal authority, as self-determination became a right.⁶⁰¹ They downplayed the significance of Resolution 1514, which is on decolonization, calling it of "questionable legal credentials" and not well-grounded in the U.N. Charter.⁶⁰² Antonio Cassese noted that at the time of the Charter's inception, 'self-determination' was only taken

⁵⁹⁹ UN, "Charter of the United Nations. I: Purposes and Principles."

According to its charter the Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

To be a center for harmonizing the actions of nations in the attainment of these common ends.

⁶⁰⁰ UN, "Charter of the United Nations. I: Purposes and Principles."

⁶⁰¹ Clark and Williamson, *Self-Determination: International Perspectives*, 48.

⁶⁰² Jon Hinck, "The Republic of Palau and the United States: Self-Determination Becomes the Price of Free Association," *California law review* 78, no. 4 (1990): 915-971.

to mean self-government. Thus, it was to constitute a purpose of the UN, and no specific and stringent legal obligations were imposed on member states. Moreover, for others “it is still unclear whether recognition of a self-determination unit is a legal or a political act.”⁶⁰³ Yet, although Article (1) was a recognition of the right to self-determination without imposing specific legal obligations on member states, by making self-determination the main goal of the United Nation in its charter, it made respecting this right an obligation for all members. Moreover, its presence in the UN Charter marked an important stage in the evolution of self-determination. It was the first time international law had covered the principle of self-determination at this level, as the UN Charter stated self-determination as a principle of international law and made it a primary goal for the UN, and then in other places a right for peoples. Secondly, in other articles of the UN charter and also in other instruments, there are clear obligations for members, for instance in Art (73)⁶⁰⁴ and Art. (76)⁶⁰⁵. The central commitment is expressed in Article 73(b) as one of working “to

⁶⁰³ Nicholas Tsagourias, *Transnational Constitutionalism: International and European Perspectives* (Cambridge, Cambridge University Press, 2007),220; Cassese, *Self-Determination of People, A legal Reappraisal*, 56.

⁶⁰⁴ UN, “Charter of the United Nations, Chapter XI: Declaration regarding Non-Self-Governing Territories, Article 73,” accessed 14 april,2016. <https://www.un.org/en/sections/un-charter/un-charter-full-text/>

⁶⁰⁵ UN, “Charter of the United Nations, Chapter XII: International Trusteeship System, Article 76,” accessed 14 april,2016. <https://www.un.org/en/sections/un-charter/un-charter-full-text/>

Article 76:

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

develop self-government,” but not necessarily national independence.⁶⁰⁶ Additionally, Article (55) of the UN Charter, concerning international economic and social cooperation, further referred to the principle of self-determination and equal rights as a basis for all UN goals to promote international cooperation in the fields of economics, education, culture, and human rights:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote...⁶⁰⁷

Moreover, in the following Article, for the enforcement of the content of Article (55), the UN charter focused on co-operation with its institutions as a direct duty for each member. All members were to pledge themselves to take joint and separate action in co-

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

⁶⁰⁶ Danspeckgruber, *The Self-determination of Peoples: Community, Nation, and State in an Interdependent World*, 42.

⁶⁰⁷ UN, “Charter of the United Nations.” IX: International Economic and Social Co-operation, Article (55):

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion

operation with the organization for the achievement of the purposes set forth in Article 55.⁶⁰⁸ The UN Charter in Article (73/B) implicitly referred to the principle of self-determination in the part concerning colonies and other dependent territories or non-self-governing territories.⁶⁰⁹

The UN Charter provided the legal framework to be applied in the self-determination process and decolonization. Chapters XI, XII, and XIII deal with Non-Self-Governing Territories, the International Trusteeship System, and the Trusteeship Council respectively. The trusteeship system which was established by the United Nations according to Article (75) for the administration and supervision of such territories as may be placed thereunder, which were called trust territories, may be taken as including an indirect reference to self-determination.⁶¹⁰ The main objectives of the trusteeship system as set out in (Chapter XII), are the promotion of the political, economic, social and educational advancement of the inhabitants of the trust territories, encouragement of respect for human rights and fundamental freedoms, and ensuring equal treatment in social,

⁶⁰⁸ UN, “Charter of the United Nations, Chapter IX: International Economic and Social Cooperation, Art. 55.”

⁶⁰⁹ UN, “Charter of the United Nations, Chapter XI: Declaration regarding Non-Self-Governing Territories, Article 73,”:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement

⁶¹⁰ “Charter of the United Nations, Chapter XII: International Trusteeship System, Article 76.”

economic, and commercial matters for all members of the United Nations. In Article (76/b) and in accordance with the purposes of the United Nations in Article 1, the UN Charter stated that one of the basic objectives of the trusteeship system was the promotion of the progressive development of the inhabitants of the trust territories towards 'self-government or independence.'⁶¹¹ Thus, according to Article (76), it is clear that the provisions concerning non-self-governing and trust territories in the UN charter are international obligations which apply to all members.

On the other hand, one of the most problematic aspects of the United Nations Charter regarding the right to self-determination is the lack of accurate and specific definition, either in relation to the principle itself, the obligations on members, or the specific criteria to determine the "people" or titleholders of this right.

The political domination of the victorious powers in the Second World War over the United Nations Charter is evident in various respects. Here we focus on some points related to the right to self-determination only. For example, the UN Charter gave the power of veto to five permanent members of the UN Security Council, which meant that international decisions did not pass without the approval of all members. This strategy had an adverse effect on many cases of violations and crimes against peoples' rights in different regions, and also encouraged many repressive regimes to perpetrate violations of human rights and crimes of apartheid and genocide without condemnation or international accountability, including the oppression of the Kurdish people in Iraq by the Iraqi State. In

⁶¹¹ UN, "Charter of the United Nations, Chapter XI: Declaration regarding Non-Self-Governing Territories, Article 73."

addition, in the Charter, there are constant assurances of the territorial integrity and sovereignty of the member states, which restrict the right of peoples to decide their destiny freely, despite the assurances of several articles on the right to self-determination and equal rights. The Charter also affirmed "self-determination and equal rights" several times, and linked them to international security and peace, while in reality, due to the hegemony of the superpowers implementing self-determination, and UN double standards, the denial of the right to self-determination in many places has led to national conflicts and destabilization of national and international security in different regions.

Although it is important for all peoples who demand the right to self-determination to rely on the UN Charter and its other instruments, as a legal basis or framework for their demands in international law, the respect and enforcement of this right according to UN doctrine depends on the political balance of power, international politics, and the interests of superpowers. In the charter, there were affirmations of self-determination and equal rights together,⁶¹² and in the period of the United Nations, many cases of conflict and ethno-national issues were resolved under the shadow of UN instruments and in a peaceful way. However, there are many cases of ethno-religious conflicts and national issues including the Kurdish issue, which have remained unresolved until now due to the lack of a political balance of power, and of international political support for these peoples, in the resolution of their issues.

⁶¹² UN, "Charter of the United Nations, Chapter I: Purposes and Principles," Article 1; UN, "Charter of the United Nations, Chapter IX: International Economic and Social Co-operation, Art. 55."

B. UN Declarations and resolutions and the right to self-determination

As noted previously, the right to self-determination evolved from a mere slogan to a principle and later into an actual right according to international law. In spite of some ambiguities, it included the specific and indisputable element designed to end colonial rule and foreign domination and encourage independence.

In addition to the UN Charter, UN Declarations and resolutions constitute other vital international legal instruments which formulate a legal basis for self-determination in contemporary international law. There are various declarations regarding the right to self-determination including the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the UN General Assembly Resolutions and Declaration on principles of international law concerning friendly relations and cooperation among states.

When the United Nations was established in 1945, 750 million people - almost a third of the world's population then - lived in territories that were non-self-governing, dependent on colonial powers. Since then, more than 80 former colonies have gained their independence. Among them, all 11 Trust Territories have achieved self-determination through independence or free association with an independent state⁶¹³. Formally according to UN resolutions, today, there are 17 Non-Self-Governing Territories remaining and fewer than 2 million people live in such territories.⁶¹⁴

⁶¹³ UN, "United Nations and decolonization."

⁶¹⁴ UN, "Non-Self-Governing Territories."

The UN General Assembly Resolution 1514 (XV) included the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted 14 December 1960, by the majority vote of members.⁶¹⁵ This was a resolution made during the fifteenth session of the UN General Assembly affirming the provision for offering independence to colonial nations and people. This was an important step in the evolution of self-determination. It stated 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.”⁶¹⁶ This instrument acts as a guide in international law for the right to self-determination.

In the 1960s, decolonisation processes were underway. The majority who were working in favour of patently anti-colonial measures could not achieve tangible results without the General Assembly transforming itself from the skewed representation of victorious members during the Wartime Alliance in the fight against fascism.⁶¹⁷ As a substantive law, the declaration provided an ordering principle intended to offer guidance on the progressive development of international law in relation to self-determination. It was perceived as a call for legislative activism and affirmative action in the General Assembly coupled with other initiatives coordinated by the UN agencies and institutions. UNGA resolution 1514(XV) of 1960 has had a major influence on the approach of the Great Powers.

⁶¹⁵ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

⁶¹⁶ UN, “International Covenant on Economic, Social and Cultural Rights.”

⁶¹⁷ UN, “United Nations and decolonization.”

An important development concerning self-determination took place soon after the adoption of UN General Assembly Resolution 1541(XV), passed on 15 December 1960, to determine the territories regarded by the UN as being covered by the Decolonisation Declaration. The specification of the principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73(e) of the Charter included the three options of (a) full independence, (b) “free association” with another state or (c) integration with another state. In cases where one of these options had been adopted in a general election or in a referendum by the population of these territories, they would be recognised as having achieved self-determination.⁶¹⁸

In addition, a year after the approval of the Declaration on Decolonisation, the General Assembly decided to establish a Special Committee on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples or, for short, the Special Committee on Decolonisation, in 1961 by resolution 1654(XVI). This committee was authorized to create proposals for the General Assembly.⁶¹⁹ The committee has accepted appeals and has executed trials with appellants. The Special Committee on Decolonisation was also an important step in the promotion of the independence movement and the right of self-determination for all peoples without discrimination. The President of the General Assembly announced the appointment of the members of this committee in January 1962. The Committee first considered the “Falkland Islands (Malvinas)” in 1964

⁶¹⁸ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

⁶¹⁹ UN, “The United Nations and decolonization, Special Committee on Decolonization,” *United Nations and decolonization*, accessed September 03, 2017. <https://www.un.org/dppa/decolonization/en/c24/about>

and has continued to do so every year since then.⁶²⁰ UNGA Res. 1654 was expanded later into Res. 2625.⁶²¹

The United Nations GA adopted Resolution 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the charter of the United Nations, passed on 24 October 1970. This was one of the most expansive articulations of the right to self-determination which appeared in the Resolution of the UN General Assembly. The General Assembly solemnly proclaimed the principles of international law concerning friendly relations and cooperation among states, including the principle of "equal rights and self-determination of peoples". The principle stated the "establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."⁶²² It affirmed peaceful international relations through the exercise of self-determination equally for all peoples. It affirmed that respecting this right would lead to permanent peace and international stability while preventing the exercise of this right or subjecting people to the colonial regime would lead to instability nationally and internationally. It also emphasized " the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace", as well as "that the subjection of peoples

⁶²⁰ UN, "UNGA1654, General Assembly Resolution, Special Committee on Decolonization, 1654 (XVI)."

⁶²¹ UN, "United Nations Documents on the Falklands-Malvinas Conflict, Resolution 1654 (XVI), 27 November 1961."

⁶²² UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security", and stated that "the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law", and that its effective application is of paramount importance for the promotion of friendly relations among States".⁶²³

It also stated the right to self-determination on the basis of equal rights for all peoples clearly and decisively, as a key objective of the United Nations and part of the UN members' obligations:

"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".⁶²⁴

Moreover, the fifth principle, covering "equal rights and self-determination of peoples" amended the decisions made in 1960, by adding a so-called fourth option for self-determination, namely "the emergence into any other political status freely determined by a people". The wording is so general that a great variety of options, such as forms of shared sovereignty or distributed sovereignty could be accepted.⁶²⁵ The Compact explicitly

⁶²³ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."; UN, "UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples."

⁶²⁴ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."; UN, "UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples."

⁶²⁵ UN, "United Nations Documents on the Falklands-Malvinas Conflict, Resolution 2625 (XXV), 24 October 1970." South Atlantic Council. Accessed February 12, 2017. <http://www.staff.city.ac.uk/p.willetts/SAC/UN/UN-LIST.HTM>

recognized the legal authority of U.N. General Assembly Resolutions on non-self-governing peoples.⁶²⁶

Resolution 2526 stated that: By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status,"⁶²⁷ a significant base of UN instruments which could be used to deal with the cases of self-determination outside the context of colonization, like the case of Kurdistan.

As part of the same strategy affirming the right to self-determination for all colonized peoples, the UN recognized the legitimacy of the struggle of colonial peoples against colonial domination in the exercise of their right to self-determination and independence. Prior to the opening of the Diplomatic Conference convened in 1974 to revise and update the four 1949 Geneva Conventions, the General Assembly passed a number of Resolutions which indicated that international humanitarian law might be appropriate to regulate armed struggles for self-determination.⁶²⁸ In 1965, UNGA passed Resolution 2105, the Resolution of Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, which "recognized the legitimacy of the struggle of colonial peoples against colonial domination in the exercise of their right to

⁶²⁶ Hinck, "The Republic of Palau and the United States: Self-Determination Becomes the Price of Free Association," 948-954.

⁶²⁷ Hinck, "The Republic of Palau and the United States: Self-Determination Becomes the Price of Free Association," 948-954.

⁶²⁸ Chadwick, *Self-Determination, Terrorism, and the International Humanitarian Law of Armed Conflict*, 34.

self-determination and independence".⁶²⁹ UNGA Resolution 2936, in 1972, Non-use of force in international relations and permanent prohibition of the use of nuclear weapons, reaffirmed "its recognition of the legitimacy of the struggle of colonial peoples for their freedom by all appropriate means at their disposal".⁶³⁰ Then, in December, 1973, UNGA Resolution 3103, which dealt with basic principles of the legal status of the combatants struggling against colonial and alien domination and racist regimes, recognized that combatants struggling for freedom and self-determination were entitled to the application of the provisions of the Third and Fourth Geneva Conventions of 1949.⁶³¹ This last Resolution also recognized that armed conflicts resulting from liberation struggles "are international conflicts in the sense of the Geneva Conventions", a conclusion which sought to reduce the ability of states to interpret and characterize many "civil" wars autonomously.⁶³²

These resolutions and others by the UN General Assembly were important steps towards establishing a legal basis for self-determination as a legal right for peoples, and formulating UN strategy for decolonization by self-determination. These different UN instruments affirmed that the right to self-determination was an essential part of

⁶²⁹ UN, "UNGA Res. 2105 (XX), Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples." *Dag Hammarskjöld Library*, Resolutions adopted by the General Assembly at its 20th session. Accessed August 10, 2017. <http://research.un.org/en/docs/ga/quick/regular/20>

⁶³⁰ UN, "UNGA Res. 2936 (XXVII), Non-Use of Force in International Relations and Permanent Prohibition of the use of Nuclear Weapons." *Dag Hammarskjöld Library*, Resolutions adopted by the General Assembly at its 27th session. Accessed August 10, 2017. <http://research.un.org/en/docs/ga/quick/regular/27>

⁶³¹ UN, "UNGA Res. 3103 (XXVIII), Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Regimes." *Dag Hammarskjöld Library*, Resolutions adopted by the General Assembly at its 28th session. Accessed August 10, 2017. <http://research.un.org/en/docs/ga/quick/regular/28>

⁶³² Chadwick, *Self-Determination, Terrorism, and the International Humanitarian Law of Armed Conflict*, 34.

fundamental human rights. UN instruments, besides promoting the right to self-determination legally, have also practically strengthened many territories which achieved their independence by depending on UN instruments.

In the UN charter, there is constant emphasis on respecting basic human rights, and the right of peoples to self-determination and equal rights as an obligation for all members, along with the many exceptions in those instruments. There are also constant reaffirmations of territorial integrity and the sovereignty of member states. These contrasting policies exist alongside each other within UN doctrine, and are of particular concern to the peoples outside the framework of colonialism.

The declarations and decisions of the United Nations, although complementary to the basic charter of the United Nations, emphasized human rights, but there is a marked development of the concept of the right to self-determination. Although the definition of the concept remains vague and no specific criteria are provided for its precise characterization, the United Nations' resolutions and declarations have given some details and specifics about the concept of the right to self-determination and who holds that right in accordance with the United Nations doctrine. The United Nations instruments are clear and explicit in dealing with cases within the framework of occupation, as they recognized the right of all peoples under occupation to self-determination. But in cases outside this framework, the instruments are vague. Hence, the United Nations has failed to deal with different ethno-nationalist issues around the world.

The political hegemony of the superpowers over the resolutions and declarations of the United Nations has also continued, and has led to the UN dealing selectively with cases related to the right to self-determination. Since the founding of the United Nations,

there have been many cases of national conflicts in different regions around the world, which were also present before and during the same period of drafting United Nations instruments and steps towards ending the occupation and granting independence to colonised peoples. But the political balance of power, international politics, and the interests of the great powers have determined the position of the United Nations in dealing with these issues, and then determining the future of those issues and conflicts. For instance, Kashmir in India, was not one of the territories covered by the nomination list to exercise the right to self-determination,⁶³³ despite its size and its impact on regional and international stability. While Western Sahara was authorised by the UN nominations to exercise self-determination according to the UN declaration on colonization, the political situation and international politics presented obstacles, and the case remains unresolved to this day.⁶³⁴ Moreover, there are other cases, including East Timor, 1999⁶³⁵ Kosovo, 2008⁶³⁶ and southern Sudan, 2011⁶³⁷, which were not covered by the United Nations list at that time as colonised territories which could exercise the right to self-determination, but have exercised self-determination and achieved independence in the post-Cold War era.

In order for a group to have the right to determine its political destiny, it must possess an adequate identity to achieve distinction as a "people". Despite the politics of marginalization and the gap between the Kurdish issue and the traditional doctrine of the

⁶³³ UN, "Non-Self-Governing Territories."

⁶³⁴ UN, "Non-Self-Governing Territories."

⁶³⁵ UNTAET, "East Timor, The United Nations Transitional Administration in East Timor (UNTAET)."

⁶³⁶ ICJ, "Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010."

⁶³⁷ Nicolas Levrat, et al. "Catalonia's legitimate right to decide. Paths to self-determination. A report by a commission of international experts."

United Nations embedded in its instruments, which revolves around peoples under external colonization only, and is often determined politically, the population of the Iraqi Kurdistan Region is a people, and in principle, has the right to freely decide their fate.

The Kurdistan people have a common loyalty to their group and share a common cause regarding their future. The Kurdistan people have expressed their common loyalty as a people and the common claim for the future in two referendums in recent years. They have all the essential elements of a people, including a specific geography, a unique race, a special language, a distinct culture and a long history. However, the Kurdistan people have been victims of international politics since the beginning of their cause, from the 1920s until now. This orientation of the policy of the superpowers has been reflected in the United Nations' policy in dealings with this people and their issue, legally and practically, so their issue has been neglected in the documents and papers of the United Nations.

While the right to self-determination was promoted through the instruments and procedures of the United Nations, the Kurdish liberation movement began to escalate, and in the sixties and seventies, it was in an advanced stage compared to previous eras. The movement demanded rights for the Kurds in Iraq in a larger context, but due to the politics of the superpowers, there was no reference by the UN to Kurdistan as a colonized territory or to defining the people of Kurdistan as a people under colonial rule, and a candidate for the exercising of the right to self-determination. This neglect has led to the unresolved continuation of this issue and its continued effects on the related countries and the region as a whole. This proves again that international politics and the political balance of power have a decisive role in determining the future of cases and claims to the right of self-determination.

§II: Judicial decisions, human rights instruments and the right of peoples to self-determination

In addition to above, there are other important instruments for self-determination including different judicial decisions and human rights instruments.

A. The provisions and decisions of the International Court of Justice

The International Court of Justice (ICJ) is considered the chief judicial entity of the United Nations. The ICJ was established in 1945, based on the UN Charter, and its seat is at the Peace Palace in the Hague, Netherlands. The court's role is to settle, in accordance with international law, legal disputes submitted to it by states and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.⁶³⁸

The ICJ has set out provision in relation to the right of self-determination including interpreting peoples' right to self-determination. Based on the past cases by the court, the focus was on the external aspect of self-determination, as the right of peoples to determine freely their political status and their place in the international community. That has to be distinguished from the internal aspect of this right, or the rights of all peoples to pursue

⁶³⁸ ICJ, "The Court," *International Court of Justice*, accessed July 14, 2018. <https://www.icj-cij.org/en/court>

freely their economic, social and cultural development within the political and legal framework of a given state. Therefore, cases largely fall under the rubric of decolonisation and external self-determination. A close look at the relevant judgments and decisions demonstrates the important role of the court in the development of the concept of self-determination and its recognition as a legal right.

On 22 June 2017, the General Assembly adopted resolution 71/292, in which, referring to Article 65 of the Statute of the Court, it requested the court to render an advisory opinion on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965.⁶³⁹

In examining this question, the court turned to the nature, content and scope of the right to self-determination applicable to the process of the decolonization of Mauritius. It began by recalling that, having made respect for the principle of equal rights and self-determination of peoples one of the purposes of the United Nations, the Charter included provisions that would enable non-self-governing territories ultimately to govern themselves. Moreover, the court noted that “the adoption of resolution 1514 (XV) represents a defining moment in the consolidation of State practice on decolonization” and that “both State practice and *opinio juris* at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination”. The court considered that the peoples of non-self-governing territories were entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering

⁶³⁹ ICJ, “Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Overview of the Case,” *International Court of Justice*, accessed 16 May, 2017. <https://www.icj-cij.org/en/case/169>

Power. Since respect for the right to self-determination is an obligation erga omnes, all states have a legal interest in protecting that right, the court found.⁶⁴⁰

The contribution of the court towards clarifying this important principle of international law is clear through some of the court's important findings in the cases of Kosovo, South-West Africa, Western Sahara, East Timor and the more recent case of the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. A common feature of the majority, if not all cases decided by or pending before the court is that the issue of the right to external self-determination, albeit central to the dispute or problem at hand, was never spelled out in such explicit terms. Notwithstanding, through analysing these cases a picture will emerge of the development of the right to self-determination in the context of decolonization.⁶⁴¹

The ICJ assisted in articulating rules applicable to exercising and realising the right of self-determination of people plus the international legal implication in the context of decolonisation. In the ICJ's submissions, the right of self-determination is not exhaustive or a one-off exercise. It is a permanent, universal, indisputable and continuing right that has a peremptory character. Nonetheless, there is variation between post-colonial and colonial contexts in relation to the entitlement of people to implementation of their right.⁶⁴²

The International Court of Justice affirmed that the mandate system established by Article 22 of the Covenant of the League of Nations was based upon two principles of

⁶⁴⁰ ICJ, "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Overview of the Case."

⁶⁴¹ Gentian Zyberi, "Self-Determination through the Lens of the International Court of Justice," *Netherlands International Law Review* 56, no. 3(2009):6.

⁶⁴² Stephen Allen, "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (ICJ)," *International Legal Materials* 58, no. 3 (2019): 598-602.

paramount importance: the principle of non-annexation and the principle that the well-being and development of the peoples concerned formed a sacred trust of civilisation. "Taking the developments of the past half century into account, there can be little doubt that the ultimate objective of the sacred trust was self-determination and independence." In the opinion of the ICJ, the mandatory was to observe a number of obligations, and the Council of the League was to see that they were fulfilled. The rights of the mandatory as such had their foundation in those obligations.⁶⁴³

The ICJ expressed its opinions in regard to the subject of the right to self-determination, legal status, and the implementation process, as well as exercising this right both in the colonial and post-colonial context. The provisions of the ICJ in relation to self-determination included legal consequences for states which continued to hinder the right to self-determination for peoples, as respecting this right is an obligation to all members according to international law.

However, in the case of Western Sahara in 1975, the court's conclusion was that "the Court did not find any legal ties of such a nature as might affect the application of the General Assembly's 1960 resolution 1514 (XV) — containing the Declaration on the Granting of Independence to Colonial Countries and Peoples — in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory."⁶⁴⁴In the East Timor case (Portugal v Australia 1995), in the court's view, "Portugal's assertion that the right of

⁶⁴³ ICJ, "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)," 31-32.

⁶⁴⁴ ICJ, "Western Sahara, Overview of the Case," *International Court of Justice*, accessed May 12, 2017. <https://www.icj-cij.org/en/case/61>

peoples to self-determination had an erga omnes character, was irreproachable, and the principle of self-determination of peoples had been recognized by the Charter of the United Nations and in the jurisprudence of the Court, and was one of the essential principles of contemporary international law”.⁶⁴⁵

By looking at the case law of the court it is difficult to discern a holistic approach to self-determination. Notwithstanding, the court has been mindful of the development of international law and the place of the right to self-determination within that framework. That is best illustrated by this finding of the court, where it is stated:

In the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned. In this domain, as elsewhere, the corpus iuris gentium has been considerably enriched, and this the Court, if it is faithfully to discharge its functions, may not ignore.⁶⁴⁶

Although the right to self-determination as a core principle of modern international law has acquired content over time through efforts by different parties including legislative process and practice by the United Nations and different states, its recognition as a legal right for all peoples was fraught with difficulties. As Rosalyn Higgins, former president of the court, noted, when the Court addressed this matter in the cases of South-West Africa (Namibia) and Western Sahara, there were still those who insisted that self-determination was nothing more than a political aspiration.⁶⁴⁷ The implementation of the right to self-

⁶⁴⁵ ICJ, “Case Concerning East Timor (Portugal v. Australia).”

⁶⁴⁶ ICJ, ICJ, “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),” 31-32.

⁶⁴⁷ Zyberi, “Self-Determination through the Lens of the International Court of Justice,” 3.

determination is a continuous struggle that is carried on in different regions and levels, while the interpretation and development of the right of peoples to self-determination through its case law is an example of the contribution to the installation of a clear legal basis for this right.

In comparison with the international instruments and the traditional doctrine of the United Nations regarding the right to self-determination and the group that can exercise this right, there have been important developments in the decisions and provisions of the International Court of Justice. As previously noted, international instruments and United Nations documents on the concept of self-determination are focused on the rule that the right to external self-determination is a right for all peoples under colonial rule, but they are not clear about the cases of peoples outside the framework of colonialism. The International Court of Justice was able to transcend this framework when it decided in the Kosovo case, as a case outside the framework of colonialism, in favour of independence. The court recognized its independence when asked about the legality of the declaration of Kosovo's independence, and concluded that Kosovo's independence is legal and not inconsistent with the Charter of the United Nations. As the ICJ stated: "The Court considers that general international law contains no applicable prohibition of declarations of independence. Accordingly, it concluded that the declaration of independence of 17 February 2008 did not violate general international law."⁶⁴⁸

⁶⁴⁸ ICJ, "Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010."

This ruling constitutes an important legal foundation for addressing Iraqi Kurdistan's demand to exercise the right to self-determination, as a case outside the context of colonialism, and it will be examined in the next chapters.

B. Global Human Rights Instruments and collective right to form the future

Other international instruments are evident in advancing the right to self-determination. The instruments explored in this section include human rights declarations, the Helsinki Final Act of 1975, the Africa Charter on Human and People's Rights, and the Vienna Declaration and Programme of Action.

1) Global Key human rights declarations

The adoption of the Universal Declaration of Human Rights (UDHR) on 10 December 1948⁶⁴⁹ marked another stage in the evolution of self-determination. Although the UDHR did not state the right to self-determination directly, it referred to rights and fundamental freedoms affirmed equally for all humans on the basis of brotherhood and common dignity, and the prevention of oppression and violation of rights at all levels.

⁶⁴⁹ UN, "Universal Declaration of Human Rights."

Additionally, UDHR recognised that the people have a right to nationality and they should not be arbitrarily deprived or denied such rights. Furthermore, it articulated the right to freedom of conscience, expression, thought and religion including the ability of the people to hold opinions without interference. UDHR Article (21/3) stated that: "The will of the people shall be the basis of the authority of government."⁶⁵⁰

Universal Declaration of Human Rights "UDHR" declared that the affirmation of human rights as universal rights common to all mankind, regardless of any differences in race, national origin, religion and class, is the foundation of freedom, justice and peace in the world. As the preamble of this declaration stated, "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."⁶⁵¹ The first article noted:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁶⁵²

The right to self-determination was an integral element of basic human rights and fundamental freedoms, and it is only through the realization of this basic right that people can determine, with no pressure or coercion, their own destiny and political status.

Furthermore, the International Covenant on Human Rights adopted by the UN General Assembly in 1966 defined in detail the substance of the right to self-determination and also stipulated the obligations for members to promote the observance of this right.

⁶⁵⁰ UN, "Universal Declaration of Human Rights."

⁶⁵¹ UN, "Universal Declaration of Human Rights."

⁶⁵² UN, "Universal Declaration of Human Rights."

The right of peoples to self-determination in international law is succinctly stated in the first paragraph of common PART I / Art 1 of the International Covenant on Civil and Political Rights, (CCPR)⁶⁵³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶⁵⁴ According to these covenants, all peoples and nations have the right to self-determination. By virtue of that right, they are free to determine their political status and to develop their economic, social and cultural situation,⁶⁵⁵ as states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.⁶⁵⁶

According to this article and the instruments of the United Nations, the final objective of the right to self-determination is political independence, possibly including secession and the building of an independent state. It includes the right to formulate economic, social and cultural development freely. People have a right to determine any system for their country and to make any policy according to their will, such as independently investing in

⁶⁵³ UN, “International Covenant on Civil and Political Rights.”

⁶⁵⁴ UN, “International Covenant on Economic, Social and Cultural Rights,”

⁶⁵⁵ UN, “International Covenant on Civil and Political Rights,” and “International Covenant on Economic, Social and Cultural Rights,” stated as follows:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

⁶⁵⁶ UN, “International Covenant on Civil and Political Rights”; UN, “International Covenant on Economic, Social and Cultural Rights.”

natural resources and mineral wealth, building cultural, political and economic relations with other countries and entities freely and participating in cultural activities outside the country freely like other independent states. Based on these assertions, the phrase ‘all peoples’ attached to the right to self-determination indicates that this right is a collective right not an individual right. Self-determination can be given a high status in international law due to the fact that the majority of the UN member states have ratified it in both covenants.

The right to self-determination has frequently been asserted in UN instruments alongside affirmation of fundamental human rights, and respect for human rights in accordance with the United Nations charter; respect for the right to self-determination is a duty for all members.⁶⁵⁷ Logically the emphasis on the right to self-determination of people is a guarantee of basic individual rights including basic freedoms, freedom of speech, and equal rights to life. So, if the right of self-determination of people as a group is not secured, then the basic right of each individual in the group will not be secured, as is seen under racist regimes. Many peoples have been stripped of the right to determine their own destiny, due either to military intervention, aggression, occupation or to injustice and oppression by racist governments.

⁶⁵⁷ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

2) The African Charter on Human and Peoples' Rights

The Africa Charter on Human and Peoples' Right is also called the Banjul Charter. This is an international human rights instrument devised with the aim of promoting and protecting human rights as well as basic freedoms within the African Continent. The Banjul Charter originated from the Organisation of African Unity based on a 1979 resolution that called for the creation of a committee of experts to design a continent-wide human rights instrument equivalent to the European Convention on Human Rights and the American Convention on Human Rights.⁶⁵⁸ The Charter acknowledged what are perceived as universally accepted political and civil rights. In determining the right to self-determination, Article 20 of the Charter indicated that all people have a right to existence including an indisputable and unquestionable right to self-determination. Therefore, the Charter supported the ability of peoples to determine their political status as well as to pursue their social and economic development. Colonised and oppressed people have a right to free themselves from domination by using strategies that are respected by the international community. Moreover, Article 20 asserted that all peoples have the right to be helped by state parties in presenting grievances and demanding their liberation from domination or oppression, be it cultural, political or economic.

Additionally, Article 22 and 23 strengthened the stance on self-determination highlighted in Article 20. In Article 22, the Charter stipulated that all people have a right to economic, cultural, political and social development with due regard to their identity and

⁶⁵⁸ African Union, "African Charter on Human and Peoples' Rights."

freedom as well as equal enjoyment of the heritage of mankind. Furthermore, Article 23 indicated that all people have a right to international and state security and peace.⁶⁵⁹

This Charter was an important international instrument of the right to self-determination. It affirmed this right as an essential element of fundamental human rights, and made respect for this right an obligation for the members of the African Union; respect for the right to self-determination is fundamental to equality in rights, dignity and development for all.

3) Helsinki Final Act 1975

The Helsinki Final Act, also known as the Helsinki Accords (Helsinki Declaration) was the result of a conference held in 1975 attended by 35 nations, intended to enhance relations between the West and the Communists.⁶⁶⁰ Nonetheless, the Helsinki Declaration is not considered to be binding since it does not have treaty status. The complex Act addressed several prominent universal issues and had far-reaching implications for the Cold War as well as American-Soviet Union relations. A product of the Cold War, the Act was designed to convey official recognition of the political boundaries, particularly in Eastern Europe, that had been put into place during the Second World War. At this period, America and other Western countries were reluctant to engage in these deliberations since

⁶⁵⁹ African Union, "African Charter on Human and Peoples' Rights."

⁶⁶⁰ Wood and Purisch, "Helsinki Final Act (1975)."

they feared it was likely to strengthen the position of the Soviet Union and result in the expansion of communism.⁶⁶¹

Nonetheless, a shift towards détente in the early 1970s made the West reconsider and carry out negotiations. In relation to articles set out by the declaration, there are four classes or baskets. The first basket which is relevant to this thesis covers military and political issues as well as territorial integrity, peaceful settlements and definition of boundaries.⁶⁶² Within the first basket known as the Decalogue, ten points were set out, and points VII and VIII were relevant to the right of self-determination. The Helsinki Final Act 1975, Conference on Security and Cooperation in Europe, Declaration on Principles Guiding Relations between Participating States, Article VIII⁶⁶³ was intended to promote equal rights and self-determination of people. Part VII supported Article VIII but sought respect for human rights.⁶⁶⁴

This document was also important in the evolution of the right to self-determination. It affirmed the right to self-determination as a right for all peoples, regardless of colour, race, religion and sect, and that the peaceful exercise of this right must be respected as a part of fundamental human rights. Respecting this right and exercising it in a peaceful manner would enhance international cooperation, especially among European countries, and preventing this right from being exercised would lead to European and global instability.

⁶⁶¹ Snyder, Sarah B. Jerry, "Don't Go: Domestic Opposition to the 1975 Helsinki Final Act." *Journal of American studies*, 44, no. 1 (2010): 67-81.

⁶⁶² Wood and Purisch, "Helsinki Final Act (1975)."

⁶⁶³ Wood and Purisch, "Helsinki Final Act (1975)."

⁶⁶⁴ Wood and Purisch, "Helsinki Final Act (1975)."

4) Vienna Declaration and Programme of Action

The Vienna Declaration and Programme of Action (VDPA) was adopted by the World Conference on Human Rights in Vienna on 25 June 1993.⁶⁶⁵ VDPA reaffirmed the UN Charter and Universal Declaration of Human Rights. Its preamble indicated that VDPA sought to promote and protect human rights as a priority for the international community. It called upon the people and all nations to rededicate themselves to promoting and safeguarding all human rights as well as fundamental freedoms in order to secure the enjoyment of human rights.⁶⁶⁶

In general, a study of international instruments suggests that, self-determination is a fundamental right for peoples and nations, not merely a legal principle, and respecting and protecting this right is a responsibility of states and of the international community as a whole. As the Helsinki Final Act⁶⁶⁷ stated, the right of a people to govern their territory and determine their internal and external status is a right *erga omnes* and *jus cogens*.⁶⁶⁸ Preventing any nation or people who have a defined territory from exercising their right to self-determination is a supreme violation of human rights which must be protected by the international community as a whole.

⁶⁶⁵ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on June 25, 1993.

⁶⁶⁶ Markus G. Schmidt, "What Happened to the Spirit of Vienna-The follow-up to the Vienna Declaration and Programme of Action and the Mandate of the UN High Commissioner for Human Rights," *Nordic Journal of International Law* 1, no. 64 (1995): 591.

⁶⁶⁷ Editors of Encyclopaedia Britannica, "Helsinki Accords," *Encyclopaedia Britannica*, accessed August, 12, 2016. <https://www.britannica.com/event/Helsinki-Accords>

⁶⁶⁸ Markus G. Schmidt, "What Happened to the Spirit of Vienna-The follow-up to the Vienna Declaration," 591.

The political dominance of the superpowers which were victorious in the Second World War is evident in the formulation and implementation of international law instruments regarding the right to self-determination. The hegemony of those powers has been evident since the drafting of the UN Charter when the power of veto was granted to five permanent members of the Security Council. This led to selectivity in dealing with cases and claims to the right of self-determination, as well as problems related to the violation of fundamental freedoms and human rights in different countries, including the silence of the international community about crimes and violations committed against the Kurdish people by the Iraqi state. Also, the United Nations strategy in dealing with issues and demands for self-determination in accordance with the purposes of the superpowers that dominate the international resolution has led to the neglect of many self-determination conflicts, which affected stability internally and regionally, including the Kurdish issue.

SECTION II: Self-determination and the rights of peoples under the light of UN principles and objectives

After the League of Nations failed to prevent WWII, the organisation entered a new phase. The League of Nations was established during WWI in 1919 by the Treaty of Versailles (one of the peace treaties adopted at the end of WWI). The League of Nations' purpose was to encourage cooperation between countries and keep international peace and

security, but it failed to achieve this goal.⁶⁶⁹ Subsequently, in order to achieve the same goal, or maintain international peace and security, the United Nations was established. The key objective behind creating the United Nations was to prevent the repetition of global wars and maintain international stability. In its charter the UN stated that its goal was maintaining worldwide peace and security and developing relations among nations based on equal rights and self-determination.⁶⁷⁰

This section addresses the right of self-determination in the light of some purposes and principles of the United Nations. It also discusses the role of international politics in respecting the right to self-determination according to the UN's purpose and principles, or strategy. In the first paragraph, it discusses the right of peoples to self-determination under United Nations objectives. The United Nations stage was important in the evolution of the right to self-determination. The UN included the concept in its basic charter and made it its main goal. It developed the concept from principle to legal right with the definition of its meaning, the people included in the right and the scope of application, through the various declarations and decisions until the concept reached its current incarnation. (§I)

The second section addresses the right of peoples to self-determination under the United Nations' main principles. The United Nations' fundamental role involves peacekeeping. It also assists nations in dealing with political, social, economic and ethnic problems. Article 1 and 2 of the UN Charter outlined the principles and the purposes of the organ. Moreover, there are various UN principles that are related to the right to self-

⁶⁶⁹ William R. Slomanson, *Fundamental Perspectives on International Law*, 6th ed (Wadsworth: Cengage Learning, 2010), 513.

⁶⁷⁰ UN, "Charter of the United Nations, Chapter I: Purposes and Principles," Art. 1.

determination including maintaining international peace and security, equal rights and the principle of permanent sovereignty over natural resources. The UN Charter has outlined these fundamental principles as obligations for members and insisted that its agencies' resolutions are respected. The United Nations made self-determination its main purpose besides equal rights. It made self-determination the basis for friendly relations among nations and international stability, while a constantly affirming the need to respect the right to self-determination and fundamental human rights. (§II)

§I: Self-determination in the light of UN objectives

The United Nations' goals set in its Charter are focused on respecting rights besides increasing peace and maintaining international stability, on the basis of self-determination and equal rights. The UN Charter set out four main purposes, first: " To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."⁶⁷¹ Furthermore the UN aimed to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other

⁶⁷¹ UN, "Charter of the United Nations, Chapter I: Purposes and Principles."

appropriate measures to strengthen universal peace"⁶⁷², and "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."⁶⁷³ It was to provide a forum for bringing countries together to meet the UN's goals, "To be a centre for harmonizing the actions of nations in the attainment of these common ends".⁶⁷⁴

A. Maintaining international peace and security

From its inception the United Nations has worked to reduce violations against international peace and security through the resolution of disputes by peaceful means and to increase international stability as a basis for enforcement of all rights stated in the UN charter and its instruments, especially the right to self-determination for peoples which remain under colonial domination and foreign occupation.

The principle of maintaining international peace and security is the first purpose of the United Nations as was stated in Art (1/1) of its charter:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and

⁶⁷² UN, "Charter of the United Nations, Chapter I: Purposes and Principles."

⁶⁷³ UN, "Charter of the United Nations, Chapter I: Purposes and Principles."

⁶⁷⁴ UN, "Charter of the United Nations, Chapter I: Purposes and Principles."

for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;⁶⁷⁵

This was a doctrine promoting relations and communication between different peoples peacefully and as friends, and depending on respecting the rights of each other equally including the right to self-determination, as the second point of the Article (1) stated:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;⁶⁷⁶

In addition, the United Nations Millennium Declaration in 2000 stated:

We rededicate ourselves to support all efforts to resolution of disputes by peaceful means and in conformity with the principles of justice and international law, the right to self-determination of peoples which remain under colonial domination and foreign occupation, non-interference in the internal affairs of States, respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction.⁶⁷⁷

Therefore, respecting this right is binding on all UN members. The UN makes all its work more effective by keeping the peace, so that the organization can focus on solving

⁶⁷⁵ UN, “Charter of the United Nations, Chapter I: Purposes and Principles.”

⁶⁷⁶ UN, “Charter of the United Nations, Chapter I: Purposes and Principles,” Art. 1.

⁶⁷⁷ UN, “UNGA Res. United Nations Millennium Declaration,” *United Nations*, September 8, 2000. Accessed July 10, 2017. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_55_2.pdf

global issues, instead of resolving conflicts.⁶⁷⁸ Additionally, the objective of maintaining international peace and security is a collective objective of the international family as a whole. The organisation works to maintain international peace and security in a world where security threats have become more complex. Although the organization has had many successes, there are also several cases where the United Nations has not been successful. In its conflict prevention and mediation work, the United Nations continues to face challenges regarding how best to engage with sometimes amorphous movements or fractured armed groups and how to ensure inclusivity.⁶⁷⁹

Self-determination conflicts outside the colonial context have previously appeared virtually impossible to settle. Long-running and destructive internal armed conflicts have been the result.⁶⁸⁰ Self-determination remains a highly relevant concept, due to the many current global disputes concerning ethnic and national problems. At present, there are about 26 ongoing armed conflicts over self-determination, ranging from a lower level of irregular violence to regular internal armed conflicts, conducted between secessionist groups and central governments. It is estimated that there are another 55 or so campaigns for self-determination which may turn violent if left unaddressed, with another 15 conflicts considered provisionally settled but at risk of reigniting.⁶⁸¹ The resolution of these problems is complex because of the need to balance the right to self-determination for the

⁶⁷⁸ UN, "International Peace and Security," *United Nations*. Accessed December 12, 2016. <http://www.un.org/en/sections/priorities/international-peace-and-security/>

⁶⁷⁹ UN, "International Peace and Security."

⁶⁸⁰ Marc Weller, "Settling Self-determination Conflicts: Recent Developments," *European Journal of International Law* 20, no. 1 (2009):160–165.

⁶⁸¹ David Quinn, "Self-determination Movements and their Outcomes," quoted in J. J. Hewitt, J. Wilkenfeld and T. R. Gurr, *Peace and Conflict 2008* (Boulder, paradigm publisher:2007), 33.

people and the sovereignty of the state. The people have a right to self-determination according to international law and governments have a sovereign right to protect the stability and integrity of their territories. Moreover, in this complex environment, the international community is often unprepared to deal specifically with the conflict between a state's right to security and a nation's right to self-determination.

B. Self-determination and territorial integrity and equal rights for all

The principle of "Equal Right" is the central principle of the decolonization efforts of the United Nations and of its documents. The UN charter stated "equal rights and self-determination of peoples" as a part of the UN objectives as a whole. As Article (1) in Para (2) stated: one of the purposes of the United Nations is "respect for the principle of equal rights and self-determination of peoples" in order "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."⁶⁸²

The enforcement of self-determination and decolonization efforts of the United Nations derive from three specific chapters in the charter devoted to the interests of dependent peoples: Chapter XI: Declaration regarding Non-Self-Governing Territories, Chapter XII: International Trusteeship System, and Chapter XIII: The Trusteeship

⁶⁸² UN, "Charter of the United Nations."

Council.⁶⁸³ These chapters of the UN charter which include Chapter XI (Articles 73-74), Chapter XII (Articles 75-85), Chapter XIII (Articles 86-91) focussed on respecting the rights, freedom and will of all peoples under occupation and populations of non-self-governing territories. They referred directly and indirectly to self-determination as a right for all peoples.⁶⁸⁴

The principle of territorial integrity is an important part of the international legal order and is enshrined in the UN Charter. It focusses on various obligations incumbent upon states, to ensure that they will refrain from violating the territorial integrity of other sovereign States.

Article 2 (4) of the UN Charter reads: All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.⁶⁸⁵ UNGA Res.2625 (XXV), which reflects customary international law, reiterated “the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State”.⁶⁸⁶ In the same vein, the Final Act of the Helsinki Conference on Security and Co-operation in Europe of 1 August 1975 (the Helsinki Conference, Art. IV) stipulated that

⁶⁸³ UN, Charter of the United Nations.

⁶⁸⁴ UN, Charter of the United Nations.

⁶⁸⁵ UN, Charter of the United Nations.

⁶⁸⁶ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

“the participating States will respect the territorial integrity of each of the participating States.”⁶⁸⁷

Oppressive states put this principle as a justification for their criminal actions against different peoples within the borders of their countries, as happened in Iraq when crimes were committed against the Kurdish people by successive Iraqi governments.

In addition to the United Nations documents stressing this principle, there are also assurances on respecting fundamental rights equally. Respect for this principle of "territorial integrity" is linked to the principles of equal rights, and respect for essential human rights, and the right to self-determination. Moreover, the decision of the International Court of Justice in the Kosovo case represented an important development in favour of the independence of the oppressed people, when it declared that the principle of territorial integrity relates to relations between independent states and does not include relations between an independent state and a quasi-state entity. In other words, when a quasi-state entity, a people, or part of a people of the existing states secedes, it does not violate the principle of territorial integrity. Thus, People cannot be prevented from exercising their right to external self-determination and building their independent entity under the pretext of violating territorial integrity.

⁶⁸⁷ Wood and Purisch, “Helsinki Final Act (1975).”

C) Self-determination and permanent sovereignty over natural resources

The creation of a new era after decolonization encouraged people to develop principles which encompassed their various claims and interests. The principle of sovereignty of people over natural resources is one of the most important principles of the United Nations, which strengthens and promotes the right to self-determination as a legal right for all peoples without discrimination, under international law. It is clear that economic power has an effective role in controlling and directing vital aspects of society and determining its future. Economic power includes full independence in dealing with natural resources. This principle builds on the right of territorial sovereignty, the equal right of peoples and the sovereign equality of states. Sovereignty over natural resources is a basis for political independence.

The principle of permanent sovereignty over natural resources is rooted in the right of self-determination and the fundamental right of peoples to freely determine and apply the framework and model for governing their territory, and to choose their own political, social and economic systems, as noted in different United Nations instruments.⁶⁸⁸ The origin of the principle of permanent sovereignty over natural resources can be traced back to numerous resolutions which were passed in the United Nations General Assembly, which serve as proof that this principle has been accepted as a norm of international law

⁶⁸⁸ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”; UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,”; UN “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples,”; UN, “UNGA Res. 1541, Defining the Three Options for Self-Determination,”; UN, “UNGA1654, General Assembly Resolution, Special Committee on Decolonization, 1654 (XVI).”

since the decolonisation debate started in the UN.⁶⁸⁹ The widespread acceptance of the principle of PSNR as constituting a principle of international law was also evidenced by its inclusion in the International Covenant on Civil and Political Rights; Art. 1(2) (ICCPR)⁶⁹⁰ as well as in the International Covenant on Economic, Social and Cultural Rights; Art. 1(2), (ICESCR)⁶⁹¹, and the Charter of Economic Rights and Duties of States (CERDS).⁶⁹²

The main objective of the principle of permanent sovereignty over natural resources was to aid peoples under colonial domination and developing countries in achieving equitable terms concerning natural resources, thus strengthening their social and economic development.⁶⁹³ The principle is a guarantee of the national development and well-being of people, but also includes more obligations concerning the management and methods available to states with regard to natural resources, in the context of enforcement of the principle.⁶⁹⁴ This sovereignty is primarily for peoples and nations rather than for states.

⁶⁸⁹ UN, UNGA Res. 626 (VII), Right to Exploit Freely Natural Wealth and Resources.” Dec. 21, 1952, *United Nations Digital Library*, accessed June 12, 2017. <https://digitallibrary.un.org/record/211441?ln=en>; UN, “UNGA Res. 1515 (XV), Concerted Action for Economic Development of Economically Less Developed Countries,” December 15, 1960, *United Nations Digital Library*, accessed August 14, 2016. <https://digitallibrary.un.org/record/205871?ln=en>; UN, “UNGA Res. 1803 (XVII), Permanent Sovereignty over Natural Resources,” December 15, 14, 1962,” *United Nations Digital Library*, accessed August 14, 2016.; UN, “UNGA Res. 3016 (XXVII), Permanent Sovereignty over Natural Resources of Developing Countries,” December 18, 1972, *United Nations Digital Library*, accessed August 14, 2016. <https://digitallibrary.un.org/record/191568>

⁶⁹⁰ UN, “International Covenant on Civil and Political Rights.”

⁶⁹¹ UN, UN, “International Covenant on Economic, Social and Cultural Rights.”

⁶⁹² UN, Charter of Economic Rights and Duties of States, GA Res. 3281(xxix), New York December 12, 1974, *Audiovisual Library of the International Law*, accessed January 12, 2018. <https://legal.un.org/avl/ha/cerds/cerds.html>

⁶⁹³ UN, “UNGA Res. 523 (VI), Integrated Economic Development and Commercial Agreements,” January 12, 1952, United Nations, accessed September 29, 2017. [https://undocs.org/en/A/RES/523\(VI\)](https://undocs.org/en/A/RES/523(VI))

⁶⁹⁴ Nico Schrijver, *Sovereignty over Natural Resources – Balancing Rights and Duties* (New York Cambridge University Press, 2008) 8.

The articles of UN General Assembly Resolution 1803 (XVII) defined the extent of this rule as a principle of international law; the principle should apply to “peoples and nations.”⁶⁹⁵ Common Article 1(2) of the ICCPR⁶⁹⁶ and the ICESCR⁶⁹⁷ declared that “all peoples may, for their own ends, freely dispose of their natural wealth and resources.”

The Right of PSNR is a part of the right to self-determination for all peoples and nations as the UN stated in Res. 1314 (XIII): “the right of peoples and nations to self-determination as affirmed in the two draft Covenants completed by the Commission on Human Rights includes “permanent sovereignty over their natural wealth and resources.”⁶⁹⁸ No political sovereignty is possible without economic sovereignty.

In numerous UN documents, there are reaffirmations of the peoples’ sovereignty over their natural resources, whether or not they have independent states. Art. (26) of (UNDRIP) stipulated that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.⁶⁹⁹

⁶⁹⁵ UN, “UNGA Res. 1803 (XVII), Permanent Sovereignty over Natural Resources,” December 15, 1962.”

⁶⁹⁶ UN, “International Covenant on Civil and Political Rights.”

⁶⁹⁷ UN, “International Covenant on Economic, Social and Cultural Rights.”

⁶⁹⁸ UN, “UNGA Res. 1314 (XIII), Recommendations Concerning International Respect for the Rights of Peoples and Nations to Self-Determination [1958] UNGA 74; A/RES/1314 (XIII) (12 December 1958), *World II, United Nations General Assembly*, accessed 15, June, 2016. [http://www. worldlii. org/int/other/UNGA/1958/74. pdf](http://www.worldlii.org/int/other/UNGA/1958/74.pdf)

⁶⁹⁹ Jackie Hartley, Paul Joffe and Jennifer Preston, *Realizing the UN Declaration on the Rights of Indigenous Peoples* (Triumph, Saskatoon: Purich Publishing, 2010), 210.

The Rights of Permanent Sovereignty over Natural Resources include the Sovereign Right to Freely Dispose, the right to Use and Exploit Natural Resources, the Freedom to Choose One's Own Economic, Environmental and Developmental Policies, the Right to Freely Regulate, Expropriate and Nationalize Foreign Investments. The principle of PSNR was rooted in the right to self-determination and was designed to encourage economic development. While self-determination in its purest form is focused on political independence, this principle includes political, social, economic and cultural development, and is the most effective instrument in achieving self-determination.

§II: UN principles and objectives and the question of Iraqi Kurdistan

Despite its legal progress through the UN instruments, as well as confirmations by the UN of principles and objectives concerning the right to self-determination, the negative position adopted by Iraq toward the right to self-determination of the people of Kurdistan continues today, causing instability internally and regionally.

Since the establishment of the Iraqi state in the 1921, and the merging of southern Kurdistan (Mosul Vilayat) with Iraq in 1926,⁷⁰⁰ by the British government, for the creation of a Shiite-Sunni sectarian balance and oil resources in the region, without considering the will and desire of the Kurdish people, there has been no real stability in Iraq.⁷⁰¹ The main

⁷⁰⁰ Abdul-Razzaq Al-Hassani, *Political History of Iraq, Part3*, 6th ed. (In Arabic) (Baghdad: The House of Colloquial Cultural Affairs, 1989), 329-343.

⁷⁰¹ Heather Lehr Wagner, *Creation of the Modern Middle East. Iraq*, 2nd Edition (New York: Infobase Publishing, 2009),104.

reason for constant instability in Iraq lies in the denial of the Kurdish issue by successive Iraqi governments. This strategy of the Iraqi state, or denial of the Kurds' right to self-determination, caused instability, wars and numerous political fluctuations in Iraq, which resulted in huge loss of life and economic decline in the country. It also caused its war with the eastern neighbours, "Iran", for a period of eight years, and the price was more than two million dead on both sides. According to the Algiers agreement in 1975 made under American supervision, Iraq gave a part of its territory, "Shatt al-Arab" in southern Iraq, to Iran for blocking the boundaries and cutting support from the Kurdish liberation movement entirely. This agreement led to the failure of the Kurdish revolution.⁷⁰² After five years, in September 1980, Iraq abrogated the 1975 Algeria agreement and declared it would exercise full sovereignty over the Shatt al-Arab.⁷⁰³ Then the war between the two countries began and continued until 1988.⁷⁰⁴

The denial of the demands of the people of Kurdistan by the Iraqi governments led to nearly constant fighting, which stemmed primarily from imposing division between the Kurdish forces and their armed groups and the Iraqi army and military forces, since the merging of Kurdistan with Iraq.⁷⁰⁵ This permanent conflict has left hundreds of thousands

⁷⁰² Danilovich, *Iraqi Kurdistan in Middle Eastern Politics*, 17.

⁷⁰³ Efraim Karsh, *The Iran-Iraq war. Essential Histories: War and Conflict in Modern Times*, (New York: The Rosen Publishing Group, 2009), 7.

⁷⁰⁴ Efraim Karsh, *he Iran-Iraq war*, 9.

⁷⁰⁵ Cengiz Gunes, *The Kurds in a New Middle East: The Changing Geopolitics of a Regional Conflict* (Cham: Springer, 2018),6-17.

of people dead, and the country destroyed and underdeveloped, with the Kurdish people among the worst casualties.⁷⁰⁶

This situation confirms one of the hypotheses of this thesis: that respecting the right of peoples to self-determination leads to peace and stability while denying this right will lead to instability.

These above mentioned UN principles also confirm that the maintaining and promotion of international peace and security necessarily require respect for the rights of peoples to self-determination, based on equal rights and friendship and brotherly relations between all peoples.⁷⁰⁷ Imposing wills and denying the right of peoples is a permanent threat to peace and international security as we have seen in many cases, including the Kurdish issue, the cases of Kosovo, South Sudan, Kashmir, amongst others.

On the other hand, international politics in general works to protect the interests of the great powers, even if this is achieved at the expense of the legitimate rights of peoples. Hence, the relations and cooperation of the superpowers with totalitarian states and repressive regimes has led to peoples being deprived of their rights, especially the Kurdish people. The Kurdish people have been victims of international politics since the Sykes-Picot agreement and the division of Kurdistan into four parts.⁷⁰⁸ They were prevented from exercising the right to self-determination as stipulated in the Treaty of Sevres in 1920.⁷⁰⁹

⁷⁰⁶ Kelly, *Ghosts of Halabja: Saddam Hussein and the Kurdish Genocide*, 20-40; Mohammed Ihsan, *Nation Building in Kurdistan: Memory, Genocide and Human Rights* (London and New York: Routledge, 2016), 13.

⁷⁰⁷ UN, "Charter of the United Nations, Chapter I: Purposes and Principles," Art. 1.

⁷⁰⁸ Bertine, *Redrawing the Middle East: Sir Mark Sykes, Imperialism and the Sykes-Picot Agreement*, 69.

⁷⁰⁹ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

When the great powers retreated, the denial of and failure to resolve the Kurdish issue until the present day have led to the nearly constant conflict and internal instability for all four countries, and external destabilization on a regional and international level.

Since the Kurdish people were not given the opportunity to exercise the right to self-determination freely, stability in Iraq and the region is still seriously threatened. The possibility of war and clashes between the Kurdistan "Peshmerga forces" (guards of the region according to the Iraqi constitution⁷¹⁰) and the Iraqi armed forces is a constant possibility, as happened in 2017, after the Kurdistan independence referendum.⁷¹¹ Current differences of political and economic opinion between Bagdad and Erbil and the continuation and deepening of problems between Baghdad and Erbil concerning such sensitive subjects as sovereignty, disputed territories, oil, and partnership in the state, along with this bloody history in their conflicts and relations, has made the possibility of continuing together permanently impossible. Secession and negotiated self-determination, and independence as a final remedy are almost inevitable, but international politics still affirms the unity of Iraq and does not support its efforts to create an independent Kurdistan at this stage, so the balance of power is not currently in favour of independence for Kurdistan.

⁷¹⁰ Iraqi constitution, Art. 121, para. 5.

⁷¹¹ Changfeng and Temitayo, "2017 Iraqi Kurdistan's Referendum for Independence: Causes and Impacts," 59.

CONCLUSION OF CHAPTER I

The legal and practical aspects of self-determination have been formulated legally through international instruments in the post-WWII era. The principal international instruments included the United Nations Charter, declarations, decisions, and other documents of the United Nations, besides several international human rights instruments, and provisions, decisions, and interpretations issued by the International Court of Justice.

The right to self-determination according to contemporary international law instruments is a core principle of international law, and it is a legal right for peoples. The UN Charter set the right to self-determination as the main principle for UN objective, also as a guaranty for maintaining international peace and security, friendly relationships among states and nations, and a way of solving national conflicts and problems peacefully. Early international law concerned itself primarily with nation-state sovereignty, but the evolution of the global human rights movement and the struggle of different peoples for freedom and equal rights have expanded the enforcement of self-determination to a universal principle and then legal right in international law which includes all peoples equally. According to current international law instruments, the right to self-determination is a matter of process and results together and not of outcome only, and is a right of people rather than of states or governments.

The stating of self-determination as a rule and purpose for the United Nation in its charter, constituted a legal basis for this right along with other instruments of international law, so that it became a fundamental right for peoples, and its respect a legal and moral obligation for existing states. A study of international instruments suggests that, self-

determination is a fundamental right for peoples and nations, not merely a legal principle, and respecting and protecting this right is a responsibility of states and of the international community as a whole. The right of a people to govern their territory and determine their internal and external status is a right *erga omnes* and *jus cogens*. Preventing any nation or people who have a defined territory from exercising their right to self-determination is a supreme violation of human rights which must be protected by the international community as a whole.

The conceptual ambiguity of self-determination concept is a result of the politics and interests of the victorious superpowers in WWII, which imposed their viewpoint during the legal formulation of the content of those instruments, as well as imposing their politics on their enforcement. Despite legal and political developments, many oppressed and occupied peoples remained outside the scope of this right according to the UN instruments, strategies and procedures. This confirms the central importance of international politics and the political balance of power in respecting and implementing this right, despite legal affirmations of it in international law. This neglect has led to the continuance of various ethno-national issues in different regions, includes the Kurdish issue in the Middle East, as will be discussed in the next chapter.

Chapter II

The Kurdish question in the Middle East and its multifaceted nature

The Kurdish question is a long and complex ethno-national issue, it concerns the largest nation without a state in the world, and it began after the Sykes–Picot Agreement⁷¹² and the division of Kurdistan into four countries: Turkey, Iraq, Iran and Syria. Its boundaries were approved in the San Remo conference in April, 1920.⁷¹³ The conference approved the final framework of a peace treaty with Turkey which was later signed at Sèvres in August, 1920.⁷¹⁴ The Kurdish question is at the centre of politics in the Middle East and linked to four countries at the same time. Thus, it has an impact on the security, political, economic status and development of the related countries, directly, as also on the region as a whole, indirectly. Ignoring this issue has led to constant conflict between the Kurdish political movement, and these four states from then until now. This long and constant self-determination conflict left hundreds of thousands of people dead, in addition to the devastation and massive economic decline of these countries. Continuing this issue without

⁷¹² Berdine, *Redrawing the Middle East: Sir Mark Sykes, Imperialism and the Sykes-Picot Agreement*, 69.

⁷¹³ Spencer C. Tucker, *Persian Gulf War Encyclopedia: A Political, Social, and Military History: A Political, Social, and Military History*, 372.

⁷¹⁴ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

a solution threatens to halt development and create political instability throughout the Middle East.

After WWI and the collapse of the Ottoman Empire, many promises were made to the Kurds about the creation of a Kurdish entity, like other nations. The right to self-determination for the Kurdish people was clearly stated in the Sevres Treaty of 1920⁷¹⁵. Due to the superpowers' politics in the region, this opportunity was ended with the Treaty of Lausanne in 1923 between Turkey and the Great Powers.⁷¹⁶ Since then until the present day, the superpowers have deprived the Kurdish people from establishing a Kurdish entity in the region, and Kurdish people have become victims of international politics.

The Kurdish issue in Iraq started after the merging of the Vilayat of Mosul, "the current Kurdistan Region," with Iraq in 1926, five years after the creation of the Iraqi state.⁷¹⁷ In order to maintain the sectarian balance (Shiite- Sunni balance) in a new country, where the majority of Iraqis were Shiites, and to control oil resources in this rich area,⁷¹⁸ they merged the province of Mosul without any regard for the Kurdish majority in the region. This led to a long and bloody conflict between the Kurds and Iraq for about one century. Moreover, the Kurdish issue was the reason for all the wars and conflicts in Iraq, particular the Iraq-Iran war, internal wars and genocide campaigns.

During this period, the Kurdish people in Iraqi Kurdistan were subjected to the most severe violations and crimes against humanity by the Iraqi state, including genocidal

⁷¹⁵ Wagner, *The Division of the Middle East: The Treaty of Sèvres*, 65.

⁷¹⁶ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 960-1022.

⁷¹⁷ Shields, "Mosul, the Ottoman Legacy and the League of Nations," 217.

⁷¹⁸ Goldstein, *The First World War Peace Settlements, 1919-1925*, 64.

campaigns such as the Anfal campaign, chemical weapons, bombing, ethnic cleansing, demographic change, forced displacement, and the destruction of thousands of Kurdish cities and villages. Through these criminal processes, hundreds of thousands were killed to international silence.⁷¹⁹

After the Kurdish uprising in 1991 in Iraq following the first Gulf war and the liberation of Kuwait by the international alliance led by the US, the Kurdish people gained freedom and self-governance, and then through a series steps established the Kurdistan Regional government and the Parliament of Kurdistan. For the first time in history, they formed a Kurdish entity de facto in Iraqi Kurdistan.

After the American intervention in Iraq 2003, Kurdistan developed more, as it participated as the second-largest army with the Americans in liberating Iraq from Saddam's regime.⁷²⁰ Then Kurds participated as a major US partner in rebuilding and governing Iraq, and for the first time a Kurdish leader, Jalal Talabani, became President of Iraq in national elections in 2005.⁷²¹ In 2005 Kurdistan became a constitutional federal region according to the Iraqi constitution.⁷²² However the outstanding issues between Erbil and Baghdad remained, including disputed territories, partnership in the state, and commitment to the constitution.

⁷¹⁹ Kelly, *Ghosts of Halabja: Saddam Hussein and the Kurdish Genocide*, 20-40.

⁷²⁰ McDowall, *A Modern History of The Kurds*, 376.

⁷²¹ Turner, *The Statesman's Yearbook 2006: The Politics, Cultures and Economies of the World*, 911.

⁷²² Iraqi Constitution, Art. 121.

The investment in and export of oil independently by the Kurdistan Region was another key development, which affirmed Kurdistan's desire for independence.⁷²³ After Baghdad had cut the Kurdistan region's share (17%) from the federal budget in 2014,⁷²⁴ Kurdistan lost hope of staying with Iraq. Despite strong opposition from Iraq, regional countries and United States, the IKR held the Kurdistan independence referendum in 2017. Although the majority (93%) voted in favour of independence,⁷²⁵ the consequences of this referendum were very difficult for Kurdistan. The Kurdistan Region faced severe punitive measures by Iraq and neighbouring countries, with all land and air borders blocked, a military attack on the Kurdistan Region by Iraqi forces, and control by Iraq of disputed areas equivalent to the size of the current Kurdistan region. After the situation calmed down and the government changed in Baghdad, the Kurds returned to Iraqi government, but the issue continued with the problems unresolved.

Currently, the Kurds are at a crossroads: federalism and continuing with Baghdad, or moving towards independence, which is unacceptable at the Iraqi, regional and American level, at least at the current time.

This chapter began by discussing the evolution of the Iraqi Kurdistan Region case as an ethno - national problem, as an introduction to addressing the power of its claim to the right to self-determination, in theoretical, legal and political context, in the next chapters.

⁷²³ Kane, *Iraq's Oil Politics Where Agreement Might be Found*, 15.

⁷²⁴ Anaid and Tugdar, *Iraqi Kurdistan's Statehood Aspirations: A Political Economy Approach*, 127-128.

⁷²⁵ Changfengand and Temitayo, "2017 Iraqi Kurdistan's Referendum for Independence: Causes and Impacts," 59.

In order to understand the present-day political dynamics of Iraqi Kurdistan, it is necessary to contextualise them. The first section will cover the historical background of the Kurdish issue from WWI to the post-Cold War era. Also, the section will focus on the twentieth-century history of the Kurdish people, including key political events and decisive treaties. (Section I) In the second section the focus is on the evolution of Iraqi Kurdistan as the de-facto state that emerged after the uprising of 1991 and continued until after American intervention in Iraq in 2003, after which it became a constitutional Federal region in 2005. The newly created Kurdistan Region of Iraq will be analysed as a case study. (Section II)

SECTION I: The ‘Kurdish Question’: a historical background

By the 16th century, a unique Kurdish identity had emerged. The term Kurdistan, or the land of the Kurds, was first recorded in the 12th century when a province named Kurdistan was created in what is today’s Iran.⁷²⁶ However, “there is no clear consensus on the borders of Kurdistan,” as different political, economic, social and cultural changes over the centuries have changed the geography and altered the borders of Kurdistan.⁷²⁷ What crystallised the Kurds’ identity was the political oppression that they faced in most of the 20th century. This began with their dispersion into four nations and the genocide they

⁷²⁶ Kerim Yildiz and Tanyel B. Taysi, *The Kurds in Iran: the past, present and future* (London: Pluto Press, 2007), 2.

⁷²⁷ Farideh Koochi-Kamali, *The political development of the Kurds in Iran: Pastoral nationalism* (New York: Palgrave Macmillan, 2003), 26.

experienced at the hands of Iraq and Turkey. Furthermore, the various kinds of discrimination they have experienced in Iran, Syria, Turkey and Iraq have helped to forge a robust sense of solidarity among the Kurds as a beleaguered people.

Hence, the Kurds have emerged as an identifiable ethnic or national group whose identity has evolved for several centuries, but their ethnic identity has been determined by their pursuit of the right to self-determination and independence. As McDowall has indicated, the Kurdish people's identity attained a definite form at approximately the same time as that of the Turks and Arabs.⁷²⁸

Kurds form the world's largest stateless nation, have Indo-European roots and have their own history, language and culture. "In 1516, the Kurdish-inhabited regions were divided between the Sunni Ottoman Empire and the Shiite Safavid Empire of Persia. Being the protector of the frontiers of two contending empires, the Kurds managed to preserve relative autonomy."⁷²⁹ In spite of the expansionist policies of the Ottoman and Persian governments, a number of quasi-autonomous Kurdish principalities survived in both countries until about the middle of the nineteenth century.⁷³⁰

Geographically, Kurdistan refers to the area in the Middle East where the four states of eastern Turkey, western Iran, northern Iraq and north-eastern Syria intersect. More specifically, it stretches from the Tauros Mountains in the west to the Iranian plateau in the

⁷²⁸ McDowall, *A Modern History of the Kurds*, 2.

⁷²⁹ Lokman I. Meho, *Kurdish Culture and Society: An Annotated Bibliography* (Westport, CT, Greenwood Press:2001), 4.

⁷³⁰ Cecil John Edmonds, "The Kurds of Iraq," *Middle East Journal* 11, no. 1(1957): 55.

east, and from Mount Ararat in the north to the plains of Mesopotamia in the south.⁷³¹ As McDowall has noted, although the term Kurdistan appears on a few maps, it is clearly more than a geographical term since it also refers to a human culture. To this extent, Kurdistan is a social and political concept.⁷³² However, the concept has no legal or international standing. The struggle for the right to self-determination and for a sovereign Kurdistan has been a major part of Kurdish history.

On the other hand, concerning the IKR economic ability, the Kurdistan Region enjoys rich sources of minerals, water, natural resources, oil and gas, as well as a climate and a suitable area for agriculture and many tourist places, which provides the possibility of significant economic expansion.⁷³³ As a single unit, Southern Kurdistan possesses abundant economic resources to successfully establish a separate territory. Significant oil deposits located in different places of Kurdistan. According to some Statistics, from 1961 to 1975 Southern Kurdistan oil production was estimated at 75- 80% of Iraq total oil production. Oil extracted from Kurdish oil fields provided the state of Iraq with revenues of 7,178 billion.⁷³⁴

The Sykes-Picot Treaty of 1916 and its implementation after WWI dispersed Kurds and divided their lands into/across four states: Turkey, Iran, Iraq and Syria. Currently, their

⁷³¹ Abdul Rahman Ghassemlou, *Kurd and Kurdistan*, 6th ed (in Kurdish translated by researcher) (Erbil: Rozhalat Publisher, 2012),5-7.

⁷³² McDowall, *A Modern History of the Kurds*, 6.

⁷³³ KRG-Ministry of Planning, *Kurdistan Region of Iraq 2020, A Vision for the Future* (Erbil: Ministry of planning, 2013),2,20,29,35.

⁷³⁴ Chaliand, *A People Without a Country: The Kurds and Kurdistan*,15.

population across these four regions is about 40 million.⁷³⁵ The total number of Kurds can only be estimated because of the internal practices of multiple countries which homogenise the populations within the four above countries. This division was applied by the superpowers that claimed victory in WWI, following which the Kurds became a minority within these four states. The population of Kurdistan comprises ethnic Kurds; many minorities also live there, such as Assyrians, Chaldeans and Armenians, Turkmens and Turks, Arabs and Iranians, amongst others.⁷³⁶

An estimate of the densely populated areas around the tripartite boundaries of the three major states shows that 50% of Kurds live in Turkey, which comprises roughly 20% of the overall Turkish population; 26% live in Iran, where they comprise 10-11% of the Iranian population, and 16% live in Iraq and form 23% of the Iraqi population. Smaller enclaves of ethnic Kurds originated in Syria where they comprise 9% of the Syrian population and 1.5% of Kurds live in the former Soviet Union. The remaining 3.5 % of Kurds live in Europe, the US and other countries.⁷³⁷

Kurdistan is a geographically coherent/contiguous territory with mountains where the Kurdish people predominate. This area covers approximately 500,000 square kilometres.⁷³⁸ MacDowell stated that: "...the Kurds inhabit a marginal zone between the power centres of the Mesopotamian plains and the Iranian and Anatolian plateau."⁷³⁹ The

⁷³⁵ Jawad Mella, *Kurdistan and The Kurds A Divided Homeland and a Nation without State* (London: Western Kurdistan Association Publications, 2011),25.

⁷³⁶ Gunter, *Historical dictionary of the Kurds*, 4.

⁷³⁷ McDowall, *A Modern History of the Kurds*, 3.

⁷³⁸ Pita Ogaba Agbese, *Ethnicity and Governance in the Third World* (New York: Routledge, 2017),268.

⁷³⁹ McDowall, *A Modern History of the Kurds*, xi.

majority of the Kurdish people are Sunni Muslim, although some are Shiites, specifically Lor Kurds and the Bakhtiaris. Some follow the Alevite faith, especially in the Dersim region. There are also minority religious groups among the Kurds, the most common of which are the Yazidi, Christian, Jewish, and Zoroastrian faiths, as well as the AhlAlhaq (Kakaies) and Sarahli.⁷⁴⁰

This study focuses on the case of the Iraqi Kurdistan region. The first Paragraph of this Section addresses the historical background of the Kurdish Question, from WWI to the end of WWII. It covers the main stages of the evolution of the Kurdish issue, and it discusses the key political developments and regional and international agreements in the Middle East related to the Kurdish Question. (§I). The second Paragraph investigates the Kurdish issue from WWII to the post-Cold War era. It discusses key regional and international political events related to the Kurdish issue. (§II)

§I: The Kurdish question from WWI to the end of WWII

The division of Kurdistan at the end of WWI, marked the beginning of the Kurdish issue in the Middle East. Kurds have been fighting for independence while battling discrimination, genocide and political marginalization. Kurdistan is the largest stateless

⁷⁴⁰ Mella, *Kurdistan and The Kurds A Divided Homeland and a Nation without State*, 27.

nation in the world.⁷⁴¹ Its history can be divided into the following stages according to global political events:

A. The Kurdish Question and key agreements and treaties for remapping the Middle East.

Several agreements were made and conventions established concerning the dividing and remapping of the Middle East area without any consideration for the Kurdish people. The agreements led to the distribution of Kurdistan and the Kurds into four countries: Turkey, Iran, Iraq and Syria. The study addresses these agreements briefly in relation to the Kurds and Kurdistan, to understand the background and main factors in the Kurdish issue, and the role of superpowers.

1. Sykes–Picot Agreement and the division of Kurdistan

Historically, Kurdistan was a colony of the Ottoman Empire, until the end of WWI in 1918.⁷⁴² When the Ottoman Empire collapsed in WWI, the victorious Allied Powers,

⁷⁴¹ Mark Dewhurst, *Assessing the Kurdish Question: What is the future of Kurdistan? Strategy Research Project, Carlisle. Carlisle Barracks*. (Pennsylvania: U. S. Army War College, 2006), i.

⁷⁴² Yale law school, “The Avalon Project Documents in Law History and Diplomacy,” *Yale law school*, accessed March 2, 2017. http://avalon.law.yale.edu/20th_century/sykes.asp

Britain and France divided the Middle Eastern colonies of the Ottoman Empire among themselves in accordance with the ‘Sykes-Picot’ agreement of 1916.⁷⁴³ Sir Mark Sykes, from the British government and François Georges-Picot, from the French government decided how to apportion the lands of the Ottoman Empire, which had entered the war on the side of Germany and the central powers. The Russian foreign minister, Sergei Sazonov, was also involved.⁷⁴⁴ This agreement effectively divided the Middle East. The agreement allocated to Britain control of what is today southern Israel and Palestine, Jordan and southern Iraq, and an additional small area that included the ports of Haifa and Acre to allow access to the Mediterranean. France got control of southeastern Turkey, northern Iraq, Syria and Lebanon. As a result of the Sazonov–Paléologue Agreement being included, Russia was allocated Western Armenia in addition to Constantinople and the Turkish Straits already promised under the 1915 Constantinople Agreement. The Palestinian region, with smaller boundaries than later Mandatory Palestine, was to fall under an international administration.⁷⁴⁵

The purpose of this agreement was to enable the superpowers to continue their colonization of the Middle East.⁷⁴⁶ The map was redrawn according to the interests of the Great Powers.

⁷⁴³ Yale law school, “The Avalon Project Documents in Law History and Diplomacy”.

⁷⁴⁴ Yale law school, “The Avalon Project Documents in Law History and Diplomacy”; WWI Document Archive, “Official Papers, Sykes-Picot Agreement,” *The World War I Document Archive*, accessed May 13, 2016. https://wwi.lib.byu.edu/index.php/Sykes-Picot_Agreement; The Editors of Encyclopaedia Britannica, “Sykes-Picot Agreement 1916,” *Encyclopaedia Britannica*, accessed March 2, 2017. <https://www.britannica.com/event/Sykes-Picot-Agreement>.

⁷⁴⁵ Alexander Mikaberidze, *Conflict and Conquest in the Islamic World: A Historical Encyclopedia, Volume 1* (Santa Barbara, Calif.: ABC-CLIO, 2011), 861.

⁷⁴⁶ Edward Peter Fitzgerald, “France's Middle Eastern Ambitions, the Sykes-Picot Negotiations, and the Oil Fields of Mosul, 1915-1918,” 718.

At the Paris Peace Conference, the Allies continued to deal with the Ottoman Empire as though it was the actual site of sovereignty in Anatolia. After the Mudros armistice, a small number of Allied troops occupied Constantinople and gradually a new Turkish state began to emerge.⁷⁴⁷ In February 1920, the last Ottoman parliament adopted the Misak-i Milli (National Pact), a declaration of national independence that directly challenged Allied sovereignty. The Misak-i Milli stipulated that Arab-majority Ottoman lands be accorded self-determination, and posited a “golden rule” concerning national minorities. Protections such as those envisaged in the other treaties were to be confirmed, provided neighbouring countries did the same with Muslim minorities. The pact was designed to ensure coordination and cooperation between Turks, Arabs and all Muslim peoples under the rule of the Ottoman Empire.⁷⁴⁸

The treaty marked the beginning of the marginalisation of the Kurds, as their land was divided into four parts, making them an oppressed minority in four different countries in the twentieth century. The final borders, including Kurdistan's new borders, were approved in the San Remo conference in April, 1920.⁷⁴⁹ The conference approved the final framework of a peace treaty with Turkey which was later signed at Sèvres in August, 1920.⁷⁵⁰ Kurds were the main victims of this agreement and the policy of superpowers. The agreement marked the beginning of the Kurdish issue; Kurds started a national

⁷⁴⁷ Andrew Mango, *Ataturk: The Biography of the Founder of Modern Turkey* (Woodstock, New York: Overlook Press, 2000), 196.

⁷⁴⁸ Kayali Hasan, *Arabs and Young Turks: Ottomanism, Arabism, and Islamism in the Ottoman Empire, 1908–1918* (Berkeley: University of California Press, 1997), 146.

⁷⁴⁹ Spencer C. Tucker, *Persian Gulf War Encyclopedia: A Political, Social, and Military History: A Political, Social, and Military History*, 372.

⁷⁵⁰ Martin, *The Treaties Treaties of Peace, 1919-1923, Volume 1*, 779.

struggle, refusing this agreement and this policy, but even now they have to deal with the results of this agreement and commitment to the borders delineated therein.

2. The Treaty of Sevres and the Kurdish Question

The Kurds began their efforts to obtain an independent Kurdistan from the beginning of the last century. From the end of WWI onwards, the Kurdish people have sought national sovereignty and the right to build their own state. However, any Kurdish moves towards independence have come at the political and territorial expense of states within the region. Despite making promises, and the existence of clauses in the Treaty of Sèvres, the international communities neglected the Kurdish claim to self-determination under the pretext that establishing a Kurdish state might cause more conflict and instability.

Before the declaration of victory by the allied forces in the summer of 1918, Woodrow Wilson, in his Fourteen Points, indicated that the conditions of the post-War period required a focus on self-determination as well as the safety of nations that were affected by the war. In another speech, the president refuted the points advanced by the Sykes-Picot Agreement, indicating that each territorial settlement involved in the war ought to be made in the interests of and for the benefit of the population, but not as part of any minor adjustment or compromise of claims amongst rival nations.⁷⁵¹ This gave the

⁷⁵¹ Steiner and Alston, *International Human Rights in Context*, 1252-1253.

Kurds hope that they might soon be released from colonial arrangements and celebrating self-determination.

After the war and the fall of the Ottoman Empire, a new Middle East emerged. It was born through negotiations on big tables in luxurious hotels in faraway countries. These were known as a peace process, but a peace where the native people had no say, or, as Formkin described it; “a peace to end all peace.”⁷⁵² The negotiations began with the Treaty of Sèvres. On 10 August 1920, the Treaty of Sèvres, which was signed between the allied powers, the victors of the First World War and associated powers and Turkey, sought to create an inter-Allied protectorate. Similar to the other treaties emanating from the conference, it ultimately stemmed from the Covenant of the League of Nations. While it espoused the principles of President Wilson, they were weighted in favour of the imperial ambitions of the Great Powers.⁷⁵³

The Kurds remained optimistic about independence and freedom; and their self-determination began by the deploying of 14 points by Woodrow Wilson after the end of WWI. Wilson’s points did not provide anything for the Kurds. Thus, Kurds have continued to look for independence and freedom, but without support from any country in the world.

When global leaders came together in the Paris Peace Conference of 1919, their deliberations focused on how to ensure peace prevailed after the war, including the formation of a border in the Middle East. In the absence of the major powers as well as

⁷⁵² Formkin, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East*, 7.

⁷⁵³ Leonard V. Smith, “Post-war Treaties (Ottoman Empire/ Middle East), 1914-1918,” *online: International Encyclopedia of the First World War*, accessed December 2, 2016. http://encyclopedia.1914-1918-online.net/article/post-war_treaties_ottoman_empire_middle_east

Russia, several issues were agreed upon. The Kurdish delegation sought partition and overruled the idea of operating under Turkish rule and being divided by Britain and France. Some Kurdish leaders mobilized themselves in order to assert their territorial claims. Led by General Sherif Pasha, the Kurdish delegation in Paris proposed an independent Kurdistan and legitimized the proposal by citing Wilson's principle of self-determination.⁷⁵⁴ In the Claims of the Kurdish People, presented to the Paris Peace Conference, Pasha argued that "in virtue of the Wilsonian principle everything pleads in favour of the Kurds for the creation of a Kurd state, entirely free and independent".⁷⁵⁵ General Pasha submitted two memorandums and two maps of Kurdistan to the conference, including the demands and rights of the Kurdish people. The first one was dated 22 March 1919, and the second one 1st March 1920.⁷⁵⁶ Nevertheless, due to the lack of international support, autonomy and self-determination remained impossible goals. France and Britain failed to offer the Kurds an alternative path than that offered by the "Sykes-Picot agreement". In the shadow of outrages committed against the Armenians by the Ottomans, coupled with the future of the Mosul vilayat (the majority of the present-day Kurdistan region of Iraq), once again, hopes of autonomy and self-determination began to rise, as can be seen in articles 62-64 of the "Treaty of Sevres" (The Treaty of peace between the Allied and Associated powers and Turkey), of 1920 that recognised the Kurds and their right to autonomy.⁷⁵⁷ In this Treaty three Articles (62,63and 64) promised a solution to the Kurdish

⁷⁵⁴ Diener and Hagen, *Borderlines and Borderlands: Political Oddities at the Edge of the Nation state*, 110

⁷⁵⁵ Diener and Hagen, *Borderlines and Borderlands: Political Oddities at the Edge of the Nation-state*, 110.

⁷⁵⁶ Mella, *Kurdistan and The Kurds A Divided Homeland and a Nation without State*, 94.

⁷⁵⁷ Formkin, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East*, 7.

Question through the right to self-determination. This treaty afforded an opportunity for the creation of an independent Kurdish state at that time, as the article 62 states:

A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia, as defined in Article 27, II (2) and (3). If unanimity cannot be secured on any question, it will be referred by the members of the Commission to their respective Governments. The scheme shall contain full safeguards for the protection of the Assyro-Chaldeans and other racial or religious minorities within these areas, and with this object a Commission composed of British, French, Italian, Persian and Kurdish representatives shall visit the spot to examine and decide what rectifications, if any, should be made in the Turkish frontier where, under the provisions of the present Treaty, that frontier coincides with that of Persia.⁷⁵⁸

Besides, concerning the new Turkish government position, the Article 63 of the treaty states:

The Turkish Government hereby agrees to accept and execute the decisions of both the Commissions mentioned in Article 62 within three months from their communication to the said Government.⁷⁵⁹

finally, according to Article 64 of the treaty, after the self-determination process of the Kurdistan people, the league of nations will recognise the independence of Kurdistan, as states:

If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and

⁷⁵⁸ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

⁷⁵⁹ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas.⁷⁶⁰

However, in the treaty, Kurds were promised support from the great powers in their quest to have their own state. They were promised the right to independence and that their issues would be presented in the League of Nations and Mosul Province via a referendum, so that they could decide whether they wanted to be part of a new nation.

However, the superpowers neglected all promises, and articles of the Treaty of Sevres concerning Kurds were neglected in favour of their own interests.⁷⁶¹ Next, they signed the Treaty of Lausanne on 24 July. This treaty focused on the re-distribution map of the region and gave the new Turkey full sovereignty and the right to act on its territory, which included Kurdistan. The treaty of Sevres was a historic opportunity to give the right of self-determination to the Kurdish people and different peoples in the Middle East. Nevertheless, the events that followed the treaty, the Treaty of Lausanne, and the politics and interests of great powers made the treaty mere ink on paper.

3. The Treaty of Lausanne and the Kurdish Question

The Treaty of Lausanne was signed in July 1923 and reflected the “real” locus and attributes of sovereignty in Anatolia. This separate treaty constituted a multilateral

⁷⁶⁰ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

⁷⁶¹ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

agreement between the Great Powers and Turkey. Provisions for an autonomous Kurdistan, let alone an independent Armenia, were removed.⁷⁶² This treaty marked the withdrawal of the superpowers from the content and terms of the Treaty of Sèvres, which gave people in the former Ottoman Empire the right to exercise self-determination. The Treaty of Lausanne of 1923 “recognised the modern republic of Turkey without any special provisions for Turkish Kurds.”⁷⁶³

However, after the failure of the League of Nations and the turmoil caused by the Second World War, the principle of self-determination returned in a new context in the post-colonial era. The new world leaders, again tasked with reconstructing European countries, bore in mind the fact that their arbitrary divisions and harsh peace plan for the first post-war era had fuelled Hitler’s fire.⁷⁶⁴ Kurds remained the first victims of the remapping that took place in the Middle East and lost their land as a result. Subsequently, Turkey, Iraq, Iran and Syria ignored all the ethnic, cultural and political rights of Kurdistan. These countries also committed genocide against the Kurds, under a national policy of intolerance during the twentieth century which continues to this day.

⁷⁶² Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

⁷⁶³ Gunter, *Historical dictionary of the Kurds*, 199.

⁷⁶⁴ Alexander and Friedlander, *Self-Determination: National, Regional, and Global Dimensions*, 308.

B. British occupation and the local Kurdish government

In 1918, the British occupied the Vilayet of Mosul,⁷⁶⁵ where the majority of the population was Kurdish. Britain initially promised to deal positively with the Kurdish question and give Kurds their autonomy and independence through the right to self-determination, despite strong opposition by the Turks. The French joined in supporting the Kurds, “who have for so long been oppressed by the Turks.”⁷⁶⁶ Two schools of thought existed in the British administration; one favoured the integration of the Vilayet of Mosul which includes southern Kurdistan to Iraq, and the other leaned toward giving the right to self-determination to Kurds. The move towards integration was promoted by Sir Percy Cox (the High Commissioner) with Miss Gertrude Bell (the British Oriental Secretary); the second camp comprised of Major E. Noel and Major B. Young.⁷⁶⁷ Throughout this period, the Kurds remained optimistic and depended on the elements of Woodrow Wilson’s Fourteen Points policy in 1918, which dealt with non-Turkish ethnics under the rule of the Ottoman Empire. In Point 12 Wilson stated:

XII. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be

⁷⁶⁵ Vilayet was a first-level administrative division of the Ottoman Empire and means province in Turkish. The Mosul Vilayet was created from the northern sanjaks (Sanjak is a district or subdivision of a vilayet) of the Baghdad Vilayet in 1878. See Appendix III, the map of Mosul Vilayet. Also see: Reva Bhalla, Turkey, the Kurds and Iraq: The Prize and Peril of Kirkuk. *Iraqi Economists Network*, accessed June 03, 2019. <http://iraqieconomists.net/en/2014/10/11/turkey-the-kurds-and-iraq-the-prize-and-peril-of-kirkuk-by-reva-bhalla/>

⁷⁶⁶ McDowall, *A Modern History of the Kurds*, 153.

⁷⁶⁷ Amatzia Baram, Achim Rohde, and Ronen Zeidel, *Iraq Between Occupations Perspectives from 1920 to the Present* (New York: PALGRAVE MACMILLAN, 2010), 242-244.

permanently opened as a free passage to the ships and commerce of all nations under international guarantees.⁷⁶⁸

But the results went against the Kurds because of the policy of Turkey and the British decision to maintain control over the oil-rich Kurdish region in the north of Iraq known as the Mosul Vilayet, which ended nascent Kurdish hopes for independence or even autonomous rule.⁷⁶⁹ In strictly legal terms, Kurds have enjoyed more national rights in Iraq than in any other host country. Successive Iraqi governments authorised limited use of the Kurdish language in elementary education (1931),⁷⁷⁰ and generally Iraqi Kurds have made more progress than Kurds in other countries.

As stated in the British documents, at this stage, the representatives of Kurds in negotiations were elders or prominent social figures, not political parties or political movements⁷⁷¹ despite the presence of some Kurdish intellectualist supporters. In 1920, the British government was convinced that the oil-rich Mosul Vilayet was an important source of revenue, which all of Iraq would depend on in the future.⁷⁷² Britain was beginning to regret the promises it had made to the Kurds in the past.

In South Kurdistan (Iraqi Kurdistan) the Kurdish leader Sheikh Mahmud sparked the first rebellion against the British occupation in 1919 and declared an independent

⁷⁶⁸ Neiberg, *The World War I Reader*, 292.

⁷⁶⁹ Edmonds, "The Kurds of Iraq," 52-62.

⁷⁷⁰ Kenneth Katzman and Alfred B. Prados, *The Kurds in Post-Saddam Iraq, CRS Report for Congress* (Washington DC: Congressional Research Service, 2006), 2.

⁷⁷¹ McDowall, *A Modern History of the Kurds*, 131.

⁷⁷² Sluglett, *Britain in Iraq: Contriving King and Country, 1914-1932*, 137.

Kurdistan the same year.⁷⁷³ Initially British authorities looked favourably on Kurdish claims to autonomy. They established relations with the main Kurdish leaders in the region like Sheikh Mahmud Barzanji and delegated considerable powers to him, appointing him as a Governor of Sulaymaniyah in 1918.⁷⁷⁴ British policy encouraged Sheikh Mahmud to run a Kurdish government and "hope to use his unique social status to legitimize his rule"⁷⁷⁵. Sheikh Mahmud "never had a different conception of the nature of his office than the highest British commissioner in Baghdad, and established a department in his own traditional style."⁷⁷⁶ Sheikh Mahmud's ambition was a real state with a wide area, covering Southern Kurdistan and some parts of Northern Kurdistan, under the British mandate, a vision which far exceeded the concessions offered by the British.

By early 1919, Sheikh Mahmud had declared himself the king of Kurdistan and undertook armed resistance. Hence, the Sheikh was declared a rebel by the British.⁷⁷⁷ In April 1919, when Sheikh Mahmud's forces assumed control of Sulaymaniyah city and surrounding areas, they lowered the British flag and raised the Kurdistan flag as that of the first Kurdish government. The British army captured Sheikh Mahmud on 9 June 1919, and exiled him to India in mid-1919.⁷⁷⁸ What led Britain to undermine this government in

⁷⁷³ Chris Kochere, *Kurd in 19-20 Century*, 6th ed, (in Kurdish) "translated by Hama Kareem Arif" (Erbil: Awer Library, 2011), 85.

⁷⁷⁴ Matan Chorev, *Iraqi Kurdistan: the internal dynamics and statecraft of a semi-state* (Boston: Fletcher School, Tufts University, 2007), 26.

⁷⁷⁵ Chorev, *Iraqi Kurdistan: the internal dynamics and statecraft of a semi-state*, 26.

⁷⁷⁶ Meiselas and van Bruinessen, *Kurdistan: in the Shadow of History*, 64.

⁷⁷⁷ Chorev, *Iraqi Kurdistan: the internal dynamics and statecraft of a semi-state*, 26.

⁷⁷⁸ Jordi Tejel Gorgas, "Urban Mobilization in Iraqi Kurdistan during the British Mandate: Sulaimaniya 1918-30," *Middle Eastern Studies* 44, no. 4 (2008):537-547.

Southern Kurdistan were its “vested interests in this oil-rich region.” Hence, Britain put all its weight behind the annexation of the Kurdish region to Iraq.⁷⁷⁹

The attempts of Sheikh Mahmud to build the first Kurdish government in the south of Kurdistan or the so-called Iraqi Kurdistan today was an important development in the continuous Kurdish attempts to obtain the right to self-determination, and support with these demands. This important attempt at sovereignty, which built on the idea of an independent Kurdistan, failed, owing to the underdeveloped state of the country. Additionally, the dissension between the tribes meant that it was difficult to construct such a state when societal solidarity was still primarily clannish rather than nationalist.⁷⁸⁰ Arnold Wilson, the British civil commissioner for Iraq, informed the British government that 75% of the population of Iraq was tribal, “with no previous tradition of obedience to any government.”⁷⁸¹

By 1919, the British government had begun to withdraw their promises to facilitate an independent Kurdish state or at least autonomy for the Kurds in southern Kurdistan. British authorities declared that “it forms no part of the policy of his majesty’s government to encourage or accept any responsibility for the formation of any autonomous or independent Kurdish state.”⁷⁸² In 1920, Great Britain was recognised as the mandate power over Iraq by the League of Nations. The Hashemite Kingdom of Iraq was founded on 23

⁷⁷⁹ Ofra Bengio, “*Autonomy in Kurdistan in historical perspective*,” quoted in Brendan O’Leary, John McGarry, and Khaled Salih, *The Future of Kurdistan in Iraq* (Pennsylvania: University of Pennsylvania Press, 2005), 173.

⁷⁸⁰ McDowall, *A Modern History of the Kurds*, 153-164.

⁷⁸¹ David Fromkin, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East*, 450.

⁷⁸² Romano, *The Kurdish Nationalist Movement: Opportunity, Mobilization, and Identity*, 36.

August 1921 under British administration following the defeat of the Ottoman Empire in the Mesopotamian campaign of WWI.⁷⁸³ In the south of Kurdistan, the Mosul Vilayet was integrated with the new state of Iraq, under the mandate of the British. This was after the report of the Special Commission of the League of Nations, which was established in 1925 to determine the future of the Mosul Vilayet and decide between the claims of Turkey and Iraq. Between January and March 1925, a committee appointed by the League of Nations conducted a survey to determine the will of the people in the Mosul Vilayet. Due to the many promises made by the British government to the Kurdish people to establish a Kurdish entity, most Kurds voted in favour of Iraq rather than Turkey.⁷⁸⁴

In December 1925, the League of Nations recommended that the Mosul Vilayet be added to Iraq, provided that its non-Arab character was recognised and the status of the Kurdish language safeguarded. Consequently, the province was in July 1926 added to Iraq. After southern Kurdistan was integrated with Iraq as the British promised, the Kurds relinquished the hope they had built on the Treaty of Sèvres, that they might build an independent Kurdistan. Kurds hoped for more and were disappointed with the League for not endorsing autonomy, which had in 1922 explicitly been promised by the British government.⁷⁸⁵

Kurdish attempts continued in the four parts of Kurdistan to obtain the right to self-determination, or at least self-rule, or to participate in governance with others. These attempts and claims were refused by the new rulers in the four countries, Turkey, Iran, Iraq,

⁷⁸³ Gregorio F. Zaide, *World History in an Asian setting* (Manila: Rex Bookstore, 1994), 354.

⁷⁸⁴ Susan Meiselas and Martin van Bruinessen, *Kurdistan: In the Shadow of History*, 2nd ed (Chicago: University of Chicago Press, 2008), 150-154.

⁷⁸⁵ Meiselas and Bruinessen, *Kurdistan: In the Shadow of History*, 153.

and Syria in a violent manner, with many genocidal campaigns against the Kurds and violations of their rights, most notably perpetrated by the new rulers of Turkey.⁷⁸⁶ The Kurdish issue remained without a solution, and led to various revolutions and popular uprisings in the four countries until the Second World War, when a new phase of the Kurdish movement began.

§ II: The Kurdish question from WWII to the post-Cold War era

The Algeria agreement of 1975 between Iraq and Iran,⁷⁸⁷ conducted under American supervision, led to a failed Kurdish revolt in Iraq. A chapter of the history of the Kurds had ended, and a completely different chapter begun in terms of the injustice and genocide perpetrated against them. Before the agreement, the Kurds had maintained some control of their own areas. There was dialogue with the Iraqi government to implement the provisions and content of self-rule in accordance with the March 1970 agreement between the Iraqi government and the Kurdish movement, and the Kurds had good relations with regional and international powers, especially Iran and America. After the Algeria agreement, everything changed, and the Kurds remained alone. The agreement marked the beginning of the most oppressive and tyrannical phase of the history of the Kurds in Iraq,

⁷⁸⁶ Paul R. Bartrop, *Modern Genocide: Analyzing the Controversies and Issues* (Santa Barbara, California: ABC-CLIO, 2018), 212.

⁷⁸⁷ Sebastian Maisel, *The Kurds: An Encyclopedia of Life, Culture, and Society* (Santa Barbara, California: ABC-CLIO, 2018), 338.

in which Iraqi Kurdistan endured the harshest types of genocide, bombing with chemical weapons and the Anfal campaign, while the UN and the superpowers remained silent.

A. The Kurdish Question from WWII to the Algeria agreement 1975

The Cold War period was difficult for the Kurdish movement. Neglected by the international community and the superpowers, Kurds were caught up in racial conflict and subjected to genocidal politics by their neighbours. Over the last century there have been many revolutions and rebellions in aid of independence for Iraqi Kurdistan. Some of these movements were in support of the creation of Kurdish states, and others were motivated by different goals ranging from autonomy to independence. From the Sykes–Picot Agreement onwards, Kurdish claims to nationhood were disputed by neighbouring states. Besides the violations and campaigns of genocide perpetrated against them, Turkey claimed that Kurds were mountain Turks. Persians equally laid claim to Kurds, and contended that the Kurdish language was one of the Persian dialects.⁷⁸⁸ Iraq followed a genocidal politics against Kurds, attacked them with chemical weapons and destroyed thousands of Kurdish villages and towns.⁷⁸⁹ Syria on the other hand withdrew the Syrian nationality of the majority of Kurds under the pretext that they were immigrants from Turkey and that Syria was not their homeland.

⁷⁸⁸ Mella, *Kurdistan and the Kurds*, 24.

⁷⁸⁹ Global IDP, *Profile of Internal Displacement: Iraq. Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council* (Geneva: Norwegian Refugee Council: 2004), 7.

The 1920s to the 1990s were also marked by several large but unsuccessful Kurdish revolts. As discussed earlier, in the South of Kurdistan (Iraqi Kurdistan), the Kurdish leader Sheikh Mahmud sparked the first rebellion against the British occupation in 1919 and declared an independent Kurdistan the same year,⁷⁹⁰ which was defeated by the British forces in Iraq. In 1945, in Iran, the Kurds established the Republic of Kurdistan, led by Qazy Muhammad. This republic was supported by the Soviet Union, but was overthrown by Iranian forces in 1946 after the Soviet Union stopped supporting it. Additionally, the US played a role in pushing Iran to put an end to it.⁷⁹¹ In Turkish Kurdistan, there were many revolutions and tribunes; in 1984, Abdullah Ocalan declared the creation of the Kurdistan Workers Party (PKK) and their efforts continue to this day.⁷⁹²

This period was marked by the involvement of the United States in Kurdish politics. On 24 October 1945, immediately after WWII, the world witnessed the birth of a new international organisation, the United Nations,⁷⁹³ that replaced the League of Nations. It was founded by the countries which had been victorious in the war. Membership of the UN is legal for both independent states and representatives of the liberation movements, but Kurdistan is not recognized to this day. During this period, the Kurdish Issue evolved significantly. After WWII, Kurdish parties were established, and the new Iraqi Kurdish

⁷⁹⁰ Kochere, *Kurd in 19-20 Century*, 85.

⁷⁹¹ Ghassemlou, *Kurd and Kurdistan*, 89.

⁷⁹² Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 98.

⁷⁹³ UN, "History of the United Nations," *United Nations*, accessed March 9, 2017, <http://www.un.org/en/sections/history/history-united-nations/>.

political organization, the KDP, was founded in 1946.⁷⁹⁴ Subsequently, there have been a number of other Kurdish political parties formed in Iraqi Kurdistan.

However, after Abdul-Karim Qasim rose to become prime minister of Iraq in 1958, Iraq itself was weakened.⁷⁹⁵ Qasim consequently decided to cultivate relationships with the Kurds. Nonetheless, after a period of friendly encounters between Kurds and Abdul Karim Qasim from 1958-1960, Qasim broke ties with the Kurds, leading to an air force attack on Kurdistan; the Kurds restarted their revolution and their attempts to obtain their rights.⁷⁹⁶ The era between 1961 and 1970 involved constant fighting between Iraqi soldiers and the Kurds (Iraq-Kurdish War).⁷⁹⁷ A military coup of 1963 spearheaded by Ahmed Hassan-Bakr and Abdul-Salam Arif saw the end of Qasim's reign in Iraq. Like its predecessors, the new military administration came up with an array of promises and treaties with the Kurdish liberation movement. Nonetheless, once again the new Iraqi leaders only used the Kurds to pursue their personal interests. After atrocities committed by Iraq against the Kurds, most joined Barzani, and subsequently the Kurdistan region was controlled by the Peshmerga. The Kurds began demanding autonomy and self-determination as the Baghdad government suffered from political uproar after the death of Arif in 1966.⁷⁹⁸ The Baathist coup of 1968 ushered in a new era for Iraq. The Baath party realised that without gaining support from the Kurds, it was impossible to remain in power.

⁷⁹⁴ Kurdistan Democratic Party, About the Kurdistan Democratic Party., *kdp-info*. (in Kurdish) "translated by the author" accessed March 9, 2018, <https://www.kdp.info/p/p.aspx?p=6&l=13&s=010000&r=347>

⁷⁹⁵ Juan Romero, *The Iraqi Revolution of 1958: A Revolutionary Quest for Unity and Security* (Lanham: University Press of America, 2011), xviii-xix.

⁷⁹⁶ McDowall, *A Modern History of the Kurds*, 306-311.

⁷⁹⁷ McDowall, *A Modern History of the Kurds*, 306-311.

⁷⁹⁸ Ghareeb and Dougherty, *Historical Dictionary of Iraq*, 21.

Thus, they rapidly communicated their wish to resolve the Kurdish question. Subsequently, in March 1970 March, Iraq and the Kurds established an agreement whereby the Kurds would enjoy meaningful autonomy: the “Agreement of 11 March.”⁷⁹⁹ Nevertheless, such a treaty was short-lived. as will be explained in the next section.

During this period, the Kurdish leaders tried to establish relations with superpowers, especially the USA. The Kurdish leaders did not trust the Soviet Union and they tried to contact the US as a new ally. This move was spearheaded by Mustafa Barzani, after his many years of undignified exile in the Soviet Union, and after the Soviet abandonment of the Iranian Kurds in the Mahabad Republic in 1946 and the tragic end of its leaders.⁸⁰⁰

Despite the development of self-determination in international instruments and the decolonization process, the UN and the superpowers remained silent about the Kurdish issue during this period, and did not appear to care about the crimes perpetrated against the Kurds.

⁷⁹⁹ McDowall, *A Modern History of the Kurds*, 327-329.

⁸⁰⁰ Roham Alvandi, *Nixon, Kissinger, and the Shah: The United States and Iran in the Cold War* (New York: Oxford University Press, 2016), 69.

B. March Agreement and the right to inter self-determination of Kurdistan people

In March 1970 , Iraq and the Kurds established the “Agreement of 11 March.” This agreement for the first time granted autonomy to Iraqi Kurdistan.⁸⁰¹ The Movement of September in the 1960s, led by Mustafa Barzani, leader of the KDP, followed by political progress in the Kurdish situation, ended in an agreement on 11 March 1970 between the Kurds and the government of Iraq to grant Kurds autonomy.⁸⁰² The March Agreement came into force in 1970, and it outlined the formation of a Kurdish area with self-government.⁸⁰³

The March agreement stated many significant points related to the rights of the people of Kurdistan. With regard to national identity, it stated: the constitution will be amended to read "The Iraqi people is made up of two nationalities, the Arab nationality and the Kurdish nationality."⁸⁰⁴ Moreover, politically and culturally the treaty specified “Unification of areas with a Kurdish majority as a self-governing unit”. It also stipulated that "Kurds will participate fully in government, including senior and sensitive posts in the cabinet and army."⁸⁰⁵ Furthermore "The Kurdish people shall share in the legislative power in a manner proportionate to its population in Iraq" and "All officials in Kurdish majority

⁸⁰¹ McDowall, *A Modern History of the Kurds*, 327-329.

⁸⁰² Abdulla, *The Kurds: A Nation on the Way to Statehood*, 132.

⁸⁰³ Edmonds Ghareeb, *The Kurdish Question in Iraq* (Syracuse: Syracuse University Press, 1981), 87.

⁸⁰⁴ Gareth R. V. Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy*, London and New York: Routledge, 2003, 192.

⁸⁰⁵ Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy*, 192.

areas shall be Kurds or at least Kurdish-speaking." It also stated that "The Kurdish language shall be, alongside the Arabic language, the official language in areas with a Kurdish majority."⁸⁰⁶

Through this agreement the Iraqi state promised Kurds that those regions in which the Kurds constituted a majority were to be granted self-governing status within four years from when the agreement was signed.⁸⁰⁷ Kurdish leaders endorsed this solution, even though they were aware that it would not be totally implemented.

Because of the lack of a balance of power in favor of the Kurd, as the Iraqi government's power became apparent, the Kurds' support was no longer needed. The tipping point was when the Iraqis ordered the assassination of Barzani, the leader of the Kurdish movement, in 1971.⁸⁰⁸ Once again, the Kurds were forced to look for means of survival, including moving to the mountains and rebelling against the Iraqi government until the ratifying of the Agreement of Algeria in 1975.⁸⁰⁹ The March Agreement was ended totally by the Algeria Convention of 1975, which was held between Iraq and Iran under the supervision of the United States.⁸¹⁰ According to the agreement, Iraq gave up part of its territory in the south to Iran, and in return, Iran cut all support for the Kurdish movement.⁸¹¹ A new stage began in the history of the Iraqi-Kurdish conflict in the mid- seventies.

⁸⁰⁶ Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy*, 192.

⁸⁰⁷ Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy*, 192.

⁸⁰⁸ McDowall, *A Modern History of the Kurds*, 328.

⁸⁰⁹ McDowall, *A Modern History of the Kurds*, 327-329.

⁸¹⁰ Cottam, *Iran and the United States: A Cold War Case Study*, 150.

⁸¹¹ McDowall, *A Modern History of the Kurds*, 327-329.

This agreement was an important development in the conflict over the self-determination of Kurdistan. The agreement proposed internal self-determination. If it had been implemented and continued, it is impossible to imagine that the numerous problems wars and crimes of genocide which have beset the people of Kurdistan would have happened. On the contrary, this agreement was a compromise solution to the Kurdish issue in Iraq, as the Kurdish-Iraqi parties returned to the same solution in the drafting of the Iraqi constitution in 2005. The external interventions and the regional dimensions of the Kurdish issue made the March agreement a bridge to cross a short stage, and then the bloody conflict continued for the right to self-determination.

C. The Kurdish Question from the Algeria agreement of 1975, to the post-Cold War era

In the 1970s instead of abiding by the March agreement with the Kurdish movement, the Iraqi government returned to a military solution and war with the Kurds, designed to end the Kurdish movement,⁸¹² in cooperation and coordination with the state of Iran and under the supervision of the United States of America.

On March 6, 1975, in an Algerian-brokered agreement between Iraq and Iran, signed under the mediating auspices of Henry Kissinger, former US Secretary of State, Iraq

⁸¹² Cottam, *Iran and the United States: A Cold War Case Study*, 150.

concluded an agreement that granted Iran sovereignty over half of the Shatt al-Arab in exchange for Iran's termination of assistance to the Kurds.⁸¹³

Then, after ending the Kurdish movement by Iraq and Iran, Iraq unilaterally terminated the agreement in September 1980 before the outbreak of the Iran-Iraq War.⁸¹⁴ Iraq had declared its full sovereignty on Shatt al-Arab, which was refused by Iran, and led to the 8 year Iraq-Iran war.⁸¹⁵

After the Algeria agreement, a new phase of Kurdish politics emerged. The Kurds lost all confidence in all superpowers. They perceived themselves as without support and tried to depend on themselves in their struggle for freedom and their rights. This period was the most problematic for Iraqi Kurds; they were neglected totally by the international community and all superpowers, even the UN.

After the Algiers Agreement, the Kurdish liberation movement collapsed. In the years that followed, its struggle for self-determination began again, with the emergence of new actors in the Kurdish arena. On 1 June 1975, Jalal Talabani and his colleagues had issued a statement in Damascus announcing the formation of the Patriotic Union of Kurdistan (PUK).⁸¹⁶ The KDP slowly began to recover from the trauma of defeat, and in August 1976 in Europe, it launched the KDP-Provisional Leadership (KDP-PL), led by Idris Barzani.⁸¹⁷ From this date onwards, the PUK became a key actor beside the PDK in

⁸¹³ Jasim M Abdulghani, *Iraq and Iran the years of crises* (London and New York: Routledge, 2012), 234.

⁸¹⁴ Naylor, *Historical Dictionary of Algeria*, 73.

⁸¹⁵ Abdulghani, *Iraq and Iran the years of crises*, 234.

⁸¹⁶ Kochere, *Kurd in 19-20 Century*, 447.

⁸¹⁷ Kochere, *Kurd in 19-20 Century*, 447.

the Kurdish political situation. Both parties have since played a major role in all Kurdish events.

In the 1980s, the Iraqi Government subjected the Kurds to genocide without any real objection being made by any state or international organisation around the world. During this period, Iraq followed an Arabisation policy to reduce the growth rate of the Kurdish population, and end the Kurdish movement's supportive environment. The Iraq Army destroyed more than 4,000 Kurdish frontier villages and towns. In the genocidal campaigns under the name of "Anfal" in the 1980s, around over 182,000 Kurdish civilians were killed,⁸¹⁸ and Kurdish towns and villages were attacked with chemical weapons.⁸¹⁹

In 1983, the Iraqi Army took as prisoners between 5,000 and 8,000 men and young boys from the Barzani clan, then killed them. In April 1988, when Halabja was attacked by chemical weapons by the Iraqi Government resulting in more than 5000 deaths, no serious attempts were made by the international community to intervene in the genocide against the Kurdish people or to alleviate their pain.⁸²⁰ This situation continued until the first Gulf War and the collapse of the Iraqi Army, which led to the uprising of the Iraqi people against the Iraqi regime in 1991.⁸²¹ A popular uprising against the Iraqi government in March 1991 liberated the large zones of Iraqi Kurdistan. In addition, after the immigration of millions

⁸¹⁸ McDowall, A Modern History of the Kurds, 331-332, 357-358; Human Rights Watch, "Introduction: GENOCIDE IN IRAQ: The Anfal Campaign," *Human Rights Watch*, accessed February 13, 2018. <https://www.hrw.org/reports/1993/iraqanfal/ANFALINT.htm>

⁸¹⁹ Global IDP, *Profile of Internal Displacement: Iraq. Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, 7.

⁸²⁰ Human Rights Watch, Whatever Happened To The Iraqi Kurds? Accessed date April 7, 2017, <https://www.hrw.org/reports/1991/IRAQ913.htm>.

⁸²¹ Jordi Tejel, *The Monarchist era revisited*, quoted In: Jordi Tejel, Riccardo Bocco, Peter Sluglett, & Hamit Bozarsalan, *Writing The Modern History Of Iraq: Historiographical And Political Challenges* (Singapore, new jersey, London: World Scientific publishing Co.ltd, 2012), 228.

of Iraqi Kurds in fear of genocide, the UN Security Council Issued the “688 resolution” or “no-fly zone” to protect the Kurds from attacks by the Iraqi government.⁸²² Kurds also became victims of the Cold War after the Kurdish attempts at revolution were abolished in that period, but they never relented in their efforts to obtain freedom. This uprising was the start of a new and different stage of the Kurdish issue, as it led to the establishing of a de facto state in Iraqi Kurdistan.

History has shown that the Kurds are not just a minority dispersed among some countries. They are a vital part of a strategic area in which independence is increasing, and no power or policy can recover it. Not recognising this point only makes the region more unstable and undeveloped.

SECTION II: Evolution of Iraqi Kurdistan's de facto state in the post-Cold War era

This period was characterised by a major development in the Kurdish situation in Iraq, which began with the start of the second Gulf War. Throughout the war, the relationship between the international community and the Kurds evolved, and for the first time the international community took many significant and historic steps in support of Kurds in Iraq. At the outset, the research deals with the popular uprising in Iraqi Kurdistan

⁸²² UNSCR, “Resolution 688 (1991) of 5 April 1991.”

during the second Gulf War. This uprising formed a decisive stage in the history of Iraqi Kurdistan and the beginning of establishing the Kurdistan region Government for the first time in history (§I). In second paragraph, the evolution of Kurdistan's de facto government during the 1990s to 2003 is analysed as the Kurdistan de facto government was transferred to the Kurdistan Regional Government constitutionally. The relationship between the US and the Kurds has played a vital role in strengthening Iraqi Kurdistan since 1990, as the US has acted as executive ruler of Iraq since the Second Gulf War. Therefore, the study will also focus on the relationship between the US and Iraqi Kurdistan (§II).

§I: The March uprising and UN Resolution 688

Since the beginning of the 1990s, when the bipolar world system ended and a new unipolar world system was created, led by the United States, the role of the United States as a hegemonic superpower in Middle East issues including the Kurdish issue has increased. The allied campaign against Iraq following its invasion of Kuwait gave the Kurds an opportunity to launch insurrection. After the First Gulf War and the Liberation of Kuwait, the Kurdish situation was regarded in a new light. The international community espoused a new policy whereby it would deal with the Kurds as part of the Iraqi opposition on some occasions, and as a new partner in Iraq on other occasions. The international community began to deal with Kurds as the de facto government: the Iraqi Kurdistan government (IKG). The international community, the US and allied states in mid-1991 instituted a no-fly zone through the UN over the northern Kurdish areas. This enabled the

Kurds to establish de facto autonomy. Such a progressive relationship between the international community and Iraqi Kurds was a product of establishing the Kurdistan Government (KG) in 1992,⁸²³ and, through the impact of the KG on international politics, protection for Kurds continued.

The punishment meted out to Iraq in the early nineties was not because of its crimes against the Kurdish people, but because of the occupation of Kuwait by Iraq, and because of its threats to Israel. The former US Secretary of State, James Baker, noted that "the idea of containing Saddam started since the beginning of 1990 when he began to threaten Israel and announcing that he possessed weapons of mass destruction."⁸²⁴ Such humanitarian interventions were considered to be the first initiative of the international community in relation to its ties with Iraqi Kurds. On 15 February 1991, US President Bush delivered a speech in Andover, Massachusetts, asking Iraqi people to overthrow the regime, stating that "there's another way for the bloodshed to stop, and that is for the Iraqi military and the Iraqi people to take matters into their own hands and force Saddam Hussein, the dictator, to step aside, and then comply with the United Nations resolutions and re-join the family of peace-loving nations."⁸²⁵

On 5 March 1991, a popular uprising ended Iraqi rule in Kurdish areas, and established control over the Kurdistan region.⁸²⁶ This uprising opened the door for all

⁸²³ KRG, "Contemporary history. Some key events since the early 20th century," *KRG*, accessed December 4, 2016. <http://www.gov.krd/p/page.aspx?l=12&s=050000&r=306&p=216>

⁸²⁴ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 273.

⁸²⁵ George Bush, *Public Papers of the Presidents of the United States: George Bush* (Washington: Best Books on, 1992), 149.

⁸²⁶ Tejel, *The Monarchist era revisited*, 228.

subsequent major political events, beginning with UN Resolution 688, and the establishment of the Iraqi Kurdistan de facto government. In 1991, immediately following the first Gulf War, the US announced that it would support a populist Iraqi uprising to end the rule of Saddam Hussein. The Kurds in the north of Iraq and Shiites in the South of Iraq did rise up against Saddam in an attempt to liberate their areas.⁸²⁷ However, after a few months, the US changed its politics, leaving Saddam to attack the Kurds and Shiites and thus end their uprising. On the other hand, the Kurds had no objection to supporting the Americans in their fight against Saddam, believing that the American president would back up his rhetoric of freedom with American force to help the Kurds in the North.⁸²⁸

The US had an interest in creating a new regime but without creating problems for US allies in the region, such as Turkey and Saudi Arabia. Additionally, under Ozal's leadership, Turkey changed its hostile non-negotiating position towards the Kurds. On 8 March 1991, it officially received Kurdish leaders (Jalal Talabani and Mohsin Dizai.)⁸²⁹ The meeting before the uprising marked the beginning of change. After the visit, Talabani explained that the most significant result of the meeting was Turkey lifting its objection to the establishment of direct relations between the Kurdish front in Iraq and the United States.⁸³⁰

After the uprising of March 1991, the Iraqi regime began remobilising and launched several attacks against the people of Kurdistan. The operation led to a humanitarian crisis,

⁸²⁷ Lawrence, *Invisible Nation: How The Kurds' Quest For Statehood Is Shaping Iraq and The Middle East*, 4.

⁸²⁸ Lawrence, *Invisible Nation: How The Kurds' Quest For Statehood Is Shaping Iraq and The Middle East*, 4.

⁸²⁹ Gunter, *Historical dictionary of the Kurds*, 223.

⁸³⁰ Gunter, *The Kurdish Predicament in Iraq: A Political Analysis*, 28.

forcing 1.5 million Kurds to flee to Iran and the borders of Turkey. France asked the UN and the global community to act in order to minimise suffering in northern Iraq.⁸³¹ The notable assistance the Kurds gained from the international community included Operation Provide Comfort, initiated by France and supported by the UK and US and the United Nations Security Council (UNSC), which passed resolution 688 (no-fly zone) above the 36th line of latitude which cuts across Kurdistan.⁸³² On the ground, a security zone was established by military forces from eleven countries. These countries began enforcing air exclusion zones over northern and southern Iraq, respectively, in 1991 and 1992. These no-fly and security zones strongly supported and encouraged the return of refugees, including those who had left in the 1970s.⁸³³ The operation was to provide humanitarian relief and also enforce the security of the Iraqi Kurdish refugees and the overall relief effort. In so doing, the international community and the United States became the ‘accidental liberator of Kurdistan.’⁸³⁴ Through the humanitarian intervention, they aimed to protect Kurdish people in the first instance, and then to support the Kurdish government.

On 16 April 1991, President George Bush senior declared that US forces would enter Iraqi territory to establish refugee camps, to help feed and shelter Kurdish refugees

⁸³¹ Ferhad Ibrahim, *The Kurdish Conflict in Turkey: Obstacles and Chances for Peace and Democracy* (Germany: LIT Verlag., 2000), 46-47.

⁸³² UNSCR, “Resolution 688 (1991) of 5 April 1991,” *Search engine for the United Nations Security Council Resolutions*, accessed June 12, 2018. <http://unscr.com/en/resolutions/688>

⁸³³ KRG, “The Kurdistan Parliament, History of the Kurdistan Parliament,” *Kurdistan Regional Government*, accessed April 11, 2017, <http://cabinet.gov.krd/p/p.aspx?l=12&p=229>.

⁸³⁴ Lawrence, *Invisible Nation: How The Kurds’ Quest For Statehood Is Shaping Iraq and The Middle East*, 3.

stranded on the Iraqi-Turkish border.⁸³⁵ For the first time, the Kurdish people saw aircrafts that came to protect them instead of killing them. They also came into contact with the US soldiers who provided humanitarian assistance. Therefore, for the first time, Kurdish interests were in harmony with international policies and US interests. In addition, the enemy of the Kurdish people, Saddam Hussein, became the target enemy for the international community, particularly for the USA.

In the same month, Operation Provide Comfort began. The joint task force 'Providing Comfort' was formed and deployed to Incirlik Air Base, Turkey, to conduct humanitarian operations in northern Iraq. The task force dropped its first supplies to Kurdish refugees on 7 April 1991. Air units operating from Incirlik enforced a no-fly zone above the 36th parallel. General Jay Garner led a 20,000-strong military force to push the Iraqi army southwards. It was considered an example of the success of a military humanitarian mission.⁸³⁶

The role of the Western mass media in advocating military intervention cannot be ignored. The media impacted later on the UN Security Council's decision to issue Resolution 688.⁸³⁷ Wheeler and Alex explained that in the cases of northern Iraq and Somalia, the principal forces behind interventions were not state leaders. Rather, it was the media and domestic public opinion that pressurized policymakers into taking humanitarian

⁸³⁵ Mohammed Shareef, *The United States, Iraq and the Kurds: Shock, Awe and Aftermath* (London, New York: Routledge, 1991), 150.

⁸³⁶ Bob Woodward, *State of Denial: Bush at War, Part III* (London: Simon and Schuster, 2006), 64.

⁸³⁷ Alex J. Bellamy and Nicholas J. Wheeler, *Humanitarian intervention in world politics*, quoted in: John Baylis, Steve Smith, Patricia Owens, *The Globalization of World Politics: An Introduction to International Relations*, 3rd Ed (New York: Oxford University Press, 2005), 510-527.

actions.⁸³⁸ These interventions have fuelled the debate over whether a new practice is emerging after the Cold War era that puts people above governments.

The UN 688 Resolution despite its emphasis on the sovereignty, unity, and territorial integrity of Iraq,⁸³⁹ was the first real international support after the Cold War that was offered to the Kurds in a difficult situation. Kurds tried hard to prove themselves legitimate new rulers of the Kurdish territory. Furthermore, they attempted to prove to the international community that despite all the injustice, persecution and genocide they had suffered at the hands of successive Iraqi governments, Kurds were able to effectively govern themselves, contrary to the allegations of hostile Iraqi, Turkish, and Iranian governments. The Kurds attracted the attention of the global media, international NGOs and humanitarian organizations and, eventually, different Western governments, and developed their government under international protection. The Kurdistan Parliament was elected in 1992, and for the first time, Kurds established their own elected government. This involved the first free and fair elections ever held in the Kurdistan Region or in any part of Iraq.⁸⁴⁰

⁸³⁸ Bellamy and Wheeler, *Humanitarian intervention in world politics*, 510-527.

⁸³⁹ UNSCR, "Resolution 688 (1991) of 5 April 1991".

⁸⁴⁰ KRG, "The Kurdistan Parliament, History of the Kurdistan Parliament."

§II: Iraqi Kurdistan from 1991-1995 and the establishment of the KRG

In Iraqi Kurdistan, the political situation is more development than in other parts of Kurdistan. The Iraqi Kurdistan region consists officially of three provinces in the north of Iraq: Erbil, Sulaimaniyah and Duhok, which have an approximate population of 5.2 million in total.⁸⁴¹ Adding in Kurds living in disputed areas as set out in Article 140 of the Iraqi Constitution, and other places in Iraq, particularly in Baghdad, Nainawa and Diyala, the Kurdish population in Southern Kurdistan and Iraq comes to 7 million.⁸⁴² Kurdistan's geopolitical importance lies in its rich resources; it is one of the most important reserves of oil and natural gas. For this reason, the world's largest oil companies are now investing in Kurdistan.⁸⁴³ Furthermore, there is a Kurdistan Regional government (KRG), and Iraqi Kurds now participate in Iraqi Federal Government.

A. Establishment of the Iraqi Kurdistan Government and federalism

In 1991, after the Second Gulf War and following the popular uprising of the Kurdish people against the Iraqi government, directly after the negotiations between

⁸⁴¹ KRG, *The people of the Kurdistan Region*, accessed February 27, 2017. <http://www.gov.krd/p/p.aspx?l=12&p=214>.

⁸⁴² Cengiz Gunes, *The Kurds in a New Middle East: The Changing Geopolitics of a Regional Conflict*, 2.

⁸⁴³ ICJ, *Iraq and the Kurds: The High-Stakes Hydrocarbons. Gambit Crisis Group Middle East Report N°120, 19 April 2012* (Belgium: ICJ, 2012), 1.

Baghdad and the Kurdish leadership broke down in 1991, the Baath regime withdrew its authority from the major Kurdish areas and instead imposed sanctions on them.⁸⁴⁴ In 1992, parliamentary general elections were held in a democratic way, which produced the Kurdistan Regional Government in areas under the control of Kurdish forces after the uprising of March 1991. The two main parties (the KDP, led by Masoud Barzani and the PUK, led by Jalal Talabani) won elections and took almost all the parliamentary seats.⁸⁴⁵ The result of this general election was the establishment of the Kurdistan Government (KG) and the Parliament of Kurdistan, which continue to this day. These successful elections which were conducted in 1992 according to democratic standards for the first time in the history of the Kurds and Iraq represented a new chapter in the history of the Kurdish people in Iraq. Directly following the elections, the Kurds started to create their administrative institutions. The US announced its support for the parliamentary elections in the Kurdish region in 1992, further advancing the cause of democracy. On 15 May 1992, the US State Department expressed support; spokeswoman Margaret Tutwiler stated that the US hoped the elections would help all the people of northern Iraq to lead a better life.⁸⁴⁶

The western media also focused on these elections, which influenced public opinion and decision makers to help the Kurds and support them in their National Democratic struggle⁸⁴⁷ This event was thus brought to the attention of the Americans, particularly the members of the US Congress, who began serious discussions about these elections and

⁸⁴⁴ Woodward, *State of Denial: Bush at War, Part III*, 210.

⁸⁴⁵ KRG-Department of Foreign Relations, "Kurdistan Regional Government," *Department of Foreign Relations – KRG*, accessed June 12, 2018, <http://dfr.gov.krd/p/p.aspx?p=88&l=12&s=030400&r=403>

⁸⁴⁶ Kerim Yildiz, *The Kurds in Iraq The Past, Present and Future* (London: Pluto Press, 2004), 44.

⁸⁴⁷ Yildiz, *The Kurds in Iraq The Past, Present and Future*, 44.

emphasised the need to support this new step towards democracy in the Middle East. The White House administration, international NGOs, the media and the Department of State also expressed support. The international community began to think about upgrading their relationship with the Iraqi Kurds.

During 1992, the Kurdistan parliament decided on federalism in order to redesign the previously unilateral legal relationship with Iraq.⁸⁴⁸ This decision was made not only in order to form a coherent identity for the Kurdish de facto government but also to reassure neighbouring states that the Kurds did not intend to create an independent state at this stage, but only wanted Kurdistan to be regarded as a federal region officially in the Iraq state. This principle for redesigning the Iraqi state was submitted to the Iraqi permanent constitution and approved in 2005.⁸⁴⁹

B. Kurdish de facto government from 1995 to post-2003

This stage was very difficult for the people of Kurdistan, because of the internal war between the two main Kurdish political parties (KDP) and (PUK) which lasted for several years, weakening the Kurdistan government. There were important developments in favour of the Iraqi Kurdistan government and its continued existence as a de facto state,

⁸⁴⁸ Mohammed Ihsan, *Nation Building in Kurdistan: Memory, Genocide and Human Rights*, 13.

⁸⁴⁹ Iraqi constitution, Art. 117: first, state: This Constitution, upon coming into force, shall recognize the region of Kurdistan, as a federal region.

despite security issues and political and economic difficulties. This stage can be divided into some key political steps, concerning the de facto state in Iraqi Kurdistan.

1. UNSC Resolution 986

On 14 April 1995, acting in accordance with Chapter VII of the United Nations Charter, the Security Council adopted Resolution 986, establishing the "oil-for-food" programme and providing Iraq with another opportunity to sell oil to finance the purchase of humanitarian goods, as well as implementing various activities mandated by the United Nations concerning Iraq.⁸⁵⁰ The programme established by the Security Council was intended 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 688 (1991)."⁸⁵¹

Iraqi Kurdistan during the 1990s was the only relatively stable, safe and free part of Iraq. In the 1990s, it suffered not only under international and UN economic sanctions but also under a separate embargo imposed by Iraq's regime in Baghdad. Therefore, a separate share from Resolution number 986, (Oil-for-Food program)⁸⁵² was allocated by

⁸⁵⁰ UNSC, "SC Res. 686, Iraq-Kuwait (2 Mar), 1991," *Search engine for the United Nations Security Council Resolutions*, accessed September 12, 2017. <http://unscr.com/en/resolutions/686>

⁸⁵¹ UN- Office of the Iraq Programme Oil-for-Food, "Oil-for-Food," United Nations, accessed March 16, 2017. <http://www.un.org/Depts/oip/background/>

⁸⁵² UNSCR, "SC Res. 986, Authorization to Permit the Import of Petroleum and Petroleum Products Originating in Iraq, as a Temporary Measure to Provide for Humanitarian Needs of the Iraqi People."

the UN to this region. The special status given to Kurdistan by the international community forced the Iraqi central government to help the Kurds to improve their position in the late 1990s. Hence, this step is considered as a second example of positive international support to the Kurdistan region which was led by the United Nations Security Council.

The international community did not interfere in the day-to-day running of the Kurdistan Region. When the Oil-for-Food program started, the US and its allies made sure that the UN would set aside a share of the food supplies for the Kurdish north. This demand was overseen by the US and its allies who were behind the negotiations with the UN, and led to a 13% allocation from the programme for the Kurds.⁸⁵³

The no-fly-zone and Resolution 986 by the UN decreased the internal obstacles caused mainly by the four-year civil war between the two main political parties (PUK and KDP) in the region and prevented Saddam Hussein's regime from further oppressing and attacking the Kurds in the North. For the first time in Kurdish history, the American media was on the side of the Kurds. The Washington Post proposed the division of Iraq, which it saw as the best way of ending Saddam Hussein's rule, and of supporting both the Kurds and the Shiites to achieve their goals.⁸⁵⁴ The Kurdistan region's share of the Oil-for-Food program which was overseen by the UN through Resolution 986, under the influence of the United States and its allies, was itself emblematic of further support for Kurds.⁸⁵⁵ This broke down Iraq's sovereignty according to international law, while promoting the semi-

⁸⁵³ UN- Office of the Iraq Programme Oil-for-Food, "Oil-for-Food".

⁸⁵⁴ Kochere, *Kurd in 19-20 Century*, 489.

⁸⁵⁵ UNSCR, "Resolution 686, Iraq-Kuwait (2 Mar), 1991."

autonomous Kurdish region and giving material and moral support to the Kurdistan Regional Government.

2. Civil war and the Washington Accord: 1998, and relations with the US

During the 1990s, relations between the international community and the Kurds evolved, both directly and through the Iraqi opposition, in the form of the Iraqi National Congress (INC).⁸⁵⁶ In 1994, as the internal war between the two key parties (Barzani's KDP and Talabani's PUK) was escalating, the US was becoming uncomfortable with the impact of this unrest. The lethal character of the conflict was unparalleled, leading finally to the Iraqi army being invited by the KDP to retake the Kurdish capital, Erbil.⁸⁵⁷ How could the international community help and protect the Iraqi Kurds when they were busy engaging in a civil war? In late January 1995, (then) US President Bill Clinton sent a message to both Barzani and Talabani in which he warned: "We will no longer cooperate with the other countries to maintain security in the region if the clashes continue."⁸⁵⁸

The civil war led to political instability and created a serious power vacuum, giving regional and international powers an opportunity to become involved. Then, to solve this problem and to continue its policy of protecting the Kurdish people, many countries

⁸⁵⁶ Peter J. Lambert, *The United States and the Kurds: Case Studies in United States Engagement* (Thesis, California: Naval Postgraduate School Monterey, 1997), 86-100.

⁸⁵⁷ Rehmany, *History of Kurd-America Relations*, 462-465.

⁸⁵⁸ Selim Caglayan, "Clinton Reprimands Barzani and Talabani." *Hurriyet Daily News*, January 28, 1995, 18.

including the US and France made a serious attempt to stop the civil war in Iraqi Kurdistan. It finally stopped after the Peace Agreement was signed in Washington D.C. in 1998. This agreement was held between the Patriotic Union of Kurdistan (PUK) led by Jalal Talabani, and the Kurdistan Democratic Party (KDP) led by Masoud Barzani, with the then US Secretary of State, Madeleine Albright, in attendance.⁸⁵⁹

Through the Washington Peace Agreement, the international community helped Kurds to end their military conflict. It was the first time that the US had dealings with Kurdish top leaders officially, which strengthened their ties to the international community. The Washington Accord under the supervision of the US Secretary of State marked a significant change in US policy toward the Kurds. After the Washington Accord, there was no war between the KDP and the PUK. There was stability in Iraqi Kurdistan, which allowed the KRG to evolve, and the Kurdistan Region to become more powerful and more developed than other areas of Iraq.

From 2003 onwards, the development of Iraqi Kurdistan has continued. From the start of Operation Iraqi Freedom, Kurdish forces participated as the second biggest⁸⁶⁰ force after the US army as a main partner in the process of rebuilding Iraq. They joined with American forces in capturing the cities of Kirkuk and Mosul, and this paved the way for even greater Kurdish autonomy.⁸⁶¹ After preparing the Iraqi constitution and adopting it in

⁸⁵⁹ FAS, "Transcript: Albright, Talabani, Barzani," September 17, 1998, *FAS, USIS Washington File, Remarks, September 27, 1998*, Accessed April 8, 2017. <http://www.fas.org/news/iraq/1998/09/980908db-1.html>.

⁸⁶⁰ Spencer C. Tucker, *The Encyclopedia of Middle East Wars: The United States in the Persian Gulf, Afghanistan, and Iraq Conflicts [5 volumes]: The United States in the Persian Gulf, Afghanistan, and Iraq Conflicts* (Santa Barbara, Calif.: ABC-CLIO, 2010), 776.

⁸⁶¹ McDowall, *A Modern History of The Kurds*, 376.

2005,⁸⁶² the Kurdistan de facto government was transferred constitutionally to the Kurdistan region. Thus, Iraqi Kurdistan became a constitutional region according to the Iraqi constitution.⁸⁶³ However the main outstanding issues between Erbil and Baghdad remained, including disputed territories, partnership in the state, commitment to the constitution. The stage of de facto government ended, and southern Kurdistan returned to being a part of Iraq.

The Kurds have participated as a major partner in rebuilding the Iraqi state and managing the country for years. The Kurds have participated as a strong actor in Iraqi government, and for the first time in national elections in 2005, Talabani, the PUK leader, became President of Iraq.⁸⁶⁴ Despite the problems faced by the KRG and new Iraq, their relations have continued to evolve both positively and negatively.

After the US intervention in Iraq and developing US-Kurd relations, the Kurds wanted to maintain as much autonomy as possible in the context of the new Iraq, and they insisted on the validity of their historic claim to the oil-rich, ethnically mixed city of Kirkuk as part of Iraqi Kurdistan. Moreover, after 2003, the Kurds submitted a proposed constitution to the Iraqi Governing Council that would make Kirkuk the Kurdish capital and give the Kurds the constitutional right to secede from Iraq at any time. Although all

⁸⁶² Iraqi constitution, Art. 117: first, state: This Constitution, upon coming into force, shall recognize the region of Kurdistan, as a federal region.

⁸⁶³ Iraqi Constitution, Art. 121.

⁸⁶⁴ Turner, *The Statesman's Yearbook 2006: The Politics, Cultures and Economies of the World*, 911.

Sunni and Shiites have rejected the proposal, it demonstrated the Kurdish desire for permanent independence.⁸⁶⁵

In January 2005, the Kurds held a referendum on the future of Iraqi Kurdistan, conducted by an independent non-governmental body called the "Higher Independent Commission for Referendum", in which a majority of the people of Kurdistan (98%) voted in favour of independence. It was a non-formal referendum.⁸⁶⁶ The justification for holding it lay in primary rights theory, which argues that any people or national and distinctive group, has a right to free self-determination. But the Iraqi Kurds did not care about this referendum and they have returned to Baghdad.⁸⁶⁷

The investment and export of oil independently by the Kurdistan Region was another key development, which affirmed Kurdistan's desire for independence. The KRG started investing in the oil and gas wells that are under the control of the Kurdistan Regional Government, or wells that have been explored recently. The KRG has made a contract with a large number of international companies in this field from different countries, notwithstanding Baghdad's strong opposition to this process. For instance, "the KRG signed twenty-five oil exploration and production-sharing contracts with international companies in late 2007 and early 2008."⁸⁶⁸ Despite the criticisms made of the process and its outcome it was a strategic move toward the creation of independent states.

⁸⁶⁵ Bill Park, "Iraq's Kurds and Turkey: Challenges for US Policy," *Parameters* 34, no. 3 (2004):18-30.

⁸⁶⁶ Peter W. Galbraith, *The End of Iraq: How American Incompetence Created a War Without End* (New York: Simon and Schuster, 2008), 20-34.

⁸⁶⁷ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 20-34.

⁸⁶⁸ Kane, *Iraq's Oil Politics Where Agreement Might be Found*,15.

After Baghdad had stopped paying salaries or making budget transfers to the Kurdish regional capital Erbil in 2014 when the Kurds started independently selling oil, and the Iraqi state had formally cut the Kurdistan regional share (17%) from the state budget in 2014, Kurdistan faced a difficult situation, exacerbated by the reduction in the price of oil, the war on ISIS,⁸⁶⁹ and the huge number of refugees from Syria and those displaced from other parts of Iraq. Since 2014, 1.5 million displaced Iraqis and Syrian refugees have moved into the Kurdistan region of Iraq, where 25 percent of the population has been displaced.⁸⁷⁰ The KRG has continued to export oil independently, but this decision by the Iraqi central government, made Kurdistan lose hope of staying with Iraq.

However, war with ISIS has strengthened Kurdistan's position with the US and the international community. This war strengthened KRG relations politically and militarily with the international community, as well as entrenching its position on the ground, and enabling it to control all disputed territories. For the first time, the Peshmerga forces have controlled all Iraqi Kurdistan including Kirkuk city and all disputed territories.

In order to take advantage of the historic opportunity afforded in 2016-2017, due to the war with ISIS, the subsequent defeat of the Iraqi army, the loss of a third of the country,⁸⁷¹ and the withdrawal from disputed areas, the KRG forces ("peshmarga") have controlled these disputed places, and intended to make the leap to independence. Therefore,

⁸⁶⁹ Anaid and Tugdar, *Iraqi Kurdistan's Statehood Aspirations: A Political Economy Approach*, 127-128.

⁸⁷⁰ UNHCR, "Iraq Refugee crisis." *USA for UNHCR*, accessed November 10, 2019. <https://www.unrefugees.org/emergencies/iraq/>

⁸⁷¹ Sarhang Hamasaeed and Garrett Nada, "Iraq Timeline: Since the 2003 War, United States Institute of Peace", *USIP*, accessed November 10, 2019. <https://www.usip.org/publications/2019/07/iraq-timeline-2003-war>

despite strong opposition from Iraq and regional countries and great powers, the IKR held the Kurdistan independence referendum in 2017, to determine the future of Iraqi Kurdistan. The majority (93%) voted for independence and secession from Iraq⁸⁷², but the process was unilateral, and without agreement with Iraq. Although the majority voted in favour of independence, it was not granted to the IKR, and the consequences of this referendum were very difficult for Kurdistan, as many new additional problems have been created for the Kurdistan region.

Now despite the many complex problems between Baghdad and Erbil, Kurds are in Baghdad and they participate in the Iraqi government. They enjoy an extended degree of independence but have focussed on solving economic and political problems with Baghdad before deciding on any option regarding the future of the Kurdistan region.

CONCLUSION OF CHAPTER II

The Kurdish people make up the fourth largest ethnic group in the Middle East. Kurds form the largest nation in the world without a state, a problem which has existed since the beginning of the last century. This is despite the fact that there have been many promises made by the great powers to create a state of their own, as set down in the Treaty of Sèvres of 1920. The superpowers decided to create a Kurdish state, but failed to do so.

⁸⁷² Changfengand and Temitayo, “2017 Iraqi Kurdistan’s Referendum for Independence: Causes and Impacts,” 59.

The Lausanne Treaty of 1923 ended the possibility of self-determination for the Kurds, and it also failed to deal justly with the Kurdish Question. The Kurdish people have been victims of the politics of superpowers since the problems began. Kurds have consistently struggled to obtain their rights, and tried to build relations with the international community. Their intent was to gain the support of the superpowers to their right of self-determination like any other peoples, especially after the declaration of Wilson's Fourteen Points. However, they failed to gain support until after the Cold War, and even then there was only limited support for Iraqi Kurdistan and not enough to facilitate independence and secession from Iraq.

During the Cold War, different countries used the Kurdish issue in Iraq as a political pawn to manipulate the Iraqi regime in such a way as to fulfil their own desires and interests in the region. However, there has been a dramatic evolution in the Kurdish situation since 1990. A new era began with the start of the second Gulf War, and continued with the Kurdish uprising in March 1991 and the creation of a no-fly-zone area in the North of Iraq by UN Resolution 688, which was considered to be the first humanitarian intervention in Iraq. The general elections and the establishment of the KRG reflected the rapid evolution of the Kurdish government. The international community continued to help the Kurds and continued protecting Kurdish territory under UN Resolution 688 in the form of the no-fly zone, and by granting them a share of the Oil-for-Food program which was under UN monitoring and recognized as UN Resolution 986 in 1996. Furthermore, Kurdish forces worked with the US inside Iraq alongside coalition troops to fight Saddam's regime in 2003. The Kurdish partnership played a key role in re-establishing and ruling Iraq after

2003. Meanwhile the unity and territorial integrity of Iraq was affirmed by the US and the international community.

Kurdistan is evolving rapidly, politically, culturally and economically. Given its geopolitical importance, it has become an effective actor in the Middle East region. KRG investments in the field of oil and gas in different parts of Kurdistan are shared by several foreign companies. At the same time, the political situation in the Middle East region has changed as a result of the Arab Spring, and for the first time, there are developments in the resolution of the Kurdish issue. These will impact positively on the IKR in the Middle East. The KRG played a significant role in the war against ISIS. This war strengthened KRG relations with the international community, and strengthened its position on the ground, allowing it to control all disputed territories.

The investment and export of oil independently by the Kurdistan Region was another key development, which affirmed Kurdistan's desire for independence. Further, despite the criticisms made of the process and its outcome, it marked a strategic move toward the creation of an independent state.

After Baghdad had cut off the Kurdistan regional share (17%) from the state budget in 2014, Kurdistan faced a difficult situation, aggravated by the reduction in the price of oil, the war on ISIS, and the huge number of refugees who had moved from Syria and from other places in Iraq to the Kurdistan region. Kurdistan lost hope of continued relations with Iraq, but as the Peshmerga forces controlled all Iraqi Kurdistan including Kirkuk city and all disputed territories, the IKR conducted a referendum to determine the future of the Kurdistan region in September 2017. The majority of participants voted for independence and separation from Iraq. However, this referendum was unilateral and not recognized by

the United Nations or other countries. It has led to many problems for the IKR with Iraq and neighbouring countries.

Kurdistan's current decision is to postpone independence, as it would be very difficult at the current stage. Independence will be gained after political conditions at the regional and international levels have been established in its favour. Currently, the IKR has focussed on solving problems with Iraq. Moreover, despite all the existing problems, Kurds have come back to Baghdad and are now participating in the Iraqi government.

CONCLUSION OF TITLE II

The legal and practical aspects of self-determination have been formulated legally through international instruments in the post-WWII era. The principal international instruments included the United Nations Charter, declarations, decisions, and other documents of the United Nations, besides several international human rights instruments, and provisions, decisions, and interpretations issued by the International Court of Justice.

Through these international instruments, self-determination has been described as a right for peoples. Self-determination is the right of every people to decide their future internally and externally freely and without the interference of others. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. Thus, the right of a people to govern their territory and determine their internal and external status is a right *erga omnes* and *jus cogens*. Preventing any

people who have a defined territory from exercising their right to self-determination is a supreme violation of international law which must be protected by the international community as a whole.

As a result of the political hegemony exercised by superpowers on the UN and its resolutions, the international community adopted discriminating methods and double standards to deal with issues around the right to self-determination, which led to the neglect of many issues, including that of the Kurdistan people, which have remained unresolved until now.

The Kurdish people constitute the largest stateless ethnic group in the world and the fourth largest ethnic group in the Middle East, where its numbers exceed forty million. Their problems started with the First World War, after the division of the region according to the Sykes-Picot agreement, through which Kurdistan was divided into four parts among Turkey, Iran, Iraq and Syria. Accordingly, the Kurdish issue in Iraq began after the annexation of Southern Kurdistan (within the Vilayat of Mosul) to Iraq five years after the establishment of the state of Iraq by Great Britain in order to obtain the oil resources in IKR and create a sectarian Shiite-Sunni balance in Iraq. During the last 100 years, the Kurds have continued their attempts to obtain their right to self-determination and independence, but without results.

The Kurdish people, although they have all the elements and characteristics of a people, and despite their long national movement for the right to self-determination, have been marginalized by the UN and international community according to the interests of superpowers and international politics which did not support the Kurds. Therefore, the Kurdish issue remained without a solution, and outside the impact of these international

developments regarding the right to self-determination, which have enhanced its practice and supported respect for it.

After the March 1991 uprising and Security Council resolution to protect the Kurds from the Iraqi government's attacks No. 688 of 1991, the Kurdistan government was established as a de facto state, then developed into a federal region in 2005, and continued to develop in various areas. In 2017, it conducted a referendum to determine its future, although the majority of (93%) voted in favour of independence, because of regional and international policies the Kurdistan Region had to survive within Iraq, and Kurdistan was faced with complex economic and political problems.

In sum, the Kurdistan people have been victims of global politics since the beginning of their issue until the present day. This proves that the legal principle faces a balance of power, and hence the achievement of the right to self-determination mainly depends on the balance of power and international politics.

CONCLUSION OF PART I

The idea of self-determination as a way for peoples to identify their political status and their future has a long history originating with the emergence of the state. Self-determination passed through many mutations, and evolved with the emergence of nationalism and the nation-state in Europe and the West after the collapse of empires. The concept advanced into a general principle in the exercise of ruling and then as a basis of

relations between peoples and nations because of the French and American revolutions. In each of the two revolutions, the freedom of the people to choose their political future became a fundamental right.

During the twentieth century, the concept of the right to self-determination was transformed from a political principle to a legal right in international law. At the start of the last century, both Woodrow Wilson and Lenin played key roles in evolving the right to self-determination. Wilson, in particular, played a pivotal role in supporting the concept politically and legally as well as promoting it globally. After the end of WWI and the foundation of the League of Nations, the principle of the right to self-determination underwent significant development. During this era, although it was not directly mentioned in the Basic Charter of the League of Nations, implicitly and indirectly, it established a strong foundation for the right to self-determination, especially by adopting the idea of dependent territories and preparing them for independence.

In the post-WWII era and through international instruments, self-determination has been recognized as a right of all peoples, as for example in: United Nations Charter, UN declarations and resolutions, jurisprudence and the decisions of the International Court of Justice, and international human rights declarations. Respecting and protecting this right is a responsibility of the international community as a whole.

Essentially, the right to self-determination is the right of peoples to determine their own destiny freely and to choose their own political status internally and externally. Internally self-determination could be gained through full integration within a state and practiced through autonomy, federalism, confederalism, or democratic political participation on the basis of equal rights for all. Externally, exercise of this right can result

in a variety of different outcomes ranging from political independence, free association or integration with an independent state, or the emergence into any other political status freely determined by a people.

However, despite the importance of the evolution of self-determination through the international instruments, many legal issues have remained concerning the definition of the concept and specific criteria to determine the people, as the instruments focused on the "people" as the holder of this right, while this right and the title holders of the term "people" were not specifically defined. There have also been problems regarding colonial and non-colonial contexts to deal with the cases of self-determination. Although international instruments are clear regarding cases of self-determination in the context of colonialism, as they recognise the right to external self-determination for all peoples under colonial rule, there is a lack of clarity about cases outside the colonial context, which include most ethno-national conflicts.

The study of the right to self-determination, especially during the twentieth century, suggests that the balance of power face the legal principle of self-determination, so respect and achievement of this right depends on the balance of power more than the basis and the legal framework for it. From this standpoint, the political domination of the great powers over international organizations, including the League of Nations and the United Nations, has led to pragmatic and double standards being exercised with regard to issues and demands for the right to self-determination. This has led to the neglect of many ethno-national issues, according to the interests and positions of the superpowers, despite the legitimacy of these issues, including the Kurdistan case, an ethno-national issue in the Middle East, and the issue of the largest stateless people globally.

The Kurdish issue began after the division of Kurdistan into four different parts and among four different countries, Turkey, Iran, Iraq and Syria, according to the Sykes-Picot agreement to divide the region according to the influence and interests of the great countries at that time: Britain and France. Despite many promises at the beginning of the twentieth century, as embodied in the Treaty of Sevres to give the right to self-determination to the Kurdish people and to establish the Kurdistan state, the Lausanne Treaty ended all these hopes. For the past 100 years, despite global developments at all levels, the Kurdish issue remained unresolved and the people of Kurdistan were subjected to the most heinous violations and crimes such as genocide, ethnic cleansing and racism.

After the Cold War, there was a dramatic change in American policy and then in the global policy towards the Kurdish issue in Iraq, which helped establish the Kurdistan Regional Government as a *fait accompli*, then developed it into the Kurdistan Region as a federal region of Iraq according to the Iraqi constitution, and continued to develop it until 2017 when it conducted a referendum to determine its fate. Although a majority of 93 percent voted in favour of independence, it ended with a difficult political and economic problem for the Kurdistan Region. US policy and regional and international policies towards Kurdistan's independence remained on the same line, keeping the Kurdistan region within Iraq, and emphasizing the unity of Iraq. These factors are decisive in determining the future of Iraqi Kurdistan, and have more weight than the the legal demands for self-determination and independence.

PART II

Kurdish's claims to self-determination in the international context

The current ethnic, religious and national issues which are related to self-determination are numerous and widespread, including Europe and Eurasia, Africa and America. In order to understand whether long term peace and stability in the world might be better served by respecting national self-determination, it is important to understand the complex nature and intractability of conflicts associated with ethno-national issues, like the Kurdish issue.

These issues, by their very nature, pull at the strings of international stability. They can be deadly, durable and destabilizing. There is no agreement among the superpowers and existing states as to how to resolve these ethno-national issues, but there is an emphasis on stability and the status quo of existing borders. Despite the near constant reaffirmation of state sovereignty and territorial integrity within the international community, in the last twenty-five years, many new states have been created as the result of national self-determination movements.⁸⁷³

⁸⁷³ Williams, "Creating a Strategic Framework for Addressing the Conflict between Sovereignty and Self-Determination: Earned Sovereignty."

The Kurdistan Region's claim for self-determination and independence has political and legal dimensions at the same time. As a result of the multifaceted and complex nature of the Kurdish issue, the issue of determining the fate of the Kurdistan Region of Iraq is a Kurdish, Iraqi, regional and international issue.

After intellectual and political developments at the global level, including the continuation of issues and struggles for self-determination, and the emergence of new theories in international politics and international law, alongside changes that occurred at the national level, in particular, the ISIS war and the holding of the Kurdistan Region independence referendum in 2017, and reflections on the referendum, the case study of the Kurdistan Region needs to be evaluated in the light of three sources together: key theoretical perspectives, international law, and international politics. Fundamental theories of the right to self-determination in politics and international law, the intellectual and theoretical aspects of the case must be studied in order to assess the theoretical bases of the demands of the people of Kurdistan, besides discussing the appropriate theory to study international policy on this issue. The case must also be studied in the light of international law, to assess the extent to which there are legal foundations for the Kurdistan Region's claims to exercise the right to self-determination. Finally, a study of the role and influence of international politics, specifically US policy toward Kurdistan independence is necessary, in order to determine the future of the Kurdistan Region. All of this leads us to the ability to scientifically understand the state of the Kurdistan region, analyze the challenges, opportunities and expectations about the future of the Kurdistan region and its moves towards independence.

The first title of this discussion addresses Kurdish claims to self-determination in international law and international politics. It evaluates the case for the Kurdistan Region in the light of three sources put together: key theoretical perspectives, international law, and international politics (Title I). The second title of the discussion is focussed on the future of Iraqi Kurdistan, caught between federalism and independence, and the role of international politics, particularly the impact of US foreign policy as a key actor (Title II).

Title I

Kurdish claims to self-determination between international law and international politics

The exercise of self-determination in the international context is crucial due to its impact on national and international stability. In its various instruments, the United Nations has established a clear legal structure for the right to self-determination and recognition it as a right of peoples, despite the persistence of the problems relating to the definition of this right and its content and the criteria for determining the peoples that are entitled to this right accurately. Moreover, these international instruments have affected the evolution of the right to self-determination, as legal right in contemporary international law and defining the commitment for the members and international community to respecting and enforcing this right.

On the other hand, the result of self-determination conflicts have emerged that international politics and the political balance of power, have an essential role in enforcing the principles of international law and achieving UN purposes, includes implementing the right to self-determination and then solving ethno-national issues. As, the international law is a set of constant legal foundations and rules set in the international instruments, while the international politics, which control the enforcement of this law, has a dynamic and

constantly changing and moving according to the interests and purposes of the superpower countries, regional and international conflicts.

The case of Iraqi Kurdistan region as a case outside the traditional legal context, or territories subject to colonialism that recognized by the United Nation and they have a right to self-determination, it need to address as a special case at both levels international law and international politics.

This title firstly discuss the claims of Kurdistan Region to self-determination in light of key and new perspectives in international politics and international law, especially liberal and realistic theories. These theories despite all differences among themselves, in identify titleholders, conditions of implementing, and the scope of enforcement, there is almost consensus among them that self-determination is a right for peoples. While realistically, enforcement of this right depending on political conditions and the balance of power. Accordingly, Despite the assumption that the Kurdish people in the Kurdistan region of Iraq have the right to self-determination and independence, but this option depends on the balance of power, and the political internal, regional and international situation. (Chapter I)

In addition to that, in the second chapter it focuses on the Kurdish question and the right to self-determination under the light of international instruments, UN objectives and principles. Besides, it examines the Kurdish question and right to self-determination in the context of international politics, to clarify the real superpowers politics about the Kurdistan claims to self-determination and the role of balance of power in this regard. (Chapter II)

Chapter I

Kurdish claims to self-determination and the key theories in international politics

The right to self-determination as a fundamental right for peoples is enshrined in the United Nations Charter and many other international instruments. Until recently, this principle has been interpreted restrictively, so that it has amounted to little more than the right to be free from colonialism. The ambiguity that accompanies the content of the right to self-determination, in terms of the definition and eligibility of this right and the scope of its application, as well as the continuing struggles of different peoples, and claims and attempts of the various ethno-religious groups within the existing countries, have provoked new explanations of the right to self-determination in political theory. In the case of the Iraqi Kurdistan Region's claims to self-determination, a new theory is required which can present it as outside the formal UN context or the colonial context as defined by UN instruments.

A theory is a system of concepts that explains a phenomenon, drawing from first principles that are autonomous of the phenomenon, while explaining its orientation and circumstances. Corbin & Strauss have explained that theories "consist of plausible relationships produced among concepts and set of concepts"; a theory provides both a framework for critically understanding phenomena and a basis for considering how what

is unknown can be organized. It enables researchers to work with guidelines/structures that ground their studies. While self-determination is a pivotal and organising principle enshrined in international instruments including the UN Charter, the concept has proved resistant to attempts to define it, and it remains a paradoxical and potent political idea which is associated with other concepts. During the Cold War it was restricted to the context of decolonisation by international consensus and through UN instruments. The consequences of ending the Cold War, the collapse of the USSR and Yugoslavia, as well as political developments globally, and continuing ethno-nationalist conflicts, demonstrated the inadequacy of this approach.

This chapter examines the key theories in international politics relating to self-determination, and in the light of these theories, it addresses the case of the Iraqi Kurdistan Region's claims to self-determination. The chapter focuses on two leading theories in international politics: realistic theories and liberal theories. These theories address the subject in an analytical way.

The first section discusses liberal theories and the right to self-determination. Liberal theories focus on the rights of the people to determine their destiny freely. They prefer the rights of people to the sovereignty and territorial integrity of the existing states, with differences in the contexts and reasons for exercising this right. According to primary rights theory, self-determination is an essential right for every peoples and distinct groups in a specific area. Every people or the population of a certain area has the full right to self-determination internally and externally. According to this theory the people of Iraqi Kurdistan have a right to self-determination. Remedial right theory emerged in the post-Cold War era. It focuses on the injustice meted out to these peoples, as a justification for

external self-determination and secession. Enforcement of the right to self-determination is seen as a final remedy for resolving ethno-national issues in a peaceful way. It focuses on interpreting the various cases of self-determination and ethno-national conflicts outside the decolonisation framework of the United Nations. (Section I)

The second section addresses realism theory and the right to self-determination. Realism can explain international relations, and superpowers deal with ethno-national issues, the claims to self-determination in the international arena, in the context of power, state interest, maintaining territorial integrity for existing states, and the balance of power. Realist theory focuses on rejecting external self-determination for any people or a section of the population except when it involves the change to a de facto state, the collapse of the existing state, or if self-determination has been achieved as the result of the balance of power arising from secession. Consequently, realist theory could interpret the US policy toward the Kurdish issue in Iraq. (Section II)

In addition to above, this chapter highlights how the legal principle of self-determination' was created in a specific political and legal context, and how it is now obsolete or inaccurate because of international political developments and the changing of the context of the balance of power.

SECTION I: The key theories and the right to self-determination

There are several theories that emphasize the right to self-determination as a fundamental right for every people and every human group. Liberal theories tend to formulate this right in a democratic framework, so that the actor and the decisive factor is the will of the people and the desire of the majority, expressed in peaceful democratic forms such as elections and public referendums. Among these theories, there are two key theories: primary rights theory and remedial rights theory.

The first paragraph addresses primary rights theory, as well as discussing the Kurdistan people's right to self-determination in the light of primary rights theory. Primary rights theory focuses on the right to self-determination "internally and externally" as a fundamental right for every people and human group. The majority of the population of a certain region can exercise the right, wherever they want, and separate from "the existing country", or decide their political and legal status, regardless of whether the region is under occupation, or whether there is violence, repression, and violation of their rights or not (§I).

The second paragraph addresses the remedial rights theory and the right to self-determination. It investigates the Kurdistan people's right to self-determination in the context of remedial rights theory. Remedial rights theory emphasises that this right is a fundamental right but y adds restrictions according to circumstances and scope of implementation. This theory affirms that the right to self-determination is a right for every minority, human group, and peoples, that must be exercised through its various forms like federalism, decentralization, and participation of all sectors in national decision making

while, according to this theory, external self-determination and secession depends on the conditions, and may not be allowed unless there is injustice and the violation of rights and violence against a group by the mother country or the majority in this state (§II).

§I: Kurdistan claims for self-determination and the Primary Rights Theory

Primary rights theory is an example of the liberal view in support of self-determination within the democratic context, or a context that is consistent with liberal - democratic principles, which should ideally provide a theoretical solution for the peaceful settlement of all self-determination issues.

A. Primary Rights Theory and the right to self-determination

Primary rights theory is an example of the permissive liberal view formulated by Harry Beran. He sketched a normative theoretical foundation for political boundaries in support of self-determination within the democratic context, or a context that is consistent with liberal - democratic principles, which should ideally provide a theoretical solution for

the peaceful settlement of all border disputes. He argued that "a theory of rightful secession can be fully plausible only as part of a comprehensive normative theory of borders".⁸⁷⁴

According to the primary rights theorists, injustice must not be the prerequisite for a group to seek the right of self-determination or decide unilaterally if they want to secede from a bigger polity. The plebiscitary framework of these theorists upholds self-determination and secession as universal rights which any group can claim through viable and legitimate means.⁸⁷⁵

The primary rights theory, also known as the pure plebiscite theory of the right to secede, is a rarely applied element of self-determination due to the idealism expected among stakeholders both weak and strong. According to this theory any group that can constitute a majority (or, in some accounts, a "substantial" majority) in favor of secession within a portion of the state has the right to secede⁸⁷⁶. Beran, like the majority of primary rights theorists, agrees that a territorially compact group is required (regardless of whether they share a national identification or other features of ascription).⁸⁷⁷

The primary rights theory is premised on the assumption that any group has the right to independently choose the course of its affairs or secede from another polity without reference to existing nuances. In essence, this theory considers secession a universal right similar to other human rights. Notable recent cases of the primary rights theory include

⁸⁷⁴ Harry Beran, *A Democratic Theory of Political Self-Determination for a New World Order*, quoted in Percy Blanchemains Lehning, 42 – 43.

⁸⁷⁵ Brando and Morales-Gálvez, "The right to secession: Remedial or primary?" 107-118.

⁸⁷⁶ Buchanan, "Theories of Secession," 35-50.

⁸⁷⁷ Brando and Morales-Gálvez, "The right to secession: Remedial or primary?" 9.

Scotland's referendum on secession from the UK in 2014,⁸⁷⁸ the Catalonia independence referendum of 2017 that the Spanish government declared illegal⁸⁷⁹, and the 2017 Iraqi Kurdistan self-rule plebiscite that received overwhelming support with a 93% ⁸⁸⁰ vote but evoked lukewarm support outside the country.

The primary rights theory as expounded in the works of Wellman⁸⁸¹ considers a nuanced version of the primary right as valid. According to this perspective, groups have the primary right to secede from other entities because they have a right to political self-determination. This right is inherent and primary, not deriving from injuries or pre-existing social, economic and political factors. However, primary rights theory is closely related to Buchanan's remedial rights only theory in as far as it omits the treatment of secession as a last resort. Wellman and Buchanan⁸⁸² disagree in principle, due to the former's willingness to trigger referendums as a right as opposed to the latter's respect for territorial integrity.

In practice, primary rights theory rarely guides efforts towards self-determination in both the developed and developing world due to its extreme idealism, and the remedial rights only theory tends to be more prominent. However, primary rights theory is founded on fundamental rights and liberties including the right to secession or independence. A fundamental argument advanced is the link between self-determination and democracy,

⁸⁷⁸ Levites, "The Scottish Independence Referendum and the Principles of Democratic Secession," 373.

⁸⁷⁹ Daniel, et al., *The Catalan Independence referendum: An assessment of the process of self-determination*, 4.

⁸⁸⁰ Changfengand and Temitayo, "2017 Iraqi Kurdistan's Referendum for Independence: Causes and Impacts," 59.

⁸⁸¹ Wellman, "A defense of secession and political self-determination," 142-171.

⁸⁸² Buchanan, "Theories of secession," 31-32.

which is accomplished by moral autonomy. John Stuart Mill's "Harm Ideology" indicated that moral autonomy is when a person is free from restraints to choose or act but by doing so, the individual does not harm other persons with similar freedoms.⁸⁸³ An individual's rights can only be understood to be entirely respected if the person is allowed to determine his political fate without limitations, including determining to stay in a political system or leave. From this perspective, a people's right to self-determination or even secession would be grounded on the aggregate individual autonomy of every member.⁸⁸⁴ This premise results in the second assertion of the theory that since democracy means a person's right to self-determination, a plebiscite with a majority vote in favour of secession would justify the peoples' right to govern their affairs. Further, the good resulting from the group's autonomy is enough to validate self-determination. Therefore, a group's right to self-determination can be perceived as fundamental to democratic governments, since it symbolises the unified will of all of its individual entities.⁸⁸⁵

Although the plebiscitary right theorists are more restrictive than is presumed, their arguments give a greater *prima facie* moral permissibility to secession in far-reaching cases than the remedial theories allow. The demands of distributive justice among other desires like sustaining democratic legitimacy do not limit the right to secede. Despite the differences between them, there are three commonalities between remedial and primary rights theorists: the fulfilment of the right to internal self-determination; secession is legitimate if alternative measures for pursuing internal self-determination have either failed

⁸⁸³ Brando and Morales-Gálvez, "The right to secession: Remedial or primary?" 8-9.

⁸⁸⁴ Brando and Morales-Gálvez, "The right to secession: Remedial or primary?" 8-9.

⁸⁸⁵ Brando and Morales-Gálvez, "The right to secession: Remedial or primary?" 8-9.

or are unfeasible, and if the latter is true, this group is justified in deciding unilaterally if it wants to secede.⁸⁸⁶

This theory is important in establishing the right to self-determination for peoples outside the framework of occupation and colonialism, and within the existing states in a democratic and peaceful manner. The right to self-determination is considered an essential part of the rights of any human group in a certain region, and exercising this right depends on their desire and will, in any location. The theory favours the people's rights to self-determination over the sovereignty and territorial integrity of existing states.

However, there are many criticisms of this theory. It does not take account of the normative ramifications of occupancy of territory, territorial integrity and sovereignty for the existing state. As it affirms self-determination as a part of collective rights and liberties, there is no consideration of the political condition for implementing it, which has a key role in implementing this right or not. Even in the post-Cold War era, there are different cases of self-determination, in which although groups have a legitimate and legal right, because of the lack of balance of power and international politics, all efforts towards solving the problems and enforcing the right to self-determination have failed.

During the last century, the Kurdish liberation movement subscribed to the theory that the right to self-determination is as much a fundamental right for Kurdish people as for any other people in the world as it is a component of global human rights, so the Kurds must be allowed to exercise this right democratically. The main argument was that the people of Kurdistan are a different people from the Iraqi people, and the vast majority want

⁸⁸⁶ Brando and Morales-Gálvez, "The right to secession: Remedial or primary?" 18-19.

to exercise the right to self-determination and secession from Iraq. But because of the political balance of regional and international politics, there was no opportunity for the Kurdistan people to exercise this right. Kurds' claims to the right of self-determination remained as political demands until the international policy changed, in particular, the US policy towards the Kurdish issue in Iraq in the post-Cold War era. Afterward, the situation of the Iraqi Kurds was changed; they established a de facto state in 1991 which then transferred into a constitutional federal region within Iraq in 2005. They conducted a unilateral independence referendum in 2017, with the majority voting for independence, but they failed to obtain it. Currently, besides the problems outstanding between the Kurdistan Region and the Iraqi state, there are regional and international politics, including US policy, which do not allow them to exercise separation from Iraq and establish their independent state.

B. The Kurdistan people's right to self-determination in the light of primary rights theory

This theory has typically been used as a framework of justification, the doctrine for all national movements, peoples, and groups demanding self-determination and independence at the global level, including the Kurdish liberation movement. The Kurds used this theory as a conceptual basis for their address to the Iraqi state and the world, to assert their right to self-determination and independence.

As noted earlier, according to this theory, the right to self-determination is a primary right for all nationalities, peoples, and ethno-religious groups. Moreover, it is a primary right related to the population of a certain region. People exercise this right according to the desire and will of this population or the majority of it.⁸⁸⁷ The right of self-determination is an inherent and fundamental right for all peoples regardless of population size, religion, race and location, regardless of whether there is occupation, injustice or persecution. The decisive factor is the will of the inhabitants of the region to design their future freely. This right includes both internal and external dimensions of self-determination. From this standpoint, the right of the people is more important than the sovereignty and territorial integrity of the existing state.⁸⁸⁸

The reason the Kurds, including the Iraqi Kurds, rely on this theory is that it is focused on national specificity. The Kurds are a different ethnic group and nation, and are the largest ethnic group in the world without their own state. Kurds form the fourth largest ethnic group in the Middle East after Arabic, Persians, and Turks.⁸⁸⁹ They also consider themselves indigenous to the region.⁸⁹⁰ The Iraqi Kurds are currently the least integrated into the Iraqi nation, existing as a virtual independent state within a state. The British government included the Kurds in Arab Iraq after it created the kingdom in the 1920s, and

⁸⁸⁷ Brando and Morales-Gálvez, “The right to secession: Remedial or primary?” 107-118.

⁸⁸⁸ Wellman, “A defense of secession and political self-determination,” 142-171.

⁸⁸⁹ Emel Elif Tugdar and Serhun Al, *Comparative Kurdish Politics in the Middle East: Actors, Ideas, and Interests*, (New York: Palgrave Macmillan, 2017), 170-171.

⁸⁹⁰ Michael J. Kelly, “The Kurdish Regional Constitution within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause,” *Penn State Law Review* 114, no. 3(2010): 707-708.

they have resisted this inclusion for most of the ensuing century.⁸⁹¹ The Kurds have relied on this theory until the present day, and they affirm that this right is an inherent and fundamental right for them as a different and distinct people. They believe that it was unjust that the great powers linked the Mosul Vilayet "present Iraqi Kurdistan" to Iraq, in 1926, through the League of Nations⁸⁹², without any consideration for the will of the Kurdish people at that time.

The common belief in Kurdistan society is that the people of Kurdistan have all the components and elements of a "people" like any other people in the world, such as land, language, race, history, culture and common loyalty to their issue. Accordingly, the same rights granted to other peoples should be granted to them, including the right to self-determination and independence.⁸⁹³

Moreover, the programmes, discourses and positions of all political parties in Kurdistan reveal a clear and decisive claim to the right to self-determination and independence as a primary right for the people of Kurdistan, in addition to support and appreciation for the struggles of other peoples for freedom and their rights⁸⁹⁴, consolidating the concepts of the oneness of injustice and the oneness of the oppressed. The right to self-

⁸⁹¹ Williams, "Creating a Strategic Framework for Addressing the Conflict between Sovereignty and Self-Determination: Earned Sovereignty."

⁸⁹² Shields, "Mosul, the Ottoman Legacy and the League of Nations," 217.

⁸⁹³ Fred Halliday, *Can we write a modernist history for the Kurdish national movement?* In *Ethnicity and State, Kurds in Iraq, Iran, and Turkey*, edited by Faleh Abdul-Jabbar and Hisham Dawood (Baghdad - Beirut: Institute for Strategic Studies, 2006), 11.

⁸⁹⁴ KPD, "Programme and Rules of Procedure, Conference 13, 2010, goals, Article 22,11,"; Khamosh Omer, *Documents of Kurdistan Regional referendum 25-09-2017* (Kurdistan parliamentarians union,2018), 9-12.

determination is formulated as a right for all peoples globally, along with the need to collect international support for this right, intellectually and theoretically.

Most of those who were interviewed for this study, believed that the Kurdish people have a right to self-determination in principle like all other peoples in the world, but differ in their opinion of the circumstances, time and the Kurdish and Iraqi interests in this matter.⁸⁹⁵

According to some, it is in the interest of the Kurds to remain with Iraq as a strong, prosperous and safe region and to strengthen Iraq also.⁸⁹⁶ Others fear that the neighbouring countries, especially Turkey, Iran and Syria, will never accept the independence of the Kurdistan Region; they believe the establishment of the Kurdish state is a direct threat to their national security, due to the same issue.⁸⁹⁷ Others believe that it is in the economic interest of the Kurds to remain with Iraq and to benefit economically and politically from Iraq, at least initially.⁸⁹⁸ Some experts believe that the Kurdish and Iraqi interests are in continuing the unity of Iraq and cooperating to solve the outstanding problems between Baghdad and Erbil peacefully rather than by secession.⁸⁹⁹

⁸⁹⁵ Karwany, Interview by the researcher; Hadidiy, Interview by the researcher; Fahmy, Interview by the researcher.

⁸⁹⁶ Fahmy, Interview by the researcher.

⁸⁹⁷ damalogy, Interview by the researcher.

⁸⁹⁸ Hadidiy, Interview by the researcher.

⁸⁹⁹ aljanby, Interview by the researcher.

In reality, not resolving the Kurdish issue and denying the rights of the Kurdish people is the basis and motivation for all problems, crimes and wars in Iraq against them, against the Iraqi people and against Iraq's neighbours.⁹⁰⁰

The Kurdistan Region, in its political discourse on peaceful self-determination, focuses on linking this right to the issue of peace and the security of Iraq and the region. It focused on this aspect of the matter to avoid opposition to regional states and take account of the demands and sensitivities of the international community. Kurds always affirm that the Kurdistan Region cares deeply about regional and international security and stability, and will never be a threat to the national security of any state in the region.⁹⁰¹

The Kurdish liberation movement in Iraq has officially avoided the emblem of the state and secession, but in reality, the Kurds have many times accepted the dissolution of autonomy and even federalism, as a transitory stage, while the ultimate goal is to obtain the right to self-determination with which freely to determine their political and international status. Kurdish history has many examples, where the only possible solution was accepted, while the Kurds negotiated with Iraq about the minimum level of independence, freedom and autonomy to be granted. Sometimes there has been an agreement which failed quickly due to internal and external factors. For instance, the peace agreement signed on March 11, 1970, between the Iraqi government and the Kurdish movement, recognized the Kurds as the second nation in Iraq and gave them autonomy.

⁹⁰⁰ Chloe Cornish and Laura Pitel, "A 100-year struggle: the Kurdish fight for land and identity. Ethnic group spread across four countries has long struggled for statehood," *Middle Eastern politics & society*, accessed October 8, 2019. <https://www.ft.com/content/871c10c2-e9c3-11e9-85f4-d00e5018f061>

⁹⁰¹ Masoud Barzani, quoted in Khamosh Omer, *Documents of Kurdistan Regional referendum 25-09-2017*, 13.

This agreement came after wars and armed clashes, and as the outcome of long and difficult negotiations, but Iraq continued to perpetrate violence against Kurds. After receiving military aid from Iran, Israel and the United States, the Iraqi government was strengthened, and in March 1974, it unilaterally ended this agreement and the war started again.⁹⁰² Then, after signing the Algiers Agreement in 1975, between Iraq and Iran, under American supervision, the Kurdish movement witnessed a major setback and the Iraqi government took control of all areas of Iraqi Kurdistan, which were under Kurdish control before this date.⁹⁰³

In a referendum on the future of Iraqi Kurdistan in January 2005, conducted by an independent non-governmental body called the "Higher independent commission for referendum", a majority of the people of Kurdistan (98%) voted in favour of independence.⁹⁰⁴ The justification for this decision can be found within the framework and arguments of primary rights theory. The justifications, slogan, and intellectual framework of the Kurdistan Region's discourse on the Kurdistan independence referendum in 2017, mainly depended on this theory as well as remedial rights theory. Also, about 93% voted in favor of independence.⁹⁰⁵ This shows that the Kurdish people believe they have the right to decide their own destiny freely, but international politics has held them back until now.

The Kurds are greater in number than many independent states. The geographical area of the Kurdistan Region of Iraq alone is larger than many countries in the world. As

⁹⁰² Maisel, *The Kurds: An Encyclopedia of Life, Culture, and Society*, 251.

⁹⁰³ Shareef, *The United States, Iraq and the Kurds: Shock, Awe and Aftermath*, 8.

⁹⁰⁴ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 20-34.

⁹⁰⁵ BBC, "Iraqi Kurds decisively back independence in referendum."

Peter Galbraith has pointed out, “It’s baffling” why the U.S. doesn’t recognize a Kurdish state, that the area has long been a bastion of stability in Iraq, “It’s larger and more viable than half the states in the United Nations.”⁹⁰⁶

Furthermore, in comparison with the peoples who have gained their independence recently, such as those of Southern Sudan, Kosovo, East Timor, the Kurdish people have the same characteristics and constituents, except for the political situation and the position of international politics toward their case. The superpowers have dealt with the Kurdish issue and the essential rights of the Kurds as an internal issue and not a cause of concern, because of the interests of these superpowers in Iraq and other related countries, Turkey, Iran, and Syria.⁹⁰⁷

The key question here is: is the admission that the Kurdish people, like all the peoples in the world, have the right to self-determination, sufficient to justify the exercise of this right and deciding its destiny freely? Or there are other factors in the matter?

In conclusion, the balance of power and supportive international politics are key factors in achieving the right to self-determination for the Kurdish people, just as they have played a key role in different self-determination cases including Kosovo and southern Sudan. According to this liberal theory, the right to self-determination is a legitimate right for all peoples, while its respect and its implementation do not depend on legal texts or scientific theories alone, but mainly on the political balance of power and international

⁹⁰⁶ Krishnadev Calamur, “Why Doesn’t the U. S. Support Kurdish Independence? The Kurds are one of Washington’s closest and most reliable allies in the Middle East.” *The Atlantic*, Global, October 20, 2017, accessed September 22, 2018. <https://www.theatlantic.com/international/archive/2017/10/us-kurdish-independence/543540/>

⁹⁰⁷ Madani, *Kurdistan in strategy of powers*, 440-442.

politics. So even though the Kurdish people have the right to freely decide their future like any people, the political situation has a decisive and final role in respecting this right and its application. Consequently, since the balance of power and international politics have not so far favoured the Kurdistan Region, it could be argued that despite the positive perceptions supporting the independence of Kurdistan, and although the Kurdish people have long struggled for self-determination, at this stage, there is no supportive political situation at any level, national, regional or international, which would encourage them to exercise this right.

§II: Kurdistan claims for self-determination and remedial right theory

Remedial rights theory is an example of the new view in support of self-determination within the ethno-national conflicts' resolution context or a context outside the traditional colonialism. it provides a theoretical solution for the peaceful settlement of self-determination issues concerning oppressed peoples, which believes that any people, or part of people or minority, have a right to self-determination and secession if they faced violation of their fundamental rights.

A. Remedial rights theory and the right to self-determination

Due to global political developments, many continuing ethno-national conflicts and problems related to self-determination in different regions of the world, and the weakness of existing theories to interpret new cases, a new theoretical framework emerged in the post- Cold War era, resulting in a new scientific theory: remedial rights theory. This theory provided a new way of understanding the different demands of the right to self-determination and independence. Additionally, it was intended to reduce the misunderstanding between theory and practice, between legal texts from international law and their application in political conditions. This new theory was proposed by the political philosopher Allen Buchanan, as a part of liberal theory.⁹⁰⁸ This paragraph briefly explains its importance as a scientific approach to examining cases of self-determination and solving ethno-national conflicts in recent years, and consequently its importance in analysis and justification of the case of the Iraqi Kurdistan Region.

Allen Buchanan noted that the universe was in desperate need of a justified and acceptable theory of self-determination and secession. No single extensive theory of secession and the right to self-determination was then wholly accepted in the school of political philosophy.⁹⁰⁹ Such gaps made Buchanan question why there is neither a framework nor a justification to explain the rationale of external self-determination. Buchanan referred to secession as a desire by the peoples of a group within an established

⁹⁰⁸ Buchanan, "Theories of Secession," 31.

⁹⁰⁹ Buchanan, *Secession: the morality of political divorce, from Fort Sumter to Lithuania and Quebec*, ix.

country to seek autonomous and sovereign status to accomplish political self-determination.

The remedial rights theory concerns itself with last resort solutions to long-held grievances that groups may have, spurring them to assert self-determination as a means of diffusing historical justice. The remedial nature of this theory places the rights of oppressed peoples above existing states.⁹¹⁰ According to this theory, violation of rights, injustice and crimes against any people, gives them a justification to external self-determination and secession. Thus, in these circumstances, secession is valid; the reclamation of territory previously occupied by a community that was unjustly lost e.g. the Baltic territories that became part of the USSR seceding during the collapse of communism in 1989 – 91, as well as the assertion of territorial rights as a last resort, as the solution to persistent abuses of rights, or the assertion of territorial rights as a solution to the revocation or infringement of previous autonomy agreements.⁹¹¹

Consequently, the remedial rights theory takes a dual view of the challenge provided by self-determination by considering the most extreme stimulants to separation: historical injustices and human rights abuses.⁹¹² Historical injustices in this context revolve around the annexation of territory from its previous occupants, whether they had organized systems of self-governance or not. Buchanan espoused this view and consolidated the concept of territorial integrity in favor of the victims rather than the violators of these

⁹¹⁰ Seymour, "Internal self-determination and secession."

⁹¹¹ Seymour, "Internal self-determination and secession."

⁹¹² Allen Buchanan, "Federalism, Secession, and the Morality of Inclusion," *Arizona Law Review* 37, no. 53 (1995): 53-63.

rights.⁹¹³ Thus, history is replete with wars, peace treaties, conventions, constitutions, laws, and statutes all coined with the purpose of asserting or protecting the right to self-determination and the territorial claims of occupants. As the Maldives representative said at the UN's 67th General Assembly gathering: "Whether this right is taken away by military intervention, aggression, occupation, or even exploitation, the world cannot condone its deprivation from any peoples in any region."⁹¹⁴

The second aspect of this theory is the abuse of human rights as the trigger to secession demands as a means of self-determination, evidenced in violence against groups or discrimination in governance and its benefits. The first element of this part considers gross human rights violations such as when violence or genocide is unleashed on a populace as a state policy, as grounds for secession and self-governance according to the remedial rights theory.⁹¹⁵ Notable examples include South Sudan's split from Sudan in 2011 after a successful referendum as a consequence of more than 5 decades of state neglect and genocide⁹¹⁶. On the other hand, discrimination and denial of rights within existing states such as the breaching of autonomy safeguards in Kosovo with respect to their relationship with Serbia under Slobodan Milosevic also constitutes grounds for secession as per remedial rights theory.⁹¹⁷

⁹¹³ Allen Buchanan, "Theories of secession," 35-40.

⁹¹⁴ UN, "Universal Recognition of Inalienable Right to Self-Determination Most Effective Way of Guaranteeing Fundamental Freedoms," Third Committee Told. *Meetings Coverage and Press Releases*, November 06, 2012, accessed December 20, 2017. <https://www.un.org/press/en/2012/gashc4051.doc.htm>

⁹¹⁵ Stanford Encyclopedia of Philosophy, "Political Realism in International Relations."

⁹¹⁶ Anthony J. Christopher, "Secession and South Sudan: an African precedent for the future?" *South African Geographical Journal* 93, no. 2 (2011): 125-132.

⁹¹⁷ Daniel Fierstein, "Kosovo Declaration of independence: an incident analysis of legality, policy and future implications," *Boston University International Law Journal* 26, no. 417(2008): 217-442.

This theory considers that peoples, as such, have a collective right to self-determination and are entitled to secession in this case only.⁹¹⁸ Consequently, if the majority of a population of a certain area exercised self-determination and decided on secession, it must be respected by the parent state and the international community, unlike the primary rights theory, by which the right to self-determination is regarded as a right for all peoples in all cases.⁹¹⁹

It is evident that the remedial rights theory does not need to conform to the international legal standard that acknowledges the principle of territorial integrity as taking precedence over the right to self-determination in practice. This conclusion is probably informed by the practicability of many self-determination situations tending towards secession and independence.

However, Buchanan identified decentralization or federalism as a means by which remedial rights theory works to ensure internal self-determination is addressed while secessionist tendencies are diffused as a means of conflict resolution in the post-Cold War era. He pointed out that some of the triggers for self-determination, such as a desire for more efficient administration and dispersal of concentrated power, do not necessarily require secession as a solution and can be addressed adequately through federalism or devolution of power.⁹²⁰ For example in Kenya a brutal ethnic war after disputed elections in 2007 yielded negotiations that eventually led to the promulgation of a new constitution in 2010 that entrenched decentralization and enabled all ethnic communities and minorities

⁹¹⁸ Seymour, "Secession as a Remedial Right," 423.

⁹¹⁹ Buchanan, *Uncoupling Secession from Nationalism and Intrastate Autonomy from Secession*, In *Negotiating Self-Determination*, 83.

⁹²⁰ Buchanan, "Federalism, Secession, and the Morality of Inclusion," 53-63.

to set up regional governments that addressed their unique needs at the grassroots level. This development greatly diffused sentiments of marginalization among many minorities that previously felt distant from the centre of power.⁹²¹ Even secession can be considered to be viable when injustices are put aside and the accommodation of various national groups within a unified state cannot be accomplished because of insurmountable variations.⁹²²

Buchanan⁹²³ posited that the theory was a sure way of diffusing the grievances that inflame the desire for self-determination. He claimed that the interests of states in maintaining territorial sovereignty is likely to spur them in the direction of safeguarding various aspects of their polity. First, in acknowledgment of the ramifications of the remedial rights theory, most states would rather protect the safety, rights and expectations of groups: remedial rights theory protects self-determination. Second, states are likely to empower and engage a broad cross-section of groups in participatory governance to minimize sentiments of exclusion or marginalization that can stimulate self-determination and secession. Buchanan considered the remedial rights theory the best safeguard of self-determination that is acceptable in international law.⁹²⁴ Moreover, if these steps faltered or the people or part of a people were exposed to injustice and persecution by their state, then, exercising the right to self-determination and even separation would be the last resort. The

⁹²¹ Michelle D'Arcy and Agnes Cornell, "Devolution and corruption in Kenya: Everyone's turn to eat?" *African Affairs* 115, no. 459 (2016): 246-273.

⁹²² Busquets, *Morality and Legality of Secession: A Theory of National Self-Determination*, 179-180.

⁹²³ Stanford Encyclopedia of Philosophy, "Secession," *Stanford Encyclopedia of Philosophy*, Jun 22, 2017, accessed February 20, 2018. <https://plato.stanford.edu/entries/secession/>

⁹²⁴ Stanford Encyclopedia of Philosophy, "Secession."

external self-determination and secession of minorities and different groups must be in specific arrangements with guarantees for the rights of other minorities and components in the new state, to avoid a repetition of the same grievances, repressive approaches and violations that prompted and justified the separation from the mother country, and prevent their recurrence. Furthermore, he pointed out that secession as a right on a par with territorial integrity actually exposes minorities, who are generally the ones who seek self-determination via secession, to new cycles of abuses. In the first instance, minorities who succeed in their secession push to become majorities in the new states, creating new minorities who immediately become vulnerable. Secondly, members of the minority who remain in the old state or entity become an even smaller minority exposed to even more abuses and discrimination. For this, external self-determination must be a final solution.

The dominant frameworks roughly conform to Buchanan's remedial rights only theory with examples such as the protracted South Sudan and East Timor secessions illustrating the point. The complicated situation in the Balkan countries, especially during the disintegration of Yugoslavia, was a textbook case of various aspects of self-determination leading to secession colliding. However, the biggest influence sustaining self-determination is exerted by UN observers who conduct peacekeeping missions and oversee the transition to egalitarianism and democracy through free elections. Fox highlighted numerous instances where the UN's intervention effectively entrenched democracy creating coalition governments or opening the path to secession by stimulating self-determination.⁹²⁵

⁹²⁵ Gregory H. Fox, "Self-Determination in the Post-Cold War Era: A New Internal Focus?" *Michigan Journal of International Law* 16, no. 3 (1995): 733-781.

However, scholars have considered the stipulations of the remedial rights theory extreme due to the fact that it recognizes the external right to self-determination in one case only: the presence of crimes and grave violations with proven evidence, and does not apply to every group demanding this right.⁹²⁶ This right like any other right is a permanent right for peoples and it must be ensured democratically for them at any time. Philpott argued that the democratic intuition in international relations is that just as self-governing peoples ought to be unchained from kings, nobles, churches, and ancient custom, self-determining peoples should be emancipated from outside control - power, colonial authority, and communist domination. Self-determination is inextricable from democracy; our ideals commit us to it.⁹²⁷ Consequently, the exercise of this right does not necessarily require revolution and violence by peoples, or injustice, violations, and serious crimes by governments. This view is strengthened by introducing historical accidents that did not involve the efforts or consent of groups seeking self-determination e.g. the creation of states after the First and Second World Wars that brought together disparate communities, sometimes without their knowledge, or consent or efforts, like most states in the Middle East including Iraq.

The problem with the remedial rights theory is that all states are regarded equally; it does not take into account the process of establishing the existing states, the type and size of these nations and groups which demand their right to self-determination, and their components of self-management, separation and state-building independently. For example, when the great powers which were victorious in the First World War created

⁹²⁶ Christopher H. Wellman, "A Defense of Secession and Political Self-Determination" *Philosophy and Public Affairs*, 24, no. 2, (1995):142-171.

⁹²⁷ Philpott, "In Defense of Self-Determination,"352-385.

Turkey, Iran, Iraq, Syria, there was no regard for the demands of the Kurdish people to determine their future freely. This has led to the Kurdish problem and the national conflicts in these countries after WWI. Moreover, the theory provides the state that the group is seeking to split from with the incentive to neglect the targeted territory and ensure it cannot provide a self-governing realm for the group.

In conclusion, given the legal ramifications and weight of self-determination coupled with its symbolic power as a beacon of freedom, some activists and leaders have frequently utilised self-determination in an attempt to capitalise on international sympathies. They have tried to internationalise issues by connecting the circumstances of the objective to international law as well as to the precedent in the rhetoric of neo-colonialism. Nonetheless, the international community disdains such connections, frequently linking the demands for self-determination solely with separatist tendencies. The political implications of preventing any peoples or neglecting any group claim to the right to self-determination can potentially destabilise the universe where borders overlap and ethnicities mingle.

It is possible to differentiate the primary rights and remedial rights arguments in relation to secession. In the primary rights framework, seceding is a right that can be offered to people even in the absence of injustices to justify secession. Conversely, the remedial rights framework indicates that secession can be justified only when injustices done to the people seeking secession have been documented.

Despite the criticism levelled at it, the Remedial Right Theory is a suitable theoretical basis for addressing the case of Iraqi Kurdistan, given the bloody history of Iraqi politics in dealing with the Kurdish issue since the creation of the Iraqi state until the end

of the Cold War. After the first Gulf war, in order to stop the Iraqi government's crimes against the Kurdish people, a safe area for the population of Kurdistan was created by UN Resolution 688, "no-fly zone"⁹²⁸. Even now there are many permanent and complex problems between Erbil and Baghdad about disputed areas, the distribution of wealth and power, and participation in the Iraqi state. This theory provides an acceptable basis for the claim of the Kurdistan region to exercise the right to self-determination and for presenting a permanent solution to the Kurdish problem in Iraq, provided that this right is exercised peacefully, with a suitable political environment and balance of power.

B. The Kurdistan people's right to self-determination in the context of remedial rights theory

This theory is a new theory about the legal framework surrounding the exercise of the right to self-determination. It could be utilised to explain and justify cases of practicing self-determination and resolving ethno-national issues in the post-Cold War era.⁹²⁹

According to this theory, exercising the right to self-determination can extend and expand more and more broadly within the framework of colonialism, as it is only granted to the peoples under colonial rule, and according to the UN listing.⁹³⁰ Rather, this right

⁹²⁸ UNSCR, "Resolution 688 (1991) of 5 April 1991."

⁹²⁹ Buchanan, *Secession: the morality of political divorce, from Fort Sumter to Lithuania and Quebec*, ix.

⁹³⁰ UN, "Non-Self-Governing Territories," *United Nations and decolonization*. Accessed august 4, 2017. <https://www.un.org/dppa/decolonization/nsgt>

must include every people, even minorities who suffered from injustice and abuses perpetrated by the parent states in order that this right may be exercised freely. Therefore, the UN and the international community should have answers to questions about the cases and claims of self-determination by peoples or part of peoples within the framework of the existing countries; the answers cannot be limited to the traditional UN theory of self-determination that links it to cases of colonialism only.⁹³¹

According to this theory, all peoples and distinct groups have the right to determine their own destiny internally, or internal self-determination, but for the external form of self-determination, there must be a clear justification associated with a severe violation of the essential rights of this people or group by the existing state.⁹³²

In short, according to this theory, every people has the right to external self-determination in case of violations of their human rights, or if these people or groups are prevented from exercising the right of internal self-determination by the existing state.

In the Kurdish case, various forms of injustice, persecution, and genocide crimes were practiced against the Kurdish people by the Iraqi state to international silence during the last century. The Kurds have been the group which has suffered most oppression under the Iraqi regime, and for a century, the Iraqi regime repressed the Kurds with genocidal policies to further Arab nationalism, for the continuity and strengthening of Arab majority domination in Iraq and to impose the Arab identity over all. By 1990, Iraq had demolished approximately 4,500 Kurdish villages, and also used chemical weapons against the Kurds;

⁹³¹ Buchanan, "Theories of Secession," 32-36.

⁹³² Buchanan, "Theories of Secession," 32-36.

more than 5000 people were killed in Halabja city alone. An estimated 182,000 died between 1987 and 1990 in the Anfal genocide.⁹³³

According to remedial rights theory the tragic history of the Kurdish people can justify their claims to exercise their right of self-determination, and it can also justify the demands of the Kurdistan Region for independence.

The Kurdistan Region relied on this theory, besides the basic right theory, to justify its decision to hold a referendum on the independence of the Kurdistan Region in 2017. As former President of IKR Masoud Barzani has repeatedly stressed, due to the injustice, genocidal crimes and severe violations committed by the Iraqi state against the people of Kurdistan in the past, and the continuation of racist policies towards the Kurdistan Region even after the change of the Iraqi regime in 2003, it is imperative that the Kurdistan Region exercise this right democratically.⁹³⁴ He said "Kurdistan's share of partnership with Baghdad was genocide, oppression, and killings," therefore "only independence would guarantee Kurds the past atrocities would not reoccur. " As he observed, "the Kurds lost hope in a renewed relationship and decided to hold a referendum." which according to him should lead to independence.⁹³⁵

The Kurdistan Region can depend on a continuance of this bloody history resulting from the imposition of Iraqi control on Kurdistan. The racism and oppressive mentality in Baghdad which persisted even after Saddam's regime changed, but reappeared in other

⁹³³ BusinessNews Publishing, *Summary: The End of Iraq: Review and Analysis of Peter W. Galbraith's Book*, 24-26.

⁹³⁴ Masoud Barzani, *Staking Our Claim The case of the Kurdistan referendum* (Erbil: Barzani Charity Foundation,2020), 64-76.

⁹³⁵ Sulaiwany, "President Barzani: I believe Kurdistan referendum will lead to independence."

forms. Anxiety, fear and lack of confidence about not repeating these crimes and problems pushed the Kurdistan Region to decide on self-determination and a belief that no future was possible except the creation of an independent entity. In addition, there were several complex problems in Baghdad and Erbil: the cutting of the budget share of IKR from the federal budget, and the interference of neighbouring countries and other regional and international powers. As a natural result of the continued external interference in Iraqi affairs by several countries, particularly the neighbouring countries which had an interest in complicating the Kurdish issue in Iraq, an independence referendum was held in 2017, to promote the Kurds' desire for independence, although its implementation was postponed.

All of the neighboring countries, Iraq, Turkey, Iran and Syria, despite all the differences among them, are united in not allowing the Kurdish struggle for independence and the establishment of the Kurdish state anywhere.⁹³⁶ Moreover, Kirkuk city, the core of the disputed areas between Baghdad and Erbil, is also a sensitive issue for the Turkish. Ankara is against the city's annexation into the Kurdistan Region, the pretext being that there are Turkmen there.⁹³⁷ Also, Iranian interference in Iraqi affairs through the dominant powers in Iraq, has been extensive in the internal political affairs of Iraq. It focuses on directing matters so that the remaining Kurdistan Region within the Iraqi circle is

⁹³⁶ Joost Hiltermann, "The Kurds: A Divided Future?," *International crises grope*, 19 May 2016. Accessed April 12, 2018. <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/kurds-divided-future>

⁹³⁷ Mr Nursin Atesoglu Guney, *Contentious Issues of Security and the Future of Turkey* (Hampshire-Burlington: Ashgate Publishing, Ltd., 2013), 78.

controlled and does not develop into an independent entity, as a model for Kurds in Iran or other countries.⁹³⁸

These crises in recent years demonstrate the impossibility of the Kurdistan Region continuing within Iraq forever. Factors include the crisis of the disputed territories between Baghdad and Erbil⁹³⁹, the investing in oil by the Kurdistan Region independently without regard to Baghdad, the Kurdistan Region's share cut from the state general budget since 2014 by the central government⁹⁴⁰, the direction of the Iraqi army and forces against the Kurdistan Region, which led to military clashes between the Iraqi army and Iraqi militias and the Kurdistan Region's forces, the "Peshmerga", after the Kurdistan Region's independence referendum in October 2017, military control by the Iraqi forces over the disputed areas,⁹⁴¹ and attempts to end the authority and existence of the Kurdistan Region by a military attack,⁹⁴² even after the results of the referendum were frozen by the KRG authorities, although it is a constitutional region according to the Iraqi constitution.⁹⁴³ These factors confirm the argument of this thesis. The imbalance of power makes

⁹³⁸ Garrett Nada, "Iran's Role in Iraq: Part 1," *Wilson centre, insight and analysis*, accessed July 04, 2018. <https://www.wilsoncenter.org/article/part-1-irans-role-iraq>

⁹³⁹ ICG, *Reviving UN Mediation on Iraq's Disputed Internal Boundaries, Report No. 194 / Middle East and North Africa*, i-ii

⁹⁴⁰ Khalaf, "Baghdad and Kurds reach budget deal-First sign of breakthrough in a fraught relationship."

⁹⁴¹ Daher, "The Kurdish Struggle and Self-Determination."

⁹⁴² Ensor, "Iraq rejects Kurds' offer to suspend independence drive as it launches new push for territory."

⁹⁴³ Iraqi constitution, Art. 117: first, state: This Constitution, upon coming into force, shall recognize the region of Kurdistan, as a federal region.

Kurdistan's demand for self-determination and independence very difficult at this stage. Theoretically, it could be imagined that the appropriate and peaceful solution is a peaceful secession, according to an agreement between both sides (Iraq and IKR), but practically, the political situation has a decisive impact on the subject.

Furthermore, by depending on the results of the cases about self-determination as a remedy for national and ethnic issues in the post-Cold War era, including South Sudan, Kosovo, East Timor, it could be concluded that the exercise of this right in a peaceful way and with the prior consent of both sides will lead to ending problems and the promotion of peace, and national, regional and international stability. The implementation of the right to self-determination in East Timor has led to peace and stability and the ending of injustice, violence, and repression by the Indonesian state, as well as solving complex national conflict that has been costly at political, economic and human levels.⁹⁴⁴ On the other hand, in the case of South Sudan, Sudan's north-south civil war went on for more than two decades, and resulted in roughly two million war-related deaths⁹⁴⁵ and the displacement of millions of others from their homes.⁹⁴⁶ In the end, respect and implementation of the right to self-determination peacefully according to this theory led to the ending of this long bloody conflict for fifty years between the government and the secessionist movement.⁹⁴⁷

⁹⁴⁴ John G. Taylor, *Indonesia's forgotten war: The hidden history of East Timor* (New York: Zed books, 1991),125.

⁹⁴⁵ CAI, *The World Factbook* (Washington: National Foreign Assessment Center (U. S.). Central Intelligence Agency, 2013), 656.

⁹⁴⁶ Girma Kebede, "Sudan: The North-South Conflict in Historical Perspective, Contributions in Black Studies," *A Journal of African and Afro-American Studies*15, no. 1 (1997): 15-45.

⁹⁴⁷ Brian Raftopoulos and Karin Alexander, *Peace in the Balance: The Crisis in the Sudan* (Cape Town: Institute for justice and reconciliation,2011),7.

Kosovo announced its secession from Serbia, ended the conflict, threat and genocide against the Kosovan people, and strengthened stability in the region. The conflict was a result of Yugoslavia's 1988 constitutional amendments withdrawing Kosovo's partial autonomy as stipulated in the 1945 constitution, sparking fears among the Albanian population in Kosovo that they would be subsumed into their larger neighbours, denying them a chance of self-determination and the creation of new countries as happened in neighbouring provinces after the death of Yugoslav president Joseph Tito in 1986,⁹⁴⁸ which started the armed conflict between the KLA and the Yugoslav forces.⁹⁴⁹ At the end of the conflict, more than 13,000 people were confirmed dead or missing and 200,000 residents fled the province, fearing Albanian retaliation, while almost 1.5 million people were displaced into neighbouring regions to avoid the violence at home.⁹⁵⁰

Many in the Kurdistan Region fear a similar situation occurring. After the agreement of 11 March 1970 between the Iraqi government and the Kurdish liberation movement, the Iraqi government accepted self-governance for the Kurds. Then Iraq withdrew from the agreement unilaterally and created a special type of autonomy regardless of the agreement and Kurdish movement, so that the conflict began again.⁹⁵¹ There is a concern in the Kurdistan Region about attempts to make constitutional

⁹⁴⁸ Sabrina Petra Ramet, *Balkan Babel: The disintegration of Yugoslavia from the death of Tito to the fall of Milosevic*, 4th ed (New York: Routledge, 2018), 12-20.

⁹⁴⁹ James Pettifer, *The Kosova Liberation Army: Underground War to Balkan Insurgency, 1948-2001* (London: Hurst, 2012), 190.

⁹⁵⁰ Mirjana Morokvasic, "Yugoslav refugees, displaced persons and the civil war," *Refuge: Canada's Journal on Refugees* 11, no. 4 (1992), 5.

⁹⁵¹ Abdulla, *The Kurds: A Nation on the Way to Statehood*, 132; Gareth Stansfield, 'The Kurdish Question in Iraq, 1914-1974', *The Middle East Online Series 2: Iraq 1914-1974*, Cengage Learning (Reading: Thomson Learning EMEA Ltd, 2006), 6.

amendments in Iraq, aiming to reduce the rights of the Kurdistan Region and its constitutional existence. Due to the lack of trust between the two sides, history of conflict, and the outstanding problems between them, they do not trust the rulers in Baghdad. Therefore, with every demand or step to amend the constitution, the KRG has declared its concerns and has identified a conspiracy against its constitutional rights under the pretext of a comprehensive amendment to the constitution. The KRG totally rejected any amendment to the Kurdistan Region's constitutional rights as a federal region according to the Iraqi constitution.⁹⁵²

Moreover, in comparison with the above mentioned cases and examples, there is a justification for secession and independence based on violations, injustice, persecution, and repression directed against the people. There is a similar justification in the Kurdish case, on account of the widespread and serious violations and crimes and genocidal campaigns against the Kurdish people and the massacre of hundreds of thousands of them by the Iraqi state during the last century.⁹⁵³

However, the application of remedial rights theory may lead to concerns for the future and the situation of minorities in the new state, if one has been established. In the Kurdistan Region, all ethnic-religious minorities are well catered for, and they enjoy almost all political, civil, social, economic and cultural rights.⁹⁵⁴ Furthermore, in order to

⁹⁵² Megan Connelly, "Breaking each other's fingers: Kurdish parties nervously watch Baghdad — and one another," *Middle East Institute*, accessed November 22, 2019. [https://www. mei. edu/publications/breaking-each-others-fingers-kurdish-parties-nervously-watch-baghdad-and-one-another](https://www.mei.edu/publications/breaking-each-others-fingers-kurdish-parties-nervously-watch-baghdad-and-one-another)

⁹⁵³ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 20-34.

⁹⁵⁴ Middle East Research Institute, *Protecting Minorities Rights in the Kurdish Region, A tailor-made model* (Erbil: MERI, 2015), 5-12.

guarantee their rights more effectively, before the referendum held by the Kurdistan Region in 2017, after consultations and discussions among the high committee of the referendum with representatives of those minorities, a document was prepared: "The political document to guarantee the rights of national and religious components in Kurdistan". This document consists of a preamble with sixteen articles, focused on all rights of these ethnic and religious minorities, and clearly including social, economic, cultural and political rights. It was incorporated into the Kurdistan constitution in case independence was declared and the Kurdistan state established after the referendum.⁹⁵⁵

Consequently, allowing the Kurdistan Region to exercise this right and determine its future freely, after an agreement between Erbil and Baghdad, under the supervision of the UN, would be a real solution to the Iraqi national crisis, and a factor in promoting security, stability and peace for Iraq and the Kurdistan Region of Iraq at the same time.

The solution is important, and its implementation is important too. Hence, the application of this theory or the exercising of the right to self-determination by the people of the Iraqi Kurdistan Region, a legitimate right according to liberal theories, primary rights theory and remedial rights theory, is dependent on political factors. its application does not depend on this principle and scientific understanding only, but on the internal and external political situation. It depends mainly on the balance of power and international politics. Since the balance of power and international politics is not in favour of Kurdish will at this time, or implementing this solution in favour of the Iraqi Kurdistan Region, the Kurdish dilemma remains as it is now and the repercussions for Iraq and the region will continue.

⁹⁵⁵ Omer, *Documents of Kurdistan Regional referendum 25-09-2017*, 174-176.

SECTION II: Realism theory and the right to self-determination and Kurdish Question

Two central theories have been used to study the effects of international politics in self-determination of peoples: liberalism and realism. Although they have been challenged by other theories, they remain central to the discipline.⁹⁵⁶ New theories have emerged in recent stages as a result of developments in political and legal thought, alongside significant developments in international politics in the last decades. As mentioned earlier, the right to self-determination was formulated and developed in the specific political and legal context in which it is now known, as well as theoretical views that try to explain the topic from different perspectives.

The first paragraph of this section addresses the realist theory and the right to self-determination, and the impact of this theory on the politics of superpowers (§I), The second paragraph investigates Kurdistan's claims to self-determination and independence in the light of realist theory (§II).

§I: Realism theory and the right to self-determination

Classical realism is a theory of international relations that emerged in the post-World War II U.S.A. Influential scholars such as Hans Morgenthau, E. H. Carr, George F.

⁹⁵⁶ McGlinchey, Walters and Scheinflug, *International Relations Theory*, 4.

Kennan and Stanley Hoffman questioned or even denied the relevance of international law in world politics.⁹⁵⁷ Realists would question the relevance of the right to self-determination in the world of self-interest. For them, order and justice in international relations were achieved by means of international politics, and not by international law.⁹⁵⁸

Traditionally, the realist set of theories of international relations that addresses the roles of the public, the state, the military, and national interests in global politics necessarily tackles self-determination and the rights that peoples have in relation to the stakeholders.⁹⁵⁹ Realism in international relations can be considered as the discipline's oldest theory, which had its first advocate in Thucydides, who presented the idea that power trumps justice and morality in The Peloponnesian War. Among many others, Machiavelli and Hobbes, followed by E.H. Carr and Morgenthau offered their readers provocative questions that still challenge our times.⁹⁶⁰ Hans J. Morgenthau, one of the key theorists of realism, in *Politics Among Nations* (1948) helped to meet the need for a general theoretical framework. Not only did it become one of the most extensively used textbooks in the United States and Britain, but it also continued to be republished over the next half century, and was an essential exposition of the realist theory of international relations.⁹⁶¹ Numerous other

⁹⁵⁷ Robert J. Beck, Anthony Clark Arend and Robert D. Vander Lugt, *International Rules: Approaches from International Law and International Relations* (Oxford: Oxford University Press, 1996), 94.

⁹⁵⁸ Beck et als, *International Rules: Approaches from International Law and International Relations*, 94.

⁹⁵⁹ Justin Rosenberg, *The Empire of civil society: a critique of the realist theory of international relations* (London: Verso, 1994), 143.

⁹⁶⁰ David Boucher, *Political Theories of International Relations*. (Oxford: Oxford University Press, 1998), 47-170.

⁹⁶¹ Encyclopedia Britannica, "The postwar ascendancy of realism," *Encyclopedia Britannica*, Accessed December 12, 2019. <https://www.britannica.com/topic/international-relations/Scholarship-and-policy>

contributors to realist theory emerged in the decade or so after World War II, including Arnold Wolfers, George F. Kennan, Robert Strausz-Hupé, Kissinger, and the theologian Reinhold Niebuhr.⁹⁶²

Each of the classic realists, along with new realists such as Kenneth Waltz, explained international developments as a result of interactions between countries in the chaotic international system. While the early realists were considered defenders of the interest of the state where the actions of states are rooted in human nature, the new realists proposed variables that drive the political behaviour of countries represented in the balance of power. Counter-balances and economic, military and political strength are conditional on criteria such as population, geography, and state resources. The interests of realists are formed mainly by military force, while the new realists see that there are interests on which states work. Consequently, realistic theory can justify the alliance and cooperation between the US and the Kurds of Iraq, which is driven by both the role of power and their mutual interests.⁹⁶³

Realism has dominated the academic study of international relations since the end of World War II. Realists claim to offer both the most accurate explanation of state behaviour and a set of policy prescriptions (notably the balance of power between states) for ameliorating the inherent destabilizing elements of international affairs. Realism (including neorealism) focuses on abiding patterns of interaction in an international system lacking a centralized political authority.⁹⁶⁴ This theory in international politics stresses its

⁹⁶² Encyclopedia Britannica, "The postwar ascendancy of realism".

⁹⁶³ Marianna Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East Since 1945*, 13.

⁹⁶⁴ Duncan Bell, "Realism International Relations."

competitive and conflictual side. It is usually contrasted with idealism or liberalism, which tends to emphasize cooperation. Realists consider the principal actors in the international arena to be states, which are concerned with their own security, act in pursuit of their own national interests, and struggle for power. The negative side of the realists' emphasis on power and self-interest is often their skepticism regarding the relevance of ethical norms to relations among states. National politics is the realm of authority and law, whereas international politics, they sometimes claim, is a sphere without justice, characterized by active or potential conflict among states.⁹⁶⁵ The first assumption of realism is that the nation-state is the principal actor in international relations. Other bodies exist, such as individuals and organisations, but their power is limited. Second, the state is a unitary actor. National interests, especially in times of war, lead the state to speak and act with one voice. Third, decision-makers are rational actors inasmuch as rational decision-making leads to the pursuit of national interest. Internationally, there is no clear expectation of anyone or anything 'doing something' as there is no established hierarchy. Therefore, states can ultimately only rely on themselves⁹⁶⁶. Scott Pegg has argued that the realist assertion that global politics is little more than a contest between legitimate sovereign nation-states is arguably passé in the face of new challenges. The international relations of unrecognised entities continue to represent a significantly under-researched problem. He has stated that "the de facto state is illegitimate no matter how effective it is."⁹⁶⁷

⁹⁶⁵ Stanford Encyclopedia of Philosophy, "Political Realism in International Relations."

⁹⁶⁶ Antunes and Camisao, "Realism," quoted In McGlinchey, Walters and Scheinflug, *International Relations Theory*, 15-22.

⁹⁶⁷ Scott Pegg, *De Facto States in the International System* (Vancouver: Institute of International Relations – University of British Columbia, 1998), 1.

During the 1990s theoretical problems associated with unrecognised entities began to be addressed for the first time within frameworks which took realism into account. Moreover, realist wisdom would hold that the balance of power (i.e. the relative power of the host state to inhibit secession) will also determine the success or failure of separatist movements, as well as the level of external support received for the seceding territory.⁹⁶⁸ Therefore, to echo Morgenthau, the unrecognised entity endures a uniquely paradoxical existence in the realm of international thought due to the ‘tension[s] [which exist] between international theory and international reality.’⁹⁶⁹ However, emphasis on the national state as the main and only actor in international relations legally, represents a deficiency and a subject of criticism in theories of realism. Where there are regions, organisations and entities besides the nation-state can exercise international relations effectively, if they have a role and influence in formulating regional and international policies, including the Kurdistan Region.

The realist theory insists on the primacy of territorial sovereignty over national self-determination. Consequently, the realist theory supports the policy of containment of self-determination within the boundaries of existing states. This policy was implemented during the Cold War and the resulting bipolar balance of power, since each superpower restrained the other from supporting claims to self-determination that would have led to the fragmentation of existing states. However, the demise of the bipolar balance of power

⁹⁶⁸ James C. Harvey, *Over-Stating the Unrecognised State? Reconsidering De Facto Independent Entities in the International System* (PhD thesis Exeter University of Exeter, 2010), 65-66.

⁹⁶⁹ Hans Morgenthau, “The Intellectual and Political Functions of Theory” (1970), quoted in James Der Derian, *International Theory: Critical Investigations* (London: Palgrave, 1995), 38.

removed these restraints and thus opened up the possibility of the unchecked expansion of national claims to self-determination.⁹⁷⁰

From a realist perspective, all nations are self-reliant, and to preserve peace and rights use the balance of power.⁹⁷¹ Realism can be considered as one of the most enduring approaches in international relations. One of the reasons for this is that “it sets itself up as a no-nonsense practical science of international politics.”⁹⁷² In realism, all events in international politics make sense and can be explained through relatively clear and immediate principles. For these reasons, realism remains a cornerstone of International Relations theory.⁹⁷³

One of the central strategies of realism in the management of world affairs is the idea of ‘the balance of power’. This describes a situation in which states are continuously making choices to increase their own capabilities while undermining the capabilities of others. This generates a ‘balance’ of sorts as (theoretically) no state is permitted to get too powerful within the international system. If a state attempts to push its luck and grow too much, like Nazi Germany in the 1930s, it will trigger a war because other states will form an alliance to try to defeat it – that is, restore a balance. Hence, realism stresses the importance of flexible alliances as a way of ensuring survival, like the alliances during WWI and WWII in the war against ISIS. States ultimately count on self-help for

⁹⁷⁰ Pavkovic and Radan, “In Pursuit of Self-Sovereignty and Self-Determination: Peoples, States and Secession in the International Order.”

⁹⁷¹ Duncan Bell, “Realism International Relations.”

⁹⁷² Peter Sutch and Juanita Elias, *International Relations: The Basics* (London: Routledge, 2007), 42.

⁹⁷³ Antunes and Camisao, “Realism”, quoted In McGlinchey, Walters & Scheinpflug, *International Relations Theory*, 15-22.

guaranteeing their own security. Within this context, realists have two main strategies for managing insecurity: the balance of power and deterrence. The balance of power relies on strategic, flexible alliances, while deterrence relies on the threat (or the use) of significant force.⁹⁷⁴

Moreover, some realist scholars have shown the persistent relevance of realist thinking in international relations with regard to the rise of ISIS. To this end, they have adopted an updated version of realism: post-realism, which seeks to offer a much more accurate account of the immaterial and cultural aspects of international politics.⁹⁷⁵ As Morgenthau stated: realism is more than a static, amoral theory, and cannot be accommodated solely within a positivist interpretation of international relations. It is a practical and evolving theory that depends on the actual historical and political conditions and is ultimately judged by its ethical standards and by its relevance in making prudent political decisions.⁹⁷⁶ Despite their differences on major issues such as the cause of war and the goal of states' foreign policy, all realist theories share a few basic concepts that allow them to be considered "realist" such as: the international system is anarchic, states are the primary actors within that system, and states act in their own interest in pursuit of either power or security.⁹⁷⁷

⁹⁷⁴ Antunes and Camisao, "Realism", quoted In McGlinchey, Walters & Scheinpflug, *International Relations Theory*, 15-22.

⁹⁷⁵ Orsi, Avgustin and Nurnus, "The Practice of Realism in International Relations."

⁹⁷⁶ W. Julian Korab-Karpowicz, "Political Realism in International Relations." *Stanford Encyclopedia of Philosophy*, May 24, 2017, accessed June 03, 2019. <https://plato.stanford.edu/entries/realism-intl-relations/#toc>

⁹⁷⁷ Korab-Karpowicz, "Political Realism in International Relations."

The classical realist view of self-determination favours sovereignty and the territorial integrity of existing states. The only and essential requirement for national self-determination is the presence and proper functioning of statal procedures.⁹⁷⁸ Claims of self-determination within the state borders are dealt with as claims for the entitlement of minority rights such as participation in public life on an equal footing with other individuals.⁹⁷⁹

The underlying argument of realism in relation to external self-determination is that the states refer to the immoral arguments of self-interest in ensuring their own survival, preservation of goods and their unwillingness to endanger their own territorial boundaries. They believe that the principle of territorial integrity sets forth certain morally important aims including the protection of individuals' security and right, the preservation of a structure in which it is reasonable for individuals to invest themselves in participating in government processes in a conscientious and cooperative fashion.⁹⁸⁰

It also focuses on reconciling claims for self-determination and territorial integrity internally in various forms including higher degrees of effective participation in public affairs, economic progress and development, minority rights and the possibility of local or autonomous administrations.⁹⁸¹ However, if the proper functioning of these procedures is questionable and the existence of the state itself becomes uncertain, the principle of external self-determination becomes applicable to reconstitute the political normality of

⁹⁷⁸ Koskenniemi, "National Self-Determination Today- Problems of Legal Theory and Practice," 249.

⁹⁷⁹ Barten, *Minorities, Minority Rights and Internal Self- Determination*, 199-200.

⁹⁸⁰ Buchanan, "Theories of Secession," 46-47.

⁹⁸¹ Barten, *Minorities, Minority Rights and Internal Self- Determination*, 253-254.

statehood.⁹⁸² It must be emphasised that these newly established entities must be founded not on self-determination claims based on ethnic or cultural nationalism, but may only emerge as states if they are capable of effective authority and promoting stability internally and externally.⁹⁸³

Realism is a key theoretical perspective in political science and international relations with which to interpret concepts and political developments. For realists, the key goal is the survival of the state and the protection of its interests. The responsibility to obtain this goal is that of the state, which must work according to the power and ethics of responsibility and national interests. Although criticisms have been made of its main views it continues to provide deep insights and remains an essential analytical theory for every researcher in political science.

In addition, realism might allow for internal self-determination in the forms of decentralisation, federalisation or autonomy. A right of external self-determination is impossible, due to its directly threatening the territorial integrity of the state, except in a complex case, that depends on the balance of power of the people who demand this right, when the change becomes a *de facto* condition, and the existing state fails to maintain its survival, internal and international obligations. The main realistic argument for implementing the right to self-determination is the balance of power of the peoples and groups who demand to exercise this right, rather than legal and ethical principles alone.

⁹⁸² Koskeniemi, "National Self-Determination Today- Problems of Legal Theory and Practice," 246.

⁹⁸³ Kalandarishvili-Mueller, "Guest Post: The Status of the Territory Unchanged: Russia's Treaties with Abkhazia and South Ossetia, Georgia."

§II: Kurdistan claims to self-determination in the context of realistic perspectives

As mentioned earlier, Realistic theory is one of the oldest and most important theories in political science and international politics.⁹⁸⁴ It focuses on the principles of territorial integrity of the existing state,⁹⁸⁵ the interests of the state, and the balance of power in international relations. Power is central to this theory, and it includes the military, political, and economic power of the state to protect its interests and impose a balance in its relations with others.⁹⁸⁶ The most challenging attack against the relevance of the right of self-determination comes from the realist camp. Its adherents believe that power relations have determined that the principle of self-determination, then not a legal principle *stricto sensu*, was applied selectively at the end of the First World War. They argue that ultimately, the basis for any change in the legal underpinnings of international society remains (the change in) power.⁹⁸⁷

According to this theory, no people or a part of the people of any country are allowed to decide self-determination in its external form, except in cases where the current state ends, and the new political alternative imposes itself as a *de facto* entity and practically confirms that it is able to exercise its role as a state, and implement internal and external obligations. The right to self-determination is a result of the balance of power, not morality

⁹⁸⁴ McGlinchey, Walters & Scheinflug, *International Relations Theory*, 4.

⁹⁸⁵ Redie Bereketeab, *Self-Determination and Secessionism in Somaliland and South Sudan Challenges to Postcolonial State-building*, (Uppsala: Nordiska Afrikainstitutet, 2012), 13.

⁹⁸⁶ Justin Rosenberg, *The empire of civil society: a critique of the realist theory of international relations*, 143. And David Boucher, *Political Theories of International Relations*, 47-170.

⁹⁸⁷ Lauri Mälksoo, "Justice, Order and Anarchy: The Right of Peoples to Self-Determination and the Conflicting Values in International Law," *Juridica International* 4, no. 1 (1999): 75–79.

and legal principles. According to realist theory these changes are dependent on the balance of power of secessionist peoples and groups.⁹⁸⁸ Accordingly, the priority is the sovereignty and territorial integrity of the existing state, in comparison with the right of people to self-determination.

International politics, including US politics, has dealt with the Kurds through a realistic perspective, not according to the principles of morality, as Henry Kissinger, former US Secretary of State, noted.⁹⁸⁹ Kissinger railed against the Wilsonian crusade for self-determination as an ineffective approach; he framed his own policymaking within “America’s traditional quest for a world [where] the weak are secure.”⁹⁹⁰ This goal could be secured without the right to self-determination.

Realism is a suitable theory for analyzing US politics toward the Kurdish question in the Middle East, in the context of questions about the right to self-determination. This theory has long been adopted by every superpower including the US, and notably by the arch-realist Kissinger, whose policy had a negative effect on the Kurdish issue during a sensitive time. During the 1970s, when the UN and the international community were trying to promote people’s freedom and independence, by decolonisation and implementing self-determination, the US government including Kissinger worked to end the Kurdish movement by the agreement of Algeria, 1975, between Iran and Iraq, ending

⁹⁸⁸ Harvey, *Over-Stating the Unrecognised State? Reconsidering De Facto Independent Entities in the International System*, 65-66; Kalandarishvili-Mueller, “Guest Post: The Status of the Territory Unchanged: Russia’s Treaties with Abkhazia and South Ossetia, Georgia.”

⁹⁸⁹ Gunter, *The Five Stages of American Foreign Policy towards the Kurds*, 96.

⁹⁹⁰ Kissinger, *Years of Renewal*, 1078.

the Kurdish movement and ignoring the Kurdish issue.⁹⁹¹ These actions led to the failure of yet another Kurdish nationalist revolt at that stage.⁹⁹²

As previously discussed, Wilson's approach to US foreign policy was characterized by the principle of self-determination of the peoples and nations, which was an important aspect of his "Fourteen Points".⁹⁹³ This political doctrine of Wilson encouraged the Kurds, to believe that the right of democratic self-determination for all peoples and nations was defended. In contrast, Morgenthau criticised this approach and used US interests as an argument against Wilson's policy. He concluded that Wilson's policy of promoting democracy failed the national interests of America, and that a balance of power in Europe and Asia would best serve American security and keep peace.⁹⁹⁴

The former Soviet Union and now Russia have also ignored the Kurds' rights. In January 1946 the Kurds proclaimed the independent republic of Mahabad, with the cooperation of the Russians, in Eastern Kurdistan, Kurdistan of Iran, "Northwest Iran" headed by Qazi Muhammad.⁹⁹⁵ Then, despite the promises of the Russians to the Kurds and the existence of good relations between the leaders of the Republic of Mahabad and the Russians, they neglected the Republic of Kurdistan in the "Republic of Mahabad", when the Iran army attacked the area. Thus, After the agreement among superpowers, Iran attacked and destroyed the Mahabad Republic, and its president and leaders were executed

⁹⁹¹ Cottam, *Iran and the United States: A Cold War Case Study*, 150.

⁹⁹² Danilovich, *Iraqi Kurdistan in Middle Eastern Politics*, 17.

⁹⁹³ Wertheim, *The League That Wasn't*, 818, Rehmany, *History of Kurd-America Relations*, 19.

⁹⁹⁴ Alexander Reichwein, *Rethinking Morgenthau in the German context, international relations online working paper Series 2011/4* (Stuttgart: Stuttgart University, 2011), 18.

⁹⁹⁵ Abdulla, *The Kurds: A Nation on the Way to Statehood*, 96-99.

in the same city.⁹⁹⁶ This is the reality of international and regional policy towards the Kurds, which could be discussed from the perspective of the realist theory.

When realistic theory is applied to the Kurdish case, the conclusion could be that the option of independence and the declaration of a state is a catastrophe for the Kurds at both levels: regional and international. International politics has never been favourable to the Kurds since the start of the Kurdish issue. In the League of Nations period, the politics of Great Britain and other great powers was contrasted with the Kurdish demands for self-determination and the creation of a Kurdish independent entity.⁹⁹⁷ In the UN period, the US and other superpowers never worked to solve the Kurdish issue in the Middle East, or create a Kurdistan state, despite a long struggle by the Kurds and promises by those powers in different stages.⁹⁹⁸ Moreover, the Kurds were used by those powers in different stages, and the same politics is still going on.

The strategy of the superpowers since the emergence of the Kurdish issue, is not in favour of the legitimate rights of the Kurdish people, but supports the existing states according to their strategic interests. The Kurdish people have been victims of international politics since the beginning of the twentieth century until now. Superpowers wronged the Kurdish people by dividing them into four parts, according to the Sykes-Picot agreement of 1916,⁹⁹⁹ without allotting any right to them. By retracting the promises and failing

⁹⁹⁶ Cyrus Ghani, *Iran & The West* (New York: Routledge, 2013), 111.

⁹⁹⁷ Jalal Talabany, *Kurdistan and Kurdish national movement*, 209-217, 253-256.

⁹⁹⁸ Meho, *The Kurdish Question in U. S. Foreign Policy: A Documentary Sourcebook*, 49-50.

⁹⁹⁹ McDowall, *A Modern History of the Kurds*, 115-121.

to implement the treaty of Sevres of 1920,¹⁰⁰⁰ that approved the right to self-determination for the Kurdish people and independence, and then concluding the Treaty of Lausanne in 1923,¹⁰⁰¹ they ended the dream of independence for the Kurdish people. The injustice of superpowers was continued as they established the state of Iraq, and after 5 years they merged the Mosul Vilayat as "Kurdistan region currently" despite the will of the people of Kurdistan, for the sake of sectarian balance in 1926.¹⁰⁰² The silence of the great powers and international community about all crimes, violations and genocides committed against the people of Kurdistan in all four parts of Kurdistan by those four countries, especially in Iraqi Kurdistan,¹⁰⁰³ is evidence that international politics is transacted according to the logic of power and interests and not the rights of oppressed peoples or the ethics and principles of international law.

Independence cannot be effectively achieved by legal principle alone. Usually, the victory for self-determination has been the result of a successful secessionist struggle. Even the collapse of the British and French colonial empires was rather the result of the understanding achieved by the elites in London and Paris that it had practically become impossible to maintain the empire, rather than sincere support for a new principle in international law. For instance, Algeria did not win independence by virtue of principles,

¹⁰⁰⁰ The Sevres Treaty, *World War I, Document Archive*, accessed September 12, 2015. https://wwi.lib.byu.edu/index.php/Peace_Treaty_of_S%C3%A8vres

¹⁰⁰¹ Treaty of Lausanne, *World War I Document Archive*, accessed September 12, 2015. https://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne

¹⁰⁰² Abdul-Razzaq Al-Hassani, *Political History of Iraq, Part3*, 329-343.

¹⁰⁰³ Bartrop and Jacobs, *Modern Genocide: The Definitive Resource and Document Collection* 1640.

but because the Algerian people managed "convincingly" to express their will to become independent.¹⁰⁰⁴

In a comparison between Kurdistan and South Sudan, there is a vast difference, as the Kurdistan Region is more developed in all aspects than South Sudan in terms of general development and infrastructure. Kurdistan has its own special language; writing and speaking, as well as a distinctive geography, unlike South Sudan. The iron borders of Kurdistan prevented Kurdistan from being a state and the silk borders of southern Sudan have helped it to become a state, along with international assistance which has not been given to Kurdistan.¹⁰⁰⁵

In regional politics, the policies of the neighbouring countries are based on the same trend, maintain their current status and suppress any attempt to change the regional map or create a Kurdish state. Therefore, it is very difficult for the Kurds in this closed area, as realism's core belief affirms that international affairs are a struggle for power among self-interested states.¹⁰⁰⁶

There was a good working political and economic relationship between Turkey and the Kurdistan Region during the years 2006-2014, with encouragement from the United States, when the Kurdistan Region allowed thousands of Turkish companies to work in Kurdistan, commercial and oil transactions between the region and Turkey amounted to

¹⁰⁰⁴ Nathaniel Berman, "In the Wake of the Empire," lecture, at *the annual meeting of American Society of International Law in April 1999*, quoted in Mälksoo, "Justice, Order and Anarchy: The Right of Peoples to Self-Determination and the Conflicting Values in International Law," 75–79.

¹⁰⁰⁵ Ahmad Al-Zawati, *The State Between Kurdistan and Southern Sudan* (Damascus: Dar Al-Zaman Printing, Publishing and Distribution, 2012), 184-183.

¹⁰⁰⁶ Snyder, "One World, Rival Theories."

billions of dollars, and Turkey became the sole outlet for selling Kurdistan oil.¹⁰⁰⁷ But Turkey left Kurdistan at the time of the referendum and closed all land and air borders in the Kurdistan Region. Iran and Iraq followed suit. The strategic interests of the Turkish state and Turkish national security were more important than friendship and even more important than economic interests in the Kurdistan Region.

The US remains the key superpower with regard to the Kurdish issue and the policy behind its dealings with the Iraqi Kurds is clear. Despite US support for the Kurdistan Region and protecting Iraqi Kurds since 1991, there is American insistence on the unity and territorial integrity of Iraq.¹⁰⁰⁸

Due to its interests and its strategic relations with countries in the Middle East, foremost of which is Turkey,¹⁰⁰⁹ the US does not create an independent state for the Kurds. This has long been its policy. During the Kurdistan Region Independence Referendum of 2017, the US affirmed this position, expressly and decisively, that it was not in favour of the secession of the Kurdistan Region from Iraq. While affirming then unity and sovereignty of Iraq, it encouraged both parties (Baghdad and Erbil) to solve the outstanding problems between them through negotiation. Former US secretary of state Tillerson, in his letter to the IKR president, opposed the referendum and proposed negotiation between Baghdad and Erbil in order to resolve the problems.¹⁰¹⁰

¹⁰⁰⁷ Shareef, *The United States, Iraq and the Kurds: Shock, Awe and Aftermath*, 178.

¹⁰⁰⁸ Marianna Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East Since 1945*, 13-15.

¹⁰⁰⁹ F. Stephen Larrabee, *Turkey as a U. S. Security Partner* (Santa Monica, California: Rand Corporation, 2008), 17.

¹⁰¹⁰ Eli Lake, "Tillerson Letters Show U. S. Nearly Averted Kurdish Referendum. The secretary of state offered internationally backed negotiations for independence, but too late," *Bloomberg* - opinion, 13

International politics and regional and international realities have been based on strength, interests and balance, Accordingly, the superpowers were not ready to take account of regional objections, to deal with creating a Kurdish state in Iraq. Rather, international politics is determined to preserve the unity and territorial integrity of Iraq.¹⁰¹¹

The central question here is: why is international politics dealing with the claims of the Kurdistan people to the right to self-determination in this way?

In the politics of international society, power and interest take precedence, not legality or morality. The actions of states are determined not by moral principles or legal commitments but by considerations of “interest and power.”¹⁰¹² These superpowers are dealing with the Kurdish issue according to this realistic doctrine, and are not ready to sacrifice their interests in and strategic relations with those important regional states in this significant region, for the right of self-determination for the people of Kurdistan, even if their rights are legitimate.

The Iraqi state continues in government and as a member of the United Nations and the international community, and it has broad political and economic relations with the majority of countries of the world. Hence, realistically the interests of the United States, its allies, and the superpowers with Iraq and other countries of the region, such as Turkey, Iran, and Syria, are greater and more important to the interests of these countries in the Iraqi Kurdistan Region.

October 2017, accessed April 12, 2018. <https://www.bloomberg.com/opinion/articles/2017-10-13/tillerson-letters-show-u-s-nearly-averted-kurdish-referendum>

¹⁰¹¹ Donnelly, Realism, in *Theories of International Relations*, edited by Scott Burchill & et al., 48.

¹⁰¹² Donnelly, Realism, in *Theories of International Relations*, edited by Scott Burchill & et al., 48.

International relations between those countries in the Middle East with the superpowers have been a permanent obstacle to international support for respecting the legitimate rights of the people of Kurdistan, including self-determination. Since the beginning of the Kurdish issue. These countries, Turkey, Iran, Iraq, and Syria have tried hard to keep any regional or international power away from the Kurds in Iraq, and any positive attitude or any step by any powers towards assisting the Kurdish people and resolving their issue has met with strong opposition from these four countries.

Those countries related to the Kurdish issue believe that any progress of the Kurdish issue in Iraq will directly affect the Kurdish issue in their countries. Therefore, they work hard to ensure that the Kurdish issue in Iraq remains as an exclusive issue without international support, and any project or attempt to exercise external self-determination and establish an independent state fails.

Because of its strategic location in the Middle East, between the Balkans and the southern republics of the former Soviet Union, Turkey has served as a major U.S. ally for more than 50 years. As there are different political, military, economic agreements between Turkey and the US,¹⁰¹³ the Turkish position and US-Turkey relations are a major obstacle to resolving the Kurdish issue in Iraq.

There is another important question: can the Iraqi Kurdistan region impose itself as a de facto state on Iraq and the region?

Realistically, especially after the Kurdistan Region independence referendum of 2017, and the internal political and economic situation, the option of an independent state

¹⁰¹³ McKiernan, "Turkey's war on the Kurds," 26-30.

is not currently a suitable solution for the Iraqi Kurdistan Region. The Kurdistan region's attempt to determine its future was faced with strong opposition from the Iraqi government and neighbouring countries, along with international rejection. The neighbouring countries of began a severe economic and political blockade against the Kurdistan Region, after which the Iraqi forces, with direct Iranian assistance, headed towards disputed areas and took control of those areas. The Kurdistan Region has lost its lands, residents and oil resources.

The economy of Iraqi Kurdistan depends mainly on two sources: first Baghdad, which provides a regional share from the Iraqi state's budget, and second oil imports from the sale of Kurdistan oil through Turkey. Both sources are not under the complete control of the Kurdistan Region. The first is under the rule of the Baghdad government, which has cut funds since 2014. The second source is under the control of the Turkish government, as well as the control of Turkey, Iran and Iraq on the commercial and economic fields of Kurdistan due to the geographical closure and the lack of a maritime boundary in Kurdistan.

The majority of the problems between Baghdad and Erbil are still outstanding, in particular the disputed territories problem, which is almost equal to the size of the current Iraqi Kurdistan Region. The international relations of Kurdistan so far are limited, do not exceed official relations, and lack influence on world public opinion, foremost among which are free countries. The subjective circumstances like the objective circumstances of the Kurdistan Region are not preparing it to be an independent state currently. International politics supports the Kurdistan region remaining within the Iraqi state as a federal region within a united Iraq, and encourages both sides to commit to the Iraqi constitution to solve

problems. The superpowers insist on the unity of Iraq and its territorial integrity, and do not care about the will and wish of the people of Kurdistan and their right to self-determination. Consequently, the balance of power and international politics does not allow for the creation of an independent Kurdistan state in the foreseeable future.

CONCLUSION OF CHAPTER I

There are different theories and schools of thought that have attempted to explain and analyze the right to self-determination during various stages in history. These theories differ in their definition of the concept and content of the right to self-determination, and the scope of its implementation. They include realistic theory, and liberal theory or primary rights theory, and remedial rights theory. These theoretical differences form a basis for understanding different interpretations to self-determination in international law and in international politics, as a right and as a practice.

Primary right theory states that the right to self-determination is a fundamental right for any group of people, and it could be exercised in any territory according to the will of people or majority of the population there. Although it fully supports and illuminates the discourse of all secessionist peoples and groups, it ignores the political balance of power and the role of international politics in implementing self-determination, which is its weak point. Relying on it to interpret the different cases of self-determination and its applications in different complex political situations is not feasible.

According to primary rights theory, the Kurdish people have a right to self-determination like any other people in the world as they have all the necessary characteristics, and the majority supported independence, in both of referendums of 2005 and 2017; more than ninety per cent voted in favour of independence.

The realistic theory and remedial rights theory are two important theories with which to address the case of Kurdistan's claims to self-determination. The first one is the oldest theory and the second is a new theory which can cover the topic scientifically.

The theory of remedial rights is important for understanding the development of the right to self-determination and explaining how the principle of self-determination appeared in a specific legal and political context. Today due to developments in international politics and the growth of human thought and the struggle of different peoples, there are different scientific perspectives and theories of this concept, outside the colonial context, which are the focus of UN instruments. This theory holds that the right to self-determination is a right for every people or group if they are exposed to injustice, persecution, and violations of their fundamental rights. It prefers the right of the oppressed people to self-determination and secession over sovereignty and territorial integrity. This theory can examine and justify the Kurdistan region's claims to self-determination, as the Kurdish people have been subjected to injustice, persecution and genocide by the Iraqi state in the past, and now they are calling for their self-determination freely.

Realist theory focuses on sovereignty, territorial integrity, the national interest of the existing state, and the balance of power. Sovereignty and territorial integrity are preferred over self-determination and secession. According to this theory, the right to self-determination must be exercised internally, within the recognized borders of the existing

state, along with encouraging reliance on the exercise of this right internally in various ways such as federalism, decentralization, political participation and everyone's participation in public life. The theory does not recognize external self-determination except if an existing state has failed in maintaining its continuity or collapsed, or a change has resulted in a de facto state, as a result of the balance of power of secessionist peoples. This theory could interpret how international politics, especially US politics, dealt with the Kurdish issue in Iraq. After long neglect, the United States and its allies supported the Iraqi Kurds to develop significantly at the political and economic levels, with permanent affirmation of the sovereignty and unity of Iraq, strengthening the Kurdistan Region internally and as a part of Iraq without support and encouragement to practice external self-determination and secession from Iraq.

The continuity of various ethno-national issues in different regions of the world assures us that the application of this principle and its respect do not depend only on its legality in law, and scientific theoretical interpretations, but mainly depend on the political balance of power and the position of the superpowers. The international politics at the present time espouses a realistic policy that deals with the questions of self-determination in political contexts and in accordance with the interests of the superpowers, even though it is a legal right in accordance with international law.

Although the Kurdish people have a right to self-determination and independence, according to both theories, primary right theory and remedial right theory, by reading the internal and external reality of the Kurdistan Region, and by evaluating the balance of power and the internal, regional and international political situation, it can be seen that independence is not possible for the Kurdistan Region at this stage.

The next chapter discusses Kurdistan's claims to self-determination between law and politics.

Chapter II

Kurdistan's claims to self-determination between law and politics

The Kurdish issue, an ethno-national issue of the fourth largest nation in the Middle East, is split between law and politics. Its complexity is due to its regional implications, related to the relevant four different regional countries directly (Turkey, Iran, Iraq, and Syria), and the region as a whole indirectly.

Despite the obscurity of the definition of self-determination and of the concept of "people", traditional international law is clear about the titleholder, or who can exercise this right. It focused on peoples described as colonized, or non-self-governing. According to the UN instruments, it is not clear for the part of peoples of existing states or other peoples outside the context of colonialism to have the right to external self-determination, although self-determination for all peoples and the principle of equal rights are also frequently affirmed. The United Nations has failed to deal with ethno-national issues within the framework of the right to self-determination. In the post-Cold War era, the international political developments and continuing ethno-religious issues and conflicts over self-determination in different places have resulted in the emergence of new ideas about how to deal with such conflicts and issues outside the colonial context, including the Kurdish issue.

The United Nations constantly emphasized the territorial integrity and sovereignty of existing states when dealing with East Timor, South Sudan, and Kosovo, despite the fact that they had broken the principle of territorial integrity and obtained their independence in the post-Cold War era. UN texts and articles have affirmed territorial integrity, while simultaneously affirming human rights. This is an important point for oppressed peoples demanding external self-determination and separation, even though they are within the borders of independent states.

Kurdistan people, long victims of international politics and law, are in a unique position in terms of background, related countries, and the position of superpowers. Before the creation of the Iraqi state after WWI by the British, Kurdistan was not part of Iraq, but was a different region outside Iraq. During the rule of the Ottoman empire, Kurdistan was the Mosul Vilayat. The British government, regardless of the will of the Kurds, integrated Kurdistan with Iraq with two main goals in mind; to create sectarian balance between Shia and Sunni, and to obtain oil in the area. This decision imposed on the Kurds made Iraq a permanent theatre of sectarian and ethnic conflicts between Kurds and Arabs, and led to the repression and genocide of the Kurdish people, and the political and economic decline of the entire country.

Now the key question here is: does the Iraqi Kurdistan region have a right to self-determination externally in the light of United Nations instruments or not? Is the main obstacle preventing the people of Kurdistan from enforcing self-determination and building their independent state political or legal?

This chapter is designed to answer these questions, and then to examine the political aspects of the issue. Moreover, this chapter will prove that the Kurds of Iraq do meet the

standards for legitimate external self-determination. The Kurds, by anyone's definition, are a distinct people but are subject to another power. Kurdish self-determination claims are based on legal and historic rights and grievances; because of instability, threats, and failed state policies, the Kurdish right to secession grows even stronger.

One key weakness of international law is that under the political hegemony there are double standards. From WWII until now, many ethno-national issues have been solved by enforcement of the right to self-determination, even outside the colonial context, and independent states like Kosovo and South Sudan have benefited. However, many self-determination issues including the Kurdish issue have continued due to international politics. This proves that the enforcement of self-determination depends on the political balance of power and international politics more than on the legal basis for it.

The first section of this chapter addresses Kurdistan's claims to self-determination and the international law, by discussing Kurdistan as a unique case with its different dimensions historically, politically, legally. Moreover, this section addresses some legal bases of Kurdistan's right to self-determination. It investigates the possibility of identifying the population of the Kurdistan Region as a "people" who have the right to self-determination according to several legal foundations, including General Assembly Resolution 2526, the International Court of Justice's decision on Kosovo's declaration of independence, the Canadian Supreme Court decision in the Quebec case, the theory of primary rights and the theory of remedial rights. Realistically international politics and the balance of power have never supported this right for the people of Iraqi Kurdistan (Section D).

The second section of this chapter demonstrates the case of the Iraqi Kurdistan Region in the light of international law instruments as a case of Self-determination outside the colonial context, also in comparison between Kosovo and Kurdistan Region. As well as, in the second section, the study addresses international politics concerning ethno-national issues. The international community in dealing with self-determination conflicts has relied on double standards, political criteria, or at least unclear legal standards. The consequence has been widely different and politicised interpretations of the definition of self-determination, and its subjection to the political balance of power. In this regard, the Iraqi Kurdistan region is now one of the most complicated cases of claims to the right to self-determination, and the topic requires evaluation in the light of scientific theories, international law instruments, and international politics. (Section II)

SECTION I: Kurdistan's claims to self-determination and the international law

Self-determination as a means of solving ethno-national issues has several dimensions that can turn what seems a simple process into a complex undertaking. To legitimately succeed in attaining the opportunity to exercise the right to self-determination and achieve international recognition, the legal processes involved are numerous and long-winded, making it difficult for a minority population to achieve their goal without real international support by one or more superpowers.

It was noted in previous chapters that the right to self-determination is included in different international law instruments. The instruments of the United Nations, despite their inability to define the exact meaning of self-determination in all situations and to determine specific and precise criteria for the concept of the people, developed the right to self-determination, which began as a political idea and revolutionary slogan, into an international principle, and finally into a legal right of peoples according to international law. These legal documents built the foundations for the right to self-determination, that first appeared in the United Nations Charter and evolved into different declarations and resolutions of the United Nations, in addition to a set of universal human rights instruments. They focused on the importance of respecting the right to self-determination as a duty of all states, as it is a right for all peoples, regardless of race, religion and colour.

Political hegemony and the lack of a specific and universally accepted definition of the right are some of the reasons why the international community is unable to respond coherently to many claims to self-determination. This has led to the United Nations employing double standards with regard to self-determination claims.

The first paragraph of this section approaches Kurdistan as a unique case. Kurdistan was not Iraq and is still different from Iraq, and the annexation of Kurdistan to Iraq occurred because of superpowers' interests (§I). The second paragraph discusses the case of the Iraqi Kurdistan Region in the light of international legal instruments and examines some legal bases of the IKR's claim to self-determination (§II).

§I: Kurdistan as a unique case

It is clear that Kurdistan falls outside the framework of colonization, so it is not easy to acknowledge its right to external self-determination in accordance with traditional international law. There are some legal foundations which help to establish this right. The Kurdistan case is a unique issue, not simply the case of a part of a people within a sovereign state which wants to secede. It is the cause of the people that merged unwillingly with a country created by an occupied country. It is necessary to delve deeper into the historical and political aspects of the case before addressing the legal issues.

A. Different land: Kurdistan was not Iraq and is still different from Iraq

Kurdistan has always been different from Iraq. It is different in terms of name and geographical origins, as Kurdistan means the "region of the mountains" or the "countries of the Kurds."¹⁰¹⁴ Moreover, Iraq and Kurdistan are different in ancient geography; they comprise two different areas in the old maps. for example, in the map made by Mahmud al-Kashgari in 1074,¹⁰¹⁵ and in maps of Eastern Asia at the time of the Ottoman Empire in 1892, 1896.¹⁰¹⁶ Kurdistan is a distinct geographical region.

¹⁰¹⁴ Mirza, "The most famous leader of the conquest of Kurdistan in the first Islamic Era," 725-727.

¹⁰¹⁵ Skyscraper City, "Kurdistan Historical Real Maps 1074 and 1893."

¹⁰¹⁶ Pull MM Cooper, "This map uses old colloquial names for regions: The Land of Rum, Kurdistan, Anatolia, Sham, al-Jazira, Arab Iraq & the Land of the Arabs." @PaulMMCooper, Sep 17, 2017, accessed

The most important difference between Kurdistan and Iraq lies in international law. Iraq and other countries were candidates for statehood through a mandate system detailed in Article 22 of the League of Nations, according to A-B-C rankings; Iraq was in the A category,¹⁰¹⁷ without Kurdistan. Also, in the Treaty of Sevres, Kurdistan has a special named section: (SECTION III. KURDISTAN. ARTICLE 62, ARTICLE 63, ARTICLE 64).¹⁰¹⁸ Kurdistan was separated in accordance with Article 63, but Iraq was separated according to Article 94;¹⁰¹⁹ Kurdistan and Iraq differ in race, language, cultural identity, loyalty.

B. Compulsory annexation

The superpowers had avoided respecting and implementing the articles of the Sevres Treaty, which formed part of international law concerning the Kurdish people. The Kurdish people was prevented from exercising the right to self-determination according to the Sevres Treaty, which stated clearly in Articles 62-64 that the Kurdish people have a right to determine their future freely,¹⁰²⁰ like any other of the peoples and minorities under

May 21,2018. <https://twitter.com/paulmmcooper/status/909410631333408768?lang=en>; Goran Candan, "A Brief Look at Kurdish Political History, Published in Kurdnas Friends 2, 1989," (This version is a drafted and extended version), accessed May 21,2018. <http://www.saradistribution.com/harkomst.htm>; Vladimir Fedorovich Minorsky " Mosul is Kurdistan. Mosul Question, The Mosul Vilayet 1926," SARA Distribution, accessed May 22, 2018. <http://www.saradistribution.com/mosul.wilayet.1926.htm>

¹⁰¹⁷ Ellis, *The Origin, Structure & Working of the League of Nations*, 107.

¹⁰¹⁸ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 787.

¹⁰¹⁹ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 787.

¹⁰²⁰ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 787.

the administration of the Ottoman Empire. Moreover, they signed the Lausanne Treaty which put an end to all Kurdish rights and moves towards self-determination.¹⁰²¹ The British and French viewed the Kurds as a people worthy of oppression and repression by the great powers.¹⁰²²

In August 1921 King Faisal I was crowned as a king of Mesopotamia "Iraq now officially" by the British.¹⁰²³ For 5 years after the creation of Iraq by the British, Kurdistan was not part of Iraq. Kurdistan was the "Mosul Vilayet" under the rule of the Ottoman Empire. After about 5 years, as a result of the pressure exerted by the British colonial power, Kurdistan was merged with Iraq state. At the end of 1925, the League of Nations decided to merge the Mosul Vilayet with the Iraqi new state, without regard for the will of the Kurdish people, who were the indigenous peoples of this region and formed the vast majority of the population.¹⁰²⁴

In more specific dates, on 22 February 1921, Britain with a book number (4/3330), decided to merge southern Kurdistan with the proposed territory of Iraq.¹⁰²⁵ After that, the new Iraqi cabinet had a meeting and reached the same conclusion. Then in October 21, 1924, a committee of the League of Nations was formed for this purpose. After this committee visited Iraq in 1925, despite widespread rejection by the Kurds, it proposed to include the vilayet of Mosul in Iraq. Finally, under pressure from the British colonial

¹⁰²¹ Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 960-1022.

¹⁰²² Phillips, *The Kurdish Spring: A New Map of the Middle East*, 9-12.

¹⁰²³ Atia, *World War I in Mesopotamia: The British and the Ottomans in Iraq*, 1.

¹⁰²⁴ Sarah Shields, "Mosul, the Ottoman Legacy and the League of Nations," 217-230.

¹⁰²⁵ Fadel Hussein, *Mosul problem: Study in Anglo-Iraqi-Turkish diplomacy and public opinion* (Beirut: The Arab Foundation for Studies and Publishing: 2015), 52-65.

power, the League of Nations on December 16, 1925 decided to annex the Vilayet of Mosul to Iraq without regard for the opinions and desires of the Kurds, who formed a majority.¹⁰²⁶

The Kurdistan people have been forced by British colonial power to join up with Arab Iraq to create a sectarian balance between Shiites and Sunnis and ensure access to oil. Before and during the first world war Britain looked upon Kurdish affairs principally from a strategic perspective and secondly with regard to oil.¹⁰²⁷ As Britain embarked upon the task of creating a state out of three provinces with 'no historical, religious or ethnic homogeneity," it did not care about the difficulties and cost.¹⁰²⁸ The Arab Shiite majority in Iraq refused to recognize this state under the leadership of King Faisal, who was a Sunni, and the Kurds also refused to join it.¹⁰²⁹

In deciding to create Iraq from three different provinces, the British ignored the clear territorial and ethnic distinctions in the name of preserving what was historically called "Mesopotamia."¹⁰³⁰ Most strikingly, "the British had no empathy or understanding of the cultural impact of combining the Shiite and Sunni segments of the [territory into one] country."¹⁰³¹ These arbitrary borders split the Kurds into four countries—Iran, Iraq, Syria, and Turkey—and left them without a state.¹⁰³²

¹⁰²⁶ Hussein, *Mosul problem: Study in Anglo-Iraqi-Turkish diplomacy and public opinion*, 52-65.

¹⁰²⁷ Eskandar, *from planning to partition: Great Britain's policy towards the future of Kurdistan 1915-1923*, 41.

¹⁰²⁸ Atia, *World War I in Mesopotamia: The British and the Ottomans in Iraq*, 190.

¹⁰²⁹ Sluglett, *Britain in Iraq: Contriving King and Country, 1914-1932*, 56-59.

¹⁰³⁰ Hadj, "The Case for Kurdish Statehood in Iraq, Case Western Reserve," 513-541.

¹⁰³¹ Courtney Hunt, *The History of Iraq. The Greenwood Histories of the Modern Nations* (Westport, Connecticut. London: Greenwood Publishing Group, 2005), 62.

¹⁰³² Hadj, "The Case for Kurdish Statehood in Iraq, Case Western Reserve," 521.

Kurdistan underwent a process of compulsory annexation to another country. This process was illegal, as it is not permissible for any side according to international law to annex any lands from any state or region to another state under any circumstance of compulsion,¹⁰³³ except with the consent of its owners.

There is an important relationship between the historical ownership of land and self-determination. In order to obtain self-determination a group must establish a claim to land as a basis for its claim to independence and sovereignty over it. Many scholars have argued that a territorial claim is important and have presented methods for establishing it. Philpott¹⁰³⁴ noted that a territorial claim to self-determination does not merely create a new state or self-governing region; it also separates or places under a new type of sovereignty the old state's land. This detachment is sharpest in cases of secession, but it raises a general question about self-determination: must a group establish a claim to land in addition to its claim to a new government. Allen Buchanan has argued that a group making a territorial claim must either (1) 'show the ill-begotten nature of the larger State's dominion and demonstrate its own historical claim or (2) evince a threat of genocide, discriminatory redistribution of wealth, or the erosion of its distinctive culture'.¹⁰³⁵ Brilmayer has argued that the territorial claim is crucial and has presented methods for establishing it. Brilmayer explored the "historical grievance" as "the most intuitively appealing and direct" method:¹⁰³⁶ "It has been claimed that secessionist claims to independence are only convincing if

¹⁰³³ Krüger, *The Nagorno-Karabakh Conflict: A Legal Analysis*, 97.

¹⁰³⁴ Philpott, "In Defense of Self-Determination," 352-385.

¹⁰³⁵ Buchanan, *Secession: the morality of political divorce, from Fort Sumter to Lithuania and Quebec*, 104-114.

¹⁰³⁶ Philpott, "In Defense of Self-Determination," 369.

the secessionist group can prove that their territory was illegally annexed into the parent State, and they have a legitimate and historical claim over the territory”. Accordingly, she built her opinion upon a claim to territory; people must have a ‘legitimate historical claim’ to the territory.¹⁰³⁷

After the British gave the Kurdish territory to the Iraqis following the establishment of the Iraqi State by the British, without regard to the will of the Kurdish people, they suppressed many Kurdish revolutions and protests, foremost among them the revolution of Sheikh Mahmoud Al-Barzanji in the Sulaymaniyah¹⁰³⁸. The British did not have rights in Kurdistan and have never owned Kurdistan. They gave away territory to which they never had any legitimate claim. The transaction was a historical injustice and an instance of compulsory annexation by a colonial country, therefore legally unreliable and void from the beginning. This was a union forced upon the Kurdish population of the Vilayet of Mosul by the British and confirmed by the League of Nations, without the will of the Kurdish people, who have fought against it for the last 100 years.

The United Kingdom was behind the Kurdish issue when the Mosul Vilayet "Iraqi Kurdistan" was merged with Iraq, but during the Cold War, it declared that the right of self-determination "is both inalienable and indivisible. It is fundamental to international peace and security, and to the protection of national integrity. As nation states, all of us have a vital interest in it. We cannot be selective in its application."¹⁰³⁹

¹⁰³⁷ Philpott, "In Defense of Self-Determination," 370-371.

¹⁰³⁸ Peter Sluglett, "The Kurdish Problem and the Mosul Boundary: 1918-1925," *Global policy forum*, accessed July 28, 2017. <https://www.globalpolicy.org/component/content/article/169/36383.html>

¹⁰³⁹ R. Fursland, "UK representative to the Third Committee of the General Assembly Statement." Oct 12. 1984, quoted in Robert McCorquodale, "Self-Determination: A Human Rights Approach." *The International and Comparative Law Quarterly* 43, no. 4 (1994): 862.

As King Faisal I, the first king of Iraq, had said more than nine decades ago, in 1923: “There are no Iraqi people yet, but there are various humankind groups whos lack any nationalism Idea, they Imbued with traditions and religious myths, they have not combined them a Collector, they listen to bad things, they tend to mess, and they are ready always to rise up against any government.”¹⁰⁴⁰

The Arab majority and the Kurdish minority in present-day Iraq are different in national loyalties, as everyone has his own ethnicity, and dreams about unity with similar peoples in other countries, outside Iraq. The denial of the rights of others, and the injustice, persecution, and repression that has been practiced in Iraq over the years by successive Iraqi governments led to the failure to create an Iraqi citizen who actually belongs to Iraq. In present-day Iraq, after all the years of wars, instability, violence and persecution that Iraq has endured, there is a stronger affiliation to ethnicity, religion, sect, or tribe than to the nation state of Iraq.¹⁰⁴¹ Thus, for Iraqi Kurdistan self-determination or the transition from "part of Iraq" status to independence is not regarded as secession, ‘but rather as the restoration of rightful sovereignty of which the people have been illegitimately deprived by the British government as colonial Power.

¹⁰⁴⁰ Sayyar Al-Jameel, *Al Al-Bayt University in Iraq 1924-1930*, *Elaph*, august 04, 2017. <https://elaph.com/Web/ElaphWriter/2006/10/180954.html>

¹⁰⁴¹ Farah Shakir, *The Iraqi Federation: Origin, Operation and Significance* (London and New York: Routledge, 2017), 43.

§II: The case of the Kurdistan Region in the light of international law instruments

The case of the Kurdistan Region in the light of international law instruments has many political and legal dimensions. It is clear that the Kurdistan Region is a case outside the framework of colonialism, which clearly recognizes their right according to international law instruments. Nevertheless, there are several legal foundations that can prove the right of the Kurdistan Region to the right to self-determination and independence.

A. Kurdistan as a case outside the context of colonialism

Despite repeated affirmations in the international law instruments that the right to self-determination is a right for all peoples, and “By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status,”¹⁰⁴² there are many exceptions, and at the same time there are many assurances of the sovereignty and territorial integrity of the existing states. This in itself is a legal restriction of the right to self-determination and its allocation to a specific group of peoples, not all peoples. Moreover, the United Nations prepared a list of the regions nominated to exercise this right which included some regions named Non-Self-Governing

¹⁰⁴² UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

Territories¹⁰⁴³. This may be considered as discrimination against the rights of different peoples and minorities globally, as they suffer oppression and injustice and are imprisoned within the borders of the existing state, according to the principle of territorial integrity, like the Kurdistan people in the Middle East.

In this thesis the right to self-determination for the Kurdish people is discussed in the light of international law, focussing on the external form of self-determination. As the instruments describes external self-determination in UN Resolution 2526, it could result in complete independence, integration with a neighbouring state, free association with another state or any other status decided upon by that people as a state: “The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.”¹⁰⁴⁴ Internal self-determination is a right for all peoples to determine their situation inside an existing state, according to different international law instruments, theoretical perspectives and democratic systems and constitutions. However, for the cases outside the colonial context for the peoples and minorities within the borders of existing states, like Kurdistan people, external self-determination requires further clarification.

The victorious countries in WWII or superpowers have imposed their perceptions, built on their interests, in the formulation of these instruments. Most of the material analysed earlier refers to all peoples having the right of self-determination; in reality a

¹⁰⁴³ UN, “Non-Self-Governing Territories.”

¹⁰⁴⁴ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

factual consensus on self-determination seems to have developed in the colonial context only.¹⁰⁴⁵ Thus, it can be observed that the handling of these instruments within the colonial context is clear, and the right to self-determination of the people under occupation is recognized. For cases which lie outside the context of colonialism, there is less clarity, but generally, the case for exercising external self-determination is strong, for a people or an ethnic group or minority which is subject to extreme and unremitting persecution, as the Supreme Court of Canada stated in the Quebec case.¹⁰⁴⁶

It could be noted, that there is no right to secede that maintains international groups inside independent countries. In the same time, there is no obligation in international law compelling these groups not to secede.¹⁰⁴⁷

It is clear that the Iraqi Kurdistan region falls outside the traditional colonial context, and its status is not clear according to traditional international law. However, there are many legal foundations for the IKR's right to self-determination, including the UN charter's principle of equal rights for all peoples, UNGA Res.2526, comparison with other cases, new theoretical perspectives like the remedial right theory, and some judicial decisions in international and national courts. With reference to all these points and the legal basis of the claim, we will prove that the Kurdistan people have a right to self-determination, although its implementation is dependent on the balance of power and international politics.

¹⁰⁴⁵ UN, "UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples,"; UN, "UNGA Res. 1541, Defining the Three Options for Self-Determination."

¹⁰⁴⁶ Malcolm N. Shaw, *International Law*, 7th edition (Cambridge: Cambridge University Press, 2014), 378.

¹⁰⁴⁷ Shaw, *International Law*, 378.

As mentioned earlier, external self-determination is clearly a right for all peoples under colonial rule, according to many international instruments like the United Nations Charter, Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res.1514, UNGA Res.1541, and UNGA Res. 2526. In these international instruments, there is a consensus regarding the right to self-determination for colonised people, as UNGA Resolution 1514 and 1541 explicitly provided that territorial colonies were no longer part of the metropolitan state and they have the right to self-determination and independence.¹⁰⁴⁸

In addition, the United Nations always emphasizes the sovereignty and territorial integrity of states, and according to its position, it will neither encourage nor support the division or secession of any part of any country, as it is an organization founded on the basis of neutrality. Former UN Secretary-General Vernon Van Dyke explained: "The United Nations would be in an extremely difficult position if it were to interpret the right of self-determination in such a way as to invite or justify attacks on the territorial integrity of its own members."¹⁰⁴⁹ At the same time, the UN documents constantly affirm respect for human rights and equality for all human kind, regardless of color, race, language, religions with the right of self-determination at the forefront of these basic rights. The international human rights legal framework contains international instruments to combat specific forms of discrimination, including discrimination against indigenous peoples,

¹⁰⁴⁸ Musgrave, *Self-determination and National Minorities*, 95.

¹⁰⁴⁹ Vernon Van Dyke, quoted in Dinah Shelton, *The Oxford Handbook of International Human Rights Law* (Oxford: Oxford University Press, 2013), 390.

minorities, racial and religious discrimination.¹⁰⁵⁰ This is an important point for oppressed peoples demanding external self-determination and separation, even if they are within the borders of independent states. In this context, they affirm that the organic relationship between international human rights includes the rights to self-determination and the principles of equality and non-discrimination in rights for all.

The customizing and linkage between the exercise of the right to self-determination and peoples subject to colonialism, and dependence on a list of other regions which have this right, designated by the United Nations, consisting of 17 territories, are key issues for cases like that of Kurdistan. UN instruments have not included Iraqi Kurdistan in the specific list of the colonized territories, territories that are nominated to exercise the right to self-determination.¹⁰⁵¹ This is a political position in a legal form adopted by the superpowers, which have neglected the Kurdish issue since its emergence in the 1920s, although it is related to four countries in the Middle East, and to the lives of millions of people. If compared with other regions on the same list, one can conclude that Kurdistan is worthy to be on this list, due to its history, evolution, its significance, its size and impact on Iraq and the region as a whole.

The Kurdistan people have been victims of international politics from the emergence of their issue until now. The great powers divided Kurdistan into four parts by the Sykes-Picot Treaty¹⁰⁵², and they continued to neglect the Kurdish issue due to their

¹⁰⁵⁰ UN, "United Nation and the Rule of Law, Equality and Non-Discrimination," *United Nations*, accessed August 12, 2018. <https://www.un.org/ruleoflaw/thematic-areas/human-rights/equality-and-non-discrimination/>

¹⁰⁵¹ UN, "Non-Self-Governing Territories."

¹⁰⁵² Berdine, *Redrawing the Middle East: Sir Mark Sykes, Imperialism and the Sykes-Picot Agreement*, 69.

interests,¹⁰⁵³ despite all the political and legal developments related to ethno-national issues globally in the post- WWII era concerning the practice of self-determination.¹⁰⁵⁴ Accordingly, the matter of neglecting the Kurdish right to self-determination here was political before it became legal.

On the other hand, as a result of global political developments and the development of the United Nations instruments with regard to the right to self-determination, it became a right for all peoples regardless of race, colour, religion and geographical location. In the next paragraph, we clarify the legal foundation of IKR self-determination.

B. The legal foundations of the right to self-determination for the people of Iraqi Kurdistan

There are several legal foundations that can prove the right of the Kurdistan Region to the right to self-determination and independence.

1. Kurdistan was not Iraq

As explained earlier, Kurdistan has never been Iraq. Kurdistan was a different area and divided according to the Sykes-Picot Treaty into four parts by Britain and France

¹⁰⁵³ Phillips, *The Kurdish Spring: A New Map of the Middle East*, 9-12.

¹⁰⁵⁴ Committee on Foreign Relations- US Senate, *United States Foreign Policy: Compilation of Studies* (Washington DC: U. S. Government Printing Office, 1961), 1327.

according to their interests as key great powers at that time. It is still different from Iraq in name, history, race, geography, culture and language. The southern Kurdistan "Kurdistan region present" has been merged with Iraq by the British colonial power in order to achieve sectarian balance in Iraq between Shia and Sunni, and lay claim to the oil resources in this rich area. Consequently, Kurdistan has historical ownership and full rights over the land of Kurdistan which was given to Arabian Iraq without regard for the will of the Kurdish people, in the context of ending the Mosul Vilayet issue.

2. Declaration on Principles of International Law concerning Friendly Relations

Nirmal has argued that UN Resolution 2526 should be interpreted for all ethnic groups that are not represented in government, on the basis of a 'prolonged, sustained and gross discrimination' against them. In some situations, secession may be the only remedy and the last resort available to the oppressed groups.¹⁰⁵⁵

The UN General Assembly implemented a key resolution "2625" in 1970 called 'The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations', which affirmed that all peoples have the right to self-determination without distinction as to race, creed or color. Here, the UN General Assembly detailed further what features of self-

¹⁰⁵⁵ B. C. Nirmal, *The right to self-determination in international law: evolution, U. N. law and practice, new dimensions* (New Delhi: Deep & Deep Publications, 1999), 250.

determination it deemed essential to warranty so as to execute the Charter and to maintain international peace and security. The resolution stated that:

“By virtue of the principles of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the charter”.¹⁰⁵⁶

These words can be regarded as a legal basis for self-determination for situations like that of Iraqi Kurdistan.

3. The population of Kurdistan are “people”

In order for a group to have the right to determine its political destiny, it must possess an adequate identity to achieve distinction as a "people". As explained earlier, the "people", is determined according to certain criteria, or characterised by the presence of some moral and material elements. The moral element lies in the loyalty of individuals to their collective identity as a "people". Materially, the group must have some elements such as a specific geography, shared ethnic background, language, religion, history, cultural heritage and territorial integrity for the region that the group claims.

¹⁰⁵⁶ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

The Kurdistan population is a “people”; it has all the moral and material characteristics. Moreover, it has elements that exist in the other peoples of the world, such as the French, Arab, Spanish or Swedish people. In term of material elements, Kurdistan people have their own language, distinct geography, different race, distinctive culture, and long history as they are indigenous peoples in the region, and have their own institutions for governance and management.¹⁰⁵⁷ They wish to describe themselves as a people like other peoples. They have a common understanding of the Kurdish Question and have wanted to be independent since the the last century, as “the Kurds’ quest for independence is 100 years old”¹⁰⁵⁸.

As long as the population of the Kurdistan region are a "people", they have the right to self-determination like all other peoples according to the Declaration on Principles of International Law concerning Friendly Relations,¹⁰⁵⁹ Also as the International Court of Justice affirmed in the case of Kosovo, the right to self-determination, as established in the Charter of the United Nations, is a right for all peoples.¹⁰⁶⁰

¹⁰⁵⁷ Riamei, *The Kurdish Question: Identity, Representation and the Struggle for Self-Determination*, 13-15.

¹⁰⁵⁸ Hiltermann, “The Kurds Are Right Back Where They Started.”

¹⁰⁵⁹ UN, “UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

¹⁰⁶⁰ ICJ, “Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010.”

4. Remedial self-determination

International law recognised the right of all peoples to self-determination, but practically the right to external self-determination for minorities or a part of the people of existing states was only applied in extreme circumstances, or groups were severely persecuted.

According to Remedial right theory, because of the bloody violations, injustice and genocidal crimes perpetrated upon them Kurds as a “people” have the legal right to self-determination freely like all other peoples of the world.

Also, many scholars and researchers in the field of international law have indicated that the Kurdish people have the right to determine their fate, and this right is a right even for minorities in certain cases. Peoples who are oppressed or colonized have the right to external self-determination, which they may exercise through secession from their mother state.

In 1998, when the Canadian Supreme Court adjudicated on the proposed secession of Quebec from Canada, the Court held that peoples subjected to conquest, colonization, and perhaps oppression may acquire the right to external self-determination through remedial secession.¹⁰⁶¹ It therefore supports the argument for self-determination according to remedial right theory.

According to remedial right theory the Kurdish people have the right to self-determination based on the unjust acts, severe violations and genocidal crimes committed

¹⁰⁶¹ Supreme Court of Canada, “Supreme Court Judgments, Reference re Secession of Quebec.”

against them in the past, by the Iraqi state, as well as the fear of their recurrence in the future. Deep and complicated issues currently divide Baghdad and Erbil, along with fears of the consequences of these problems if they are not resolved. The result is likely to be a bloody conflict and armed war between both sides, in particular about disputed areas, oil, budget, participation in the Iraqi state, and issues over sovereignty between the centre and the region.

If an ethnic group lives in a compact area and is oppressed by the majority, this group can claim the right to self-determination.¹⁰⁶² A more suitable legal basis for a remedial right to secession could perhaps be found in Principle V para. 7 of the Friendly-Relations-Declaration of 1970. Although this declaration is not legally binding as such it can be seen as an authoritative interpretation of UN law and as a basis for determining the further direction of the development of UN law.¹⁰⁶³

Buchanan has used the remedial right theory to affirm that a group obtains the right to secession when it has suffered from violations of fundamental human rights and threats or grievances, like threats of genocide.¹⁰⁶⁴

Kurds have suffered about 100 years of oppression and have been denied their rights including the right to self-determination under the Iraqi regime. The Kurdish people in Iraq have the right to practice self-determination at least as a remedial solution according to this point in international law, but the main obstacle lies in the balance of power and

¹⁰⁶² Jashua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession With Formulations of Post-Colonial National Identity* (the Hague/ Boston /London: Martinus Nijhoff Publishers, 2000), 69.

¹⁰⁶³ Peter Hilpold, *Autonomy and Self-Determination: Between Legal Assertions and Utopian Aspirations* (Cheltenham, Northampton: Edward Elgar Publishing, 2018), 38.

¹⁰⁶⁴ Buchanan, "Theories of Secession," 31-61.

international politics and the interests of the superpowers, as well as the Kurdistan Region's inability to impose a de facto situation on Iraq and the regional countries.

5. Judicial decisions

There are two other important legal foundations for the Kurdistan claim to self-determination. The first can be found in the judicial decisions of the International Court of Justice in the case of the Kosovo independence declaration, which was found to be legal and consistent with the United Nations Charter. The second, the decision of the Canadian Supreme Court in the Quebec case.

The Kosovo case fell outside the colonial context and most of the people of Kosovo were part of the existing state or within the border of an independent state, but it has exercised external self-determination and proclaimed independence. Moreover, the International Court of Justice decided in favour of it; it gained wide international support and broad recognition. This decision inaugurated a new stage in international law, and it could make a legal basis for the claims of the Kurdistan region.¹⁰⁶⁵

Similarly, the decision of the Canadian Supreme Court in the Quebec case is important, since it decided that any minority or ethnic group that suffered from injustice and grave violations has a right to external self-determination. The Canadian Supreme

¹⁰⁶⁵ ICJ, "Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010."

Court indicated that it may be possible to argue that international law recognizes the right to external self-determination for a people who have been repressed within the border of the current state or blocked from the meaningful exercise of their right to self-determination internally.¹⁰⁶⁶ The Court rejected the claims of Quebec to secession because it decided that the people of Quebec had not been denied self-determination rights within Canada, and were not repressed in the context of the Canadian state.¹⁰⁶⁷

Given this development in international law, we can conclude that in view of these crimes, the genocide, the ethnic cleansing, the deprivation of rights, the bloody conflict lasting a century, the people of Kurdistan have a remedial right to self-determination. However, the enforcement of this right depends on the political balance of power, and on internal, regional and international politics, not only on these legal foundations.

6. Denial of the right to internal self-determination

International law subsequently developed to embrace the principle of self-determination in a binary form, as entailing rights to internal or external self-determination depending on the circumstances. Peoples existing outside the colonial context and who are not oppressed may exercise their right to self-determination through internal forms, like federalism, free association and autonomy. After Kurdistan was merged with Iraq, Kurds were deprived of their right to internal self-determination, or, the rights of people within

¹⁰⁶⁶ Supreme Court of Canada, "Supreme Court Judgments, Reference re Secession of Quebec."

¹⁰⁶⁷ Supreme Court of Canada, "Supreme Court Judgments, Reference re Secession of Quebec."

an independent state to freely choose their government¹⁰⁶⁸, and build a representative government.

The denial of the right to internal self-determination is one of the other legal justifications for approving the claim to the right to self-determination for the people of Kurdistan, as the decision of the Canadian Supreme Court confirmed in the case of Quebec.¹⁰⁶⁹ The Supreme Court of Canada concluded that if the minority in an independent state is under subjugation and suppression and cannot enjoy representative government as the resolution 2625 (XXV) provides, this section of the population can obtain the right to external self-determination.¹⁰⁷⁰

Antonio Cassese has argued that a group may have the right to separate from its mother state when the central authorities of a sovereign state persistently refuse to grant participatory rights to a “religious or racial group.”¹⁰⁷¹ After the integration of Iraqi Kurdistan into Arabian Iraq, the Kurdish issue began. Although there was an emphasis on giving autonomy to Kurdish regions and recognizing the Kurdish language in these areas in the decision of the League of Nations regarding the merging of Mosul Vilayet with the Iraqi State,¹⁰⁷² in the Constitution of the kingdom of Iraq of 1925¹⁰⁷³ there was no reference

¹⁰⁶⁸ Cassese, *Self-Determination of People, A legal Reappraisal*, 19.

¹⁰⁶⁹ Supreme Court of Canada, “Supreme Court Judgments, Reference re Secession of Quebec.”

¹⁰⁷⁰ Supreme Court of Canada, “Supreme Court Judgments, Reference re Secession of Quebec.”

¹⁰⁷¹ Cassese, *Self-Determination of People, A legal Reappraisal*, 119.

¹⁰⁷² Abdulla, *The Kurds: A Nation on the Way to Statehood*, 89-90.

¹⁰⁷³ Constitution Society, “Constitution of the kingdom of Iraq, March 21, 1925, as amended July 29, 1925,” *Constitution Society*, accessed September 24, 2018. <https://www.constitution.org/cons/iraq/iraqiconst19250321.html>

to the autonomy of the Kurds nor recognition of the Kurdish language. The Kurdish people was denied internal self-determination as well.

Resolution 2625 provided that the territorial integrity of "States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour"¹⁰⁷⁴ should be respected. According to this paragraph, minorities, and ethno-religious groups within independent states clearly have the right to self-determination if they do not possess a representative government,¹⁰⁷⁵ or if the government of a sovereign state denies access to the government and power on the grounds of race or religion.¹⁰⁷⁶ In these situations, the principle of territorial integrity would no longer be valid. This simply means the government must be non-racist and no element of the population can specifically be excluded from government, as in the apartheid regime. Throughout the last century, successive Iraqi governments have worked to exclude Kurds from participation in government and sharing power with the Arabian majority in Iraq. Consequently, the Kurdish people have a right to self-determination.

The "right" of self-determination cannot lapse; it inherently belongs to a collective people sharing similar objective characteristics such as race, culture, history, religion and language. This group must objectively see itself as a people: a people whose basic rights -

¹⁰⁷⁴ UN, "UNGA Res. 2526, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

¹⁰⁷⁵ Quane, *The United Nations and the Evolving Right to Self-Determination*, 568-569.

¹⁰⁷⁶ Cassese, *Self-Determination of People, A legal Reappraisal*, 112.

especially that of self-determination - have been denied by subjugation to a foreign power.¹⁰⁷⁷

Cassese believes that a referendum is a form of legitimation for external self-determination, even for a group which does not have this right according to international law. When the Soviet Union broke up the process of independence of the twelve Soviet Republics occurred outside the realm of international law.¹⁰⁷⁸ The referendums were a form of legitimation for their breaking away according to the general principle of self-determination.¹⁰⁷⁹

Consequently, the Iraqi Kurdistan region has the legitimate right to self-determination, as two referendums were held, the first by a non-governmental institution in 2005,¹⁰⁸⁰ and the second by the formal authorities in 2017.¹⁰⁸¹ In both of these referendums, the vast majority of participants (more than 90%) voted in favour of independence, making a legitimate basis for IKR claims to self-determination.

Independence is the final goal for Iraqi Kurdistan. In the draft of the constitution of Kurdistan, prepared after 2005 by the Kurdistan Parliament, this right was referred to in many places. The Kurdish region freely associates with the other regions in the Iraqi federation, but reserves the right to leave the federation if the central government either departs from the federal model or abandons the constitutional principles of democracy and

¹⁰⁷⁷ John A. Collins, "Self-Determination in International Law: The Palestinians, Case Western Reserve," *Journal of international Law* 12, no. 1 (1980): 137-167.

¹⁰⁷⁸ Cassese, *Self-Determination of People, A legal Reappraisal*, 266.

¹⁰⁷⁹ Cassese, *Self-Determination of People, A legal Reappraisal*, 270-273.

¹⁰⁸⁰ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 20-34.

¹⁰⁸¹ Bethan McKernan, "Kurdistan referendum results: 93% of Iraqi Kurds vote for independence, say reports."

human rights, or if the central government fails to effectuate Article 140 in the federal constitution.¹⁰⁸²

7. Similar cases

In the case of Bangladesh, the degree and extent of the deprivation of fundamental human rights were so compelling that there was little hope that any action short of secession would satisfy the sub-groups demanding effective participation in the government. Where the denial of the right to balanced development, the right of life, and the right to protection of separate identity is clear and peaceful tools to remedy these injustices useless, and secession is the only remedy, a claim to secede is not illegitimate.¹⁰⁸³

World Wars I and II serve as a constant reminder of a basic reason for international acceptance of the right to self-determination: survival. While the *raison d'être* of self-determination may be couched in the belief that all people must be allowed to freely determine their future, an underlying rationale is survival. "Survival" is a means of emphasizing the peace-promoting aspects of self-determination.¹⁰⁸⁴ Consequently, in the Kurdish case, self-determination and an independent state are the most effective means of

¹⁰⁸² Constitution of Kurdistan, Article 8, quoted in Kelly, "The Kurdish Regional Constitution within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause," 707-808.

¹⁰⁸³ M. Rafiqul Islam, "Secessionist Self-Determination: Some Lessons from Katanga, Biafra and Bangladesh," *Journal of Peace Research* 22, no. 3 (1985): 211-215.

¹⁰⁸⁴ Collins, "Self-Determination in International Law: The Palestinians, Case Western Reserve," 166.

protecting the Kurdish people from crimes of injustice, oppression, genocide, and ethnic cleansing. These crimes were practiced against the people of Kurdistan by the Iraqi state, and there are also fears by the Kurds of the recurrence of these crimes in the future. For Iraqi Kurdistan, self-determination is a basis for survival, as a distinctive people who have a distinctive identity with specific ethnicity, language, geography and history, and a national issue.

In the case of Bangladesh, according to many sources the Biafrans and Bengalis could no longer live in peace or fulfill their legitimate individual aspirations within the larger political community because of wide violations of their rights by majorities.¹⁰⁸⁵ One of the factors considered by the United Nations in the formulation of the partition plan for Palestine was the fact that the inhabitants could no longer coexist in peace. This was also the primary reason for the creation of Pakistan out of British India.¹⁰⁸⁶ In these cases, external self-determination was perceived as the only way to rescue people from oppression and violence by the majority and existing state.

In the case of Quebec, the Supreme Court of Canada concluded that although the Quebecois are culturally unique, uniqueness alone does not confer the right to secession. This evaluation is in accordance with the current requirements of international law: only oppressed or colonised people have the right to secession. Because the Quebecois are

¹⁰⁸⁵ Onyeonoro S. Kamanu, "Secession and the Right of Self-Determination: An O. A. U. Dilemma," *The Journal of Modern African Studies* 12, no. 3 (1974): 355-376.

¹⁰⁸⁶ M. Cherif Bassiouni, *self-determination and the Palestines, in proceedings of the American Society of international law 65th annual meeting* (Washington: American Society of International Law's Annual Meeting, 1971), 36.

manifestly not an oppressed people and they have meaningful access to a government they are not entitled to unilaterally secede under international law.¹⁰⁸⁷

State practice and the international community allow for an extended use of the right to self-determination outside the traditional colonial context. There has been widespread recognition that the right is relevant to the Palestinians;¹⁰⁸⁸ to the blacks in South Africa;¹⁰⁸⁹ and to other territories such as Tibet, as the UN called Tibetans as a "people" in its documents.¹⁰⁹⁰ The UN also "solemnly renews its calls for the cessation of practices which deprive the Tibetan people of their fundamental Human Rights and Freedoms, including their right to self-determination".¹⁰⁹¹

The successful resolution of ethno-national issues and independence cases apparently made the international community realize the dangers inherent in blind obedience to the principle of territorial integrity. This principle must not serve as a shield for tyrants and dictators; it must not become a wall behind which human deprivations are justified and perpetuated.¹⁰⁹²

¹⁰⁸⁷ Roya M. Hanna, "Right to Self-Determination in In Re Secession of Quebec," *Maryland Journal of International Law* 13, no. 1 (1999): 240- 246.

¹⁰⁸⁸ UN, "UNGA Res. 2787, UN General Assembly- Twenty-Sixth Session, GA. Res. 2787(XXVI) of 06 Dec. 1971," United Nations. Accessed September 12, 2017. [https://undocs.org/en/A/RES/2787\(XXVI\)](https://undocs.org/en/A/RES/2787(XXVI))

¹⁰⁸⁹ UNSC, "SC Res. 417 South Africa," *Search engine for the United Nations Security Council Resolutions*, accessed September 12, 2017. <http://unscr.com/en/resolutions/417>; UNSC, "SC Res. 418," Search engine for the United Nations Security Council Resolution, accessed September 12, 2017. <http://unscr.com/en/resolutions/418>

¹⁰⁹⁰ UN, "UNGA Res. 1353, General Assembly- fourteenth session, Resolutions adopted without reference to a committee, Question of Tibet," GA. Res. 1353 (XIV), October 21 1959, *United Nations*. Accessed September 12, 2017. [https://undocs.org/en/A/RES/1353\(XIV\)](https://undocs.org/en/A/RES/1353(XIV))

¹⁰⁹¹ UN, "UNGA Res. 1732, General Assembly-sixties session, Question of Tibet," GA. Res. 1723(XVI), December 20, 1961, *United Nations*, accessed September 12, 2017. [https://undocs.org/en/A/RES/1723\(XVI\)](https://undocs.org/en/A/RES/1723(XVI))

¹⁰⁹² B. C. Nirmal, *The right to self-determination in international law*, 250.

In the Kosovo case the International Court of Justice declaration marked a significant development. The court asked: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?” The Court noted that the principle of territorial integrity is about relations between independent states and not between a state and a semi-state entity. It states: “the scope of the principle of territorial integrity is confined to the sphere of relations between States.”¹⁰⁹³

In other words, the independence of a region or part of an independent country is not considered as a violation of territorial integrity of the mother state in accordance with the instruments of the United Nations, because this principle is related to the relationship between states in questions of compulsory annexation, where land is taken from a country by a colonial power or given to another power.

Therefore, according to traditional international law, it would not be possible for minorities or peoples within the border of an independent state to claim external self-determination unless they had been suppressed and violated. In spite of this, the international community has experienced the exercise of self-determination by several ethnic minorities around the world, including Bangladesh, former Yugoslavia, the Soviet Union, and South Sudan. Yet, various ethno-national issues around the world within states continued, which affected international security and peace. They must be dealt with as conflicts of self-determination, and there is a need for more clarity in international law.

¹⁰⁹³ICJ, “Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010.”

SECTION II: Self-determination outside the colonial context: comparison between Kosovo and Kurdistan Region

There are many similarities between the case of Kosovo and the case of the Kurdistan region, in terms of background, political situation, legal context, and colonialism. These features shared between the cases of Kosovo and the Kurdistan region can be relied upon to explain the state of Iraqi Kurdistan, and are important in helping to justify its steps towards independence.

The first paragraph of this section addresses the Case of Kosovo as a similar case to the IKR case in different aspects. (§I) The second paragraph demonstrates a comparison between Kosovo case and the Iraqi Kurdistan Region case in the light of international law and international politics. (§II)

§I: The case of Kosovo

The declaration of independence of Kosovo and recognition by the International Court of Justice in the answer to the General Assembly of the United Nations, that the declaration of independence was a legal action, was a turning point in international law related to the right to self-determination and related concepts.¹⁰⁹⁴

¹⁰⁹⁴ ICJ, “Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010.”

A. Factual background

Kosovo is a small, mountainous country at the southern end of the former Yugoslavia in the Balkan Peninsula. To Kosovo's north lies Serbia, to the south of Kosovo lies Albania, to the west of Kosovo lies Montenegro and to the east lies Macedonia.¹⁰⁹⁵ The current population of Kosovo is 1,809,296.¹⁰⁹⁶ Since 2008, Kosovo has been a self-declared independent country. The United States and most members of the European Union (EU) recognized Kosovo's declaration of independence from Serbia in the same year.¹⁰⁹⁷

Ancient Kosovo's problems stemmed from its location as a frontier between Christian orthodox and Muslim cultures since the first millennium. As a result, its demographics and religious make-up were always contentious issues between the indigenous Serbians who have been practicing the Orthodox religion, the Ottoman Empire of the Turks and the native Albanians whose numbers have increased over time and have been mostly Muslim like the Ottoman Turks¹⁰⁹⁸. The constant struggle over territory between the Austro-Hungarian Empire and the Ottoman Empire turned Kosovo into a frontier zone with a local populace fighting on both sides of the divide. The result is that Kosovar Albanians gradually increased in numbers, reaching more than 90% by latest estimates and expanded the Muslim presence in a territory Serbs considered holy as the

¹⁰⁹⁵ Benjamin Olson, "Kosovo Genocide: Summary & Timeline," *Study. com*, accessed June 24, 2018. <https://study.com/academy/lesson/kosovo-genocide-summary-timeline.html>

¹⁰⁹⁶ Country meters, "Kosovo Population," *Country meters*, accessed June 24, 2018. <https://countrymeters.info/en/Kosovo>

¹⁰⁹⁷ Antonia Young, John R. Lampe and John B. Allcock, "Kosovo, Self-Declared Independent Country," *Encyclopaedia Britannica*, accessed May 14, 2018. <https://www.britannica.com/place/Kosovo>

¹⁰⁹⁸ John R. Lampe, *Yugoslavia as History: Twice there was a Country* (Cambridge: Cambridge University Press, 2000), 158.

former seat of the Serbian Orthodox Church¹⁰⁹⁹. This expansion is attributable to continuous Serb emigration from the regions, especially since 1990, and high birth rates among the Albanian Muslims.

As the Ottoman empire collapsed in the early 20th century, Serbia, which had been independent since the late 1880s, reasserted control over Kosovo in 1912, but soon lost out after the First World War when the new communist hegemony created Yugoslavia, which included both provinces in addition to others¹¹⁰⁰. Serbia's sovereignty over Kosovo was recognized at the Versailles Congress in 1919.¹¹⁰¹ This created an autonomy crisis which the communists were able to quickly detect and respond to with token pledges of autonomy in the 1945 constitution, a legal promise that stimulated hopes and constant attempts at more self-governance. In the end, as communism collapsed in the 1980s, Yugoslavia disintegrated as most provinces opted to become independent countries, except for Serbia under Milosevic, which once again decided to reassert control over Kosovo in 1988,¹¹⁰² inspiring bitterness, new attempts at self-determination and secession. Finally, Serbia under Milosevic undertook a repressive campaign to eject Albanians from Kosovo, an ultimately fruitless effort which did not shift or change the demographic make-up of the

¹⁰⁹⁹ Houssain Kettani, "Muslim population in Europe: 1950–2020." *Population* 733 (2010): 963-988.

¹¹⁰⁰ Gerlachus Duijzings, *Religion and the Politics of Identity in Kosovo* (London: Hurst, 2000), 6-10.

¹¹⁰¹ Institut za uporedno pravo, *Aggression against Yugoslavia correspondence* (Belgrade: Faculty of Law, University of Belgrade, 2000), 84.

¹¹⁰² Nebojša Vladislavljević, "Grassroots groups, Milošević or dissident intellectuals? A controversy over the origins and dynamics of the mobilisation of Kosovo Serbs in the 1980s." *Nationalities papers* 32, no. 4 (2004): 781-790.

province¹¹⁰³. This latter issue created grounds for secession demands as exemplified in the remedial rights theory by Buchanan.

B. The new conflict point

The conflict was a result of Yugoslavia's constitutional amendments withdrawing Kosovo's partial autonomy as stipulated in the 1945 constitution. The Serbian parliament approved a new constitution that ended Kosovo's autonomous status in March 1989 (Serbians approved the constitution in a referendum on July 1, 1990). The Kosovo Assembly declared Kosovo's independence from Serbia on July 2, 1990, and Serbia dissolved the Kosovo Assembly on July 5, 1990.¹¹⁰⁴

This process sparked fears among the Albanian population in Kosovo that they would be subsumed into their larger neighbors, denying them a chance at self-determination and the creation of new countries as was happening in neighboring provinces after the death of Yugoslav president Joseph Tito in 1986¹¹⁰⁵. The formation of the KLA in 1991 was the turning point in the long-running hostilities started in the 1995 war when the KLA chose to use violence as a means of securing autonomy, in contrast to the non-

¹¹⁰³ Vladislavljević, "Grassroots groups, Milošević or dissident intellectuals?"

¹¹⁰⁴ University of Central Arkansas- "political science, Serbia/Kosovo (1968-present)," *University of Central Arkansas*, accessed July 08, 2018. <https://uca.edu/politicalscience/dadm-project/europerussiacentral-asia-region/serbiakosovo-1968-present/>

¹¹⁰⁵ Ramet, *Balkan Babel: The disintegration of Yugoslavia from the death of Tito to the fall of Milosevic*, 12-20.

violence strategy that Ibrahim Rugova and his Democratic League of Kosovo had been pursuing since Milosevic's withdrawal of autonomy in 1989¹¹⁰⁶. Rugova had successfully minimized the violence by creating a self-governing authority in Kosovo throughout the 1980s and 90s through independent elections where he was repeatedly elected as president among the Kosovar Albanians. The DLK hoped to convince the international community, especially NATO and the West, that Kosovo was capable of being a sovereign state despite the contentions of the Serbian Government. The US and European policy on the Balkans was in favor of independence for former Yugoslav republics, not self-governing provinces within those states.¹¹⁰⁷

From early 1995 to mid-1999 a war raged in Kosovo between the Federal Republic of Yugoslavia (then consisting of Serbia and Montenegro) and the KLA¹¹⁰⁸ over the autonomy of the latter province.¹¹⁰⁹ In 1998, Yugoslav authorities deployed their security services and paramilitary groups in the province, killing almost 2,000 prominent politicians seeking self-determination, rebels and civilians in the process¹¹¹⁰. When peace talks and diplomatic interventions failed, NATO intervened with the aerial bombardment of

¹¹⁰⁶ Tim Judah, "Kosovo's road to war." *Survival* 41, no. 2 (1999): 5-18.

¹¹⁰⁷ Ramet, *Balkan Babel: The disintegration of Yugoslavia from the death of Tito to the fall of Milosevic*, 12-20.

¹¹⁰⁸ Yugoslavia then was the remnant of the disintegrated republics forming greater Yugoslavia consisting of Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, and Macedonia. while the Kosovo Liberation Army (KLA) consisted of Albanian rebels who were the infantry with the Albanian army providing ground support with NATO providing air support in March 1999, see; Olson, "Kosovo Genocide: Summary & Timeline."

¹¹⁰⁹ Olson, "Kosovo Genocide: Summary & Timeline."

¹¹¹⁰ James Pettifer, *The Kosova Liberation Army: Underground War to Balkan Insurgency, 1948-2001*, 190.

Yugoslavia in favor of the KLA to counter the brutal methods that the Serbian forces under President Slobodan Milosevic were using to pacify the province¹¹¹¹.

The major conflict in 1998 culminated in the NATO bombing campaign of March to May 1999. The air strikes targeted Serbian military positions and eventually Serbia's capital Belgrade, compelling the antagonists to commence peace talks¹¹¹². In June 1999 NATO and Yugoslavia signed a peace deal stipulating military withdrawal from the province, the entry of a UN peacekeeping force and the return of ethnic Albanians as well as other communities displaced from the province due to the war. However, the intervention of the international community fell short of demanding secession of the province, which many considered an integral part of the larger Serbian republic.

The war came to an end after the ratification of the Kumanovo Treaty when the Yugoslav forces withdrew from Kosovo to allow international peacekeepers into the region, while KLA forces either left to join other rebel groups in neighboring countries or formed the Kosovo Police. At the end of the conflict, more than 13,000 people were confirmed dead or missing, and almost 1.5 million people were displaced into neighboring regions to avoid the violence at home.¹¹¹³ These crimes and widespread violations by the Serbian government against the population of Kosovo made the international community intervene to stop them, and it then supported Kosovo as it moved towards the declaration of independence.

¹¹¹¹ William J. Fenrick, "Targeting and proportionality during the NATO bombing campaign against Yugoslavia." *European Journal of International Law* 12, no. 3 (2001): 489-495.

¹¹¹² Adam Roberts, "Nato's 'humanitarian war' over Kosovo," *Survival* 41, no. 3 (1999): 102-112.

¹¹¹³ Morokvasic, "Yugoslav refugees, displaced persons and the civil war," 5.

C. The Declaration of Independence

The resolution process of the Kosovo war involved negotiations between the Federal Republic of Yugoslavia (Serbia), NATO and Russia before the signing of the Kumanovo Agreement on June 9, 1999. Russia had an important role to play because its support was necessary for a UN Security Council Resolution on Kosovo that the Group of Eight (Canada, France, Germany, Italy, Japan, Russia, UK, US) had agreed on, which would have ended the NATO airstrikes and required Yugoslavia to withdraw troops from Kosovo¹¹¹⁴. The Kumanovo Agreement required the following:

- Withdrawal of Yugoslav forces from Kosovo
- An end to the civil unrest that KLA was conducting
- An end to hostilities between NATO and Yugoslavia
- A 25 km air buffer zone and 5 km ground safety zone around Kosovo's borders which Yugoslavia could not access without NATO approval;
- Deployment of security forces and civil authorities within Kosovo to quell civil unrest.¹¹¹⁵

Once the different parties met their obligations, the Serbians went about the process of deposing Milosevic from power in an election held in October 2000, followed by his arrest and extradition to the International Court of Justice, and he died in custody in 2006.¹¹¹⁶

¹¹¹⁴ Oksana Antonenko, "Russia, NATO and European security after Kosovo." *Survival* 41, no. 4 (1999): 124-127.

¹¹¹⁵ Jason E. Fritz, *Stability Operations in Kosovo 1999-2000: A Case Study* (Carlisle: U. S. Army Peacekeeping and Stability Operations Institute, 2018), 90-94.

¹¹¹⁶ Hiram Abtahi & Grant Dawson, "The anatomy of the Milošević trial (2001–2006)." *Journal of International Humanitarian Action* 1, Article number: 4 (2016), accessed May 15, 2017. <https://jhumanitarianaction.springeropen.com/articles/10.1186/s41018-016-0004-x#ack1>

This international intervention, imposing an agreement and a specific situation on the government, paved the way for the establishment of Kosovo. It secured freedom for the people of Kosovo and its political groups to focus on self-building, building institutions internally, and building relations externally, moving towards independence as the ultimate goal of the region.

In 2008 Kosovo declared independence from Serbia which by then had broken away from first Yugoslavia, then from Serbia and Montenegro, claiming sovereignty over the Kosovo province. Most of the international community, a total of 113 countries, recognized Kosovo as an independent state after this declaration, including the US and majority of EU countries.¹¹¹⁷

In 2010 the International Court of Justice affirmed that Kosovo's declaration of independence was in conformity with international law, and declared that "the Court considers 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."¹¹¹⁸ The court also declared that: "the scope of the principle of territorial integrity is confined to the sphere of relations

¹¹¹⁷ Be in Kosovo, "Countries that have recognized Kosovo as an independent state,"; Kosovo Thank you, "Thank you From the Kosovar People."

¹¹¹⁸ ICJ, "Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010."

between States”.¹¹¹⁹ In so doing it dismissed Serbia’s assertion that Kosovo’s independence declaration had violated its territorial integrity.¹¹²⁰

International support including the decision of the ICJ, played a key role in Kosovo’s fight for independence. As Walter has argued, the minimalism of the court helped in the treatment of the Kosovo conflict because it politically facilitated the acceptance of independence in the case of Kosovo.¹¹²¹ Fourteen states including Finland and Germany submitted briefs to the International Court of Justice in its Advisory Opinion on Kosovo to argue in favour of Kosovar secession and independence, based on the argument that international law embraced a principle of remedial external self-determination in instances of severe oppression by the mother state.¹¹²²

Currently, the status quo prevails with the two countries operating as separate entities.

¹¹¹⁹ ICJ, “Accordance with the International Law of the Unilateral Declaration of independent in respect of Kosovo Advisory Opinions of 22 July 2010.”

¹¹²⁰ UN, “Security Council meets in emergency session following Kosovo Declaration of Independence, with members sharply divided on issues, 5839th meeting.” *United Nations, Meetings Coverage and Press Releases*, February 18, 2008. Accessed July 22, 2018. <https://www.un.org/press/en/2008/sc9252.doc.htm>

¹¹²¹ Walter, *Antje von Ungern-Sternberg, and Kavus Abushov, Self-determination and secession in international law*, 13.

¹¹²² Milena Sterio, “Self-Determination and Secession Under International Law: The Cases of Kurdistan and Catalonia,” *American Society of International Law* 22, no. 1 (2018), accessed August 15, 2018. https://www.asil.org/insights/volume/22/issue/1/self-determination-and-secession-under-international-law-cases-kurdistan#_ednref5

§II: The case of Kurdistan in comparison with the case of Kosovo

If we compare the two cases in terms of the fundamental elements of the state, background, people, authority, and recognition, it can be concluded that the Kurdistan Region is more qualified from Kosovo to be a state given its continuity in terms of government, people and land, but it is lacking international support and recognition.¹¹²³ Kosovo had widespread international support which led to formal recognition when it announced independence. The United States and the majority of European states and other allies strongly supported Kosovo's statehood and sovereignty and its campaign for international recognition.¹¹²⁴ This result is a legal political matter and it is the outcome of the regional and international political situation. In terms of geographical area, the Kurdistan region is much larger than the geographical area of the region of Kosovo, as the area of the Kurdistan region is 40,643 (SQ KM)¹¹²⁵, while the area of Kosovo is 10,905 (SQ KM).¹¹²⁶ The population of the Kurdistan region is also much greater than the population of Kosovo. The population of the Kurdistan region is 5.2 million,¹¹²⁷ and with

¹¹²³ Aleksandar Pavkovic and Peter Radan, *The Ashgate Research Companion to Secession* (Farnham: Ashgate Publishing, Ltd., 2013), 455.

¹¹²⁴ Newman and Visoka, "The Foreign Policy of State Recognition: Kosovo's Diplomatic Strategy to Join International Society," 367–387.

¹¹²⁵ KRG, "Kurdistan's geography and climates," Department of foreign relations, *Kurdistan Regional Government*, accessed May 15, 2017. <http://dfr.gov.krd/p/p.aspx?p=293&l=12&r=367>

¹¹²⁶ Young, Lampe and Allcock, "Kosovo, Self-Declared Independent Country."

¹¹²⁷ KRG, "The people of the Kurdistan Region," *Kurdistan Regional Government*, accessed February 27, 2017. <http://www.gov.krd/p/p.aspx?l=12&p=214>

the addition of Kurds living in disputed areas it comes to 7 million,¹¹²⁸ while, the population of Kosovo is (1,809,296)¹¹²⁹ persons.

In the case of Kosovo, the United Nations built the local self-governing institutions according to international resolutions after the end of the war. After Kosovo's declaration of independence, the UE and international community worked hard to build democracy, fight corruption and establish the rule of law to make Kosovo's authorities functional, and the stateself-sufficient.¹¹³⁰ The Kurdistan region is more developed than that of Kosovo, with 28 years of the experience of regional government,¹¹³¹ and elections. There is a quasi-state in the Kurdistan region of Iraq, and it has legislative, executive and judicial powers.¹¹³² There is an official army in Kurdistan, the "Peshmerga forces", recognized in the Iraqi constitution as "regional guards".¹¹³³ The IKR has broad base for regional and international relations.¹¹³⁴ The Kurdistan region has been exporting crude oil independently without return to Baghdad from 2013.¹¹³⁵ There is a state within a state in Iraq under the name of the Kurdistan region¹¹³⁶.

¹¹²⁸ Gunes, *The Kurds in a New Middle East: The Changing Geopolitics of a Regional Conflict*, 2.

¹¹²⁹ Country meters, "Kosovo Population,"

¹¹³⁰ Gëzim Visoka, *Shaping Peace in Kosovo: The Politics of Peacebuilding and Statehood, Rethinking Peace and Conflict Studies*, (Cham, Switzerland: Palgrave Macmillan-Springer, 2017), 51-52.

¹¹³¹ KRG - Department of External Relations, "Kurdistan Regional Government."

¹¹³² KRG - Department of External Relations, "Kurdistan Regional Government."

¹¹³³ Iraqi constitution, Art. 121.

¹¹³⁴ Alex Danilovich, *Iraqi Federalism and the Kurds: Learning to Live Together* (London and New York: Routledge, 2016), 99.

¹¹³⁵ Julia Payne and Peg Mackey, "UPDATE 2-Iraqi Kurdistan starts independent crude oil exports," *Reuters*, Jan. 8, 2013, accessed August 12, 2017. <https://www.reuters.com/article/kurdistan-crude-exports/update-2-iraqi-kurdistan-starts-independent-crude-oil-exports-idUSL5E9C843R20130108>

¹¹³⁶ Ofra Bingo, *Iraqi Kurds, building a state within the state*. (in Kurdish) "translated by Soran Mustafa Kurdy" (Erbil: Aras Publisher, 2013), 434.

In terms of historical background, also, there are similarities between the case of the Kurdistan region and the case of Kosovo. Kosovo merged with Serbia in 1912¹¹³⁷, and Serbia's sovereignty over Kosovo was recognized at the Versailles Congress in 1919.¹¹³⁸ Kosovo was not owned by Serbia and was not part of it in the past. The Kurdistan region was never part of Iraq, but was rather a different region. Kurdistan had multiple states, and semi-states, and the Emirates throughout history.¹¹³⁹ The IKR was under the rule of the Islamic Caliphate and the Ottoman Empires as a different province or "vilayet" of Iraq, which was annexed to Iraq by the British government in 1926, after the suppression of many rebellions including the Kurdish national movement under the leadership of Sheikh Mahmud Barzanji, in the early 1920s,¹¹⁴⁰ for the sake of sectarian balance but also because of the oil reserves in the region. Kosovo and Kurdistan both suffered prolonged war and instability because of a merger.¹¹⁴¹ From the beginning of the twentieth century onwards there has been no stability in Iraq as a result of competition for power and ethno-religious problems, and ongoing conflict between the various groups, or conflict between the Iraqi regime and its neighbours.¹¹⁴² Denial of the Kurdish people's rights by successive Iraqi governments and the failure to resolve the Kurdish issue have been key factors in the

¹¹³⁷ Duijzings, *Religion and the Politics of Identity in Kosovo*, 6-10.

¹¹³⁸ Institut za uporedno pravo, *Aggression against Yugoslavia correspondence*, 84.

¹¹³⁹ Michael Eppel, "The Demise of the Kurdish Emirates, The Impact of Ottoman Reforms and International Relations on Kurdistan during the First Half of the Nineteenth Century," 237-258; Hakan Ozoglu, *Kurdish Notables and the Ottoman State: Evolving Identities, Competing Loyalties, and Shifting Boundaries* (New York: State University of New York Press, 2012), 43-71.

¹¹⁴⁰ Adel Soheil, *The Iraqi Ba'th Regime's Atrocities Against the Faylee Kurds: Nation-State Formation Distorted* (Stockholm: Books on Demand, 2018), 29.

¹¹⁴¹ Olson, "Kosovo Genocide: Summary & Timeline."

¹¹⁴² BBC, "Iraq profile – timeline, A chronology of key events," *BBC*, accessed June 24, 2018, <https://www.bbc.com/news/world-middle-east-14546763>

instability of Iraq for nearly a century.¹¹⁴³ The external self-determination of Kosovo was independence more than secession, as would be the case in the Kurdistan Region, if the process develops at any time, because Kurdistan was not part of Iraq but included in Iraq by the British colonial power, which led to the Kurdish issue in Iraq.¹¹⁴⁴

In term of internal problems, both Kurdistan and Kosovo are post-conflict societies, and they have suffered greatly from violence, war, injustice, dictatorship, and violations of their fundamental rights. Consequently, they have many social, economic and political problems, both collectively and individually. Some of these problems are related to the absence of the administrative institutions, at least at the beginning of the liberation, or the withdrawal of the central government forces from the region, as well as problems concerning peacebuilding, unity, the rule of law and the new democratic experiment. The long-term divisions can entrench old hatreds and wounds. “Such has been the case in Kosovo, where after seven years of international rule, society is deeply segregated and the threat of another ethnic conflict remains very real.”¹¹⁴⁵ Consequently, in both cases, international support was very important to peacebuilding, as UN Secretary-General Boutros-Ghali described “the concept of peace-building as the construction of a new environment”¹¹⁴⁶ in the wake of conflict. International support is needed at all levels of the techno-politics of contemporary post-conflict management: state-building, peacebuilding,

¹¹⁴³ Wagner, *Creation of the Modern Middle East. Iraq*, 104.

¹¹⁴⁴ Shields, “Mosul, the Ottoman Legacy and the League of Nations,” 217-218.

¹¹⁴⁵ Clive Baldwin, *Chris Chapman and Zoë Gray, Minority Rights: The Key to Conflict Prevention, report Minority Rights Group International* (London, MRG,2007), 2.

¹¹⁴⁶ Sarah Keeler, *Peacebuilding. The Performance and Politics of Trauma in Northern Iraq*, in *Daniel Bertrand Monk and Jacob Mundy, The Post-Conflict Environment Investigation and Critique* (Michigan: University of Michigan Press,2017), 69.

transitional justice, resettlement, reconstruction, and redevelopment aid. The Kurdistan region existed within a state still caught up in the ravages of war, but in term of peacebuilding, it alone is internationally lauded as a beacon of democracy and prosperity within this otherwise grim picture of contemporary Iraqi politics of violence.¹¹⁴⁷

On the other hand, when Kosovo declared its independence in 2008 it was not an independent country, but a region within the country of Serbia. Moreover, the people of Kosovo are not a colonized people according to international law instruments, but part of the people of Serbia. Kosovo was never a colony, and the Serbian Army had withdrawn long before the independence issue was determined.¹¹⁴⁸ But Kosovans exercised independence and received support and wide recognition internationally. As explained previously, international law about exercising the right to self-determination in the colonial context is clear, as it recognizes the right of peoples to freely determine their own destiny¹¹⁴⁹, but in cases outside the context of colonialism, it is not clear. Furthermore, the region of Kosovo was not on the United Nations list of candidates to exercise the right of self-determination. Yet it has exercised independence, and dealt with the international community, and has been officially recognized so far by 113 countries.¹¹⁵⁰ Hence, the status of Kosovo as a case outside the framework of the traditional colonial context is a legal precedent and marks a significant development.

¹¹⁴⁷ Sarah Keeler, *Peacebuilding. The Performance and Politics of Trauma in Northern Iraq*, 71.

¹¹⁴⁸ Paul Harris, *Is Tibet entitled the right to self-determination?* (Hong Kong: University of Hong Kong, 2008),10.

¹¹⁴⁹ UN, “UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.”

¹¹⁵⁰ Be in Kosovo, “Countries that have recognized Kosovo as an independent state.”; Kosovo Thank you, “Thank you From the Kosovar People.”

The case of Kurdistan is also an ethno-national issue, similar to the case of Kosovo in terms of the colonial context. It is a case outside the traditional colonial framework recognized in United Nations documents. Nowadays, the Kurdistan region is part of Iraq and consequently, the population of the Kurdistan region are part of the Iraqi people legally.¹¹⁵¹ The Kurdistan Region is not on the United Nations list of territories under colonialism which are candidates for the exercise of the right to self-determination.¹¹⁵² Hence, the IKR could strengthen its argument with reference to the status of Kosovo and the decision of the International Court of Justice in favour of Kosovo's independence.

This confirms the central hypothesis of this thesis that respecting and implementing the right to self-determination depends principally on international politics and the balance of power more than the right and legal principle themselves.

Kosovo has exercised independence based on the theory of remedial right as a last resort, and to end violations, repression and crimes by the Serbian state against the inhabitants of the region of Kosovo. Harris argued that the only legal basis for recognising the exercise of self-determination and declaration of independence by the Kosovan people was their subjection to “alien subjugation, domination and exploitation” under Serbian rule.¹¹⁵³ Despite much opposition to the calculation of Kosovo as a legal case for independence and development of international law in this regard,¹¹⁵⁴ the independence of

¹¹⁵¹ Iraqi constitution, Art. 141-142.

¹¹⁵² UN, “Non-Self-Governing Territories.”

¹¹⁵³ Harris, *is Tibet entitled the right to self-determination ?*, 10.

¹¹⁵⁴ Spyros Economides, “James Ker-Lindsay & Dimitris Papadimitriou, Balkan Ghosts, Kosovo: Four Futures,” *Global Politics and Strategy* 52, no. 5 (2010): 99-116.

Kosovo was a turning point in the history of the evolution of the right to self-determination in law and practice.

The main hypothesis behind the independence of Kosovo, which was not connected to decolonisation, occupational regimes, or dissolutions of states, was that independence and the establishment of an independent state will protect the Kosovan people from injustice, persecution and genocide by the Serbian state forever. There is at least a credible argument that the Serbs were responsible for serious crimes and violations against the Kosovars; as UNSC Resolution 1244 notes there was a "grave humanitarian situation" and a "threat to international peace and security".¹¹⁵⁵ It was oppression that led to NATO's 1999 intervention, as well as the declaration of independence.¹¹⁵⁶ It could be argued that the Kurdistan independent state in Iraqi Kurdistan is a realistic legal-political framework to protect the people of Kurdistan from occupation, injustice and genocide. In sum, "Only the Kurd can protect the Kurd."¹¹⁵⁷

Therefore, by relying on its predecessor, Kosovo, the Kurdistan Region can also justify its claim to exercise this right, especially if it relies on the same justification for the practice of self-determination and the Declaration of Independence, which focuses on violations of rights, crimes of violence and genocide.

There were far more crimes committed against the peoples of Kurdistan than against the people of Kosovo. Violations and crimes against the Kurdish people in Iraq

¹¹⁵⁵ UNSC, "SC Res. 1244 (1999) on the situation relating Kosovo," *United Nation peacemaker*, accessed June 20, 2018. <https://peacemaker.un.org/kosovo-resolution-1244>

¹¹⁵⁶ Roberts, "NATO's humanitarian War over Kosovo," 120-123.

¹¹⁵⁷ Phillips, *The Kurdish Spring: A New Map of the Middle East*, 450.

have included: denial of the right to internal self-determination, and autonomy,¹¹⁵⁸ genocide and ethnic cleansing, Arabization, demographic change, chemical weapons bombing, forced deportation.¹¹⁵⁹ All these crimes were practised by the Iraqi state against the people of Kurdistan to the silence of the international community. Even now there are ongoing problems and complaints related to the economic, security and agricultural rights of Kurdish citizens in disputed areas.¹¹⁶⁰ The possibility of a clash between the military forces of the Kurdistan Region and the Iraqi forces is a permanent possibility, given the attacks by Iraqi forces with Iranian assistance and supervision, against the Kurdistan Region, after Kurdistan's independence referendum in 2017.¹¹⁶¹ Then the Iraqi military took control of the disputed areas; there were widespread violations against the citizens of the Kurds in those areas, according to international reports,¹¹⁶² and the clash led to numerous new security, military, and sectarian problems, which deepened the problems between Baghdad and Erbil.

Kosovo had a problem with one country, Serbia, but Iraqi Kurdistan has a problem directly with Iraq and indirectly with all its neighbours (Turkey - Iran - Syria), due to the existence of the Kurdish issue in those countries and its regional dimensions. Therefore,

¹¹⁵⁸ Ofra Bingo, *Iraqi Kurds, building a state within the state*, 37-39,76-86.

¹¹⁵⁹ UNPO and KRG, "The Kurdish Genocide. Achieving Justice through EU Recognition."

¹¹⁶⁰ Nadia Riva, "Kurdistan, Kurdish MP calls on UN to put an end to human rights violations in Kirkuk," *kurdistan24*, December 29-2017, accessed June 21, 2018. <https://www.kurdistan24.net/en/news/19656e2c-eb84-44dc-9908-e9b8142d26f9>

¹¹⁶¹ Best Defense, "The Kurdish war with Iraq. A perplexing conflict, Thomas E. Rex," *foreignpolicy*, October 17, 2017, accessed June 22, 2018. <https://foreignpolicy.com/2017/10/17/the-kurdish-war-with-iraq/>

¹¹⁶² US-Department of State, "Iraq 2018 Human Rights Report," *Country Reports on Human Rights Practices for 2018*, Bureau of Democracy, Human Rights and Labor. accessed February 12, 2019. <https://www.state.gov/wp-content/uploads/2019/03/IRAQ-2018.pdf>

with all the differences that exist between these four countries and their policies on several sectarian, economic, and security issues, any attempt or project that leads to the establishment of a Kurdish state in any part of Kurdistan, particularly Iraqi Kurdistan, is doomed to failure, as was seen in 2017 after the Kurdistan independence referendum. In addition to Iraq, Syria, Turkey and Iran were also involved with the Iraqi government in making sure the referendum attempt failed, and then strongly condemned the referendum and took retaliatory action. Among other considerations, they are worried that an independent Kurdish state would encourage their own Kurdish populations to seek greater autonomy, so ¹¹⁶³ they closed all land and air borders of the Kurdistan region.

There are also similarities with regard to the withdrawing of autonomy and denial of internal self-determination. Withdrawal of autonomy from Kosovo began in the 1990s, and led to violence and armed clashes, culminating in the Serbian armed forces taking control of the region and beginning a campaign of killing, repression and persecution.¹¹⁶⁴ This denial of internal self-determination has become one of the justifications for exercising the right to external self-determination, outside the framework of colonization, in the light of remedial right theory in international law. Schachter articulated 3 possible conditions for triggering a right to remedial secession: (1) the claimant community should have a distinct identity, and inhabit a region that largely supports secession. (2) The community has been subjected to a pattern of systematic economic or political

¹¹⁶³ Eric Pichon, "European Parliamentary Research Service," *European Parliamentary Research Service, Iraqi Kurdistan independence referendum*, Briefing October 2017, accessed June 15, 2018. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608752/EPRS_BRI\(2017\)608752_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608752/EPRS_BRI(2017)608752_EN.pdf)

¹¹⁶⁴ University of Central Arkansas, "political science, Serbia/Kosovo (1968-present)."

discrimination or (3) The central government has rejected reasonable proposals for autonomy and minority rights of the claimant community.¹¹⁶⁵

Iraqi Kurdistan has also been deprived of autonomy and internal self-determination within the Iraqi state throughout the twentieth century. The ruling that merged Kurdistan, the "Vilayet Mosul," with Iraq indicated that Iraq should secure autonomy for the Kurds, but this was neglected by successive Iraqi governments.¹¹⁶⁶ When the Iraqi government agreed with the Kurdish movement, as recorded in the March 1970 agreement, the central government agreed to give the Kurds autonomy in the current Kurdistan Region, but after the Iraqi government had become more powerful, it rejected the agreement, and unilaterally issued a law about autonomy without ascertaining its feasibility, beginning the new phase of the war between Iraq and the Kurds.¹¹⁶⁷ After 2003, when the Iraqi regime changed, the Kurdistan region became a federal region according to the Iraqi constitution, but in this tense atmosphere, Kurds fear for the future of any constitutional amendment that affects the federalism of the state. The Kurds see a conspiracy in all attempts to amend the constitution by the dominant powers and the Arab majority in Iraq, and assume it will be biased toward retreating from and disrespecting the federalism of the Kurdistan region.¹¹⁶⁸ In all speeches made by opponents of the Iraqi government, or by officials, sectarian representatives, and political leaders, there is a constant focus on concepts like amending

¹¹⁶⁵ O. Schachter, "Sovereignty - then and now," quoted in Knop, *Diversity and Self Determination in International Law*, 81.

¹¹⁶⁶ Ofra Bingo, *Iraqi Kurds, building a state within the state*, 37-39,76-86.

¹¹⁶⁷ Abdull, *The Kurds: A Nation on the Way to Statehood*, 132.

¹¹⁶⁸ Burcu Ozelik, "Iraqi Kurds fear wide constitutional review," *Asia time*, December 3, 2019, accessed December 5, 2019. <https://asiatimes.com/2019/12/iraqi-kurds-fear-wide-constitutional-review/>

the constitution, imposing state dominance, centralization of decision making.¹¹⁶⁹ Accordingly, this raises serious concerns for leaders in Iraqi Kurdistan, and because of a change in the balance of power in favour of Baghdad after the KR referendum, there is a permanent danger that the constitution may be amended, leading to a denial of the legal rights of the Kurdistan region.

Iraqi Kurdistan established a de facto state before 2003, and the Kurdistan region had a considerable degree of autonomy and domestic sovereignty, which is particularly impressive considering the current state of Iraq¹¹⁷⁰. Kurds willingly returned to Baghdad in order to build a federal democratic state, but after ten years they had lost hope. Former IKR president Masud Barzani noted that “From World War one until now, we are not a part of Iraq.” He said: “It’s a theocratic, sectarian state. We have our geography, land and culture. We have our own language. We refuse to be subordinates.” When discussing trusting Baghdad, he observed, “The parliament in Baghdad is not a federal parliament. It’s a chauvinistic, sectarian parliament. Trust is below zero with Baghdad,”¹¹⁷¹

In a comparison between the Kosovo independence declaration and Kurdistan independence referendum in 2017, similarities can be seen in the positions of existing states. Demands for independence from both Kosovo and Kurdistan were rejected by the mother states. Serbia regarded the Kosovo Independence declaration as a violation of the Serbian constitution and international law. Boris Tadić, President of Serbia, said: “the

¹¹⁶⁹ Burcu Ozelik, “Iraqi Kurds fear wide constitutional review.”

¹¹⁷⁰ Jude, “Contesting borders? The formation of Iraqi Kurdistan’s de facto state,” 847-850.

¹¹⁷¹ Barzani on the Kurdish referendum: 'We refuse to be subordinates', quted in *The Guardian*: accessed July 18, 2018. <https://www.theguardian.com/world/2017/sep/22/masoud-barzani-on-the-kurdish-referendum-iraq-we-refuse-to-be-subordinates>

illegal declaration of independence by the Kosovo Albanians constituted a flagrant violation of resolution 1244 (1999), which had reaffirmed the sovereignty and territorial integrity of Serbia, including Kosovo and Metohija...Here in the Security Council of the United Nations I say clearly and unequivocally: Serbia will never recognize the independence of Kosovo. ...Kosovo will forever remain a part of Serbia.”¹¹⁷² The Iraqi government rejected the Kurdistan Independence referendum of 2017, and justified its position by reference to the Iraqi constitution. The Kosovo independence declaration and Kurdistan independence referendum were unilateral.

The international community have constantly affirmed the rights of minorities in Kosovo and Kurdistan. In Kosovo, the international community has worked diligently through the processes of establishing governance and state institutions to guarantee the rights of minorities there legally and to encourage them in practice. Post-war Kosovo represents a bold experiment by the international community to create a society that adheres to democracy and human rights standards. The international administration has based its post-war reconstruction and governance of Kosovo on standards aimed at EU accession, and classifying individuals upon citizenship, not ethno-religious criteria. To this end, since 1999 the international administration in Kosovo has worked on a new Kosovan identity that transcends ethnicity and that fits with European standards, including respecting the legitimate rights of all ethno-religious groups in Kosovo. ¹¹⁷³

¹¹⁷² UN, “Security Council meets in emergency session following Kosovo Declaration of Independence, with members sharply divided on issues, 5839th meeting.”

¹¹⁷³ Anita McKinna, “Kosovo: The International Community's European Project,” *European Review* 20, no. 104, (2012):10-22.

The rights of minorities in Kurdistan are upheld;¹¹⁷⁴ the Kurdistan region has become a refuge for religious and ethnic minorities fleeing from central and southern Iraq because of violence and sectarian wars and terrorist operations that targeted them. Although nowadays Kurdistan is mostly identified with Islam, practised by the majority of Kurds, "it can be called a reservoir of religions because various religious groups of minority faiths coexist there."¹¹⁷⁵

Many parallels can be drawn between the two cases with relation to international intervention to protect human rights and end genocide. There are many United Nations resolutions on Kosovo, including Resolution 1244 for international intervention and protection of the Kosovan population from attacks, and the establishment of peace and permanent protection for the region.¹¹⁷⁶ Similarly, there was Security Council Resolution No. 688 or "no-fly zone" to protect Iraqi Kurdistan from the attacks of the Iraqi state in 1991.¹¹⁷⁷

Interventions in both cases produced stability and protected the two peoples from genocide and repression by the central governments, and also created a suitable ground for developing an alternative locus of power to the centralized state authority. In other words, international protection in both regions led to the establishment of the national entity and

¹¹⁷⁴ Middle East Research Institute, *Protecting Minorities Rights in the Kurdish Region, A tailor-made model*, 5-12.

¹¹⁷⁵ Khanna Omarkhali, *Religious Minorities in Kurdistan: Beyond the Mainstream* (Wiesbaden: Harrassowitz Verlag, 2014), VII.

¹¹⁷⁶ UNSC, "SC Res. 1244 (1999) on the situation relating Kosovo."

¹¹⁷⁷ UNSCR, "Resolution 688 (1991) of 5 April 1991."

the foundations of the state, as the establishment of regional governments is a fundamental step towards independence.

If Kosovo has a right to self-determination, the right of the Kurdistan region is infinitely stronger. The catalogue of gross oppression, crimes and genocide in different forms against the Kurdish people under Iraqi rule, and the identity of Kurdistan as a country are all much clearer than in the case of Kosovo.

However, in terms of the balance of power and orientation of international politics, there are big differences between these two cases. In the case of Kosovo there is clear Western, European and American support in favour of Kosovo's independence.¹¹⁷⁸ In contrast, there was broad international opposition to the Kurdistan independence referendum, including from Europe and America. The IKR leaders' last miscalculation was its failure to accurately predict the reaction from the international society: no state would support secession. Although the US and Europe never explicitly supported independence, they nonetheless treated Kurdistan as a de-facto state.¹¹⁷⁹ Although the Kurdistan people were the victims of international politics and the interests of the superpowers, still no country has announced its support for independence. When the IKR held the Independence referendum in 2017, it was faced with strong opposition by all international and regional powers. The international community focused on respecting the unity of Iraq. They ignored the desire of the Kurds, and even the result of the referendum. In contrast, there was

¹¹⁷⁸ Be in Kosovo, "Countries that have recognized Kosovo as an independent state,,"; Kosovo Thank you, "Thank you From the Kosovar People,,"; UN, "Security Council meets in emergency session following Kosovo Declaration of Independence, with members sharply divided on issues, 5839th meeting."

¹¹⁷⁹ Akiko Yoshioka, "What Caused the KRG Miscalculation on the Independence Referendum?" *the Washington Institute*, accessed June 26, 2018. <https://www.washingtoninstitute.org/fikraforum/view/what-caused-the-krgs-miscalculation-on-the-independence-referendum-of-the-k>

logistical, legal, military, financial, diplomatic, and moral support for Kosovo directly from several countries, including the many great powers, followed by recognition after the independence declaration. This difference between the two cases reaffirms the argument of this thesis: that respect for the right to self-determination and its enforcement depend on the support of international politics and the balance of power.

CONCLUSION OF CHAPTER II

During the last 100 years, for the Iraqi Kurds struggle, self-determination and the establishment of an independent state are the final goals, to ensure freedom from suppression and protection from the threats to their existence and their future. An attempt at external self-determination by Kurdistan is likely to meet Iraqi, regional and external resistance from powerful forces that have been influential in the Kurdish issue from its inception. However, the distinctive features of Kurdistan, several legal foundations and court rulings, and comparison with other cases suggest that the people of the Kurdistan region have the right to external self-determination and independence.

Kurdistan was always different from Iraq and was not part of Iraq. After the collapse of the Ottoman Empire following the First World War, southern Kurdistan remained within the Vilayet of Mosul. It was compulsorily annexed to Iraq by Britain five years after the establishment of the State of Iraq by the British government. The main goal of the British in this forced annexation was to obtain oil and create a Sunni-Shiite sectarian balance in Iraq. Kurdistan, without the will of its owners and its people, was awarded to

another country by the colonial country that is not entitled to and does not own this land. Therefore, the decision to forcibly annex Kurdistan to Iraq is considered null and void.

The population of the Kurdistan Region form a people. They have all material and moral elements and characteristics which shape the concept of the “people”. Thus, according to the principle of "equal rights", they have the right to self-determination like all other peoples. Also, the people of Kurdistan have been subjected to grave violations and crimes of genocide by successive Iraqi governments, under international silence. These crimes and historical grievances qualify the people of Kurdistan for self-determination and independence according to the remedial right theory, as applied to Kosovo, South Sudan, and Bangladesh.

The case of the Kurdistan Region, like other cases of the right to self-determination, leads to the conclusion that denying people their right to self-determination by peaceful means leads to the destabilization of national and international stability. However, successful models for implementing the right to self-determination provide an important means of ending violations and state crimes against minorities, and achieving stability and national conflict resolution, under international supervision, as in the cases of East Timor, South Sudan and Kosovo.

The main question here is: why is Kurdistan still prevented from exercising this right and establishing its independent state? The answer confirms the main argument of this thesis: despite the legitimacy of the right of the people of Kurdistan to self-determination, according to the legal foundations referred to, the international politics and the balance of power is not in favour of the independence of Kurdistan yet. The

postponement of external self-determination for the Kurdistan people and the establishment of their independent entity is more of a political than a legal issue.

After long and violent repression by Serbia, Kosovo exercised the right to unilateral separation and relied on the theory of remedial secession. Kosovo's call for independence obtained international support and was recognized by more than 110 countries so far including the US and most European countries. The International Court of Justice also decided in favour of independence for Kosovo. This is a significant development in international law in favour of oppressed peoples and minorities struggling for independence, even if they are within the borders of existing and independent states.

The case of the Kurdistan Region is similar to the Kosovo case in several aspects: the background, the framework of the traditional occupation, the irrelevance of colonization that traditional international law sees as a prerequisite for the exercise of external self-determination, as well as the fact that both peoples are within the borders of independent countries. If Kosovo has the right to independence, legally, then the people of Kurdistan also have the right to self-determination and independence.

There is a fundamental difference between the cases of Kosovo and Kurdistan, related to the political situation. In the case of Kosovo, there is direct international support in several forms for independence, from the United States, European countries, and many others, and the case has been discussed in the UN Security Council and other different bodies of the United Nations. Also, In the International Court of justice, there was huge international support for the independence of Kosovo.

On the other hand, although the people of Kurdistan have been victims of international politics since the division of Kurdistan and the compulsory annexation of

Southern Kurdistan to Iraq, and the subsequent emergence of the Kurdish issue in Iraq, there is no country that supports the right to self-determination of the people of Kurdistan and their independence.

The comparison between Kosovo and the Kurdistan region proves once again the key argument of this thesis: the legal principle of self-determination faces the political balance of power; consequently, respect for and implementation of the right to self-determination are dependent on the political balance of power and international politics more than the legal legitimacy of this right.

CONCLUSION OF TITEL I

The case of the right to self-determination of the people of Kurdistan is a very complex issue, which has regional and international dimensions at the same time. After using the basic theories related to international politics and international law, especially Remedial Right Theory and Realism Theory, it came to the conclusion that the people of Iraqi Kurdistan have the right to self-determination and independence, especially after being subjected to injustice, oppression, and genocide by the Iraqi state. However, due to the lack of balance of power and international politics, it cannot implement this right at this stage.

Where the Remedial right theory of Buchanan sees if the group, people or even the minority are subjected to injustice, persecution and violations of its fundamental human

rights, it has the right to self-determination. Is this case of self-determination and separation will be the last solution? This solution has been utilised in many cases, including South Sudan and Kosovo. In addition, the Canadian Supreme Court emphasizes the same approach in the Quebec case, when it ruled that a minority or part of the people, if subjected to injustice and gross violations of their fundamental rights, have the right to self-determination and secession. On the other hand, according to the theory of realism, that, despite everything that has happened, the international and regional politics are not in favour of the Kurdistan independence option. thus, Realistically, the United States' support for Iraqi Kurdistan during the last 30 years, it was support for IKR rights within a federal and united Iraq, alongside with affirming on the unity of Iraq. The United States has a pragmatic policy, given its relations and interests in the region, especially with Turkey and Iraq, it does not support the Kurdistan Region's attempts towards independence.

The issue of Kurdistan's independence is a political issue rather than a legal issue. It is clear the case of the Kurdistan Region is outside the framework of colonialism, also it is not on the list of the territories nominated by the United Nations to exercise the right to self-determination. Nevertheless, there are several legal foundations affirming the legitimacy of the Kurdistan Region's demand for self-determination. first of all, the specificity of the case of Kurdistan and its difference from Iraq in all sides, and its compulsory annexation, without the consent of its people by the colonial country "Great Britain" to Iraq after five years of establishing Iraq, is void legally. Also, the population of Iraqi Kurdistan are a "people" and they have all the necessary elements in order to be defined as a "people", consequently according to the principle of equal rights and in accordance with Resolution 2526, they have the right to self-determination, when it

declared that this right is for all peoples. in addition, in light of the Remedial Right Theory, the Historic grievances and gross violations of the Kurdish people, are justifies their demand and gives them the right to self-determination, as it has utilised in cases of Kosovo, South Sudan and Bangladesh. Also, as the Canadian Supreme Court in the case of Quebec has affirmed the same direction.

Besides that, through compared this case to other cases, especially the Kosovo issue, which is similar to the case of Iraqi Kurdistan, the people of Kurdistan have the right to self-determination and independence, just as the people of Kosovo exercised this right and the International Court of Justice supported them.

Despite all of that, in fact, the people of Kurdistan cannot exercise this right in this stage, due to the lack of balance of power and the absence of a positive international policy towards their demand for independence. This proves once again the main argument of this thesis, that the legal principle faces the political balance of power, and the realization of this right depends on the political balance of power and international politics, more than its legal legitimacy.

Title II

Iraqi Kurdistan at a crossroads: federalism, independence and international politics

As the Iraqi Kurdistan region developed politically, economically and socially, and reached a level at which it was considered by some to be a state within a state,¹¹⁸⁰ its demands for self-determination and independence rose dramatically. Since 1992, the Kurdistan Region has exercised its legal authority in public administration, at the legislative, executive and judicial level. The ruling authority in Kurdistan consists of the Parliament of Kurdistan, the Kurdistan Regional Government, and a Higher Judicial Council in Kurdistan, along with many public bodies and institutions that are independent or not affiliated with the Ministry. In addition, the Kurdistan Region has its own army, the forces of the Peshmerga, “the Guard of the Region,” according to the Iraqi constitution.¹¹⁸¹ The KR has been exporting the region's oil independently, and it has an extensive regional and international network.¹¹⁸² Despite the tensions and wars in recent years, Kurdistan has remained a safe area, and has become a shelter for about 1.5 to 2 million refugees and

¹¹⁸⁰ Ofra Bengio, *The Kurds of Iraq: Building a state within a state* (Boulder-Colorado: Lynne Rienner publisher, 2012), cover page.

¹¹⁸¹ Iraqi Constitution, Art. 121.

¹¹⁸² The Kurdistan Regional Government - Department of Foreign Relations, accessed April 12, 2018. <https://dfr.gov.krd/p/p.aspx?p=25&l=12&s=010000&r=332>; Kurdistan judicial system, accessed April 11, 2017. <http://www.krjc.org/>; Kurdistan parliament, accessed April 11, 2017. <https://www.parliament.krd/english/>

displaced persons, those fleeing from war, terrorist groups and acts of violence in Syria and other parts of Iraq.¹¹⁸³

Despite the many criticisms which have been made of the authority of Kurdistan relating to corruption, weak principles of governance, monopoly of decision-making and partisan domination of public life,¹¹⁸⁴ the KR has proven through its continuity, services and relationships that it can act as an effective authority if the region develops into an independent state. It will commit as a state to its internal and external responsibilities.

The Kurdistan Region played an important role in the war against ISIS, and it strengthened its influence on the ground, especially in disputed areas, as well as its regional and international relations in all political and military, and strategic aspects.

In 2017, despite international, regional and Iraqi opposition, the KR held the Kurdistan Independence Referendum, and the majority, (93%) voted in favor of independence.¹¹⁸⁵ The leadership of the Kurdistan Region did not declare the Kurdistan State, and this referendum caused major problems for Kurdistan at political and economic levels. Afterwards, the Federal Court in Baghdad ruled that the referendum was null and

¹¹⁸³ UNHCR, "Iraq Refugee crisis." *USA for UNHCR*, accessed November 10, 2019. <https://www.unrefugees.org/emergencies/iraq/>

¹¹⁸⁴ US-Department of State, "Iraq 2018 Human Rights Report," 25, 45-47.

¹¹⁸⁵ Changfengand and Temitayo, "2017 Iraqi Kurdistan's Referendum for Independence: Causes and Impacts," 59.

void¹¹⁸⁶, and the Kurdistan region was put under tremendous military, political, and economic pressure and forced to declare its acceptance of this ruling,¹¹⁸⁷

There are many outstanding problems between Baghdad and Erbil, concerning disputed areas, oil, budget, participation in the Iraqi government, and poor levels of confidence, along with the historical grievances of the people of Kurdistan because of their treatment by successive Iraqi governments. Yet the Kurdistan Region is now at a crossroads, faced with a choice between implementing the result of the referendum in 2017, or declaring independence, or remaining within Iraq as a federal region and participating in Iraqi government. The first option, declaring independence, is the most difficult path to go down at the present time, due to the lack of balance of power in favour of Kurdistan. Besides, Iraqi, regional and international opposition to this option and the possibility of repeating the post-referendum situation of 2017, regardless of the fact that this right is a legitimate right of the people of Kurdistan. The second option, continuing and active federalism, is also dependent on several factors, including the Kurdistan Region's policy towards Baghdad and the level of success in solving the outstanding problems between Erbil and Baghdad, along with the international policy position, particularly the policy and support of the United States of America for the Kurdistan Region within a democratic and federal Iraq.

¹¹⁸⁶ Iraqi Federal Supreme Court, "Decisions and Judgments Issued By The Federal Supreme Court, Republik of Iraq," *Federal Supreme Court-Iraq*, accessed May 12, 2018. https://www.iraqfsc.iq/krarat/feden/91_fed_2017en.pdf

¹¹⁸⁷ KRG, "KRG Statement on the Iraqi Federal Supreme Court's Interpretation of the Article 1 of the Constitution," *Kurdistan Regional Government*, accessed may 15, 2018. <http://previous.cabinet.gov.krd/a/d.aspx?s=040000&l=12&a=56019>

This chapter focuses on discussing the future of Iraqi Kurdistan, in the light of regional and international developments, and the impact of US policy. The United States, as the greatest superpower and dominant force in the international arena, continues to be highly influential in determining the future of Iraqi Kurdistan. The chapter addresses US-KR relations, and the US position on IKR independence (Chapter I).

The second chapter evaluates the dimensions of the ISIS war and the future IKR, as well as studying the independence referendum for the Kurdistan Region. It focuses on analysing the possibilities for and expectations of the future of the Kurdistan Region (Chapter II)

Chapter I

US policy and Kurdistan's claim to self-determination

The United States as the greatest superpower today has a decisive effect on directing regional and international politics and therefore determining the future of ethno-national issues. During the last 100 years, the US has adopted a realistic and pragmatic policy determined by its own interests, which has had huge positive and negative effects on the Kurdish issue in the Middle East.

The Kurdish people's rights have often been a victim of great powers' policy, including the policy of the United States of America in the Middle East, particularly before the new world order. These powers have often used the Kurds as a tool for their interests, and then neglected the Kurdish issue and Kurdistan's independence. One of the main reasons for the absence of the Kurdistan state so far is not just a lack of great powers' policy supportive of the independence of Kurdistan, but also the strategic relationship between these powers and the regional countries in the Middle East. US realpolitik has focused continually on the unity of Iraq, supporting Turkey and Iraq, dealing with countries in the region regardless of human rights and freedoms, and dealing with the minorities issues. This policy will never support independence for Iraqi Kurdistan.

On the other hand, there was a bright side to US policy toward the Kurdistan people. In the post-Cold War era, American policy changed dramatically towards the Kurdish

issue, especially in Iraq, without reaching the level of support for the independence of Kurdistan. From 1991 until now the United States has been the main partner in protecting Iraqi Kurdistan, the establishment of the Kurdistan Authority and subsequent developments, besides affirming the policy of keeping the Kurdistan Region within Iraq.

There is a big difference in US policy toward the Kurdish issue in the pre-Cold War era, and US policy in the post-Cold War era. The first period was characterized by purely negative dealing, but the second period, the post-Cold War era, was characterized by a positive and supportive policy for the Kurdistan Region of Iraq. US policy has developed to support Kurds in Syria, after Syrian crises and particularly in their war against ISIS. Yet there is a straight line and an ongoing policy focused on keeping Kurdistan inside Iraq and maintaining the unity of Iraq, besides emphasizing the constitutional rights of the Kurdistan people in the context of a federal and democratic Iraq. The Americans have emphasized this policy since the US intervened in Iraq in 2003, and during the 2017 Kurdistan Region referendum, and they constantly confirm it.

The US policy towards the Kurdish and the Kurdistan Region's demands to self-determination is consistently guided by realistic theory. The state is the lone actor in international relations, the sovereignty and territorial integrity of the state is more important than the rights of peoples, and the interests and goals of the state are achieved through power and balance of power. This theory does not recognise the right of minorities or the right of peoples of existing states to external self-determination, but rather it focuses on encouraging the exercise of internal self-determination in forms of autonomy, federalism, representative government and the participation of different groups in the national decision. It believes in the right to external self-determination in only one case, when the existing

state terminates, and the alternative entity emerges which proves that it can combine internal and external obligations as a state. According to the realist school, this outcome depends on the balance of power of the secessionist groups.¹¹⁸⁸

Until now, the United States' strategic interests in the region have required moving away from supporting and adopting any project for independent Kurdistan. This approach derives from its strategic relations with regional powers, especially Turkey. It is also clear that Turkey is a strategic ally of the United States and a member of NATO. The United States' fear that Turkey will go to the East Pole, that is, the former Soviet Union, and to Russia today, makes the United States consider Turkey and its demands regarding the Kurdish issue. In the US viewpoint, the Kurdistan region is an ally of United States, but it is not as important as the alliance with Turkey.¹¹⁸⁹

The main interests of the United States in the Middle East are focused on Israel's security, energy, the stability of its strategic allies, fighting terrorism and extremism, and containing Iranian and Russian influence in the region.¹¹⁹⁰ The Middle East is a sensitive region that requires the American administration to work with everyone and to contain opposites, in order to secure the interests of the United States. These interests of the United States in the region and its relations with Iraq and Turkey, and with the various countries of the region are more important than its relations with the Kurdistan Region. Therefore, the US takes into account their demands with regard to the Kurdish issue.

¹¹⁸⁸ Part II, Title I, Chapter I, section II.

¹¹⁸⁹ Gunter, *Out of Nowhere: The Kurds of Syria in Peace and War*, 7-8.

¹¹⁹⁰ Carola McGiffert and Craig Cohen, *Global Forecast: The Top Security Challenges of 2008*(Washington. DC: Center for Strategic & International Studies, 2007),35.

It could be argued that the people of Kurdistan have the right to self-determination according to several foundations and cases of international law, but international politics and balance of power are a major obstacle and do not favour the independence of the Kurdistan Region. The case of Kurdistan's self-determination has always been more of a political than a legal issue. Hence, to address the extent of the impact of international politics, particularly American policy on the KR's demand to exercise external self-determination and independence, this chapter will focus on addressing US foreign policy since the beginning of the Kurdish issue, until now.

The first section addresses US strategy and the question of Kurdistan's independence. It discusses US foreign policy and Kurds from WWI to the post-Cold War era, as well as US policy and political developments in Iraqi Kurdistan until 2003. (Section I) The second section discusses US foreign policy toward Kurdistan's independence after American intervention in Iraq in 2003. (Section II)

SECTION I: US strategy and the question of Kurdistan's independence

To address the reality, reasons for, aims and impact of US foreign policy toward the Kurdish issue since WWI, and analyse the evolution of US-Kurd relations during this period, we must step backwards and examine the Kurdish situation in the context of US policy in the Middle East.

US policy towards the Kurdish issue during the last century can be divided into two key stages – before and during the Cold War Era and the Post-Cold War era. The first paragraph investigates US foreign policy in relation to the Kurdish Question during the first stage in the last century. US policy was negative toward Kurds, and sometimes used the Kurds as a tool for its interests. Moreover, it consistently neglected the Kurds' rights and their claims to self-determination (§I)

The second paragraph discusses US foreign policy toward Kurdistan after the second Gulf war 1990. In this period, US foreign policy changed positively toward the Iraqi Kurds and the US supported them in many stages. Nevertheless, the United States policy towards the Iraqi Kurds remained unstable. Officially, it does not support the Kurds in their attempts to establish an independent Kurdistan. This section aims to describe and analyze US policy toward the Kurdish issue, and to evaluate the argument that the US policy has changed and progressed in favour of the Kurdish people in the post-Cold War era, without supporting Kurdistan's claim to self-determination and independence. (§ II)

§I: US and Kurds from WWI to the post-Cold War era

During this stage, from the end of WWI and including the Cold War period, US foreign policy towards the Kurdish issue was realistic and unbalanced, which had a negative impact on the Kurds' situation and their issues. The US held sometimes unclear policies regarding the Kurds and their situation, and arguably used the Kurdish issue as a

tool for its regional interests in the Middle East. As a result, it has neglected the rights of Kurdish people completely. As Kissinger noted, “we did not agree with the Kurdish state, but we were ready to continue the Kurdish issue”.¹¹⁹¹ Some of the reasons for this are the balance of power, and the US relations with, and vested interest in, the enemies of Kurds, including the related countries: Iran, Syria, Turkey and Iraq.

A. US foreign policy toward the Kurds as a pragmatic policy

At the international level, the US was categorized as one of the world’s superpowers from the First World War to the post-ColdWar era, and since the collapse of the Soviet Union,¹¹⁹² the US has been recognized as a unipolar leader and the strongest superpower.¹¹⁹³ Accordingly, the USA has a huge influence on regional and global politics, including the role and the future of the Kurdistan region at the Iraqi, regional and international level. Until now US foreign policy in the Middle East has focussed on many subjects which are more important for the US than the Kurdish Question.¹¹⁹⁴ Therefore there is a stable line or direction in US foreign policy although this policy has changed

¹¹⁹¹ Issa, *The Kurdish Issue in Iraq*, 103.

¹¹⁹² Stephen Burman, *America in the Modern World: The Transcendence of United States Hegemony* (New York: Palgrave Macmillan, 1991), 70-78.

¹¹⁹³ Sinéad Baker, “Business Insider, The most powerful countries on earth,” *ranked*, accessed Mar 2, 2019. <https://www.businessinsider.com/most-powerful-countries-ranked-us-news-and-world-report-2019-2>

¹¹⁹⁴ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 263.

dramatically since the end of the cold war. The US policy focus has been on maintaining Iraq and keeping the Kurdistan region within Iraq, in spite of ups and downs within US policy towards Iraqi Kurds. "The United States stands ready to assist Baghdad and Erbil to chart a positive course forward in support of a unified, federal, and democratic Iraq through peaceful, political means." ¹¹⁹⁵

US foreign policy consists of three main elements - principles, resources and circumstances - that are, according to Samuel Patterson, linked as follows: "The United States has an ambiguous set of principles to guide their foreign policy. This ambiguity combined with their enormous resources allows them to be flexible in their national goal poignant with the changing circumstances."¹¹⁹⁶ This policy does not adhere to specific principles but rather is exercised according to strategic interests at different stages. Therefore, to understand the US foreign policy, it is necessary to understand the key theoretical perspectives from which the general lines of US foreign policy are drawn and interpreted, besides understanding US interests in each region, its steps and practices, and its allies.

United States foreign policy has been theorized by several philosophical schools and scholars. Realism provides a scientific interpretation of US foreign policy toward the Kurdish issue in the Middle East. In this context, realists believe that US strategic interests must be preserved and protected regardless of who runs the administration. They believe

¹¹⁹⁵ Fatih Erel, "US calls on Iraq to accept Erbil's overtures for talks," *Anadol agency*, accessed August 17, 2018. <https://www.aa.com.tr/en/americas/us-calls-on-iraq-to-accept-erbils-overtures-for-talks/948967>

¹¹⁹⁶ Patterson, Davidson, Ripley, *A More Perfect Union: Introduction to American Government, revised edition*, 593-595.

that sustaining US interests requires maintaining regional stability and prevailing power balances.¹¹⁹⁷

Realists argue that the foreign policy of superpowers is tested only by their ability to manipulate their national security interests, which include protecting and supporting friends and allies and preserving a benevolent balance of power between the different actors.¹¹⁹⁸ Realist theory emerged from a belief that the state is the key actor in international politics, and that relations among states lie at the core of real international relations. Solving ethno-national issues like the Kurdish issue is not as important as exchanging interests between the US and regional countries including Iraq and Turkey.

Realists have been criticised by many scholars, including moralists. They (moralists) criticise realists' propensity to allocate a secondary position to morals, norms and values in their studies of how and why policy decisions are made. Thus, from the moralists' perspective, the concept of 'National Security Interest' in itself implies a selfish and unprincipled approach to the conduct of foreign relations.¹¹⁹⁹ It implies a nation's overriding concern with its geopolitical and economic advantages with no respect for ethics, regulations and others' wellbeing. The only advantage of using this concept is that it serves the nation's own interests.¹²⁰⁰ Consequently, this perception explains what leads

¹¹⁹⁷ Mann, *Rise of the Vulcans: The History of Bush's War Cabinet*, 134.

¹¹⁹⁸ Patterson, Davidson, Ripley, *A More Perfect Union: Introduction to American Government, revised edition*, 595.

¹¹⁹⁹ Patterson, Davidson, Ripley, *A More Perfect Union: Introduction to American Government, revised edition*, 595.

¹²⁰⁰ Seth P. Tillman, *The United States in the Middle East: Interests and Obstacles* (Bloomington, Indiana: Indiana University Press, 1982), 43.

US foreign policy to immoral political behaviour.¹²⁰¹ Morgenthau justified the call for self-interest as being the ultimate goal of every nation and argued that “survival” is the highest moral principle of a state. The state has no right to risk its national interest for the sake of certain moral principles: by implication, national interest overpowers morality.¹²⁰² To confirm this, Holsti stated that, “regardless of reasons of conscience, prestige, and self-interest, governments in most cases conduct their relations with each other in accordance with the commonly accepted rules of the game.”¹²⁰³ It is obvious that US foreign policy and national security have been adopted at the expense of principles and values. This fact also explains why the Kurdish issue was not a part of US foreign policy and the national security circle before the Cold War period.

Constant pragmatic US policy towards the Kurdish has led to the neglect of Kurdish claims to self-determination and historical grievances, crimes and violations of their rights. The US has dealt, and continues to deal with Kurds according to realist theory, or in the context of US objectives in the Middle East. According to US foreign policy there are priorities in the region that are more important than supporting the Kurds in their struggle for self-determination. For example, Kurdistan is an ally of America and Turkey is an ally of America, but for the US, the importance of the US- Turkish alliance is much greater than that of the US alliance with the Kurdistan region.¹²⁰⁴ This situation has come about because of many related factors, including geopolitics, geo-strategy, history of relations, agreements, assignments and international alliances, international and regional conflicts,

¹²⁰¹ Holsti, *International Politics: A Framework for Analysis*, 381.

¹²⁰² Morgenthau, “Another Great Debate: The National Interest of the United States,” 961-988.

¹²⁰³ Holsti, *International Politics: A Framework for Analysis*, 393.

¹²⁰⁴ Rehmany, *History of Kurd-America Relations*, 14.

the influence of each ally on regional and international situations, the securing of the interests of the United States in the region.

On the other hand, support networks and partnership have developed between the Kurdistan region of Iraq and the United States, since the first Gulf War. There is also significant military and political support for the Kurds in Syria, which made them the strongest component of the opposition in Syria, and they eliminated ISIS. They built a Kurdish local-administration, or semi-entity in the large areas of western Kurdistan, northeastern Syria.¹²⁰⁵ In contrast, there is no support for Kurds in Turkey or Iran, although their population is much larger than that of the Kurds in Iraq and Syria. Besides the long struggle for their rights, they have no form of internal self-determination like autonomy or federalism, and the violations against them continue.¹²⁰⁶ This proves that realistic US policy deals with whoever has the power to secure its interests and achieve its goals. The US does not care about the rights of the Kurdish people in Turkey and Iran, due to their political realism.¹²⁰⁷

Countries related to the Kurdish issue, like Turkey and Iraq, the two US allies in the region, are strongly opposed to the independence of Kurdistan, and American policy clearly takes into account their demands and their desires, as the US has constantly affirmed the unity of Iraq. Therefore, this pragmatic policy of the US, does not take Kurdistan's

¹²⁰⁵ Selcan Hacaoglu, "Who Are the Syrian Kurds the U. S. Is Abandoning?", *The Washington post, BloombergQuickTake.* *Analysis*, accessed October 15, 2019. https://www.washingtonpost.com/business/who-are-the-syrian-kurds-the-us-is-abandoning/2019/10/07/b0e75ed4-e919-11e9-a329-7378fbfa1b63_story.html

¹²⁰⁶ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 431-448, 472-490, 499-503

¹²⁰⁷ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 431-448, 472-490, 499-503

claim to self-determination into account, despite its affirmation of the need to protect the legitimate rights of the people of Kurdistan within the framework of the Iraqi state and to solve the problems between Baghdad and Erbil.¹²⁰⁸ In sum, US foreign policy is based on continuing the map of the Middle East as it is, and does not support Kurdistan independence at the current stage.

B. US policy toward the Kurds from WWI to the end of WWII

The first American involvement in the Middle East dates back to the 19th century.¹²⁰⁹ The American intervention in the Middle East until the 1920s focused mainly on economic goals, as American fears of local shortcomings in energy levels, along with the American military deficit, provided the motivation behind American involvement in the Middle East, which began with the First World War.¹²¹⁰

Ottoman-American relations, which started with the arrival of American merchant ships at Izmir port in 1797, gained a new dimension with the signing of a treaty of commerce and friendship between the United States and the Ottoman Empire in 1830; David Porter was assigned as an acting ambassador and moved from Algeria to Istanbul in

¹²⁰⁸ Rehmany, *History of Kurd-America Relations*, 14.

¹²⁰⁹ Issa, *The Kurdish Issue in Iraq*, 75.

¹²¹⁰ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 138-139.

1831.¹²¹¹ Also, in 1856, the United States concluded a similar agreement with Iran. These two agreements are the beginnings of the spread and strengthening of American influence centred on economic issues in the Middle East.¹²¹²

Since at least the end of WWI, Kurdish people have sought national sovereignty and the opportunity to build their own state. However, any Kurdish efforts have come at the political and territorial expense of states within the region. This difficult Kurdish situation continued during World War I. After the war and the fall of the Ottoman Empire, the new Middle East emerged.¹²¹³ It was born through negotiations on big tables in luxurious hotels in faraway countries: these were known as a peace process, but a peace where the native people had no say, or, as Formkin described it; “a peace to end all peace”.¹²¹⁴ In reality there was more than one peace treaty; the first treaty was the Sevres Treaty.

The first stage of the American policy towards the Kurds can be traced to the announcement of the Fourteen Points of Woodrow Wilson in 1918.¹²¹⁵ Throughout this period, the Kurds remained optimistic and depended on Wilson’s policy, which was mentioned in the context of self-determination after the end of WWI for non-Turkish

¹²¹¹ Berrin Akalin, “Ottoman-American Relations, Francis Hopkins Smith and Armenian Issue,” *International Education and Leadership* 5, no. 1, (2015):1-28.

¹²¹² Issa, *Kurdish issue in Iraq*, 75.

¹²¹³ Claire Metelits, *Inside Insurgency: Violence, Civilians, and Revolutionary Group Behavior*, (New York and London: New York University Press, 2010), 127.

¹²¹⁴ David Fromkin, *A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East*, cover page.

¹²¹⁵ Rehmany, *History of Kurd-America Relations*, 12.

ethnics under the rule of the Ottoman Empire. In one of his Fourteen Points Wilson stated that:

XII. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.¹²¹⁶

These 14 points of Wilson then became a basis for the Sevres Treaty.¹²¹⁷ But the result did no good to the Kurds because of the British decision to integrate southern Kurdistan for the sake of the Sunni-Shiite sectarian balance in Iraq and to maintain control over the oil-rich Kurdish region in the north of Iraq known as the Mosul Vilayet, which ended nascent Kurdish hopes for independence or even some type of autonomy.¹²¹⁸

Historical documents about the American policy towards Kurdistan reveal that at the beginning of the 20th century there was a serious focus on Kurdistan by the United States of America. When they formed the Inter-Allied Commission on Mandates after WWI to study the Middle East region and then provide a solution in the name of the "King–Crane Commission". American delegates King and Crane expressed a special

¹²¹⁶ Michael Provence, *The Last Ottoman Generation and the Making of the Modern Middle East* (Cambridge University Press, 2017),67. Richard W. Mansbach and Kirsten L. Tailor, *Introduction to Global Politics, 2nd ed* (New York and London: Routledge. 2012),123.

¹²¹⁷ Rehmany, *History of Kurd-America Relations*, 19.

¹²¹⁸ Cecil John Edmonds, *Kurds Turks and Arabs: Politics, Travel and Research in North-Eastern Iraq 1919-1925* (London: Oxford University Press, 1957), 15-27.

interest in the Kurds through their interviews with Kurdish figures, their visits, and their tours in the region, during 1918-1919.¹²¹⁹

After WWI, America recognized the Kurdish issue as a historical, geographical, and demographic reality.¹²²⁰ Also, the report of the United States at the Paris Peace Conference, which was read by Albier Laiber, suggested solving the Kurdish issue alongside the Armenian issue, by mandate and then independence. Then, after the Americans withdrew from the Versailles Treaty, they avoided the Kurdish issue for dozens of years.¹²²¹

The USA has neglected the Kurdish Question. However, regardless of the circumstances, the Kurds have continued to fight for self-determination. Despite the neglect of the Kurdish issue globally in the literature of the 1940s and 50s, when it was generally considered an internal issue,¹²²² after the establishment of the Republic of Kurdistan "Mahabad Republic" in Iranian Kurdistan, and then the formation of many Kurdish political parties, the Kurdish issue emerged from the hands of regional countries and has become a global issue linked to the Soviet Union, Europe and then America.¹²²³

This period (1918-1945) in relation to the United States, was also marked by the Depression. After World War I, the US rejected the Treaty of Versailles and did not join

¹²¹⁹ Issa, *Kurdish issue in Iraq*, 85.

¹²²⁰ Issa, *Kurdish issue in Iraq*, 86-91.

¹²²¹ Issa, *Kurdish issue in Iraq*, 86-91.

¹²²² Gareth Stansfield and Mohammed Shareef, *The Kurdish Question Revisited* (New York, Oxford University Press, 2017), xviii-xix.

¹²²³ Mordechai Nisan, *Minorities in the Middle East: A History of Struggle and Self-Expression*, 2nd ed. (North Carolina and London: McFarland & Company, Jefferson, 2015), 41.

the League of Nations.¹²²⁴ There were more developments in administration and internal progress at all levels.¹²²⁵ During this period, the USA featured as a global superpower and its participation was the main reason for the result of the First World War and the victory of the coalition countries with the United States over the Axis of Power.¹²²⁶ Its importance cannot be denied.

C. US foreign policy and the Kurds from WWII to the end of the Cold War

During the 1940s, American interest in the Kurds surfaced when the Kurdish Mahabad Republic was established in Iranian Kurdistan, but the US remained an observer of the Kurdish-Soviet rapprochement.¹²²⁷ During the 1950s the secret American political intervention “according to American viewpoints” was aimed at protecting the political unity and political independence of the mother country by promoting idealistic liberalism in exchange for communist ideology as liberal nationalist movements emerged around the world. Therefore, American interest shifted from the Iranian Kurds to the Iraqi Kurds.¹²²⁸

¹²²⁴ United States senate, “The Treaty of Versailles,” United States senate, accessed April 12, 2017. https://www.senate.gov/artandhistory/history/common/generic/Feature_Homepage_TreatyVersailles.htm

¹²²⁵ JOS C. N. Raadschelders, “Administrative History of the United States: Development and State of the Art,” *Administration & Society* 32, no. 5, (2000): 499-528.

¹²²⁶ David Reynolds, *Power on superpower: the impact of two World Wars on America's International Role*, quoted in Warren. F. Kimball, *America Unbound: World War II and the Making of a Superpower* (New York: Springer, 2016), 13-37.

¹²²⁷ Alvandi, *Nixon, Kissinger, and the Shah: The United States and Iran in the Cold War*, 69.

¹²²⁸ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 138-139.

After World War II, the US gradually gained influence in the Middle East with the decline of the British; and soon started to show an interest in Kurds. There are many US documents referring to America's real interest in forming a relationship with the Kurds. One of the earliest-documented signs of such interest came in a memo sent by Edward Crocker II, the first US ambassador to Baghdad, on 10 April 1950.¹²²⁹ Crocker sent a cable from Baghdad to the State Department after eight months about the publication of a new Kurdish language news bulletin, prepared weekly by the US Information Service at the American Embassy in Baghdad. Crocker described the venture as strictly directed at Iraqi Kurds with the sole intention of filling the gap in the democratic information activity countering Soviet propaganda to the Kurds.¹²³⁰ Also, the document mentioned sending many US Missionaries to Kurdistan in the early 1950s to build relations with the Kurds and distribute some posters and information as anti-Soviet propaganda. In other documents, the embassy discussed the effect of public American media on Kurds, including "Outlines: plans for Kurdish Voice of America broadcasts, while avoiding the encouragement of Kurdish nationalism."¹²³¹ However due to Turkish opposition it was suggested that these programmes should be stopped, in the document entitled "Advises against broadcasting

¹²²⁹ US Embassy Iraq, Cable from Edward S. Crocker II, to the Department of State, Document 2, "Recent Developments in Connection with the Kurdish-Language News Bulletin," April 10, 1950. *The National security Archive*, Documentation on Early Cold War, U. S. Propaganda Activities in the Middle East, accessed May 17,2017. <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB78/docs.Htm>

¹²³⁰ US Embassy Iraq, Cable from Edward S. Crocker II, to the Department of State, Document 2, "Recent Developments in Connection with the Kurdish-Language News Bulletin," April 10, 1950.

¹²³¹ US Embassy in Tehran, "Iran Cable from Henry F. Grady to the Department of State. Outlines plans for Kurdish Voice of America broadcasts, while avoiding encouragement of Kurdish nationalism. Document 27: [Kurdish Voice of America Broadcasts]," August 6, 1951, *The National security Archive*, Documentation on Early Cold War, U. S. Propaganda Activities in the Middle East, accessed May 17,2017. <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB78/propaganda%20027.pdf>

propaganda to Turkish Kurds because of Turkish government opposition."¹²³² These documents and others indicate the beginning of the Americans' interaction with the Kurdish issue, and their attempts to exploit this issue for their strategic goals.

1. US and Kurds from WWII to Algeria agreement (1945-1975)

It could be argued that the American involvement stemmed from when the US realized how many attempts there had been to formulate cooperation between the Iraqi government and the (then) Soviet Union. During this period the Kurdish leaders had no trust in the Soviet Union and they tried to contact the US as a new ally, due to the Soviet abandonment of the Iranian Kurds in the Mahabad Republic in 1945 and the tragic end of its leaders.¹²³³ Kurds found it hard to trust the Soviets and their leaders again; therefore, the Kurds chose the USA as their ally and worked hard to develop a friendship with this superpower, or build direct relations and cooperation, but failed. The United States did not respond to all Kurdish movement initiatives and retained the same policy, continuing to neglect the Kurds and their claims to self-determination, and dealing with Iraqi Kurds as a part of Iraq.¹²³⁴

¹²³² US Embassy in Ankara, "Turkey Cable from George Wadsworth to the Department of State., Advises against broadcasting propaganda to Turkish Kurds because of Turkish government opposition. Document 31: [Broadcasts to Turkey's Kurds]," September 4, 1951, *The National Security Archive*, Documentation on Early Cold War, U. S. Propaganda Activities in the Middle East, accessed May 17, 2017. <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB78/propaganda%20031.pdf>

¹²³³ Abdulla, *The Kurds: A Nation on the Way to Statehood*, 96-99.

¹²³⁴ Rehmany, *History of Kurd-America Relations*, 36-37.

In the 1950s the US was trying to keep the Kurds isolated from Soviet influence, and also to help the pro-Western Iraqi monarchy through keeping the Kurds under control and preventing any uprising by this group.

The Kurdish leaders' attempts to develop contacts with the US were based on strategic calculations relevant to that period - Iraq had gained the enmity of the US after the 1958 revolution.¹²³⁵ During the rule of Abdul Karim Qasim in Iraq, due to the fear of communist domination of the Kurdish issue and in order to confront and stop the communist encouragement to establish the Greater Kurdistan State, which was to include all four parts of Kurdistan from Turkey, Iran, Syria and Iraq, the American government built policies that focussed on keeping the Kurds within Iraq and keeping them away from independence, and making sure that the US' relationship with other countries remained unaffected.¹²³⁶

During an interview in 1962 in the New York Times newspaper, Motafa Barzani told Dana Adams Schmidt, "Let the Americans give us military aid, openly or secretly, so that we can become truly autonomous, and we will become your loyal partners in the Middle East."¹²³⁷ Kurds wanted America as a regional partner and they seem to have believed that they could play a significant role in the region as part of a strategic US partnership, but the US had other strategic allies in the region like Turkey and Iran, which

¹²³⁵ Gunter, *The Kurdish Predicament in Iraq: A Political Analysis*, 26.

¹²³⁶ Committee on Foreign Relations- United States Senate, *United States Foreign Policy: Compilation of Studies*, 1327.

¹²³⁷ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 17.

it considered more useful than the Kurds.¹²³⁸ In that stage, the US has used the Kurds only as a tool for its interests in the Middle East.

Directly after WWII, the world witnessed the birth of a new international organization: the United Nations, which replaced the League of Nations. It was founded by the victorious countries in the war.¹²³⁹ Membership in the UN is legally allowed for independent states, associations, and observers. Accordingly, representatives of the liberation movements have the right to be counted "as an observer member",¹²⁴⁰ but due to the lack of international support, they have not given any opportunities to the Kurdish movement until today.

In the sixties and seventies, despite all the developments that have taken place regarding the right to self-determination legally and the declaration of several instruments in this regard, and processes of decolonization by the United Nations, the Kurds have continued to be deprived of this right. The US, UN and the superpowers remained silent about the Kurdish issue during this period and did not appear to care about the crimes perpetrated against the Kurds.

However, the March Agreement came into force in 1970 between the Kurds and the Iraqi Government. It outlined the formation of a Kurdish area with self-government.¹²⁴¹ This agreement promised Kurds that those regions in which the Kurds constituted a

¹²³⁸ Gunter, Introduction, 14.

¹²³⁹ UN, History of the United Nations, *United Nations*, accessed April 7, 2018. <https://www.un.org/en/about-us/history-of-the-un>

¹²⁴⁰ Natalia Tsvetkova, *Russia and the World: Understanding International Relations* (Lanham. Boulder. New York. London: Lexington Books, 2017), 179.

¹²⁴¹ McDowall, *A Modern History of the Kurds*, 327-329.

majority were to be granted self-governing status within four years from the date of its signature.¹²⁴² Throughout this period, the US policy retained a direct relationship with Iraqi Kurds under the supervision of the Iranians until the Algeria Agreement.¹²⁴³

The first documented and confirmed evidence of US support for the Kurds goes back to 1972. It appeared in the leaked Pike House Committee hearings. The document started by recording Ali Reza Shah who was president of Iran at that time, requesting President Nixon and Henry Kissinger's help in aiding the Kurds.¹²⁴⁴ Nixon accepted the Kurdish demands - "Anything for a friend and loyal ally said Nixon."¹²⁴⁵

It appeared that both Iran and the US tried to use the Kurdish issue for their own interests and political influence, instead of considering Kurdistan as a nation which has been victimised and denied its rights, while the Kurds believed they were fighting for their independence. They also believed that the United States policy was different from that of other superpowers and depended on liberalism, respecting human rights and freedoms for peoples, as the US has consistently proclaimed. Therefore, the Kurds aimed to be a trusted and a real partner. Mustafa Barzani stated to a group of visiting journalists, "We are ready to act according to U.S. policy if the U.S. will protect us from the wolves," while expressing his desires for Kurdistan to become America's fifty-first state.¹²⁴⁶ Masoud Barzani, the former president of Kurdistan Region and the son of Mustafa Barzani, would recall that his

¹²⁴² McDowall, *A Modern History of the Kurds*, 327-329.

¹²⁴³ Ghareeb, *The Kurdish Question in Iraq*, 87.

¹²⁴⁴ Ghareeb, *The Kurdish Question in Iraq*, 139.

¹²⁴⁵ William Blum, *The CIA: A Forgotten History: U. S. Global Interventions Since World War 2* (London: Zed Books, 1986), 1275.

¹²⁴⁶ MacDowall, *A Modern History of the Kurds*, 333.

father admitted that he should have been more “dubious” of the Shah of Iran. Barzani continued his statement: “But he didn’t think the Americans would cheat us.”¹²⁴⁷ Throughout this period, all administrations, one after the other, had marginalised the Kurdish question. Kissinger told Sa'dun Hammadi, Minister of Foreign Affairs of Iraq, in the Memorandum of Conversation Paris, December 17, 1975: “When we thought you were a Soviet satellite, we were not opposed to what Iran was doing in the Kurdish area. Now that Iran and you have resolved it, we have no reason to do any such thing. I can you tell you we will engage in no such activity against Iraq's territorial integrity, and are not.”¹²⁴⁸

US support for Israel in the October 1973 war was one of the reasons behind US support for Iraqi Kurds; in the heat of the October 1973 war between the Arabs and Israel, the Iraqis dispatched a battalion to take part in the confrontation.¹²⁴⁹ Then after the Algeria Convention, Kurds understood that their faith in American foreign policy had proved to be misplaced.

Regarding the Shah’s role in the Nixon-Kissinger intervention of 1972-1975, there were some documents representing congressional investigation into this episode, which described Nixon and Kissinger as the Shah’s “junior American partners.”¹²⁵⁰ The US’s influence was apparent when the Shah unilaterally decided to end Iranian support for the Kurds, which in turn ended the Iraqi Kurdish movement. As part of the Cold War regional

¹²⁴⁷ Lawrence, *Invisible Nation: How The Kurd’s Quest For Statehood Is Shaping Iraq and The Middle East*, 27.

¹²⁴⁸ Belmont and Keffer, *Foreign Relations of the United States, 1969-1976, Volume 27, Iran; Iraq, 1973-1976*, 817.

¹²⁴⁹ Meho, *The Kurdish Question in U. S. Foreign Policy: A Documentary Sourcebook*, 22.

¹²⁵⁰ House of Representatives. *Select Committee on Intelligence. CIA: The Pike Report* (Nottingham: Spokesman Books:1977), 198.

balancing of power,¹²⁵¹ the United States' foreign policy in every administration before 1990 adopted an unfriendly approach to dealing with Kurds.

On 3 October 1975 Barzani wrote a letter to Secretary of State Kissinger in which he stated:

Our movement and people are being destroyed in an unbelievable way, with silence from everyone. We feel your excellence that the United States has a moral and political responsibility towards our people, who have committed themselves to your country's policy."¹²⁵²

Kissinger never responded to this letter. Kissinger admitted that "for the Kurdish people, perennial victims of history, this is, of course, no consolation."¹²⁵³ More specifically, he explained that "saving the Kurds would have required the opening of a new front in inhospitable mountains close to the Soviet border" and therefore "we did not have the option of overt support in a war so logistically difficult, so remote, and so incomprehensible to the American public."¹²⁵⁴ Kissinger concluded: As a case study, the Kurdish tragedy provides material for a variety of conclusions: the need to clarify objectives at the outset; the importance of relating goals to available means; the need to review an operation periodically; and the importance of coherence among allies.¹²⁵⁵

In other words, the US support of Kurds was not the strategic policy of the US, and the Kurds had played the role of dispensable pawns for US foreign policy over time.

¹²⁵¹ Kissinger, *Years of Renewal*, 538.

¹²⁵² Randal, *After Such Knowledge, What Forgiveness? My Encounters With Kurdistan*, 166.

¹²⁵³ Kissinger, *Years of Renewal*, 577-579.

¹²⁵⁴ Kissinger, *Years of Renewal*, 577-579.

¹²⁵⁵ Kissinger, *Years of Renewal*, 577-579.

US policy related to the Kurdish issue in the 1970s operated according to doublestandards, and divided into two parts: initially, the US supported Kurds in Iraq, but has neglected them since the Algeria Agreement in 1975 was ratified between Iraq and Iran under US supervision.¹²⁵⁶ Following this Agreement, the US and its ally Iran have blocked all support for the Kurdish movement and this has led to a great setback for the Kurdish self-determination struggle.

The period 1945-1975 on the one hand showed that although some progress had been made and the US had supported Kurds some of the time, the Iraqi Kurds had actually been pawns in a deadly game by the US and regional countries. United States' assistance was not given to help the Kurds to achieve their goal of "self-determination and independence" but rather to put pressure on Iraq's pro-Soviet government. In sum, as Kissinger noted through the later investigation of the "Pike Committee" of Congress: "the United States did not support the Kurdish state, but they were ready to contribute to perpetuating the Kurdish problem so that they could maintain a balance of power for their benefit."¹²⁵⁷

¹²⁵⁶ Abdulghani, *Iraq and Iran the years of crises*, 234.

¹²⁵⁷ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 139.

2. US and Kurds from the Algeria agreement to the post-ColdWar era (1975-1991)

After the Algiers agreement a new phase of US policy towards Kurdistan's claim to self-determination emerged during which the Kurds lost all confidence in the Americans, and saw themselves as without support from anyone, and tried to depend on themselves in their struggle for freedom and their rights.

Mustafa Barzani told Edmund Ghareeb in an interview in 1976: “Without American promises, we would not have acted the way we did. While if it wasn’t for the American promises, we would never have become trapped and involved to such an extent.”¹²⁵⁸ Joseph Sisco, Undersecretary of State for Political Affairs, “explained to Barzani that the United States had come in to help the Kurds at the request of the Shah; and now, at the request of the Shah it was pulling out.”¹²⁵⁹

This period was the most difficult for Iraqi Kurds; they were neglected totally by the US and all superpowers, even the UN. Then, in the 1980s, the Iraqi Government subjected the Kurds to genocide campaigns and killed hundreds of thousands in different ways, beside the death of hundreds of thousands of victims in wars and the constant instability of Iraq,¹²⁶⁰ without any real objection by any state or any international organisation around the world.

¹²⁵⁸ Ghareeb, *The Kurdish Question in Iraq*, 159.

¹²⁵⁹ Shareef, *The United States, Iraq and the Kurds: Shock, Awe and Aftermath*, 146.

¹²⁶⁰ Lisa Blaydes, *State of Repression: Iraq under Saddam Hussein* (Princeton and Oxford: Princeton University Press, 2018), 80-112.

At the beginning of the 1980s the US completely ignored the Kurdish issue and all Iraqi Kurds' problems, in order to guarantee Iraq as an ally against revolutionary Iran. In September 1987, an official US delegation visited Kurdistan to investigate the Anfal genocide against the Kurds, which caused the death of about 200.000 people, and the demolition of about 4500 cities and villages.¹²⁶¹

The only signs of US attention to the genocide and historical grievances came towards the end of the 1980s. In September 1987, the US congressional member of staff, Peter Galbraith, and Haywood Rankin, a political counsellor from the US Embassy in Baghdad, visited the Anfal area and witnessed for themselves the atrocities and effects of the genocide on the Kurdish people. Both saw the atrocities of the Anfal Campaign against the Kurds. Their observations were recorded in two documents. Rankin produced a 27-page document recounting his observations, which was circulated at "the State Department and other Reagan administration agencies",¹²⁶² and Galbraith produced a report published by the Senate Foreign Relations committee entitled "War in the Persian Gulf: The US Takes Sides" recounting these atrocities."¹²⁶³ Although these documents can be considered as a first step towards real support by the US for the Kurdistan people, the US administration has retained its negative position toward the Kurdish issue. Also, in April 1988, when Halabja town was attacked by chemical weapons by the Iraqi Government, no serious attempts were made by the United States to intervene in the genocide against the Kurdish people or to alleviate their pain. It can be argued that this was because of US

¹²⁶¹ UNPO and KRG, "The Kurdish Genocide. Achieving Justice through EU Recognition."

¹²⁶² Lawrence, *Invisible Nation: How The Kurds' Quest For Statehood Is Shaping Iraq and The Middle East*, 40.

¹²⁶³ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 27.

interests in retaining relations with the Iraqi government, which was hostile to Iran. Galbraith argued that the Reagan administration failed to recognise that the Iraqi regime was in no way a reliable US partner, nor a source of stability in the region, to the extent that the US overlooked the gassing of the Kurds in 1988 at Halabja town which belongs to the Sulaimaniyah province.¹²⁶⁴ The US administration was ready to ignore Iraq's use of chemical weapons against its own civilian Kurds. It continued to believe that Iraq's behaviour could be moderated and that, as a strategic asset, it could protect US interests in the region. Shortly after the Halabja gassing and before the end of the Iraq-Iran war, the Kurdish leader, Jalal Talabani, made his first visit to the US, hoping to obtain weapons and support for autonomy. He met some VIPs, but then, following protests from Turkey, the US ignored any other requests for meetings with the Iraqi opposition including the Kurds.¹²⁶⁵ All Kurdish attempts to establish contact with the US to obtain US support had failed.

The US was completely aware of the continuing violence against the Kurds: when, in March 1988, Iraq killed over five thousand Iraqi Kurds in chemical attacks.¹²⁶⁶ After that, there was a little progress in US policy toward Kurds; two events can be mentioned here. On 8 September, 1988 US Secretary of State George Shultz met Iraq's Deputy Prime Minister, Saadoun Hammadi, and condemned as unjustified and undesirable, "Iraq's use of chemical weapons against the Kurdish population."¹²⁶⁷ The US Congress passed a bill,

¹²⁶⁴ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 34.

¹²⁶⁵ Jalal Talabani, quoted in Majid Khadduri and Edmund Ghareeb, *War in the Gulf, 1990-91: The Iraq-Kuwait Conflict and Its Implications* (New York: Oxford University Press:1997), 205.

¹²⁶⁶ Pierre Razoux, *The Iran-Iraq War*, trans. Nicholas Elliott (Cambridge, Massachusetts. London: Harvard University Press, 2015), 439.

¹²⁶⁷ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 33.

presented by Senator Claiborne Pell, to impose sanctions on Iraq. The bill was titled “The Prevention of Genocide Act of 1988”; it was passed unanimously on 9 September 1988. A congressional investigation into Iraq’s use of chemical weapons against its Kurdish population was conducted by Galbraith and Christopher Van Hollen to help secure the House’s support, but Congress refused to pass the Bill, except in a weak version: “There is no indication that the Reagan administration sought in any way to signal its displeasure” at these events.¹²⁶⁸

The US President and his Secretary of State consider the Kurds no more than an actor to be used in political games. Therefore, it should not be too difficult to understand why Gur-Arieh argued: “No nation in the 20th century has been made the pawn of regional and global powers as often as the Kurds.”¹²⁶⁹

Because the US believed that Iraq was a strong ally and saw it as a strategic asset to the US in the Middle East, they did not want to weaken Iraq by pressuring it, or punishing it for its actions against the Kurds, even after the Anfal Campaign and the gas attacks against Kurdish people. All US attempts were ineffective in stopping the genocide against Kurds and supporting their issues. Thus, Kurds remained as pawns for superpower manipulation, particularly the US and its allies in the Middle East, till the end of the Cold War and the proclamation of the new world order.

¹²⁶⁸ Joost R. Hiltermann, *A Poisonous Affair: America, Iraq, and the Gassing of Halabja* (New York: Cambridge University, 2007), 102-103.

¹²⁶⁹ Gur-Arieh, *Kurds: The Elusive Quest. New Outlook, Volumes 34-35*, 6.

§II: US foreign policy and political developments in Iraqi Kurdistan (1991-2003)

US policy interest in the Kurdish Question effectively started after WWII and underwent many stages, but over the past 30 years, the relations between the US and Iraqi Kurds have developed as both parties increasingly expanded their mutual interests in the region. This progress in US policy towards the Kurdish issue in the post-Cold War era was a positive development, and helped the IKR become a new US ally in the Middle East.

A. Modifying US policy towards the Kurdistan people

In this stage of US foreign policy toward the Kurdish issue, which is classed as the Post Cold-War stage, after the Iraqi occupation of Kuwait in 1990,¹²⁷⁰ US foreign policy changed positively toward Iraqi Kurds and supported them in many stages, although it did not support them to establish an independent Kurdistan.

The main question here is: what were the main reasons behind this dramatic change in US policy towards Iraqi Kurdistan in the early 1990s?

There were several reasons behind this change, the most important of which was the end of the Cold War and the demise of the Soviet Union in the early 1990s,¹²⁷¹ as it

¹²⁷⁰ Majid Khadduri and Edmund Ghareeb, *War in the Gulf, 1990-91: The Iraq-Kuwait Conflict and Its implications* (Oxford: Oxford University Press, 2001),3.

¹²⁷¹ Miller, *The Struggle to Save the Soviet Economy: Mikhail Gorbachev and the Collapse of the USSR*, 7.

was the main global competitor of the United States, and its end also meant the demise of fear of its effects on Iraq and the region. As Kissinger noted, the United States was considered an ally of Iraq, for long periods. This belief that Iraq would be an ally of the Soviets prompted the United States to help the Kurds fight Iraq in the 1970s.¹²⁷² Then, after Iraq had given America guarantees and achieved the goals of its main ally in the Gulf and the region "Iran", America implemented the desire of Iraq at the expense of the rights of the Kurdish people and the Kurdish movement, through the Algiers Agreement between Iraq and Iran in 1975,¹²⁷³ and this led to the collapse of the Kurdish revolution.

Another reason for this change was simply hostility toward the Iraqi Regime. The Kurds and the United States were enemies of Iraq at the same time. The Kurds have fought Iraq for decades, and the United States fought it after its occupation of Kuwait. Therefore, it was in the interest of America to cooperate with the Kurds and use them for its purposes in Iraq. Also, this rapprochement and coordination were in the interest of the Kurds, their goals and their difficult situation in Iraq and the region.

Even the punishment meted out to Iraq in the early nineties was not because of its crimes against the Kurdish people, but because of the occupation of Kuwait by Iraq in 1990,¹²⁷⁴ and because of its threats to Israel. Reflecting this, the former US Secretary of State, James Baker, noted that the idea of containing Saddam started at the beginning of 1990 when he began to threaten Israel and announced that he possessed weapons of mass

¹²⁷² Belmont and Keffer, *Foreign Relations of the United States, 1969-1976*, 817.

¹²⁷³ Maisel, *The Kurds: An Encyclopedia of Life, Culture, and Society*, 338.

¹²⁷⁴ Khadduri and Ghareeb, *War in the Gulf, 1990-91: The Iraq-Kuwait Conflict and Its implications*, 3.

destruction.¹²⁷⁵ Thus protecting Israel's security and removing the Iraqi threat is one of the other reasons behind the shift in US policy toward the Kurds in Iraq.

Another reason for the change in US policy in the 1990s towards the Kurds in Iraq was humanitarian. After the American president "Bush" encouraged the Iraqi people to rise up against Saddam's regime, after the uprising of the Kurds in the north and the Shi'ites in the south, in March 1991, the US allowed the Iraqi government to suppress them. This led to a bloody crackdown in the south and north and led to two million Kurds migrating to the borders of Turkey and Iran for fear of reprisals from Saddam's forces.¹²⁷⁶ The growing humanitarian crisis gained the attention of the media and humanitarian NGO organizations in Western countries. That led to popular pressure and stirring up public opinion in America and Western countries to put pressure on their governments to move towards protecting Kurdish refugees on the borders. France proposed a safe haen in Iraq for the Kurds, which could be imposed by force if necessary¹²⁷⁷. All these efforts led to the passing of the UNSC Resolution 688 to protect the Kurdish people, and to establish a no-fly zone.¹²⁷⁸ This humanitarian intervention was very helpful for the development of the political situation in Iraqi Kurdistan and subsequently evolved into relations and cooperation between the two sides, USA and Iraqi Kurdistan.

¹²⁷⁵ Charountaki, *The Kurds and US Foreign Policy: International Relations in the Middle East since 1945*, 336.

¹²⁷⁶ Meho, *The Kurdish Question in US Foreign Policy*, 73.

¹²⁷⁷ Bradshaw, "After the Gulf War: The Kurds," 78-80.

¹²⁷⁸ Stephen Zunes, "The United States and the Kurds: A Brief History, Foreign Policy in Focus."

Another reason for the change in US policy towards the Iraqi Kurds and its move to protect them, was the Turkish government's position.¹²⁷⁹ As the Turks feared the migration of millions of Iraqi Kurds to Turkey would lead to chaos or an uprising by the Kurds there, they pressed America to act to stop the flow of refugees to Turkey and to put an end to the then Iraqi government.¹²⁸⁰

These factors made the US policy towards the Kurdish question different in comparison with its past, without supporting any project for independence for Iraqi Kurdistan.

B. US policy and building the Iraqi Kurdistan government

This period was characterised by a major change in US foreign policy towards the Kurds in Iraq, which began with the start of the second Gulf War. After the war, the relationship between the United States and the Kurds evolved, and for the first time the United States took many significant and historic steps in support of the Kurds in Iraq.¹²⁸¹ Since the beginning of the 1990s in particular, when the bipolar world system ended and a unipolar new system was created, led by the United States, the role of the United States as a hegemonic superpower in Middle East issues including the Kurdish issue increased.

¹²⁷⁹ Olson, "The Kurdish Question in the Aftermath of the Gulf War, Geopolitical and Geostrategic Changes in the Middle East," 475-499.

¹²⁸⁰ Ninan, "The United Nations, the US and Northern Iraq," 2760-2765.

¹²⁸¹ Phillips, *The Great Betrayal: How America Abandoned the Kurds and Lost the Middle East*, 5.

Besides, "since the gulf war in 1991 when the US enforced the no-fly-zone, Kurdish compatriots have made the most of their opportunity to consolidate de facto independence."¹²⁸² In fact, the allied campaign against Iraq following its invasion of Kuwait gave the Kurds an opportunity to launch an insurrection, and the US has become the de facto security guarantor to Iraq's Kurds. The development of a formal relationship between the American government and Iraq's Kurdish population began as a response to the humanitarian crisis after the First Gulf War. The response mission was named Operation Provide Comfort.¹²⁸³

After the First Gulf War and operation Kuwait Freedom, the US depended on a new policy whereby it would deal with the Kurds as part of the Iraqi opposition sometimes, and as a new partner in Iraq on other occasions. At this stage, the US began to deal with Kurds as a de facto government.

After the UN adopted resolution 688, the US and allied states in mid-1991 instituted a no-fly-zone over the north of the 36th parallel, now the northern Iraqi Kurdish region, in order to protect the Kurdish People from Iraqi forces and to guarantee the Kurdish Territory.¹²⁸⁴ This step changed the situation in favour of the Kurds, which enabled the Kurds to establish de facto autonomy. Operation Provide Comfort was a shift in American policy on Iraq, made more prominent in comparison to American policy only three years

¹²⁸² Phillips, *The Great Betrayal: How America Abandoned the Kurds and Lost the Middle East*, 5.

¹²⁸³ U. S. Military, Department of Defense (DoD), "U. S., Providing Government, Comfort to Iraq's Kurds: Forming a de Facto Relationship."

¹²⁸⁴ Phillips, *The Great Betrayal: How America Abandoned the Kurds and Lost the Middle East*, 47-48.

earlier that declined to respond to allegations of genocide among these same Kurds by the Iraqi state.¹²⁸⁵

In the US Senate Foreign Relations Committee room, on 27 February 1991, Senator Pell and Peter Galbraith chaired an Inter-Parliamentary Consultation on the Kurds. Many Kurdish leaders were present including Jalal Talabani. During their meeting with the US senators, the Kurds emphasised their pro-American sentiment and the likelihood of an uprising.¹²⁸⁶

Then, a year after Resolution 688, the Kurds held a general election successfully in the areas under their control, and for the first time, Kurds established their own governance, in the form of the Kurdistan Government.¹²⁸⁷

Directly following the elections, the Kurds started to create their administrative institutions. The US and its allies supported the parliamentary elections in the Kurdish region in 1992 as an important democratic stage. On 15 May 1992 the State Department expressed support; spokeswoman Margaret Tutwiler stated that the US hoped the elections would help lead to a better life for all the people of northern Iraq.¹²⁸⁸

These successful elections which were conducted in 1992 according to democratic standards for the first time in the history of the Kurds and Iraq represented a new chapter in the history of the Kurdish people in Iraq.

¹²⁸⁵ U. S. Military, Department of Defense (DoD), "U. S., Providing Government, Comfort to Iraq's Kurds: Forming a de Facto Relationship."

¹²⁸⁶ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 46.

¹²⁸⁷ KRG - Department of External Relations, "Kurdistan Regional Government."

¹²⁸⁸ Yildiz, *The Kurds in Iraq The Past, Present and Future*, 44.

In addition, the US and western media focused on these elections, which influenced public opinion and decision makers to help the Kurds and support them in their National Democratic struggle.¹²⁸⁹

This event was thus brought to the attention of the Americans, particularly a large number of the members of the US Congress, who began serious discussions in Congress about these successful democratic elections. In light of this, they emphasised the need to support this new step towards democracy in the Middle East. This election was to lead to the raising of voices within American society in support of the Kurdish people, in terms of their goals and the democratic model that emerged from Kurdistan. In various US institutions such as Congress, the White House administration, the American International-NGOs, the media and the Department of State, support was expressed for this election as a successful general election in Iraqi Kurdistan. This led the US to start thinking about upgrading the relationship and coordination with the Kurdistan government.

Through our study of the congressional hearings throughout the years 1991-1992, we arrived at the conclusion that: after elections for the Kurdistan Parliament, which were held on 19 May 1992 and were the first free and fair parliamentary elections in the history of Iraq, a large number of members of Congress began to express support for these elections, as well as for the legitimate rights of the Kurdish people. In addition, they demanded the end of threats and crimes of genocide against them; for instance, Congressman John Kerry expressed full support for what he regarded as a model of a

¹²⁸⁹ Rehmany, *History of Kurd-America Relations*, 449-450.

successful democratic election.¹²⁹⁰ Congressman Spector also expressed that these elections marked a historic turning point in the Kurdish path toward democracy.¹²⁹¹

In general, through their speeches to Congress on Kurdish people during 1991-1992, the majority of Congress members expressed support for and solidarity with the aspirations of the Kurdish people and their legitimate rights. Additionally, they praised the elections in 1992 as an example of a democratic model for others in the Middle East to follow. Some went further; they criticised the US foreign policy towards the Kurds and demanded that the White House administration change its approach in dealing with the Kurdish issue, and some of them claimed a right of self-determination for the Kurdish people.¹²⁹² These discourses, claims and discussions put pressure on the US administration, and also were a strong start to dealing with the Kurds from a different angle, or cooperating with Kurds as a friend and as a nation that deserves respects for its rights through support for and continued protection of the new democratic experiment. Thus, the general parliamentary elections reflected positively on US foreign policy towards the Kurdish issue. Additionally, the United States besides its allies continued to help the Kurds in different ways and continued protecting Kurdish Territory under UNSC Resolution 688 and through the no-fly zone.

In his explanation of the situation, Lawrence stated:” The Kurdish safe haven was supposed to serve Washington’s Iraq containment strategy, a launching pad for the harassment of Saddam Hussein. On the other hand, it was one of the most successful

¹²⁹⁰ Rehmany, *History of Kurd-America Relations*, 448-449.

¹²⁹¹ Congress Documents quoted in Rehmany, *History of Kurd-America Relations*, 448-470.

¹²⁹² Rehmany, *History of Kurd-America Relations*, 448-460.

nation-building projects in American history. The Kurds held elections, set up their own social services”.¹²⁹³

On the other hand, the Kurdistan region's share of the Oil-for-Food program which was overseen by the UNSC through Resolution 986, under the influence of the United States, was itself further support for the semi-autonomous Kurdish region, and gave material and moral support to the Kurdistan Government.¹²⁹⁴

Thus, the no-fly-zone and Resolution 986 by the UN decreased the internal obstacles caused mainly by the four years' civil war between the two main Kurdish political parties (PUK and KDP) in the region, and also prevented Saddam Hussein's regime from further oppressing and attacking the Kurds in the North. On the other hand, for the first time in Kurdish history the American media began to report in favour of the Kurds. For instance, for the first time, the Washington Post mentioned Dividing Iraq, which it saw as the best way of ending Saddam Hussein's rule, and of supporting both the Kurds and the Shiites to achieve their goals.¹²⁹⁵

¹²⁹³ Lawrence, *Invisible Nation: How The Kurds' Quest For Statehood Is Shaping Iraq and The Middle East*, 4.

¹²⁹⁴ UNSCR, “SC Res. 986, Authorization to Permit the Import of Petroleum and Petroleum Products Originating in Iraq, as a Temporary Measure to Provide for Humanitarian Needs of the Iraqi People,” *Search engine for the United Nations Security Council Resolutions*, accessed September 12, 2016. <http://unscr.com/en/resolutions/986>

¹²⁹⁵ Chris Kochere, *Kurdish nationalism movement and the will of independence*. (in Kurdish) “translated by Hasan Rastgar” (Erbil, Aras Publisher, 2013), 489.

C. The US and the stability of Kurdistan

The civil war led to political instability and this created a serious power vacuum, giving regional and international powers an opportunity to become more involved in Kurdistan's situation. To solve this problem and to continue its policy of protecting the Kurdish people, the US implemented a serious attempt to stop the civil war in Iraqi Kurdistan. A civil war between the two parties (the Patriotic Union of Kurdistan (PUK) led by the former Iraqi president Jalal Talabani and the Kurdistan Democratic Party (KDP) led by the former president of the Kurdistan region Masoud Barzani)) was resolved in September 1998 after U.S. mediation.¹²⁹⁶ The Peace Agreement was monitored by the US Secretary of State, Madeleine Albright,¹²⁹⁷ and in October 2002 a joint parliament was appointed.¹²⁹⁸

Thus, another important positive step which contributed to the improvement and development of the US policy towards the people of Kurdistan, in the post cold war era, was to end the civil war between the two main Kurdish parties. James Rubin, who was at the State Department briefing in September 1998, argued:

“We also want to listen to the real voices of the Iraqi people. Both of these leaders [Barzani and Talabani] represent the interests of millions of Iraqi Kurds. In extraordinarily difficult circumstances they are working to cooperate with the international community and we hope that they will have a chance to talk to a

¹²⁹⁶ Peter L. Hahn, *Historical Dictionary of United States-Middle East Relations*, 2nd Edition (Lanham, Boulder, New York, and London: Rowman and Littlefield, 2016), 60.

¹²⁹⁷ Madeleine Albright, Quoted in FAS, “Transcript: Albright, Talabani, Barzani.” September 17, 1998, *FAS, USIS Washington File*, Remarks, September 27, 1998, accessed April 8, 2017. <http://www.fas.org/news/iraq/1998/09/980908db-1.html>.

¹²⁹⁸ Hahn, *Historical Dictionary of United States-Middle East Relations*, 60.

wide spectrum of people in Washington and real leaders will be heard from.”¹²⁹⁹

During the signing ceremony, Albright noted:

“And, as today’s meeting reflects, we are intensifying our efforts to help Iraqis - whether Arab or Kurd, Shiite or Sunni - to develop a deeper sense of common purpose and a more effective strategy for achieving their future in a democratic and pluralist Iraq.”¹³⁰⁰

After the Washington Accord, the then President of the US, Bill Clinton, in a letter to the US congress on 5 November 1998, titled “Status of efforts to obtain Iraq’s compliance with UN resolutions”, declared:

“Both Barzani and Talabani have made positive, forward-looking statements on political reconciliation. We will continue our efforts to reach a permanent reconciliation through mediation in order to help the people of northern Iraq find the permanent, stable settlement which they deserve, and to minimize the opportunities for Baghdad and Tehran to insert themselves into the conflict and threaten Iraqi citizens in this region.”¹³⁰¹

Following an in-depth study of many US Official Documents from 1950 to 2018 which are related to the Kurdish Question and kept by a range of different US institutions (such as the US Government, Congress, the White House, the Ministry of Defense, and the Department of State), it can be concluded that there have been significant changes in the

¹²⁹⁹ FAS, “Transcript: Albright, Talabani, Barzani.” September 17, 1998, *FAS, USIS Washington File*, Remarks, September 27, 1998, Accessed April 8, 2017. <http://www.fas.org/news/iraq/1998/09/980908db-1.html>.

¹³⁰⁰ Medline Albright, Quoted in FAS, “Transcript: Albright, Talabani, Barzani.” September 17, 1998.

¹³⁰¹ Beal Clinton, quoted in Mohammed Shareef, *The United States, Iraq and the Kurds: Shock, Awe and Aftermath*, 155.

US policy towards Kurds, but the US still supports the “Iraqi Kurdistan Region”, not “independent Kurdistan”.¹³⁰² The need to protect Iraqi Kurds and strengthen the Kurdistan Government were important factors in the formation of US foreign policy in Iraq.

Through the Washington Peace Agreement, the US helped Kurds to end their physical military conflict and disputes, which had a great impact on the Kurdistan region’s progress and position both internally and regionally. Also, it was the first time that the US had dealings with Kurdish top leaders officially, after the Algiers agreement between Iraq and Iran under American supervision in 1975 led to the failure of the Kurdish revolution.¹³⁰³ This historical step by the US in 1998 strengthened Kurdish ties and connections with the US.

The achievement of the Washington peace treaty under the supervision of the US Secretary of State marked a significant change in US policy toward the Kurds and US-Kurdish relations. After the Washington Accord there was no war between the KDP and the PUK. The Accord led to instability in Iraqi Kurdistan, which allowed the KRG to progress, and Kurdistan became more powerful and more developed than the other Iraqi areas.

¹³⁰² Rehmany, *Kurd and Kurdistan in American Secret Documents*, Iraqi Kurdistan,61-816; Rehmany, *History of Kurd-America Relations*,559-583.

¹³⁰³ Danilovich, *Iraqi Kurdistan in Middle Eastern Politics*, 17.

SECTION II: US policy toward Kurdistan's independence after American intervention in Iraq in 2003

After the Washington Accord of 1998 between the PUK and KDP, Kurd-US relations evolved dramatically, which led to a real partnership in the war to liberate Iraq from Saddam Hussein in 2003 by the Americans and their allies.

In the letter written to the President of the Kurdistan Region, Masoud Barzani to postpone the Kurdistan independence referendum in 2017, Rex Tillerson, a former US Secretary of State, stated:

"Together, over decades, we have forged a historic relationship, and it is our intention and commitment that this relationship continues to strengthen over the decades to come. Over the past three years, in particular, our strong partnership and your brave decisions to cooperate fully with the Iraqi Security Forces turned the tide against ISIS."¹³⁰⁴

US policy towards Iraqi Kurds has remained stable officially. The USA is supporting the Kurdistan region's economic, political and administrative development and progress, but the US official policy does not support the Kurdistan people to establish their own independent state.

In this section, the first paragraph addresses the evolving the relationship between US and Kurds after 2003, and how the Iraqi Kurdistan region has become a US partner.

¹³⁰⁴ Tillerson to Barzani.

For three decades, the IKR has been a reliable partner on furthering U.S. policy in Iraq and fighting terrorism. (§I) The second paragraph discusses US foreign policy toward independence for Kurdistan after American intervention in Iraq in 2003. It examines that US policy affirming a strong Kurdistan region, not independent Kurdistan. (§ II)

§I: The Kurdistan region as a US partner

Operation Iraqi Freedom was launched on 20 March 2003. The immediate goal, as stated by the Bush Administration, was to remove the regime, including destroying its ability to use weapons of mass destruction or to make them available to terrorists. The broad, longer-term objective included helping Iraqis build “a new Iraq that is prosperous and free.”¹³⁰⁵ In October 2002, Congress authorised the President to use force to “defend the national security of the United States against the continuing threat posed by Iraq,” and to “enforce all relevant United Nations Security Council resolutions regarding Iraq...”¹³⁰⁶

The end of Saddam Hussein's rule and salvation from the Ba'th party's repressive regime were the main goals for the Kurds, as they were linked to their security, their protection and the strengthening of their government in Iraqi Kurdistan. Accordingly, Kurds participated with the United States as an essential partner in the war of 2003 and all

¹³⁰⁵ Gorg. W. Bush, “Text: Bush's Speech on Iraq,” *The New York Times*, March 18, 2003, accessed June 15, 2017. <https://www.nytimes.com/2003/03/18/politics/text-bushs-speech-on-iraq.html>

¹³⁰⁶ US Superintendent of Documents, *United States Code* (Washington: Government Printing Office, 2014), 313.

post-2003 key developments in Iraq. The Kurds participated as the key force behind the United States during the US intervention in Iraq in 2003,¹³⁰⁷ and as a main partner during the post-war state-rebuilding in Iraq, in the management of Iraq, and in the war against ISIS.¹³⁰⁸ This development is considered one of the most important steps taken to develop Kurdish-American relations, since the political situation in Iraq was going through a chaotic situation which continues to the present day. “The intervention thus provided not merely emergency humanitarian aid, but long-term military assistance that shifted the balance of power within Iraq, effectively rewarding the Kurds with political autonomy that also promoted their human rights.”¹³⁰⁹

Over time, the focus of Operation Iraqi Freedom focus has shifted from regime removal to the more open-ended mission in Iraq which is helping an emerging new Iraqi leadership improve security, establish a system of governance, and foster economic development around Iraq. With that shift in focus, the character of the war has evolved from major combat operations to a multifaceted counter-insurgency and reconstruction effort.¹³¹⁰

It was clear that the US objective was to project the image of liberator rather than occupier. Douglas Feith has argued that the US wanted to show that that they genuinely wanted to help the Iraqis rid themselves of Saddam Hussein. The only Iraqis available for

¹³⁰⁷ Rayborn and Sobchak, *The U. S. Army in the Iraq War: Volume 1, Invasion. Insurgency. Civil War 2003-2006*, 81-85.

¹³⁰⁸ ICG, “Arming Iraq’s Kurds: Fighting IS, Inviting Conflict.”

¹³⁰⁹ Copperman, “Humanitarian Intervention,” quoted in Michael Goodhart, *Human Rights: Politics and Practice*, 338.

¹³¹⁰ Catherine Dale, *Operation Iraqi Freedom: Strategies, Approaches, Results, and Issues for Congress*, CRS Report for Congress (Washington: Congressional Research Service, 2009), 2.

such partnership were the externals - the Kurds and the Iraqi exiles.¹³¹¹ The Americans and their allies could point to the successes of the Kurdistan region. The key role played by the Kurds for the US in the run-up to the war was military, as Iraqi Kurdistan had a large force of Peshmerga available in strategic positions.¹³¹² The Kurds, however, remained mindful of their past experiences with the USA during the Cold War. They knew that the American plans for post-Saddam Iraq would determine the future of their autonomous region in northern Iraq; the Kurdish leadership was adamant that they would not cooperate unless they received assurances from the US regarding their security, and their status in post-Saddam Iraq. In other words, the Kurds demanded guarantees that their rights would be promoted after the removal of Saddam Hussein. So, from that time Barzani and Talabani were enthusiastic supporters of the US drive to topple Saddam's regime and they worked as key partners with the USA in the liberation of Iraq.

Kurdish fears were further eased when, on 6 March 2003, President Bush stated: "Iraq will provide a place where people can see that the Shiite and the Sunni and the Kurds can get along in a federation. Iraq will serve as a catalyst for change, positive change."¹³¹³ This statement gave federalism distinct recognition, but was less indicative of rights like that of self-determination which Kurds had been craving, after years of fighting with the Iraqi government.

¹³¹¹ Douglas J. Feith, *War and Decision: Inside the Pentagon at the Dawn of the War on Terrorism* (New York: Harpercollins Publishers, 2008), 369.

¹³¹² Yildiz, *The Kurds in Iraq The Past, Present and Future*, 103.

¹³¹³ George W. Bush, quoted in Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 271.

In assessing Kurdish–US relations in the run-up to the war, it is necessary to look at the role of Turkey, as a triangular relationship existed between the three countries. When Turkey refused to allow US forces to use its territory to intervene in Iraq, the Kurds opened the lands of the Kurdistan region to help the American forces to attack Iraq from the north, which is why Kurdish claims appeared stronger to the US.¹³¹⁴

In response to a question during one of the interviews in 2003 about what rewards Iraqi Kurds expected from their support of US aims, Masoud Barzani in an essay in 2005 pointed out, "After the U.S. armed forces, our peshmerga was the second-largest member of the coalition." Also, President Barzani stated that, "Iraq's Kurds have consistently been America's closest allies in Iraq. Our Peshmerga forces fought alongside the U.S. military to liberate the country, suffering more casualties than any other U.S. ally."¹³¹⁵

Following the removal of Saddam Hussein regime through the US intervention (Operation Iraqi Freedom), in 2005, democratic elections were conducted in Iraq for the first time in order to establish a new government of Iraq.¹³¹⁶ The new Iraqi governance according to the Iraqi permanent constitution recognized the Kurdistan Regional Government (KRG) and it approved all Kurdistan Region Laws.¹³¹⁷ After Operation Iraqi Freedom, the KRG continued but as the strongest part of Iraq, more sophisticated and prosperous, and a semi-independent state. Kurdistan was a safe area while the Iraqi

¹³¹⁴ Gunter, "Introduction," quoted in Rehmany, *History of Kurd-America Relations*, 13-14.

¹³¹⁵ Masoud Barzani, "Kurdistan is a Model for Iraq, Our path to a secular, federal democracy is inspired by the US," *The Wall Street Journal*, november 12, 2008, accessed June 15, 2017.

¹³¹⁶ The White House, Iraqi Election Facts, *The White House. President George W. Bush, Archives*. accessed March 9, 2018. <https://georgewbush-whitehouse.archives.gov/infocus/iraq/text/facts.html>

¹³¹⁷ Iraqi Constitution, Art. 117.

situation was deteriorating and very dangerous. The American-Kurdish partnership was strengthened day after day.¹³¹⁸

In the face of such crises, the Kurds were and still are the closest ally of the United States in Iraq. This relationship developed into a historical point in the the war against ISIS, when the US alongside the international community, supported the Kurdistan Region politically, military and economically. Despite the coldness between the partners during the referendum of the Kurdistan Region, the positive atmosphere between the two sides was soon reviewed. Now there is an American military camp in Erbil, in addition to the American consulate, and dozens of American companies, NGOs and institutions.¹³¹⁹

Yet the American policy is to keep the Kurdistan region as part of Iraq and not to declare independence. This policy is based on taking into account the interests of US allies in the region, especially Turkey, Iraq and the Arab countries, and the Americans believe that Kurdistan independence means the end of Iraq and instability for the whole region.

¹³¹⁸ Gunter, "Introduction," quoted in Rehmany, *History of Kurd-America Relations*, 14.

¹³¹⁹ U.S. Embassy and Consulates in Iraq, US consulate general Erbil, *U.S. Embassy and Consulates in Iraq*. Accessed March 9, 2017. <https://iq.usembassy.gov/embassy-consulates/erbil/>

§II: US policy and Kurdistan self-determination; A strong Kurdistan region, not independent Kurdistan

During the last three decades, the American policy in Iraq focused on the Kurdistan region remaining inside Iraq, but as a strong, secure and prosperous region. The US has helped the KR, but has not provided any official support for the Kurdistan Region in its attempts at self-determination and independence.

A. Strengthen the Kurdish role in Iraq

During the past 15 years, the US' positive politics toward the Kurds has developed constantly. The U.S.-Kurd relationship has grown and deepened considerably since the U.S. intervention in Iraq. This stage began with the second American war against Saddam Hussein in 2003, which led to the creation of the U.S.-Kurdistan Regional Government alliance, and continues today.¹³²⁰ “The Kurds entered post-Saddam national politics on an equal attitude with Iraq's Arabs for the first time ever by participating in a U.S.-led occupation administration (Coalition Provisional Authority, CPA). Holding seats on a 25-

¹³²⁰ Gunter, *Out of Nowtuhere: The Kurds of Syria in Peace and War*,104.

person advisory Iraq Governing Council (IGC), appointed in July 2003, were Barzani, Talabani, and three other Kurds.”¹³²¹

As part of this evolution, for the first time, Kurds were part of a real partnership in terms of Iraqi rule. The first Kurdish president in Iraq’s history, Jalal Talabani, was democratically elected in the January 2005 elections, and Kurds held many high posts in the Iraqi Government.¹³²²

In addition, during this period, the diplomatic relationship between Erbil and Washington grew to an unprecedented degree. For the first time, Masoud Barzani, President of the Kurdistan region, was officially invited to the U.S. where he met with President George Bush at the White House on October 25, 2005.¹³²³ The official meetings were continued even during the Obama administration, and Trump administration. In addition, many senior officials of the U.S. administration visited Erbil over many years.

Kurds were expecting more than the U.S. gave them in the new Iraq, as they had participated in the liberation of Iraq as a key partner of the U.S. and listened to the US promises and guarantees that were mentioned previously. The Americans tried to preserve good relations with everyone in Iraq: the Kurds, the Shiites and the Sunnis. This balance of U.S. policy in Iraq was not completely identical with the interests of the Kurds. This

¹³²¹ Kenneth Katzman, “The Kurds in Post-Saddam Iraq, CRS Report for Congress. Congressional Research Service, (2009),2. *FAS*, accessed June 16,2020. <https://fas.org/sgp/crs/mideast/RS22079.pdf>

¹³²² Turner, *The Statesman's Yearbook 2006: The Politics, Cultures and Economies of the World*, 911.

¹³²³ The Oval Office, “President Bush Meets with President Barzani of Kurdistan Regional Government of Iraq,” *The White House*, accessed June 15, 2017. <https://georgewbush-whitehouse.archives.gov/news/releases/2005/10/20051025-7.html>

was because there were many controversial issues and problems among the Kurds and Iraq because of previous Iraqi government policies.

During this period the U.S.-Kurd relationship continued to develop, despite the presence of some obstacles. There were differences between the Americans and the Kurds after the liberation of Iraq. This was because there were some problems concerning the way in which Iraq was to be ruled after US intervention. However, the relationship continued as a matter of strategic interest. Also, there were other differences between the U.S. and the Kurds regarding federalism. The Americans proposed earlier that there should be provincial federalism for the 18 provincial boundaries of Iraq¹³²⁴, but this was ignored after the Kurdish protest.

In terms of the Kirkuk issue, some sources have noted that pressure from Washington and the U.S. embassy in Baghdad convinced the Kurds to drop their insistence on carrying out a referendum in Kirkuk by the constitutionally mandated deadline of December 31, 2007. In the end, the KRG agreed to a compromise, postponing the referendum on the city's future.¹³²⁵

The U.S. policy in Iraq did not completely meet the desires of the Kurds, and these policies were criticised by the Kurds in some cases. Nevertheless, the Kurds remained a strategic key to the United States in Iraq.

¹³²⁴ Aram Rifaat, "U. S. -Kurdish Relations in Post-Invasion Iraq," *Middle East Review of International Affairs* 11, no. 4 (2007): 79-89.

¹³²⁵ Soner Cagaptay, *The Future of the Iraqi Kurds* (Washington: Washington Institute for Near East Policy, 2008), 13.

On the other hand, the Kurds were a key partner of the United States in the rebuilding of the Iraqi state after 2003, which gave a positive message to the regional countries, that Kurds should remain with the Iraqi people as a part of Iraq. This meant that Iraq played down the fears of the U.S. allies (Turkey and the Arab countries) in terms of Kurdish-U.S. relations, and then encouraged the United States to develop increasing cooperation and coordination with the Kurds in Iraq in several fields.

B. US-IKR special relations

In recent years, American relations with the Kurdistan region have evolved to include political, economic, security, military, cultural, scientific, and even popular fields, and both sides gave assurances of the importance of this relationship and its continuity for both parties. As mentioned above, there has been a dramatic evolution in Kurd-U.S. relations since 1990. The former US vice-president Joseph Biden actually described them as “special relations.”¹³²⁶

After the 2009 elections in Iraq, the US and the Kurds faced new challenges including dealing with contentious issues such as the resolution of Kirkuk’s status, hydrocarbon control and real partnership in power in the federal government. This created

¹³²⁶ Mardini, Relations with Iraq's Kurds: Toward a Working Partnership,1.

some tensions, to an extent that there was criticism of U.S. policy by Kurdish writers and the public.¹³²⁷

On the other hand, the US-Kurd relationship has been significant for both parties. Barzani highlighted the fact that: Today, the Kurds seek to retain a bilateral relationship with the United States because of their Kurdish fears of abandonment and a lack of trust, not from mutual interests and partnership. These sentiments are ingrained in the thinking of the KRG's leaders, who lived through a time when Kurds were a casualty of the Cold War's Great Game in the Middle East.¹³²⁸ The Kurds have consistently been America's closest allies in Iraq, well before Operation Iraqi Freedom.

Although so far, officially, the U.S. is dealing with the Kurdistan Region as a region within Iraq and does not have any serious desires to formally support an independent Kurdistan state, U.S. policy towards the Iraqi Kurds has always been inseparable from U.S. policy towards Iraq as a whole.

The US-Kurd relationship has nevertheless remained mutually beneficial. Kurdistan officials and US officials prefer basing U.S. forces in Kurdistan, as they see that the United States forces based in the Kurdistan region are welcomed and important for both sides.¹³²⁹ But, as the US has lessened its dependency on the Kurds, it is only natural that they do not hold the status they held in 2003. "These U.S. steps toward winning over Iraqi

¹³²⁷ Cagaptay, *The Future of the Iraqi Kurds*, 13.

¹³²⁸ Mardini, Relations with Iraq's Kurds: Toward a Working Partnership, 2.

¹³²⁹ Laurie Mylroie, "Long-term US military presence likely in Kurdistan," *Kurdistan24*, accessed June 18, 2017. <https://www.kurdistan24.net/en/news/f0ddc0e1-da49-4e74-9e32-3452c59850ac/long-term-us-military-presence-likely-in-kurdistan>

Arabs have convinced the Kurds that America is abandoning them in favor of the Arabs.”¹³³⁰

This situation intensified after the 2017 Iraqi Kurdistan Independence Referendum and the US position in support of Iraqi unity, or opposition to the Kurdistan referendum and independence.

The Kurds are looking to Washington to assuage some of their doubts. Although the Kurdistan region is in a stronger position than it was post-referendum, Kurds are still seeking to convince the U.S. to provide their full support in order to establish their own state. The U.S.-Kurd relationship needs more formality, balance and, most importantly, a positive settlement of the Kurdistan claim to self-determination.

C. The Kurdistan region’s influence on American policy in the Middle East

Kurdistan is evolving slowly but steadily. It is working on building itself politically, militarily and economically. As a result of its geopolitical importance, its possession of natural resources oil, gas and water,¹³³¹ its security and position in Iraq and in the Middle East region, it has an important impact on the politics in Iraq and the region. In December 2011, the US Secretary of Defense Robert Gates emphasized that the support of the Kurds is most important to implement the security agreement and all the strategic agreements

¹³³⁰ Cagaptay, *The Future of the Iraqi Kurds*, 13.

¹³³¹ Gunter, “Introduction,” quoted in Rehmany, *History of Kurd-America Relations*, 16.

between Iraq and the United States, and it is also a key factor in creating a united and peaceful Iraq.¹³³² This development makes it of interest to all regional and international powers and gives them an incentive to deal with KR and not neglect it. So, for a superpower like the United States, which has many vital interests in this region, the supportive position from KIR is significant.

In spite of this, as we pointed out earlier, one of the main obstacles to the development of American policy towards the independence of the Kurdistan region is Turkey. This country is a strategic ally of America, and since the 1950s, Turkey has benefited from constant US political, financial, and military support.¹³³³ Both countries are members of NATO, and consequently Turkey is important to the USA, and US concerns to Turkey's interests.¹³³⁴ US policy has taken note of Turkey's negativity toward Kurdistan's self-determination and independence, due to its fears of a Kurdish revolution within its borders, or the fear of Kurds in Turkey being encouraged to seek secession.¹³³⁵

One of the most important goals of U.S. strategy in the Middle East, as announced by different US administrations, was democratization,¹³³⁶ and ending terrorism and ISIS.¹³³⁷ These goals are shared by the Kurds, who proved their ability and progress in

¹³³² Gunter, *Out of Nowhere: The Kurds of Syria in Peace and War*, 7.

¹³³³ Rizas, *Realism and Human Rights in US Policy toward Greece, Turkey, and Cyprus*, 156.

¹³³⁴ Rizas, *Realism and Human Rights in US Policy toward Greece, Turkey, and Cyprus*, 156.

¹³³⁵ Mahmoud Othman, "Introduction," quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 23.

¹³³⁵ Carothers, "U. S. Democracy Promotion During and After Bush."

¹³³⁶ Carothers, "U. S. Democracy Promotion During and After Bush."

¹³³⁷ The president of the United States, *National Strategy for Counterterrorism of the United States of America*, 3.

these areas, promoting democracy and fighting terrorism.¹³³⁸ US- Kurdish relations evolved despite problems and differences, and without discussion of KR independence.

The KRG now has widespread investments in the field of oil and gas in different parts of Kurdistan. These investments are shared by several foreign companies, including the largest U.S. and international companies. Kurdistan has gradually moved to become one of the most important global energy sources.¹³³⁹ This important economic development is of vital interest to the following three players which are interrelated and mutually beneficial: the Kurdistan region, Turkey and the United States. So, day by day the Kurdistan region's economy is increasingly bound up with U.S. interests, leading to the development and strengthening of the political position of Kurdistan.

Additionally, there is a new political balance and constant sectarian conflicts in the region. There are two lines facing one another, one led by Iran and including states, forces and Shiite groups, which agree with the Shiite doctrine and policies of Iran. The second sectarian group in the region is led either by Turkey or Saudi Arabia. The second group is flexible in dealing with issues related to the United States' interests since they are largely America's allies.¹³⁴⁰ Kurdistan tends to the second power arrangement, with its extensive economic relationship and strategic partnership with Turkey. Turkey, uneasy with the increasingly sectarian flavour of the Shia-dominated government in Baghdad, has since

¹³³⁸ Liam Anderson, quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 108.

¹³³⁹ Iraq business news, "List of International Oil Companies in Iraqi Kurdistan," *Iraq business news*, accessed August 23, 2019. <https://www.iraq-businessnews.com/list-of-international-oil-companies-in-iraqi-kurdistan/>

¹³⁴⁰ Mohammed Nuruzzaman, "Contemporary Shia-Sunni Sectarian Violence," *ResearchGate*, accessed June 19, 2017. https://www.researchgate.net/publication/330411363_Contemporary_Shia-Sunni_Sectarian_Violence

moved closer to the KRG, not least with respect to energy issues. Added to the mix is the increasingly sectarian standoff in the region as a whole.¹³⁴¹ Relations with the Gulf countries are also gradually evolving,¹³⁴² as they are America's allies in the region. This is another positive point in favour of the Kurdistan Region.

Good relations exist between Kurdistan and European countries. This relationship is constantly evolving. Now, most of these countries have General Consulates in Erbil, in addition to the presence of European companies and institutions.¹³⁴³ As European countries are clearly strategic allies of the United States, as long as there are good relations and strategic links on the part of the European countries with the Kurds, this gives the U.S. and others the trust and the willingness to push forward with the Kurdistan Region.

D. The United States and the Kurdistan Region Independence Referendum

US cooperation and partnership with the Kurdistan Region during the war against ISIS was important for both sides. The political, military and financial implications of US aid helped the Kurdistan Region to face its difficult situation since 2014,¹³⁴⁴ due to the ISIS

¹³⁴¹ Bill Park, *Turkey-Kurdish Regional Government Relations After the U. S. Withdrawal From Iraq: Putting the Kurds on the Map?* (Pennsylvania: US Army War College Press, 2014), xi.

¹³⁴² Ramadan Al Sherbini, "Saudis, Iraqi Kurdistan agree on cooperation," *gulf news*, accessed July 27, 2018. <https://gulfnews.com/world/mena/saudis-iraqi-kurdistan-agree-on-cooperation-1.2256762>

¹³⁴³ KRG Department of Foreign Relations, "Current Foreign Representations in the Kurdistan Region," *KRG Department of Foreign Relation*, accessed June 12, 2018. <http://dfr.gov.krd/p/p.aspx?p=37&l=12&s=020100&r=363>

¹³⁴⁴ ICG, "Arming Iraq's Kurds: Fighting IS, Inviting Conflict."

war and the asylum of a huge number of refugees and displaced persons, and the fact that the budget of the Kurdistan region was cut by Baghdad. The United States continued its policies regarding the unity of Iraq, as it was before the ISIS war.

The consistent US strategy that focuses on maintaining the unity of Iraq and keeping the Kurdistan region within Iraq has emerged again through the position of the United States towards the Kurdistan Region's independence referendum in 2017, as affirmed in the letter of Rex Tillerson, a former US Secretary of State, to the President of the Kurdistan Region, Masoud Barzani, in order to postpone the Kurdistan independence referendum.¹³⁴⁵ American politics toward the Kurdish issue changed dramatically in favour of Iraqi Kurdistan, in the post-Cold War era. The US policy was changed from using Kurds as a tool for US interests and neglecting their rights, and the violations and crimes of genocide perpetrated against them by the Iraqi state, to protecting Iraqi Kurdistan within international resolutions and building a direct relationship with the Iraqi Kurds, which gradually evolved into a true partnership in Iraq. The status of the Kurds changed from that of victim to that of partner with the US in key political developments in Iraq, particularly in the American intervention in Iraq 2003, or operation of liberating Iraq from Saddam's regime, rebuilding the Iraqi state, managing Iraq after 2003, and finally in the war against ISIS. Despite all this, the American policy towards Kurdistan independence remained on the same strategic line, keeping the Kurdistan region as a region within Iraq, and maintaining the unity of Iraq.

¹³⁴⁵ Tillerson to Barzani.

Since the decision to hold a referendum in June 2017 by the Kurdistan Region Presidency,¹³⁴⁶ attempts have been made by the Americans to withdraw the referendum decision or at least postpone the referendum. They announced officially that the United States rejected this referendum and did not recognize it and its results.¹³⁴⁷ Yet despite Iraqi, regional,¹³⁴⁸ international, and American opposition,¹³⁴⁹ the Kurdistan Region conducted the Kurdistan Region independence referendum on September 25, 2017, and the majority (93%) voted for independence.¹³⁵⁰

This was the main difference in positions between the Kurdistan Region and the United States in the last 30 years. American policy in its refusal of the IKR referendum relied mainly on three points: first, success in the the fight against ISIS, as a priority for both sides (US and IKR), and for the international community, second, keeping the Kurdistan region within Iraq and maintaining the unity of Iraq, and third, resolving the outstanding problems between Baghdad and Erbil, which they see as a major motivation to push the IKR toward referendum and independence.¹³⁵¹ Jones, who was U.S. ambassador from 2014 to 2016, argued those reasons are why the U.S. doesn't support an independent Kurdish state at the moment; A: The KRG is not economically viable. B: The political conditions were simply not prepared. We're seeing that," he said. "There's a very

¹³⁴⁶ Rudaw, "Kurdistan Region to hold independence referendum on Sept 25."

¹³⁴⁷ Heather Nauert, "Spokesperson," *Department Press Briefing*, Washington, DC September 26, 2017.

¹³⁴⁸ AFP, "Turkey warns Iraqi Kurdish referendum will 'have a cost.'"

¹³⁴⁹ Tillerson to Barzani.

¹³⁵⁰ Bethan McKernan, "Kurdistan referendum results: 93% of Iraqi Kurds vote for independence, say reports."

¹³⁵¹ Heather Nauert, "Spokesperson," *Department Press Briefing*, Washington, DC September 26, 2017.

sharp reaction from Iran. There's a sharp reaction from Turkey. A sharp reaction from Baghdad. So the neighbors weren't prepared for this. They weren't willing to go along. There were a lot of issues that were not resolved."¹³⁵²

In his private message to the then President of the Kurdistan Region, the US Secretary of State emphasised that America was determined not to hold a referendum at this time, and focussed on eliminating ISIS as the priority at that stage. A serious and comprehensive dialogue conducted under international supervision between Baghdad and Erbil would address all outstanding problems. Within a year, if negotiations failed, the Kurdistan Region would have the right to think about the referendum.¹³⁵³ Thus, the United States reaffirmed its policies in the Middle East based on the consideration of the desire and interests of its allies from the countries of the region, particularly Iraq and Turkey.¹³⁵⁴ In the perceptions and realpolitik of the Americans, the interests of the United States with these countries are more important than their interests with the Kurdistan Region. Accordingly, it is not possible to foresee American acceptance of Kurdistan's independence at the present time.¹³⁵⁵

American policy towards the referendum differed from Kurds' perceptions of it. The United States took a neutral position only towards the negative repercussions and problems that resulted from the referendum and monitored them without intervening. The US did nothing about the sanctions imposed by neighbouring countries on the Kurdistan

¹³⁵² Calamur, Why Doesn't the U. S. Support Kurdish Independence?

¹³⁵³ Tillerson to Barzani.

¹³⁵⁴ William Bell, quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 105.

¹³⁵⁵ Gunter, "Introduction," quoted in Rehmany, *History of Kurd-America Relations*, 14.

region, the closing of all land and air borders with the Kurdistan region, and the fact that the Iraqi armed forces with the Iranian-backed militias attacked the Kurdistan region, and controlled the disputed areas.

American policy has consistently been that the independence of Kurdistan will lead to the end of Iraq and instability in the Middle East, so the US will not support it.¹³⁵⁶ This policy does not prevent them from supporting the constitutional rights of Kurdistan people and developing and enhancing the position of the Kurdistan Region in the political process in Iraq¹³⁵⁷.

CONCLUSION OF CHAPTER I

US politics towards the Kurdish issue or Kurdistan claim to self-determination, it evolved through different stages in the last 100 years ago. The US politics constantly focus on maintaining the unity of Iraq and remaining of Kurdistan within the Iraqi state. The US ignores the Kurdish question under the pretext of the following; that establishing Kurdish own state might cause either regional peace or chaos and more conflict and instability. There are many reasons for this, this, but arguably the main one is the fact that the Kurds live in four separate states (Turkey, Iraq, Iran, and Syria), and, from the US viewpoint,

¹³⁵⁶ Gunter, "Introduction," quoted in Rehmany, *History of Kurd-America Relations*, 14.

¹³⁵⁷ Charountaki," quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 26-29.

pragmatically, the interests with these countries are more important for US foreign policy than the Kurds rights.

The US depends on realism theory in its foreign policy, includes US foreign policy in the Middle East, and its position towards the Kurdish issue since the beginning of this issue. notwithstanding there is a US politics in this regard which is supportive politics at different levels since 1991, to make this region a strong and safe area within Iraq, but is affirming constantly on the unity of Iraq, and non-supporting creating an independent state in the Iraqi Kurdistan.

Accordingly, constant US strategy does not support Iraqi Kurdistan's attempts for Independence, due to US relations and interests with Turkey and Iraq and other regional countries. from the US viewpoint, pragmatically, the relations and interests with these countries are more important than the interests with Kurdistan region.

On the other hand, through the stages of their struggle, the Kurds have constantly tried to build relations with the United States in order to gain its support for their issue. While the American policy continued to deal with the Kurdish issue in a pragmatic view and according to US interests in the Middle East. The development of the US politics towards the Kurdish issue can be divided into two main stages: the Cold War era and the post-Cold War era. Each period has its own features, elements and characteristics.

In the first stage, US politics was not in favour of the Kurds and negatively affected the Kurdish revolution and their struggle against the Iraqi governments. During the Cold War era, the main strategic goal of the US was the containment and confrontation of the former Soviet Union, its communist ideology and that of its allies. Thus, during this period, the main objective of the U.S. concerning Iraq was to contain Iraq and keep it away from

the Soviet Union. In other words, The US ignored the Kurds' claims and the Kurdish issue, while it used Iraqi Kurds as a pawn in the Cold War to put pressure on Iraq to prevent it from becoming a Soviet ally in the Middle East. The U.S. was even silent about the crimes and genocide perpetrated against the Kurdish people during this period.

With the end of the Cold War, the Bush Administration wanted to create a New World Order under U.S. leadership, with a new US policy to deal with the Iraqi Kurds. There has been a dramatic evolution in US politics towards the Kurdish issue 1990. The reasons behind the change in US policy towards the Kurds of Iraq, in the early nineties, included the end of the Cold War and the demise of the Soviet Union and its influence on Iraq and the region, and hostility to the Iraqi regime after its occupation of Kuwait and its threat to the security of Israel and US allies in the region. The United States persuaded the Kurds to cooperate with them, as they shared the same goal: the demise of the Iraqi regime. In addition, there was humanitarian motivation, especially after the humanitarian crisis as a result of the immigration of millions of Iraqi Kurds to the Turkish and Iranian borders, as they feared reprisals from the Iraqi army after the 1991 uprising. Moreover, the Turks put pressure on the United States to move towards curbing the authority of Iraq and limiting its attacks, as they feared that the Kurdish refugee crisis on the Turkish border would lead to security problems and provoke Turkey's Kurds, and provide a threat to its national security. All these factors led to a major shift in the American policy towards the Iraqi Kurds, without supporting them in their main goal of self-determination and independence.

In general, in the post-Cold War era, the US politics towards the Kurdish issue took a new form and entered a new stage which began with the start of the second Gulf War. This development was helped by the Kurdish uprising in March 1991, then by the

creation of a no-flyzone area in the North of Iraq by UNSC Resolution 688, which was considered to be the first humanitarian intervention, at least in Iraq. In addition, the general parliamentary elections and the establishment of the KRG reflected positively on Kurd-U.S. relations. The U.S. pushed the Iraqi Central government to provide the Kurdistan region with a share of the Oil-for-Food program which was under UN monitoring and recognized as UN Resolution 986 in 1996. Also, peace developed between the two main Kurdish political parties, the PUK and the KDP. The Washington Accord of 1998 was another attempt and initiative by the U.S. to develop its relationship with the Iraqi Kurds and strengthen the stability in IKR.

Furthermore, Kurdish forces worked as key U.S. allies inside Iraq alongside coalition troops to fight Saddam's regime in 2003. This cooperation and coordination between the Iraqi Kurds and the United States reached the level of a real partnership when the Kurds stood side by side with the American forces in the operation of liberating Iraq in 2003. This partnership also grew during all the major developments that took place in the new Iraq post-2003, including the rebuilding of the Iraqi state, state rule after 2003, confronting extremism, terrorism and the fight against ISIS. In fact, the refusal of the Turkish government to allow American forces to use the Turkish lands in the American intervention in Iraq in 2003 helped the Iraqi Kurds to enhance their relationship and cooperation with the United States in this delicate phase. The relationship between the United States and the Iraqi Kurds developed into a military partnership, where Kurdish forces participated as the key force behind the United States army in the operation of American intervention in Iraq, or the liberation of Iraq from Saddam Hussein's regime in 2003. This participation was significant for both sides and strengthened the relationship

and partnership between them (US and Iraqi Kurdistan) as well as paving the way for partnership and alliance in all subsequent major political developments in Iraq, especially the rebuilding of the Iraqi state, and ruling Iraq after 2003, as well as facing terrorism and the war against ISIS. The position of Kurdistan was greatly strengthened for the Americans, and its position was strengthened in the political process in Iraq. During this period the Kurdistan region has developed politically and economically. As well as, U.S.-Kurdish relations have developed from military relations in combat to extensive community relations in all fields: political, military, economic, security, social, cultural and scientific.

Despite all this, throughout the last 30 years, the United States has not formally given support or approved the right of self-determination or helped to build a Kurdish independent state. It maintained the line that Kurdistan was a part of Iraq, although it has some peculiarities and features that are different from the rest of Iraq.

The difference between the United States and the Kurdistan region was most pronounced when the US announced its rejection of the independence referendum and its results. Meanwhile the United States remained silent about the sanctions imposed by the neighbouring countries on the Kurdistan region because of the referendum.

Currently, U.S.-Kurdish relations are in a state of evolution and there are many expanding developments and expectations at Iraqi and regional levels, which support the ongoing relationship. While, the United States insists on the unity of Iraq and does not support the right to self-determination for the people of Kurdistan or independence.

Chapter II

Iraqi Kurdistan and the question of shaping the future

Obtaining the right to self-determination and achieving independence have always been the main goals of the Kurdish movement. During the past 100 years, depending on the stage of development and the balance of power, there have been temporary changes or announcements of other goals that are less sensitive than full independence, such as autonomy, federalism, or confederation, but independence has remained a major goal of the Kurdish movement, particularly in Iraqi Kurdistan.

The continuing failures of the Iraqi state in politics, security, and the provision of services, at the same time, the extensive development of the Kurdistan Region during the last thirty years has again raised questions about shaping the future and self-determination. Furthermore, the discovery of huge quantities of oil in the region and the need to export it, as well as the international community's focus on Iraqi Kurdistan and building broad political and economic relations with a region, are pushing the Kurdish leadership again to talk directly about the possibility of holding an independence referendum and secession from Iraq. As a consequence of the increase and complexity of the problems between Baghdad and Erbil, the budget of the region was cut in 2014. The huge influx of Syrian refugees and displaced persons from central and western Iraq, also made the situation more difficult, and the IKR proposed the referendum and independence paper. During this period of tension and instability in the entire region, the terrorist organization ISIS appeared and

attacked Iraq the same year and occupied a third of the land of Iraq and Syria. Despite the ISIS attack on the Kurdistan Region and the vast death toll and economic decline the region suffered, Kurdistan remained a safe area. This war changed the balance of power in favour of the Kurds in Iraq, as well as in Syria, as through this war, relations and cooperation between the Kurds and the international community have been strengthened with regard to political and military matters, and national security. After the collapse of the Iraqi army, Iraqi forces left the disputed areas, and the forces of the Kurdistan Region, entered to protect those areas from ISIS terrorists. This led to Kurdish control over all these areas, including the oil-rich city of Kirkuk.

The Kurdistan Region has become more influential militarily, economically, demographically, and then politically. This reality on the ground pushed the Kurdish leaders to resolve the referendum issue, and despite a strong Iraqi, regional and international opposition, they decided to hold the Kurdistan Region Independence Referendum in 2017, and the vast majority of the population voted in favour of independence.

After the referendum, despite the problems which arose from it, and the fact that the international community refused to recognize it and its results, especially the United States, the question of the Kurdistan Region's future remained paramount. Now the Kurdistan Region is at the crossroads of federalism or independence.

The first section of this chapter will focus on the future of Kurdistan and international policy towards it, including the ISIS war, the Kurdistan Region independence referendum, and the options available to the Kurdistan Region to determine its future (Section I).

The second section discusses the future of Iraqi Kurdistan, its challenges and prospects, including the Erbil-Baghdad conflict and its legal-political dimensions, and future options. Finally, it addresses the future of Kurdistan's sovereignty in the light of subjective and objective factors (Section II).

SECTION I: The war on ISIS and international politics and the Kurdistan referendum

The rise of the Islamic State in Iraq and Syria (ISIS or the Islamic State) could be regarded as one of the major turning points in the region's politics in the early twenty-first century. Accordingly, the first paragraph of this section discusses the war on ISIS and its internal and external implications with regard to the Kurdistan region (§I). The second paragraph addresses the Kurdistan region's independence referendum in 2017, with reference to reasons, outcomes, and impacts, as a major event for Kurdistan which represented a substantial move toward independence, after US intervention in Iraq in 2003. Were it not for the balance of power, the result would have been the independence of Kurdistan and the transformation of the map of the Middle East. (§II).

The impact of these two major developments in the political history of the Kurdistan region could change the future of the Kurdistan region definitively.

§I: The ISIS war and its political implications

Over the last years, the Kurdistan region has endured many potentially existential crises, any one of which could have finished off a less cohesive society,¹³⁵⁸ including the war on ISIS, which is a terrorist organization.¹³⁵⁹ The Kurdistan Region has managed to survive all that was thrown at it and could now continue to thrive. The region has been mired in crises and political, economic and social problems; many international reports dating from several years ago indicated the seriousness of the situation and the possibility of deteriorating conditions in the Middle East and the strengthening of terrorist groups,¹³⁶⁰ and their exploitation of unemployed youth, as a result of poor conditions and the absence of real and democratic development and human rights, compared to the rest of the world. Eighteen years ago, a series of UN Human Development Reports forecast and predicted

¹³⁵⁸ Gary Kent, “Thriving in Adversity: the past and future of Kurdistan in Iraq,” *Fathom*, accessed February 14, 2019. <https://fathomjournal.org/thriving-in-adversity-the-past-and-future-of-kurdistan-in-iraq/>

¹³⁵⁹ ISIS (Islamic State of Iraq and Syria), also known as ISIL (Islamic State of Iraq and the Levant), is a terrorist organization. It is a Sunni jihadist group with a particularly violent ideology that calls itself a caliphate and claims religious authority over all Muslims. It was inspired by al Qaida but was later publicly expelled from it. It is in part a product of the instability which remains a regional problem in the Middle East. The foundation of the group was announced on April 8, 2013; it had a significant presence by 2014 and occupied areas in Syria and then Iraq. Within months of Baghdadi’s appearance in Mosul, foreigners from all over the world were arriving to fight for the so-called caliphate. An estimated 50,000 arrived in its territory. During the past five years after it reached its climax in 2017, it occupied a third of Iraqi and Syrian lands, leading to the loss of land and fighters by the Kurdish forces in Iraq and Syria, and Iraqi forces, in cooperation with international society, until the plot to kill ISIS leader Abu Bakr Al-Baghdadi on October 31, 2019. Now ISIS remains in the form of hidden terrorist groups and commits separate terrorist acts in isolated areas of Iraq and Syria. The international community has emphasized caution and is aware of the continued threat posed by ISIS and the possibility of its return in light of the severe conditions and instability in Iraq and Syria, along with the unhealthy and complicated social and economic reality which is fertile soil for new and growing extremist religious groups. See; Rand Corporation, “The Islamic State (Terrorist Organization),”; Martin Chulov, “The rise and fall of the Isis 'caliphate',”; Glenn Swann, et al., “Visual guide to the raid that killed Isis leader Abu Bakr al-Baghdadi.”

¹³⁶⁰ Anthony Tirado Chase, *Routledge Handbook on Human Rights and the Middle East and North Africa* (New York: Routledge, 2016), 97.

the deep crisis facing the region while hinting at a coming political explosion. The Arab Human Development Report 2002: Creating Opportunities for Future Generations observed that the Arab world was at a crossroads. “The region is hampered by three key deficits that can be considered defining features: the freedom deficit; the women’s empowerment deficit and the human capabilities/knowledge deficit relative to income.”¹³⁶¹ Compared with the rest of the world, “the Arab Countries had the lowest freedom score in the 1990s’ and when measured by indicators such as political process, civil liberties, political rights and a free media ‘the Arab region had the lowest value of all regions of the world for voice and accountability.’”¹³⁶² In terms of the status of women, applying the UNDP gender empowerment measure to Arab countries revealed that the latter suffered a glaring deficit in women’s empowerment.¹³⁶³

The absence of human rights and democracy in the Middle East region, war and instability and the political vacuum created by the crises after the Arab Spring have provided fertile ground for the emergence and expansion of Islamic extremist groups, of which ISIS is the most recent iteration. The political and social conditions leading to the rise of the Islamic state can be summarised in two points: the first development, which has a long history, is a direct by-product of political authoritarianism. The second development, which is more recent, lies in the destabilizing effects that flow from war and state

¹³⁶¹ UNDP- Arab Fund for Economic and Social Development, *Arab Human Development Report 2002, creating opportunities for future generations* (New York: United Nations publications, 2002), vii.

¹³⁶² UNDP- AFESD, *Arab Human Development Report 2002, creating opportunities for future generations*, 27.

¹³⁶³ UNDP- AFESD, *Arab Human Development Report 2002, creating opportunities for future generations*, 28.

breakdown.¹³⁶⁴ Even in 2019 US-Senate reports warned that "If Sunni socio-economic, political and sectarian grievances are not adequately addressed by the national and local governments of Iraq and Syria, it is very likely that ISIS will have the opportunity to set conditions for future resurgence and territorial control."¹³⁶⁵

Furthermore, members of ISIS are globally widespread; some are based in Europe and America and while they have mainly attacked Iraq and Syria, they have also attacked European and American interests.¹³⁶⁶

The ISIS war has two basic dimensions for the Kurdistan Region. On the one hand, a regional and international game was being played against the Kurdistan region in an extreme religious form, for various internal, regional and international reasons, with different effects at different levels. On the other hand, it was an important opportunity for the Kurdistan Region to strengthen their demand for independence and implement what they had dreamed of over the years.

¹³⁶⁴ Hashemi, "The ISIS Crisis and the Broken Politics of the Middle East," 2.

¹³⁶⁵ US Office of the Inspector General, "Operation Inherent Resolve and Other Overseas Contingency Operations, lead inspector General report to the United States Congress: October 1, 2018 – December 31, 2018," *U. S. Department of Defence*, February 5, 2019, accessed February 12, 2019. https://media.defense.gov/2019/Feb/05/2002086500/-1/-1/1/FY2019_LIG_OIRREPORT.PDF.

¹³⁶⁶ William McCants, *The ISIS Apocalypse: The History, Strategy, and Doomsday Vision of the Islamic State* (New York: St. Martin's Publishing Group, 2015), 1-5.

A. The internal political implications of ISIS

The Islamic State terrorist organisation, known as ISIS, defined itself as an organization on the offensive.¹³⁶⁷ It sought to provoke an apocalyptic war against the world that it believed would bring about the Islamic caliphate. Its strategic focus was on simultaneous and mutually reinforcing local and global campaigns.¹³⁶⁸ The ISIS slogan “remain and expand” reflects the organization’s equal emphasis on physical control and territorial expansion, after its leader, Abu Bakr al-Baghdadi, declared the caliphate on July 16, 2014.¹³⁶⁹ ISIS had as many as 30,000 fighters in Iraq and Syria in August 2014 according to a Defense Intelligence Agency estimate. ISIS built from the small remnant left in 2011 an army large enough to recapture Fallujah, Mosul, and other cities in Iraq and dominate much of eastern Syria in only three years.¹³⁷⁰ When ISIS first gained control of Mosul, it was making huge strides towards Baghdad, which was at one point considered by Iran to be its ‘red line’.¹³⁷¹ Soon afterwards, ISIS shifted its advance towards the Kurdistan Region. The ISIS attack on the Kurdistan region caused a great human and

¹³⁶⁷ Jennifer Cafarella, Harleen Gambhir and Katherine Zimmerman, “Jabhat al Nusra and ISIS: Sources of Strength,” *AEI Critical Threats Project and the Institute for the Study of War*, February 2016, accessed September 13, 2018. http://www.understandingwar.org/sites/default/files/Jabhat%20al%20Nusra%20and%20ISIS%20Sources%20of%20Strength_0.pdf

¹³⁶⁸ Jessica Lewis McFate, “The ISIS Defense in Iraq and Syria: Countering an Adaptive Enemy,” *Institute for the Study of War*, May 2015, accessed September 13, 2018. <http://www.understandingwar.org/report/isis-defense-iraq-and-syria-countering-adaptive-enemy>.

¹³⁶⁹ Aaron Y. Zelin, “Colonial Caliphate: The Ambitions of the ‘Islamic State,’” *Washington Institute for Near East Policy*, July 8, 2014, accessed September 13, 2018. <https://www.washingtoninstitute.org/policy-analysis/view/colonial-caliphate-the-ambitions-of-the-islamic-state>

¹³⁷⁰ Jennifer Cafarella, Brandon Wallace and Jason Zhou, *ISIS's second comeback. assessing the next ISIS rebellion* (Washington, institute for the study of the war, 2019), 8.

¹³⁷¹ McFate, *The ISIS Defense in Iraq and Syria: Countering an Adaptive Enemy*.

material loss. Since 2014, nearly 2,000 members of IKR forces have perished and 10,000 have been injured while fighting ISIS.¹³⁷²

The ISIS crisis has had a significant effect on the trade of goods and services, as trade, the growth rate and public services decreased in all areas of the Kurdistan Region.¹³⁷³ From early 2012 with the influx of Syrian refugees and later IDPs in 2014, the situation turned into a full-blown humanitarian crisis. As of February 2015, there were more than 1.5 million Syrian refugees and Iraqi IDPs in the KRI. This constitutes a 28 percent increase in the KRI's population.¹³⁷⁴ The Syrian refugee and Iraqi IDP inflows into KRI had a pronounced impact on the economy. Moreover, the ISIS crises happened in the context of an ongoing KRG budget crisis (since February 2014), and these three shocks hit the economy hard.¹³⁷⁵

Fear of instability in the region led to the reduction of foreign investments and many international companies leaving the Kurdistan region. Before the war, according to the World Bank, "The main reason for KRI being a preferred location for investments is its strategic location within Iraq, its better security and political stability situation, and its friendlier business climate compared to Iraq"¹³⁷⁶

¹³⁷² Jack Lopresti, "Kurdistan Region in Iraq," *UK parliament, Hansard*, House of Commons Hansard, Contents / Westminster Hall, 06 March 2019 Volume 655, Column 446wh, accessed March 12, 2019. <https://hansard.parliament.uk/Commons/2019-03-06/debates/2DEBF969-9EE9-4BB0-9BED-8CEA201FAC27/KurdistanRegionInIraq>

¹³⁷³ World Bank and KRG, "Syrian Conflict and ISIS Crisis." *The World Bank. KRG Ministry of planning. Report No. 94032-IQ.*, February, 2015. Accessed September 12, 2017. <https://openknowledge.worldbank.org/handle/10986/21597>

¹³⁷⁴ World Bank and KRG, "Syrian Conflict and ISIS Crisis," 1.

¹³⁷⁵ World Bank and KRG, "Syrian Conflict and ISIS Crisis," 5.

¹³⁷⁶ World Bank and KRG, "Syrian Conflict and ISIS Crisis," 17.

By April 2015 ISIS had recalibrated its strategy, and had five major lines of attack: (1) seize new cities outside of Iraq and Syria; (2) increase global terror attacks; (3) conduct fortified defense of key cities in Iraq and Syria (4) attrit counter-ISIS forces, and (5) undermine religious rivals.¹³⁷⁷

Another consequence of the war against ISIS in Iraqi Kurdistan was the collapse of the Iraqi army in front of ISIS, leaving the disputed areas, meaning that the balance of power changed in favour of the Kurdistan region. The collapse of the Iraqi army led to a widespread security vacuum in disputed areas, soon filled by Kurdish Peshmerga forces belonging to the Kurdistan region, leaving them in control of administrative and military affairs and security. The IKR imposed full authority on those areas, including the oil-rich city of Kirkuk. "To be fair, had the Kurds not done this, ISIS would surely have seized the territory and its oil."¹³⁷⁸ Since then, the Kurdistan region is now twice as big as it was before the war, as the geography of the disputed areas is almost equal to the area of the current Kurdistan region. The population also increased, and the war against ISIS gave international impetus to the reputation of and respect for the IKR Peshmerga forces, which defeated ISIS and steadfastly faced their fierce attacks throughout Kurdistan and the disputed territories.

There was an opportunity for the Kurdistan Region to control the oil wells in those oil-rich areas, which added to the economic strength of the region, as oil is the main driver

¹³⁷⁷ Jennifer Cafarella, *Brandon Wallace and Jason Zhou, ISIS's second comeback: Assessing the next ISIS rebellion*, 13.

¹³⁷⁸ Robert Ford, "America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities," *The Atlantic*, Global, October 30, 2017, accessed September 17, 2018. <https://www.theatlantic.com/international/archive/2017/10/iraq-kurds-isis-referendum-abadi/544313/>

of the Kurdistan and Iraq economy. The Kurdistan region added this economic power to its military power controlling the ground, along with international logistical and military support, as well as international sympathy for Kurdistan and the Peshmerga forces in the war against ISIS, which pushed the Kurdistan region towards a referendum and independence.

IKR forces “Peshmerga” controlling disputed territories presented a historic opportunity for the Kurds. This new reality during the ISIS war encouraged the Kurdistan Region to try to attempt a de facto resolution of the fate of disputed territories, or to resolve the situation through military control after the collapse of the Iraqi army.

In 2017 the KRG Ministry of Peshmerga Affairs reiterated that it would not withdraw from the disputed territories,¹³⁷⁹ despite demands from federal officials in Baghdad.¹³⁸⁰ These allegations increased the urgency of addressing legal questions as to the Peshmerga’s status.

Moreover, despite Iraqi and American opposition regarding the referendum in the disputed areas, they refused, categorically, to hold a referendum in those areas. However, the Kurdistan region conducted the Kurdistan Independence Referendum in 2017. The referendum included the disputed territories, in order to provide historical and legal evidence to prove that these regions were Kurdish, and that there was political and legal

¹³⁷⁹ Baxtiyar Goran, “Peshmerga Draw Kurdistan Border with Their Blood,” *Kurdistan 24*, January 4, 2017. <http://www.kurdistan24.net/en/news/0c435694-1656-4d81-9709-0af369dd8d42/-Peshmergadraw-Kurdistan-border-with-their-blood->.

¹³⁸⁰ Tim Hume and Mohammed Tawfeeq, “Kurds Must Give up Captured Territory Once ISIS Is Defeated, Iraqi Leader Says,” *CNN*, November 18, 2016, <http://edition.cnn.com/2016/11/18/middleeast/iraqkurds-disputed-territory/>.

control by the Kurdistan Region over these areas in addition to the de facto sovereignty over them.

B. Kurdistan and the external political implications of the ISIS war

It is important to note that under the current geopolitical system and in light of the advancement of the position of the Kurdistan region due to its opposition to ISIS and its natural resources, the international community has developed its relationship with the region. Despite the high morale and the raised ambition of IKR over the ISIS war years, due to the decline in the price of oil, the presence of more than 1.5 million refugees and displaced persons, and its ongoing fight against Islamic State, the Kurdistan region is suffering from severe financial hardship.

However, the IKR has also benefited from the emergence of ISIS and the pressing matter of combatting the threat it posed, and from extending its borders and enhancing its relationship with international powers. This war has allowed the IKR to present itself as an active partner with powerful countries in the international arena, through participating in the international alliance of anti-terrorism and the war against ISIS.

Many states have sent arms to Iraq's Kurds during the war on (ISIS), including the USA,¹³⁸¹ many European countries,¹³⁸² Russia,¹³⁸³ and Iran.¹³⁸⁴

During 2014-2017, the Kurdistan region became a safe haven for Iraqis, and gained an international reputation for protecting religious and ethnic minorities, promoting peaceful coexistence and religious freedom.¹³⁸⁵ The power of Kurdistan was further strengthened by direct military support from international powers. The Kurdistan region also attracted the attention of the international media due to the war on ISIS, the refugee situation in the Kurdistan region, and the harbouring of religious and ethnic minorities fleeing genocide and terrorism in other areas of Iraq. These factors led the leadership of the Kurdistan Region to evaluate inaccurately the internal, regional and international conditions, and during the ISIS war leaders decided to hold the referendum in the hope of that the international community would appreciate its significant relations with the IKR as much as they appreciated the efforts of the Kurdistan region in fighting ISIS, harbouring refugees and protecting minorities, in contrast with Iraq's continued failures at military administrative and political levels and in the provision of security. But the international position encouraged Iraqis to change the equation, contrary to the wishes of the Kurdistan Region.

¹³⁸¹ ICG, Arming Iraq's Kurds: Fighting IS, Inviting Conflict, ; *Mehr*, KRG prime minister: Role of Iran in Iraqi Kurdistan constructive, accessed September 13, 2017. <https://en.mehrnews.com/news/111117/Role-of-Iran-in-Iraqi-Kurdistan-constructive>

¹³⁸² Adrian Croft, "EU gives go-ahead to states sending arms to Iraqi Kurds, Reuters," *World News* August 13, 2014, accessed September 13, 2017. <https://www.reuters.com/article/us-iraq-security-kurds-eu/eu-gives-go-ahead-to-states-sending-arms-to-iraqi-kurds-idUSKBN0GC20I20140812>

¹³⁸³ Rudaw, "Russia supplied arms to Iraqi Kurds – Lavrov," *Rudaw*, 27-01-2016, accessed September 13, 2017. <https://www.rudaw.net/english/kurdistan/260120165?keyword=Iran>

¹³⁸⁴ Mehr, KRG prime minister: Role of Iran in Iraqi Kurdistan constructive.

¹³⁸⁵ UNHCR, Iraq Refugee crisis.

§II: The Kurdistan independence referendum and the question of international politics

The Kurdistan region's independence referendum in 2017 was a major event for the independence of Kurdistan and represented a substantial move toward reshaping the future after American intervention in Iraq in 2003. Were it not for the balance of power, and the position of some members of the international community, especially the US position, the result would have been the independence of Kurdistan and separation from Iraq.

In the months before the vote, substantial doubts existed as to whether the referendum would go ahead, as significant obstacles existed to realizing actual independence in the near future. These obstacles included vehement opposition to Kurdish independence from Iraq and surrounding states like Iran and Turkey,¹³⁸⁶ also opposition and political concerns on the part of western nations like the United States. As Brett McGurk, Special Presidential Envoy for the Global Coalition to Counter ISIS stated: "we're focused right now on this referendum that Kurdish authorities have said they want to hold on September 25th. It's something the U.S. Government is firmly, firmly opposes."¹³⁸⁷ The White House publicly called for the Kurdistan Regional Government to cancel the referendum, and stated, "The United States does not support the Kurdistan

¹³⁸⁶ Iran, "Turkey Warn Kurdistan Referendum Will Cause 'Conflict' in Iraq," *Rudaw*, Aug. 17, 2017, accessed September 15, 2018. <http://www.rudaw.net/english/middleeast/17082017>.

¹³⁸⁷ Brett McGurk, "Special Presidential Envoy for the Global Coalition to Counter ISIS," *Press Release, Office of the Special Presidential Envoy for the Global Coalition to Counter ISIS*, Update: Global Coalition to Defeat ISIS, August 4, 2017, accessed September 15, 2018. <https://sy.usembassy.gov/special-presidential-envoy-brett-mcgurk-provides-update-efforts-defeat-isis/>

Regional Government's intention to hold a referendum later this month," It urged the Kurdistan Regional Government to "enter into a serious and sustainable dialogue with Baghdad, which the United States has repeatedly indicated is ready to facilitate," warning that the vote "distracts attention from efforts to defeat the Islamic State (ISIS) and achieve stability in the liberated areas."¹³⁸⁸

Despite all such opposition, the Iraqi Kurdistan region independence referendum went ahead on September 25, 2017.¹³⁸⁹ Voters were asked to tick “yes” or “no” to a single question: “Do you want the Kurdistan region and the Kurdistan areas outside the [Kurdistan] region to be an independent country?”¹³⁹⁰ The majority of voters (93%) chose independence, with a participation rate among registered voters of 72 per cent.¹³⁹¹ Despite this result, and many observations about the procedure,¹³⁹² days after the Kurdistan independence referendum, “the Baghdad government—far stronger and with Iranian and American backing—would have none of it, rejecting appeals for dialogue and threatening force”. It sent army and militia units to attack the Kurdistan region. Such swift, aggressive action demonstrated the Iraqi government’s insistence that Iraqi Kurds will remain a part

¹³⁸⁸ The White House, “Statement by the Press Secretary on the Kurdistan Regional Government’s Proposed Referendum,” *The White House, Foreign Policy, statements and releases*, Issued on: September 15, 2017, accessed September 16, 2018. <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-kurdistan-regional-governments-proposed-referendum/>

¹³⁸⁹ McKernan, Kurdistan referendum results: 93% of Iraqi Kurds vote for independence, say reports.

¹³⁹⁰ The question was written on the referendum voting card in four languages: Kurdish, Arabic, Assyrian- Syriac, and Turkish-Turkoman. That is indicative of the diversity in the Kurdistan Region, (see *Appendix IX*).

¹³⁹¹ McKernan, Kurdistan referendum results: 93% of Iraqi Kurds vote for independence, say reports.

¹³⁹² Christine McCaffray van den Toorn, “Internal Divides Behind the Kurdistan Referendum,” *Carnegie Endowment for international peace*, October 11, 2017, accessed September 18, 2018. <https://carnegieendowment.org/sada/73359>

of this country, by whatever means.¹³⁹³ In commanding its troops to advance, the Iraqi government must have realised it had the wind at its back: almost unanimous international anger at the IKR's decision to proceed with the referendum despite their clearly stated objections allowed it to make its move with the support of the country's two powerful neighbours Turkey and Iran,¹³⁹⁴ and with the apparent green light of the U.S.¹³⁹⁵

A. Question of recognition and political challenges

The internal and international consequences of the referendum reflect the complex reality of the Kurdistan Question, and highlight the lack of a balance of power and international support in favour of the Kurdistan, despite the legitimacy of their claim to exercise their rights in a peaceful and democratic manner. Only a favourable balance of power and de facto legitimacy, which Kurds do not currently have, can impose a commitment to the outcome of the Kurdistan referendum and the achievement of independence.

¹³⁹³ Ford, "America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities."

¹³⁹⁴ ICG, "Oil and Borders: How to Fix Iraq's Kurdish Crisis," *International Crises Group. Briefing N°55*, Middle East & North Africa, 16 October 2017, Brussels, 17 October 2017, accessed 18, September 2018. <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/55-settling-iraqi-kurdistans-boundaries-will-help-defuse-post-referendum-tensions>

¹³⁹⁵ Crisis Group interviews, U. S. officials, 16 October 2017, quoted in ICG, "Oil and Borders: How to Fix Iraq's Kurdish Crisis."

1. Ambiguity in commitment to the outcome

Referendum is the term given to a direct vote of the electorate required by the legal framework or requested by the executive or legislative body on an issue of public policy, and generally reflects voters' preferences about a range of different issues. Referendums may be held in relation to particular circumstances (e.g., to amend a country's constitution) or in relation to particular political issues (e.g determining the future of a region or country) but are in general held in relation to issues of major political significance.¹³⁹⁶ A referendum is one of the main mechanisms for exercising national self-determination.¹³⁹⁷

The most common types of referendums are mandatory (also termed obligatory or compulsory) referendums and optional (or facultative) referendums.¹³⁹⁸ A mandatory or obligatory referendum is a vote of the electorate which is called automatically under circumstances defined in the constitution or in the legislation, or about specific issue proposed by the authorities where the voters are called by a formal demand. However, if a proposal passes, the government or appropriate authority is compelled to implement it.¹³⁹⁹ The second category of referendum is the optional or facultative referendum. These are votes of the electorate which are called by a formal demand, which may emanate from the

¹³⁹⁶ Ace, "The Electoral Knowledge Network, Electoral Systems, Referendum," *ace*, accessed September 15, 2018. <http://aceproject.org/aceen/topics/es/ese/ese08/ese08a/ese08a01>

¹³⁹⁷ J. A. Laponce, "National self-determination and referendums: The case for territorial revisionism," *Nationalism and Ethnic Politics* 7, no. 2 (2001): 33-56.

¹³⁹⁸ Bertrand Badie, Dirk Berg-Schlosser and Leonardo Morlino, *International Encyclopedia of Political Science, volume 1* (Los Angeles, London, New Delhi, Singapore and Washington DC: SAGE, 2011), 2226.

¹³⁹⁹ Anup Chand Kapur, *Principles of Political Science* (Ram Nagar. New Delhi: S. Chand & Company Ltd, 1997), 567.

executive, from a number of members of the legislature, from a number of citizens or from some other defined agent. The consequences of the vote may or may not be binding¹⁴⁰⁰

Kurdistan officials alternately claimed that the vote was binding or nonbinding, consultative or representing Iraqi Kurds' immutable decision about their aspirations; what is certain is that it lacked international support.¹⁴⁰¹ The referendum of the Kurdistan region was clearly a unilateral referendum, but at the official level, there was ambiguity about dealing with the outcome of the referendum and the extent of commitment to applying the results. In other words, was this referendum mandatory or optional? No guidance on dealing with the results was given in the decision of the Kurdistan region's presidency,¹⁴⁰² or in the Kurdistan Parliament's meeting¹⁴⁰³ about holding a referendum. Nevertheless, there were various statements by officials about commitment to the results, about whether it was a referendum for real independence and eventual state-building, or merely intended to find out the Kurdistan people's opinion about their fate. In fact, it was a referendum about self-determination, secession and building the independent state. On July 1, 2014, President Barzani declared, "The goal of Kurdistan is independence"¹⁴⁰⁴, and officials announced, "We've been waiting more than 100 years for this."¹⁴⁰⁵ But for fear of regional

¹⁴⁰⁰ Badie, Berg-Schlosser and Morlino, *International Encyclopedia of Political Science*, 2226.

¹⁴⁰¹ Katy Collin, "The Kurdish referendum won't deliver independence—here's why it matters anyway", *Brookings Institution*, 19 September 2017, accessed September 17, 2018. <https://www.brookings.edu/blog/markaz/2017/09/19/the-kurdish-referendum-wont-deliver-independence-heres-why-it-matters-anyway/>

¹⁴⁰² Omer, *Documents of Kurdistan Regional referendum 25-09-2017*, 11-13.

¹⁴⁰³ Raya Chalabi, "Iraq's Kurdish parliament backs Sept. 25 independence referendum," *Reuters*, Middle East and North Africa, September 15, 2017, accessed September 16, 2018. <https://uk.reuters.com/article/uk-mideast-crisis-iraq-kurds/iraqs-kurdish-parliament-backs-sept-25-independence-referendum-idUKKCN1BQ2C5>

¹⁴⁰⁴ Nader et al., *Regional Implications of an Independent Kurdistan*, 3.

¹⁴⁰⁵ Chalabi, "Iraq's Kurdish parliament backs Sept. 25 independence referendum."

and international political reactions, the presidency of Kurdistan shrouded it in ambiguity. KRG former Prime minister and current president of Kurdistan Nechirvan Barzani on the day of the referendum emphasized that: “Kurdistan Referendum does not mean independence. We want to show the free will of Kurdistan people to the world”.¹⁴⁰⁶ In other words, this ambiguity in the official discourse on dealing immediately with the result of the referendum was a political manoeuvre to assess reactions, and then based on reactions and subsequent developments, the public decision on the implementation of the results could be formed.

The KRG Prime minister Masrour Barzani wrote, "In 2017, Iraqi Kurdistan held a referendum on independence. The ballot was nonbinding, but an overwhelming 93 percent of people voted in favor."¹⁴⁰⁷

As previously noted, the question of the right to self-determination and the independence of Kurdistan is a political question more than a legal one. The Kurdistan people like any other people has the right to self-determination, but the balance of power is not in favour of this option, due to the lack of international support and the complex regional situation for the Kurds. The Kurdistan region’s independence referendum in 2017, a democratic and peaceful mechanism for exercising self-determination was a right of the people of Kurdistan, according to the majority of states, but they did comment about its timing. The former president of the IKR Masoud Barzani stated: “during our meetings with delegations of different countries, there was no one to deny the right of the people of

¹⁴⁰⁶ KRG Prime minister Nechirvan Barzani Emphasised, "The positions of the neighbouring countries are natural, and they are not against the Kurdistan Region referendum," quoted In *Sharpress*, 06/11/2017, ccessed September 28,2018. <https://www.sharpress.net/all-detail.aspx?Jimare=89014>

¹⁴⁰⁷ Masrour Barzani, “Why the Kurdistan region of Iraq is making a new start.”

Kurdistan to a referendum and self-determination, but they had reservations about the timing of the referendum.”¹⁴⁰⁸ The political developments following this referendum have proved that international politics currently opposes any change in the map of the Middle East, and achieving this right requires a change in the balance of powers.

2. Motives and outcomes of the IKR’s referendum

From the point of view of the Kurdistan leadership, the main motives and reasons for holding the referendum, as noted by the former president of the Kurdistan Region, Masoud Barzani included the fact that Baghdad had abandoned the principle of partnership in power and wealth. Iraq was built on the principle of the partnership between the two main nations, but Baghdad abandoned this partnership and has not adhered to it since the establishment of the Iraqi state; for example, there were no Kurds in the Iraqi army.¹⁴⁰⁹ Other reasons for holding the referendum included multiple constitutional violations by the Iraqi government, and the non-enforcement of Article 140 of the constitution, regarding resolving the fate of the disputed areas, and the fact that the Peshmerga forces were deprived of national or international support, even though they are part of the Iraqi defence

¹⁴⁰⁸ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel. September 7, accessed September 16, 2018. <https://www.youtube.com/watch?v=Zap2rVRiGyA>

¹⁴⁰⁹ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

system according to the constitution.¹⁴¹⁰ The budget for the Kurdistan region was cut, the agreement to establish a civilian state in Iraq was abandoned, and Iraq has turned into a religious sectarian state. The Kurds' experience with Iraq was a failed experiment, which resulted in the historical grievances of the Kurdish people, and the killing of hundreds of thousands of the Kurdish people, most of them women and children, through campaigns of genocide, and attacks by chemical weapons, as well as the destruction of Kurdish cities and villages. All these reasons pushed the Kurdistan region to hold a democratic referendum for its self-determination.¹⁴¹¹

On the other hand, the timing of the referendum seems to have been politically motivated. The relationship between Erbil and Baghdad was another potential driver of the timing of the referendum. Iraqi Kurds have several inter-related, existential issues to negotiate with Baghdad, including a proposed confederation, revenue sharing, the status of security forces, and contested jurisdiction over a swathe of disputed territories.¹⁴¹² The collapse of the Iraqi army in the face of ISIS attacks in 2014, and the abandonment of the disputed areas led to a widespread security vacuum, followed by full Kurdish military control over those areas, preventing these areas and their oil fields from falling into ISIS hands¹⁴¹³. This development was one of the main motives for holding the referendum in

¹⁴¹⁰ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

¹⁴¹¹ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

¹⁴¹² Collin, "The Kurdish referendum won't deliver independence—here's why it matters anyway."

¹⁴¹³ David Romano, "Iraq's Descent into Civil War: A Constitutional Explanation," *Middle East Journal* 68, no. 4 (2014): 547-548.

2017. ¹⁴¹⁴In addition, the advanced relationship between the Kurdistan region and the international community, and especially military coordination and security cooperation during the ISIS war, were also motives for the referendum. There were other reasons and motives for the referendum, including nonrealistic expectations by the Kurdish leadership that friends and countries would cooperate during the ISIS war, and that the referendum result would be accepted or given international support.

Kurdish miscalculation of the regional¹⁴¹⁵ and international response, especially the American position, towards the referendum,¹⁴¹⁶ was a key reason for holding the referendum at that time. The despair coming from Baghdad due to the outstanding problems between Iraqis and Kurds, the cutting of the region's budget by Baghdad in 2014, and the struggle to achieve the main goal of independence and building the Kurdistan state, pushed the Kurdistan region to seize the opportunity and practise self-determination through a public referendum on whether to remain within Iraq or secede from it. Meanwhile, KRG officials failed to reach an agreement (or even propose a plan) as to how divorce proceedings with Iraq would take place¹⁴¹⁷

The Iraqi Constitution in 7 Articles states that holding referendums is a constitutional measure in resolving some subjects like accepting constitutional

¹⁴¹⁴ Ford, "America Never Understood Iraq, As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities."

¹⁴¹⁵ KRG Prime minister Nechirvan Barzani Emphasised, "The positions of the neighbouring countries are natural, and they are not against the Kurdistan Region referendum."

¹⁴¹⁶ Al-Jazirah Center for Studies, "After Kirkuk: What does it mean to defeat Erbil, the balance of regional powers?" Al-Jazirah Center for Studies, 10/31/2017, accessed September 18, 2018. <https://studies.aljazeera.net/ar/article/600>

¹⁴¹⁷ Crispin Smith, "Independent Without Independence: The Iraqi- Kurdish Peshmerga in International Law," *Harvard International Law Journal* 59, no. 1(2018): 245-277.

amendments or the formation of regions or solving disputed territories.¹⁴¹⁸ While there is no constitutional text in the Iraqi constitution that supports the independence referendum for the Kurdistan Region or any other region in Iraq, at the same time there is nothing to prevent such a referendum or criminalize it directly.¹⁴¹⁹ Thus, while many officials in Baghdad condemned the Kurdish vote as illegitimate, "there is nothing in the Iraqi constitution that expressly forbade such a non-binding referendum."¹⁴²⁰ The referendum was legally based on a decision of the IKR presidency¹⁴²¹ and the decision passed in the Kurdistan Parliament.¹⁴²² It was a unilateral referendum, held without approval from Baghdad.

On the other hand, this referendum was conducted at an inauspicious time,¹⁴²³ as Iraq was at war with ISIS, and the goal of the international community was eliminating ISIS in Iraq and Syria.¹⁴²⁴ In addition, the internal political and economic situation of Kurdistan was very difficult, due to the lack of a national political consensus among the Kurdish parties on holding the referendum at this time,¹⁴²⁵ along with the cutting of the KR budget by Baghdad in 2014, and the presence of nearly two million Syrian refugees and

¹⁴¹⁸ Iraqi Constitution, Articles: 4/5, 119, 126/2. 3. 4, 131, 140/2, 142/3/4, 144.

¹⁴¹⁹ Iraqi Constitution, Articles: 4/5, 119, 126/2. 3. 4, 131, 140/2, 142/3/4, 144.

¹⁴²⁰ Ford, "America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities."

¹⁴²¹ Omer, *Documents of Kurdistan Regional referendum 25-09-2017*, 11-13.

¹⁴²² Chalabi, "Iraq's Kurdish parliament backs Sept. 25 independence referendum."

¹⁴²³ Crispin Smith, "The Kurds Miscalculated with Referendum," *Middle East Institute*, October 18, 2017, accessed September 15, 2018. <https://www.mei.edu/publications/kurds-miscalculated-referendum>

¹⁴²⁴ Tillerson to Barzani.

¹⁴²⁵ Al-Jazirah Center for Studies, "After Kirkuk: What does it mean to defeat Erbil, the balance of regional powers?"

Iraqi displaced persons.¹⁴²⁶ Because of international and regional politics, which were strongly opposed to holding this referendum, especially the American position, and the focus on the unity of Iraq,¹⁴²⁷ the referendum presented a new problem for the Kurdistan Region. The strong opposition by the government of Iraq, which then attacked Kurdistan with its army and sectarian militia supported by Iran, in addition to punitive measures by neighbouring countries, especially Turkey and Iran,¹⁴²⁸ led to the referendum being turned from a mechanism to achieve independence and state-building into a reason to postpone independence to an indefinite date and an entry point for many security, economic and political problems for the Kurdistan Region.

B. Implications of the practice of the IKR independence referendum

Exercising IKR independence referendum in 2017, had many Implications at different levels internally and externally. generally, the power, relations, and political position of the Kurdistan Region before and after this referendum were different totally. this section examines some key implications as folwing:

¹⁴²⁶ Masrour Barzani, “Why the Kurdistan region of Iraq is making a new start.”

¹⁴²⁷ ICG, “Oil and Borders: How to Fix Iraq’s Kurdish Crisis.”

¹⁴²⁸ Country of origin information portal, “Iraq, Kurdistan region after referendum of independence,” *The European Union for Georgia*, October 2017, accessed September 17, 2018. <http://coimra.gov.ge/en/2017/10/27/kurdistan-after-referendum/>

1. Regional and international positions

The Iraqi government, in its special dialogues with Kurdistan leaders, agreed to hold the referendum, but as the date of the referendum approached, due to the international and regional positions, and the Iranian and Turkish pressure, it changed its position and strongly opposed the referendum. Iraqi Prime Minister Haider Abadi had accepted the ‘undisputed right’ of Kurdistan independence in discussions, and Baghdad and Erbil had established two joint committees according to the American expert, David L. Phillips in his book *The Great Betrayal, how America abandoned the Kurds and lost the Middle East*.¹⁴²⁹

Despite international condemnation of the vote itself, the simple potential of the referendum has drawn attention to a surprising array of support for the independence of the Iraqi Kurds. There have been pro-independence pieces in U.S. media. Israeli Prime Minister Netanyahu made public statements in support of the vote and of independence.¹⁴³⁰ Saudi Arabia has refrained from making a public statement but offered to mediate between Erbil and Baghdad. There was a Twitter campaign of pro-referendum Saudis expressing support.¹⁴³¹ It was reported in the media that the United Arab Emirates supported the Kurdistan Independence Referendum.¹⁴³² But after the American insistence on not supporting the referendum, and the negative settlement from Iraq and regional powers,

¹⁴²⁹ Kent, “Thriving in Adversity: the past and future of Kurdistan in Iraq.”

¹⁴³⁰ Collin, The Kurdish referendum won’t deliver independence—here’s why it matters anyway.

¹⁴³¹ Collin, The Kurdish referendum won’t deliver independence—here’s why it matters anyway.

¹⁴³² Collin, The Kurdish referendum won’t deliver independence—here’s why it matters anyway.

Israel, Saudi Arabia and the United Arab Emirates withdrew their support for the Kurdistan referendum.¹⁴³³

American policy has focused on the unity of Iraq and the survival of the Kurdistan region within Iraq. American fear of the end of Iraq and instability in the Middle East, which would threaten the interests of their allies in the region,¹⁴³⁴, encouraged Iraq, with Iranian and Turkish help, to attack the Kurdistan region.¹⁴³⁵ The neighbouring countries Turkey, Iran and Iraq were collectively encouraged to thwart or at least block the results of the referendum by threatening, attacking, and besieging Kurdistan and closing all land and air borders.¹⁴³⁶

In principle, countries with the most influence in Iraq - the U.S., Iran and Turkey all supported the territorial unity of Iraq. All accepted the integrity of the Kurdish region and have consistently opposed unilateral attempts at settling the status of the disputed territories.¹⁴³⁷

In response to the referendum, Iran and Turkey shut down Kurdish airspace and border crossings, and Iraq moved to take control of the disputed territories including Kirkuk.¹⁴³⁸

¹⁴³³ Al-Jazirah Center for Studies, “After Kirkuk: What does it mean to defeat Erbil, the balance of regional powers?”

¹⁴³⁴ Gunter, “Introduction,” quoted in Rehmany, *History of Kurd-America Relations*, 14.

¹⁴³⁵ ICG, “Oil and Borders: How to Fix Iraq’s Kurdish Crisis.”

¹⁴³⁶ ICG, “Oil and Borders: How to Fix Iraq’s Kurdish Crisis.”

¹⁴³⁷ ICG, “Oil and Borders: How to Fix Iraq’s Kurdish Crisis.”

¹⁴³⁸ Smith, “The Kurds Miscalculated with Referendum.”

In light of a history in which Kurds, wherever they may be residing, have been denied the chance of statehood as a nation, and given that regional actors fear that Kurdish independence in Iraq could inspire similar efforts elsewhere, these reactions were predictable; Any bid, however symbolic, was highly likely to face countermeasures by neighbouring states that vigorously oppose it.¹⁴³⁹

Iran and Turkey, have constantly opposed any Kurdish attempts to build the Kurdish state in any part of Kurdistan. While these two powers often find themselves at loggerheads over regional issues and alliances, preventing Kurdish statehood is one thing on which they readily agree and cooperate.¹⁴⁴⁰

Accordingly, when Iraqi Kurdistan held an independence referendum in 2017, the voters overwhelmingly approved the referendum, but the vote alarmed Iran and Turkey and other countries in the region which feared Kurdish secession. Along with the lack of support by the US for the IKR referendum, regional countries started announcing their support for the Iraqi central government. Instead of independence, the referendum led to war between the Iraqi government and Kurdish forces, blocked relationships with different countries, and posed an existential threat to the Kurdistan region.

The conclusion to be drawn from the referendum is that independence for the Iraqi Kurdistan region is not the correct option at this stage. Events and political developments following the referendum have proved that the geopolitics and economic factors as well as international and especially US politics, and regional positions will play a significant role in determining the future of the region of Kurdistan. The political balance of power rather

¹⁴³⁹ ICG, "Oil and Borders: How to Fix Iraq's Kurdish Crisis."

¹⁴⁴⁰ ICG, "Oil and Borders: How to Fix Iraq's Kurdish Crisis."

than the legal foundation of the right is the main factor in achieving the right to self-determination for the people of the Kurdistan region.

2. The fate of the referendum and the fate of the Kurdistan region

Secessionist, unilateral referendums are common around the world today. The votes take place without the support of the central state, which calls them illegal. Unilateral referendums are not held to make changes to the status quo—rather, they are aspirational. The broad conclusion to be drawn from these votes is that they have symbolic internal meaning but relatively little impact on materially advancing independence.¹⁴⁴¹

As predicted by the U.S. administration and others, holding the referendum precipitated a crisis for the Kurdistan region.¹⁴⁴² Despite multiple and different statements by leaders in the Kurdistan region before the referendum, they were assured that this referendum was not a declaration of independence, nor would it lead to the declaration of the state directly after the referendum.¹⁴⁴³ They did not announce that this referendum was an optional or facultative referendum. After the referendum, the Federal Court in Baghdad

¹⁴⁴¹ Collin, “The Kurdish referendum won’t deliver independence—here’s why it matters anyway.”

¹⁴⁴² Financial Times, “US warns Kurdistan over independence referendum,” *Financial Times*, 20 September 2017, accessed September 17, 2018. <https://www.ft.com/content/69b5b776-9e58-11e7-8cd4-932067fbf946>

¹⁴⁴³ KRG Prime minister Nechirvan Barzani Emphasised, “The positions of the neighbouring countries are natural, and they are not against the Kurdistan Region referendum.”

decided that its results were null and had no legal value.¹⁴⁴⁴ The Kurdistan Regional Government accepted this imposed decision.¹⁴⁴⁵ Currently, there is still ambiguity about the fate of the referendum, as the Kurdish leaders were divided over this issue. Some of the leaders adhere to the referendum and its results and emphasise the implementation of its results at an appropriate moment; as Barzani argued, due to the decision of the Kurdistan people the referendum has succeeded and it will continue.¹⁴⁴⁶ On the other hand, some leaders announced that the referendum was an optional referendum, "not mandatory", as Masrur Barzani has written in the Washington post.¹⁴⁴⁷ Therefore, there is currently no unified opinion among the Kurdish leaders about the fate of the referendum.

The referendum phase has ended and from now on, if the Kurdistan Region chooses the independence option, it does not need to hold the referendum again. Rather, it can exercise self-determination in various other ways, for instance by declaring independence unilaterally, as Kosovo did.

Some scholars have argued that this referendum can be used by the KRG to press Iraq to deal with outstanding constitutional issues and has already been useful in building international support for that process. If negotiations are unproductive, the referendum is

¹⁴⁴⁴ Ahmed Rasheed & Raya Jalabi, "Iraqi court rules Kurdish independence vote unconstitutional, Middle East and North Africa." November 20, 2017, accessed September 18, 2018. <https://uk.reuters.com/article/uk-mideast-crisis-iraq-kurds/iraqi-court-rules-kurdish-independence-vote-unconstitutional-idUKKBN1DK0Q3>

¹⁴⁴⁵ Joanne Stocker, "Kurdistan Regional Government Accepts Nullification of Independence Referendum."

¹⁴⁴⁶ Masoud Barzani, 2017 (with the resigning president of the Kurdistan region of Iraq, Masoud Barzani) BBC, January 27, accessed September 16, 2018. <https://www.youtube.com/watch?v=TF9jbZMRRhs>

¹⁴⁴⁷ Masrour Barzani, "Why the Kurdistan region of Iraq is making a new start."

also a move toward independence based on the continued failures of the central Iraqi state to accommodate the autonomous Kurds.¹⁴⁴⁸

The UN Security Council and the League of Arab States, the great powers and many countries did not accept the referendum or recognize its results, and they emphasized the unity of Iraq. Among these powers were friends and partners of the Kurdistan Region in its war against ISIS, but they have different opinions on the referendum issue, especially the United States and European countries. This indicates that despite the victory of the region against ISIS and its elimination as a regional and international threat, international politics and superpowers were not in favour of establishing a Kurdistan state in the region. These two things are completely different, despite the Kurds' attempts to mix them together. The Kurdistan region's position toward ISIS, their hosting of refugees and the displaced, and protection of ethnic and religious minorities in Kurdistan is one thing, and elicits global gratitude and appreciation. But the Kurdistan region's move toward self-determination and independence during this war is something else, as it can shake the interests of the superpowers or their priorities, or the interests of their allies in the region, and therefore cannot be allowed.

¹⁴⁴⁸ Collin, "The Kurdish referendum won't deliver independence—here's why it matters anyway."

SECTION II: The Iraqi Kurdistan future; challenges and prospects

The Iraqi Kurdistan region is recognized as a federal region in Iraqi Constitution under article 117,¹⁴⁴⁹ and consists of the three provinces of Dahuk, Arbil and Sulaymaniyah. The Kurdish Regional Government exercises legal supremacy and financial autonomy within Kurdistan. There is also a Kurdish National Guard made up of Peshmerga forces, and IKR has exclusive ownership of its own resources. Essentially, the KRG has its own ministers, who do not report to Baghdad, its own economy, internal border, and internal security forces. The IKR has its own foreign policy and the government is internationally recognized as a constitutional regional government and part of Iraq; in practice KRG is a de facto state.¹⁴⁵⁰

In Baghdad, following Jalal Talabani, who was elected in 2005 as Iraq's first post-war president, as well as the first Kurdish president of Iraq,¹⁴⁵¹ the position of presidency of Iraq has been held by Kurds five times. Since 2003 representatives of Kurdish political parties have held senior government posts in Baghdad.

The first paragraph of this section discusses the Erbil-Baghdad conflict and its legal-political dimensions, and future options. It discusses the main Problems between Erbil and Baghdad such as: disputed Territories, oil, gas, and internal revenue and the

¹⁴⁴⁹ Iraqi Constitution, Art. 117.

¹⁴⁵⁰ Nina Caspersen and Gareth Stansfield, *Unrecognized States in the International System* (Oxon, New York: Routledge, 2011), 3-4.

¹⁴⁵¹ Jacob Eriksson and Ahmed Khaleel, *Iraq After ISIS: The Challenges of Post-War Recovery* (Cham: Palgrave Macmillan, 2019), 61.

Kurdistan region's share from the federal budget, and Federalism, the issues of power-sharing and partnership in the national decision. (§I) The Second paragraph focuses on the future of the Kurdistan Region, through discussing the implications of each option, the challenges ahead, the opportunities and prospects. (§II)

§I: The Erbil-Baghdad conflict and its legal-political dimensions, and future options

As Diamond has noted, ethnic divisions are deeply ingrained: “They cannot be extinguished through repression or assimilation; however, they can be managed so that they do not threaten civil peace.”¹⁴⁵² In its Independence Case document, the KRG covered different Iraqi governments’ violations of the constitution. First it focused on the principle that “Iraq is a voluntary union that may be voluntarily dissolved by its constituent units.” The Kurdistan Referendum was presented as a constitutional and lawful action, and it was noted that Iraq has not honoured the Constitution that was the basis for the voluntary union. Finally, it focused on the referendum as a Marker of Constitutional Dissolution.¹⁴⁵³ For the KRG, Kurdistan complemented its case under international law: Kurdistan has been de facto an independent state since 1991; it meets all the criteria for statehood in the

¹⁴⁵² Larry Jay Diamond, “Three paradoxes of democracy,” *Journal of Democracy*, 1, no. 3(1990): 58.

¹⁴⁵³ KRG, “Report: The Constitutional Case for Kurdistan’s Independence,” Quoted in *Fondation Institut Kurde de Paris*, September, 2017. Accessed September 20, 2018. <https://www.institutkurde.org/en/info/report-the-constitutional-case-for-kurdistan-rsquo-s-independence-1232551094.html>; KRG, “Report: The Constitutional Case for Kurdistan’s Independence.” *Kurdistan Regional Government*, September 24, 2017. Accessed September 17, 2018. <http://previous.cabinet.gov.krd/a/d.aspx?s=040000&l=12&a=55856>

Montevideo convention, and it has a right to self-determination under the UN Charter. In 2005 Kurdistan formed a voluntary union with Iraq, in which limited powers were granted to the federal government. A voluntary union may be rightly voluntarily dissolved when one party has failed to fulfil its obligations. Iraq's constitution deliberately does not define its territory, render the union permanent, or prohibit secession.¹⁴⁵⁴

Following years of de facto state shifting to the Kurdistan region as a federal region of Iraq, the Kurdish leaders have seen that it was a mistake to abandon the idea of independence and return to Iraq voluntarily. They believe that they have repeated the unsuccessful experience of partnership with the Iraqi state.¹⁴⁵⁵

Although the Iraqi constitution included the legal framework in principle for the devolution of power across regions and branches of governments, due to constitutional violations and failure to fully adhere to the constitution a composite Iraqi identity never took shape. What was needed was something like the Western Allies created, the Grundgesetz für die Bundesrepublik Deutschland, or Basic Law for the Federal Republic of Germany, as a legal framework for creating a new federal collective democratic identity for post-Nazi Germany.¹⁴⁵⁶ The main question here is: what is the future of the relationship between Baghdad and Erbil, and how will it affect the future of Iraqi Kurdistan and its options for self-determination?

¹⁴⁵⁴ KRG, "Report: The Constitutional Case for Kurdistan's Independence."

¹⁴⁵⁵ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

¹⁴⁵⁶ International Business Publications, *Germany Government System Handbook - Strategic Information and Developments* (Washington: International Business Publications, 2018),127.

A. Constitutional Conflict between Erbil and Baghdad: commitment or political conflict

A permanent constitution is an important document for any sovereign society, and governments usually draft them over a long period of time. Yet Iraq had no such luxury, as it was forced to draft its foundational document in only a few months. In October 2005, Iraqis went to vote on a permanent constitution, but voted on an incomplete draft.¹⁴⁵⁷ The Iraqi constitution is full of articles which include structural flaws and have political implications, as a result of them being written in a hurry to deadlines, so that the temporary state administration law is shifted into a permanent constitution, and authority transferred from the Coalition Provisional Authority (CPA), which was established by the United States to administrate Iraq, after the US intervention in Iraq 2003,¹⁴⁵⁸ to elected national authorities.

The Iraq constitution of 2005 combines temporary and liberal consociationalism. This makes Iraq a case of consociationalism ‘light’.¹⁴⁵⁹ There was agreement on the general guidelines but some basic issues remained unresolved, and were converted into dialogues and agreements after the constitution, which had to be settled by the drafting of laws. For Hay “the Iraqi Constitution remains an incomplete attempt to contrive consociational Iraq’s

¹⁴⁵⁷ Saad N. Jawad, *The Iraqi constitution: structural flaws and political implications*. LSE Middle East Centre Paper Series, 01 (London: LSE Middle East Centre, 2013), 22.

¹⁴⁵⁸ James Dobbins et al., *Occupying Iraq a history of the coalition provisional authority* (Santa Monica. California: Rand Corporation, 2009), iii.

¹⁴⁵⁹ Matthijs Bogaards “Iraq’s Constitution of 2005: The Case Against Consociationalism ‘Light’” *Rutledge*, (2019), 2. ResearchGate. accessed September 19, 2018. https://www.researchgate.net/publication/321193438_Iraq's_Constitution_of_2005_Three_Problems_Four_Misconceptions_Some_Suggestions

Constitution of 2005 arrangements among groups with little shared vision of an Iraqi state.”¹⁴⁶⁰ The Iraqi constitution did not emerge as a negotiated settlement and generated considerable criticism, while all the constitutional promises on paper meant little to most Kurds.¹⁴⁶¹ There were differences between Kurds and Arabs, during the writing of the constitution, and those differences continued even after the constitution was passed, which reflected negatively on the application of the content and articles of the constitution.¹⁴⁶² In its case for independence, the KRG declared:

Kurdistan retained its sovereign status in joining the voluntary union, and its commitment to being part of Iraq was conditional on the constitution being honored. As this text demonstrates, Iraq’s violations of the Constitution are extensive. No less than 55 of its 144 Articles have been violated, and a further twelve have not been fulfilled or implemented. Therefore, just less than half of the articles have either been violated or are unfulfilled. These failures are persistent and deliberate; they cannot be excused by the presence of insurgencies.¹⁴⁶³

More than 50 articles were not settled, which generated a permanent crisis between Kurdistan and the state of Iraq, as the articles were supposed to be identified by the law, after the passing of the constitution. Some of these materials and issues represented the core of the Kurdish issue in Iraq, which has been the subject of controversies and conflicts between the Kurds and successive Iraqi governments since the beginning of the Kurdish issue.

¹⁴⁶⁰ Emily Hay, “International(ized) constitutions and peacebuilding,” *Leiden Journal of International Law* 27, no. 1(2014): 160.

¹⁴⁶¹ Romano, “Iraq’s Descent into Civil War: A Constitutional Explanation,” 557.

¹⁴⁶² Jawad, *The Iraqi constitution: structural flaws and political implications*, 11-18.

¹⁴⁶³ KRG, “Report: The Constitutional Case for Kurdistan’s Independence,” 1.

Today we are witnessing the repercussions of not resolving and postponing these problems in the Iraqi constitution, particularly for: the identity of the Iraqi state, the nature of the state and the extent of the federal system, the relationship between the federal government and the Kurdistan regional government, the fate of disputed territories, sharing the wealth of the country, civil state and the rule of law, the establishment of a federation council, and the establishment of the “Federal Supreme Court” to interpret constitutional articles.

Many articles and phrases in the Iraqi constitution positively included the rights of the people of Kurdistan, while the non-implementation of the constitution, different interpretations or political revenge under the umbrella of the constitution combined to engender a constant state of crisis between the KR and the federal government.

In spite of all the observations and problems in the structure and in implementation, the current Iraqi constitution is the best constitution in the history of the Kurdish issue in Iraq, as it has approved many legitimate rights of the Kurdistan people.

The preamble to the Iraqi constitution, after referring to historical grievances and genocide campaigns against the Kurdish people and other components of the Iraqi people, states: “The adherence to this constitution preserves for Iraq its free union, its people, its land and its sovereignty.”¹⁴⁶⁴ In other words, the re-establishment of the new Iraq after

¹⁴⁶⁴ invoking the pains of sectarian oppression sufferings inflicted by the autocratic clique and inspired by the tragedies of Iraq's martyrs, Shiite and Sunni, Arabs and Kurds and Turkmen and from all the other components of the people and recollecting the darkness of the ravage of the holy cities and the South in the Sha'abaniyya uprising and burnt by the flames of grief of the mass graves, the marshes, Al-Dujail and others and articulating the sufferings of racial oppression in the massacres of Halabcha, Barzan, Anfal and the Fayli Kurds and inspired by the ordeals. We the people of Iraq of all components and shades have taken upon ourselves to decide freely and with our choice to unite our future and to take lessons from yesterday for tomorrow. The adherence to this constitution preserves for Iraq its free union, its people, its land and its sovereignty, see: Iraqi Constitution, Preamble.

2003 is optional, and the union of the components in this new Iraq is optional. The Kurds in Iraq were guaranteed an important constitutional development which could help them build a decentralized state in Baghdad, and the continuing attempt to gain independence and self-determination for Erbil.

The relationship between Iraq and Kurdistan is set out in Article 117 of the Iraqi Constitution: “This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.”¹⁴⁶⁵

The phrase ‘with its existing authorities’ can be interpreted as referring to military security authorities, the Peshmerga forces; the KR security and military forces are to be viewed as a security arrangement in line with the Iraqi Constitution. The Kurdistan region’s laws are also protected by Article 141 of the Iraqi Constitution:

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.¹⁴⁶⁶

So, the Kurds have their own government and laws which are protected by the Iraqi Constitution. They also have their own military, the Peshmerga forces. All these are constitutional. Besides, as US Ambassador Ford said, “in 2005, the Kurds had refused to

¹⁴⁶⁵ Iraqi Constitution, Art. 117.

¹⁴⁶⁶ Iraqi Constitution, Art. 141.

sign a text that called Iraq an Arab state. The Iraqi constitution includes no such declaration.”¹⁴⁶⁷

The Kurdistan regional independence referendum was an additional factor in significantly deepening the problems between Erbil and Baghdad. Each of the two sides relied on the constitution in its conflict with the other. During the IKR referendum in 2017, the Kurdistan Regional Government made a constitutional case for secession from Iraq.¹⁴⁶⁸ In the lead up to the referendum the Kurdistan Regional Government and the government in Baghdad accused each other of violating the constitution. Then after the referendum appeared to have been successful, the Iraqi Prime Minister Abadi said: “We are not ready to discuss or have a dialogue about the results of the referendum because it is unconstitutional.”¹⁴⁶⁹ In response to this, the Kurdistan Regional Government has stated that the Iraqi Government does not have exclusive powers over referendums.¹⁴⁷⁰

Article 110 of the Iraqi Constitution outlines the exclusive powers of the federal government. It includes foreign policy, formulation and execution of national security, fiscal and customs policy, regulating standards, citizenship, regulation of broadcast frequencies and mail, budgets, water policies and the census.¹⁴⁷¹ In addition, Article 115

¹⁴⁶⁷ Ford, “America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities.”

¹⁴⁶⁸ KRG, “Report: The Constitutional Case for Kurdistan’s Independence,” 1.

¹⁴⁶⁹ Reuters, “Iraq refuses talks with Kurdistan about independence referendum results,” *Reuters World News*, 26 September 2017, accessed 18, September 2018. <https://uk.reuters.com/article/uk-mideast-crisis-kurds-referendum-talks/iraq-refuses-talks-with-kurdistan-about-independence-referendum-results-idUKKCN1C107D>

¹⁴⁷⁰ Constitution Education Fund, “Is an independent Kurdistan possible?” *Constitution Education Fund*, 27th September 2017. accessed 18, September 2018. <http://www.cefa.org.au/ccf/independent-kurdistan-possible>

¹⁴⁷¹ Iraqi Constitution, Art. 110.

of the Constitution states that any powers not stipulated as federal exclusive powers belong to the regional governments.¹⁴⁷²

The Kurdistan Regional Government believes that the federal government has not honoured their side of the constitution. One of the areas for dispute is the exclusive federal power for national security. The KRG has stated: “The federal Iraqi army.... failed to protect Christian, Yazidi and Kurdish citizens from genocidal assaults by ISIS, and the Iraqi government followed this devastating failure of duty by refusing to facilitate the appropriate resourcing of the Peshmerga.... The official Army has also ceased to be representative of Iraq.”¹⁴⁷³

Iraq’s constitution suffers from a lack of durable national power-sharing, a preoccupation with self-rule at the expense of shared rule, and an experiment with what is called here ‘fluid federalism’. The temporary nature of the main consociational provisions resulted in incomplete, informal, and increasingly voluntary power-sharing,¹⁴⁷⁴ which caused problems at all levels between Baghdad and Erbil. This constitution failed to provide Iraq with a stable framework for the accommodation of communal tensions. Failure to adhere to the constitution or arbitrary or political and partial implementation of it deepened the ethno-national problem between Kurds and the Iraqi state. The failure of the Iraqi constitution to build a federal, democratic and stable Iraq has made the future of Iraqi Kurdistan mysterious. The options are staying in Iraq with all of these complex

¹⁴⁷² Iraqi Constitution, Art. 115.

¹⁴⁷³ KRG, “Report: The Constitutional Case for Kurdistan’s Independence.”

¹⁴⁷⁴ Bogaards “Iraq’s Constitution of 2005: The Case Against Consociationalism ‘Light’,” 2.

problems, or secession, which is currently very difficult, due to the lack of support for Kurdistan in current regional and international politics.

B. The Problems between Erbil and Baghdad, and the question of shaping the future

After decades of fighting and suffering, the Kurds in Iraq have achieved far-reaching self-rule and recognition for the Kurdistan Region as a federal region of Iraq. The Kurdistan Region has several inter-related, existential issues to debate with Baghdad, including the disputed territories, a proposed confederation, the status of security forces, oil and gas, Kurdistan's share from the federal budget, power-sharing and participating in national decisions, and commitment to the constitution. However, looking at the history of conflicts, and regional and international politics, beside alliances between the Kurds and their counterparts inside Iraq and beyond its borders, it could be argued that unless the region solves these complicated issues with Iraq, it will face an uncertain future, whether it chooses independence, federalism or confederation.

The 2005 constitution left most of these issues either unsettled or to be settled through mechanisms that have been difficult to implement: namely Article 140 of the constitutional mandate.

These problems represent the core of the Kurdish problem in Iraq. The solution to these problems gives considerable additional power to the Kurdistan Region at the

economic, geographical, demographic, and consequently political levels. Solving the problems discussed below will rebalance power in favour of Kurdistan, and will serve as an additional guarantee of independence in terms of internal conditions.

1. Disputed Territories

The problem of territories disputed between Baghdad and Erbil is the core of the Kurdish issue in Iraq. It is a very complex problem. A long and violent conflict has been waged over these strategic, and oil-rich regions, between the Kurds and the successive Iraqi governments,¹⁴⁷⁵ with regional and foreign interventions, especially Turkish and Iranian. Fear of the return of these regions to the Kurdistan Region led to the changing of the balance of power in favour of Kurdistan at the political, economic, demographic, and geographical levels.

Iraq's constitution contains the term disputed territories but does not define them. Likewise, media reporting on the disputed areas tends to describe an undifferentiated 300-mile-long swathe of territory from the Iranian to the Syrian border with oil-rich Kirkuk at its center.¹⁴⁷⁶ Disputed territories include the areas from Kirkuk, Nainawa, Salahuddin, Diyala. According to some sources, the size of the KRG today is 50,328 sq. km, while the

¹⁴⁷⁵ Gareth Stansfield and Liam Anderson, "Kurds in Iraq: The Struggle Between Baghdad and Erbil", *Middle East Policy* 16, no.1 (2009): 134-145.

¹⁴⁷⁶ Amit R. Paley, "Strip of Iraq' on the Verge of Exploding, Thiess," *Washington Post Foreign Service*, September 13, 2008, quoted In Sean Kane, *Iraq's Disputed Territories a view of the political horizon and implications for U. S. policy*, (Washington: United States Institute of Peace, 2011), 5.

size of the disputed areas between Baghdad and Erbil is 45,050 sq.km. This means that 48 per cent of the KRG land is still distributed between Baghdad and Erbil.¹⁴⁷⁷

Article 140 of the Iraqi constitution stipulates legalized normalization or the returning of displaced Kurds to the disputed territories, followed by a census and referendum on whether those areas choose to remain within Iraq or want to join the Kurdistan region. All steps of this process should have been completed at the end of 2007 but were never implemented.¹⁴⁷⁸

According to U.S. government officials, the greatest potential threat to Iraq's stability is the prospect of Arab-Kurdish conflict over oil-rich Kirkuk and other disputed territories. This is especially the case when the vacuum is caused by the lack of an agreed political and constitutional framework for Iraqis to address competing claims to these strategic lands and oil-rich land that makes up the disputed areas.¹⁴⁷⁹

Both in 2005 and in subsequent years, "Barzani emphasized that only if Baghdad scrupulously respected the obligations of the constitution would Iraqi Kurdistan remain in the Iraqi Republic."¹⁴⁸⁰ This included the implementation of Art.140, which called for the resolution of the disputed territories, straddling the border separating the Kurdish Region from the rest of Iraq.

¹⁴⁷⁷ Stansfield and Shareef, *The Kurdish Question Revisited*, 387.

¹⁴⁷⁸ Iraqi constitution, Art. 140.

¹⁴⁷⁹ Sean Kane, *Iraq's Disputed Territories a view of the political horizon and implications for u. s. policy*, (Washington: United States Institute of Peace, 2011),3.

¹⁴⁸⁰ Ford, "America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities."

For the Kurdistan region, these areas are historical parts of Kurdistan. The population there is mixed, while questions of national and territorial identity are at the heart of the Kurdish question. Since the mid-twentieth century, the fate of Kirkuk and the demarcation of the borders of Iraqi Kurdistan have been the main points of contention between the Kurds and the central government.¹⁴⁸¹ These areas were subjected to genocide through the Anfal campaigns, forced displaced, ethnic cleansing , an organized severe and continuous process of demographic change by successive Iraqi governments, as part of the process of Arabization, in order to change the identity of those areas and cut them off completely from Iraqi Kurdistan.¹⁴⁸² The Arabization strategy has been practised through forcibly separating the majority of the indigenous population from the existing Kurds and minorities and settling the Arabs imported from central and southern Iraq, with various financial inducements, jobs, and privileges.¹⁴⁸³ For example, during the 1970s and 1980s, the forced displacement of Kurdish people from the province of Kirkuk meant that they gathered in the collective cities created for those purposes near Erbil and Sulaymaniyah. Through this tactic, they had "use of territorial design as a tool for ethnic and urban control in the context of Northern Iraq".¹⁴⁸⁴ After the change of the Iraqi regime in 2003, the Kurds partly returned to these areas, and now the inhabitants of these regions are diverse, from Kurds and Arabs, to Turkmen, Chaldeans and Assyrians.

¹⁴⁸¹ Sherko Kirmanj, *Identity and nation in Iraq* (Boulder, Colorado: Lynne Rienner, 2013), 91-94.

¹⁴⁸² Gunes, *The Kurds in a New Middle East: The Changing Geopolitics of a Regional Conflict*, 27.

¹⁴⁸³ HRW, "Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq," *Human Rights Watch Report*, 16, no. 4(August 2004), accessed September 22, 2018. <https://www.hrw.org/reports/2004/iraq0804/>

¹⁴⁸⁴ Francesca Recchia, "From Forced Displacement to Urban Cores: The Case of Collective Towns in Iraqi Kurdistan," *Critique*, 2012, accessed September 22, 2018. <https://architexturez.net/doc/az-cf-123984>

Kirkuk has been at the heart of the conflict between the Kurds and the central government. The Ba'ath regime, which ruled from 1968 to 2003, embarked on a systematic policy of Arabisation, deportation, forced displaced, resettlement, modification of administrative boundaries and discrimination and persecution vis-a-vis not only the Kurdish as majority and the original people but also the Turkmen and Assyrian populations.¹⁴⁸⁵ The Kurdish leaders described Kirkuk, the geographic and strategic epicenter of the dispute, as a core of their question. Mustafa Barzani asserted that “Kirkuk is the heart of Kurdistan”,¹⁴⁸⁶ and “Kirkuk our Jerusalem” according to Jalal Talabani.¹⁴⁸⁷ Some even reject the term disputed territories altogether and, in a reference to the Kurdish presence outside the Kurdistan region's official boundaries, call them the occupied territories.¹⁴⁸⁸ Similarly, Arab politicians hold the country's current provincial boundaries to be sacrosanct and argue that any alteration to them will lead inexorably to the disintegration of Iraq.¹⁴⁸⁹ Clearly, the depth of emotion resulting from decades of armed conflict, discrimination, and a forced demographic change in northern Iraq cannot and should not be discounted. The insertion of Article 140 into the Iraqi constitution to demarcate the border of the Kurdistan Region, and the Kurds' insistence on its implementation highlights the significance of the question of territorial identity for

¹⁴⁸⁵ Inga Rogg and Hans Rimscha, “The Kurds as parties to and victims of conflicts in Iraq,” *International Review of the red crosses* 89, no. 868 (2007): 826-837.

¹⁴⁸⁶ David Ghanim, *Iraq's Dysfunctional Democracy* (Santa Barbara-California: ABC- CLIO,LLC, 2011),187.

¹⁴⁸⁷ Phillips, *The Great Betrayal: How America Abandoned the Kurds and Lost the Middle East*, 4.

¹⁴⁸⁸ Kane, *Iraq's Disputed Territories a view of the political horizon and implications for u. s. policy*, 5.

¹⁴⁸⁹ Kane, *Iraq's Disputed Territories a view of the political horizon and implications for u. s. policy*, 5.

Kurds.¹⁴⁹⁰ As Nawshirwan Mustafa the former second in command of the PUK put it, Kirkuk also has a highly symbolic value, since all struggles and negotiations with Baghdad eventually failed because the government did not accept a compromise. According to him, Saddam Hussein had offered the Kurds full recognition of their government in the 1990s if they would give up their claim to Kirkuk.¹⁴⁹¹

On the other hand, UNAMI's 2009 findings hinted that districts that were less diverse in ethnic composition might logically choose to remain under Baghdad or join the Kurdish region, hence enabling the drawing of a sustainable boundary. The challenge has been to find a solution for districts whose makeup is thoroughly mixed.¹⁴⁹² After the fall of the regime in 2003, the Kurds not only took de facto control of the city and other disputed areas but also used all their weight and bargaining power to press for a "Kurdistani" solution. These efforts resulted in Article 58 of the Transitional Administration Law,¹⁴⁹³ which was eventually included in Article 140 of the 2005 constitution and foresees specific measures to reverse the former regime's policy of Arabization, especially in Kirkuk.¹⁴⁹⁴

The overlap of sovereignty between the de facto sovereignty of the Kurdistan Regional Government (KRG) and the de jure sovereignty of Iraq's national government was the main issue for the administration of disputed territories, while the disputed regions

¹⁴⁹⁰ PUK, "PUK political bureau releases statement on implementation of Article 140, July 1, 2014," *PUK Media*, accessed September 20, 2018. http://www.pukmedia.com/EN/EN_Direje.aspx?Jimare=20782

¹⁴⁹¹ Nawshirwan Mustafa, "Again 140," *Rozhname newspaper*, 9 October 2007, quoted in: Rogg and Rimscha, "The Kurds as parties to and victims of conflicts in Iraq," 837.

¹⁴⁹² ICG, "Oil and Borders: How to Fix Iraq's Kurdish Crisis."

¹⁴⁹³ Law of Administration for the State of Iraq for the Transitional Period (TAL), Ch. 1, Art. 4, *refworld*, accessed September 22, 2018. <https://www.refworld.org/docid/45263d612.html>

¹⁴⁹⁴ Rogg and Rimscha, *The Kurds as parties to and victims of conflicts in Iraq*, 837.

in Diyala, Kirkuk, Ninewa and Salah el-din currently fall under the control of the Iraqi government and not the KRG. However, there are significant numbers, sometimes the majority of the population of Kurdish residents, who are allied more naturally to the KRG than to the Iraqi government, as the majority in these areas voted in favour of Kurdish parties in all national and local elections post-2003.¹⁴⁹⁵

The US failure to address the disputed territories and conflicting Kurdish-Arab claims to places like Kirkuk was dangerous. US Ambassador in Iraq Ryan Crocker predicted in a senior staff meeting that leaving the Kirkuk issue unresolved “would destroy Iraq.”¹⁴⁹⁶ Furthermore, US Ambassador Robert Ford stated: “Distracted by each new crisis du jour, we never mounted a sustained, determined effort to bring Erbil and Baghdad together to resolve the smouldering problem of the disputed territories.”¹⁴⁹⁷

It is likely that the city of Kirkuk and its oil fields will remain within the Kurdish sphere of influence, but not under outright control, at least at the current stage. Wanche has warned, “Make no mistake: Kirkuk is as vital for Kurds’ national identity as Jerusalem is for Jews and Palestinians.” Kurdish leaders have proposed that Kirkuk “be a power-sharing city and region within Kurdistan”, but they will never give it up willingly.¹⁴⁹⁸

¹⁴⁹⁵ Renad Mansour and Victoria Stewart-Jolley, Explaining Iraq’s election results, *Chatham House*. Accessed October 23, 2021. <https://www.chathamhouse.org/2021/10/explaining-iraqs-election-results>

¹⁴⁹⁶ Ford, “America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities.”

¹⁴⁹⁷ Ford, “America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities.”

¹⁴⁹⁸ Sophia Wanshe, “awaiting liberation Kurdish perspective on a post-Saddam Iraq,” quoted in O’Leary, McGarry, Salih, *The Future of Kurdistan in Iraq*, 187.

Despite attempts to solve this problem, the future is unclear due to the lack of a balance of power in favour of Kurds, as these territories have been controlled by Iraqi military forces and Shiite militias, with help from Iran and Turkey and a green light from the United States in 2017. However, without a solution to this problem, the status of Iraqi Kurdistan as a whole remains uncertain, and stays in the same conflict circle.

2. Oil, gas and internal revenue and the Kurdistan region's share from the federal budget

Oil is the lifeblood and a major source of the economy of Iraqi Kurdistan, which is rich in oil and natural gas.¹⁴⁹⁹ After a prolonged conflict, Kurdistan has become an important point on the global energy map, and an average of nearly half a million barrels per day is issued.¹⁵⁰⁰ Extracting and exporting oil gives rise to one of the complex problems between the Kurdistan Region and the Iraqi government. Like the disputed territories issue, the constitution failed to finally resolve this issue, and there is a space for different and political interpretations for constitutionally related articles. This problem grew after the Kurdistan Region contracted with the oil companies to search for oil in the Kurdistan Region independently after the approval of the constitution. Then the budget for the region

¹⁴⁹⁹ Michael Gunter, quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 111.

¹⁵⁰⁰ Dmitry Zhdannikov, "Kurdistan details its secretive plan to export half a million barrels of oil per day right under Iraq's nose," *Business Insider*, Nov 17, 2015, accessed September 23, 2018. <https://www.businessinsider.com/r-exclusive-how-kurdistan-bypassed-baghdad-and-sold-oil-on-global-markets-2015-11>

was cut by Baghdad in 2014. Since that time, a political and economic crisis has occurred between the KR and Baghdad.

Oil and gas are specified in many articles in the Iraqi constitution, but some laws were required to arrange the details. Art. 112 states: "The federal government, with the producing governorates and regional governorates, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner..."¹⁵⁰¹ The operative words "with" and "provided" suggest that the control of Iraq's oil and gas industry is not under the exclusive authority of the federal government. Art. 115 states: "All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates..."¹⁵⁰² This could mean that the Kurdistan Regional government could manage the oil and gas alone, at least until the issuance of a national law on oil and gas in the Iraqi parliament., The Kurdistan Regional Government has itself passed an "Oil and Gas Law" for the development and exploitation of its own hydrocarbon resources, Iraq's major source of income. The KRG is largely dependent on this law.¹⁵⁰³ There was an agreement on an oil and gas law in February 2007 between the Kurdistan Region and Iraqi government, to be passed by the Iraqi parliament by May of the same year. This draft had a supplement, in which both sides agreed that each party has the right to contract with companies until the law is passed in Parliament.¹⁵⁰⁴

¹⁵⁰¹ Iraqi Constitution, Art. 112.

¹⁵⁰² Iraqi Constitution, Art. 115.

¹⁵⁰³ Rogg and Rimscha, "The Kurds as parties to and victims of conflicts in Iraq," 823-842.

¹⁵⁰⁴ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

However, the law has not been decided yet, and this problem remains pending between Baghdad and Erbil.

Since this problem had not been resolved constitutionally or politically and no law satisfactory to both parties had been issued, the share of the Kurdistan Region was cut from the federal budget, despite the right of the Kurdistan Region as a constitutional region to a share in the federal budget as defined by Article 121: “Regions and governorates shall be allocated an equitable share of national revenue sufficient to discharge their responsibilities and duties, but have regard to their resources, needs, and the percentage of their populations”.¹⁵⁰⁵

The decision to cut the budget of the Kurdistan Region in 2014 was accompanied by the ISIS attack on Iraq and the Kurdistan Region and the arrival of about two million refugees and displaced persons in the Kurdistan Region, which led to the present difficult economic situation.¹⁵⁰⁶ Although oil from the Kurdistan Region is exported abroad via Turkey, the rate of return is much lower than the needs of the Kurdistan Region, due to accumulated debts on the region during the past years, the dues of companies working in this field and the cost of production and export.

The independent production and export of oil by the Kurdistan Region, without recourse to Baghdad, with all the internal observations regarding the lack of transparency and its use for narrow personal, family and partisan benefit, has strengthened the demands for self-determination and independence, as the foundation for economic independence has

¹⁵⁰⁵ Iraqi Constitution, Art. 121.

¹⁵⁰⁶ Mohamed Walid Lutfy and Cris Toffolo, *Handbook of Research on Promoting Peace Through Practice, Academia, and the Arts* (Hershey: IGI Global, 2018),323.

been built. Baghdad's reaction was extreme, as it cut the budget of a region without the ability to hold officials accountable or prevent companies from conducting business. The price of this historical step towards independence was heavy for Kurdistan, and it has led to the difficulty of paying employee salaries since 2014 in the Kurdistan Region until the present day.¹⁵⁰⁷

3. Federalism, the issues of power-sharing and partnership in the national decision

In the beginning of the “new Iraq” after 2003, Galbraith argued that a federation of Shia, Sunni and Kurdish states would avoid civil war.¹⁵⁰⁸ The Kurds, having already achieved their own ‘localized democracy’ and quasi-state, have very little stake in the political dynamics of the Iraqi central government.¹⁵⁰⁹ Their remaining part of Iraq, therefore, seems to be driven more by external geopolitical factors than internal political dynamics. The “Kurdish achievements” in Iraqi Kurdistan are not consensual: the main Sunni Arab, Arab nationalist and Sunni Arab Islamist forces, and some Shiite Islamist currents, as well as neighbouring states and mainstream Arab public opinion, perceive

¹⁵⁰⁷ Lutfy and Toffolo, *Handbook of Research on Promoting Peace Through Practice, Academia, and the Arts*, 323; Asharq Al-Awsat, “Salaries of Kurdistan Region Employees Deepen Iraqi Govt. Crisis,” *Asharq Al-Awsat*, 27 April 2020, accessed April 27, 2020. <https://english.aawsat.com/home/article/2254931/salaries-kurdistan-region-employees-deepen-iraqi-govt-crisis>

¹⁵⁰⁸ Peter Galbraith, “There is one way to preserve Iraq - and give us a way out,” *The Guardian*, 17 May 2004. Accessed September 20, 2018. <https://www.theguardian.com/world/2004/may/17/usa.iraq2>

¹⁵⁰⁹ Denise Natali, *The Kurdish Quasi-State: Development and Dependency in Post-Gulf War Iraq (Modern Intellectual and Political History of the Middle East)* (Syracuse: Syracuse University Press, 2010), 127–131.

federalism as a threat to Iraq's unity and are suspicious about the dominant role played by the Kurds in Baghdad.¹⁵¹⁰

If in previous years, or following American intervention in 2003, federalism meant democracy for Iraq and federalism for Kurdistan, continuing the democratic experiment started during the last 13 years of de facto independence from the rest of Iraq,¹⁵¹¹ today federalism for the Kurdistan Region means implementing the Iraqi Constitution as a whole. The implementation of this constitution with the above-mentioned problems is very difficult and requires new agreements between Baghdad and Erbil to fill the gaps in the constitution, or a general agreement to address issues outstanding or deferred in the Iraqi constitution. Above all this development required a division of power between the two sides, and power sharing and participation in the national decision needs to be addressed.

Partnership in decision-making, consensus, and power-sharing which distinguished post-2003 Iraq has dwindled into constitutional phrases and political slogans. Despite the positions of Kurds and Sunnies in Baghdad, the Arab Shiite majority has controlled the national decisions in Iraq.¹⁵¹² Dixon has questioned whether Iraq's polity is consociational at all because the Sunni Arabs were not part of the government and did not vote for the constitution.¹⁵¹³ Visser noted how the 'the degree of formal power-sharing at the level of the central government is in fact quite limited.' Plans for extra-constitutional institutions

¹⁵¹⁰ Rogg and Rimscha, *The Kurds as parties to and victims of conflicts in Iraq*, 824.

¹⁵¹¹ Galbraith, "There is one way to preserve Iraq - and give us a way out."

¹⁵¹² Maj Asam Haupt and Camber Warren, *Publications Combined: The Role of Social Media in Crisis - Data Collection By The Public And Private Sectors As A Strategic Asset And To Prevent Terrorism* (Monterey: Tradoc analysis centre, 2018), 11.

¹⁵¹³ Paul Dixon, "Is consociational theory the answer to global conflict? From the Netherlands to Northern Ireland and Iraq," *Political Studies Review* 9, no. 3 (2011): 309–322.

such as the Political Council of National Security, the Federal Oil and Gas Council, and the National Council of High Policies, which could be seen as ‘attempts to create additional consociational layers in Iraq’s power-sharing democracy’¹⁵¹⁴ have not succeeded so far. Consequently, day after day, the authorities and real power are concentrated in the hands of the central government of the Shiite majority at the expense of power-sharing and the authorities of the regions.

It could be argued that the power-sharing and consensus, without being intertwined directly into the constitutional fabric of the political structure, will be a temporary process. Furthermore, consociationalism has been weakened over time, not just pro forma but also de facto. The Kurdistan region is afraid that its federal situation could become unstable at any time. Özpek (2012) observed that ‘ethnic and religious groups have no guarantee of sharing executive power, that segmental autonomy is ‘under threat’,¹⁵¹⁵ that the principle of proportionality has been violated because the Iraqi government aims to subordinate the KRG by cutting their budget and imposing an Arab identity in the Iraqi military’, and that ‘de facto veto power of ethnic and religious groups did not continue’.¹⁵¹⁶ Likewise, O’Driscoll has noted how Iraqi governments ignored the liberal consociational elements of the constitution; this politics is clear particularly in the issues related to the Kurdistan region.¹⁵¹⁷

¹⁵¹⁴ Reidar Visser, “The emasculation of government ministries in consociational democracies: The case of Iraq, *International Journal of Contemporary Iraqi Studies* 6, no. 2 (2012):232.

¹⁵¹⁵ Burak Bilgehan Özpek, “Democracy or partition: Future scenarios for the Kurds of Iraq,” *Insight Turkey* 14, no. 3 (2012): 134.

¹⁵¹⁶ Özpek, “Democracy or partition: Future scenarios for the Kurds of Iraq,” 137.

¹⁵¹⁷ Dylan O’Driscoll, “Autonomy impaired: Centralisation, authoritarianism and the failing Iraqi state” *Ethnopolitics* 16, no. 4(2017): 320.

For the leadership of Kurdistan, "partnership in the national decision" or the sharing of power and wealth is an existential issue and the core of real federalism, and without it, there a new Iraq is meaningless. The fact that the Kurds continue to be neglected and do not participate in the national decision is a direct result of the repressive mentality and racist policies of the rulers of Iraq before 2003, or since the creation of Iraq. Masoud Barzani, the former president of the Kurdistan region, also stressed several times that the result of the Kurd's failed partnership with Iraq after 2003 was the deprivation and neglect of the Kurdish people the lack of implementation of the constitution, and a repressive chauvinistic viewpoint.¹⁵¹⁸ All this is evidence of the depth of the true partnership problem between the Kurds and the Arab majority in Iraq.

§II: The future of Kurdistan's sovereignty in the light of subjective and objective factors

In 2005, Barzani emphasized to the US that the Kurdish Region ought to be able to choose independence, but would join the new Iraqi republic nonetheless.¹⁵¹⁹ Largely at the Kurds' insistence, the preamble to the Iraqi constitution states that the Iraqi people could "decide freely and by choice to unite our future." In the negotiations, the Kurds stressed

¹⁵¹⁸ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

¹⁵¹⁹ Ford, "America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities."

the inclusion of the word “freely.” They appreciated its implicit meaning: they chose freely to join Iraq, and they could choose freely to leave.¹⁵²⁰ Thus, the choice of independence has been the strategic option from the beginning of the Kurdish issue until now, but, as mentioned earlier, the appropriate opportunity has not yet come to achieve it, due to an unfavourable settlement by regional states and superpowers with regard to the demand for independence, and the Kurds do not have the power to impose a balance in favour of their sovereignty.

A. Kurdistan, or Iraq; the realistic approach in shaping the future

As mentioned earlier, Kurds yearn for the full independence promised them by the Treaty of Sèvres in 1920, subsequently denied by Ataturk’s facts on the ground and the Treaty of Lausanne three years later.¹⁵²¹ Peter W. Galbraith stated that “The people of Kurdistan almost unanimously prefer independence to being part of Iraq,” but they agree that this is not an option now or in the near future because of the fears of Syria, Iran and Turkey that the cause of independence would spread to their own Kurdish populations.¹⁵²² Autonomy under a federal system, therefore, is the best the Kurds can hope

¹⁵²⁰ Ford, “America Never Understood Iraq As the Kurdish crisis continues to spiral, a former diplomat laments a history of missed opportunities.”

¹⁵²¹ Brendan O’Leary, John McGarry and Khalid Salih, *The Future of Kurdistan in Iraq* (Philadelphia, Pennsylvania: University of Pennsylvania Press, 2005), 4-6.

¹⁵²² Peter W. Galbraith, quoted in O’Leary, McGarry and Salih, *The Future of Kurdistan in Iraq*, 242.

for in Iraq, and, as long as the United States supports the idea, the Iraqi Arabs are not in a position to prevent it.¹⁵²³

Iran understands that, with Turkey as a key ally and, with the prospective support of the Arab states and the deepening identification of Kurds as Sunnis, Kurdistan will survive without Iran's support. Therefore, Iran has, in recent years, been seeking a friendly relationship with the region, and has expressed a desire for more economic interaction with Kurdistan, similar to the way in which Turkey works with the region. More importantly, Iran does not desire to leave the region, or a future Kurdistan state, which is potentially a springboard for anti-Iranian activities. Hence, Iran is unlikely to be hostile towards this newly evolving Kurdistan.

Statehood was always a long-term goal for negotiation with Baghdad, as Kurdistan leaders emphasised in talks with Baghdad. The referendum was not about immediate and unilateral independence. The hope was that Baghdad would avoid violence, as promised, and seek a fresh start with Kurdistan, not necessarily in the form of statehood but maybe confederation or genuine federalism, in coming years.¹⁵²⁴

The development of the Kurdistan Region made different countries and international organisations including the European Union, the USA and many other countries bypass Baghdad in their dealings with the KRG. Since the disintegration of the Iraqi army in the northern areas, or during the war on ISIS, the international community including the USA, Canada, the UK, Germany, Italy, Spain and Australia has been directly supplying weapons and ammunition to the Kurdistan Peshmerga forces, and dealing with

¹⁵²³ Galbraith, quoted in O'Leary, McGarry and Salih, *The Future of Kurdistan in Iraq*, 242-248.

¹⁵²⁴ Kent, "Thriving in Adversity: the past and future of Kurdistan in Iraq."

Sunni representatives directly.¹⁵²⁵ This is a strong indication of the division of Iraq in practice, and even the international community considers Iraq to consist of three components or three political destinations, or an undeclared de facto confederation. Therefore, for some, Iraq's best chance for survival is as a loose federation of at least two, but more likely three states - Kurdistan in the north, a Sunni Arab state in the centre, and a Shia state in the south. The central government would exercise relatively few powers - little more than foreign affairs and monetary policy.¹⁵²⁶

The three-state solution with a weak rotating presidency, proposed by Les Gelb in a 2003 New York Times op-ed piece, appeals to many,¹⁵²⁷ including then-senator Joe Biden (current president of the United States) and Leslie Gelb, (former president of the Council on Foreign Relations.) In 2006 in a joint article, they proposed breaking Iraq into three “largely autonomous regions – Kurdish, Sunni, and Shiite – “with a viable central government in Baghdad.”¹⁵²⁸ Biden and Gelb proposed:

Establish three largely autonomous regions with a viable central government in Baghdad. The Kurdish, Sunni and Shiite regions would each be responsible for their own domestic laws, administration and internal security. The central government would control border defense, foreign affairs and oil revenues. Baghdad would

¹⁵²⁵ ICG, Arming Iraq’s Kurds: Fighting IS, Inviting Conflict, Mehr, KRG prime minister: Role of Iran in Iraqi Kurdistan constructive, Croft, EU gives go-ahead to states sending arms to Iraqi Kurds, Rudaw, Russia supplied arms to Iraqi Kurds – Lavrov, Mehr.

¹⁵²⁶ Kent, “Thriving in Adversity: the past and future of Kurdistan in Iraq.”

¹⁵²⁷ Leslie H Gelb, “The Three-State Solution,” *The New York Times*, 25 Nov 2003, accessed September 17, 2018. <https://www.nytimes.com/2003/11/25/opinion/the-three-state-solution.html>

¹⁵²⁸ The Editors, “Joe Biden May Have Been Right About Iraq, editorial,” *Observer*, accessed September 22, 2018. <https://observer.com/2015/06/joe-biden-may-have-been-right-about-iraq/>

become a federal zone, while densely populated areas of mixed populations would receive both multisectarian and international police protection.¹⁵²⁹

After the collapse of the 2017 Kurdistan referendum and the conclusions that followed, the difficult internal economic situation focussed the regional and international policy on the unity of Iraq and encouraging the Kurdistan Region and Baghdad to resolve their issues amicably under the umbrella of the constitution. Currently it seems that the main policy of the Kurdistan region is focused on the return to Baghdad, and emphasizing federalism and the application of the constitution. The KRG Prime Minister declared, “Our future is wedded to a secure and democratic Iraq.”¹⁵³⁰

Meanwhile, America has been loath to throw out its script about a democratic, united Iraq, but this poses the question of how democratic Iraq could ever be when the "Kurdistan Region" or such a large segment of its population wants out, having been obliged to remain within the Iraqi borders. International and regional politics, external interventions and political conflicts in Iraq, without the commitment to the constitution and the implementation of the articles relating to Kurdistan, has led to fear and lack of trust between Erbil and Baghdad, so that "power-sharing with sunset clauses may be all that is

¹⁵²⁹ Joseph R. Biden Jr. and Leslie H. Gelb, “Unity Through Autonomy in Iraq,” *The New York Times*, May 1, 2006, accessed September 22, 2018. <https://www.nytimes.com/2006/05/01/opinion/01biden.html>

¹⁵³⁰ Masrour Barzani also wrote:

In 2017, Iraqi Kurdistan held a referendum on independence. The ballot was nonbinding, but an overwhelming 93 percent of people voted in favor. While we would have welcomed greater support from the international community for our right to self-determination, our priority now is to create a strong, stable Kurdistan region anchored within the international community. We ask those whom we helped protect to acknowledge the constructive global role we have played by helping us build our economy, see: Masrour Barzani, “Why the Kurdistan region of Iraq is making a new start.”

agreeable in particular cases."¹⁵³¹ It is precisely this flexibility that left Iraq badly prepared for what came next.

Some scholars have argued that unless a constitutional mechanism for proper dispersal of political powers across Iraq's regions and branches of its government is developed, through the confederal structure, it may be too late to stem the sectarian and ethnic conflicts and overcome its perpetual crises of governance or keep Iraq united. After Baghdad exercised its authority in a "sectarian" way, Kurds and Sunnis now find the idea of forming confederal regions quite tempting.¹⁵³²

B. The Question of Kurdistan's Self-Determination: Challenges and Prospects

The collapse of the Iraqi state in 2003 after US intervention, which "changed the balance of power in the Middle East in an unprecedented way,"¹⁵³³ was an important opportunity for Kurds to declare independence and secession from Iraq. They did not do so, but instead returned willingly to Baghdad to build a unified, federal, and democratic Iraq, with Shiite and Sunni, under the American umbrella. After many years, Kurds believe

¹⁵³¹ John McGarry, *What explains the performance of power-sharing settlements*, quoted in Allison McCulloch & John McGarry, *Power-sharing: Empirical and normative challenges* (London: Routledge, 2017), 284.

¹⁵³² Shamsul Khan & Sherko Kirmanj, "Engineering Confederalism for Iraq," *National Identities*, 17, no. 4 (2015): 371-373.

¹⁵³³ Ebru Canan-Sokullu, *Debating Security in Turkey: Challenges and Changes in the Twenty-First Century* (Langham: Lexington Books, 2013), 126.

they made a historic mistake when they returned to Baghdad and participated in rebuilding the Iraqi state and the failed partnership with the current rulers of Baghdad.¹⁵³⁴

1. Kurdistan: facts and self-determination

As discussed previously, the history of the Kurdish issue and the struggle for the right to self-determination began with WWI and has continued until the present day.¹⁵³⁵ Independence and state-building through self-determination is a major goal of all Kurdish movements,¹⁵³⁶ but due to the objective and subjective circumstances as well as international and regional politics, the demands of the Kurds fluctuated between autonomy, federalism, confederation, and independence. Independence remained a final goal despite all internal and external developments.

According to Galbraith, there is not an Iraqi Kurd leader who preferred Iraq to an independent Kurdistan if that were a realistic alternative.¹⁵³⁷ The results of both the 2005 "unofficial" referendum¹⁵³⁸ and the 2017 official referendum¹⁵³⁹ on the fate of Kurdistan

¹⁵³⁴ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

¹⁵³⁵ Nezan, Kendal."A brief survey of The History of the Kurds," *Fondation Institut Kurde de Paris*, accessed September 23, 2018. https://www.institutkurde.org/en/institute/who_are_the_kurds.php

¹⁵³⁶ Masoud Barzani, 2017, (An interview with the president of Kurdistan of Iraq) Arabia Canal, Interview with Turkey Dakhel.

¹⁵³⁷ Galbraith, quoted in O'Leary, McGarry and Salih, *The Future of Kurdistan in Iraq*, 247-248.

¹⁵³⁸ Galbraith, *The End of Iraq: How American Incompetence Created a War Without End*, 20-34.

¹⁵³⁹ Bethan McKernan, "Kurdistan referendum results: 93% of Iraqi Kurds vote for independence, say reports."

confirmed this requirement, or independence and separation from Iraq. Moreover, this demand confirmed the Kurdish project which was presented by Kurds as a constitution for Iraq after 2003, and focused on ensuring the right to self-determination of the Kurds wherever they wished, as well as the approval of Kirkuk and disputed areas as parts of the Kurdistan Region of Iraq.¹⁵⁴⁰ Although this project was rejected by the Shiites and Sunnis, it was another indication of the demand for independence and the building of a Kurdistan entity as permanent goal.

The Kurdistan region has several strategic strengths, besides its extensive relations with the great powers, including the United States, but it faces various internal and external challenges, which have obstructed its attempts toward independence. Kurdistan is an important factor in the success of the American policy in Iraq and the region. “If the U.S. wanted to stay militarily in Iraq, Kurdistan is the place; Kurdish leaders have said they would like to see permanent U.S. bases in Kurdistan.”¹⁵⁴¹ The United States is not alone. Israel has longstanding ties to the Kurds. The only contributor to even mention this well-known connection is Sophia Wanche, who made a passing reference to the Israeli view of Kurdistan “as a potential bulwark against perceived threats from Iran.” She noted, however, that “Israel has generally prioritized its alliance with Turkey.”¹⁵⁴²

There are three main natural sources of natural resources for the Kurdistan region: oil and gas and water. Kirkuk is located above one of the major oil fields in the Middle East, but oil and gas have been discovered in different parts of what is currently the

¹⁵⁴⁰ Park, “Iraq's Kurds and Turkey: Challenges for US Policy,” 18-30.

¹⁵⁴¹ Galbraith, quoted in O’Leary, McGarry and Salih, *The Future of Kurdistan in Iraq*, 247-248.

¹⁵⁴² O’Leary, McGarry and Salih, *The Future of Kurdistan in Iraq*, 189.

Kurdistan Region, and large international companies from various Western countries are at work on it.¹⁵⁴³ Moreover, Kurdistan oil and gas resources will continue to be discovered, and the production and export rate of oil will steadily increase. Kurdistan has become an important location on the global energy map. The region plans to increase exports to as much as 1 million barrels and wants also to become a significant gas exporter, which would put it firmly on the global energy map.¹⁵⁴⁴ Various international oil and gas companies have been attracted to Kurdistan,¹⁵⁴⁵ and the economic interests of Kurdistan are mixed with different countries' interests, which further empowers Kurdistan. The other important resource that is abundant in Kurdistan, besides oil and gas, is water. As Galbraith has noted, "Water is a vital resource in the parched Middle East, arguably more important and contentious than oil over the long term, [and] Kurdistan has lots of water."¹⁵⁴⁶ It is an area that receives appreciable amounts of annual rainfall besides many rivers.

Iraqi Kurdistan, along with its wealth of oil, gas, water and other natural resources, is located in an important geographical location; it is in the heart of the Middle East. It will, therefore, have an impact on the future of the region and the world.¹⁵⁴⁷ Iraqi Kurdistan is an important part of Kurdistan, as it shares borders with all three parts, Iranian Kurdistan, Turkish Kurdistan, and Syrian Kurdistan; the Kurdish issue directly affects these three

¹⁵⁴³ ICJ, *Iraq and the Kurds: The High-Stakes Hydrocarbons. Gambit Crisis Group Middle East Report*, 1.

¹⁵⁴⁴ Zhdannikov, "Kurdistan details its secretive plan to export half a million barrels of oil per day right under Iraq's nose."

¹⁵⁴⁵ Iraq business news, "List of International Oil Companies in Iraqi Kurdistan."

¹⁵⁴⁶ Galbraith, quoted in O'Leary, McGarry and Salih, *The Future of Kurdistan in Iraq*, 274.

¹⁵⁴⁷ Gunter, quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 111.

countries.¹⁵⁴⁸ Yet despite the difficult economic situation of today, there are many elements of the economic strength of Kurdistan which have so far been underutilized especially tourism and agriculture¹⁵⁴⁹. However, all of these strengths, until now, add up to less than a balance of power in favour of the option of independence.

2. Kurdistan: sovereignty and its challenges

Now the future of Iraqi Kurdistan is pending and its future depends on the option that will be chosen by the IKR, and the acceptability of this option internally and externally, or, the balance of power in favour of implementing and fixing this choice.

The Kurdistan region at the current stage is at a crossroads and faced with various options, including first: perpetuation of the current situation, that is, federalism in the constitution and de-facto-state in practice; second, real federalism and implementation of the constitution through a new legal political agreement with Baghdad; third, remaining in the confederation through understanding and comprehensive cooperation among the three main components in Iraq: Shiites - Kurds - Sunni, and fourth, independence and secession from Iraq. In principle and in practice, the Kurdistan Region must now choose between two main options: survival within Iraq, or, implementation of the result of the Kurdistan

¹⁵⁴⁸ Lungthuiyang Riame, *The Kurdish Question: Identity, Representation and the Struggle for Self-Determination* (New Delhi: KW Publishers Pvt Ltd, 2015), 268-273.

¹⁵⁴⁹ World Bank Group, "Iraq's Kurdistan Region Reforming the Economy for Shared Prosperity and Protecting the Vulnerable," *World Bank*, (2016): 27-28, 50-51, accessed September 23, 2018. <http://documents.worldbank.org/curated/en/672671468196766598/pdf/106132-v2-main-report-P159972-PUBLIC-KRG-Economic-Reform-Roadmap-post-Decision-Review-05-30-16.pdf>

referendum in 2017, and a declaration of independence. The main question here is: which is the best option for IKR, taking into account the objective and subjective circumstances of the Kurdistan Region?

The current state of Baghdad –Erbil Relations cannot remain the same for long; both the KRG and the federal government need stability and they emphasize the need for dialogue to solve the problems between them.¹⁵⁵⁰ A new political and economic understanding must be forged which allows each side to save face, after everything that has happened during the last few years. In this environment fraught with tensions and mistrust, and given Baghdad's control over the disputed areas, and regional and international politics supportive of the unity of Iraq, the choice will not reflect the will of Kurdistan, and the Kurds will be forced to postpone independence and stay with Iraq. Currently, the Kurdistan Region is not in a position of sufficient power to impose its hegemony and conditions on Baghdad, as it suffers from internal problems related to the economic crisis, national unity, decisions about the KR national sovereignty, issues related to the principles of good governance, corruption, and violations of democracy and human rights in the Kurdistan region, as well as the critical state of the relationship with Baghdad. At the same time, the KR suffers from a lack of international supportive politics.

Many defended confederalism even before the Kurdistan independence referendum in 2017, as an appropriate means of redrawing the relationship between Baghdad and Erbil, and that of the three main components of Iraq: Shiite-Kurds-Sunni. Given their past experiences with the centralized Iraqi state and their long-held suspicions about any

¹⁵⁵⁰ KRG, Erbil - Bagdad relations. A constructive and stable partnership with Bagdad, *GOV.RRD, Kurdistan regional government*. Accessed May 14, 2019. <https://gov.krd/english/the-governments-mission/erbil-baghdad-relations/>

political action happening in Baghdad that may affect their lives, the Kurds, therefore, are generally expected to be more interested in a confederate structure than the Shiites or the Sunnis.¹⁵⁵¹

At the present time, it seems that accepting a confederation option proposed by Baghdad is a poor bet due to the dominance of the Shiite majority over the Iraqi government, in all political, economic and military matters, the lack of a balance of power in favour of Kurdistan, and the weakness of the Sunnis' position, along with the accumulated and continuing economic, security and political problems in Iraq including the US- Iran conflict on the Iraqi ground.¹⁵⁵²

Under current circumstances, the KRG is still far from a credible and possible declaration of independence for Iraqi Kurdistan, leaving aside the extreme unrest that the breakaway of the Iraqi federal region would entail. U.S. support of Kurdish independence is unlikely at the moment.¹⁵⁵³ Perhaps surprisingly to some, the US has expressed its opposition to its independence; not so surprisingly, neighbours of Iraq which share borders with Iraqi Kurdistan, such as Turkey, have also shown their discontent with the idea.¹⁵⁵⁴

¹⁵⁵¹ Khan & Kirmanj, "Engineering confederalism for Iraq," 373.

¹⁵⁵² Albert B. Wolf, To Stop a U.S.-Iran War, Finlandize Iraq By treating Iraqi territory as a neutral zone, Washington and Tehran can avoid conflict. Foreign policy, Argument. Accessed May 13, 2020. <https://foreignpolicy.com/2020/05/11/stop-us-iran-war-neutral-territory-finlandize-iraq/>

¹⁵⁵³ Cagaptay, *The Future of the Iraqi Kurds*, 36.

¹⁵⁵⁴ Paul Iddon, "What does Turkey have to fear about Kurdish Independence?" Rudaw, Accessed December 11, 2017. <https://www.rudaw.net/english/analysis/07072017>

Al Jazeera center for studies, Evolution of Turkey - Iraqi Kurdistan's Relations, Al Jazeera center for studies. Accessed December 26, 2017. <https://studies.aljazeera.net/en/reports/2017/12/evolution-turkey-iraqi-kurdistans-relations-171220092851950.html>

The idea that the Kurdistan region's status will significantly alter with a declaration of independence, even without international support, is unrealistic. The geographical facts have a key role in determining the IKR's future.¹⁵⁵⁵ Landlocked, the region remains at the mercy of its neighbours, none of which has countenanced Kurdish statehood anywhere because of their own sizable Kurdish populations, and each of which will do anything to obstruct Kurdish attempts to build the Kurdistan State in Iraq. Consequently, international support, particularly supportive US politics is the main factor behind the successful inauguration of sovereignty for Kurdistan, but US politics is currently headed in a different direction.¹⁵⁵⁶ Historically, the prolonged occupation of Kurdistan by repressive states in the region, and its presence in the heart of enemies, with geographical borders closed, has negatively affected the status of Kurdistan at all levels. This factor constrained their freedom of action and relations and the ability to exist independently. The Kurds' dependency on foreign elements became a closed circuit from which they could not escape.

Internally there are economic challenges. In addition to the critical state of relations between Baghdad and Erbil. Despite the daily extraction and export of oil, the KRG is too financially dependent on its opponent "Baghdad" to go its own way.¹⁵⁵⁷

¹⁵⁵⁵ Gunter, quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 111., Riame, *The Kurdish Question: Identity, Representation and the Struggle for Self-Determination*, 268-273.

¹⁵⁵⁶ Cagaptay, *The Future of the Iraqi Kurds*, 36., Gunter, "Introduction," quoted in Rehmany, *History of Kurd-America Relations*, 14.

¹⁵⁵⁷ MOCHMPW/RBD/PMT/E&S Team, environmental and social management framework (ESMF). Iraqi Road maintenance microenterprises grant, *World Bank*. Accessed September 17, 2020. <https://documents1.worldbank.org/curated/en/928191602187661368/pdf/Revised-Environmental-and-Social-Management-Framework-ESMF-Iraq-Road-Maintenance-Microenterprises-Grant-Project-P171446.pdf>

Yet the sovereignty and existence of a state are only as strong as the recognition given it by the international community. Iraqi Kurdistan is a de facto state,¹⁵⁵⁸ and these cases are considered a rare phenomenon in the international system. It is not yet a state at the international level or to be seen as a sovereign state. The international community, in spite of its dealings with the de-facto division in Iraq between the three components, Shiites, Sunnis and Kurds, takes into account the position of Iraq as formal national authority, especially in issues related to national sovereignty and territorial integrity. If the KR chooses the option of independence at any time, according to international law, its full sovereignty must be recognised in the international arena. As previously noted, all the elements necessary for statehood exist in the case of Iraqi Kurdistan, except for international politics supportive of independence.¹⁵⁵⁹ The KRG lacks strong international support for its quest for independence because of concerns regarding risks to regional stability inherent in questioning any of the borders created after World War I.¹⁵⁶⁰ Without US support, even a formal declaration of an independent state, will result in energetic efforts by the new state's neighbours to suppress it and insufficient international support to protect it from military attack, economic strangulation and other sanctions.¹⁵⁶¹

Theoretically, in addition to the positive change that understands the independence of Kurdistan in regional and international policies, especially in both US and Turkish policy, there are assumptions that determine the future of Kurdistan independence. Some

¹⁵⁵⁸ Caspersen and Stansfield, *Unrecognized States in the International System*, 3-4.

¹⁵⁵⁹ Calamur, Why Doesn't the U. S. Support Kurdish Independence?

¹⁵⁶⁰ ICG, "Oil and Borders: How to Fix Iraq's Kurdish Crisis."

¹⁵⁶¹ Bengio, *The Kurds of Iraq: Building a State Within a State*, 13.

changes can positively influence the creation of an appropriate opportunity for the Kurdistan Region to move towards independence. Such opportunities could include a change in Iraqi politics, or in the doctrine of the ruling Shiite elite in Iraq, to accept the independence of Kurdistan, or the complete collapse of the Iraqi state, or failure to build a democratic and federal Iraq,¹⁵⁶² or the inability to secure the daily necessities of life for citizens, administration, security and services, or for these to be non-continuous for a member of the international community.¹⁵⁶³ If these changes happen, the international community will deal with the Kurdistan Region as a safe and prosperous region, and it can replace the mother state. International and regional politics and the interests of multiple countries do not allow this despite all the comprehensive failures, problems, violence, and conflicts that took place in this country, along with crimes of genocide and historical grievances that were practised against the Kurdish people over a century by the rulers of the Iraqi state created by the colonial power of Great Britain from different components imposed upon them. Fear of threats to national interests, the fear of complete chaos in the Middle East region and instability at the regional and international levels has brought about this situation.

The resolution of the Kurdish issue in Syria and Turkey would provide a strong motivation to change the Turkish policy towards the independence of Iraqi Kurdistan, removing one of the most effective obstacles to the formation of the state. Currently, despite the promises to solve the Kurdish issue, Turkey's extremist and military policy

¹⁵⁶² Gunter, quoted in Rehmany, *The American policy in Kurdistan from the Viewpoint of Western scholars*, 111.

¹⁵⁶³ Nader, *Regional Implications of an Independent Kurdistan*, 50.

towards the Kurdish issue in Syria and Turkey continues.¹⁵⁶⁴ There is a violent conflict between the PKK militants and the Turkish army in several areas,¹⁵⁶⁵ and the Turkish attack on Kurds in Syria is ongoing.¹⁵⁶⁶ Kurds have made significant progress in securing their rights and achieving sympathy and international support for their cause, especially through their battle and victory over the Islamic State (ISIS), now they are in a position of strength in Syria.¹⁵⁶⁷ The desire to secure their rights in any form, through autonomy, federalism or establishing an independent entity will also provide strong motivation to accelerate the move towards independence in Iraqi Kurdistan. According to Iran's viewpoint the independence of Iraqi Kurdistan is threatening its national security,¹⁵⁶⁸ and changing the regime in Iran would end or limit Iran's hegemony over Iraq, as well as removing a major obstacle to the independence of Kurdistan. While a change in the Iraqi state in any way is now very unlikely, if the American policy towards the independence of Iraqi Kurdistan changes, then the positions of European and Gulf states will change positively, and this will be the decisive factor in establishing the state of Kurdistan in the Middle East.

¹⁵⁶⁴ John Holland-McCowan, "War of Shadows: How Turkey's Conflict with the PKK Shapes the Syrian Civil War and Iraqi Kurdistan," *ICSR*, May 19, 2017, accessed September 22, 2018. <https://icsr.info/2017/08/08/icsr-report-war-shadows-turkeys-conflict-pkk-shapes-syrian-civil-war-iraqi-kurdistan/>

¹⁵⁶⁵ ICG, "Turkey's PKK Conflict: A Visual Explainer," *International Crises Group*, accessed May 11, 2020. <https://www.crisisgroup.org/content/turkeys-pkk-conflict-visual-explainer>

¹⁵⁶⁶ BBC, "Turkey v Syria's Kurds: The short, medium and long story," *BBC*, October 23, 2019, accessed October 23, 2019. <https://www.bbc.com/news/world-middle-east-49963649>

¹⁵⁶⁷ Harriet Allsopp and Wladimir van Wilgenburg, *The Kurds of Northern Syria: Governance, Diversity and Conflicts* (London: I. B. Tauris, 2019) 190-199.

¹⁵⁶⁸ Younes Forouzan, Abdolreza Alishahi and Hamid Soleimani Souchelmaei, "Independence of Iraqi Kurdistan," *Iran's National Security and Possible Scenarios* 9, no. 3 (2018): 1-7.

However, this development is also unlikely; the US cannot neglect Kurdistan, a pillar of its Middle East strategy and stability.¹⁵⁶⁹

Looking to the future, the Kurdish independence movement will gain new momentum, but is still likely to face major restraints from Turkey, Iran and the Iraqi government.¹⁵⁷⁰ The political developments and historical events since WWI have meant that the Kurdish issue has become the touchstone of regional stability,¹⁵⁷¹ as there will be no stability in the Middle East unless the Kurds are allowed to exercise their right to self-determination. Moreover, despite the current circumstances, and the problems and challenges associated with Iraqi, regional and international politics, the establishment of the Kurdistan state in the future is inevitable.

CONCLUSION OF CHAPTER II

The Kurds played a pivotal role in fighting and capturing ISIS in Iraq. The ISIS war was an existential challenge and threat to the Kurdistan Region, but at the same time, it

¹⁵⁶⁹ Seth J. Frantzman and Eric R. Mandel, “The US cannot neglect Kurdistan, a pillar of its Middle East strategy and stability,” *The Hill*, Opinion Contributors 09. 27. 2019, accessed October 29, 2019. <https://thehill.com/opinion/international/462477-the-us-cannot-neglect-kurdistan-a-pillar-of-its-middle-east-strategy>

¹⁵⁷⁰ Liu Li, Wang Zeshen and Wang Jiapei, “Belt and Road Initiative in the Gulf Region: Progress and Challenges,” *China Institute of International Studies*, accessed September 23, 2018. http://www.ciis.org.cn/english/2017-09/28/content_40031507.htm

¹⁵⁷¹ Riame, *The Kurdish Question: Identity, Representation and the Struggle for Self-Determination*, 268-273.

was an important opportunity for the Kurdistan Region to move towards independence. This war strengthened the position of the Kurdistan Region internally and externally. It strengthened the independence of Kurdistan in its external relations, in terms of relationship and partnership between the IKR and the international community in strategic, security and military fields. The collapse of the Iraqi army in the face of ISIS, and the Iraqi army leaving for disputed areas, offered a historic opportunity for the Kurdistan Region, followed by the control of the Kurdistan Peshmerga forces over those areas, including the oil-rich city of Kirkuk, which led to the strengthening of the Kurdistan region's position on the ground. After the Kurds gained control over the disputed areas, which they have claimed for decades, the area of the Kurdistan Region expanded to almost twice its area before the ISIS war, and has strengthened its military, economic and demographic power. Hence these developments, besides the tense relationship between Baghdad and Erbil due to the outstanding problems between them including the distribution of authority and wealth, oil, the disputed territories, and the budget cut in 2014, encouraged the Kurdistan Region to hold the independence referendum in September 2017. The result was expected and a majority, 93 per cent, voted in favour of independence. But instead of this result leading to independence and state-building, it caused a stifling political and economic crisis for the Kurdistan Region.

The referendum provoked a strong reaction from Baghdad as well as neighbours Iran and Turkey, and even from the U.S. and Europe, none of which can accept the breakup of Iraq. The Iraqi and regional positions were adopted after the US rejected the referendum, in support of the unity of Iraq. This shows the ability of the United States to determine the fate of the Kurdistan Region. This American policy was a continuation of its strategy to

preserve the unity of Iraq and the Kurdistan region within a federal and democratic Iraq, with an emphasis on the constitutional rights of the people of the Kurdistan Region.

The ruling imposed militarily and politically, then legally by Iraq and the countries of the region like Turkey and Iran, made the Kurdistan Region hesitate to implement the result of the referendum. The true goal of the referendum was achieving independence and secession from Iraq, but the absence of a balance of power in favour of the Kurdistan region shifted the focus from a referendum to build the state or "obligatory referendum", to a referendum on the opinion of the people about their future or "optional referendum".

The continuity of the developments of the Kurdistan Region at various levels, and the continuity of the existential problems in its relationship with Baghdad, placed the Kurdistan Region at the crossroads, between federalism and independence. In principle, Iraqi Kurdistan has several options for redesigning the relationship with Baghdad and shaping its future, including federalism, or federalism in the constitution and the confederation or the semi-state in practice, which currently exists, or confederation, or independence. However, in reality due to the current situation, the lack of supportive international politics, and the balance of power in favour of Iraq and its unity, the options for IKR are very limited. Accordingly, Iraqi Kurdistan is currently forced to stay with Iraq. The politics of the Kurdistan region focuses on understanding and reconciliation with Baghdad by focusing on federalism and the application of the constitution in Iraq, but it faces complex problems and difficult challenges.

The independence of Kurdistan depends on internal, regional and international factors, and not all of these are currently in favour of the independence option. The Kurdistan Region does not have a balance of power in favour of Kurdistan sovereignty.

First of all, there are internal challenges related to the economic crisis, national unity, the problems of sovereign decision-making, and issues related to good governance and the application of its principles in the Kurdistan government, including the lack of transparency, corruption, democracy and respect for human rights. Iraqis categorically reject the independence of the Kurdistan Region, and the outstanding existential issues between Baghdad and Erbil persist, including the failure to solve the problem of strategic disputed territories. Along with Iraq the regional countries relevant to the Kurdish issue resent the idea of an independent Kurdistan, particularly Turkey and Iran, which are strong regional powers, and there is no change in their policies toward the Kurdish issue. Meanwhile US policy is focused on the Kurdistan region remaining within Iraq and maintaining the unity of Iraq.

The Kurdish issue is at the centre of stability in the Middle East, and without solving the Kurdish issue peacefully and allowing the Kurds to exercise their right to self-determination, it will be very difficult to talk about this stable and prosperous area. Moreover, despite the current circumstances, and the problems and challenges for Iraqi Kurdistan, all indications suggest that the Kurdistan region is a strong candidate to be an independent state in the future.

CONCLUSION OF TITEL II

During the last thirty years, the US has been a de facto supporter of Iraqi Kurdistan, and it has played a key role in political developments and helped the Kurds at various levels. However, support for Iraqi Kurdistan was not enough to obtain self-determination and independence. For the people of Kurdistan as a people under occupation, without a friend or supporter in any country in the region, in a very hostile and complex region, the relationship with the United States is very important, because of the leading role of the United States globally, regionally and in Iraq after 1990. Therefore, the IKR used its relations with the United States to strengthen its position and to be a developed and stronger region in Iraq compared to other parts of Iraq.

US policy toward the Kurdish issue before the end of the Cold War is different from that in the post-Cold War era. In the first stage, the United States used the Kurds only as a tool to achieve its goals in the region and left them when the American interest required. Moreover, the United States has remained silent about all the crimes, violations and genocide that the people of Kurdistan in Iraq have been subjected to by the Iraqi authorities for decades.

After the end of the Cold War and the liberation war of Kuwait, a new and different era began from the story of America and the Iraqi Kurds. A dramatic change occurred in the American policy towards the Kurdish issue and the rights of the people of Kurdistan in Iraq. There are several reasons behind this development, including: the hostility of the Iraqi regime, the end of the Cold War and the disappearance of fear of Soviet influence in the

region, the humanitarian factor or protection of the people of Kurdistan after mass immigration to the borders of Iran and Turkey for fear of revenge by the Iraqi authorities, along with the Turkish pressure to create a safe area inside Iraq to avoid the possibility of stirring up Turkish Kurds after the refugees entered their lands and threatened its national security.

After the establishment of a no-fly zone or the so-called Operation Provide Comfort, according to UNSC Resolution 688, important developments began in US-Kurdish relations and reached the level of a real partnership in the American intervention in Iraq in 2003, and in all subsequent political developments, including the Iraq administration after 2003, countering terrorism and the war on ISIS.

Despite all these developments in American policy, America constantly asserts the unity of Iraq. US policy does not support the establishment of the state of Kurdistan in the Middle East, on the grounds that it would create chaos and instability in the region. Realistically, the United States takes into account its interests in the Middle East as well as the desire and interests of its allies there, especially Turkey, so it does not support the independence of Kurdistan. From this standpoint, given the role and influence of the US in the region, this negative position towards Kurdistan's independence is one of the main obstacles in Kurdistan's movement towards independence.

After 2003, the Kurdistan region was evolving rapidly at different levels, politically, culturally and economically. Given its geopolitical importance, it has been an effective actor in the Middle East region. The investment and export of oil independently by the Kurdistan Region was another key development, and it marked a strategic move toward the creation of an independent state. After Baghdad had cut off the Kurdistan

regional share (17%) from the federal budget in 2014, the war on ISIS was an important opportunity for the IKR to change the balance of power in favour of its goals, through controlling the disputed territories including Kirkuk city, and also to strengthen its military relations and cooperation independently with different countries including superpowers.

These factors encouraged the Kurdistan region to hold the independence referendum in 2017, and the majority (93%) voted in favour of independence, but it led to a difficult political and economic problem for the Kurdistan region.

During this referendum, after the negative American position and the rejection of the referendum and its results, regional positions escalated, by Iraq, Iran and Turkey, towards the Kurdistan Region, and they imposed on the IKR to remain within Iraq, though the results of the referendum were in favor of independence. This proves that the issue of the Kurdistan region of Iraq was a political issue before being a legal issue and that the main factor in determining its future is international policy, especially US policy in the Middle East. It also proves once again the basic argument of this thesis that the legal principle of self-determination faces the political balance of power; consequently, realization of the right to self-determination and independence depends on the balance of power and international politics.

Although there are different options for the future of the Kurdistan Region, including federalism, confederation, independence, in practice, creating a balance of power in favour of the Kurdistan Region is difficult at the present time, so given the internal, regional, and international conditions, the appropriate option for the Kurdistan region is to focus on Iraq at the current stage, solving the outstanding problems between Baghdad and Erbil and securing the right to self-determination through negotiations under international

supervision. Despite all the current obstacles, all indications suggest that the creation of an independent Kurdistan state is the next stage.

CONCLUSION OF PART II

The issue of the Kurdistan region's self-determination is more political than legal. The Kurdish issue as an ethno-national issue is very complex. During the last 100 years, the people of Kurdistan have been subjected to the hardest crimes and genocide. On the other hand, the people of Kurdistan continued in various forms in attempts to obtain the right to self-determination and independence, but without success.

After evaluating the issue in the light of international law, and the basic theories in international politics, and then in light of international politics, especially American policy in the region, we conclude that the people of the Kurdistan region have the right to self-determination, but the absence of the balance of power and a supportive position adopted by international politics, especially US policy, are the main obstacles and make achieving this right very difficult.

In terms of international law and the case of the Kurdistan Region, it is clear that the Kurdistan Region is a case outside the framework of colonialism, while the right to self-determination is clearly recognized for colonized countries according to international legal instruments. Nevertheless, there are several legal foundations that can prove the right of the Kurdistan Region to self-determination and independence.

Before the creation of Iraq at the beginning of the 1920s, the Kurdistan Region was never a part of Iraq, and it is different from Iraq historically, geographically, linguistically, culturally, ethnically, and even in the documents of international law before it was merged with Iraq, according to the Treaty of Sèvres, and the Mandate system of the League of Nations. The current Kurdistan region (Mosul Vilayet) was compulsorily merged with Iraq five years after Iraq was established by an occupying country, Great Britain, in order to gain access to oil and maintain the Shiite-Sunni sectarian balance in Iraq. So, this annexation without the original owner's desire for the land is null and illegal.

The people of Iraqi Kurdistan are "people", and they have all the material and moral elements of people. Materially, Kurdistan has a common language, distinctive race, distinctive culture and history, specific geography. Also, morally, they define themselves as a "people" and share a common loyalty to their cause. Hence, like other peoples, on the basis of the equal rights principle, they have the right to decide their destiny freely like other peoples.

Different UN and international instruments stated that this right is for all peoples, and by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

The people of Kurdistan have been subjected to the worst forms of violations and crimes by the Iraqi state, including genocide, ethnic cleansing, bombing with chemical weapons, Arabization, genocide, destruction of villages and cities, forced displacement,

demographic change. These operations have resulted in the deaths of hundreds of thousands of victims and continuous war and instability at the national and regional levels for decades. These violations and historical grievances, along with complex existential problems between Baghdad and Erbil and the possibility of clashes and the repetition of those crimes in the future, justify the demands of Kurdistan for self-determination according to the theory of remedial right. It has also been applied in the cases of Kosovo, South Sudan and Bangladesh. Additionally, as the Canadian Supreme Court decided in the Quebec case, if a minority or part of a people in an independent country has their fundamental rights violated, they have the right to external self-determination and secession. When the issue of Kurdistan is compared with other issues, especially the case of Kosovo, one must conclude that if the people of Kosovo have the right to self-determination and independence, the people of Kurdistan also have the same right.

There is an indirect constitutional basis in favour of the right of the IKR to self-determination, especially when there are violations and non-compliance with the constitution. As the Iraqi constitution stated: "The adherence to this Constitution preserves for Iraq its free union of people, of land, and of sovereignty." Constitutional violations by Iraqi governments were common after 2005, like the non-enforcement of constitutional Art.140, which dealt with the resolution of the disputed territories between Baghdad and Erbil. This allowed to the IKR to decide its future freely.

Yet after 100 years of the Kurdish issue and the struggle for the right to self-determination, international politics is not in favour of the independence of Kurdistan, due to the interests of the great powers.

The UNSC Res. 688 and US new policy have played a vital role in establishing the KRG and strengthening the Iraqi Kurdistan situation since 1990. After its effective role in the ISIS war, the IKR strengthened its position internally and externally, and it conducted the independence referendum in 2017 to determine the future of the Kurdistan Region. The majority (93%) voted in favour of independence, but as a result of the lack of balance of power, or because of regional and international policies, the referendum ended with a complex political and economic problem for the Kurdistan Region.

This again proves the basic argument of this thesis; the legal principle of self-determination faces the political balance of power, and the realization and implementation of the right to self-determination mainly depends on the balance of power and international politics.

International politics, including US policy in the region, affirms the unity of Iraq and the survival of the Kurdistan region within Iraq. This factor is one of the main obstacles to the independence of Iraqi Kurdistan. The US depends on realistic theory in its foreign policy regarding Kurdistan. Notwithstanding, since 1991, the US has supported the Kurdistan region as a strong and safe area within Iraq, while constantly affirming the unity of Iraq. Accordingly, US policy does not support Iraqi Kurdistan's attempts at independence, due to US relations and interests with Turkey and Iraq, as it believes that these countries are more important than the independence of Kurdistan region for US goals and interests.

Therefore, in light of the realistic theory, also depending on evaluating national, regional and international positions regarding Kurdistan's independence, the option of independence and statehood for IKR is difficult at the present time. The appropriate option

at this stage is to focus on Iraq and build a comprehensive understanding to solve the main problems between Baghdad and Erbil, and agreement on a roadmap ending with securing the right for the Kurdistan people to freely determine their destiny.

GENERAL CONCLUSION

The Kurds form the largest stateless nation in the world, and they make up the fourth-largest ethnic group in the Middle East. Their issue started with WWI, after the division of Kurdistan into four parts between four different countries, Turkey, Iran, and Iraq, Syria, according to the Sykes-Picot Treaty between Britain and France, to divide the Middle East region as the legacy of the Ottoman Empire, according to the influence and interests of the great powers France and Britain as victorious countries in the war. Consequently, since WWI the Kurdistan people have been victims of the superpowers' politics.

Despite many promises made by the great powers to create an entity for the Kurds, as set down in the Treaty of Sèvres of 1920, when the superpowers decided to create a Kurdish state, the Lausanne Treaty of 1923 ended the possibility of self-determination for the Kurdistan people, and the international community failed to deal with the Kurdish Question justly. The Kurdish issue became more complicated, so any attempt by the Kurdish people towards self-determination and independence, was faced with the opposition of four different countries at the same time, besides the geographical closure and the borders that surround those countries, internal conditions and international policy based on pragmatism and self-interest. Kurds have consistently struggled to obtain the right to, self-determination and independence in different forms, but the result is the same: no independence for Kurdistan, and the people of Kurdistan have to submit to the international enforced border over them.

This study presents an analytical study of the international politics and the right of self-determination. It focuses on the influence of international politics as a core component of the balance of power involved in implementing this right. The main argument is that the legal principle of self-determination is faced with the political balance of power. Accordingly, the realization of the right to self-determination depends on the balance of power and international politics. Consequently, the people of Kurdistan have the right to self-determination, but due to the absence of a balance of power and unsupportive international politics, they cannot exercise this right yet.

The main objective of this thesis is to provide a scientific interpretation and analysis of the right to self-determination between the legal principle and the balance of power, with the focus on the Kurdistan Region. Accordingly, it aims to present an analytical viewpoint about the right of the people of the Kurdistan region to self-determination and the possibility of implementing this right in light of international law, the balance of power, and regional and international politics. The thesis aims to explore the factors and obstacles which mean that the Kurdistan people cannot exercise this right and build their own state, despite one century of struggle in order to achieve this goal.

The concept of self-determination as a central tenet of both international law and international politics has evolved from a political idea to a revolutionary slogan, then to a political principle, then to a legal principle, and finally into a legal right of peoples according to the current international law, through a long and difficult history. Different peoples and countries around the world have participated in this long process starting from the Westphalia Peace Treaty, and including the American and French revolutions. International organizations, like the League of Nations and the United Nations,

international leaders, like Lenin and Wilson, judicial rulings and courts decisions, and many scholars and experts, have participated in developing the self-determination concept and have made it a legal right.

The twentieth century, in particular after the founding of the United Nations in 1945, represented a decisive stage in the evolution of self-determination and the formulation of the form and legal basis for the right as we know it today. Self-determination has become a part of international law in the post-WWII era as a result of the doctrine of United Nations and the global political developments and struggle of different peoples for freedom and independence. Through its instruments, including the UN Charter, UN declarations, UN decisions and practices, the UN formulated the legal framework for the right to self-determination and promoted it in the international context. Moreover, for the first time, the principle of self-determination has been stated in international instruments as a fundamental right of peoples, as well as a central principle of the UN and its goals, which all members are obliged to respect in order to maintain international peace and security. Additionally, despite all developments, there are legal problems related to the definition, content, and scope of the concept of self-determination and the concept of “people”, as a titleholder of this right.

From the history of the evolution of the concept, especially during the twentieth century, it could be concluded that the political balance of power, also international politics, or the positions of the superpowers according to their interests, have a decisive role in achieving and implementing this right or denying it. Accordingly, there are many cases where peoples and countries have been guaranteed the freedom to decide their future, as many ethno-national issues have been resolved through this right. However, there are,

various ongoing self-determination conflicts, and many legitimate demands for this right and independence still remain without an answer, like the case of Iraqi Kurdistan.

There are different perspectives on the definition and the content of self-determination. Although considerable legal progress has been seen in the definition of self-determination, as seen in international instruments, there is still a lack of clarity regarding the definition and content of this concept. It is now generally agreed that the concept includes freedom from colonial control for peoples and countries under colonial rule.

The right to self-determination is the right of peoples to freely determine their own political status internally and externally. Internal self-determination aims to design the state for any particular group in a democratic way, including autonomy, self-governance, federalism and relations with other entities, with equal rights for all groups within the same country. External self-determination means the determining of the political status freely, including independence, secession and the establishment of a new state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people.

According to international instruments, in order for a group to have the right to determine its political destiny, it must possess an adequate identity to achieve distinction as a "people". According to the opinion of UNESCO experts on defining the concept of the people as titleholder of the right to self-determination, this concept relies on existing material and moral elements together in a group. Consequently, the "people" is a group of individual human beings who enjoy some material and moral elements together. The moral elements lie in the loyalty of individuals to their collective identity as a "people". The group must have some material elements such as a specific geography, shared ethnic background,

common language, religion, common history, common cultural heritage and territorial integrity for the region that the group claims. Significantly, under the principle of self-determination, a group with a common identity and link to a defined territory is allowed to decide its political future in a democratic fashion.

Although the people of Kurdistan are formally part of the Iraqi people, the population of the Kurdistan region is a "people" according to different criteria including UNESCO experts' criteria. Materially they have elements: distinct language, distinct ethnicity, history, geography and clear borders, even their own administration, the KRG. Further, in terms of the moral aspect, they are aware that they are a "people", and they have a common affiliation and collective loyalty to their issue. Accordingly, they are a people and therefore they have the right to self-determination like any other people according to many legal foundations.

Practically, even if the population of the Iraqi Kurdistan Region is recognised as a "people" legally, which in principle guarantees them the right to self-determination in a peaceful context, the right does not depend on the legal framework and international law only, but on international politics and the political balance of power.

A study of international law instruments related to self-determination suggests that self-determination is a fundamental right for peoples and nations, not merely a legal principle, and respecting and protecting this right is a responsibility of states and of the international community as a whole. Moreover, the right of a people to govern their territory and determine their internal and external status is a right *erga omnes* and *jus cogens*. Preventing any nation or people who have a defined territory from exercising their right to self-determination is a supreme violation of international law. Besides, there are

many problems in these documents. In the context of these instruments, external self-determination is only for peoples, not for every human group or minorities. Moreover, in these instruments the right to self-determination has been recognized clearly for "peoples" living in colonies, or non-self-governing peoples. These instruments are not clear in recognizing the right to self-determination for peoples outside the context of colonialism, or the part of the peoples of independent states, or oppressed peoples, with ethno-national issues.

The application of this right is not absolute, but is confined to the territories under colonial rule, and these regions were determined by UN recognition. These paradoxes create a margin for different and political interpretations about the essence of the right, its respect and the scope of its implementation.

Yet the content of the UN instruments is contradictory; while there have been many affirmations of the right to self-determination for all peoples regardless of colour, geography, religion, race and population size, there have also been affirmations of territorial integrity and current borders, removing the possibility of change as a result of exercising the right to self-determination. Additionally, the remaining peoples who are covered by this right are listed as peoples under colonial and non-self-governing territories. This includes a limited number of peoples and not all peoples who have the right to self-determination and wish to exercise their right. At the same time, there are peoples outside the context of colonialism who have exercised self-determination and have built their states, and currently the international community deals with them formally, as in the cases of West Timor, Kosovo, and South Sudan. This also shows the gap between international

law and its implementation in the context of international politics, which is subject to the political balance of power and interests of superpowers.

The political hegemony of the superpowers which were victorious in WWII is evident in the formulation and implementation of international law instruments regarding the right to self-determination. For instance, when the power of veto was granted to five permanent members of the UN Security Council, it led to selectivity in dealing with cases and claims to the right of self-determination, as well as problems related to the violation of fundamental freedoms and human rights in different countries, including the silence of the international community about crimes and violations committed against the Kurdistan people by the Iraqi state. In sum, the United Nations strategy in dealing with issues and demands for self-determination in accordance with the purposes of the superpowers that dominate the international resolution has led to the neglect of many self-determination conflicts and injustices to many peoples, and has affected stability internally and regionally.

The people of Kurdistan, although they have all the elements and characteristics of a people, and are comparable to the peoples of territories which have been nominated for the practice of self-determination, and despite their long national movement for the right to self-determination, have been marginalized. The territories nominated by the United Nations did not include the Kurdistan region of Iraq. The Kurdish issue remained without a solution, and outside the impact of these international developments regarding the right to self-determination, which have enhanced its practice and supported respect for it. Because of the lack of political power and influence in regional and international politics, the lack of support from the great powers and the negative position adopted by international

politics towards the Kurdish issue, this issue was neglected by the United Nations and superpowers, and the Kurdistan people have been a victim of global politics.

The case of the Iraqi Kurdistan region is a special case; it is one of the main and complex cases of the right to self-determination globally, and also Kurdistan is a major candidate to be a state in the future. This case, due to its relationship to the Kurdish issue as a whole, its developments, its geopolitics, its outcome and its impacts, constitutes a significant part of politics in the Middle East nationally, regionally, and internationally.

During the last 100 years, for the Kurdistan people self-determination and the establishment of an independent state have been the final goals, to ensure freedom from suppression and protection from the threats to their existence and their future. An attempt at external self-determination by Kurdistan is likely to meet Iraqi, regional and external resistance and powerful forces that have been influential in the Kurdish issue from its inception. However, the distinctive features of Kurdistan, and new theoretical directions in international law regarding the right to self-determination for oppressed peoples, as well as several legal foundations and court rulings, and comparison with other cases suggest that the people of the Kurdistan region have the right to external self-determination and independence, but respecting this right or implementing it is dependent on the balance of power and international politics.

The thesis analysed the subject under the light of three measures: international law, key theories related to self-determination, and international politics.

It is clear that the case of the Kurdistan region falls outside the framework of colonialism, and therefore the traditional international law is not clear in dealing with it. The right to self-determination has recognized clearly peoples and territories under colonial

control. There is also a list by the United Nations of the candidate territories for the exercise of this right, which did not include the Kurdistan region. The Kurdish issue has been neglected by the United Nations over the past decades as a result of international politics and the interests of the great powers and the hegemony of those powers over the establishment, work and instruments of the United Nations. However, there are several legal arguments and foundations that the Kurdistan Region can rely on to justify its demand for self-determination and independence.

First, the first consideration concerns the case of the Kurdistan region in the light of international law. Kurdistan was always different from Iraq and was not part of Iraq. After the collapse of the Ottoman Empire following the First World War, southern Kurdistan remained within the Vilayet of Mosul. It was compulsorily annexed to Iraq by Britain five years after the establishment of the state of Iraq by the British government. The main goal of the British in this forced annexation was to obtain oil and create a Sunni-Shiite sectarian balance in Iraq. Kurdistan, without the will of its owners and its people, was awarded to another country by the colonial country that is not entitled to and does not own this land. Therefore, the decision to forcibly annex Kurdistan to Iraq is considered null and void.

Besides, there is an indirect constitutional basis in favour of the right of the IKR to self-determination, especially when there are violations and non-compliance with the constitution. As the Iraqi constitution stated: "The adherence to this Constitution preserves for Iraq its free union of people, of land, and of sovereignty." There were constitutional violations by Iraqi governments after 2005, like the non-enforcement of constitutional Art.140, about resolving the disputed territories between Baghdad and Erbil. This gave the right to IKR to decide its future freely.

The UN instruments affirm the right to self-determination is a right for all peoples without exception, and by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status. The population of the Kurdistan Region forms a “people”, and they have all material and moral elements and characteristics which shape the concept of the “people”. Therefore, according to the principle of “equal right,” they have the right to self-determination like all other peoples.

According to international instruments, respecting the right to self-determination is a commitment to respect fundamental human rights. Also, according to many legal foundations, hard violations of human rights justify the secession of any people, minority or ethnic group. In addition, the people of Kurdistan have been subjected to violations and abuse by successive Iraqi governments including crimes of genocide, ethnic cleansing, demographic change, forced displacement, bombardment with chemical weapons, destruction of villages and cities, denial of representation or the right to internal self-determination, and extensive violations of fundamental human rights, all in addition to international silence. These crimes and historical grievances, that left hundreds of thousands of victims, constitute a strong additional basis and justification for the Kurdistan Region’s demands and qualify the people of Kurdistan for self-determination and independence according to the remedial right theory, as applied in Kosovo, South Sudan, and Bangladesh.

The decision of the Supreme Court of Canada stated in the Quebec case, that part of the people of the existing state, or an ethnic group and minority have the right to external self-determination whenever it is subject to hard violations of their fundamental rights by

the parent state, is another legal foundation for the right of self-determination for oppressed peoples and minorities. Accordingly, this also constitutes an additional legal basis for the legitimacy of the right to self-determination for the Kurdistan people after all violations and crimes against them by the Iraqi state.

The case of the Kurdistan Region is similar to the Kosovo case in several aspects: the background, the fact that the territories are outside the context of the colonialism that traditional international law sees as a prerequisite for the exercise of external self-determination, as well as, the fact that both peoples are within the borders of independent countries.

The case of Kosovo falls outside the traditional colonial framework, but it does feature oppressed people within the borders of an existing state, so that it could be argued that remedial secession for the oppressed people is justified in international law. Kosovo has exercised the right to external self-determination and declared independence, despite opposition from the mother country Serbia. In addition, the International Court of Justice decision in 2010 on the legality of the declaration of independence of Kosovo stated that the declaration of independence of Kosovo “did not violate general international law”, while the Kosovo people are like the Kurdistan people, and were part of the people of a sovereign state and outside the colonial context. Kosovo’s call for independence obtained international support and has been recognized by more than 110 countries so far including the US and most European countries. This is a significant development in international law in favour of oppressed peoples struggling for independence, even if they are within the borders of existing and independent states.

Therefore, if Kosovo has the right to independence, legally, then the people of Kurdistan also have the right to self-determination and independence.

Yet there is a fundamental difference between the cases of Kosovo and Kurdistan, related to international politics. In the case of Kosovo, there is direct international support in several forms for independence, from the United States, European countries, and many others, when the case has been discussed in the UN Security Council and other different bodies of the United Nations. Also, in the International Court of justice, there was huge international support for the independence of Kosovo. Although the people of Kurdistan have been victims of international politics since the division of Kurdistan and the compulsory annexation of Southern Kurdistan to Iraq, and the subsequent emergence of the Kurdish issue in Iraq, and all serious violations, crimes of genocide, and historical grievances against the Kurdistan people during the last 100 years, there is no country that supports the right to self-determination of the people of Kurdistan and their independence.

The comparison between Kosovo and the Kurdistan region proves once again the key argument of this thesis: the legal principle of self-determination faces the political balance of power, and, the achieving and implementation of the right to self-determination is dependent on the political balance of power and international politics more than the legal legitimacy of this right.

Second, in terms of theories and the right to self-determination for the Iraqi Kurdistan people, according to primary right theory and remedial right theory, the IKR has the right to self-determination, while according to realistic theory, the IKR cannot achieve this right due to the absence of the balance of power and international politics, particularly US policy toward IKR independence.

Primary right theory states that the right to self-determination is a fundamental right for any group of people, and it could be exercised in any territory according to the will of the people or majority of the population there. Although it fully supports and illuminates the discourse of all secessionist peoples and groups, it ignores the political balance of power and the role of international politics in implementing self-determination, which is its weak point. Relying on it to interpret the different cases of self-determination and its applications in different complex political situations is not feasible.

According to primary right theory, the Kurdish people have a right to self-determination like any other people in the world as they have all the necessary characteristics, and the majority supported independence, as in both referendums in Kurdistan in 2005 and 2017; more than ninety per cent voted in favour of independence.

The realistic theory and remedial rights theory are two important theories with which to address the case of Kurdistan's claims to self-determination. The first one is the oldest theory and the second is a new theory in internal national law and politics.

The theory of remedial rights is important for understanding the development of the right to self-determination outside the colonial context, which is a key point of UN instruments. This theory holds that the right to self-determination is a right for every "people" or group if they are exposed to injustice, persecution, and violations of their fundamental rights. It prefers the right of the oppressed people to self-determination and secession over sovereignty and territorial integrity. This theory can examine and justify the Kurdistan region's claims to self-determination, as the Kurdish people have been subjected to injustice, persecution and genocide by the Iraqi state in the past, and currently, they have

profound existential problems with Baghdad; there is a fear of a recurring clash, and the replication of these crimes.

Realistic theory focuses on sovereignty, territorial integrity, the national interest of the existing state, and the balance of power. Sovereignty and territorial integrity are preferred over the right of peoples to self-determination. According to this theory, the right to self-determination must be exercised internally, within the recognized borders of the existing state, along with encouraging reliance on the exercise of this right internally in various ways such as federalism, decentralization, political participation and everyone's participation in public life. The theory does not recognize external self-determination except in one case: if an existing state has failed in maintaining its continuity or collapsed, or a change has resulted in a de facto state, as a result of the balance of power of secessionist peoples. This theory could interpret how international politics, especially US politics, dealt with the Kurdish issue in Iraq. After long neglect, the United States and its allies supported the Iraqi Kurds to develop significantly at the political and economic levels, with the permanent affirmation of the sovereignty and unity of Iraq, strengthening the Kurdistan Region internally and as a part of Iraq without support and encouragement to practice external self-determination and secession from Iraq.

The continuity of various ethno-national issues in different regions of the world assures us that the application of this principle and its respect do not depend only on its legality in law, and scientific theoretical interpretations, but mainly depend on the political balance of power and the positions of the superpowers. The superpowers at the present time espouse a realistic policy that deals with the questions of self-determination in

political contexts and in accordance with the interests of the superpowers, even though it is a legal right in accordance with international law.

The Kurdish people have a right to self-determination and independence, according to both theories: primary right theory and remedial right theory. According to realistic theory, or after addressing the internal and external political ability of the Kurdistan Region, and evaluating the balance of power and the internal, regional and international political situation, the independence of the Kurdistan Region is difficult to achieve at this stage.

Third, in terms of international politics and right to self-determination for the Kurdistan people, particularly the policy of the US, as the key international actor in Iraq and Kurdistan, independence is a difficult concept. US policy still affirms the unity of Iraq and does not accept the independence of the Kurdistan region.

During the last century, US policy has ignored Kurdistan independence under the pretext that establishing a Kurdish state might cause chaos and more conflict and instability in the Middle East. In fact, the US depends on realistic theory in its foreign policy, including US foreign policy in the Middle East, and its position towards the Kurdish issue since the beginning of this issue. Consequently, despite the positive change and continuing supportive US politics, in the post-Cold War era, in order to make this region a strong and safe area within Iraq, US politics' constant affirmation of the unity of Iraq precludes the creation of an independent state in Iraqi Kurdistan. Accordingly, US strategy does not support Iraqi Kurdistan's attempts at independence. There are many reasons behind this position, but arguably the main one is the fact that the Kurds live in four separate states (Turkey, Iraq, Iran, and Syria), and consequently, the Kurdish issue is related to all these

four countries at the same time, and, from the US pragmatic viewpoint, the relations and interests with these countries, particularly with Turkey, are more important than the interests with the Kurdistan region.

The development of the US politics towards the Kurdish issue can be divided into two main stages: the Cold War era and the post-Cold War era. Each period has its own features, elements and characteristics.

In the first stage, US politics was not in favour of the Kurds and negatively affected the Kurdish revolution and their struggle. During this era, the main US goal was the containment and confrontation of the former Soviet Union, and its communist ideology. Consequently, the U.S. only used the Kurdish issue as a political pawn to push the Iraqi regime in such a way as to fulfill its desires and interests in the region. The US intended to put pressure on Iraq's pro-Soviet government. The Kurds played the role of dispensable pawns for U.S. foreign policy over time, and had been pawns in a deadly game played between the U.S. and countries in the region. The U.S. ignored Kurdish rights and was even silent about the crimes and genocide perpetrated against the Kurdish people during this period.

With the end of the Cold War, there has been a dramatic evolution in US politics towards the Kurdish issue. The reasons behind this significant change in US policy in the early nineties included the end of the Cold War and the demise of the Soviet Union and its influence on Iraq and the region, also hostility to the Iraqi regime after its occupation of Kuwait and its threat to the security of Israel and US allies in the region. The United States cooperated with the Kurds, as they shared the same goal: the demise of the Iraqi regime. In addition, there was humanitarian motivation, especially after the immigration of millions

of Iraqi Kurds to the Turkish and Iranian borders, as they feared reprisals from the Iraqi army after the 1991 uprising. Moreover, the Turks put pressure on the United States to move towards curbing the authority of Iraq and limiting its attacks, as they feared that the Kurdish refugee crisis on the Turkish border would lead to security problems and provoke Turkey's Kurds, and provide a threat to its national security. All these factors led to a major shift in the American policy towards the Iraqi Kurds, without supporting them in their main goal of self-determination and independence.

The new US policy towards the Kurdish issue in the post-Cold War era helped the Kurdistan uprising in March 1991. The creation of a no-fly-zone area in the North of Iraq by UNSC Resolution 688 in the same year, which was considered to be the first humanitarian intervention, at least in Iraq, helped Iraqi Kurdistan historically and created the conditions for the establishment of a Kurdish de facto government. In addition, the parliamentary general elections and the establishment of the KRG, have reflected positively on Kurd-US relations. The U.S. pushed the Iraqi Central government to provide the Kurdistan region with a share of the Oil-for-Food program which was under UN monitoring and recognized as UN Resolution 986 in 1996. Also, the Washington Accord of 1998 to end the internal war between the two main Kurdish political parties, the PUK and the KDP was another attempt and initiative by the U.S. to develop its relationship with the Iraqi Kurds and strengthen the stability in IKR.

Furthermore, the cooperation and coordination between the Iraqi Kurds and the United States reached the level of a real partnership when the Kurds stood side by side with the American forces in the operation of liberating Iraq in 2003. This partnership also continued during all the major developments that took place in Iraq post-2003, including

the rebuilding of the Iraqi state, state rule after 2003, confronting extremism, terrorism and the war on ISIS.

In fact, the refusal of the Turkish government to allow American forces to use the Turkish lands in the American intervention in Iraq in 2003 helped the Iraqi Kurds to enhance their relationship and cooperation with the United States in this delicate phase. As a result of the IKR-US partnership, the position of Kurdistan was greatly strengthened for the Americans, and its position was strengthened in the political process in Iraq. During this period the Kurdistan region developed politically and economically. U.S.-Kurdish relations developed into extensive relations in all fields. Yet throughout the last 30 years, the position of the United States has not changed toward the independence of Kurdistan, and it affirms that Kurdistan is a part of Iraq. In this context, it has rejected the Kurdistan independence referendum in 2017 and its results. United States politics is a key factor in determining the future of Iraqi Kurdistan.

The Kurds played a pivotal role in fighting and capturing ISIS. The ISIS war was an existential challenge and threat to the Kurdistan Region, but at the same time, it was an important opportunity for the Kurdistan Region to move towards independence. This war strengthened the position of the Kurdistan Region internally and externally. It strengthened the independence of Kurdistan in its external relations, in terms of relationship and partnership between the IKR and the international community in strategic, security and military fields. The collapse of the Iraqi army in the face of ISIS, and the Iraqi army leaving for disputed areas, offered a historic opportunity for the Kurdistan Region, followed by the control of the Kurdistan Peshmerga forces over those oil-rich areas, which led to the strengthening of the Kurdistan region's position at all levels. After the Kurds gained control

over the disputed areas, which they have claimed for decades, the area of the Kurdistan Region expanded to almost twice its area before the ISIS war, and strengthened its military, economic and demographic power. Hence these developments, besides the tense relationship between Baghdad and Erbil due to the outstanding problems between them including the distribution of authority and wealth, oil, the disputed territories, and the cutting of the KR share from the federal budget in 2014, encouraged the Kurdistan Region to hold the independence referendum in September 2017. The result was expected and a majority, 93 per cent, voted in favour of independence. But instead of this result leading to independence and state-building, due to negative positions at Iraqi, regional and international levels, it caused a stifling political and economic crisis for the Kurdistan Region. The referendum provoked a strong reaction from Baghdad as well as neighbours Iran and Turkey, none of which can accept the breakup of Iraq. In fact, the Iraqi and regional positions were adopted after the US rejected the referendum, in support of the unity of Iraq. This shows the ability of the United States to determine the fate of the Kurdistan Region. This American policy was a continuation of its strategy to preserve the unity of Iraq and the Kurdistan region within a federal and democratic Iraq, with an emphasis on the constitutional rights of the people of the Kurdistan Region in this context. The ruling imposed militarily and politically, then legally by Iraq and the countries of the region like Turkey and Iran, made the Kurdistan Region hesitate to implement the result of the referendum. The true goal of the referendum was achieving independence and secession from Iraq, but the absence of a balance of power in favour of the Kurdistan region, shifted the focus from a referendum to build the state or "obligatory referendum", to a referendum on the opinion of the people about their future or "optional referendum".

The continuity of the developments of the Kurdistan Region at various levels, along with the continuity of existential problems in its relationship with Baghdad, placed the Kurdistan Region at the crossroads between federalism and independence. In principle, Iraqi Kurdistan has several options for redesigning the relationship with Baghdad and shaping its future, including federalism, confederation, and independence. However, in reality, due to the current situation, the lack of supportive international politics, and the balance of power in favour of the unity of Iraq, the position of IKR is difficult. Accordingly, Iraqi Kurdistan at the present stage is forced to stay with Iraq, despite everything that has happened in the past.

The independence of Kurdistan depends on the balance of power and internal, regional and international factors, and these are not in favour of the independence option currently. First of all, there are internal challenges related to the economic crisis, national unity, democracy and corruption besides the persistence of the existential problems between Baghdad and Erbil, especially the strategic disputed territories issue. In addition, at the Iraqi and regional level, there is a categorical rejection of the independence of the Kurdistan Region. US policy emphasizes that the Kurdistan region should remain within a unified, federal and democratic Iraq. Consequently, the Kurdistan Region does not have a balance of power in favour of Kurdistan sovereignty at this moment.

The political developments and historical events since WWI show that the Kurdish issue is the centre of stability in the Middle East, and without solving the Kurdish issue peacefully and allowing the Kurds to exercise their right to self-determination, it will be very difficult to talk about the stable and prosperous area. Moreover, despite the current

circumstances, and the problems and challenges for Iraqi Kurdistan, all indications suggest that the establishment of the Kurdistan state in the future is inevitable.

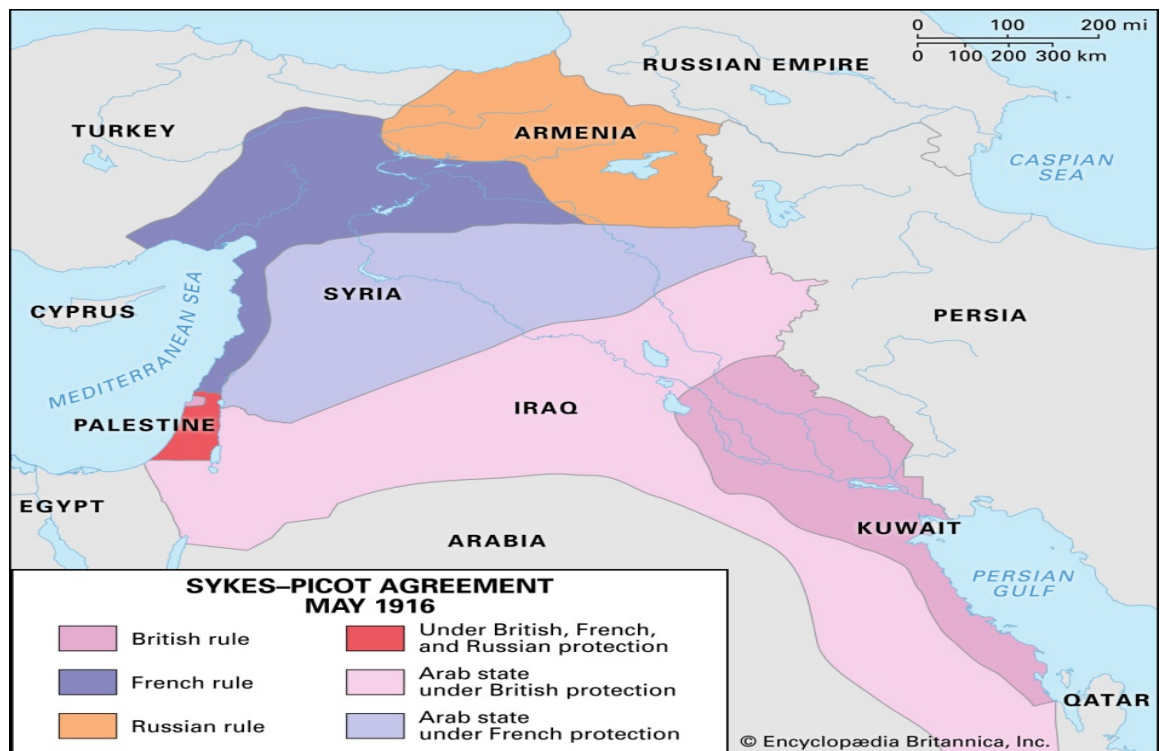
The history of the past 100 years has proven that respecting the right to self-determination and exercising it in a suitable political context, and in a consensual way, will lead to increased peace and national stability, while, preventing the exercising of this right will lead to destabilization at national and international levels. If Kurdistan continues to move towards independence, the KR must demonstrate to the international community, particularly the US and Turkey, that it is capable of functioning as an independent state, that it would be a desirable new sovereign partner. While reaching this goal it needs to create a balance of power, and this is difficult at the present time. Hence, the unilateral declaration of independence, outside the framework of an Iraqi or regional understanding, or without US approval and support, will harm the future of the Kurdistan region and lead to instability.

The appropriate option for Iraqi Kurdistan at this time lies in a comprehensive understanding and agreement with Baghdad according to a new road map and under international supervision, that starts by solving the key problems between Baghdad and Erbil and ending with securing the right of self-determination for the people of Kurdistan. The Kurdistan region should work through a long-term strategy to establish a state rather than trying to declare a state.

Appendices

Appendix I

The map of Sykes-Picot Agreement



The map of Sykes-Picot Agreement 1916, *britannica*, accessed June 03, 2016. <https://www.britannica.com/event/Sykes-Picot-Agreement>

Appendix II

The Sykes-Picot Agreement: 1916 ¹⁵⁷²

It is accordingly understood between the French and British governments:

That France and Great Britain are prepared to recognize and protect an independent Arab states or a confederation of Arab states (a) and (b) marked on the annexed map, under the suzerainty of an Arab chief. That in area (a) France, and in area (b) Great Britain, shall have priority of right of enterprise and local loans. That in area (a) France, and in area (b) Great Britain, shall alone supply advisers or foreign functionaries at the request of the Arab state or confederation of Arab states.

That in the blue area France, and in the red area Great Britain, shall be allowed to establish such direct or indirect administration or control as they desire and as they may think fit to arrange with the Arab state or confederation of Arab states.

That in the brown area there shall be established an international administration, the form of which is to be decided upon after consultation with Russia, and subsequently in consultation with the other allies, and the representatives of the Shereef of Mecca.

That Great Britain be accorded (1) the ports of Haifa and Acre, (2) guarantee of a given supply of water from the Tigris and Euphrates in area (a) for area (b). His Majesty's government, on their part, undertake that they will at no time enter into negotiations for the cession of Cyprus to any third power without the previous consent of the French government.

That Alexandretta shall be a free port as regards the trade of the British empire, and that there shall be no discrimination in port charges or facilities as regards British shipping and British goods; that there shall be freedom of transit for British goods through Alexandretta and by railway through the blue area, or (b) area, or area (a); and there shall be no discrimination, direct or indirect, against British goods on any railway or against British goods or ships at any port serving the areas mentioned.

That Haifa shall be a free port as regards the trade of France, her dominions and protectorates, and there shall be no discrimination in port charges or facilities as regards French shipping and French goods. There shall be freedom of transit for French goods through Haifa and by the British railway through the brown area, whether those goods are intended for or originate in the blue area, area (a), or area (b), and there shall be no discrimination, direct or indirect, against French goods on any railway, or against French goods or ships at any port serving the areas mentioned.

That in area (a) the Baghdad railway shall not be extended southwards beyond Mosul, and in area (b) northwards beyond Samarra, until a railway connecting Baghdad and

¹⁵⁷² Yale law school, Lillian Goldman Law Library, *the Avalon project documents in law history and Diplomacy*, accessed date march 2,2017, http://avalon.law.yale.edu/20th_century/sykes.asp

Aleppo via the Euphrates valley has been completed, and then only with the concurrence of the two governments.

That Great Britain has the right to build, administer, and be sole owner of a railway connecting Haifa with area (b), and shall have a perpetual right to transport troops along such a line at all times. It is to be understood by both governments that this railway is to facilitate the connection of Baghdad with Haifa by rail, and it is further understood that, if the engineering difficulties and expense entailed by keeping this connecting line in the brown area only make the project unfeasible, that the French government shall be prepared to consider that the line in question may also traverse the Polgon Baniyas Keis Marib Salkhad tell Otsda Mesmie before reaching area (b).

For a period of twenty years the existing Turkish customs tariff shall remain in force throughout the whole of the blue and red areas, as well as in areas (a) and (b), and no increase in the rates of duty or conversions from ad valorem to specific rates shall be made except by agreement between the two powers.

There shall be no interior customs barriers between any of the above mentioned areas. The customs duties leviable on goods destined for the interior shall be collected at the port of entry and handed over to the administration of the area of destination.

It shall be agreed that the French government will at no time enter into any negotiations for the cession of their rights and will not cede such rights in the blue area to any third power, except the Arab state or confederation of Arab states, without the previous agreement of his majesty's government, who, on their part, will give a similar undertaking to the French government regarding the red area.

The British and French government, as the protectors of the Arab state, shall agree that they will not themselves acquire and will not consent to a third power acquiring territorial possessions in the Arabian peninsula, nor consent to a third power installing a naval base either on the east coast, or on the islands, of the red sea. This, however, shall not prevent such adjustment of the Aden frontier as may be necessary in consequence of recent Turkish aggression.

The negotiations with the Arabs as to the boundaries of the Arab states shall be continued through the same channel as heretofore on behalf of the two powers.

It is agreed that measures to control the importation of arms into the Arab territories will be considered by the two governments.

I have further the honor to state that, in order to make the agreement complete, his majesty's government are proposing to the Russian government to exchange notes analogous to those exchanged by the latter and your excellency's government on the 26th April last. Copies of these notes will be communicated to your excellency as soon as exchanged. I would also venture to remind your excellency that the conclusion of the present agreement raises, for practical consideration, the question of claims of Italy to a share in any partition or rearrangement of turkey in Asia, as formulated in article 9 of the agreement of the 26th April, 1915, between Italy and the allies.

His Majesty's government further consider that the Japanese government should be informed of the arrangements now concluded.

Appendix III

The map of Mosul Vilayet in the Ottoman Empire

MOSUL VILAYET IN THE OTTOMAN EMPIRE



Reva Bhalla, Turkey, the Kurds and Iraq: The Prize and Peril of Kirkuk. Iraqi Economists Network, accessed June 03, 2019. <http://iraqieconomists.net/en/2014/10/11/turkey-the-kurds-and-iraq-the-prize-and-peril-of-kirkuk-by-reva-bhalla/>

Appendix IV

The Treaty of Sevres of 1920¹⁵⁷³

Articles 62-4

SECTION III

KURDISTAN

ARTICLE 62

A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia, as defined in Article 27, II (2) and (3). If unanimity cannot be secured on any question, it will be referred by the members of the Commission to their respective Governments. The scheme shall contain full safeguards for the protection of the Assyro-Chaldeans and other racial or religious minorities within these areas, and with this object a Commission composed of British, French, Italian, Persian and Kurdish representatives shall visit the spot to examine and decide what rectifications, if any, should be made in the Turkish frontier where, under the provisions of the present Treaty, that frontier coincides with that of Persia.

ARTICLE 63

The Turkish Government hereby agrees to accept and execute the decisions of both the Commissions mentioned in Article 62 within three months from their communication to the said Government.

ARTICLE 64

If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas.

The detailed provisions for such renunciation will form the subject of a separate agreement between the Principal Allied Powers and Turkey.

¹⁵⁷³ Lawrence Martin, *The Treaties of Peace, 1919-1923, Volume 1*, 779.

If and when such renunciation takes place, no objection will be raised by the Principal Allied Powers to the voluntary adhesion to such an independent Kurdish State of the Kurds inhabiting that part of Kurdistan which has hitherto been included in the Mosul vilayet.

Appendix V

The ancient Middle East's Map

Map was made Mahmud al-Kashgari in 1074, at the map you can see Middle East (Erdul Ekrad) in Arabic country of Kurds



Kurdistan historical real maps 1074 and 1893, Skperyscar city, accessed May 12, 2018.
<https://www.skyscrapercity.com/threads/kurdistan-historical-real-maps-1074-and-1893.1292619/>

Appendix VI

The map of Ottoman Empire

The map of Ottoman Empire was made in 1893 during Abdul Hamid II. There is Kurdistan in Arabic alphabet, there is wide land called Kurdistan.



Kurdistan historical real maps 1074 and 1893, *Skperyscar* city, accessed May 12, 2018. https://www.skyscrapercity.com/threads/kurdistan-historical-real-maps-1074-and-1893.1292619/#lg=attachment_xfUid-4-1593007259&slide=0

Appendix VII

The Agreement of 11 March 1970 ¹⁵⁷⁴

Autonomy Agreement between Kurd and Iraqi government

1. The Kurdish language shall be, alongside the Arabic language, the official language in areas with a Kurdish majority; and will be the language of instruction in those areas and taught throughout Iraq as a second language.
2. Kurds will participate fully in government, including senior and sensitive posts in the cabinet and army.
3. Kurdish education and culture will be reinforced.
4. All officials in Kurdish majority areas shall be Kurds or at least Kurdish-speaking.
5. Kurds shall be free to establish student, youth, women's and teachers' organisations of their own.
6. Funds will be set aside for the development of Kurdistan.
7. Pensions and assistance will be provided for the families of martyrs and others stricken by poverty, unemployment or homelessness.
8. Kurds and Arabs will be restored to their former place of habitation.
9. The Agrarian Reform will be implemented.
10. The Constitution will be amended to read "The Iraqi people is made up of two nationalities, the Arab nationality and the Kurdish nationality."
11. The broadcasting station and heavy weapons will be returned to the Government.

¹⁵⁷⁴ Mcdowall, *A Modern History of the Kurds*, 327–328.; Gareth R. V. Stansfield, *Iraqi Kurdistan: Political Development and Emergent Democracy* (London and New York: Routledge, 2003), 192.

12. A Kurd shall be one of the vice-presidents.
13. The Governorates (Provincial) Law shall be amended in a manner conforming with the substance of this declaration.
14. Unification of areas with a Kurdish majority as a self-governing unit.
15. The Kurdish people shall share in the legislative power in a manner proportionate to its population in Iraq

Appendix VIII

UN List of Non-Self-Governing Territories

UN List of Non-Self-Governing Territories by Region and Administrative Authority¹⁵⁷⁵

AFRICA

1. Western Sahara, Since 1963, Spain.

ATLANTIC AND CARIBBEAN

2. Anguilla, Since 1946 United Kingdom.
3. Bermuda, Since 1946, United Kingdom.
4. British Virgin Islands, Since 1946, United Kingdom.
5. Cayman Islands, Since 1946, United Kingdom.
6. Falkland Islands (Malvinas), Since 1946, United Kingdom.
7. Montserrat, Since 1946, United Kingdom.
8. Saint Helena, Since 1946, United Kingdom.
9. Turks and Caicos Islands, Since 1946, United Kingdom.
10. United States Virgin Islands, Since 1946, United States.

EUROPE

11. Gibraltar, Since 1946, United Kingdom.

PACIFIC

12. American Samoa, Since 1946, United States.
13. French Polynesia, 1946-1947 and since 2013, France.
14. Guam, Since 1946, United States.
15. New Caledonia, 1946-1947 and since 1986, France.
16. Pitcairn, Since 1946, United Kingdom.
17. Tokelau, Since 1946, New Zealand.

¹⁵⁷⁵ UN, "Non-Self-Governing Territories," *United Nations and decolonization*. Accessed august 4, 2017. <https://www.un.org/dppa/decolonization/nsgt>

Appendix IX

The US Secretary of State letter to the President of the Kurdistan region

The US Secretary of State Rex Tillerson's letter to the President of the Kurdistan region Masoud Barzani to request the postponement of the 2017 referendum.¹⁵⁷⁶

Dear President Barzani,

I am writing on behalf of the United States to express our profound respect for you and for the people of the Iraqi Kurdistan Region. Together, over decades, we have forged a historic relationship, and it is our intention and commitment that this relationship continues to strengthen over the decades to come. Over the past three years, in particular, our strong partnership and your brave decisions to cooperate fully with the Iraqi Security Forces turned the tide against ISIS. We honor and we will never forget the sacrifice of the Peshmerga during our common struggle against terrorism.

Before us at this moment is the question of a referendum on the future of the Kurdistan Region, scheduled to be held on September 25. We have expressed our concerns. These concerns include the ongoing campaign against ISIS, including upcoming operations in Hawija, the uncertain regional environment, and the need to focus intensively on stabilizing liberated areas to ensure ISIS can never return. Accordingly, we respectfully request that you accept an alternative, which we believe will better help achieve your objectives and ensure stability and peace in the wake of this necessary war against ISIS.

This alternative proposal establishes a new and accelerated framework for negotiation with the central Government of Iraq led by Prime Minister Abadi. This accelerated framework for negotiation carries an open agenda and should last no longer than one year, with the possibility of renewal. Its objective is to resolve all issues outstanding between Baghdad and Erbil and the nature of the future relationship between the two. We would also seek to address your immediate fiscal and security needs.

Mr. President, we recognize your frustrations over the past decade, and, indeed, the historic wrongs suffered by the Kurdish people in Iraq since 1921. We accept the essential need to find an agreed way forward that can address the needs and requirements of all the races, creeds, and ethnicities in this ancient land. This is essential for the stability of your region, and protection of our own national security interests. For all of these reasons, it is the policy of the United States under the

¹⁵⁷⁶ Tillerson to Barzani, *Bloomberg*, delivered on 23 September, accessed October 12, 2017. <https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rsJkyXsgEaig/v0>

administration of President Trump to do everything in our power to help you and the central government resolve these outstanding issues, and ensure that our full weight and authority stand behind this new framework for negotiation.

Furthermore, we are prepared to help facilitate U.N. Security Council endorsement, as soon as possible, to further support this process, and the full participation of the United Nations, and our critical partners, such as the U.K. and France. This is a rare opportunity that we respectfully ask you accept as an alternative to the currently scheduled referendum, which we believe would carry serious consequences – and even, perversely, set back your objectives.

Given the history of the Kurdish people, we understand that you would envision this proposed dialogue as a last chance. We believe, however, that it is a chance worth taking – particularly in the wake of your historic victories against ISIS, unprecedented cooperation between Iraqi Security Forces and the Kurdish Peshmerga, and strong international support. **At the end of this process, of course, should the talks not reach a mutually acceptable conclusion or fail on account of lack of good faith on the part of Baghdad we would recognize the need for a referendum.**

In exchange for our commitment to help support this serious framework for dialogue – as an alternative to delay the scheduled referendum – we ask for your commitment on the following points:

First, negotiation with Baghdad remains the basis for reaching an understanding and finding a common agreement on the future relationship between the Kurdistan Region and the Government of Iraq. Whether this means a truly functioning federalism or some other formula confederation, or independence, it must be reached through a peaceful negotiation.

Second, the Kurdistan Region and the Kurdish Peshmerga would continue to remain key partners within our International Coalition to Defeat ISIS, maintaining appropriate Coalition support, as you continue the historic coordination with the Iraqi Security Forces. The United States would plan to accelerate our own efforts to support Joint Security Mechanisms, particularly in territories, such as Sinjar, that remain unstable after ISIS. We must work jointly together to ensure stability in these sensitive areas.

Third, the boundaries of the Iraqi Kurdistan Region would be identified through negotiations with Baghdad, consistent with the process outlined in Article 140. The United States would support, together with the UN, and in cooperation with the Government of Iraq, an accelerated process to resolve these issues within the set time-frame as described above.

Fourth, we expect that you will continue to exert efforts to cooperate with the current Government of Iraq, led by Prime Minister Abadi, including participation in the 2018 national elections, and exert a positive influence in Baghdad when it comes to forming a new government after those elections. Your statesmanship and leadership will be essential during this post-ISIS period for the entire region.

Parallel to the frame work for negotiation, we will support and facilitate resolving the following issues within one year:

1. Implement meaningful power and revenue sharing arrangements.
2. Implementation of Article 140.
3. To resolve other issues such as Peshmerga, civil aviation, diplomatic representation, etc.

We believe this letter and your courageous decision to accept this alternative sets the foundation for a historic opportunity between the United States, the Kurdistan Region, and the Government of Iraq in the wake of our shared sacrifice and victories against ISIS. On behalf of the United States,

President Donald J. Trump, and our entire National Security Team, we are honored to work with you.

Respectfully,

Rex Tillerson

Appendix X

The voting card in Kurdistan Region Independence Referendum in 2017



Sumernews, The voting card in Kurdistan Region Independence Referendum in 2017, *Sumernews*, accessed September 12, 2018.

<http://ww-w.sumer.news/ar/news/22049>

Appendix XI

Woodrow Wilson's Fourteen Points

THE TEXT OF THE FOURTEEN POINTS

PRESIDENT WILSON'S *Fourteen Points*, as set forth in an address made before the joint session of Congress, on January 8, 1918.

- 1 Open covenants of peace openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view.
- 2 Absolute freedom of navigation upon the seas outside territorial waters alike in peace and in war, except as the seas may be closed in whole or in part by international action or the enforcement of international covenants.
- 3 The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.
- 4 Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.
- 5 A free, open-minded and absolutely impartial adjustment of all colonial claims based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.
- 6 The evacuation of all Russian territory, and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy, and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their goodwill, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.
- 7 Belgium, the whole world will agree must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.
- 8 All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.
- 9 A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.
- 10 The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity of autonomous development.
- 11 Rumania, Serbia and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan States to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan States should be entered upon.
- 12 The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.
- 13 An independent Polish State should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.
- 14 A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike.

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UNIVERSITY of CLERMONT AUVERGNE

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DOCTORATE in POLITICAL SCIENCE

Ali Kareem NORE

INTERNATIONAL POLITICS AND THE RIGHT TO SELF-DETERMINATION

The Case of Iraqi Kurdistan

Thesis supervised by

Frederic CHARILLON, Professor of Political Science at the University of Clermont Auvergne, and
Marie-Elisabeth BAUDOIN, Professor of Public Law at the University of Clermont Auvergne.

Defended on May 23, 2022.

JURY:

- **Mrs. Marie-Elisabeth BAUDOIN,**
Professor of public Law, University of Clermont Auvergne, Thesis Director
- **Mr. Frederic CHARILLON,**
Professor of political science, University of Clermont Auvergne, Thesis Director
- **Mr. Jean -Vincent HOLEINDRE,**
Professor of political science, University of Paris II, Rapporteur
- **Mr. Pierre RAZOUX,**
Academic director, Fondation Méditerranéenne d'Etudes Stratégiques (FMES), Member
- **Mr. Jean-Jacques ROCHE,**
Professor of political science, University of Paris II, Rapporteur

International Politics and the Right to Self-Determination: The Case of Iraqi Kurdistan

ABSTRACT

The subject of self-determination as a core principle and a legal right for peoples, which enables them to shape their future according to current international law, remains legally and politically problematic. This thesis is an analytical study; it focuses on the influence of international politics and the political balance of power on the implementation of the right of self-determination. The main objective of this thesis is to provide a scientific interpretation of the right to self-determination, focusing on the case of the Iraqi Kurdistan Region in light of international law, the balance of power, and regional and international politics. The significance of this topic lies in its connection with the freedom of people to determine their future, and to deal with ethno-national conflicts, as well as to ensure national and international peace and security. The main problem is the legal principle facing the political balance of power. The key hypothesis is the realization of the right to self-determination depends on the political balance of power and international politics more than legal legitimacy. The Kurdistan Question started with WWI, when Kurdistan was divided between four countries: Turkey, Iran, Iraq, and Syria, according to the Sykes-Picot treaty (1916). The case of the Kurdistan Region, and its claims to self-determination, is a complex subject, due to its national, regional, and international dimensions, and the role played by superpowers. The people of Kurdistan have the right to self-determination, but because of the absence of a balance of power, and the oppositional policies of neighboring countries in addition to unsupportive international politics, they cannot exercise this right yet. Continuing to demand the option of independence requires the IKR to adopt a different long-term strategy to change the current political balance.

Politique internationale et droit à l'autodétermination: le cas du Kurdistan irakien

RÉSUMÉ

Le sujet de l'autodétermination en tant que principe fondamental et droit légal des peuples, qui leur permet de façonner leur avenir conformément au droit international actuel, reste juridiquement et politiquement problématique. Cette thèse est une étude analytique; il met l'accent sur l'influence de la politique internationale et l'équilibre des forces politique sur la mise en œuvre du droit à l'autodétermination. L'objectif principal de cette thèse est de fournir une interprétation scientifique du droit à l'autodétermination, en se concentrant sur le cas de la région du Kurdistan irakien au regard du droit international, et l'équilibre des forces politique régionale et internationale. L'importance de ce sujet réside dans son lien avec la liberté des peuples de déterminer leur avenir, de faire face aux conflits ethno-nationaux et d'assurer la paix et la sécurité nationales et internationales. Le principal problème reste autour du principe juridique face à l'équilibre des forces politique. L'hypothèse clé est que la réalisation du droit à l'autodétermination dépend de l'équilibre des forces politique et de la politique internationale plus que de la légitimité juridique. La question du Kurdistan a commencé avec la Première Guerre mondiale, lorsque le Kurdistan a été divisé entre quatre pays: la Turquie, l'Iran, l'Irak et la Syrie, selon le traité Sykes-Picot (1916). Le cas de la Région du Kurdistan, et ses prétentions à l'autodétermination, est un sujet complexe, en raison de ses dimensions nationales, régionales et internationales, et du rôle joué par les superpuissances. Le peuple du Kurdistan a le droit à l'autodétermination, mais en raison de l'absence d'équilibre des forces et des politiques d'opposition des pays voisins en plus de la politique internationale non favorable, il ne peut pas encore exercer ce droit. Si l'IKR continue à demander l'indépendance, il doit changer sa stratégie à long terme pour modifier l'équilibre politique actuel.

Keywords: Kurdistan, Kurdish issue, Self-determination, political Balance of power, Iraq, International Law, International Politics, People concept, Ethno-national issues, United Nations, Realism theory, Remedial right theory, Kurdistan Independence Referendum, United States policy.