

The Right to Self-Determination of Kurds in Iraq; Perspectives International Law

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Abstract--- *The principle of self-determination has come a long way from its origins as a tool for political rhetoric to its current status as a right of international law valid erga omnes. However, the contents of the right to self-determination, as well as its applicability, remain unclear. This holds true especially concerning national minorities, which have not traditionally been considered recipients of this right. This paper investigates the extent to which national – particularly ethnic – minorities have a legal right to self-determination, both internally within a State and externally, allowing for secession and the formation of a new State. However, discusses the meaning of the right to self-determination in its historical and contemporary perspective, and examines the different options available for the accommodation of contested self-determination claims. Detailing these implications in relation to the Iraqi Kurdistan Region (IKR).*

Keywords--- *Self-determination, Kurd, Minority, Independence, Right.*

I. INTRODUCTION

This paper examines the right to self-determination under international law. The examination covers the historical background and development of this right, including the development of related international regimes, particularly the UN Charter, the Declaration of the Granting of Independence to Colonial Countries and Peoples, the International Covenant on Civil Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Declaration on Friendly Relations. After addressing these initial matters, the chapter goes on to examine the legal nature and scope of the right to self-determination, including the rights conferred, the duties imposed and the entities to which these apply. The relationship of the right to self-determination to other principles of international law, including human rights law, as well as the different manifestations of this right, such as internal self-determination and external self-determination, are also examined. In addressing these issues, the chapter explores the case law on self-determination, especially the jurisprudence of the International Court of Justice (ICJ).

II. LITERATURE REVIEW

2.1 Concept and Meaning of the Right to Self-Determination

One of the cardinal principles of international law is the right to self-determination. This principle was the battle cry of independence movements in many colonies and provided the legal basis upon which they agitated for emancipation from colonial rule. It is founded on the equality of all peoples and epitomizes their right to decide their

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own destiny free of external interference or control. It intertwines with other principles of public international law, such as the sovereignty and equality of states, as well as the cognate principles of non-intervention and the prohibition of the use of force.

Indigenous and minority groups have similarly appealed to the right to self-determination in their quest for freedom from sovereign independent states and foreign control. The right to self-determination is not only a feature of public international law, however. It also resonates with international human rights law, which recognises that people living within a sovereign state enjoy equality of rights, and particularly, an individual and collective right to 'freely determine political status and to freely pursue economic, social and cultural development.' (ICCPR, 1966 & (Idowu, 2008).

Cassese illuminates the significance of the right to self-determination by stating 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 (Antonio, 1995).' He adds that, '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 (Antonio, 1995).

Relatedly, Thornberry expresses the bifurcated view that self-determination is the right of all peoples to self-governance (Nazila, 2005). In addition to serving as the basis for a claim to statehood by groups aspiring for one, it is also pivotal in preserving the sovereignty and independence of existing states, as well as in ensuring full control over their resources, and the amicable resolution of disputes. In a nutshell, self-determination is an essential aspect of democracy and a systematic means for state creation under international law.

Nevertheless, despite its importance, the precise meaning and scope of self-determination is mired in controversy. The assertion that international law confers on a people the right to self-determination leaves many obscure and fluid questions unaddressed. For example, the precise meaning of 'self-determination or 'a people,' remains uncertain.

In both Articles 1(2) and 55 of the United Nations (UN) Charter, reference is made to the right to self-determination. This principle, even though not categorically so stated, lays the groundwork for other chapters of the Charter dwelling on territories that are not self-governing and the system of trusteeship.

On the above basis, it is arguable that all UN member states, by ratifying the UN Charter, have agreed to uphold people's right to self-determination. The adoption of the UN Charter in 1945 was followed by the Universal Declaration of Human Rights in 1948 (UDHR 1948). Close to two decades later, two more comprehensive human rights instruments were adopted namely, the International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. Unlike the UHDR, which is generally viewed as general and discretionary, the ICCPR and ICESCR, including the rights enshrined therein, are intended to be legally binding due to all signatory states thereto this principle (ICESCR, 1966). At the same time, since 1976 when the ICCPR became legally effective,

Still, what emerges from the foregoing analysis is that the exact contours of the principle of self-determination in terms of its substantive meaning, the rights it confers, the duties it imposes and the entities to which it applies continue to be in a state of flux. This shifting nature of the principle of self-determination also renders it amenable to diverse goals and conditions (Kerim Yildiz, 2007). Beyond emancipation from colonial rule self-determination is viewed as the intrinsic right of a people to pursue and realise their socio-economic and cultural aspirations through a system of democratic self-governance.

2.2 Historical Background

Viewed from the standpoint of its central meaning as ‘equality,’ some accounts have traced the origin of self-determination to Greco-Roman and Afro-Asian systems of thought (S. James Anaya, 1996). For others though, the right dates from more modern times, at about the latter half of the 18th century, particularly, following the United States Declaration of Independence in 1776 and the French Revolution of 1789 (Antonio Cassese, 1995). Both of these events challenged the view that monarchs had sole authority over the destiny of peoples and their territories.

That understanding of self-determination was first demonstrated through the acquisition of territories based on the will of people, by the French, who annexed Alsace, Avignon, Belgium and the Palatinate at the beginning of the French Revolution. The French had conducted plebiscites in those regions where the people voted for unification with France. As Lorca argues, even before the outbreak of World War I, there was already a historical precedent for self-determination as people deployed the principles of justice to clamour for their rights (Arnulf Becker, 2014).

In the 19th century, self-determination experienced a major transition when the then U.S. President, James Monroe, in a bid to forestall European interference in South America, asserted that countries in that region had a right to self-determination (Andrew Gray, 1997). President Monroe’s famous declaration of ‘Americas for the Americans’ would later be known as the Monroe doctrine. Simultaneous with events in America, similar revolts were taking place against the tyranny of kings and members of the aristocracy, the highpoint of which was reached during the French Revolution that entrenched self-determination and accentuated its significance for the rights of individuals and peoples. Such rights entitle people to enjoy freedom, resist oppression and determine the organisation of the state, based on their own notion of governance (Joshua Castellino, 2000). These progressive movements led to the notion of democratic governance and reinforced the right to self-determination.

President Wilson’s espousal of self-determination following World War I, received comparatively greater acknowledgement. As far as he was concerned, nationalist movements were responsible for much of the political turmoil that plagued Europe before that war. He suggested, as a way out of that political quagmire, that such movements and their aspirations be condoned, rather than suppressed. Unsurprisingly, his tenure in the White House saw the U.S. take a liberal stance on the formation of new states. Still, like his Soviet counterparts, Wilson’s utterances on self-determination were somewhat more rhetorical than real. His double talk was clearly visible when, despite having assured nations, including the Kurds, of independence, he collaborated with Britain and France, through the Sykes-Picot Agreement, to partition the Middle East into territories that subsequently became colonies, with minorities such as the Kurds.

2.3 Forms of the Right to Self-determination

In view of the apparently broad nature of the principle of self-determination, it is, at least, for the sake of theoretical convenience, subdivided into two: internal self-determination and external self-determination. The former may be manifested through diverse forms of autonomous rule, while the latter may take the form of new state creation. These categorisations are often a general reflection of developments in the law of self-determination, but at other times, the product of scholarly commentary.

2.3.1 Internal Self-determination

This form of the self-determination typically does not seek outright secession or disruption of the political, economic and cultural integrity of sovereign states. It only expresses the right of peoples living within a sovereign state to determine their own political status. It resonates mostly with the non-colonial context and speaks of the right of a people to decide their socio-economic and cultural structures, based on their own free will and through democratic means.

As explained earlier, internal self-determination may unfold in different ways. These include autonomous rule within a sovereign state, or federal or other special constitutional mechanisms adopted to meet the demands of a particular people. Other forms of self-determination can be seen in the literature. For example, as noted previously, Simpson refers to devolutionary self-determination, which means the series of institutional frameworks and other innovative measures designed by states to appease disaffected national and tribal groups living within them. Devolutionary self-determination is observable in states such as Canada, Australia, Spain and the U.S. [and Spain self-government favored in the United States, and regionalism in Spain (Gerry J Simpson, 1996). Tomuschat mentions federal right of self-determination (Tomuschat, 1993) which is similar to the devolutionary model Simpson describes. Tomuschat calls any form of self-determination within framework of a state as political self-determination (Tomuschat¹⁹⁹³). Political self-determination may take all forms that are less intrusive than secession.

The 1970 Declaration on Principles of International Law recognised the right to internal self-determination (A/RES/2625 (XXV)). This right enjoys similar recognition from other international legal instruments, (A/RES/2200(XXI). such as the UN Charter, as well as the ICCPR, which has received the ratification of most countries. Through these instruments, states have expressed their commitment to respect for, as well as the protection and fulfillment of the right to internal self-determination. Thus, states have a duty in respect of this right under international law. The most significant form of internal self-determination is usually the attainment of autonomous rule for specific minorities living under an independent state. Brief attention is given below to some of the diverse ways in which the right to autonomous rule may be exercised in modern independent states.

Self-autonomy may take the form of territorial units vested with broad legislative powers and the enjoyment of considerable economic, financial and taxation independence. Some useful examples are Catalonia in Spain, Scotland in the UK, Gagauzia in Moldova, the Aaland Islands Finland, and Greenland in Denmark and South Tyrol in Italy. In some cases, such units may not have real legislative powers, but may exercise a sizeable degree of administrative regulatory powers, as can be seen in Crimea, Tatarstan, Corsica and Wales. (A Legare & M Suksi, 2008).

2.3.2 External Self-determination

Unlike its internal counterpart, external self-determination is more controversial in the legal discourse. Nonetheless, it generally connotes the decision of a people to form their own sovereign state, or to forge a free association with an existing independent state or integration with such a state. (A/RES/1541, 1960) This right rarely arises. It is widely associated with colonialism or foreign occupation. There is broad agreement that people living under such conditions are entitled to the right to external self-determination. As McCorquodale puts it, external self-determination 'was applied most frequently to colonial situations as it concerns the territory of State, its division, enlargement or change and the state's consequent international external relations with other states (McCorquodale, 1994).

Outside the context of colonial rule or foreign occupation, views divide on whether the right to external self-determination exists. Understandably, to uphold this right in other situations would open the door to unilateral secession from sovereign states, potentially undermining their territorial integrity. It seems that, in cases not involving colonial rule, self-determination has an internal nature, which implies a people's right to independently seek their own socio-economic and cultural development through democratic governance.

Under the 1960 Decolonisation Declaration, the right to external self-determination may be exercised in three ways: (i) emergence of sovereign independent states; (ii) free association with an independent state or (iii) integration with an independent state. (A/RES/1514(XV), 1960) It can be said that, under the Decolonisation Declaration, secession from an independent state is not the only way of exercising the right to external self-determination outside the colonial era.

According to Arechaga, the right to external self-determination through unilateral secession would enjoy legality, only if has been successfully exercised and has won widespread international backing, as was the case in the secession of Bangladesh from Pakistan (Jimenez De Arechaga, 1978). In apparent support of this view, others maintain that the way unilateral secession is received, depends on the effectiveness of the breakaway and the particular circumstances of its occurrence (Christopher O. Quayle, 1992).

2.4 Kurds and Kurdistan Background

Kurd, Population that inhabits region known as "Kurdistan" in Middle Eastern, an extensive plateau and mountain area, in South West Asia, including parts of East Turkey, North East Iraq, and North West Iran and smaller sections of North East Syria and Armenia. The region lies astride the Zagros Mts. (Iran) and the eastern extension of the Taurus Mts. (Turkey) and extends in the south across the Mesopotamian plain and includes the upper reaches of the Tigris and Euphrates rivers. (McDowall, 1996)

The Kurds were conquered by the Arabs in the 7th cent. The region was held by the Seljuk Turks in the 11th cent., by the Mongols from the 13th to 15th cent., and then by the Safavid and Ottoman Empires. Having been decimated by the Turks in the years between 1915 and 1918 and having struggled bitterly to free themselves from Ottoman rule, the Kurds were encouraged by the Turkish defeat in World War I and by U.S. President Woodrow Wilson's plea for self-determination for non-Turkish nationalities in the empire. The Kurds brought their claims for independence to the Paris Peace Conference in 1919. (Wilson's, 1918 and Chaliand, 2017)

The Treaty of Sèvres (1920), which liquidated the Ottoman Empire, provided for the creation of an autonomous Kurdish state. Because of Turkey's military revival under Kemal Atatürk, however, the Treaty of Lausanne (1923), which superseded Sèvres, failed to mention the creation of a Kurdish nation. Revolts by the Kurds of Turkey in 1925 and 1930 were forcibly quelled. In the late 1930s aerial bombardment, poison gas, and artillery shelling of Kurdish strongholds by the government resulted in the slaughter of many thousands of Turkey's Kurds. In the British mandate of Iraq, there were unsuccessful uprisings in 1919, 1923, and 1932. The Kurds in Iran also rebelled during the 1920s, and at the end of World War II a Soviet-backed Kurdish "republic" existed briefly. (Treaty of Sèvres, 1920 & Olson 1989)

With the overthrow of the Iraqi monarchy in 1958, the Kurds hoped for greater administration and development projects, which the new Ba'athist government failed to grant. Agitation among Iraq's Kurds for a unified and autonomous Kurdistan led in the 1960s to prolonged warfare between Iraqi troops and the Kurds under Mustafa al-Barzani. In 1970, Iraq finally promised local self-rule to the Kurds, with the city of Erbil as the capital of the Kurdish area. The Kurds refused to accept the terms of the agreement, however, contending that the president of Iraq would retain real authority and demanding that Kirkuk, an important oil center, be included in the autonomous Kurdish region. (Meho, 1968)

In 1974 the Iraqi government sought to impose its plan for limited autonomy in Kurdistan. It was rejected by the Kurds, and heavy fighting erupted. After the establishment of the Islamic Republic in Iran (1979), the government there launched a murderous campaign against its Kurdish inhabitants as well as a program to assassinate Kurdish leaders. Iraqi attacks on the Kurds continued throughout the Iran-Iraq War (1980–88), culminating (1988) in poison gas attacks on Kurdish villages to quash resistance and in the rounding up and execution of male Kurds, all of which resulted in the killing of some 200,000 in that year alone. (McDowall, 1996)

With the end of the Persian Gulf War (1991), yet another Kurdish uprising against Iraqi rule was crushed by Iraqi forces; more than 1,500,000 Kurds fled to the Iraq-Turkey border, and nearly one million fled to Iran. Thousands of Kurds subsequently returned to their homes under UN protection. In 1992 the Kurds established an "autonomous region" in N Iraq and held a general election. (McDowall, 1996) In 2013 they have done decide entirely and confessed formally and legally and legitimately and constitutionally that Iraqi Kurdistan is the region. (Iraqi Constitution, 2005) In 25 September 2017 Kurd voted to independence by referendum adopted on parliament resolution.

III. JURISPRUDENCE OF THE INTERNATIONAL COURT OF JUSTICE ON SELF-DETERMINATION

The ICJ first engaged with the principle of self-determination in *Namibia Legal Consequences* (I.C.J Reports, 1971) and *Western Sahara*, (I.C.J. Reports, 1975) both of which were in the context of colonial rule. (ICJ Reports, 1971, 1975) *Namibia Legal Consequences*, in particular, was the first case in which the ICJ delivered its opinion on self-determination. Namibia came under South Africa's mandate under the aegis of the League of Nations. Following the demise of the League, however, South Africa sought to annex Namibia, arguing that with the end of the League, its mandate had similarly terminated, with no further obligation to put Namibia under trusteeship based on the Charter of the new UN.

In its ruling, the ICJ insisted that, based on the tenets of international law that had emerged concerning non-self-governing territories, as encapsulated in the UN Charter, the principle of self-determination applied to all such territories (ICC-01/09-02/11, 2015). According to the Court, ‘the last fifty years...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.’ Consequently, the Court declared as illegal, South Africa’s purported annexation of Namibia, as this was not an expression of the will of its people. (ICC-01/09-02/11, 2015)

In *Western Sahara*, which came before the ICJ in 1975, four years after *Namibia Legal Consequences*, the Court unequivocally affirmed that there existed a sound legal basis to apply the principle of self-determination in the context of decolonisation, and specifically, to territories that were not self-governing (Malcolm, 1978). In *East Timor*, the ICJ went further to confirm the *erga omnes* status of the principle of self-determination, noting that it is ‘one of the essential principles’ of international law in respect of decolonization (ICJ Reports, 1995).

The ICJ was confronted with the same issue in 1975, when East Timor, then administered by Portugal as a non-self-governing territory, was annexed by Indonesia in violation of their right to self-determination. The Court stated as follows: “...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 of contemporary international law.” (ICJ Reports, 1995).

In the case of Kosovo, the ICJ has given only one advisory opinion yet that deals indirectly with self-determination in sovereign, independent states. In *Military and Paramilitary Activities in and against Nicaragua* delivered in 1986, the Court ruled that US’ use of force against Nicaragua and intervention in its internal affairs amounted to a violation of that country’s sovereignty and, therefore, international law (ICJ Reports, 1995).

It can be concluded, from the opinions examined above, that the ICJ considers self-determination as an integral part of international law. It applied to all colonial peoples prior to their achievement of independence, but also has relevance in terms of the other two systems of self-governance pursued based on the independently expressed will of a people.

IV. SUBJECT OF THE RIGHT TO SELF-DETERMINATION

4.1 People

For Quane, the absence of a clear definition of the concept of ‘people’ renders nebulous the attainment of a people’s right to self-determination; a situation, which, according to him, has led to diverging constructions of this right (Helen, 1998). Crawford similarly believes that ‘the question of the ambit of self-determination, the territories to which it applies, has arguably remained as much a matter of politics of law’ (James, 2007). Whatever the disagreements, it is reasonable to conclude that people are the true holders of the right to self-determination. This conclusion is supported by the fact that the relevant sources of law, make express reference to people as the subject of this right. People, as the holders of the internationally recognised right to self-determination also constitute a subject of international law.

Other commentators have attempted to proffer a practical definition for the concept of 'people.' Murswiek, for example, seeks to connect it to a territory. According to him, a people means 'a group which can be a holder of the right to self-determination which exists only if it lives in a distinct territory, where it constitutes the majority and where it is able to speak its own language, develop its own culture, cultivate its traditions or practice its particular religion.' (Murswiek, 1993) Murswiek's definition seems to overlook the existence of what might be termed as 'sovereign tribes,' which exercise considerable authority over tribal members and perform quasi state functions, such as the operation of courts and issuance of license plates, even though they lack territorial sovereignty (Clark, 2012).

Adam stresses that 'to grant the right of self-determination exclusively to those who have a distinct ethnic, religious or cultural background actually increases the danger of ethnic or religious cleansing.' (Adam, 2002) This is because political leaders, who feel concerned about the possibility of claims to self-determination by a particular group, may be tempted to do everything possible to wipe out the traditions and languages that give them a distinct identity (Clark, 2005). This is a widespread historical phenomenon, which is evident in Turkey's prohibition of Kurdish language and names, as well as in efforts by the former Soviet Union to eliminate non-Russian languages and traditions (Clark, 2005).

That notwithstanding, there is considerable scholarly support for the view that distinct 'racial groups' can, in general terms, constitute a people (Cassese, 1995). Some scholars consider a people or nation as any group 'having a common and distinctive history, language, culture, and/or religion.' (Brietzke, 2000) Perhaps, more tenuous than these cases, are those groups that are divided more along political than cultural lines. A useful illustration here is the case of Taiwan and mainland China, whose differences seem more to be political than cultural (Clark, 2005).

The 1989 UNESCO International Meeting of Experts on further study of the Concept of the Rights of Peoples offers another working definition of the concept of 'people.' In its "Final Report and Recommendations," the international experts described 'people' as follows:

- i. "a group of individual human beings who enjoy some or all of the following common features:
 - (a) Common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) Linguistic unity; (e) religious or ideological affinity; (f) territorial connection; and (g) Common economic life.
- ii. The group must be of a certain number which need not to be large (e.g. the people of micro States), but which must be more than a mere association of individuals within a state.
- iii. The group as a whole must have the will to be identified as a people or the consciousness of being a people.
- iv. The group must have institutions or other means of expressing its characteristics and will for identity." (SHS.89/CONF.602/7, 1990)

A careful analysis of the UNESCO definition presented above shows that, whether or not, a group of individuals constitutes a people is determined on the basis of a two-prong test: the objective and the subjective.

Objective test

- i. This considers whether the group demonstrates visible differences from other groups of Individuals.

- ii. Subjective test
 - a) This involves determining whether the group shares a common self-consciousness of themselves as a unique people.
 - b) In addition, there exist structures through which the group is able to enjoy political or social representation.

4.2 The Rights of Minorities

It has been observed that ‘the majority of all conflicts that afflicted the world were within countries between communities and not between countries. Most of these conflicts, in turn, had their roots in the inability of cultural, ethnic, or religious communities to coexist peacefully.’ Such conflicts usually arise when affected communities perceive blatant neglect or endangerment of their fundamental rights. The situation becomes more intense where such communities feel deprived of necessary democratic channels for the fulfillment of their aspirations (Rossouw, 2017).

In multiethnic religious societies, wide differences between minority and majority groups in terms of privileges and access to opportunities have a tendency to brew tension. The grievances of the minority, who feel unjustly treated by the majority, if not properly and timeously addressed, usually escalate into violent conflicts.

Minorities living within a state typically clamour for government recognition of their distinct identity and the protection of their right to use their language, whether in private or in public, as well as to form associations and engage freely in their own religious and cultural practices. Moreover, they crave for active participation in political affairs and in the formulation and execution of policies that bear on their development. Across large parts of the world, however, things have continually moved in the opposite direction. The status and rights of minority communities have continued to be the subject of heated political debates, with minority and majority groups constantly at logger heads over such contentious issues as language rights, religious freedom, education curricula, land claims, regional autonomy and national symbols. (Rossouw, 2017).

V. THE METHODS ADOPTED FOR EXERCISING THE RIGHT OF SELF-DETERMINATION

The right of peoples to self-determination is an inalienable right of peoples, nations and States under occupation or colonialism under international instruments. However, this right shall not be granted unless demanded by any means of demand for the exercise of the right of self-determination. Firstly, it is the peaceful exercise of the right of peoples to self-determination. Secondly, it is the armed struggle to exercise the right of peoples to self-determination. This is what we will discuss through two separate branches.

5.1 Peaceful Ways and Implementation of Exercising the Right to Self-determination

Every people aspiring to the right of self-determination must have passed a stage of political awareness, and reached a certain degree of progress and civilization progress. Then one can seek to achieve this right, and at least to seek to achieve. Moreover, the features of this awareness emerged in the form of the formation of bodies and institutions certain degree of organization and management, may appear in the form of political parties, unions, associations, etc.

Given the importance of this right, we must refer to the popular will to self-determination, as it is the best way to express the desire of the peoples, this means is better than to refer to the representatives of the people or the leaders of military organizations that lead his struggle. The means of identifying the real will of the people to determine their fate by secession, independence or union, to join another state or even to maintain their status quo because the people have the right to enjoy this right and their fate is determined through the referendum process. Complete Determine his fate. (And that the referendum Old in the field of international law style, has been working since the dawn of the French Revolution, it was within the principles and slogans advocated by the revolution and legislation slogan (to join my without a referendum), he joined the far Nessa provinces (Eebenona) in 1790, County (Savoy) in 1792 through a referendum, as work was done by referendum in the era of the League of Nations, and acknowledged by the then United Nations under its Charter although not its statement how to exercise this right explicitly, and many referendums conducted under the supervision of the United Nations, highlighted An example of these referendums is the referendum held in East Timor in A.D. M 2000 in favor of independence , a large majority of the votes of the people of that country (1) As confirmed by numerous General Assembly and Security Council resolutions in the United Nations (2). In fact, must be available in the referendum process set of conditions and procedures to ensure safety and to reflect the will the real people of these conditions are:

- i. The electorate shall be composed of all the indigenous peoples of the territory concerned with the right to vote according to the legal age, whether inside or outside the country.
- ii. If there is electoral propaganda preceding the referendum process, electoral propaganda can lead to the selection of an international center that corresponds to the wishes of the people.
- iii. The voting process shall be conducted in a neutral, calm and orderly atmosphere within multiple electoral districts where the election, examination and counting of votes shall take place after the end of the referendum. Voting must be secret and not public, free from pressure, coercion, looting or fraud.
- iv. The referendum process should be conducted under international supervision and supervision, such as organizing a self-determination referendum under the auspices of the United Nations, a neutral international committee, a group of neutral observers or a neutral country. Indeed, the supervision of referendums by the United Nations is the most common, favored by many peoples of the world who demand the exercise of the right to self-determination.

It should be noted that many countries arose on the basis of a referendum, as happened in Sudan 1956, Ghana in the same year, the Belgian Congo in 1962 and in addition to East Timor in 2000.

The right of national self-determination applies only to the peoples and nations that claim it. Therefore, this claim must be expressed in some way and in a certain way. In general, we can divide the means by which peoples' demands for self-determination can be divided into two main means. Two types of means used by the peoples for the realization of this right; the first includes peaceful ones and the second includes non-peaceful ones such as armed struggle. We discuss this topic in three demands and as follows: The referendum, the decision of a representative body represented by the people or through a decision of the leadership of the National Liberation Movement based on its political legitimacy. When the armed struggle succeeds, shall be directed towards the peaceful direction of this right.

5.1.1 Truth Commissions

A group of persons with the primary task of knowing the wishes of the inhabitants of the territory concerned to determine its political future. However not less than two sent by the State or States concerned or a neutral third party, to the United Nations to know the wishes of the people through their leaders, elites and assemblies and after hearing them read petitions and 5 as well as a Mkablaat directly with them, and were such committees had been sent to Eritrea in 1984 and 1950 (Lionel Cliffe, 1998). To Kenya in 1962 (Dr. Andreas Eckl, 1962), to the Indies in 1920 (Ulbe Bosma, Remco Raben, 2008) and Russia in 1972.

5.1.2 Trusteeship

Trusteeship is not a means of self-determination, but is used as an international tool in these cases to give people the opportunity to irrigate and normal life and keep them away from direct effects. After the availability of neutral natural conditions, the people move to the stage of independence or consult or refer to their self-determination. in Libya market Somalia and this means also serve as a prelude to a referendum that is not used to influence the parents and the pressure on them and then if it must be them not worthy to become the ruling State concerned is the commandment' (Christine Griffioen, 2009).

5.1.3. Elections

This method is used if the wishes of the people are unclear. There is more than one national body calling for different concepts and interpretations of self-determination. Elections are the most important means of expressing free will. Individuals tend to consider elections an inalienable right of the state. Socialists believe that elections are a social function for the benefit of the group. Whereas, according to the social tendency that sees elections as a social function, it can be exercised by those assigned to it by the group in its name (John C. Courtney, 2004).

5.1.4. Decision of the Parliament or any Representative Body Representing the People

The means of elections is a popular democratic means in the formation of hundreds representing the masses, whether at the level of the people as a whole or certain segment in it. He said. The exercise of the right of self-determination may be through a decision by an elected representative body representing the people without the need for a popular referendum. This is a democratic means, because this elected body (the Parliament) is elected by elections by all members of the people (David Webb, 2017).

Some instance of exercises self - determination of peoples decision of the national body elected, where the Sudan parliament declared independence on 19 Nov 1955, Indian National Assembly declared independence in May 1949 (M. Zahir, 2017), Mauritanian National Council declared independence in March 1960 (Pazzanita, 2008), Kosovo Parliament decaled independence on 17 February 2008 based on Security Council Resolution No. (1244) of October 10, 1999, (Eyal Benvenisti, 2005), moreover independence of Cambodia and Nigeria in 1960 (Toyin Falola, 2008), In this regard that the Kurdish people chose their legitimate representatives in the first parliament to represent them in the Kurdistan region of Iraq on 19 May1992 in a democratic atmosphere that expressed different political trends and ideas However Kurds Parliament was decided through the unanimity of its representatives in 1992.

Selection of federalism as a formula the people of Kurdistan of Iraq exercise their right to choose the form of their constitutional relationship with the Iraqi government.

After the completion of the process as a result of the general elections in the Kurdistan Region on 19 May 1992 and the nomination of members of the Kurdistan Parliament began the latter to perform his functions under the powers and powers set forth in Law No. 1 year and after six months full of the legislation of law No. (1) In this session the Council took its decision The Iraqi Central Bank in Baghdad, where he approved the formula of the Federal Union of Iraqi Kurdistan with the Center and with the rest of Iraq. The decision of the Council was adopted unanimously by its members (150) as an appropriate formula based on the will of the people of the Territory expressed by its elected representatives. The project has the right to self-determination.

It is in line with the international, regional and local circumstances and positions calling for the maintenance of the current borders Of the Iraqi State and territorial integrity (57). Taking into account the socio-economic and political circumstances that the region was going through in 1992, in addition to the absence of sufficient opportunities to educate and educate voters about the implications of the principle of self-determination and its internal, regional and international implications, the decision taken by the Parliament of the Region (6) in this regard is often considered a declaration. Independence by the liberation movements is an expression of the exercise of the right of the people concerned to self-determination, such as the Algerian Liberation Front and the Palestine Liberation Organization. Territory as was the case with the federal republics that were within the former Soviet Union.

5.1.5. Recognition by the international community of the decision of the traditional rulers of the regions concerned to join a State

The decision of these rulers derives its alleged legitimacy from the historical continuity of its supreme social and political status and then resorting to this form of self-determination during the process of dividing the Indian Territories between the states of India and Pakistan, where it decided to grant the Territories and on behalf of their inhabitants the option of joining one of the two new states. This method of enforcing the right of self-determination has not always been particularly successful if the Governor of the Territory belongs to a religion different from that of the majority of his parish. The decision of the rulers of Hyderabad and Kashmir to join India has led to bloody clashes between different religious groups Thus, these differences between these groups continue to this day (Chitrlekha Zutshi, 2018).

5.1.6. Referendum

The popular referendum is one of the most peaceful and popular means of self-determination in the process of self-determination. It is also one of the most peaceful, civilized, accepted and developed means of being based on the will of the people or nation that wants to determine its fate. The pursuit of this varies from one region to another and from one society to another according to the prevailing circumstances. This means calls for a high awareness of the peoples of the optional response, as well as a political mobilization mobilizes the people towards the organization of their ranks and unite on a single word (Lotje de Vries & Mareike Schomerus, 2017).

The German Trichke wrote a book he called (the blessings of war) in which he said: "All the countries that we know today created in the aftermath of one or several wars and war unites the ranks of individuals that feel that one culture and incite them to attack others and defend themselves, and thus create new civilizations for that Attack and defense are the wheel of civilizations and civilizations and civilization itself. War cleanses the souls and raises the banner of honor high.

5.2 Method Armed Struggle (Armed Resistance) to Exercise the Right of Self-determination

The right to self-determination has evolved into a legal right based on the Charter of the United Nations and other international conventions. This allows the right holder to exercise different and effective ways to achieve this right, and it may be through armed struggle if peaceful means do not work.

The right of peoples to resist using all means, including armed force in accordance with international law, to defeat aggression, eliminate occupation and colonialism, achieve independence and lift injustice as legitimate political objectives for the right to self-determination. It is noteworthy that there is a fact that any people are prevented from enjoying their rights by force and oppression. It must use force against those who deny this legitimate right, whether occupied or a local government that does not wish to recognize such a right.

For instances, many countries are formerly colonized, they could not exercise the right to self-determination by peaceful means, whether through referendum or by parliament or any representative body of the people, because the invader always tries to get rid of and recognize the right of the people to self-determination as Weapons and resistance against the existing government, including those of the Algerian Liberation Front 1954 (Alistair Horne, 1996), the Eritrean Liberation Front in 1961(Dan Connell, 2019) and the Palestine Liberation Front (Helena Cobban, 2003).

In above mentioned the Kurdish people have used this means (armed struggle) for the purpose of demanding the right of self-determination and on many occasions, as the Kurds did not silence their right and made successive revolts to defend themselves and gain their national rights, including the right to self-determination. The revolution of Sheikh Ubeydullah Shamzini river in 1880, (Aram Rafaat, 2012) the revolt of Sheikh Mahmoud (Robert Olson, 1989) grandson and Barzani revolutions of 1943 and 1944, (Abdulkarim Findi, 1995) the revolution of September 1961, and the revolution of Gullan and the 1991 uprising in Iraqi Kurdistan (Edmund A. Ghareeb, 2004) and other Kurdish revolts against the countries that were and still control (occupy) the territory of Kurdistan, the Kurdish people still practiced Armed to obtain his legitimate rights in some parts of Kurdistan.

In fact, the United Nations recognition of the right of peoples to armed struggle through the use of armed force has come gradually, it has been at the beginning of the position recognizes the legitimacy of the peoples' struggle for liberation from colonialism and foreign domination, using all means in accordance with the United Nations Charter, while becoming At a later stage, it affirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity, freedom from colonial and foreign domination and foreign rule, and by all means, including the use of armed force. (A/RES/1514 (XV, 1960).

On the other hand, the international community has recognized the legitimacy of peoples resorting to armed struggle for the purpose of self-determination. This is evident in many resolutions issued by the United Nations in many judges, for example, as stated in Security Council resolutions no. 232 in 16 December 1966 (S/RES/232, 1966) and 235 in February 1978 (S/RES/235, 1967), respectively, the Security Council recognized the legitimacy of the struggle of peoples and their armed resistance to the exercise of self-determination as provided for in the Charter of the United Nations and the resolutions of the Security Council and the General Assembly, as well as in the General Assembly resolution. No. 2105 on December 20, 1965 (A/RES/2105 (XX), 1965), where it was confirmed (Legitimacy of the struggle of peoples for the exercise of their right to self-determination), and in the same context, resolution 2151 of November 17, 1969 (A/RES/2151(XXI), 1969), which stressed the legitimacy of the armed resistance to obtain the right of self-determination, including independence, as well as resolution No. 2787 in 6 December 1971 (A/RES/2787, 1971), which referred to the legitimacy of the struggle of peoples for the right of self-determination by all means and legitimate means in conformity with the provisions of the Charter of the United Nations.

VI. FINDINGS

This paper summarises findings on the paper questions addressed in this study. The paper examined the right to self-determination under international law. The examination covered the historical development of this right in international instruments such as the UN Charter, the Declaration of the Granting of Independence to Colonial Countries and Peoples, the ICCPR, the ICESCR and the Declaration on Friendly Relations, in addition to the international case law, particularly that of the ICJ. This chapter also examined the legal nature, scope and forms of self-determination, as well as its beneficiaries, especially “people” and its meaning.

This paper found that, despite its importance in international law, the application and precise scope of the right to self-determination is still clouded in uncertainty. Despite that, it has steadily evolved from a mere slogan in ancient customary law to a legally recognised right in contemporary times. In its internal form, it means the right of a people to effective representation within an existing host state. Its external manifestation entails the right of a people to form a new sovereign state, integrate with another sovereign state or simply associate with the same.

In the above context, “people” could be seen as a group of individuals with a shared sense of distinctiveness in terms of race, history, culture, language or religion and who have a specific geographical location with a set of structures for their socio-political representation. The right to self-determination is also seen as the entitlement of a sovereign state to protect its independence against secessionist acts, which highlights the tension associated with this right.

VII. CONCLUSION

This study has examined the Iraqi Kurdish claim to self-determination and the extent of its legitimacy. This ultimately necessitated the analysis of important international law concepts such as self-determination, particularly secession and its legality. Others were the notions of people, statehood and international recognition. The study has established that presently, international law remains inchoate on some of these questions. Current Iraqi laws,

particularly the 2005 constitution, also leave several issues unaddressed. Nevertheless, as a whole, drawing on insights from relevant primary and secondary sources, findings from this study show that there is significant support for the Kurdish right to self-determination. It was shown that the Kurds qualify as a people facing exceptional circumstances of extreme and prolonged oppression from the Iraqi host state, without any effective alternative than secession as a remedy.

Although the Kurds have enjoyed self-autonomy since 1992, the Iraqi federal government remains unrepresentative, abusive and more concerned to wipe out Kurdish identity and continue its dominion over the Kurds. Tension continues between the Kurdish regional government and the federal government, leaving the present power-sharing arrangement fragile and unpredictable. Also, the federal government has generally been weak in securing the country's borders and citizens.

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