



THE KURDS IN IRAQ

The Past, Present
and Future

K E R I M Y I L D I Z

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Kerim Yildiz

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Foreword

With the demise of the rule of the Ba'ath party in Iraq, the country's Kurdish population faces a new chapter in the political and regional development of its region. For over a century the Kurds have been subject to the grand schemes of other powers, denied autonomy, and have faced the onslaughts of military assaults, economic embargoes, and the destruction of their native regions.

This publication is intended to provide an outline of some of the issues affecting the Kurds in Iraq. It provides a brief exploration of the past's effect on the present, and of how both the Kurds and the international community may avoid repeating previous mistakes, laying the foundations for an internationally recognised autonomous region committed to pluralistic democracy and human rights. Such a region would require a commitment to the rule of law and internationally recognised human rights standards.

In the intervening years between the First Gulf War and the 2003 US-led war against Saddam, the Kurds established a democratic administration, which has persevered despite a lack of assistance from the international community to facilitate its establishment or indeed any international recognition. Iraqi Kurdistan serves as a role model not only for Iraq but also for the rest of the Middle East, particularly with regard to adherence to human rights principles, including women's rights and freedom of expression. The study proposes that the Kurds should continue to have full and equal participation in the reconstruction of Iraq. The study also details a range of human rights policies to the Occupying Powers, the international community and the Kurds themselves. The publication highlights the international initiatives possible to ensure the economic and social development of Iraqi Kurdistan, including equitable distribution of the revenues of oil and the Oil-for-Food Programme.

This publication provides a scholarly analysis of the urgent and as of yet unanswered question: what is to be the future of the Iraqi Kurdistan bearing in mind what was achieved after the First Gulf War in 1992? In BHRC's view, unless the rule of law is quickly established throughout post-war Iraq, the future of the whole region remains bleak.

The research and writing of this publication was undertaken by Kerim Yildiz, Executive Director of the Kurdish Human Rights Project. The advice and assistance of KHRP staff members and other experts is gratefully acknowledged, including that of Tom Blass, freelance journalist and researcher, Clodaghmuire Callinan and Rochelle Harris. This publication was made possible by the financial support of the Sigrid Rausing Trust.

Mark Muller
Vice President,
Bar Human Rights Committee of England and Wales



Map of the area inhabited by Kurds

Introduction

Since the downfall of Saddam Hussein's regime in 2003, the Kurds of Iraqi Kurdistan have made significant achievements in securing their rights, perhaps signalling a milestone towards a new culture of human rights in the Middle East. Nonetheless, the Kurds have faced enduring hardship over the past century, including military attacks, economic embargoes, human rights violations and the destruction of their native regions.

Some of the landmarks in the history of Iraqi Kurdistan – perhaps most notably the chemical and gas attacks at Halabja, the 1991 uprising and the subsequent flight of over 2 million refugees – have been so egregious as to have become imprinted on the consciousness, and sometimes conscience, of the outside world. Other events are less well known and less well understood: such as US and Iranian involvement in Iraqi Kurdistan in the 1970s, Turkish intervention, the nascent democracy of the autonomous area and the double embargo effect of Saddam Hussein's economic siege and United Nations (UN) sanctions. This publication is intended to provide an outline of some of the issues affecting the Kurds in Iraq. It provides a brief exploration of past history's effect on the present, and of how both the Kurds and the international community may avoid repeating previous mistakes, laying the foundations for an autonomous region committed to a pluralistic democracy and human rights.

There are no exact ethnological or linguistic criteria by which the Kurds can be defined. There are a number of Kurdish dialects. There is no single religion that binds them, and they are to be found in numerous countries. Paraphrasing Benedict Anderson, one might say that Kurds are those that believe themselves to be so.¹ Kurdish identity, however, is not monolithic. While some Kurds believe passionately in the existence of a pan-Kurdish nation, others are bound more closely to other identities; tribal, national or religious.

Standing at the crossroads of so many powerful nations, the Kurds have always, inadvertently or otherwise, been subject to or caught up in the vicissitudes of their allegiances and altercations. This publication looks at the ways in which the Kurds in Iraqi Kurdistan have been subjected to sustained violence and oppression by several Iraqi regimes. This is not unique to Iraq. In Turkey, as in Iran, Syria

2 The Kurds in Iraq

and the former Soviet Union, Kurds have been the victims of village destructions and evacuations, killings, torture, rape in custody, arbitrary detentions, censorship and other human rights violations. On several occasions, governments – the outlooks of which are otherwise opposed – have sought to collaborate in their efforts to suppress the Kurds.

Behind the pattern of victimisation lies the fear of the Kurds breaking away from the states in which they live to create their own nation. The dream of an independent Kurdistan is not universally perceived in the same way. Some regard it as a dream, perhaps realisable in generations to come, but unfeasible for the moment. Others regard the right to self-determination as a fundamental right guaranteed *inter alia* by the UN Charter. It is little surprise that anti-secessionist measures taken by some states have had a tendency to alienate Kurds, fuelling a radicalism which might not otherwise carry itself with such fervour.

This publication was written with the purpose of introducing the Kurds to a readership in some cases newly wakened to their existence by media reports arising out of the US-led invasion of Iraq. Much of the research was undertaken in London.

In August 2003, a KHRP fact-finding mission to Iraqi Kurdistan arrived soon after the bombing of the UN building in Baghdad, which had severely dented the morale of international agencies and non-governmental organisations (NGOs).² Many expatriate staff were leaving or had left Iraq. Still others were arriving in the comparatively safe north from the nation's capital. The sense of post-liberation jubilation was muted. The Kurds living above the 'green line' separating 'Saddam' Iraq from 'Kurdish' Iraq had been 'free', with all the qualifications and hardships that that entailed for over ten years. The end of the war had brought new forms of relief. Many were visiting family members in Mosul and Kirkuk for the first time in years. As one man in Erbil described, 'For twelve years we've lived with Saddam's guns trained on us just across the border; just knowing they've gone means we can breathe more easily.'³

The end of Saddam's rule also brought with it disappointments. Many families still clung to the hope that when the Ba'athists fell, mothers, fathers, children and siblings that had disappeared years before would reappear.⁴ With the passage of time and the continuing discovery of mass graves around the country, those hopes are fading and some are grieving for the second time. Others, living in impoverished conditions and without access to the wealth

and luxuries visible in bazaars and shops, decry the inability of the international community and of their own government to improve their condition overnight.

The political climate, and its tensions created by the rights or wrongs of the war, has constituted an interesting backdrop against which to write about the Kurds in Iraq. The question as to whether war was 'justified' created unlikely allies and unlikely foes. The arguments for and against seemed to be at odds with any clearly definable ideological lines. The new front created in the battle for ideas concerns the respective roles of the UN and the US-led administration. In all these issues, the Iraqi Kurds sided more closely with the hawks of the US than the doves of 'Old Europe' or the UN. Their perspective did not necessarily vindicate the decision to go to war. Only time will tell what effect the end of Ba'athism has had on Iraq. Many Kurds are disenchanted with the provisions of multilateralism, being better disposed toward any potential ally promising action over deliberation. Kurds will admit that circumstance has often forced them into choosing their friends before fully considering the wisdom of having done so. For the first time in their history, however, the Kurds may have backed the winning horse.

Part I
The Past

1

The Kurds

'KURDS' AND 'KURDISTAN'

The Kurds are native inhabitants of their land and as such there are no strict 'beginnings' for Kurdish history and origins.¹ In modern times, Kurds as an ethnic group are the end product of thousands of years of evolution stemming from tribes such as the Guti, Kurti, Mede, Mard, Carduchi, Gordyene, Adianbene, Zila and Khaldi,² and the migration of Indo-European tribes to the Zagros mountain region some 4,000 years ago.³ The Kurds are similar to the Highland Scots in that they have a clan history, with over 800 tribes in Kurdistan.⁴ At the time of the Arab conquest of Mesopotamia in the seventh century AD, the name 'Kurd' was used to describe these nomadic people who lived in this region.

The term 'Kurdistan', meaning 'the land of the Kurds', first appeared in the twelfth century when the Turkish Seljuk prince Saandjar created a province with that name. This province roughly coincides with the area of Kurdistan (Kordestan) situated in modern Iran. It was not until the sixteenth century, however, that the phrase 'Kurdistan' came into common usage to denote a system of Kurdish fiefs generally, and not just the Saandjar-created province. The range of land which Kurdistan encompasses has fluctuated historically, but it was and remains predominantly the geographical region that spreads across the mountainous area where the borders of Iraq, Iran, Syria and Turkey meet. Claims as to the exact dimensions of Kurdistan vary but its backbone is the Taurus and Zagros mountain chains, and it stretches down to the Mesopotamian plain in the south and, in the north and north-east, up to the steppes and plateaus of what was Armenian Anatolia. The small Kurdish-populated areas just inside the Armenian and Azerbaijani borders with Turkey and Iran respectively are sometimes included as part of Kurdistan depending on the commentator. These areas have, however, been known as 'Red Kurdistan'. Smaller minority communities, including Christians, Turcomans, Assyrians and Armenians, also inhabit Kurdistan as a whole.

Although Kurdistan has appeared on some maps since the sixteenth century, it is clear that it should be more than a geographical term as

it also refers to a human culture, which exists in that land.⁵ Kurdistan has no fixed borders, and claims to the territory that it comprises vary between different organisations, groups and individuals. No map of Kurdistan can be drawn without contention as, for all practical purposes, Turkey has always denied Kurdistan's existence, while Iran and Iraq remain reluctant to acknowledge that it is as extensive as many Kurds purport, and Syria denies that it extends into its territory.⁶

LANGUAGE

The Kurds do not have a single common language but speak a number of different dialects. The biggest group, as regards the number of people who speak it, is called 'Kurmanji'. This dialect is spoken by Kurds living in Turkey, Syria and the former USSR; it is also spoken by Kurds living in the northern part of Iran and down to the Greater Zab river in Iraq.⁷ The other chief dialect is Sorani (or Kurdi), which is spoken by Iraqi Kurds living south of the Greater Zab and by Iranian Kurds living in the Kordestan province. A speaker of one of these dialects can usually understand a speaker of the other, although someone from a remote area may find it difficult. Sub-dialects include Kirmanshahi, Leki, Gurani and Zaza. Some of these sub-dialects are not easily learnt or understood by fellow Kurds. As is the case with the Irish language and most minority languages, the official languages spoken around Kurds influence Kurdish modern dialects.⁸ Thus, Kurdish in Turkey contains a large number of Turkish words and Kurdish in Iraq contains an overlay of Arabic words.⁹

RELIGION

The Kurds are not homogeneous religiously. The majority of Kurds are Sunni Muslims, who were converted between the twelfth and sixteenth centuries, and adhere to the Shafi'i school rather than the Hanafi school which was the official religion of the Ottoman Empire. There are a number of other different religious affiliations among the Kurds, however, and they include Jews; Christians; Alevis, who follow an unorthodox form of Shi'ism; adherents to the 'established' faith of Iran – Ithna'asheri Shi'i Islam; the Ahl-i Haqq (People of Truth), a small sect found in the south and south-east of Kurdistan; and Yazidis.¹⁰

POPULATION

There are no official population figures for Kurds but it is accepted that they are the largest ethnic group without a state in the world. Estimated figures indicate that the highest numbers of Kurds are to be found in Turkey, but it is in Iraq where they constitute the largest proportion of the overall population. There are believed to be over 15 million Kurds in Turkey (20 per cent of the population); 4 million in Iraq (25 per cent of the population); 7 million in Iran (15 per cent of the population); over 1 million in Syria (9 per cent of the population); 75,000 in Armenia (1.8 per cent of the population); and 200,000 in Azerbaijan (2.8 per cent of the population). These estimates are conservative but indicate that the Kurds are currently the fourth largest ethnic group in the Middle East.

The absence of reliable figures is in part due to the lack of censuses in Syria, Turkey, Iraq and Iran that recognise ethnic identity as a legitimate category of registration. It has suited the countries inhabited by the Kurds to manipulate and downplay the size of their Kurdish communities in order to prevent them from becoming politically powerful.

TOPOGRAPHY OF KURDISTAN

The precipitation in Kurdistan has meant that the area is agriculturally rich and many Kurds are engaged in livestock farming and agricultural production. Tobacco is the main cash crop, as well as cotton and grain in some areas. Other products, such as fruit and vegetables, are mainly for domestic consumption. Once richly forested, the area has suffered from widespread deforestation, which has devastated timber production and caused environmental damage. Oil is also concentrated in the Kurdish regions. There have been regular disputes over its exploitation and revenues from oil have been one of the major causes of conflict between the Kurds and the ruling governments in the region. Other minerals found in the area include chrome, copper, iron, coal and lignite. Water is yet another element that is rich in Kurdistan, with both the Euphrates and Tigris rivers running through it. However, the Kurds do not control the flow of the rivers. There has been little effort made towards industrial development in the Kurdish areas, as economic underdevelopment is a convenient method for the governments in the region of keeping the Kurds under control.

2

The Treaty of Sèvres and the Creation of Iraq¹

Historically, the Kurds have enjoyed a considerable degree of semi-autonomy under the various regional powers seeking to exercise territorial control over the lands inhabited by Kurdish tribes. Indeed from the sixteenth century the Persian and Ottoman Empires allowed Kurdish autonomy in order to maintain peace on their open borders.

The first opportunity for the Kurds to establish an independent state came with the collapse of the Ottoman Empire and the end of the First World War. In the aftermath of the First World War there was a new preoccupation with the situation of minority groups – albeit driven primarily by strategic political considerations rather than concern for individual and group protection. In his Fourteen Point Programme for World Peace, President Wilson included the statement that the non-Turkish minorities of the Ottoman Empire should be ‘assured of an absolute unmolested opportunity of autonomous development’.²

This sentiment had champions within each of the great powers – Britain, France and the US – as it did within those ‘nationalities’ themselves. But there were other aspects to consider, such as the break-up of the Ottoman Empire, the threat posed by the nascent Soviet Union, the status of the Catholic Armenian population, and Britain’s desire to preserve stability in and around its colonial possessions. The Kurds’ right to self-determination was understood by the British, but qualified by the unsubstantiated belief that a Kurdish leader could not be found that would sacrifice either his own or tribal interest for the greater purpose of the Kurdish nation. Indeed Britain was not even sure that a widespread and cohesive Kurdish identity transcending tribal or other loyalties even existed. Turkey, fearful of further dismantlement of its empire, played on British fears.³

Notwithstanding these reservations, the Treaty of Sèvres, signed by the Allied Powers and the Ottoman government in 1920, envisaged an independent Kurdish state. Article 62 of the Treaty provided that a Commission appointed by the French, Italians and British

would, within six months of the treaty entering into force, draft a scheme of local autonomy for the Kurdish areas lying east of the Euphrates, south of Armenia and north of Syria and Mesopotamia – with safeguards for other minorities within these areas. Article 64 further provided that if, after one year of the implementation of the treaty, the majority of the Kurdish population in this area called for independence, then subject to recommendation from the Council of the League of Nations, Turkey should agree to renounce all rights to the area. The final sentence of Article 64 referred to the Kurds living in Mosul and stated that, ‘If and when the said renunciation is made, no objection shall be raised by the main Allied powers should the Kurds living in that part of Kurdistan at present included in the vilayet of Mosul⁴ seek to become citizens of the newly independent Kurdish state.’

This last section of Article 64 referred to the fact that the British were appointed by the League of Nations as the mandate authority over the Ottoman provinces of Mesopotamia (which included Mosul) the same year that the ill-fated Treaty of Sèvres was signed. Initially, British policy appeared to be to keep the Kurdish area separate and autonomous. At the 1921 Cairo Conference, at which a future Arab state of Iraq was discussed, a memorandum from the British government’s Middle East Department stated ‘We are strongly of the opinion that purely Kurdish areas should not be included in the Arab state of Mesopotamia, but that the principles of Kurdish unity and nationality should be promoted as far as possible by H.M.G.’⁵ Winston Churchill, then heading the Colonial Office, predicted that an Arab leader in Iraq ‘would ignore the Kurdish sentiment and oppress the Kurdish minority’⁶ and it was decided to keep Kurdistan under separate administration headed by a British High Commissioner.⁷ The British did in fact carry out a referendum in Mosul in 1921 but based the franchise on property ownership. They then turned the extremely poor poll into a pretext for annexation.⁸

The High Commissioner in Iraq, Sir Percy Cox, had long been convinced of the desirability of incorporating the Kurdish areas into an eventual Arab state. He was supported by the new Arab King of Iraq, Emir Faisal, brought in by the British and anxious to consolidate his fragile support and authority. Cox continued to press the need for incorporation and fuelled by fears of renewed Turkish claims on the area, Churchill capitulated in October 1921. He agreed that the Kurdish areas should be included in Iraq and should participate in the National Assembly, although still on condition of local autonomy.

Progress towards the emergence of Iraq as an independent state was reflected the following year when the 1922 Treaty of Alliance put Anglo-Iraqi relations on a treaty basis. Yet it still appeared that the British might honour their commitment to Kurdish autonomy when they issued a Joint Declaration with the Iraqi government, communicated to the League of Nations in December 1922, recognising the right of the Kurds to form a government within the borders of Iraq.

During this period, the Treaty of Sèvres was not implemented. The treaty was a humiliation for Turkey, which faced chaos and deprivation in the aftermath of war. Mustafa Kemal, the founder of the Turkish Republic, repudiated its provisions and waged a war of national independence. After this conflict, the adversaries negotiated a new accord to settle issues of sovereignty, claims, rights and the like. Kurdish leaders petitioned the League of Nations and Britain for recognition of Kurdish autonomy during negotiations on the 1923 Treaty of Lausanne. However, this instrument completely ignored the claims of the Kurds to any form of independent status and carved up Kurdistan, only recognising the protection of the rights of religious minorities. The area subject to the Treaty of Sèvres was restored to Turkish sovereignty; the rest was divided between Iran and the new state of Iraq.⁹

The League of Nations did, however, reinforce Kurdish claims to autonomy and their need for special protection in 1924. In the context of settling the border between Turkey and Iraq, the League of Nations set up an International Commission of Inquiry that went to Mosul in 1925. It found that five-eighths of the population of the disputed territory was Kurdish. It indicated that this pointed towards an independent state on the basis of ethnicity alone, although it noted that those living north of the Greater Zab were more closely connected with the Kurds of Turkey and those living south had more in common with the Persian Kurds. The Commission finally recommended that the disputed territory of Mosul remain within Iraq. It did, however, express great concern about the stability of Iraq and considered that guidance and protection in the form of a League mandate ought to be maintained for a substantial period of time to enable the consolidation and development of the state. The Commission's recommendation to leave Mosul within Iraq appeared to be predicated on the continuation of the mandate system, since it noted that Turkish sovereignty over Mosul would be preferable to granting it to a new state of Iraq not yet ready for independence.

The League accepted the Commission's recommendation against partition of the area but decided in favour of attaching Mosul to Iraq. However, this was on condition that Mosul remained under the League mandate for 25 years, and that due consideration was given to conferring responsibility for local administration, the justice system and education on Kurdish officials, and having Kurdish as the official language. The British, as the mandate authority, were invited to report to the League on the administration of Mosul, the promulgation of a form of autonomy and recognition of the rights of the Kurds. The 1922 Alliance Treaty was accordingly amended to secure the British mandate for 25 years or until Iraq's admission as a member of the League, whichever was sooner.

The only concrete step towards British fulfilment of the obligations set out in the League's resolution was a 1926 Local Languages Law, allowing Kurds in Erbil and Sulaimaniya to have primary education and to print books in their own language. However, when various Kurdish cultural societies were formed in 1926 and 1927, which took an increasingly political stance, they were dismantled by police operations conducted by the British.

During this time the whole of Iraqi Kurdistan was still refusing to accept an Arab administration and the British were repeatedly involved in measures to suppress opposition and unrest. The British brought Sheikh Mahmud¹⁰ back to Sulaimaniya in 1922 hoping that he would repel any Turkish aggressive moves on the area. Sheikh Mahmud, however, not only declared himself 'King of Kurdistan' and formed an embryonic administration but also attempted to play off Turkey and Britain against each other. The British called for his surrender and launched an offensive in 1923 to prevent him joining forces with the Turks, following which he was forced to flee. His attempts to regain power led to RAF bombing raids. A year later, further unrest in Mosul after legislative elections in 1924 was put down with more bombing raids and led to a resumption of British occupation in Sulaimaniya.

In 1930 another Anglo-Iraq Treaty of Alliance was signed, aimed at ending the British mandate and regulating future British relations with Iraq. The Treaty made no mention of the Kurds, still less did it do anything to secure Kurdish autonomy or basic rights. Leaders in Sulaimaniya sent petitions to the League, recalling its 1925 decision, but these were ignored. Unrest flared again; in September 1930 troops fired directly into protesting crowds in Sulaimaniya, killing dozens of people. Sheikh Mahmud, who was again leading the protests, was

severely defeated and forced to surrender to the Baghdad government. He was placed under house arrest and kept there for more than 20 years until his death in 1956.¹¹

Iraq attained its independence from Britain in 1932. Iraq's membership of the League of Nations was, however, conditioned on its acceptance of international obligations to protect the civil and political rights of the Kurds and their rights as a minority group. These provisions were expressed to constitute internationally supervised obligations and fundamental laws of Iraq, which could not be undermined by any subsequent laws, regulations, or official action. In practice, the Hashemite monarchy under King Faisal only eroded the protections that Britain had intended for the Kurds. Key legislation, drafted with the aim of ensuring language rights, was implemented half-heartedly or not at all. Faisal's death in 1933 was thought to offer the Kurds a new chance to ameliorate the position in which they now found themselves.

Subsequent history, however, is one of conflict, betrayal and dashed promises. Each of the regime changes punctuating Iraqi governance over the course of the past eight decades has had a significant and violent effect on the fate of both the Kurds and much of the rest of the Iraqi population.

3

The Kurds Under Barzani

REVOLTS

The Iraqi government was beset by factionalism and loss of coherent leadership following King Faisal's death. King Ghazi succeeded him but with the weakness of the central government, naturally new revolts occurred.

By 1935 the Kurds were emboldened enough for Kurdish chiefs to challenge the government on its failure to uphold its obligations under the Declaration. Amongst other demands were the official use of Kurdish language in Kurdish areas, representation in the National Assembly, and a fair share of the nation's resources. But the Kurdish chiefs were unsuccessful. The new government chose not to support the Kurds.

In October 1936, General Bakr Sidgi staged a coup in Iraq. He was of Kurdish origin but not a Kurdish nationalist and had been a commander of the northern region army units during the several years of revolts. General Sidgi was in alliance with the Ahali Group political faction and King Ghazi accepted the coup. In August 1937, however, General Sidgi was assassinated. The Mosul command of the armed forces then turned on the military-led government and toppled Iraq's first government installed by coup, by yet another coup. A further coup in 1938 led to another Ottoman officer becoming Prime Minister.

In 1939, King Ghazi was killed in an automobile accident. His son Faisal II became King although he was only four years old. When Britain went to war with Germany in 1940, the Iraqi regime entered into diplomatic relations with Germany and Italy. Britain wanted to use bases in Iraq to launch a Russian front but when they arrived in Basra the pro-Axis government ordered the RAF to stop all their flights. In response, British aircraft began targeting Iraqi positions, which resulted in their swift defeat.

THE EMERGENCE OF A KURDISH LEADER

The most important occurrence from a Kurdish perspective in this intervening period between Iraq's independence and the revolution

of 1958 was the emergence of a powerful and charismatic political leader, Mullah Mustafa Barzani. He had started his political life by organising local revolts in his own Barzan region, for which he was subsequently exiled to the city of Sulaimaniya. There he was held under house arrest until his escape in 1943. A new Kurdish revolt broke out in 1943 which lasted until 1945, following which Barzani was forced to flee to Iran. His arrival in Iran coincided with the creation of the Kurdish 'Mahabad Republic' in the north.

This bold attempt at nationhood in Iran was only made possible by support from the Soviet Union as it controlled the north of Iran during the Second World War. With the end of the war however, and the beginning of the Cold War, the Soviet Union was asked by the western powers to withdraw from Iran. The Kremlin, mindful of maintaining the composure of the global apple-cart, complied. Despite its ephemeral span, the 'Mahabad Republic' was significant for numerous reasons. It was here that the Kurdish Democratic Party (KDP) was formed in 1945. It was here, also, that a schism emerged leading to the creation of the Iraqi KDP (with Barzani as president) in addition to the Iranian KDP (PDKI).

Barzani fled Iran for the Soviet Union in 1947, as following the Soviet withdrawal he was unsuccessful in coming to terms with an Iranian government that was determined to show its muscle in the north-west of the country. There he remained until the overthrow of the Hashemite monarchy in Iraq by General 'Abd al-Karim Qasim and his group of Free Officers in 1958.

AFTERMATH OF THE 1958 REVOLUTION

The 1958 revolution was genuinely popular among all sections of Iraqi society. Among the Kurds it was believed that a new era of Kurdish–Arab understanding had been established. Barzani and his associates were allowed to return from exile. A Kurd, Khalid Naqshabandi, was appointed to a three-man 'sovereignty council', indicating goodwill towards Kurdish sentiment. But good relations were short-lived. It became apparent that the Free Officers would never tolerate Kurdish autonomy in any form. In addition, splits were apparent within Kurdish opinion – in part, between those that supported the government, and those, like Barzani, who did not. Barzani's Kurdish militia, the *peshmerga*,¹ occupied the north of Iraq from Zakho to the Iranian border. The government responded with

a prolonged but futile bombing campaign, which in one form or another, continued until 1975.

THE BA'ATH REGIMES

In February 1963 the regime of General Qasim was brought to an end by a coup of the Ba'ath party; a new Arabic ideology influenced Iraq, which was socialist and secular in spirit. Within weeks of the Ba'aths seizing power, thousands of Iraqis were killed, tortured or imprisoned as the party attempted to eradicate all remnants of the previous regime and to crush even the possibility of dissent. Once again, the Kurds harboured the aspiration that the new government would prove sympathetic to Kurdish autonomy but the reverse proved true. The KDP did agree to a ceasefire and talks began on Kurdish autonomy. However, the talks collapsed as the Kurds insisted on including Kirkuk and Mosul in the Kurdish autonomous region. With the failure of these talks, the Ba'ath regime initiated a policy of crushing the Kurds through military might and began an 'Arabisation'² process that continued until the end of the Ba'athist regime in 2003.

In November 1963, infighting and confusion within the Ba'ath party resulted in the takeover of the Iraqi government by 'Abd al-Salam 'Arif.³ Within months, 'Arif had negotiated a peace agreement with Barzani leading to a lull in the conflict.

'Arif died early in 1966, to be succeeded by his brother, al-Bazzaz. In June 1966, al-Bazzaz made a Declaration, which clearly recognised the binational (Kurdish/Arab) character of the Iraqi state, and implied regional autonomy as long as it did not undermine Iraqi unity. This, on paper, was an important step for Barzani and the Kurds. However, the reality was that al-Bazzaz did not have the support of his officers, and he fell from power soon after signing the agreement. A military stalemate ensued, and Barzani consolidated his power base until the Ba'ath party seized power again in July 1968.

Recent Kurdish claims to autonomy have never been in any doubt. It was Saddam Hussein that negotiated and then imposed the autonomy agreements of the 1970s.

THE MARCH MANIFESTO OF 1970

That the Kurds as a group have their own linguistic and cultural needs was recognised at the inception of Iraq, and reconfirmed in the Constitution of 1958. Autonomy for Iraqi Kurds as a part of Iraq's

political and constitutional equation dates back at least to the March Manifesto of 1970, and has, on paper, been confirmed on numerous occasions since. Had it been adopted, it is possible that many of the Kurds' subsequent conflicts with the central government might have been avoided. While the manifesto stops short of describing Iraq in federal terms, a substantial proportion of its provisions are still regarded by the Kurdish political parties as a blueprint within any new constitutional framework yet to be drawn up.

The March Manifesto was drafted in the wake of the Ba'athists taking power in 1968, as it attempted to consolidate its grip on civil, political and military power within the nation. The Iraqi Communist Party (ICP), while outlawed, still commanded considerable power. Iraq also faced external threats posed by other regional powers, notably Israel and Iran, and indirectly by the US through the agency of the Shah of Iran. A 'solution' to the Kurdish problem was desirable for the Ba'athists to alleviate pressure from the north. In March 1969, the KDP had made a daring attack on Iraqi Petroleum Corporation installations in Kirkuk, highlighting the oilfield's vulnerability and the military capability of Barzani and his followers.⁴ That the Kurds were armed by the Iranians heightened the Ba'ath party's desire for conciliation.

The manifesto (negotiated by Saddam Hussein and by Mahmud 'Uthman on behalf of the KDP) was announced on 11 March 1970. On the face of it almost all of Barzani's demands were met; Kurdish, alongside Arabic, was to be an official language in areas where the majority of the population was Kurdish, and taught throughout Iraq as a second language; Kurds would participate fully in government, including senior army and cabinet posts; Kurdish education and culture would be reinforced and all officials in Kurdish areas would be Kurds, or speak Kurdish; Kurds would be free to establish student, youth, women's, and teachers' organisations; funds would be set aside for the development of Kurdistan; pensions would be provided to the families of *peshmerga* killed in battle; agrarian reform (appertaining to ownership of farmland) would be implemented; a Kurd would be one of the vice-presidents of Iraq; and finally, there would be unification of Kurdish majority areas as one self-governing unit.

Had the manifesto been implemented, principal officials, up to the level of Governor, including district officers and chiefs of police and security, would have been Kurdish or Kurdish-speaking. The region was to receive extra investment from Baghdad, in the form of

an economic development plan undertaken with regard for Kurdish underdevelopment, extending to relief and assistance of the needy and unemployed. In addition there would be official promotion and promulgation of Kurdish literary, artistic and cultural endeavours, a Kurdish press and a television station, as well as an amnesty for those who had fought against the state from the Kurdish areas.

It is arguable as to whether there was any sincerity on behalf of Baghdad. Kurdish leaders have reportedly declared their foreknowledge that it was little more than a ruse, but a ruse that could not be refused. Nonetheless, preliminary steps taken by the Ba'athists were encouraging. A taskforce consisting of four Kurds and four Arabs was established, and charged with working out the implementation of the manifesto. KDP apparatchiks were appointed to the governorships of Sulaimaniya, Erbil and Dohuk (the latter a new Kurdish governorate, created in the effort to mollify the Kurds). The Interim Constitution was amended so as to state that 'The Iraqi people are composed of two principal nationalisms: The Arab Nationalism and the Kurdish Nationalism.'⁵ Villages were rebuilt and *peshmerga* were even paid by the government to act as border guards.

Over the course of the following three years it became clear that Saddam Hussein lacked the will to implement the manifesto. A number of reasons lay behind the failure; Barzani was subject to several failed assassination attempts, possibly government-backed; and the Kurds' choice of vice-candidate, Habib Karim, was rejected by Baghdad. The key sticking point, however, was the failure to resolve the status of Kirkuk. In its drafting, the manifesto neatly sidestepped the issue as to whether the city of Kirkuk and its surrounding oilfield would fit into the autonomous region; instead, it provided for the 'unification of areas with a majority as a self-governing unit'.⁶ The government agreed to demarcate the border between the two regions by virtue of population – where a Kurdish population was in the majority, it would be included. This was to be decided by a census.⁷

Barzani accused Saddam of deliberately attempting to alter the demography of the region, bringing in Arab settlers from the south and north of the country. By 1973, clashes had started to break out between the two sides once again, despite continued negotiations.

Four years after the March Manifesto, Saddam Hussein imposed his own Autonomy Law. By this time, Barzani was looking at the opportunities offered by siding with the Iranians.

THE 1974 AUTONOMY LAW⁸

Saddam Hussein gave Barzani two weeks to accept the Law for Autonomy in the Area of Kurdistan (Act No. 33 of 1974). Barzani refused and bitter fighting followed. In some respects the Law appeared almost reasonable. It purported to establish Kurdistan as a self-governing region that had considerable authority over its own social and economic affairs. It also fleshed out in detail the area's administrative and legislative structures. The region was to be defined in accordance with the 1970 Agreement and the 1957 census records, in the absence of a more up-to-date head-count. Nonetheless, it fell far short of Barzani's demands. It did not cede Kirkuk, and more critically, it imposed a vastly more central government control over the region than was envisaged by the March Manifesto.

Act No. 33 of 1974 described the autonomous region as an integral administrative unit with juridical personality and autonomy within the Republic of Iraq, with Erbil as its metropolitan centre. Kurdish and Arabic were to be the official languages, and languages of education. The region was to have its own budget and financial resources derived from local taxation. A Legislative Council, envisaged as an elected legislature, was established, as was an appointed administrative body, the Executive Council. Executive Council members would hold ministerial rank and report directly to the Council of Ministers.

Under the Autonomy Law, the Legislative Council was empowered to adopt decisions relating to the development of the area and promotion of its local, social, cultural and economic aspects. Developments of culture, national characteristics and traditions, and functioning of local departments, institutions and administrative bodies, were also under the Legislative Council's auspices. It was tasked with the ratification of plans and programmes of the Executive Council on economic and social matters, and on development, education and health. It also maintained oversight and control over financial issues.

Most of the main administrative functions of government came under the control of the Executive Council, including education and higher education, works and housing, agriculture and agrarian reform, internal affairs, transport and communications, culture and youth, municipalities and summer resorts, social affairs, and state property. But the Council's responsibility was more restricted with regard to other issues, including matters relating to the administration

of justice, security and public order, and the appointment of Kurdish or Kurdish-speaking officials for the Autonomous Area.

Article 1 provided that Kurdistan would enjoy autonomy as an integral unit within the framework of Iraq. Kurdistan was to be defined by the existence of a majority according to the 1957 census; a census that Barzani rejected. Erbil was designated as its metropolitan centre.

Article 13 stated that, 'The President of the Republic shall appoint a member of the Legislative Council to form an Executive Council. The President of the Republic may [sic] dismiss the chairman of the executive council at any time, in which case the Executive Council shall be dissolved.'

Article 17 ensured that state apparatus was firmly embedded into the region: 'Police, security and nationality formations in the area shall be attached to their directorates general at the Ministry of Interior, and their staff subject to the laws and instructions applied in the Republic of Iraq.' Article 19 added, 'Supervision of the legality of the decisions of the autonomous bodies shall be exercised by the Supreme Court of Appeal of Iraq.'

The autonomous region itself (*mintaqat al-hukm al-dhati*) accounted for less than half of the total area of Iraqi Kurdistan. Legal limitations substantially qualified autonomy; central authorities were authorised to give the local administration 'general guidance', and a minister of the state was authorised to attend all meetings of the so-called autonomous bodies. The validity of any decision by the autonomous authorities could be contested by the Minister of Justice, and if contested, the decision could be suspended by a committee of the Iraqi Court of Cassation. In appearance, none of these are necessarily draconian but in the absence of any effective challenge, or check on executive authority, the presidential will could ultimately override any decision.

Subsequent amendments to the law further undermined 'autonomy' by introducing restrictions on who could stand for election to the Legislative Council. A law introduced in 1986 stipulated that candidates must 'believe in the leading role of the Arab Ba'ath Socialist Party and in the principles and aims of the glorious revolution of 17–30 July 1968 and should have played a notable role in the implementation of those principles and aims'. Candidate lists needed the approval of central government – ensuring that the only eventual members of the council were sympathetic to Saddam Hussein and the Ba'ath party. Elections for the Legislative

Council were held throughout the 1980s. Yet even by the time of the government's 1992 withdrawal from the north, it appears that the Executive and Legislative councils were barely functioning if at all.

US AND IRANIAN INVOLVEMENT IN KURDISH-IRAQI RELATIONS: 1970-75

Barzani had enjoyed the backing of the Soviet Union up until the signing of a friendship pact between Moscow and Baghdad in 1972, by which time Barzani began to shift his trust away from the Russians to the opposite ideological pole. The extent to which other regional players dictated the action of Barzani throughout the 1970s should not be understated. Arguably, Barzani would not have continued his armed struggle against the seemingly insurmountable Iraqi military had it not been for his belief that the US and Iran genuinely supported Kurdish autonomy. In reality, it became clear that Iran and the US used the Kurds as vehicles for their own regional designs. Being so vulnerable, exploitation by the US and the Shah of pre-Revolutionary Iran was inevitable.⁹

Since 1937, Iran had felt humiliated by restrictions on its right to use the Shatt al-'Arab waterway connecting the Persian Gulf to the Iranian port of Abadan and the Iraqi port of Basra. Iran under the Shah was Iraq's major rival, and the Shah found that backing the Kurds financially and militarily was a useful means of putting pressure on Baghdad. Both the US and Iran, in addition, were concerned by Baghdad's increasingly close relationship with Moscow. By 1972 the new relationship between Barzani and Baghdad forged by the March Manifesto of 1970 had effectively broken down. The parties continued to fight, although negotiations continued over Kirkuk, the census and other outstanding sticking points.

The US became increasingly interested in Iraqi affairs after the signing of the friendship pact with the Soviet Union in April 1972. The nationalisation of Iraq's oil facilities in June 1972 also provoked the Shah of Iran into providing the Kurds with increased military and financial aid.

Barzani's confidence was buoyed by the support that he received not only from the Shah, but from the CIA with the backing of Henry Kissinger. Previously, the US's respect for Iraqi territorial integrity, and for the borders of all the nations in which Kurds lived, had dissuaded it from recognising or supporting the Kurds in any capacity. But in 1972, US desires to maintain the Shah's allegiance, not just in the

Middle East but in relation to US policy in south-east Asia, extended to assistance in underwriting the Kurds' war against Baghdad. As Barzani's relations with the Iranians had not always been fruitful, the Shah cajoled the US to make direct contact with the Kurds. Barzani was encouraged by US assurances that the Shah would continue to back the Kurds until they had achieved their own political objectives. In a newspaper interview in 1973, Barzani declared, 'We do not trust the Shah ... I trust America. America is too great a power to betray the Kurds.'¹⁰

When Barzani refused to accept the terms of the 1974 Autonomy Law it drew both sides into fighting. Barzani's forces numbered some 60,000 *peshmerga*, and the same number again of irregular fighters, bolstered by Iranian-provided artillery and antitank missiles. Iraqi forces numbered 90,000 men, 1,200 tanks and armoured cars, and 200 aircraft.¹¹ More than 100,000 refugees fled to camps across the border with Iran. By now Barzani was aware that he was too reliant on Tehran's support and he was fearful that should an agreement be reached between Iran and Iraq it would be disastrous for the Kurds. Barzani lobbied Washington repeatedly for assistance and for further reassurance that he would not be let down. Washington, however, was not forthcoming. The Algiers Agreement proved either Barzani's naivety or his overestimation of Washington's influence over Tehran.

THE ALGIERS AGREEMENT OF 1975 AND ITS AFTERMATH

During this time, a full-scale conflict between Iran and Iraq directly over border and water rights was only averted by negotiations culminating, in early 1975, in a peace agreement signed at a meeting of the Organization of Petroleum Exporting Countries (OPEC) in Algiers. In return for dropping support for the Kurds, the Shah was to gain sovereignty over half of the disputed waterway. In addition Iraq would abandon its claim to Khuzistan, one of Iran's oil-rich regions. Within 48 hours, Iran withdrew its military support of the Kurds. A two-week ceasefire negotiated by the Iranians on behalf of the Kurds was not adhered to and Kurds fled across the border in groups of tens of thousands. The Iraqi military began a vicious campaign of reprisal; killing thousands, not only *peshmerga* but also civilians. The Iraqi army created a security zone in the border areas between the Kurdish region and Turkey, Syria and Iran, 600 miles long. This resulted in the destruction of an estimated 1,500 villages.

Barzani was defeated, both militarily and emotionally. The mantle of his leadership was passed to his son, Massoud Barzani.

The restored peace between the powers left the Kurds exposed and without a sponsor. Unable to continue armed conflict, Barzani's fighters were left with a battered infrastructure, in considerable disarray. The 'autonomous region' accounted for only half of the Kurdish-populated area and up to 300,000 Kurds were resettled, often to Arab provinces far from the north. Arabs occupied the destroyed Kurdish villages and boundaries were redrawn to ensure that previously Kurdish provinces now had Arab majorities.

In June 1975, a rival focus for Kurdish aspirations emerged, the Patriotic Union of Kurdistan (PUK), founded in Damascus, and headed then, as now, by Jalal Talabani.

The period following, up to and including the span of the Iran–Iraq War, was both confused and confusing. Initially, Saddam Hussein attempted to build up the Kurdish region economically, in part an attempt to fend off new calls for a separatist armed struggle. At the same time, however, he tried to impose his Executive and Regional Councils on the region. Both the KDP and PUK sought backing from outside regional players in rivalry. In 1980 the PUK gained some ground through an alliance with the Islamic Republic of Iran before attempting to negotiate autonomy with Baghdad.

By 1987, Saddam Hussein had decided to end the threat posed by Iranian collusion with the Kurds once and for all.¹²

4

The Anfal Campaigns

SPOILS OF WAR

The term 'Anfal' has its origin in one of the *sura*, or verses, of the Koran, and alludes to the 'spoils of [holy] war'.¹ It was used by the Ba'athist military machinery to refer to a series of eight military offensives that took place in Iraqi Kurdistan in the spring and summer of 1988. A distinction from other military campaigns by the Ba'athists against the Kurds, and the cause of its notoriety in the outside world, was the systematic use of chemical weapons against both military and civilian targets. Also key to the devastation caused by the Anfal campaigns was the physical destruction of an estimated 3,000 villages, the displacement of approximately 1.5 million people and the mass execution of civilians. While exact figures have yet to be established, it is believed that up to 180,000 people were killed as a result of the Anfal campaigns.

THE LOGIC OF DESTRUCTION

The rationale for the Anfal campaigns has its origin in the Iran–Iraq War (1983–88), which by 1987 had taken a significant toll on Iraqi military manpower, and reduced a hitherto healthy economy to a parlous condition. In 1986, when the Iranian government succeeded in brokering a truce between the PUK and the KDP,² Saddam Hussein feared the formidable prospect of an alliance between joint Kurdish forces and Iran. Iran, usually on the defensive throughout the conflict, was threatening to gain the upper hand. In response, Saddam Hussein issued Decree No. 160 of the Revolutionary Command Council on 29 March 1987, appointing his cousin 'Ali Hassan al-Majjid to command the Northern Bureau of the Ba'ath.³ Decree 160 gave al-Majjid virtually unqualified power in the 'autonomous region' of Iraq. His decisions and directives were to be obeyed without question by all intelligence agencies, including military intelligence (the *Istikhbarat*), and by all domestic security forces, including the Popular Army Command (*Qiyadat al-Jaysh al-Sha'bi*) and the military commands

in the northern region.⁴ 'Ali Hassan al-Majjid was to be the supreme commander; the overlord, of all aspects of Anfal.⁵

Prior to the appointment of al-Majjid (subsequently known as 'Chemical Ali'), actions against the *peshmerga* were directed by the Iraqi army's First and Fifth Corps, based in Erbil and in Kirkuk. During Anfal the Ba'ath party took direct charge of the anti-Kurdish operation. Its modus operandi was to raze the villages of Iraqi Kurdistan so as to ensure that support for *peshmerga* forces was impossible.

In the first weeks and months after his appointment, Chemical Ali began a preliminary wave of village clearances and relocated the inhabitants of destroyed villages into *mujamma'at*, or government resettlement camps. This period also saw the first Ba'athist use of chemical weapons against the Kurds, notably in the villages of Balisan and Sheikh Wasan, in the Balisan valley. These attacks were precursors to a pattern that became ubiquitous over the course of the next year. Chemical weapons were delivered by bombs from aeroplanes and helicopters of the Iraqi air force, leading to burning, blindness, vomiting, and in some cases death, of Kurdish victims. Villages would be subsequently looted, then destroyed by troops and by *jash*;⁶ the surviving villagers having fled for shelter and assistance.

In the wake of the first attacks villagers seeking help from the hospital at Erbil were divided into groups by age and sex, and detained in an *Amm* (General Security Directorate) detention centre. The men would be taken away in busloads, and never seen again. Surviving women and children were dumped in an open plain, on the banks of a river, and left to fend for themselves.⁷ This procedure would become established as a common pattern throughout the course of the next year.

In total, 703 villages were destroyed by forces acting under Chemical Ali in the course of 1987. Villagers fled to *peshmerga*-controlled areas, moved in with family in other towns and villages, or were relocated to government complexes in the north and centre of Iraq.

THE SPRING OFFENSIVES OF 1988

The first time that the term 'Anfal' was routinely used by the Iraqi military and by the Ba'ath party was during the military campaigns that began in February 1988. The Ba'athist lexicon described the *peshmerga* as 'saboteurs'; Jalal Talabani, the leader of the PUK, as an 'agent of Iran'.⁸

The first 'Anfal' campaign consisted of an attack on the Jalafi valley villages of Bergalou and Sergalou, in the mountains of south-eastern Iraqi Kurdistan, which were important PUK strongholds. The villages were also close to the Dukan Dam and hydroelectric power station; a key military objective for the PUK. The region was already defined as a 'prohibited area' by the Iraqi government and its inhabitants were accustomed to regular bombardment both by troops and artillery. Previously, they had experienced chemical attacks during the operations of 1987, although without significant loss of life. In February 1988, the first shots of the Anfal campaign were heard, culminating in a month-long siege of the Jalafi valley. PUK troops held out for weeks, but were hopelessly outnumbered. The Ba'ath party employed ground troops, the air force, the Republican Guard, and chemical weapons to lay siege on the villages. They were later bulldozed and razed to the ground, precipitating the flight of refugees to the town of Sulaimaniya and to Iran. Hundreds of *peshmerga* and civilians died, either directly as a result of the military action or indirectly by exposure when attempting to cross into Iran. Men and teenage boys captured by the military simply 'disappeared'.

THE ATTACK ON HALABJA

Shortly afterwards Iraqi troops attacked the town of Halabja with chemical weapons. Halabja is a town close to the Iranian border, and had long been a stronghold of PUK *peshmerga*. It had been targeted by Iraqi troops in 1987, when parts of the town were bulldozed in retaliation for *peshmerga* support. Its strategic importance was based largely on its proximity to the Darbandikan Lake, which was a significant source of the water supply to Baghdad. In early March 1988, the Iranian army made a concerted thrust to take Halabja. They shelled the town heavily on 13 March, and took it two days later. The Iraqis counterattacked on 16 March, with conventional air strikes and artillery shelling. In wave after wave of bombing attacks the air force first delivered what appeared to be napalm or phosphorus. Later in the day, chemical weapons were used. Eyewitnesses have reported how

Dead bodies – human and animal – littered the streets, huddled in doorways, slumped over the steering wheels of their cars. Survivors stumbled around, laughing hysterically, before collapsing. Iranian soldiers flitted through the darkened streets, dressed in protective

clothing, their faces concealed by gas masks. Those who fled could barely see, and felt a sensation like needles in the eyes. Their urine was streaked with blood.⁹

Survivors fled towards Iran, where they were treated with atropine injections, the only available antidote to the toxins used in the attacks. They were housed in refugee camps at Sanghour, near the Persian Gulf, and at Kamiaran, near the Kurdish city of Kermanshah. Halabja was left under the de facto control of the Iranians. When finally retaken by the Iraqis it was entirely levelled. Exact mortality figures have yet to be established. Human Rights Watch has the names of 3,200 victims, but estimates that between 4,000 and 7,000 people were killed.¹⁰

Human Rights Watch contends that the attack on Halabja, although the single most devastating chemical attack throughout the period of the Anfal campaigns, was not in fact part of Anfal.¹¹ Halabja was a city; the Anfal campaigns were designed to break the back of resistance among the rural Kurdish population. Unlike the Anfal attacks on villages, there was no rounding up of civilians for detention or execution. The Halabja attack, however, broke the morale of PUK fighters in Sergalou and Bergalou. The villages were swiftly taken, and the first Anfal campaign, which had involved input from 27 Iraqi army divisions, was concluded.

THE ATTACK ON SAYW SENAN

The second Anfal campaign began on 22 March 1988, the day after Kurdish New Year, with the chemical shelling of the village of Sayw Senan. The following day, the army attacked with ground troops. Over the course of the following week, the situation in the village was chaotic. Some fleeing villagers were put in temporary camps, some were detained, and some were never seen again. In contrast to the first Anfal, disappearances were not restricted to men and teenage boys; hundreds of women and children also vanished, notably those that fled Qara Dag towards the adjacent region of southern Germian. In one village, hundreds of men, women and children that surrendered to the Iraqi forces were never seen again.¹²

THE REMAINING ANFAL CAMPAIGNS

The third Anfal campaign was similar in numerous respects to the two preceding campaigns; heavy assaults from the air and ground

troops; mass destruction of villages; and the creation of thousands of displaced Kurds. There had been disappearances of men, women and children in the first two campaigns, but the third chapter of Anfal saw a marked increase in the systemisation of the elimination of Kurdish civilians (although the full bureaucratic machinery would later be refined). Targeted at villages on the plain of Germian, the aim again was to destroy PUK support. Typically, both civilians and *peshmerga* alike were duped into surrendering to Iraqi forces by false promises of amnesty and taken to 'preliminary collection points' such as those at Leilan, Aliawa, Qader Karam and Chamchamal in the north, and Tuz Khurmatu and Qoratu further south.¹³ Once detained, groups were separated according to age and sex. Many were moved repeatedly to different detention camps. In all, conditions were deplorable; food was practically non-existent, and there were few or no facilities for hygiene. The detained were repeatedly reassured that they were safe and that they would eventually be relocated to government complexes. Many were taken away by truck, and never seen again. Over 10,000 inhabitants of southern Germian alone are thought to have disappeared.¹⁴

Subsequent Anfal campaigns continued in this pattern. While the bulk of efforts were directed at PUK-controlled areas, the final Anfal campaign was targeted at strongholds of Barzani's KDP. Some camps have passed into Kurdish lore as bywords for unspeakable terrors, including those at Tikrit, Topzawa, Dibs (women's camp) and Nugra Salman (where the elderly were held). In all camps, prisoners of both sexes and all ages were regularly beaten and rations were pitiful to the extent that some, especially the elderly and the young, died of starvation. Mothers were separated from children. Many were taken away, blindfolded and handcuffed, never to be seen by their relatives again.¹⁵

Besides the total 'disappearance' of up to 100,000 Kurdish victims, ample evidence exists of the use of mass executions of men, women and children as a means of destroying Kurdish resistance. Typically, prisoners were taken from the camps in convoys of buses or other vehicles, handcuffed, blindfolded and driven to remote locations in south and central Iraq. Here, weakened by lack of food and water and by the stifling conditions inside the vehicles, they were pulled out and executed by machine gun alongside freshly-dug mass graves. One convoy was thought to consist of over 1,000 people, all executed in this way over the course of a few hours. It is thought that 12,000

were killed in one location alone. Only since the end of the Ba'athist regime have these graves begun to come to light.

The final Anfal commenced on 25 August 1988 with poison gas attacks on the village of Badinan, which was intended to crush what resistance remained in those areas of Iraqi Kurdistan controlled by the KDP. Like its predecessors, the campaign was marked by mass shootings of civilians and arbitrary detentions. The Iraqi military itself recorded the detention in custody of over 13,000 civilians.

AMNESTY

On 6 September 1988, a 'general and comprehensive amnesty' was announced, allowing the return of refugees from Turkey, and the dispersal of prisoners in camps.¹⁶ Returning refugees were allotted to new complexes, optimistically described as 'new villages', despite the absence of housing and the presence of watchtowers.¹⁷ Here, they were expected to build their own shelter without provision of materials. Return to their original villages was an impossibility for the refugees; not only did the villages not exist, but it was forbidden. Similarly, 'Anfalak'¹⁸ were prohibited from leaving the complexes on pain of death. There were other repercussions for survivors:

those who benefited from the Anfal decree ... [were not to be] treated on an equal footing with other Iraqis in terms of rights and duties, unless they can effectively match good intentions with proper conduct and demonstrate that they have ended all collaboration with the saboteurs, and that they are more loyal to Iraq than their peers who have benefited from the above-mentioned amnesty decree.¹⁹

Nor were they permitted to buy state land or work as state employees, until a period of two years had elapsed.

Up until the summer of 1989, Saddam Hussein continued razing towns and villages, and resettling their inhabitants. Mass executions were reported as occurring well into the autumn and winter of 1988. Within a year of the conclusion of the campaigns, two-thirds of Iraqi Kurdistan was estimated to have been depopulated of Kurds. In addition to the tens of thousands of internally displaced people created by the Anfal campaigns, 60,000 people sought refuge in Turkey. Turkey was a reluctant host; anxious to defuse the possibility of attention being drawn to the plight of its own Kurdish population.

Thus, it refused refugee status to those that had crossed the border, and denied non-Turkish institutions and agencies access to the camps in which Anfalak were housed. A greater number of refugees – an estimated 100,000 – sought and received assistance in Iran.

INTERNATIONAL RESPONSES TO THE ANFAL CAMPAIGNS

Full details of Anfal and of the use of chemical weapons took some time to reach the outside world. US Secretary of State George Shultz declared on 8 September 1988 that the use of chemical weapons by Iraq was ‘unjustified and abhorrent’ and unacceptable to the civilised world.²⁰ Early attempts to investigate the use of chemical weapons were largely thwarted by the governments of both Iraq and Turkey. The UN was asked by 13 countries to investigate the allegations, but Turkey and Iraq’s refusal to comply made it impossible for investigations to go ahead.²¹

Evidence of the use of chemical weapons was provided by a team of three doctors from the organisation Physicians for Human Rights (PHR). PHR visited a number of refugee camps, specifically to investigate claims that poison gas was used against civilians on 25 August 1988. It concluded that Iraqi aircraft attacked villages with bombs containing ‘lethal poison gas’, killing many and causing ‘severe suffering’ among survivors, both animal and human.²²

According to PHR, bombing runs were followed by the appearance of yellowish clouds at the site of the bomb bursts. Birds and domestic fowl near bomb bursts were killed within two to five minutes, followed closely by sheep, goats, cows, and mules. Larger mammals and people close to the point of detonation began to die soon afterwards. Their skin darkened and yellow, sometimes bloody, discharge drained from their noses and mouths.²³

The medical findings indicated exposure to mustard gas, although the exact composition of the weapons remained unclear. Deaths within minutes of exposure, as witnessed during the attacks, suggested the use of at least one other chemical additive.²⁴

Separate research was conducted into the gas attacks at Halabja by Dr Christine Gosden, Professor of Medical Genetics at Liverpool University. Gosden concluded that a number of chemical agents had been used, including mustard gas, and nerve agents SARIN, TABUN,

and VX. Testifying to a Senate Judiciary Subcommittee in April 1998, she stated:

Saddam Hussein clearly intended to complicate the task of treating the Halabja victims. At a minimum, he was using Halabja as part of the Iraqi [chemical weapons] test programme. Handbooks for doctors in the Iraqi military show sophisticated medical knowledge of the effects of chemical weapons.²⁵

What, perhaps, was not apparent even to the authors of the chemical weapons attack was the legacy that the attacks would leave in their wake. Gosden found that ten years later the attacks had left a devastating inheritance both for direct survivors and for their descendants including respiratory problems, eye disorders, skin diseases, neuro-psychiatric problems, cancers, congenital abnormalities, infertility, miscarriages, stillbirths, and neonatal and infant deaths.²⁶

In early 2003, the US and UK governments would tout the use of chemical weapons by Saddam Hussein as a proof of both the Iraqi government's possession of and willingness to use weapons of mass destruction. Yet in the immediate wake of their use in the Anfal and Halabja attacks, the reaction of both governments was discernibly guarded. Internal documents pointed to the US administration's reluctance to believe that Iraq had indeed used chemical weapons – arguing that there was no evidence to suggest that Iran was not either solely, or at least jointly responsible for the attacks.²⁷ In the UK, between 1986 and 1991, twelve Early Day Motions²⁸ were tabled calling for the abandonment of the supply of arms to Iraq and condemning what happened at Halabja. Not one was signed by now prominent figures including Tony Blair, Jack Straw, Robin Cook, Geoff Hoon or John Prescott. The historian Peter Sluglett describes the events as having 'occasioned little reaction on the part of Iraq's patrons in the West beyond some feelings of unease, a feeling, perhaps, that a headstrong and wayward child had gone a little too far'.²⁹ He adds, 'As time went on, it appears that US and British intelligence agencies did indeed have a fairly clear idea of what was happening [but] clearly realised that forthright public condemnation would be bad for business and kept silent.'³⁰

The international community was not entirely mute. In response to Massoud Barzani's appeal to the UN to prevent further chemical assaults, the UN Security Council passed Resolution 620 on 26 August

1988, which condemned the use of chemical weapons.³¹ This act was largely symbolic; the gassing of Kurds continued until the autumn. In the US, a bill was proposed which, if introduced, would have cut US\$ 800 million worth of credit guarantees for exports to Iraq. The bill met opposition from the US administration, largely at the behest of powerful lobbyists acting on behalf of US food producers, who were major exporters of produce to Iraq, and thus failed to become law.

5

The First Gulf War: From Uprising to Democracy

BACKGROUND

In 1988, the main Kurdish political parties formed the first National Front of Kurdistan, a political force in waiting.¹ The Front would not have too long to wait before an opportunity to become operational arose. In 1990, the government of Iraq annexed the territory of Kuwait, giving rise to a series of events that became the First Gulf War.

THE INTIFADA (UPRISING)

The constitution of Iraqi Kurdistan has its origins in the outcome of the 1990–92 Gulf War; the uprising or intifada against Saddam Hussein following the ceasefire signed with NATO troops; the resulting crackdown against the Kurdish rebels in the north and the Shi'ites in the south; and the subsequent refugee crisis.

Whether the US and its allies are responsible for encouraging the 1991 uprising, and hence for the appalling tragedy that followed, is a matter of continuing debate. In the minds of many Iraqis, the mistake of the US was to encourage a popular and spontaneous uprising, but to decline to support it with arms. Some have also accused the Iraqi opposition in exile of failing to capitalise on a key opportunity.²

The allegation of US incitement is most often seen to stem from ex-US President George Bush's statement that 'there's another way for the fighting to stop, and that is for the Iraqi military to take matters into their own hands to force Saddam Hussein, the dictator, to step aside'.³ This, along with other statements carrying a similar sentiment, was broadcast to the Iraqis by the CIA-backed radio station Voice of America on and around 15 February 1991.⁴ Their position in history is moot. Some have argued that responsibility for the rebellion lies in the hands of the Americans; others that the Kurds and Shi'ites would have rebelled in any event.

The human cost of the subsequent crackdown was extraordinary and devastating to the Kurdish region, coming as it did so soon in the

wake of the Anfal campaigns. However, the resulting imposition of the no-fly zone above the 36th Parallel gave Iraqi Kurds some respite from the Baghdad regime.

The uprising began days before Saddam's ground-war defeat in late February and his surrender in early March 1991. It started in the south of the country, with revolts in the cities of Basra, Suq al-Shuyukh, Nasiriya, Najaf and Karbala.⁵ In the north, the first cities to fall were Raniyya and Chawar Qurna, then Koi Sanjaq, Sulaimaniya, Halabja, Arabat, Erbil and eventually Kirkuk on 20 March 1991. The Iraqi writer Faleh 'Abd al-Jabbar describes how the pattern of the rebellions was remarkably similar:

Masses would gather in the streets to denounce Saddam Husain and Ba'thist rule, then march to seize the mayor's office, the Ba'th Party headquarters, the secret police building, the prison and the city's garrison (if there was one). As they marched, people would shoot at posters or wall reliefs of the dictator. As the cities came under rebel control, the insurgents 'cleaned out Ba'thists and mukhabarat.' There was little or no regional coordination during the rebellion. It was often unclear in one town what was occurring in the other, or even, in one quarter of a town, what was happening in an adjacent district.⁶

In the north, events moved quickly. Facing the prospect of Saddam Hussein's defeat, many *jash* saw that an opportunity had arisen to turn against him. The forces and confidence of the *peshmerga* multiplied in consequence. Kurdish leaders have since proclaimed to have been taken by genuine surprise at the scale of the popular protest.

From a military perspective, the Kurds had notable successes. Over 50,000 members of the Iraqi armed forces are thought to have deserted in the north. In Sulaimaniya an estimated 900 members of the *mukhabarat* were killed in a day of fighting. Predictably there were revenge attacks on members of the Iraqi security services. The brunt of these were reportedly reserved for members of the security service apparatus and prominent Ba'athist apparatchiks. Journalist and film-maker Sheri Laizer describes visiting a *peshmerga* military camp during the rebellion.⁷ Ordinary soldiers, she reported, were treated well. Known Ba'athists, torturers, and secret service agents, by contrast, were imprisoned in stifling conditions with little access to water or air.⁸ Revenge killings almost certainly occurred, both in Iraqi Kurdistan and, especially, in the Shi'ite south of the country.⁹

Recent excavations of mass graves have raised the prospect that some contain the bodies of Ba'athists killed by rebels.

THE BA'ATHISTS RESPOND

The US did not back the rebellion, however. Numerous reasons have been put forward including fear of an Iranian-style Shi'ite revolution, a desire to preserve Iraq's territorial integrity or a vested interest in preserving Saddam Hussein's regime.¹⁰ Despite the scale of the uprising, Saddam Hussein found it easy to crush. In the south of Iraq, the Republican Guard quickly retook Basra, Najaf and Karbala with unprecedented savagery, killing an estimated 300,000 people in the process. In the north, the Iraqi army began its counteroffensive operations in late March, using ground troops and helicopter gunships. Intense bombing of Kirkuk led to its being recaptured on 28 March. Sulaimaniya was taken by 3 April 1991, followed by the cities of Dohuk, Zakho, and Erbil.¹¹

EXODUS FROM IRAQI KURDISTAN

More than 100,000 people are thought to have been taken into detention during the operations in 1991. Men were routinely rounded up, and as occurred during the Anfal campaigns, many were never seen again. In some towns in the north, hospital patients allegedly had their throats slit and were thrown from windows. In total at least 20,000 people are thought to have died in the crackdown on the northern rebellion. Within days an exodus of vast proportions began. Up to half a million people took refuge in Turkey, and one and a half million in Iran. Thousands died of cold, exposure and hunger in their flight. Others were killed by continuing attacks from Iraqi forces, including the use of phosphorous bombs from helicopters.¹²

Prior to the outbreak of hostilities between Allied forces and the government of Iraq, the UN had pre-positioned supplies and facilities in all four of Iraq's neighbouring countries, to accommodate the projected 300,000 refugees it estimated would or could have been created during the war. In the event, only 65,000 fled during the coalition bombing; the adequacy of the pre-positioned supplies was dwarfed by the crisis created after the fighting had ended between Iraq and the allies.

The High Commissioner described the crisis as representing the 'highest rate of influx'¹³ in the 40-year history of the UN

High Commissioner for Refugees (UNHCR). Within days of the crackdown, the refugees' situation had become desperate. The half million attempting to reach Turkey, and those displaced within Iraqi Kurdistan were stranded in mountain passes; inaccessible areas with little shelter, water or cover. In addition, the lack of roads made the provision of supplies almost impossible.

TURKEY, IRAN AND THE IRAQI KURDS

While Turkey was praised by its NATO allies for its efforts to help the displaced, in reality its treatment of the refugees left a great deal to be desired. The movement of Kurds into Turkey created a dilemma for Ankara. Anxious not to do anything that would inflame, or in any sense highlight its own 'Kurdish problem', or to add to the 30,000-plus Iraqi Kurds still in Turkey as a result of the Anfal campaigns, it initially refused to let the Kurds down from the mountains into more hospitable terrain on the Turkish side of the border, despite most of the refugees being hopelessly under-prepared for the wintry conditions of the mountains.¹⁴ The press reported nursing mothers with babies and young children being beaten back by Turkish soldiers with rifle butts.¹⁵ Initially, Turkey called for refugee camps to be established in Iraq. Turkish President Özal decided to let the Kurds cross the border only on 16 April, almost three weeks after many of the Kurds had begun their flight from the towns and villages of Kurdish Iraq.¹⁶ Furthermore, though a signatory to the 1951 Convention Relating to the Status of Refugees, Turkey did not and continues not to recognise non-European asylum seekers as refugees.¹⁷

By far the greatest number of refugees crossed into Iran, where in comparative terms they enjoyed a better welcome. Around a million Iraqis crossed the border, and approximately 150,000 camped on the border. Ninety-four camps and reception areas were established, many within towns destroyed during the Iran–Iraq War.¹⁸

RESOLUTION 688¹⁹

At the instigation of France, Turkey and Iran, the UN Security Council called a meeting on 5 April 1991 to discuss the adoption of a resolution that would condemn the repression by the Iraqi government of its own people. The adoption of Resolution 688 did not go unchallenged: Cuba, Yemen and Zimbabwe voted against it; China and India abstained; and Iraq lodged a formal protest.²⁰ Some

observers noted with dissatisfaction that the resolution was not tied in with Resolution 687, passed two days before, laying down the terms of the ceasefire with Iraq.²¹

Among other measures, Resolution 688 stated that the Security Council:

1. [Condemned] the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region;
2. Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression and expresses the hope in the same context that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;
3. Insists that Iraq allow immediate access by international humanitarian organisations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations.

This resolution coincided with the first appeal of the UN Disaster Relief Office (UNDRO) to cope with the Kurdish refugees. Five days later, Prince Sadr al-Din Aga Khan was appointed by the UN Secretary-General to be Executive Delegate of the Secretary-General in the context of a UN Inter-Agency Humanitarian Programme for Iraq, Kuwait, and the Iraq/Iran and Iraq/Turkey border areas. The role encompassed coordinating and overseeing humanitarian assistance and negotiating on behalf of the UN with the government of Iraq. On 18 April 1991 a deal was struck between the UN and the Iraqi government to provide humanitarian assistance by the UN to displaced Iraqi Kurds and Iraqi Kurdish refugees. Iraq agreed to ensure safe passage of relief supplies and provide forms of logistical support.²²

Resolution 688 raised a number of important issues in international law. Internal acts of repression by the Iraqi government were included in the resolution's definition of international peace and security, where they had the consequence of generating an outflow of refugees towards and across international borders. This gave the Security Council a mandate to act even where action amounted to interference with domestic affairs. This seemed to contradict Article 2(7) of the UN Charter,²³ which prohibits intervention in matters within a state's domestic jurisdiction. Nonetheless, the adoption of the resolution

appeared to establish that such internal repression was within the Security Council's sphere of confidence.

The severe emergency situation was exacerbated by a number of difficult factors. As previously discussed, Turkey was reluctant and initially refused to admit Kurdish refugees from Iraq. Furthermore, Turkey's opposition to relief operations being performed on Turkish territory was such that it placed obstacles in the path of the Office of the UN High Commissioner for Refugees performing standard protective functions.²⁴ In any event, the magnitude of assistance required, appalling weather conditions and the impassability of mountain roads would have hindered relief operations even were Turkey willing to provide them.

No attempt was made in Iran to prevent refugees from crossing the border, and in some instances there was remarkable generosity; one town with a population of 25,000 played host to 75,000 fleeing Iraqi Kurds.²⁵ Nonetheless, the Iranian side also came with complications. Sour relations between Iran and the west made negotiation difficult.²⁶ Camps, though in some conditions well provided, were remote, and heavily guarded. It was also alleged that good quality relief supplies from international humanitarian organisations were substituted by Iranian officials for second-rate replacements in some camps. The Lawyers' Committee for Human Rights concluded that refugees were left with the unenviable choice between the uncertainty of returning to Iraqi Kurdistan and extreme isolation in remote, heavily guarded but well provisioned camps of Iran.²⁷

'OPERATION PROVIDE COMFORT'

On 13 April 1991, the US in agreement with the Turkish government commenced a relief operation for refugees caught in the border area as a stop-gap measure, up to and until the UN was able to meet the humanitarian need. 'Operation Provide Comfort' involved the provision by land but mostly by air, of 15,500 tons of relief supplies, administered by over 20,000 personnel from 13 nations.²⁸ However, the operation did not meet the needs of the refugees, and it was clear that they would have to be persuaded to return to Iraq if aid was to be adequately supplied.

'OPERATION SAFE HAVEN'

Momentum for the creation of a safe haven within Iraq gathered in the first two weeks of April 1991. The idea was suggested by Turkish

Prime Minister Özal to UK Prime Minister John Major, who called for the establishment of UN-protected enclaves within Iraqi Kurdistan at an EC summit on 8 April 1991. On 16 April 1991, President George Bush announced that US military forces would move into Iraqi Kurdistan and establish refugee camps to shelter and feed the refugees massed in the border areas between Iraq and Turkey, declaring,

The approach is quite simple: if we cannot get adequate food, medicine, clothing and shelter to the Kurds living in the mountains along the Turkish-Iraq border, we must encourage the Kurds to move to areas in northern Iraq where the geography facilitates, rather than frustrates, such a large-scale relief effort.

Consistent with UNSC Resolution 688 and working closely with the United Nations and other international organisations and with our European partners, I have directed the US military to begin immediately to establish several encampments in northern Iraq where relief supplies for these refugees will be made available in large quantities and distributed in an orderly manner ... adequate security will be provided at these temporary sites by US, British and French air and ground forces, again consistent with United Nations Security Council Resolution 688 ... all we are doing is motivated by humanitarian concerns ...²⁹

A first camp was established at the border town of Zakho, financed by the European Community and by the Dutch government. Gradually the safe haven increased in size to stretch as far as Amadiyya in the east and Dohuk in the south, as Iraqi troops and police were rolled back at the insistence of the Allies. Unsurprisingly, the Baghdad government protested in a letter to the UN Secretary-General that 'Operation Safe Haven' constituted 'a serious, unjustifiable and unfounded attack on the sovereignty and territorial integrity of Iraq'.³⁰ Nonetheless, the UK and US governments warned that Iraqi aircraft were prohibited from flying north of the 36th Parallel, and that armed forces were not to be sent into the 36-by-63-mile zone created by the operation for the safety of its Kurdish inhabitants.

From the beginning of the Allied forces' relief operation there was tension between the military powers and the UN. The UN Secretary-General did not wish to grant coalition troops official status as a UN peace-keeping force and refused to do so. Administration of the Zakho camp was handed over to the UN authorities on 13 May. On 23 May 1991, the UN representative in Iraq announced an agreement

to station up to 500 UN security guards, carrying only side-arms, in four Kurdish provinces. They were tasked with patrolling UN relief centres in both the north and the south of Iraq.³¹ On 7 June 1991, humanitarian relief efforts were taken over by UNHCR. By September, almost all of the Iraqi Kurdish refugees had been persuaded to return.

That so many had been persuaded to return so quickly is attributable to a number of factors; Turkey's obvious discomfort at accommodating refugees and its refusal to grant asylum put pressure on those that had crossed the border to return; while refugees remained for some time in a number of camps in Iran, virulent attacks of food poisoning, thought to have been the responsibility of Iraqi agents, caused large numbers to re-cross the border. 'Operation Provide Comfort' was probably the main inducement. Routes of return were clearly mapped out, and relief and medical supplies provided along the way. It was often possible for community leaders to travel ahead to ensure that conditions would be suitable for the return of their people.

There were some setbacks, however, as refugees refused to return to areas outside of the protected zone below the 36th Parallel. Sporadic attacks by Iraqi troops displaced upwards of 200,000 people from Sulaimaniya and Erbil in October and December 1991 respectively, and a further 40,000 from Erbil the following March,³² by which time almost half a million people remained internally displaced within Iraq.

The refugees' return was premised on the assurance that once within Iraq, they would be safe from further attacks by Iraqi forces. Not only did a moral obligation lie with the UN/coalition to ensure this would and could be honoured but it is prohibited to return refugees to a country where they may face persecution under the principle of *non-refoulement* in customary international law.³³ The challenge that lay ahead for the international community was to find a long-term method of ensuring the safety of the returnees without a major military presence. The UK Foreign Secretary Douglas Hurd had stated on 17 June 1991 that they 'went into northern Iraq in order to persuade the Kurds to come down from the mountains – to save lives. We don't want the operation to end in a way that will merely recreate the same problem.'³⁴ To this end measures included a 5,000-strong rapid reaction force within Turkey, backed by air support. This did not last the summer, and was entirely withdrawn in September 1991. Thus, the sole security force within Iraqi Kurdistan consisted

of the contingent of lightly armed UN guards, numbering at most 500, but often as few as 100.³⁵

NEGOTIATING AUTONOMY WITH SADDAM HUSSEIN

Faced with renewed insecurity, and justifiably cynical about the security afforded by the 'safe haven', Kurdish political parties realised the need to consider the impossible and negotiate with Saddam Hussein for an autonomy agreement. The idea was backed with support from within the coalition, notably the UK and the European Community, who declared on 29 July that 'it would be appropriate for the international community to give its support to a [satisfactory autonomy] agreement on the basis of Resolution 688 of the Security Council'.³⁶

Nevertheless, ensuing negotiations were marked by short-lived triumph and enduring disaster. Mas'ud Barzani and Jalal Talabani haggled with Baghdad in parallel. Their joint goal was for Baghdad to offer 'expanded autonomy within the federated structure of Iraq promising democracy, pluralism and constitutional rule in Baghdad'.³⁷ Early on in the talks, Talabani claimed that he wrested from Saddam Hussein an agreement to dismantle the Revolutionary Command Council (the inner sanctum of the Ba'ath party) and hold free elections. In May 1991, Massoud Barzani announced that he had won from Baghdad the designation of Kirkuk as the administrative capital of the autonomous region.

As the sceptics suspected from the start, Saddam proved a fickle deal-maker. Negotiations broke down in June as the Iraqi government moved the goalposts several times and made conditions that the Kurdish leaders could not meet. These included the stipulation that the Kurds join the Ba'athist government in Baghdad. By the autumn, fighting had broken out between Iraqi troops and the Kurds. On 20 October 1991, Iraqi forces were withdrawn from the three northern governorates of Erbil, Dohuk and Sulaimaniya and the Kurdish region was placed under economic siege. Salaries to civil servants were cut off, and an embargo imposed (oftentimes referred to as 'internal supply restrictions' to distinguish from the UN embargo against Iraq)³⁸ preventing foodstuffs and fuel from crossing the front line that now separated the 'autonomous' north from the rest of the country. This crippled the economy, and paralysed the political parties that

constituted the Kurdistan Front. Iraqi shelling of towns such as Kifri, Kalar and Maydan, displacement of Kurds in Kirkuk and the surrounding region, and the stepping up of the 'Arabisation' process demonstrated the international community's 'security measures' for the Kurdish region had their limitations.

6

Democracy in Iraqi Kurdistan

A RAINBOW ALLIANCE

The origins of the Kurdistan Regional Government (KRG) lie in the Kurdistan Front, a rainbow alliance of Kurdish parties formed in the aftermath of the Anfal campaigns in 1989. It included the KDP, the PUK, the Kurdistan People's Democratic Party (KDPD), the Kurdistan Socialist Party (PASOK), the Kurdistan Branch of the Iraqi Communist Party, the Assyrian Democratic Movement and the Kurdistan Toilers' Party.¹ Opportunity for the Front to constitute a de facto government came with the withdrawal of the Iraqi government's administration of the area in October 1991. The lack of formal structure of the KRG necessitated the holding of elections in May 1992. It must be noted that the Kurdish-administered region, under the de facto jurisdiction of the Kurdish political parties, did not extend to all those areas of Iraq in which the Kurds were in a majority.

INTERNATIONAL AMBIVALENCE

Even at its inception, the KRG was regarded ambivalently by the outside world. The US, ideologically supportive of the democratic process, tentatively welcomed the election. However, its longstanding commitment to the territorial integrity of Iraq also made it circumspect. On 15 May 1992, the US government declared its hope that the elections would 'help lead to a better life for all the people of northern Iraq ... [it] welcome[d] public and private assurances by the Iraqi Kurdish leadership [that the elections would deal] only with local administrative issues [and did not] represent a move towards separatism'.² The UK government likewise declared that it was happy with the elections as long as they did not represent a move towards the creation of 'Kurdistan'.³ The European Parliament on the other hand passed a resolution expressing approval, and encouraging pursuit of the path towards autonomy.⁴ The international community had already demonstrated, in its response to the refugee crisis in the wake of the uprising, its confusion on policy with regard to Iraqi sovereignty and territorial integrity and it persisted.

AUTONOMY FROM A KURDISH PERSPECTIVE

Autonomy for the Kurdish region in Iraq was not a novel concept. It had been negotiated several times between Kurds and the central government, usually faltering over the extent of the territory that should be included in any agreement, the means of determining the extent of the territory, and of course the Ba'ath party's reluctance to honour agreements. However, the 1970 March Manifesto remained a valuable legislative tool for the Kurds. Among its provisions it was determined that Kurdish should be taught alongside Arabic in all areas with a Kurdish majority, that Kurds would participate fully in government (including the cabinet and the armed forces), and that the Constitution should be amended to declare that 'the Iraqi people is made up of two nationalities, the Arab nationality and the Kurdish nationality'.

In order to prevent further atrocities by Saddam, the political bodies resulting from the election insisted that the Kurdish region would remain a part of Iraq.

ELECTORAL PROCEDURE

Despite the Kurds' desire for a legitimate election in the eyes of the UN, the UN declined to offer its assistance or recognition. Nonetheless, international monitoring (by, among others, Pax Christi,⁵ and the International Human Rights Law Group) did take place. In addition, the Kurdistan Front passed legislation to prove it was taking pains to ensure the highest standards of probity and fairness. Two elections were to be held. The first would decide membership of the 105-person National Assembly. The second would be a presidential election, to decide the holder of the post of Leader of the Kurdistan Liberation Movement.

Both elections were held on 19 May 1992 using a proportional representation electoral mechanism under which any party gaining 7 per cent or more of the vote would win a place in the assembly.⁶ In the event, the two main parties, the KDP and the PUK, dominated the outcome almost equally. None of the other parties were able to meet the 7 per cent threshold, so their remaining votes were divided between the KDP and the PUK. In the assembly, the votes ultimately translated as 50 seats each for the main parties, five extra seats being provided for minority groups (four for the Assyrian Democratic Movement, and one to the Kurdish Christian Unity party). None

of the four candidates running in the leadership election (Massoud Barzani of the KDP, Jalal Talabani of the PUK, 'Uthman 'Abd al-'Aziz Muhammad of the Islamic Movement, and Mahmud 'Ali 'Uthman of PASOK) were able to muster an absolute majority, and further elections were ultimately postponed.

By July 1992 ministries had been established. In effect, these were divided between the two main parties with each minister being deputised by a counterpart from the other party. Prime Minister Dr Fu'ad Masum of the PUK was deputised by Rosch Shawais of the KDP; Amin Mawlud of the KDP, Minister for Industry and Electricity, deputised by the PUK's Ameen 'Abd al-Rahman, and so on.⁷ Talabani and Barzani did not participate in the elections for the assembly, weakening its credibility in the opinion of some. In his statement to parliament Prime Minister Dr Fu'ad Masum declared:

The election of the Kurdish parliament was a great victory for our people. Our enemies anticipated that we would drown in a sea of blood. The Iraqi regime hoped that the people would side with it so that Saddam Hussein could claim a victory to cover his defeat. But as we expected, the people stayed true to their traditions and the national liberation movement rose to the occasion.⁸

The result was regarded as a triumph for Kurdish democracy, but the equal split between the two main parties augured badly. The initial difficulty was not conflict but paralysis, with the two factions operating not so much in league with each other, but in parallel.

A NEW KIND OF POLITICAL SPACE?

Since Iraqi Kurdistan's self-declared election in 1992, it has become difficult to define it as a political space.

The 1992 elections were held in order to fill the political vacuum created by the withdrawal of the Iraqi central government's presence in the north. Baghdad considered the KRG 'illegal', and yet offered nothing in its place. The holding of elections within a part of one nation, in the absence of the consent of that nation's central government raised the question as to what kind of political space was created, and whether the elections jeopardised Iraq's territorial sovereignty. This question remains unanswered in a number of respects.

As mentioned, the international community took an ambivalent stance towards the territory under the governance of the KRG. It lauded the attempt at establishing a democracy under the nose of a despot, but tempered its enthusiasm with a concern that Iraq should stay intact. Resolution 688 of 1991 reaffirmed 'the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq and of all states in the area'.

The Kurdish Front assured that the elections did not in any sense represent a move toward separatism. From the start, the Front declared itself to be doing little more than meeting a need, but the Elections Act of April 1992 observed that

the Iraqi government has recently carried out an unprecedented measure, namely the withdrawal of its administrative units and personnel from Kurdistan, thereby creating a unique administrative and legislative vacuum. The Iraqi Kurdish Front, which was conducting negotiations with the central government, has thus been thrown into a very complicated and challenging situation ... the [IKF] is determined to take up this challenge ... It is taking the first step to catch the train of the civilized world. It intends to reconstruct Kurdish society on the basis of democracy and respect for human rights in accordance with international norms and agreements.⁹

It proceeded to describe the Front as a 'de facto' ruling power that would, 'demonstrate to the world that the people of Iraqi Kurdistan are capable of ... self-government'.¹⁰ However, a position on the Kurdish region's relationship with the rest of the country was not forthcoming until later in the year when, in a special communiqué, the Kurdish parliament declared a federal union with the rest of Iraq.

The communiqué noted that statehood had been an ambition of Kurds since before the 1919 Treaty of Sèvres, which promised some form of state-like self-determination. However, its own proclamation fell far short of the creation of a state:

the parliament, in exercising its duties and its right to decide the destiny of Iraqi Kurdistan in accordance with international commitments and conventions, has agreed unanimously to specify the legal relationship with the central government of Iraq as one of federal union within a parliamentary, democratic Iraq based on a multi-party system and respect for human rights.¹¹

Some have pointed out the threat of a breakaway Kurdish state would not have arisen as and when it did had it not been for the creation of the safe haven by Allied forces.¹²

Iraqi Kurdistan has been treated as a *de facto* 'state' by agencies of governments, which do not otherwise recognise it as such. UK immigration authorities have, for example, sought to return asylum seekers to Iraqi Kurdistan in the face of evidence of continued harassment by Ba'athist security services in the rest of Iraq.

RELATIONS BETWEEN THE PUK AND KDP

A rift broke out between the two main Kurdish parties after the elections. Underlying tensions were clearly exacerbated by the double embargo imposed on the region, Saddam Hussein's economic siege and the UN sanctions against Iraq.

Both sides accused the other of letting themselves be manipulated by regional players Iraq, Iran and Turkey. Certainly, the challenges facing an emerging democracy in a hostile environment, lacking the full blessing of the international community, were substantial, if not insurmountable. Danielle Mitterrand noted in a speech to the Chatham House Institute in 1994,

One wonders how a democracy can flourish in a country abandoned to the bombing of their Iranian and Turkish neighbours and to the destructive intrusions of the Iraqi army with all the exactions, the withdrawal of the currency,¹³ power cuts, deportation of the population living in the unprotected part of Kurdistan, the double embargo imposed by the Iraqi government, a complete lack of energy supplies, the burning of the crops, and the daily tragedy of anti-personnel mines.¹⁴

Much of the animosity between the two parties originates within the history of Kurdish politics and the rift between factions of the KDP, leading to Jalal Talabani's announcement of the creation of the PUK in 1975. But events started to snowball in May 1994 regarding a land dispute north-east of Sulaimaniya. By the time a lasting agreement was found, Iran, Turkey, Ireland, France, the US and even Iraq had hosted, or had offered to host, mediation talks.¹⁵ An operations room was established on 21 May 1994 to oversee the restoration of normality. This was largely administered by Ahmad Chalabi and other members of the Iraqi National Congress (INC).¹⁶

Between 16 and 22 July 1994, the parties met in Paris, and with the assistance of the French government and observers from the UK and US embassies, produced a new draft constitution for the KRG. The Turkish government was concerned that the agreement constituted a roadmap for Kurdish quasi-nationhood and refused to grant exit visas to the two politicians required to sign it in Paris, in the presence of French president François Mitterrand. Thus, the Paris Agreement failed.

A new strategic agreement, signed on 21 November 1994, amounted to nothing. The parties again disagreed over the collection of border tariffs and land ownership of Erbil which was the seat of the KRG.¹⁷

During talks in Ireland in 1995, the KDP and PUK representatives agreed on the demilitarisation of Erbil, the turnover by the KDP of customs revenues to a joint bank account, reconvening of the KRG, and to reassure outside interests of their respect for Iraq's territorial integrity and Turkey's 'legitimate security interests'. There were widespread hopes on all sides that these Drogheda talks would succeed where others had failed.¹⁸ However, the rift materialised again in 1996 when in August, the KDP allied itself with Baghdad to retake first Erbil and then the eastern city of Sulaimaniya. Barzani's justification for such an unholy alliance was that perceived PUK/Iranian joint forces posed a threat to Iraqi territorial integrity.¹⁹

Though seemingly routed, the PUK was able to recover most of the territory it had lost including Sulaimaniya with support from the Iranian military. By this time, resurgence in violence between Iran and Iraq began to look like a real possibility. In October 1996, US-sponsored talks were held in Ankara. Conferences were held sporadically throughout the following year all of which appeared to be making progress until October 1997, when there were renewed disagreements between the KDP and PUK over land ownership.

Beginning with an overture made by Jalal Talabani, the KDP and PUK again agreed to forge a long-lasting peace and by July 1998, US President Bill Clinton was able to declare that both leaders had

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.²⁰

Barzani and Talabani met in Washington in September 1998. In what was termed the 'Final Statement of the Leaders Meeting', they informed the world that they had reached a number of significant agreements. They condemned internal fighting, pledged to refrain from resorting to violence or seeking outside intervention against each other as a means for settling differences, agreed to comply with the human rights provisions of Resolution 688, agreed to facilitate the free movement of citizens, and vowed to refrain from negative press statements. Other provisions were made for revenue sharing, the status of the key cities of Erbil, Dohuk and Sulaimaniya, and for the organisation of free elections. A timetable was set for establishing milestones on the continuing road to peace.

Any lack of confidence in prospects for unity between the two Kurdish parties were subsequently proven wrong. The peace, so elusive during the early 1990s, continued to be maintained.

7

Human Rights in Iraqi Kurdistan

BACKGROUND

Even the most cursory glance at the history of the Iraqi Kurds illustrates the appalling extent to which they have been subjected to human rights violations on a systematic basis which has been effectively unchecked by the international community for several decades. Human rights abuses did not begin with the advent of the Saddam Hussein regime in 1979, or with the Ba'athists. They have been a feature of relations between the central governments and the Kurds since the creation of Iraq. The involuntary displacement of civilians, disappearances and destruction of property have all been a hallmark of this abuse.

Kurds have not been the sole victims of the Iraqi state. The Shi'ites and Marsh Arabs have also suffered, as have Turcomans, Chaldeans and Assyrians inhabiting the predominantly Kurdish three northern governorates. Nor has the Iraqi government been the sole perpetrator of abuses against the Kurds in the region. Successive regimes in Iran and Turkey have likewise committed atrocities against Kurds and manipulated them with little respect for international borders.

The creation of a quasi-Kurdish 'state' provided some protection against the abuse of human rights, but nonetheless it continued. Almost half of the Kurdish population of Iraq lived outside of the three governorates, many in and around Kirkuk, and were perhaps subjected to some of the worst rights abuses – including torture, detention without charge, eviction, and denial of citizenship and language rights – to have occurred since the crackdown on the uprising in 1991. On several occasions throughout the 1990s, Turkish interventions in Iraqi Kurdistan, ostensibly operations to counter the activities of the Kurdistan Workers Party (PKK), have resulted in destruction of property and the deaths of substantial numbers of civilians.

For many Kurds, the very fact of their oppression is inseparable from larger issues relating to Kurdish autonomy or self-determination.

CRIMES OF THE BA'ATH REGIME

At the risk of some repetition, it is useful here to describe some of the human rights abuses perpetrated by the Ba'athist regime against the Kurds before moving to the sphere of international law.

A key theme of the Iraqi state's oppression of the Kurds was its suspicion of Kurdish demands for autonomy. Even as Saddam Hussein negotiated the March Manifesto in 1970 with Mullah Mustafa Barzani, he employed terror tactics against the Kurds as a means of weakening support and political structures, and to bring the Kurds into line with central government authority. At no stage did the Iraqi military shy from extending its offensives to civilian areas; throughout the 1970s civilians lost their lives or livelihood as a consequence of Iraqi military attacks. Amnesty International documented political oppression during this period and noted the detention of an estimated 60,000 men with links to the KDP in the south of Iraq in 1976.¹

One of the consequences of the Algiers Agreement with Iran in 1975 was the creation of a 'security belt' along the borders with Iran and Turkey, between five and 30 kilometres wide. In the process up to 1,400 villages are thought to have been destroyed and 600,000 victims resettled into collective townships.² At the same time, the Iraqi government attempted to shift the demographic makeup of the oil-rich Kurdish regions. The administrative map of Iraq was redrawn in what amounted to gerrymandering on a massive scale, ensuring that an Arab majority existed in key oil provinces. Tens of thousands of Kurdish residents were evicted from the regions of Kirkuk, Khaniqin, Mandali, Shaikhan, Sinjar and Zakho. Many were dumped in the southern desert regions and others in camps effectively under military control. Arab families were brought in to Kurdish regions induced with financial and land ownership rewards.

The 1980s saw the pace of atrocities against the Kurds accelerated with little scrutiny by the outside world. One of the most infamous events in recent Kurdish history is the disappearance of up to 8,000 male members of the Barzani clan in 1983, in retaliation for Massoud Barzani allying the Kurds with Iran at the beginning of the Iran-Iraq War.

Amnesty International reports describe a catalogue of abuses.³ Where it proved difficult to detain suspects, government forces would instead detain their relatives, including youths, children and pregnant women. It has been reported by Amnesty that in 1985,

Iraqi forces arrested 300 children and teenagers in Sulaimaniya in retaliation for acts by the *peshmerga*, and that they were tortured and 29 were executed without trial. Other allegations include further retaliatory killings in the same year, both by firing squad and burial alive. This pattern of summary executions, either following unfair trial proceedings or in the absence of any trial proceedings at all, continued in 1987 when reportedly 360 people – including 14- and 17-year-old children – were executed in the space of two months.

The Iran–Iraq War was a difficult time for the Kurds and for the protection of human rights and lives. While most of the heaviest fighting took place further south, the Kurds' position on both sides of the border exposed them to the war both politically and militarily. In its report on Iraq, published in 1991, UNHCR estimated that Iraqi Kurdistan had the dubious distinction of being one of the most heavily mined regions of the world, with 20 million mines thought to have been laid during the 1980s, largely during the Iran–Iraq War but also in response to uprisings by the *peshmerga*.⁴ In the early 1990s, it was not uncommon for over 2,000 deaths or injuries to be caused by landmines in a single year.⁵ The use of different types of mines including lightweight plastic explosives, and careless and unmapped distribution often in civilian and/or agricultural areas, increased the likelihood of casualties and made detection particularly difficult.

But it was the Anfal campaigns of 1988 that finally began to alert the outside world to the scale of Iraqi atrocities against the Kurds (although arguably, Anfal only drew the response it deserved some time after it occurred). The rationale of the campaigns was to crush the Kurdish collusion with Iranian forces. However, the response was so disproportionate as to suggest that the underlying motive was genocide. Anfal became synonymous with the use of chemical weapons at Halabja. However, by far the most casualties were caused by mass executions and other indiscriminate killings of both *peshmerga* and non-combatants. The hallmark characteristics of Anfal – mass executions, arrests and relocations – are believed to have carried on after the campaigns' end (marked by an amnesty granted to survivors and refugees in 1988).

The next chapter in Saddam's flagrant abuse of Kurdish rights was his response to the uprising following the end of the First Gulf War in March 1991. The brutality of the Iraqi government's reaction, including the use of tanks and other heavy armaments, helicopter gunships, and allegedly phosphorous bombs on fleeing civilians, provoked the flight of almost 2 million people, which ultimately

prompted the adoption of Security Council Resolution 688, and the establishment of the safe haven.

The establishment of the safe haven by no means rendered Iraq's Kurds totally immune from human rights abuses. Many Kurds lived south of the 'green line' separating Kurdish control from that of the Iraqi military. In and around Kirkuk, the government stepped up its programme of Arabisation, expelling or coercing the departure of an estimated 120,000 Kurds, and members of other non-Arab ethnicities, between 1991 and 2001.⁶

BREACHES OF INTERNATIONAL LAW BY THE GOVERNMENT OF IRAQ⁷

The Kurds, and the many other ethnic groups that make up Iraq, have been victims of atrocious human rights abuses and thus gross violations of international law. As a member of the UN, Iraq was obliged under Articles 55 and 56 of the UN Charter to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. In addition, Iraq was bound to implement numerous other human rights obligations by virtue of its voluntary ratification of key international treaties.⁸ Both the Charter and the treaties required Saddam's regime to respect and safeguard a wide range of civil, political, economic social and cultural rights. Iraq was also required to comply with the various international supervisory procedures established under those treaties.

In particular Iraq made a unilateral declaration to comply with the terms of the 1975 UN Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment and to implement its provisions. The General Assembly urged states in 1977 to demonstrate voluntary compliance with the Declaration in this way.

The evidence of Saddam's regime's actions against the Kurds, particularly in the course of the Anfal campaigns but not limited to events in 1988, certainly pointed to a prima facie case involving acts prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide, to which Iraq was a state party. Article 1 of the Convention confirms that genocide is a crime under international law and, under Article 3, that conspiracy, direct or indirect incitement and attempt to commit genocide are all punishable, as is complicity in genocide.

A key element of the crime of genocide, and one which requires very strong and precise evidence to establish, is the requisite intent to destroy a group in whole or part. The Special Rapporteur on Iraq stated that 'it would seem beyond doubt that these policies, and the Anfal operations in particular, bear the marks of a genocide-type design' and that 'the Anfal Operations constituted genocide-type activities which did in fact result in the extermination of a part of this population and which continue to have an impact on the lives of the people as a whole'.⁹

In addition to the treaties to which Iraq was a signatory, the UN adopted numerous norms and standards in the forms of declarations, principles and guidelines.¹⁰ Many of these are pertinent to Iraq's abuse of human rights.

HUMANITARIAN LAW

Iraq ratified and is legally bound by the terms of the four Geneva Conventions of 1949.¹¹ Iraq has not, however, ratified the two Additional Protocols to the Geneva Conventions dealing with the protection of victims of international and non-international armed conflicts respectively.

The Geneva Conventions are primarily applicable to situations involving conflict between states. The Kurdish political parties lack state status. Nonetheless, Article 3, common to all four conventions, requires states parties to respect minimum humanitarian standards in cases of armed conflict occurring in that state's territory and which is not of an international character. A state is required to ensure that persons taking no active part in the hostilities, such as civilians and members of armed forces placed *hors de combat* for any reason, are treated humanely and without discrimination, and that the wounded and sick are collected and cared for.¹²

Common Article 3 also states that the parties to the conflict should endeavour to bring into force by special agreements all or part of the other provisions of each Geneva Convention.

Acts prohibited by Common Article 3 represent breaches of international humanitarian law, and are a flagrant violation of Common Article 1 of all four Conventions, by which state parties, 'undertake to respect and to ensure respect for the [Geneva Conventions] in all circumstances'. In addition, such acts contravene the general enforcement provisions common to all four Conventions that oblige states to take the 'measures necessary for the suppression

of all acts contrary to the [Geneva Conventions]'. It should be noted, however, that violations of Common Article 3 are not classified under the terms of the Geneva Conventions as 'grave breaches' and do not, therefore, fall within the special enforcement rules governing grave breaches.

It is also necessary for a conflict to reach a certain degree of severity before it can be considered to fall under Common Article 3. Riots and other civil disturbances, even if suppressed with lethal force, would not generally fall within its scope. There is no doubt, however, that much of the conflict waged between the Iraqi government and the Kurds was of a level to which Common Article 3 would have applied. Excessive and illegal use of force in quelling lesser disturbances would in any event be caught by the provisions of international human rights law which continue to apply in a state of emergency or other conflict.

Although Iraq is not party to the two Additional Protocols to the Geneva Conventions dealing with the protection of victims of armed conflict, attacks against civilians are widely condemned and prohibited by the customary laws of armed conflict. General Assembly Resolution 2444 (1968) reaffirms principles that must be observed by all parties in armed conflict, including the prohibition of attacks on the civilian population and the requirement to distinguish at all times between civilians and persons taking part in hostilities.¹³ Similarly, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 1974 prohibits and condemns 'attacks and bombings on the civilian population, inflicting incalculable suffering'.¹⁴

The Anfal campaigns were characterised by gross violations of human rights and humanitarian law committed on a massive scale and in the words of the UN Special Rapporteur, was 'accomplished in a clearly systematic fashion through the intentional use of obviously excessive force'.

The use of chemical weapons by Iraq in the Iran–Iraq War was in breach of the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 1925 to which Iraq was a party. Although this Protocol only applies to international conflicts, it reflects three important customary principles of international law: the right to adopt methods of warfare is not unlimited; methods and weapons that cause unnecessary suffering and superfluous injury, whether to civilians or combatants, are prohibited; and non-combatants must

always be protected and, in particular, the indiscriminate targeting of civilians is outlawed.

In view of their international regulation, resort to chemical weapons in civilian areas may well amount to serious violations of the laws and customs of war, even in an internal conflict. The Statute of the International Tribunal for the former Yugoslavia for example expressly includes the 'the employment of poisonous weapons or other weapons calculated to cause unnecessary suffering' as a violation of the laws and customs of war.¹⁵ The use of such weapons against non-combatants would certainly fall within the general prohibition of violence, murder and cruel treatment in Common Article 3 of the Geneva Conventions. The Declaration on the Protection of Women and Children in Emergency and Armed Conflict also strongly condemns the use of chemical and bacteriological weapons as 'one of the most flagrant violations' of the Geneva Conventions and the principles of humanitarian law.

The Ba'athist regime refused to inform the United Nations Office of Project Services (UNOPS) of the location of mines laid during the Iran-Iraq War or in its wars with the Kurds. In view of their international regulation, the indiscriminate laying of mines in civilian areas again may well amount to serious violations of the laws and customs of war, even in an internal conflict.

HUMAN RIGHTS STRUCTURES AND THE KURDISH AUTHORITIES

Both parts of the KRG dedicated resources to human rights observance and protection. During the KHRP visit to Iraq in 2003, the fact-finding mission visited the Office of Human Rights, Displaced Persons and Anfal Affairs, the Bureau of Human Rights in Sulaimaniya, and the Ministry of Human Rights in Erbil.¹⁶ Each is charged with the investigation of human rights issues within their territories, including prison conditions, unfair detention, and detention without trial. However, neither the Erbil nor Sulaimaniya-based institutions are empowered to hold government authorities to account.

WOMEN'S RIGHTS IN IRAQI KURDISTAN

Iraqi legislation under the Ba'ath party adhered largely to Shari'a legal principles concerning the rights (or lack thereof) of women. The establishment of the safe haven enabled the nascent women's rights movement in Iraqi Kurdistan to lobby successfully for

legislative change and also to establish the building blocks of new educational tools promoting women's rights and gender awareness within a broader context. Some aspects of Kurdish society, however, remained heavily patriarchal and imbued with a strong belief in family 'honour'. This importance attached to honour is strongly embedded in the social cosmology of the Kurds, and honour killings have been known to occur.

One issue particularly pertinent to women in Iraqi Kurdistan has been the large proportion of women-headed households within the internally displaced persons (IDPs) population. This, a direct effect of the Anfal and similar campaigns, has caused untold suffering within a society in which matriarchal households are traditionally unknown, and are not easily reassimilated into the social fabric.

Ironically perhaps, Saddam's Iraq was once held by the west as a beacon of progressiveness in the Middle East with regards the rights of women. In 1993 a UN Children's Fund (UNICEF) report stated:

Rarely do women in the Arab world enjoy as much power and support as they do in Iraq. Women in Iraq are granted the full rights of citizenship, and are also expected to fulfil their role in building the country ... Women pursue high political positions ... [t]hey pursue professional careers in labor and social services ... The 1970 Constitution affirmed the equality of all citizens before the law, and guaranteed equal opportunities without discrimination by sex ... In 1980, women were granted the right to vote and hold office. In 1974, education was made free at all levels, and in 1979/1980 it was made compulsory for girls and boys through the age of twelve. These legal bases provide a solid framework for the promotion of women and the enhancement of their role in society. They have had a direct bearing on women's education, health, labour, and social welfare.¹⁷

It is true that the secular nature of the Ba'athist regime contrasted distinctly with many others in the Middle East and that women's participation in the professions was encouraged as a matter of Ba'athist policy. However, the utopia of gender equality as described by the UNICEF report was heavily qualified by some significant factors particularly that Saddam Hussein's regime was a brutal dictatorship and neither women nor children were exempt from its draconian laws or their enforcement. These included decrees that obliged citizens to inform the authorities of knowledge of any subversive behaviour,

which was enormously destructive to family life. Later attempts by Saddam to bolster his authority by appealing to back-to-basics Islam contradicted the earlier secular agenda. Decrees of the Revolutionary Command Council (RCC) were issued which repeatedly enforced state control of women's lives and sanctioned archaic attitudes. Cynically perhaps, for a purportedly secular state, Decision 110 of the RCC 'exempted from punishment or legal questioning men who murdered their mothers, daughters, sisters, paternal aunts, brothers daughters or fathers brothers daughters, if they were deemed guilty of an honour crime'.¹⁸ Perhaps as invidious were Saddam's Nazi-like attempts to increase the Iraqi birth rate during the Iran–Iraq War. Strategies employed by the state included financial incentives for men to marry war widows: '[F]or marrying a woman with a middle-school certificate a man received a grant of 200 dinars, for a high-school graduate 300 dinars, and for a university graduate 500 dinars.'¹⁹ Contraception and abortion were made illegal, which consequently led to a rise in backstreet abortions.

Arguably, the creation of the safe haven raised the situation of Kurdish women (bar those living below the 'green line') considerably above the lot of Iraqi women in the rest of Iraq. However, prior to 1992, they were doubly disadvantaged by their gender and by their ethnicity. Neither women nor children were exempt from the mass executions of the Anfal campaigns. Those surviving to head households became impoverished and socially marginalised. In its 2002 report the UN Human Settlements Programme (HABITAT) reported that

it is observed that there is a predominance of women and children IDPs that have been displaced: they are now living mainly in the collective towns in Erbil and Darbandikhan, in the urban centers of Dohuk and Sulaimaniya and in the rural areas in Sulaimaniya. These groups exist in precarious housing conditions and their livelihoods are most uncertain.²⁰

Furthermore, the report noted that women and children formed the majority of IDPs and 'the shortage of living space, access to education by only 50% of the children, high rates of illiteracy, shortage of health care and the lack of any regular employment, are factors that have serious implications'.²¹

In the euphoria accompanying the 1992 elections there was a bold attempt to unshackle Iraqi Kurdistan from some of the more

oppressive aspects of Ba'athist family law. In the weeks before the elections in May, women parliamentarians and others from the main political parties (including the KDP, PUK, the Communist Party, the Democratic Independent Party of Kurdistan, and the People's Party of Kurdistan) established a women-only committee charged with the drafting of alternative family law legislation. Proposed reform related to three key areas of legislative concern, which were marriage, divorce and inheritance. It included, *inter alia*: reducing the number of wives a man can have from four to two; abolishing the *talaq* divorce, by which a man can divorce his wife by repeating thrice 'I divorce you'; and new provisions in the criminal code entailing equal treatment for men and women in adultery cases. The committee garnered significant public support for the measures, including 30,000 signatures in a petition taken around schools and hospitals. Despite initial momentum, the proposals failed to overcome reactionary forces within the Kurdish parliament and Saddam's laws remained on the statute books.

Those efforts initiated in 1992 subsequently bore some fruit. Successful lobbying of the Kurdish parliament in Erbil in 2002 resulted in a divorcing of family law from Shari'a diktats and closed the loophole that had previously made honour killings 'legal'.

The relatively stable conditions that have emerged in Iraqi Kurdistan since the signing of the Washington Agreement in 1998 have allowed the emergence of women's groups, NGOs and charities. These organisations remained localised and poorly funded, yet some, such as the Khatuzeen Centre for Social Action, one of the first local, non-politically affiliated NGOs for women's issues to be established in Erbil, went from strength to strength. Run by local volunteers, the centre is occupied with a broad range of pursuits including the improvement of health, hygiene and of women's literacy; challenging the prevalence of child labour (especially in households headed by women, including Anfal widows); and penal reform. The organisation was instrumental in lobbying the KRG to pass legislation divorcing Shari'a law from the civil code relating to gender-oriented issues. This has resulted, *inter alia*, in changes to divorce, custody and inheritance laws, and increased the penalty for perpetrators of honour killings to 25 years, or death.

While the Kurdish parliament showed itself increasingly receptive to changes in legislation, attitudes in some parts of Kurdish society remained entrenched. In tribal areas especially, many of the challenges faced by women (and men, perhaps to a lesser degree),

have been social. In a number of areas of Iraqi Kurdistan, the practices of betrothal at birth and sibling swap marriages were prevalent and continue. Chilura Hardi informed KHRP in Erbil that she had visited valleys in remote parts of the region in which every marriage was between close relations.²² Sibling swap arrangements involved the marriage of sets of siblings, almost invariably without consent, and often arranged at birth. If one couple divorced, the other pair or pairs were also obliged to divorce. The practical effect of the arrangement was that the social pressures for the couple to remain intact were enormous. The psychological ramifications for many women are, according to Hardi, a high incidence of severe depression, and increasingly, suicide in the form of self-immolation. These practices, while less commonplace today, continue to occur.

8

The Internally Displaced of Iraqi Kurdistan

A DISPLACED HISTORY

Displacement was employed as a tactic by the Ba'athists at least since the party assumed power. In 1963 in its first year, the Ba'athist government destroyed villages around Kirkuk following Barzani's insistence that the Kirkuk oilfields be incorporated into a Kurdish autonomous region. Setting a pattern for subsequent practices, villagers in the region were expelled from their homes and employment, and replaced with Arab workers brought in from south and central Iraq. Following the imposition of the autonomy law in 1974, the Iraqi government put numerous pressures on Kurds living outside of the autonomous region by

placing restrictions on the acquisition or retention of title deeds to property; placing restrictions on employment and the transfer of government employees to posts outside the Kurdish region; the Arabisation of place names; and the offer of financial rewards to Arabs who married Kurdish women in an attempt to expedite the process of ethnic assimilation. Others were victim to arbitrary arrest, prolonged detention without trial, torture, or execution.¹

Further attempts to alter the north's demographic balance accompanied the reprisals against the Kurds in the advent of the ceasefire agreement signed between Iran and Iraq in 1975.

The Iraqi government endeavoured to alter in advance the result of any official census in favour of the Arab population at the expense of not only Kurds, but also Assyrians and Turcomans. The government continued its village destruction to the extent that an estimated 600,000 victims are thought to have been resettled in government complexes, or 'collective towns'. The majority of these were located close to large cities from where inhabitants could be easily monitored and controlled. Tens of thousands of people were evicted from their homes in disputed or sensitive oil-rich areas (notably Kirkuk,

Khaniqin, Mandali, Shaikhan, Sinjar and Zakho). These uprooted Kurds were relocated in government-controlled camps near urban centres and along main highways with restrictions placed on their residence and employment. In addition, large numbers of Kurds were expelled from the northern area entirely, and dispatched to barren desert regions in the south. Even after their return some years later, they were banned from re-inhabiting former villages and resettled either in urban areas or in government camps. This was accompanied by large-scale gerrymandering which redrew the administrative map of Iraq. For the next decade, an estimated 4,500 village destructions continued apace, initially as the Iraqi government created a buffer zone between itself and the region controlled by Kurdish forces, but subsequently the campaign affected villages within government-held territory. The Anfal campaigns accelerated the destruction, displacing hundreds of thousands, and forcing them in many instances into the government's 'settlement camps' in which most remain.

Anfal victims remember all too clearly the confused and terrible circumstances of their flight from their villages. It is unsurprising therefore that many have been psychologically unable to 'move on'. Jalal Muhammed, a 73-year-old living in Suresh with his wife, remembers how

on 10 April 1988, the army surrounded our area. They had helicopters, tanks, armed vehicles, infantry, everything. After two days, all the inhabitants of the village were transferred. The young men were all taken away. They took my sons, Abdullah, Omar, Samat, Muhammad and Jalaw. I never saw them again. When we arrived here there was nothing. We were each given 4,000 dinar to build a new house. The Iraqi army built a prison where our village used to be. Then they destroyed it.²

Though the camp was bleak in appearance the complex grew into a sizeable and established settlement. Its one-storey buildings (mostly self-constructed by the inhabitants) constituted substantial family dwellings replete with courtyards. As in the other camps, the main problem for inhabitants was and continues to be the lack of provision of services and geographical isolation from Sulaimaniya. For the Anfal families these basic issues have reinforced their social marginalisation and unless addressed could also conceivably impact upon future generations.

DISPLACEMENT SINCE THE ESTABLISHMENT
OF THE SAFE HAVEN

The year 1991 marked the beginning of a new wave of displacement. Saddam Hussein's response to the Kurdish uprising created some 2 million refugees from Iran, Turkey and Iraq,³ and the Ba'athists stepped up the forced displacement of Kurds in and around the Kirkuk region. By far the majority sought refuge above the 'green line' separating the autonomous region from territory under the control of the Iraqi government, placing further economic and humanitarian stresses on a region already under pressure.

Human Rights Watch estimates that in the past twelve years, 'around 120,000 Kurds, Turcomans and Assyrians have been expelled to the Kurdish-controlled northern provinces, with a smaller number expelled to central and southern regions of the country'.⁴ Expulsion was systematic, bureaucratic, and usually involved the issuance of formal documents. In the camps of Takiyeh and at Bazian, every family has a story testifying to the brutal and extreme pressure that the Ba'ath party resorted to in its efforts to alter the demography of Iraqi Kurdistan. Torture, imprisonment and constant visits from security services were widespread. In the UN-HABITAT camp at Bazian, one woman described the forms of coercion her family had faced.⁵ Hassiba, her husband and five children were living in Iran at the time of the uprising of 1991. After the uprising, they returned to Kirkuk, and found that their house had been looted and vandalised by the Iraqi army. Moving back in to the house they soon began to receive threats from the *Amn* and other authorities. 'The authorities kept asking us to join the Ba'ath party but we refused. Because my husband wasn't a member of the Ba'ath, it was impossible for him to obtain any work.'⁶ A number of the family's male friends had already been arrested and imprisoned, and eventually Hassiba's husband received a warning that his own arrest was imminent. He fled Kirkuk and went to Erbil. Following his flight Hassiba stated that 'the *Amn* came every day to question me about my husband. They came in armoured cars and surrounded the house. I couldn't sleep at night I was so afraid.' Hassiba left Kirkuk to join her husband in Erbil, disguising her identity beneath a *burqa*, and the house the family owned was abandoned. The family remained in Erbil until 1996 and then rented accommodation in Sulaimaniya. In 2002 they were finally rehoused in the UN-HABITAT complex.

Leyla, a neighbour of Hassiba's, had a similar story to tell. Leyla described how prior to the 1991 uprising her family had come under intense pressure from the Iraqi security services to leave: 'We were always being intimidated. Many of our friends and family had been arrested, imprisoned or tortured. My brother-in-law was executed.'⁷ On numerous occasions Leyla and her husband were summoned to the *Amm* headquarters and interrogated. Following the uprising, her husband was imprisoned at Ammadi. He was released five months later and they decided to leave.

[We] left to go to Iran. We lived in a camp on the border. It was an old school building. It was very bad. We were living on humanitarian aid. After three months, we decided to move back to Iraq, first to Shaqlawa, and then to Erbil. In Erbil we were supported by the PUK. In 1996 when the Iraqi army came to Erbil, we left for Sulaimaniya.⁸

Forcing Kurds to spy on their own family members was another form of coercion. 'Ali, in his late thirties, living in the Takiyeh camp at Bazian with his wife, children and mother, described how,

If you were a Kurd, you were forced to join the Ba'athists, and to become an Arab [by officially changing your birth certificate]. Either you spied on your own people, or they arrested you, or made you leave. My brother couldn't stand it, so he left for the north. After that, the Ba'athists ordered me to either get my brother or to bring information from the north. I refused. So they threw me into prison. I paid 500,000 dinars for my release – but they didn't let me out. The cell was one metre long by one metre wide. That was where you had to eat, pee, and sleep. There was no room, even, to lie down. Sometimes there were up to three people in the cell.⁹

'Ali escaped from prison (by bribing a guard) and left Kirkuk in 2001. He had been told that his wife, brothers and three children had been taken away. 'They were just driven to the checkpoint [at the crossing with the Kurdish-administered region] and dumped there. All our possessions had been taken. When the Ba'athists take your house, everything goes. You just have to accept it.'¹⁰

Attempts to change citizenship from Kurdish to Arab and to deny Kurds their own cultural rights in other fundamental ways were

accelerated throughout the last decade. A Human Rights Watch report published in March 2003 describes how this included 'compelling the use of Arab names for historic sites, city or town districts, streets, public buildings such as schools and hospitals, and private property such as restaurants, shops and other businesses'.¹¹

9

Economic/Humanitarian Affairs in Iraqi Kurdistan

BACKGROUND

Prior to the First Gulf War Iraq depended heavily on oil exports as a source of revenue, importing on average 70 per cent of its food needs every year. Iraqi Kurdistan, however, was traditionally self-sufficient with regard to food grains and even supplied its excesses to the rest of the country. Following the First Gulf War, both regions were degraded economically. Not all characteristics were shared. Iraqi Kurdistan in some respects suffered more than the rest of the country. In others it was able to regain a degree of self-sufficiency with the development of its own stratagems for economic survival. Agricultural regions had been hard hit by years of conflict but the porosity of the region's borders with Turkey, Syria, and Iran allowed for informal, though considerable, commerce and importation of goods with attendant revenues from border tariffs. As a result, small-scale business activities in towns and cities prospered from six or seven years of relative stability.

Even before 1991 the Kurdish region was already suffering from the effects of ongoing conflict and the Anfal campaigns. Anfal took a particular toll on rural communities; 25 per cent of the region's 3.7 million population were victims of displacement. It destroyed the agricultural economy, and forced many rural dwellers into towns in the Kurdish autonomous region or Saddam's 'settlements' largely situated in the lowlands of the Kurdish region but outside of Kurdish administration. Mass displacement, with its resulting effect on the economy, occurred again in 1991 in the wake of Baghdad's brutal response to the Kurdish and Shi'ite uprisings. UN sanctions and Saddam Hussein's embargo on the north whittled away at revenue, reducing government income to tariffs charged to traffic crossing the borders of Iraqi Kurdistan with Turkey, Iran and Syria.

Improved relations between the PUK and KDP from 1998 gave the Kurdish economy a chance to recuperate. While a significant

proportion of households relied on assistance from government and multilateral sources, prices stabilised.

OIL IN IRAQ: A BRIEF OVERVIEW

Oil has been a powerful force in the shaping of Iraq's destiny since significant deposits were discovered early in the last century. Iraq's estimated 112 billion barrels' worth of reserves are the second largest proven reserves of oil in the world, second only to those of Saudi Arabia.¹ Geologists suggested that there may be 100 billion barrels' worth yet to be discovered, the combination of war and sanctions having hindered development of resources and halted large-scale exploration.

Prior to Iraq's invasion of Kuwait in 1991, Iraqi oil production was in the region of 3.5 million barrels per day (bpd), falling in the immediate wake of the imposition of the oil embargo to around 300,000 bpd. This increased significantly during the course of the next decade; in 2002, monthly production was in the region of 2 million bpd. In July 2002, the Iraqi Minister for Oil 'Amr Rashid claimed that Iraq could be producing up to 3.5 million bpd by the end of 2003. This is doubtless a substantially overoptimistic estimate: experts from within the oil industry suspected sustainable production capacity to be in the region of 2.8 million bpd.

Iraqi oil facilities were in a poor state of repair. Sanctions banning the use of dual-use goods and underinvestment turned some of the world's best-functioning production facilities into the shoddiest, which utilised technology regarded as outdated and questionable (over-pumping and water-flooding) so as to maintain production. Estimates of the sums needed to rehabilitate Iraq's oil facilities have been in the region of US\$ 30–40 billion.²

The sanctions 'lid' on Iraqi oil exports was lifted in December 1999, with the Security Council voting to remove all limits on the volume of oil that Iraq could export. Nonetheless, all exports had to be made through Security Council-approved routes; exports by other means were to be regarded as smuggling.

UN Resolution 986 dictated that at least half of exported Iraqi oil was to be transited through Turkey in effect, through the Ceyhan oil terminal in Turkey and the Turkey–Iraq oil pipeline.³ Oil was also exported from the Gulf port of Mina al-Bakr. Ceyhan served European markets, while Mina al-Bakr served the east. Between 60 and 70 per cent of Iraqi oil was bought by companies from countries including

China, Sudan, Pakistan, Vietnam, Egypt and Italy, prior to being sold on to end-users.⁴ The remaining oil was sold to Russian firms such as Tatneft, Slavneft, Sidanco, Rosnefteimpex, Soyuzneftegaz and Zarubhezneft.⁵ The US was a significant end-user of Iraqi oil; in January 2003, American imports of Iraqi oil were in the region of 1.2 million bpd, as compared to 430,000 bpd exported to Europe and 140,000 bpd to Asia.⁶ In addition to official channels, Iraq is alleged to have illegally exported significant quantities of oil through means other than those permitted by Resolution 986, notably to Turkey, Syria, Jordan and Iran.⁷

OIL IN IRAQI KURDISTAN: A BRIEF OVERVIEW

Oil was first discovered around the city of Kirkuk in the early years of the twentieth century. By 1925, the first concessions were granted to Turkish Petroleum Company, in which British Petroleum was a partner, along with Royal Dutch/Shell, and a French company which was precursor to TotalFina Elf. From this point onwards, Kirkuk became pivotal in relations between Kurds and the rest of Iraq. It has been alleged that as early as the 1920s attempts were made to change the demography of the region, displacing Kurds, Turcomans and Assyrians, and moving in Arabs in their place.⁸ The painfully apparent arguments prevalent today regarding ethnic makeup are not new. In 1963, when Mullah Mustafa Barzani was negotiating the creation of an autonomous region with the first Ba'ath party regime, his attempt to include Kirkuk as well as the oilfields of north-west Mosul scuppered the negotiations. The government pointed to the results of a 1947 census indicating that Kurds consisted of no more than 25 per cent of Kirkuk city, and 53 per cent of the province.⁹

Other, though less significant fields in Iraqi Kurdistan include Bai Hassan, Jambur, Khabbaz, Saddam, and Ain Zalah Butmaiah Sufaia. Under the regime of Saddam Hussein, production in the north was under the auspices of the Northern Oil Company (NOC). Sixty per cent of the company's facilities were damaged during the First Gulf War.

PIPELINES

The bulk of Iraq's pipeline that exported crude oil was transited through the 660-mile long, 40-inch diameter Kirkuk–Ceyhan pipe. This had a maximum capacity of 1.1 million bpd. A second parallel

pipeline with a maximum capacity of 500,000 bpd was originally designed to carry exports of Basra regular oil. Damage to pumping stations and oil terminals during the First Gulf War stood in the way of the pipelines operating at full capacity.

In 1975, the Iraqi government built the reversible, north–south ‘strategic pipeline’ facilitating the transfer of Kirkuk oil for shipment out of Iraq’s Gulf ports, and oil from the southern oilfields for transit via the Kirkuk pipelines. This was disabled during the First Gulf War, and despite affirmations from Iraqi government ministers in 2001 that the pipeline had been rehabilitated, a UN report concluded in 2002 that it suffered from ‘serious leakage’.

A Memorandum of Understanding was signed between Iraq and Syria in August 1998 for the reopening of a 50-year-old pipeline in Kirkuk between the two countries. By 2000, there were allegations that this had been reopened in contravention of UN sanctions.¹⁰

SANCTIONS

On 2 August 1990, immediately subsequent to the Iraqi invasion of Kuwait, the UN Security Council passed Resolution 660 condemning the invasion and calling for the immediate and unconditional withdrawal of Iraq’s forces to the positions that it occupied on 1 August.¹¹ Four days later, the Security Council passed a new resolution, ushering in the sanctions regime that endured until May 2003. Resolution 661 prevented states from importing ‘all commodities and products originating in Iraq or Kuwait’, and ‘any activities ... to promote the export ... of any commodities and products originating in Iraq or Kuwait’.¹² It was intended that these sanctions would be repealed on condition that Iraq met the conditions of Resolution 660. After the ceasefire in February 1991 sanctions were modified. Resolution 687 welcomed ‘the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate Government’, and dictated that while Iraq itself was prohibited from selling oil, sale or supply to Iraq of foodstuffs, and materials and supplies for essential civilian needs were no longer prohibited. All remaining restrictions would be lifted once Iraq had complied with the resolution’s principal conditions: that Iraq identify and destroy remaining weapons of mass destruction, that it demarcate its frontier with Kuwait and accept Kuwaiti sovereignty, that Kuwaiti and other nationals be released, and that a compensation committee be established for the payment of reparations out of oil revenues.

In March 1991, Iraq was visited by an inter-agency mission which reported that '[T]he Iraqi people may soon face a further imminent catastrophe, which could include epidemic and famine, if massive life-supporting needs are not rapidly met.'¹³ A succession of resolutions were passed by the Security Council subsequently (including Resolutions 706¹⁴ and 712¹⁵) which, had they been agreed by the Iraqi regime, would have permitted the sale of a limited quantity of oil to meet the basic needs of the Iraqi people. Baghdad's refusal to agree to the original oil-for-food resolutions was due in part to the accompanying provisions for on-site monitoring of the programme by UN officials, and because they required the Iraqi government to accept the presence of the UN Special Commission (UNSCOM). Baghdad wanted comprehensive lifting of sanctions, something the UN refused to countenance, given its belief (fed largely by the revelations of high-level defectors from Iraq), that Saddam Hussein was still in possession of significant quantities of weapons of mass destruction.¹⁶

Iraq was offered another opportunity to sell its oil in April 1995 when the Security Council, acting under Chapter VII of the UN Charter, passed Resolution 986, establishing the 'Oil-for-Food' Programme (OFFP). This was intended as a 'temporary measure to provide for the humanitarian needs of the Iraqi people, until the fulfilment by Iraq of the relevant Security Council resolutions, including notably Resolution 687 (1991) of 3 April 1991'. However, there was significant lag between the passing of the resolution and its implementation. A Memorandum of Understanding was signed between Baghdad and the Security Council in May 1996; the first food arrived in Iraq under the programme in March 1997. The resolution initially permitted Iraq to sell up to US\$ 2 billion worth of oil every six months, a figure raised to US\$ 5.26 billion in 1998.¹⁷

Not all the revenues raised by the OFFP were for the sole use of funding humanitarian assistance. Of the total, 25 per cent went toward helping Iraq meet its war reparation payments, 2.2 per cent toward the UN's operational costs in Iraq, and 0.8 per cent for the weapons inspection programme. Of the remaining 72 per cent for humanitarian assistance, 13 per cent was earmarked for the three northern governments, implemented on behalf of the government of Iraq by the UN in a programme managed by ten UN agencies, including the UN Office of the Humanitarian Coordinator in Iraq (UNOHCI), the Food and Agricultural Organisation (FAO), HABITAT, the International Telecommunication Union (ITU), the UN

Development Programme (UNDP), the UN Educational, Scientific and Cultural Organisation (UNESCO), UNICEF, the UN Office of Project Services (UNOPS), the World Food Programme (WFP), and the World Health Organisation (WHO).

CRITICISM OF THE OIL-FOR-FOOD PROGRAMME

The OFFP provided a lifeline for many of the inhabitants of the Kurdish region of Iraq, as it did for countless people elsewhere in the country.¹⁸ Nonetheless it has also drawn a number of criticisms from within the Kurdish community, NGOs operating in the region, and indeed other UN agencies. From the outset, the OFFP never made explicit mention of the de facto state of Iraqi Kurdistan or the KRG for fear of jeopardising relations with the government of Iraq (which, of course, refused to recognise the legitimacy of the KRG). Despite the programme's reliance on the cooperation of the administrative apparatus of the KRG in the north, the UN and the government of Iraq were at all times the sole parties privy to the Memorandum of Understanding in which the programme had its origin. In a 2002 report, the UN agency UNICEF admitted that 'all parties are affected and often frustrated by the complex legal and political framework of the OFFP'.¹⁹

Both of the major parties in Iraqi Kurdistan complained that the UN paid more attention to avoiding conflict with the government of Iraq than the proper administration of the programme.²⁰ To an extent this is concurred with by the UNICEF report which stated that the 'government of Iraq may perceive any major policy change ... as an attempt to detach the three northern governorates. The obstacles to negotiating major policy and administrative issues in northern Iraq will seriously hamper the impact of any programme.'²¹ The report further observed that 'since the start of the OFFP there has been no far-reaching comprehensive policy framework for planning, resource allocation and implementation of most programmes', and that an 'ad hoc' approach was dominating planning and programme implementation.²²

There has been a lack of data available on the programme and where it has been available it appeared that spending was extremely slow. As of August 2002, for example, only 29 per cent of allocated funds had been spent on medicine throughout the period of the programme. In many other sectors, including agriculture, clearance of minefields, electricity and education, accurate data simply could

not be obtained from UN sources. The KRG believed that if the programme's rehousing scheme continued at the 2002 rate, the provision of adequate shelter for the 100,000 families that still required it would not be accomplished until 2028.²³

It is conceded that Baghdad meddled significantly in the operation of the OFFP,²⁴ but that the UN's Memorandum of Understanding with the Iraqi government gave Baghdad too much leverage over its affairs in the north. One minister in Erbil remarked that

the hostile attitude of Saddam and UN bureaucracy meant that a lot of money just wasn't spent on the needs of the region. We submitted a number of projects that Saddam just blocked if he didn't like – for example, we needed electricity generation, so we submitted proposals for hydropower projects but they were blocked [by the Iraqi government]. The same happened with a large hospital in Sulaimaniya ... at the end of the day, the UN didn't leave a positive impact here.²⁵

The same minister added that in his opinion the UN was too responsive to the fears of Iraq's regional neighbours – noting that Turkey was able to scupper KRG plans for the opening of a bank by making a complaint to the Security Council.

A perceived side-effect of the OFFP was the creation of a dependency culture. Centralised purchasing of food and medicine and the importing of foodstuffs from outside of Iraq removed the incentive for farmers to plant crops, enervating the local agricultural economy. The UN's expressed reason for not buying local crops was that it would upset the Baghdad regime. Desire to avoid confrontation with Baghdad meant that UN agencies did not officially 'recognise' the ministries of the KRG, despite the paradox of their close collaboration and the KRG's need to sign off on joint projects.

Numerous other charges have been laid at the doors of UN agencies, which in concert with Baghdad's efforts hindered economic development in the Kurdish autonomous region. UNDP made a series of recommendations on how best to rehabilitate the region, few of which were ever implemented. In addition, some, notably the Kurdish administrations, pointed to the UN agencies' underestimation of food and fuel requirements and its failure to address the need for revival of the rural economy as shortcomings of the combined presence of the various organs of the UN.

However, while not immune to criticism, the programme did provide much-needed assistance. Some estimated that were the programme terminated and no satisfactory alternative installed, over 60 per cent of the population, relying on OFFP's distribution of nine kilos of wheat per month per person to all Iraqi citizens, would be unable to feed itself.

EMBARGO

In October 1991, Saddam Hussein began to put the Kurdish region of Iraq under economic siege, cutting off salaries to employees and making the transport of goods and commodities between the north and the rest of the country impossible.²⁶ By the end of the year, Baghdad had in effect begun the creation of a fortified line between the two regions. Saddam ensured that fuel and foodstuffs did not cross the line to go north. In July 1992, Saddam Hussein introduced a complete ban on the importation of fuel. Within a few months the embargo was total. This diminished household purchasing power dramatically, and increased the price of kerosene 200-fold and rice 80-fold. Other commodities increased in price by similarly astronomical factors.²⁷ Baghdad used every tactic at its disposal to impose economic hardship on the region, and under international pressure would only loosen the grip temporarily. Smuggling compounded difficulties; while the Kurdish region had substantial wheat-growing capacity, Baghdad offered a substantially higher price than did the KRG, a powerful incentive for Kurdish farmers to sell their crops across the border.

In addition to the embargo, elements within the Iraqi government ensured the disruption of the UN's humanitarian relief efforts through harassment and assault of both UN and other aid workers. These included bombings, shootings, threats, searches, extortion, attacks on and confiscation of property, including vehicles, physical assaults, grenade attacks, and even rocket-launched grenades.²⁸

An underlying criticism of the UN's activities in the north, however, is that it was overanxious to treat the Kurdish region as one and the same as the rest of the country, so as to allay regional fears regarding threats to Iraq's territorial integrity. The Kurdish authorities were unable to win any exemption from the UN sanctions placed on Iraq as a whole – thus placing the region under a double embargo, from the international community and from Saddam Hussein.

CURRENCY

The three governorates in effect enjoyed their own currency after the First Gulf War. Swiss-printed dinar banknotes, also known as Old Iraqi Dinars (OIDs), fell out of circulation in the rest of Iraq in 1992. Partly because of the limited print run of Swiss dinars, the currency held its value over the currency of the rest of the country extremely well, maintaining a value in the region of ten to twelve to the US dollar.

EMPLOYMENT

Reliable employment statistics for the Kurdish-administered areas are elusive, but a study made in 2000 by the UNOHCI showed unemployment to be between 5 and 12 per cent. The government was found to be a substantial employer. Thirty per cent of the adult population were employed 'in government services'; 22 per cent in agriculture, 24 per cent in the transportation sector, 18 per cent in the services sector and only 5 per cent employed in the manufacturing/industrial sector. Many held down more than one job or sought temporary employment alongside more permanent jobs. Large-scale displacement, urbanisation and conflict resulted in the creation of an informal labour market as former agricultural workers sought day employment on a casual basis in towns and cities. Various ministries of the KRG initiated research programmes into reversing the pattern of migration from rural areas in an attempt to kickstart the much denuded agricultural economy.

NON-GOVERNMENTAL ORGANISATIONS

UN agencies apart, numerous non-governmental organisations have operated in Iraqi Kurdistan since 1992. Many of the first NGOs to arrive in Iraq did so at the behest of the UN to help in relief efforts in the aftermath of the 1991 war and subsequent uprising. NGOs with offices in Baghdad found it almost impossible to function, as the Iraqi regime micro-managed their activities to an extreme degree. In consequence, most transferred either the bulk or the entirety of their operations to Iraqi Kurdistan. Initially funding was provided by the UK Department for International Development (DFID), the European Union and US Agency for International Development (USAID). After the KDP's joint attack on Erbil with Saddam Hussein in 1996, most

NGOs reconsidered their positions and some, including Oxfam and Médecins Sans Frontières, decided to leave.²⁹

NGOs reported that on the whole operational conditions were 'exemplarily good'; although there were reports of some restraints on their activities by the PUK and KDP, including attempts to tax staff on an individual basis instead of through their employers, and monitoring NGOs in an attempt to influence their activities.

Among the most prominent NGOs in Iraqi Kurdistan were the Save the Children Fund, Help the Aged, the Mines Advisory Group, and the Japanese organisation Winds of Peace. All these organisations have faced difficulties stemming from the constitutional uncertainties attached to Iraqi Kurdistan. Because Baghdad refused to recognise the legitimacy of the Kurdish administration, many of the NGOs operating in the area were working 'illegally', without recognition of the central government, reliant on countries bordering Iraqi Kurdistan for access. The Iraqi government was also effective in driving a wedge between NGOs and UN, using its power of veto over UN staff as leverage over UN agencies in an attempt to manipulate them into breaking off NGO ties and funding. NGO officials stated that they were removed from the minutes of any meetings and 'ignored' by UN staff, or only able to meet them in an unofficial capacity outside of working hours.³⁰ There have also been allegations that by using its power of veto Baghdad blocked the entrance of UN workers from all but Third World or Arab countries. This resulted in Saddam capitalising, either on the sympathy of these staff to the Baghdad regime, and/or concern regarding their job security, to manipulate and hinder their relationships with NGOs. Many NGOs faced the choice of working either in the south or the north of the country.

The UK-based Mines Advisory Group (MAG) employed over 700 local staff as well as a small contingent of expatriates in Iraq.³¹ MAG established an operation in Iraqi Kurdistan in 1992 primarily with the aim of removing mines laid during the Iran–Iraq War, and in anti-Kurdish operations of the late 1980s. Since 1992 MAG claims to have destroyed half a million mines and pieces of unexploded ordnance (UXO) and cleared tens of millions of acres of land, returning it to domestic and agricultural use.³² Other MAG programmes included demarcating minefields from 'safe zones', erecting fences that prevented the movement of mines, and collating data that could be utilised by the local administration, UN agencies, and other NGOs working to clear and destroy mines and UXO. MAG also managed

to secure pledges from the KDP and PUK that they would abide by landmine conventions.

The Save the Children Fund established its Iraqi operation in the wake of the First Gulf War, assisting Kurdish refugees crossing the border from Iran and Turkey. Hostility from the Iraqi central government led to the organisation closing down its operations outside of the Kurdish region and continuing to work in Iraqi Kurdistan without the consent of the Iraqi government, accessing the region from Syria and Jordan. Save the Children's first remit was the provision of emergency assistance, primarily shelter materials and food, to IDPs and refugees; although throughout the 1990s the organisation participated in village reconstruction and road-building schemes, educational facility rehabilitation and agricultural assistance. From 1999 Save the Children established a 'long-term programme' focusing on 'social development, community mobilisation, and capacity building for local authorities and NGOs'.³³

10

The Kurds Have no Friends but the Mountains

TURKEY: A DIFFICULT NEIGHBOUR

Before, throughout and since the 1990s the Turkish government has had a vested interest in maintaining a profile in Iraqi Kurdistan. Having waged a programme of oppression against its own Kurdish population (denying even limited self-government, language rights, political expression, and other tools of ethnic identity), Ankara has long been concerned that moves towards Kurdish separatism in Iraq might spill over into south-eastern Turkey. Moreover the PKK, a Marxist-Leninist guerrilla group against which Turkey has engaged in a bitter war for the best part of two decades, has used Iraqi Kurdistan as a base.¹ Turkey has the second largest army within NATO after the US. Its military might, interests and the extent of its border with Iraq made it a critical influence in the region.

The international community found the formulation of a clear-cut position regarding Turkey's regional involvements difficult. Turkey's reluctance to grant asylum to the hundreds of thousands of Kurdish refugees fleeing Iraqi reprisal was born out of its unwillingness to exacerbate what it has long described as its 'Kurdish problem'. Turkey's record of human rights abuses has elicited both condemnation and appeasement from the west, in the knowledge that as the model for secular Muslim democracy in the Middle East, a candidate for EU membership and a NATO member, alienating Ankara would be counter-productive. Turkey's initial refusal to admit refugees was deplored, but without the country's willingness to host coalition airbases, overseeing the no-fly zone would have been impossible. Knowledge of the coalition's reliance on the use of Turkish territory gave Ankara substantial leverage throughout the duration of the 'safe haven'.

Ironically perhaps, it could be argued that it was former US President George Bush's desire to assuage Turkish fears regarding the Iraqi Kurds that led to the establishment of the safe haven.² Saddam Hussein's crushing of the Kurdish rebellion in the weeks after the

end of the Gulf War precipitated a refugee crisis of unprecedented proportions across the border in Turkey. 'Operation Provide Comfort' and the creation of the no-fly zone in Iraqi Kurdistan allowed for the resettlement of fleeing Kurds; and relieved Turkish President Turgut Özal of an obligation to provide humanitarian aid to over 500,000 people. However, Turkish suspicion of the autonomous region soon followed. By virtue of geography, the Turkish government was able to regulate closely the safe haven's contact with the outside world; border crossings could be closed, and the exit of Kurdish officials (and entry of aid workers) carefully monitored.

Ankara's relations with the main Iraqi Kurdish political parties has been complex, as have relations between those parties and the PKK. Turkey, alongside bordering Syria and Iran, opposed the establishment of the Kurdish federal 'state'. Yet by 1992 Jalal Talabani had forged ties with the Turkish government, reportedly mooted to then Prime Minister Demirel the idea that Turkey should annex Iraqi Kurdistan.³ Not being able to afford to antagonise Ankara, the KRG assisted the Turkish military in its operations against the PKK. In autumn 1992, *peshmerga* of both parties took part in a joint operation with Turkish troops in which 5,000 guerrillas seeking shelter in the mountains of Iraqi Kurdistan were flushed out.

Three years later, Turkish forces were involved in a larger operation against the PKK. This drew the attention of both the US and Europe, underscoring the potential for regional conflict in the border areas of Iraq, as well as western discomfort at Turkey's increasingly violent counter-terrorist measures against the PKK. Iraqi Kurds had tolerated a PKK presence since the previous Turkish operation, but prevented it from launching cross-border operations. Fearing that the policing system had broken down, in late March 1995, Turkey sent 35,000 troops into Iraqi Kurdistan to 'neutralise' over 2,500 PKK guerrillas suspected to remain there.⁴ Perceived KDP support for Turkey's occupation met a response in the form of a PKK offensive against the KDP (supported, allegedly, not only by the PUK but also by the Iranian government). Iran was alarmed at the designs that Turkey, a US ally and NATO member, had on the region, so close to its border.

Turkey's stated position was that the ongoing power struggle between the PUK and KDP had led the PKK to establish camps in the area from which terrorist attacks against Turkey were being planned. It is argued that its intervention was related to the protection of Turkish citizens. Turkey's actions in Iraq were perhaps only partly guided by its desire to wipe out PKK resistance. Another consideration

put forward has been that the incursion was a threat to the Kurds in order to ensure that they would honour any further agreement to restrain the PKK. More likely it was a show of force demonstrating the possible repercussions of further moves towards autonomy or secession from Iraq.

In any event, the lives of numerous innocent people were not protected. While civilian casualties of the ensuing operations were widely reported to be less than anticipated, the UNHCR evacuated several thousand Iraqi Kurds from the conflict area. Human rights groups documented numerous violations of human rights and humanitarian law by invading troops, including torture, killing, and the destruction of up to 70 villages.⁵ A KHRP case currently pending before the European Court of Human Rights concerns the killing and mutilation of seven Kurdish shepherds in Iraqi Kurdistan by Turkish troops during cross-border incursions in 1995.⁶

In Europe, the scale of the operation alarmed western leaders; France and Germany in particular condemned the invasion and described it as disproportionate. Germany went so far as to temporarily freeze a US\$ 106 million subsidy intended to finance the construction of two Turkish naval frigates.⁷ The Clinton administration vacillated in its position, first appearing to express understanding of the need to take cross-border counter-terrorism measures, and then warning Ankara that the operation should be limited in scope and duration. A number of Members of Congress voiced their displeasure, also drawing attention to the US role in supplying arms used in the invasion, including F-16 fighters, Cobra and Black Hawk helicopters, and M-60 tanks.⁸

This was not the last full-scale invasion to be seen in the 1990s. On 14 May 1997, the Turkish government sent an estimated 50,000 troops across the border, again with the assent and backing of the KDP. This latest invasion demonstrated in textbook fashion the complexity of regional antagonisms. Turkey's aim was, once again, supposedly to annihilate the perceived threat posed by the PKK. However, the Turkish military acted on its own initiative and reportedly did not inform the country's new pro-Islamist government until twelve hours after the operation had begun. The military later accused Ankara of starving funds in an effort to ensure that it failed. Also lying at the heart of the operation was a desire to ward off the influence of Tehran (wielded through its support of the PUK, which, in turn, Turkey believed to be assisting the PKK). However, Iran vehemently denied its involvement in Iraqi Kurdistan in any way. The Turkish

military believed its interests to be best served by KDP dominance of the region.

Turkey's position regarding Iraq and the Kurds was not a unified stance. Nor can it be regarded in isolation from other issues that it confronted, such as membership of the Council of Europe, its role and position within NATO, Cyprus, the increasing influence of Islam in the secular state, and of course, the unresolved 'Kurdish problem'. Despite the abduction, arrest and trial of Abdullah Öcalan⁹ in 1999, and Öcalan's subsequent calling of a ceasefire, guerrillas of the former PKK remained active, both in Turkey and in Iraqi Kurdistan.

Since 1997 the Turkish military maintained an estimated 5,000-strong military presence in its 15-kilometre 'security zone' within Iraqi Kurdistan, in part as a consequence of its war against the PKK. These concerns have, for the Turks, justified continuing military and political involvement in Iraqi Kurdistan.

BEYOND IRAQ: THE KURDS OF TURKEY, IRAN AND SYRIA

As this publication has previously noted, the Kurdish population is as heterogeneous as any other of a similar size. It has been described as the world's largest nation without a state. However, nations represent and contain enormous diversity in terms of religious, cultural and political identity while maintaining common threads. Certainly, there are similarities evident in the way the Kurds have been treated by the states in which they live. Throughout the Kurdish region, governments have adopted the same tactics to control and subjugate the population, deny autonomy and cultural rights, and ensure economic marginalisation. In some cases nations have colluded with each other in creating joint strategies with which to tackle the 'Kurdish problem', or they have manipulated Kurdish sympathies, setting Kurd against Kurd exploiting political and cultural schisms.

There is no single Kurdish identity, but there are Kurdish identities that defy or transcend borders. Pan-regional relations between the Kurds have always been complex and intimate. The mountain ranges that mark frontiers between nations do not mark breaks in linguistic, cultural or familial continuity. Many of the characteristics of Iraqi campaigns against the Kurds – destruction of villages, displacement of villagers, intimidation, arbitrary detention, unexplained disappearances and military operations against civilian populations – have all been employed by the other regional players. At various times, and to varying degrees, Kurds across the region have

faced restrictions on the use of their own language. Governments have themselves often paid little regard for borders. A longstanding agreement between the governments of Turkey, Iraq, Iran and Syria, for example, allowed each to attack 'terrorists' in the territory of the other. On several occasions in the last decade Turkey has sent several tens of thousands of troops across the Turkish/Iraqi border, with little regard for the well-being of the local Kurdish inhabitants. This has resulted in the deaths of civilians and the destruction of villages.

Certainly, while the Kurds must endure the artificial national distinctions imposed upon them by the Treaty of Sèvres (Iraqi Kurd, Turkish Kurd, Syrian Kurd, and so on), they have often been united in their shared plight. In the course of the past two decades, the means employed by the governments and military apparatus of Turkey, Iran and Iraq, have at some point come to resemble each other. In Turkey perhaps more markedly than anywhere else in the region the scale of village destruction has echoed the experiences of the Iraqi Kurds. The KHRP estimates that several thousand villages have been destroyed or evacuated by the Turkish military resulting, along with the creation of large-scale infrastructure projects (notably the construction of dams), in the displacement of some 3 million Kurds since 1985. Turkey has a very different standing in the community of nations than did the despotic regime of Saddam Hussein and yet a quick glance at the recent experiences of the Turkish Kurds shows remarkable parallels with events across the border.

In 1923 Mustafa Kemal (Atatürk) created the modern Turkish Republic. Early in the Republic's existence Atatürk made assurances that Kurds would be guaranteed a degree of autonomy and cultural rights.¹⁰ The new government embarked on a radical programme of secularisation, and the creation of a unified, indivisible state based on one language, and one people. By necessity, this required the conversion of an ethnically and linguistically diverse people into a homogeneous population of Turks.¹¹ The Kemalist project augured a concerted suppression of south-east Turkey's Kurdish population. Suppressing a revolt of Kurdish officers and intellectuals, the Turkish government began a mass exile of Kurds accompanied by the destruction of villages; a campaign of displacement that lasted for almost 20 years. In 1934, the government implemented its Law on Resettlement, setting out a scheme of resettlement dividing the region into three zones: mountainous areas in which all the inhabitants were to be resettled for security reasons, Turkish-majority inhabited districts in which Kurdish migrants would be relocated, and a third

consisting of areas in which the Kurdish population was to be diluted by an influx of Turkish immigrants.¹² The displacement campaign was discontinued in 1946. During the 1950s, the Turkish government began to allow Kurds to return to their traditional areas. But the respite was brief. The conflict with the PKK precipitated a violent renewal of the abandoned relocation strategy.

A military coup of the Turkish government in 1980 had the effect of intensifying the suppression of Kurdish identity, to the extent that the use of the Kurdish language, even in private conversation, was forbidden. The coup had prompted Öcalan and his PKK supporters to leave Turkey for Syria and Iraq. On the 21 March 1984 (Kurdish New Year, or *Newroz*) the PKK began a guerrilla campaign, targeting first Turkish military, later 'village guards', Kurdish villagers paid and armed by the Turkish state.¹³ Turkey's response would echo of the Iraqi government's creation of a security zone in the 1970s, and foreshadow the Anfal campaigns later in the decade. It ushered in a new and deadly conflict, between a radical, politicised Kurdish force with considerable popular support among the Kurds, and a military regime determined to impose cultural homogeneity on south-east Turkey. The ensuing conflict divided loyalties in the region.

A number of rationales have been put forward as to why, since 1985, the Turkish government embraced village destruction with such zeal, and the factors that might dictate a village's fate at any point in time.¹⁴ Certainly, the Kemalist principle of cultural assimilation played a large part. President Turgut Özal (himself half-Kurdish) believed that a cohesive Kurdish minority situated in the south-east of Turkey threatened the very fabric of the republic.¹⁵ Controlling the region would only be possible if the Kurdish population was forced out of hamlets dispersed across a mountainous terrain, and concentrated within larger, centralised, managed settlements. This was a notion that continued to guide policy throughout the 1990s.

But the evacuations were significantly related to the conflict. In 1994 senior military staff also admitted that the village clearances were part of the government's strategy to defeat the PKK.¹⁶ Village destructions were also conducted in reprisal if it was suspected that their inhabitants had given PKK fighters logistical support. Villages faced destruction if they were unwilling to join the village guard system (mirroring the *jash* system in northern Iraq). Villagers refusing to participate faced the prospect of security forces torching their homes and forcing them to abandon their villages. Often, villagers would be identified, photographed and numbered prior to being

evacuated. From the early 1990s, notably beginning with the exodus of Kurds from Iraq in 1991, another motive for clearing villages was so as not to create an extension of the Iraqi autonomous region.

Further causes for Turkish displacements can be attributed to villagers fleeing violence between PKK fighters and Turkish security forces, and the systematic and widespread practices of extrajudicial killings, torture, and arbitrary detention that often accompanied the Turkish military machine, as well as the actions of village guards, sometimes used by the Turkish military to fight their battles by proxy.

The village evacuation policy and violations of international human rights law by the Turkish security forces have elicited widespread condemnation by international human rights organisations (notably the Kurdish Human Rights Project, and Human Rights Watch), and others institutions, both within Turkey and abroad. Its membership of the Council of Europe and desire for eventual EU accession has exposed its human rights record to the scrutiny of, amongst others, the European Court of Human Rights in Strasbourg and the Council of Europe. In 1998, the Council of Europe's Committee on Migration found that

the evacuation of villages refusing to join the village guard system is carried out by the army with extreme brutality and no civilian supervision. It is frequently accompanied by the destruction of property and further violations of human rights such as sexual assault and humiliation, beatings and extrajudicial executions.¹⁷

Occurrences of village evacuations, torture, and other gross violations of human rights extended well beyond the arrest of Abdullah Öcalan in 1999, and despite the passage of reforms that appear to improve human rights on paper, the Turkish government's policy towards the Kurds remained of great concern.¹⁸

In some respects, the travails of Iranian Kurds is very different to those of the Turkish population. Relative to Turkey, Iran's Kurdish policy is tolerant with regard to Kurdish language rights and cultural expression including music, folklore and dance. But there are strong undercurrents of discontent with the Iranian government amongst the Kurdish population, which feels marginalised, politically, economically, and in religious matters, by the theocratic government of the Islamic Republic. Apparent stability in the Kurdish regions belies both a bloody recent history and strong support for a Kurdistan

that enjoins the Kurdish regions of Iraq, Syria and Turkey with the Kurdish provinces of Iran. In at least two important historical respects Iran is seen as the crucible of Kurdish nationalist feeling: it was the birthplace of the PDKI, the Kurdish political party which would in turn spawn the KDP (out of which would emerge its own main rival, the PUK), and of the Mahabad Republic, in the northern Iranian city of Mahabad, which was, for a brief and ill-fated spell between January 1946 and December of the same year, the first self-declared Kurdish state ever to exist.

In Iran, there are an estimated 9 million Kurds representing around 12 per cent of the country's total population. The majority live in the provinces of Kermanshah, Kordestan and Azerbaijan which lie in the north-west tangent of the country bordering eastern Iraq, southern Turkey, and Azerbaijan. Prior to the overthrow of the Shah, relations between the Iranian state and the Kurds were difficult and often led to conflict. But the Shi'a, Islamic revolution of 1979 marked the beginning of a violent struggle between the Islamic Republic and the Kurds. The absence of any mention of the Kurds (or any other of Iran's minorities) within the Constitution, and the Islamic Republic's refusal to countenance any degree of Kurdish autonomy, fuelled the outbreak of conflict. Two political parties/factions, the PDKI (Kurdish Democratic Party of Iran) and Komala, acted as conductors for Kurdish sentiment in Iran. Differing ideologies drove internecine fighting between the two.

Armed resistance to the Islamic state carried on into the early 1990s, and by the time it had ended the death-toll, particularly on the Kurdish side, was considerable. The assassination of two major figures within the Kurdish political establishment effectively put paid to the PDKI operating in anything other than the utmost secrecy.¹⁹ (PDKI Secretary General Abd al-Rahman Quassimlou was assassinated in a Vienna apartment in June 1989. His successor to the party leadership, Dr Sadiq Sharafkindi, was shot in Berlin in September 1992.) However, the cleric Muhammad Khatami received the support of 76 per cent of voters in Kurdistan province in the 1997 presidential election, ushering (a now perhaps expired) honeymoon period between the reformists and the Kurds. The PDKI and Komala both remain in operation underground in Iran; membership is punishable by imprisonment or death. There are, however, well established groups in exile in France, Canada, Australia and other nations.

While there are Kurdish representatives in the *Majlis* (Iranian parliament) no Kurdish political party or faction is permitted to exist,

causing widespread dissatisfaction among the Kurds, and increasing the attraction of prohibited and underground political movements – including the PKK and Iraqi Kurdish political parties. In a 2001 report on the situation of human rights in Iran prepared by Maurice Danby Copithorne, Special Representative of the Commission on Human Rights,²⁰ the Special Representative notes that ‘The [Iranian] Government has been reluctant to recognize the Sunnis as a distinct minority, particularly where they are also ethnic minorities. For example, for years, Sunni Kurds have complained of from officials in terms of permits for building or renovating mosques.’ Copithorne also noted that in April 2001 a group of 30 Iranian parliamentarians had ‘noted their dissatisfaction with the Ministries of Education and Foreign Affairs for failing to provide employment opportunities for Sunnis’. Economically, the Kurdish regions of Iran are depressed. Many of families inhabiting border towns rely on a smuggling economy and the presence of the Iranian security services is correspondingly high. Unemployment, drug use, and related social problems are all rife, exacerbating the Kurds’ sense of discontent and marginalisation from the rest of Iran.

Estimated at being between 1.1 and 1.5 million,²¹ the Kurdish population of Syria is substantially smaller than those of Iraq, Turkey or Iran. Nonetheless, Kurdish–Arab relations have played a significant role in Syria’s history, and Syria has played a significant role in the history of the Kurds. Since Syria’s independence in 1946, the Kurds of Syria have faced various forms and degrees of ethnic discrimination. These include the continued denial of Syrian citizenship to an estimated 200,000 Kurds following an exceptional census conducted in al-Hasakap province in 1962, the creation of an ‘Arab Belt’ (al-Hizam al-Arabic) along the Syrian border with Turkey and Iraq, the continued expropriation of Kurdish land, Arabisation, restrictions on Kurdish cultural expression and on the use of the Kurdish language. Periodically, even high-ranking Kurds have been expelled from the echelons of the military, government and other institutions. Kurdish is not recognised as an official language. Successive legislative instruments have attempted to expunge Kurdish from the public domain: in 1986, the use of Kurdish was banned from the workplace. Kurds cannot teach, write, study, or publish in their own language. Nonetheless, there is an active Kurdish political scene in Syria, currently represented by twelve Syrian-Kurdish political parties, all of which trace their origins to the establishment of the Kurdish Democratic Party of Syria (al-Party) in 1957.

Given its own discrimination against the Kurds, it is perhaps ironic that the Syrian government gave assistance, shelter and training to Abdullah Öcalan and the PKK following the Turkish military takeover in 1980. And yet do so it did. (The logic of Syrian support for Öcalan lies in grievances against Ankara held by the government in Damascus among which are disputes over the use of the Euphrates river as a water resource, and Turkey's alliance with Israel.)²² This support created a number of tensions. Among other difficulties caused, the PKK allegedly levied a toll of goods, money and services against the Syrian Kurdish population.²³ It is also a paradigm example of a regional nation state manipulating Kurds' interests for its own geopolitical interests. Syrian sponsorship ended in October 1998, with Turkey's massing of troops against the Turkish/Syrian border and threatening to intervene militarily had Damascus not closed the PKK's training camps.

It is worth reiterating that the Treaty of Lausanne signed in 1923 imposed new definitions on Kurds that reflected no reality other than the cartographic calculations of the post-war powers. Relations between Kurds across the Middle East have been and continue to be characterised by a Byzantine complexity beneath which lies, if not a single united interest, at least a convergence of a number of interests. But all the landmark events in the history of the region (the Treaties of Sèvres and Lausanne, the establishment of the Mahabad Republic, the creation of the major parties, the PDKI and the KDP and the PUK, the Anfal campaigns, Turkish interventions in Iraq, the human rights violations against the Kurds in the south-east of Turkey, the arrest of Öcalan) have impacted upon the region's Kurds, if not always in the same way. At times, there has appeared to be near unanimity amongst the Kurds that has transcended borders.

Politically, there are close historical ties between many of the main Kurdish factions, even where they have come to define themselves by their areas of opposition. Virtually irrespective of borders, a large number have played a formative role in each other's development. Soon after the signing of the Treaty of Lausanne, Kurdish nationalist parties emerged which built cross-border ties. This accelerated with the establishment of the Mahabad Republic in 1946. Ephemeral though it proved, this bold attempt at independence saw Iranian and Iraqi Kurds brought together in a single administration.

The major political players in Iraq, the KDP and the PUK, both have their roots in the PDKI, formed in Iran in 1945. The Iraqi KDP in turn helped with the establishment of KDP in Syria in 1957.²⁴

The PDKI is now outlawed in Iran, having been driven underground in the early 1990s. Filling the vacuum, Iranian Kurdish nationalist sentiment is largely drawn to the two rival Iraqi groups.

On occasion, a single event has brought a unanimous response among the Kurds. The impact of the Anfal campaigns is certainly one such: the chemical and gas attacks, mass executions, and use of prison camps so redolent of the Holocaust, mobilised Kurdish opinion perhaps as cohesively as any other tragedy in recent Kurdish history (even as it went largely unnoticed by the rest of the world). The kidnap and arrest of the PKK chairman Abdullah Öcalan in 1999 was similarly condemned across the Kurdish diasporas and beyond. Within much of the international community it was regarded somewhat cynically. The complexities of Kurdish realpolitik, however, dictated that the unanimity only went so far: in those areas of the Kurdish region of Iraq controlled by the KDP, pro-Öcalan demonstrations were forbidden.²⁵

11

US Foreign Policy Towards Saddam: Pre-September 11

Following the First Gulf War, US policy towards Iraq was initially that of containment. This policy was built on the no-fly zones in both the north and south, and sanctions with the purpose of preventing Saddam from producing chemical and nuclear weapons, and launching any more attacks.

However, there were those who did not support this policy, namely Dick Cheney, the current Vice-President (at the time, Defense Secretary) and Paul Wolfowitz, the current Deputy Secretary for Defense (at the time, Under-Secretary for Defense). They both agreed that in the aftermath of the Cold War a new vision was required for US foreign relations.¹ Cheney and Wolfowitz submitted a draft for the Pentagon's 'Defense Planning Guidance' for 1994-99. The paper described a new vision for US policy and argued that America should have no rival on the planet, among neither friends nor enemies.² It called for use of force, if necessary, to implement this new world order.³ The paper also referred to the doctrine of pre-emption, including the right and ability to strike first against any threat from chemical or biological weapons.⁴ The document was extremely controversial politically and thus when it initially appeared in the public fora, it was dismissed as the work of a low-level employee.⁵ However, the contents of this paper would eventually translate to US foreign policy in 2003.

Following President Clinton's election, in their final hours at the White House, Cheney and Wolfowitz released a final version of the report, acknowledging that the policy formulation had been theirs since its conception.

During the Clinton years the policy of 'containment' was adhered to with Clinton stating in 1998 that

the no-fly zones have been and will remain an important part of our containment policy ... because we effectively control the skies over much of Iraq, Saddam has been unable to use air power to repress his own people or to lash out again at his neighbours.⁶

In response, Cheney and others founded the Project for the New American Century (PNAC) in 1997. In open letters the following year, the 'hawks' urged the Clinton administration to recognise the provisional government of Iraq, headed by the opposition INC and remove Saddam from power. They also advocated unilateral action against Iraq because the US could 'no longer depend on our partners in the Gulf War coalition to enforce the inspections regime'.⁷ The group consisted of at least ten members who would later act as advisors to Bush Jr's presidential campaign and/or take up positions within the next Bush administration.

During this period, US military forces had continued to see combat in Iraq. In weekly exchanges, allied aircraft fired missiles at Iraqi air defences that were perceived as a threat to the no-fly zone. US action did intensify on several occasions. In 1993 the US launched a missile attack against the Iraqi intelligence agency in retaliation for a foiled plot to kill the first President Bush after leaving office.⁸ In 1996 Iraqi forces crossed a line of control in Iraqi Kurdistan and headed towards the safe haven. US forces responded by launching a heavy round of air strikes.⁹ In 1998 following the removal of the UN weapons inspectors from Iraq, the US attacked through 'Operation Desert Fox' and struck suspected weapons facilities and targets throughout the whole country over a four-day period.¹⁰ A stalemate persisted between the US and Iraq following the 1998 crisis.

The second President Bush entered the White House in 2000 determined to take decisive action against Saddam Hussein. During his election campaign, he stated that if it was discovered that Saddam was developing weapons of mass destruction he would 'take him out'.¹¹ On 16 February 2001, US F-16 strike aircraft and British Tornado GR1 bombers hit targets around Baghdad outside the no-fly zone boundaries. Bush hinted that the strikes were meant to send a warning to Saddam and degrade his ability to threaten pilots patrolling the no-fly zones.¹²

Bush demonstrated his desire to tackle Saddam early on in his administration, but had to wait until an appropriate time to act wholeheartedly.

Part II
The Present

12

The Road to War¹

'EITHER YOU ARE WITH US,
OR YOU ARE WITH THE TERRORISTS'²

Post-September 11 saw the world's only remaining superpower, the US, announce this simplistic harsh criterion for determining allies and dividing the world stage. A state that is unrivalled in its political, military and economic power had experienced vulnerability; this could never be allowed to happen again.

On 29 January 2002, the international community was given the first indication of a historic global shift from the old Cold War doctrines of containment and deterrence to pre-emptive strikes for an unspecified threat when, in his State of the Union address, President Bush warned that the war on terror had just begun and labelled Iraq, Iran and North Korea as part of an 'axis of evil'.³ Over the following year, when discussing Saddam Hussein, this policy would also be linked to the new doctrine of 'humanitarian intervention', which had been forged during the Kosovo conflict. Here President Clinton bypassed the UN Security Council, while claiming to act in accordance with customary international law as the US forcefully intervened to prevent human rights abuses.⁴

This accelerated, aggressive and proactive strategy, which would eventually culminate in the 2003 war in Iraq, found acceptability with the American public, given their sensitivities to any threat to national security, the revival of patriotism and the popularity of President Bush, following the events of 9/11. The seemingly swift defeat of the Taliban in Afghanistan, with minimal US casualties, lent further support to this policy.

The State of the Union address received wide media coverage throughout the world as a declaration of an inevitable war in Iraq. This created transatlantic tension, as European officials did not support this policy and complained that 'pre-emption' could not be reconciled with international law. Furthermore, China, a permanent member of the UN Security Council that had backed US military action in Afghanistan, condemned the speech, saying such words

could 'damage the atmosphere for seeking solutions to relevant problems and it would not be conducive to world and regional peace and stability'.⁵ Saddam Hussein did not respond to the State of the Union address officially, but the Iraqi Vice-President, Taha Yassin Ramadan, criticised the 'axis of evil' comment as 'stupid', and added that the US and Israel were the 'source of evil and aggression toward the whole world'.⁶

Over the next few months US–Iraq relations deteriorated rapidly, while the US and the UK drew even closer. Demands from the British Prime Minister, Tony Blair, to allow UN weapons inspectors to return to Iraq or risk military action, were rejected by Iraq. Speaking to German news magazine *Focus*, Iraq's Deputy Prime Minister, Tariq Aziz, said that Iraq was preparing itself for the consequences of disregarding the US and UK's demands.⁷

During this period a number of stories were leaked to the press. Most were accompanied by frequent confrontations with Iraq over relatively minor issues, with presumably the hope of having the cumulative effect of creating an atmosphere where all-out war with Iraq became necessary in the eyes of the US/UK public. Interviews regarding Iraq's weapons programme, such as an article in *Vanity Fair*, where an Iraqi defector claimed that Iraq was developing a long-range ballistic missile system, appeared regularly in the press.⁸ US warplanes struck various targets in Iraq claiming retaliation for Iraqi attacks on British and American aircraft patrolling the no-fly zone. The US also expelled an Iraqi diplomat based at the UN headquarters in New York, after accusing him of activities incompatible with his diplomatic status.

Meanwhile, France and Germany adamantly reiterated their position that a war in Iraq without a UN mandate was unacceptable.⁹ Britain and the US on the other hand adopted a different approach. When questioned regarding the necessity of a UN Security Council resolution, Tony Blair was deliberately vague and implied the contrary. He stated that an attack would be carried out within the confines of international law and that Iraq was already in violation of 23 UN resolutions.¹⁰ President Bush clearly implied that as far as Washington was concerned a US attack on Iraq did not require a UN resolution.¹¹

The UN adopted the role of mediator between the 'hawks' and the 'doves'. In early May 2002, for the first time since December 1998, the UN Monitoring, Verification and Inspection Commission (UNMOVIC) and Iraqi officials held initial technical talks about disarmament. In

July, however, further talks in Vienna ended without agreement. As a goodwill gesture in August, Iraq wrote a letter to the Secretary-General of the UN, inviting Hans Blix, the UN Chief Weapons Inspector, to Iraq for talks on disarmament issues. He refused, insisting that he would not travel to Iraq until Saddam Hussein approved the return of weapons inspectors.¹²

The stance of the US administration concerning the readmission of weapons inspectors into Iraq was clarified by Dick Cheney, the US Vice-President, who stated:

Many of us are convinced that Saddam Hussein will acquire nuclear weapons fairly soon. A return of weapons inspectors would provide no assurance whatsoever of his compliance with UN resolutions. On the contrary, there is a great danger that it would provide false comfort that Saddam was somehow back in his box. Meanwhile he would continue to plot.¹³

Following this speech Tony Blair, under pressure from his own party, European leaders, and public opinion in the UK, held urgent talks with President Bush. It appeared that he had convinced him to try for a UN mandate for war rather than unilateral military action.¹⁴

However, on 8 September 2002, the *Observer* newspaper reported that the US had begun a military build-up for a war against Iraq, 'ordering the movement of tens of thousands of men and tonnes of material to the Gulf region'.¹⁵

President Bush addressed the UN General Assembly in mid-September 2002, and challenged the UN to confront the 'grave and gathering danger' of Iraq, or to stand aside as the US and like-minded nations acted together.¹⁶ In response, Iraq announced that it accepted the 'unconditional' return of UN weapons inspectors.¹⁷ The terms of the weapons inspections were then discussed, but 'unconditional' on the part of the Iraqis meant that eight presidential compounds continued to remain off limits.¹⁸ This was unacceptable to the US and the UK.¹⁹

In Britain Tony Blair endeavoured to raise support for his strong US alliance by presenting a UK intelligence services dossier to Parliament. It claimed that Iraq had biological and chemical weapons, some of which could be deployed within 45 minutes. This assertion would eventually come back to haunt Tony Blair, and to a lesser extent President Bush.²⁰

On 10 October 2002, the US Congress adopted a joint resolution authorising use of force against Iraq.²¹ Six days later Iraq renewed its offer to readmit UN weapons inspectors. This coincided with an Iraqi referendum that gave Saddam Hussein a further seven-year term as president, with purportedly 100 per cent of the vote.²²

8 November 2002 saw the UN Security Council unanimously adopt Resolution 1441, which outlined the inspection regime for Iraq's disarmament to be conducted by the International Atomic Energy Agency (IAEA).²³ Iraq's parliament condemned the UN resolution, and the head of Iraq's foreign relations committee advised MPs to follow the Iraqi leadership and reject the 'US'-drafted document.²⁴ The Bush administration responded by announcing that it would not wait for the UN Security Council to approve an attack on Iraq should this fail to comply with weapons inspections.²⁵ Although the Iraqi government initially voted unanimously to reject the UN resolution and called upon the US to disarm, the following day the Iraqi ambassador to the UN informed the Security Council that Iraq would in fact accept Resolution 1441.

On 18 November 2002, after a four-year absence, UN weapons inspectors arrived in Iraq to relaunch the search for weapons of mass destruction in laboratories, factories and Iraqi facilities.²⁶ In December they announced that Iraq had finally admitted to attempting to import aluminium tubing illegally for weapons purposes. Iraq claimed that it was for developing conventional weapons and not nuclear, as alleged by the US/UK.²⁷ This bad news was tempered with good. The inspectors were allowed to enter a presidential palace for the first time since they renewed disarmament inspections in Iraq, a bone of contention between the UN/Iraq when negotiating the terms of inspections. The situation from a UN perspective appeared to be improving.

On the other hand, from the end of November through to December, British and American planes fired on Iraqi air defences in what US Defense Secretary Donald Rumsfeld categorised as retaliations for Iraqi attacks, which were violations of Resolution 1441.²⁸ Iraq claimed that the missiles struck the offices coordinating the UN-sponsored OFFP, which was located at the premises of the Southern Oil Company in Basra. It wounded ten people and killed four.²⁹

In Britain, Tony Blair initiated a shift in emphasis for the justifications of the war from weapons of mass destruction to combine it with human rights violations, using a report published by the British Foreign Office. It stated that Saddam Hussein had

carried out 'systematic torture' on Iraqi opponents of the regime, and outlined other gross human rights violations on his part.³⁰ The change in tactics was partly to play on the public's sympathy for the victims of the violations and thereby lend support for the war, and also to invoke the doctrine of 'humanitarian intervention' as a legal basis for war.

On 8 December 2002, Iraq provided the UN weapons inspectors with a 12,000-page declaration of Iraq's chemical, biological and nuclear weapons programmes. Iraq stated that there were no weapons of mass destruction in Iraq.³¹ In addition, Saddam Hussein apologised to the Kuwaiti people for invading their country in 1990, while simultaneously accusing the country's leadership of plotting with the Americans to invade Iraq.³² Although President Bush had warned Iraq that the 8 December declaration had to be credible and complete, Hans Blix, having subsequently perused the documents, informed the Security Council that it was merely a reorganised version of the information Iraq had provided to UNSCOM in 1997.³³ The US reached a preliminary conclusion that the declaration of Iraq's weapons programmes failed to account for chemical and biological agents missing when inspectors left four years before, resulting in a material breach of Resolution 1441.³⁴ The head of the IAEA, however, requested a few months to reach a conclusion about Iraq's declaration on its weapons programme.

President Bush appeared to ignore this plea and continued to prepare for a war. He gave his formal approval to the deployment of a further 50,000 US soldiers to the Gulf.³⁵ Shortly afterwards, US military officials accused Iraq of shooting down an unmanned surveillance drone over southern Iraq.³⁶ The surest sign that war was imminent emerged when the US sent forces to Israel to strengthen their defences against possible missile attacks from Iraq. The US also announced that the Saudi Arabian government had agreed to allow American planes to use their bases in the event of a war with Iraq.³⁷

The New Year saw US Defense Secretary Donald Rumsfeld signing a directive authorising the deployment of thousands more troops to the Persian Gulf. Britain entered into the military fray on 7 January 2003, when it announced that it would also mobilise 1,500 reserve forces and dispatch a naval taskforce of 3,000 Royal Marines and 2,000 members of the Royal Navy to the Gulf.³⁸ In Iraq, whilst celebrating the 82nd anniversary of the establishment of the Iraqi army, Saddam Hussein accused the UN inspectors of being spies and

called his enemies the 'friends and helpers of Satan', in a pre-recorded announcement.³⁹ He also declared that Iraq was fully prepared for war.⁴⁰ Consequently, further troops were deployed by the US and the heaviest day of bombing in the southern no-fly zone in at least a year followed on 13 January 2003. Iraq reiterated its claims that many of these attacks were aimed at civilians.

In response to this growing military manoeuvring by the US, UK and Iraq, the French President put French forces on alert for possible action in Iraq, while Russia placed three warships on standby to go to the Persian Gulf to protect its own 'national interests' relating to oil.⁴¹

The US/UK continued to build up their troops in the region, while the weapons inspectors intensified their investigations in Iraq, visiting a record number of sites. On 9 January 2003, Hans Blix and Mohammed el-Baradei delivered an interim report to the Security Council. Mr Blix stated that 'We have now been there for some two months and have been covering the country in ever wider sweeps and we haven't found any smoking guns.'⁴²

Despite this statement, a week later, the *Washington Post* reported that the UN weapons inspectors had discovered a cache of eleven empty chemical warheads not listed in Iraq's final declaration.⁴³ These were later found to have no traces of chemicals. The head of Iraq's weapons-monitoring directorate argued that the weapons were overlooked, as they were stored in boxes similar to those for conventional 122 mm rocket warheads. Nevertheless this discovery led to a US appeal to NATO for military support in the event of an Iraqi war. NATO, however, played no role in the campaign against Iraq.⁴⁴

Anti-war demonstrators took to the streets of cities around the world on 18 January, to protest against the build-up of US/British forces in the Gulf. In response to this growing public display against the war, the US offered Saddam Hussein immunity from prosecution if he left Iraq.

With the situation deteriorating rapidly, Hans Blix instigated high-level talks with the Iraqi administration, and an agreement was reached for better cooperation under a ten-point plan.⁴⁵ Iraq agreed to allow the questioning of scientists and officials by the inspectors without a minder present. Although this had been the chief complaint of the weapons inspectors, Iraq's attempts to compromise appeared to have no effect on the US/UK who sent further troops to the region.

Indeed, by this stage, Britain's military contribution was larger than at the start of the First Gulf War.

The end of January saw anti-war political manoeuvring on all sides of the globe; Germany declared that it would not back a UN resolution authorising war against Iraq; representatives of Egypt, Jordan, Saudi Arabia, Syria, Iran and Turkey met in Istanbul and urged Iraq to provide more information on its weapons programmes; China and Russia joined forces with France and Germany in calling for the US/UK to work with the UN; the Iranian Supreme Council for National Security argued that military intervention was unjustified; and Iraq refuted Colin Powell's statement that Saddam had clear links with the al-Qaida network and advised the Iraqi people to be prepared for martyrdom in the event of an invasion.

On 28 January, Hans Blix gave a more detailed report to the UN Security Council on the progress of the weapons inspections. This report stated that although Iraq had been quite cooperative, there was an absence of full transparency, including the deliberate concealment of documents.⁴⁶ More importantly, the report found evidence that Iraq had produced anthrax in the 1990s and that it might still exist. It also indicated that Iraq may have lied about the amount of VX nerve gas it produced and noted its failure to account for more than 6,000 chemical bombs.⁴⁷

The initial response to this report was varied. Iraq denied the allegations and insisted that they had complied with all their obligations. The head of the IAEA reiterated his plea for more time to complete inspections and stated that no evidence had been found to indicate that Iraq had 'revived its nuclear weapon programme since the elimination of the programme in the 1990s'.⁴⁸ The UN Secretary-General also recommended that the inspectors be given more time. However, the US administration rejected these calls, arguing that 'the more time they get the more time they're getting the run-around'.⁴⁹ Similarly, the Australian Prime Minister called on the Security Council to act and said that it was time for UN 'rhetoric' to be backed with action.⁵⁰

A year after his controversial State of the Union address, President Bush delivered his second and stated that he would produce fresh evidence to the UN of Saddam's illegal weapons.⁵¹ He continued, 'if Saddam Hussein does not fully disarm for the safety of our people, and for the peace of the world, we will lead a coalition to disarm him'.⁵² The leaders of Britain, Spain, Italy, Portugal, Hungary, Poland, Denmark and the Czech Republic called on Europe to stand united

with America to disarm Iraq, in a joint letter published in newspapers worldwide on the morning following President Bush's State of the Union address.⁵³

On 6 February 2003, US Secretary of State Colin Powell presented tape recordings, satellite imagery and informants' statements to the UN, which he claimed constituted 'irrefutable and undeniable' evidence of concealment of weapons of mass destruction by Saddam Hussein.⁵⁴ Newspapers the following day reported that France, China and Russia rejected the argument by Colin Powell that urgent action needed to be taken against Iraq, and that the case for war had not been strengthened by his address to the UN Security Council.⁵⁵

France, Germany and Belgium blocked a NATO plan to improve defences for Turkey, which responded by becoming the first country in NATO's history to invoke publicly Article 4 of the mutual defence treaty which binds the allies to talks when one perceives a threat to its 'territorial integrity, political independence or security'.⁵⁶ Subsequently, NATO dropped objections to Turkey's defence being strengthened in case of a war in Iraq, on the basis of US guarantees that sending surveillance planes and missile batteries to Turkey did not necessarily mean war.

Iraq in the meantime had furnished weapons inspectors with more documents endeavouring to clarify the questions regarding chemical and biological weapons and agreed to the use of surveillance planes by inspectors over its territory. France and Germany, backed by Russia, used this opportunity to put forward plans to boost weapons inspections as an alternative to war.

On 14 February 2003, Hans Blix delivered his verdict on Iraq's compliance, informing the UN Security Council that Iraq had not fully complied, but on the other hand no weapons of mass destruction had been uncovered.⁵⁷ The report did not alter France, Germany, Russia or China's firm stance against military action. In response, Saddam Hussein issued a presidential decree banning weapons of mass destruction and all materials used to create weapons of mass destruction.

On 24 February 2003, the US, Britain and Spain proposed a new UN resolution declaring that Iraq had 'failed to take the final opportunity' to disarm itself of weapons of mass destruction.⁵⁸ Plans for presenting such a resolution had previously been shelved when the French President, Jacques Chirac, publicly announced that France would veto a second resolution authorising military action. Furthermore, the Australian Prime Minister backed the resolution, on the basis

that if it was not carried out then the credibility of the UN Security Council would be weakened. In response, Germany, France and Russia, presented a rival initiative stating that 'the military option should be the last resort'.⁵⁹

The following day, Tony Blair, in an address to the House of Commons, announced that a vote on the proposed UN Security Council resolution would be delayed to give Iraq a last opportunity to disarm.

On 26 February 2003, in a televised interview with CBS News, Saddam Hussein rejected the offer of asylum and denied links with al-Qaida.⁶⁰ He also refused to destroy al-Samoud 2⁶¹ missiles, which the US/UK had claimed were illegal. A swift turnaround ensued two days later when the office of the chief weapons inspector received a letter from Iraq agreeing in principle to destroy its al-Samoud 2 missiles and other items.⁶² Weapons inspectors then destroyed four missiles.

On 8 March 2003, the US and Britain proposed a 17 March deadline for Iraq to disarm or face war, even though China, France, Germany and Russia stood firm in opposing a second resolution authorising war. The UN Secretary-General warned the US that it would be in breach of the UN Charter if it attacked Iraq without Security Council approval. In a report to the UN Security Council, Hans Blix stated that he suspected that Iraq was trying to produce new missiles, and that it would take months to disarm Iraq.⁶³ The head of the IAEA countered this by stating that there was no evidence of nuclear weapons development programmes in Iraq.

Saddam began pulling elite troops away from Iraq's northern border with Turkey, and moving Iraqi Republican Guard units south from Mosul to Tikrit. Other units moved into residential areas of Baghdad. US/UK warplanes continued to patrol the no-fly zone and attack various targets in retaliation for alleged Iraqi fire. Soldiers from the six-nation Gulf Cooperation Council (GCC) also took up positions for the defence of Kuwait.

The British government, under increasing domestic and international pressure, put forward six tests that the Iraqi president would have to pass to avoid war.⁶⁴ These included a televised statement by Saddam Hussein consenting to give up Iraq's weapons of mass destruction, permission for Iraqi scientists to be interviewed abroad, and the complete destruction of all al-Samoud 2 missiles. In response, the UN Security Council held a meeting to discuss this six-test plan but France rejected the proposal, saying that the new

ideas did not address the key issue of seeking a peaceful solution to the crisis. Iraq also refuted the proposal, labelling it a previously rejected aggressive policy.

By mid-March, the British Foreign Secretary, Jack Straw, told BBC radio that 'the prospect of military action is now much more probable, and I greatly regret that, but it is not inevitable'.⁶⁵ The following day, George Bush, Tony Blair and Spanish Prime Minister, Jose Maria Aznar, held an emergency summit and gave the UN 24 hours to enforce 'the immediate and unconditional disarmament' of Saddam Hussein.⁶⁶ In retaliation, France, Russia and Germany issued a joint declaration, saying that there was no justification for a war and that the inspections were working.⁶⁷ Belgium announced that it would refuse transit rights to US forces if a war was waged without the authorisation of the UN.⁶⁸ The Pope issued a statement asking Saddam to avoid giving the west a reason to attack and warned that the conflict could trigger an explosion of terrorism. Iraq, on the other hand, issued a decree dividing the country into four military districts; a tactical manoeuvre for imminent battle.

Colin Powell then urged inspectors and journalists to leave Iraq *in case* of military action.⁶⁹ As a result of this Kofi Annan resigned himself to inevitable war and ordered that all weapons inspectors, their support staff and humanitarian personnel be evacuated.

The US/UK and Spain finally withdrew their draft resolution seeking UN Security Council authority for military action in Iraq on 18 March 2003, as they realised it would never be passed. This move was followed by a televised speech by President Bush in which he stated: 'Saddam Hussein and his sons must leave Iraq within 48 hours. Their refusal to do so will result in military conflict commenced at a time of our choosing.'⁷⁰ Saddam's eldest son rejected the ultimatum and warned that any US forces would face a bloody battle if they invaded Iraq.

Although President Bush's speech received support from his limited allies, in particular the UK, Spain, Australia and Poland, there was considerable condemnation from the rest of the world; the French President said that the unilateral decision was contrary to the wishes of the UN Security Council and the international community; the Russian President declared that it was a mistake; the German Chancellor said that there was no justification for a war in Iraq; China's Prime Minister said that every effort should be made to avoid war; the New Zealand Prime Minister stated that unilateral war was setting a dangerous precedent; and the acting

Malaysian Prime Minister asserted that unilateral action was an illegal act of aggression.

The day before the start of the war, Saddam Hussein appeared on Iraqi national television and rejected the US ultimatum to leave the country, as did the Iraqi parliament. Accepting the inevitable, Hans Blix declared his sadness that his work had not brought about the assurances required regarding the absence of weapons of mass destruction.

Air raid sirens announcing the beginning of war sounded for the first time in Baghdad on 20 March 2003. After much anticipation, coalition forces, led by the US, had launched a war on Iraq. There were two prevailing justifications for launching it: the belief of a threat from weapons of mass destruction; and to protect the Iraqi people from the gross human rights violations of Saddam Hussein.

THE KURDS' PATH TO WAR

There are two reasons why the Kurds had an important role for the US in the run-up to the war: one was military, as the Kurds had a large force of *peshmergas* available in a strategic position; and the second related to the US war against terrorism as they believed that an al-Qaida cell was located within Iraqi Kurdistan.

Early on the road to war, the US realised that the PUK and KDP could perhaps assemble as many as 80,000 *peshmerga* between them, to fight against Saddam. The Kurds, learning from their past experiences with the US, were in no hurry to become Iraq's equivalent of the Afghan Northern Alliance. The leaders of both the KDP and PUK were aware that the Kurdish self-rule in Iraqi Kurdistan could fall depending on the US implementation of a post-Saddam administration. They were therefore adamant not to assist unless they received guarantees for their safety and for Kurdish future status in a post-Saddam Iraq.

The 'war on terror' had also penetrated Iraqi Kurdistan. A small but powerful Islamist group, the Ansar al-Islam, with links to al-Qaida had allegedly taken control of a series of villages in the remote mountainous area of eastern Kurdistan on the border with Iran. Kurdish officials claimed that the group provided refuge and training to over 100 al-Qaida fighters who had fled from Afghanistan.⁷¹ There were also reports that the group was testing the effect of toxic agents, such as cyanide gas and ricin, on farm animals.⁷² The Kurds, however, were fearful that the Ansar al-Islam would intensify their activities and weaken the Kurds either during a war or in the post-war nation

building that would follow. The call to war by the US strengthened the bonds between the two largest Kurdish parties in Northern Iraq and they adopted 'a united stand on Iraq'.⁷³

In assessing Kurdish–US relations in the run-up to the war, it is necessary to look to Turkey, as a triangular relationship existed between the three.

US interests in Turkey had steadily expanded after the end of the Cold War due to the policy of containment. Turkey's proximity to countries such as Iran and Iraq, who were seen as threats to the US, and its status as the only Muslim country in NATO provided a useful tool in implementing this US policy. Turkey acted as a mediator between these states and was also a strategic point for gathering intelligence. Moreover, in the aftermath of the First Gulf War, Turkey became essential to sustain UN sanctions by preventing smuggling across the border with Iraq. The US also used military facilities in Turkey to launch patrols to the no-fly zone in Iraqi Kurdistan.

Although Turkey was a non-combatant during the First Gulf War, it had allowed the US/UK to use its airbases. Turkey had also cooperated in the Bosnia, Kosovo and Afghanistan conflicts. Consequently, when it came to planning the 2003 war in Iraq, the US were confident of Turkey's cooperation in relation to airbases. In addition, in order to launch an effective ground-force attack in the north of Iraq, the US needed to cross over 60,000 troops at the Turkish–Iraqi border. The military planned a serious thrust from the north to match and then meet up with its troops in the south who would enter from Kuwait. Thus, the US sought permission not only to use airbases for combat purposes but also to send troops across the Turkish border. However, the US/UK failed to take into account Kurdish–Turkish relations and the effects these would have on their military agenda.

The US entered into negotiations with Ankara to strike a deal on these military requests in 2002. As war was not imminent at this time, the US had no urgency to speed up the negotiations and thought that any stalling on Turkey's part related to bartering for a better financial compensation package. The US did not realise that foremost among Turkey's concerns was that a war against Saddam could lead to a fully independent Iraqi Kurdistan, which would have devastating effects for Turkey domestically. They feared that it would encourage Turkey's Kurdish population, estimated at over 15 million, to revive separatist movements. They were also worried about the Kurds gaining control of the oil-rich cities of Kirkuk and Mosul, as controlling such wealth would subsequently increase the Kurds' political power.

Slowly, rumours began to emerge from Ankara that the Turkish military would enter Iraqi Kurdistan once the fighting began to prevent the establishment of a Kurdish state and ensure that the Turcomans were given their own regional government controlling Kirkuk and Mosul. These rumours were later backed up by a *Guardian* article on 1 August 2002 when, in an interview, General Arman Kuloglo, an ex-military commander in Turkey, stated that he believed that Turkey would occupy Iraqi Kurdistan in the event of war because it 'doesn't want the towns of Kirkuk and Mosul to fall to the Kurds'.⁷⁴

In July 2002, Paul Wolfowitz, the US Deputy Secretary for Defense, visited Turkey to continue to negotiate a deal for the war. It is believed that he had informally requested permission for American ground forces to be stationed in Turkey and use its airbases. It was also reported that Turkey was demanding and receiving assurances from the US that an independent Kurdish state in Iraqi Kurdistan would be prevented. The Turkish Prime Minister, however, announced that he was endeavouring to dissuade the US from taking military action against Iraq and made no mention of the context of the negotiations.

During this period, although the Kurdish parties did not officially lend their support for a war in Iraq, they attended meetings with opposition groups and US/UK officials. The purpose of these meetings was to decide on a post-war administration for Iraq. In this regard the KDP drew up a draft constitution in July 2002, which outlined a federal system for Iraq following Saddam's fall.⁷⁵ The opposition groups also announced plans that the provisional government would be established in Iraq immediately after the start of the war. These meetings served a dual purpose for the US/UK: to gain support from the Kurds in a war against Saddam; and to show unity, which would hopefully exert pressure on the Iraqi President to go into exile.

After months of negotiations, Jalal Talabani, the leader of the PUK, publicly issued an invitation on 15 August 2002 for the US/UK to invade Iraq from the PUK's territory. In an interview with CNN, Mr Talabani stated: 'I explained to the United States officials here that the Iraqi opposition, Kurds included ... have tens of thousands of armed people. These forces can liberate Iraq with the support of the US, with cooperation and coordination with American forces.'⁷⁶

Turkey found itself in a difficult position. Although it valued its alliance with the US, it was still reeling from an economic crisis. More importantly, it was worried that the US had made secret agreements with the Kurds, leaving Turkey out in the cold. However, Ankara

truly believed that the US valued its military support far more than any alliance with the Kurds. In October 2002, the Prime Minister declared: 'We know that the United States cannot carry out this operation without us.'⁷⁷

In November the Kurds and the Turks fell out because of the speeches made by the Turkish Prime Minister during his election campaign, in which he threatened to seize the oil-rich cities of Kirkuk and Mosul in the event of a war. The Kurds responded by warning that such an occupation would turn into a Cyprus-style crisis and they would not accept intervention by Turkey. Two of America's most crucial allies had fallen out, with the US playing piggy-in-the-middle.

The beginning of December saw a flurry of diplomatic activity in Turkey. On 3 December 2002, US/UK diplomats met with Turkey's political and military leaders in meetings conducted by Paul Wolfowitz, the US Deputy Secretary of Defense. Following these, Turkey announced that it *would* allow the US/UK to use its airbases and airspace in a war against Iraq on the condition that a second UN resolution authorising the military campaign was obtained.⁷⁸ This announcement did not address the Turkish demands relating to Iraqi Kurdistan. It appeared that some sort of agreement had been reached but Mr Wolfowitz dodged all related questions.

The situation remained static until February 2003, when Turkish and US officials met in Ankara to finalise the agreement on the war. At this point the UN precondition appeared to be of less importance but instead Turkey issued a further ultimatum; either Turkish troops were allowed into Iraqi Kurdistan or Turkey would say no to the US. The US accepted this demand along with an agreement on behalf of the Kurds that their forces would not be allowed to enter Kirkuk and Mosul.⁷⁹ In concession Turkey agreed that its troops would steer clear of all Kurdish towns and cities, and stay out of Mosul and Kirkuk unless the *peshmerga* moved in. To that end, the Turkish foreign ministry issued a statement saying:

The Turkish army will enter the region to prevent an exodus, to prevent the Kurds from establishing a free Kurdistan, to prevent them entering Kirkuk and Mosul, and to protect the Turcomans. We don't want a clash between Turkey and the Kurds, and for that reason we are sending lots of troops to the region as a warning.⁸⁰

US officials offered assurances to the Kurds that the deployment of Turkish troops would be limited; purely for humanitarian purposes, under the control of the US-led coalition.

The Kurds, however, adamantly refused such a deal. They believed that if Turkish troops crossed the border they would pursue Ankara's own agenda and never leave Iraqi Kurdistan, particularly given Turkey's belief in its historical claims over Kirkuk and Mosul. Furthermore, even if Turkey only controlled some areas of Iraqi Kurdistan, it would cut the Kurds off from land access not only to Turkey but also to Iran and Syria. In response to the Turkish Foreign Ministry's statement, the Kurdish parties informed Turkey and the US that if a security problem arose or a mass exodus occurred beyond their ability to cope, then they would ask for help. The Turkish justifications for entering Iraqi Kurdistan were logically rejected.

Both sides believed that the US was favouring the other, while Washington tried to find a solution to the impasse. In the end Turkey would make the decision for them.

Prior to the meetings in Ankara, a formal request was lodged for permission to deploy British troops to Turkey, with the purpose of supporting the Americans in preparing for a northern front attack against Iraq. Turkey stalled in answering this request because of an irrational fear that the British were trying to influence the Kurds to distrust Turkey. Moreover, it was understood by the US during the Ankara meetings that any deployment of Turkish troops would be under the auspices of the US-led coalition. Turkey adamantly refused this condition and believed that the US would back down, as they appeared desperate to get rid of Saddam at any cost.

On 27 February the Turkish parliament voted to delay its debate on the agreement with the US.⁸¹ The country's new government, led by a party with Islamist roots, paused to consider their voters' opinion, who were overwhelmingly opposed to any participation in the war. In conjunction with these issues, Turkey had also been endeavouring to join the European Union for a number of years. By supporting a US-led attack on Iraq, which France and Germany were adamantly against, they worried that it would adversely affect their application for EU membership.

On 1 March 2003 the Turkish parliament narrowly defeated a government motion that would have allowed up to 62,000 US soldiers to be based on Turkish soil for combat operations against Iraq. The loss of the northern front shocked Washington. No one in the Bush administration had expected Turkey to refuse the US request, primarily because it was understood that Turkey would never leave its most powerful ally out in the cold; in the long term they would

have too much to lose. Turkey had proved itself unreliable; the US stopped trying to placate Turkey and instead focused its negotiations on the Kurds.

For the Kurds the most important battle had been won before the combat had even begun.

13

The Second Gulf War: 'Operation Iraqi Freedom'

'THEY WERE RECEIVED WITH BOMBS, SHOES AND BULLETS'¹

On 20 March 2003, at 0315 GMT, President Bush addressed the US nation and announced that 'at this hour, American and coalition forces are in the early stages of military operations to disarm Iraq, to free its people and to defend the world from grave danger'.²

The first day of the war saw limited air strikes on Baghdad by the US-led coalition forces. Saddam Hussein responded with a televised address to the Iraqi people, calling the attack 'criminal' and vowed to win the war.³ On the other side of the border, the Turkish parliament finally approved the use of Turkey's airspace by coalition aircraft, but remained insistent on sending its own troops unilaterally to Iraqi Kurdistan, as a price for coalition ground-force access.⁴

China, France and Russia, permanent members of the UN Security Council, denounced the US-led invasion.⁵

The war began relatively slowly, as military chiefs were obliged to revise their tactics due to the inability to use Turkish territory to stage a northern front. In addition, the coalition tried to persuade Iraqi forces to lay down their arms by dropping leaflets into Iraq in Arabic instructing soldiers on how to surrender.⁶ Fewer civilian casualties would curtail the extent of the criticism for the war, both domestically and internationally. Iraq fired a number of missiles at Kuwait, and although they did not have a great military impact, the US/UK claimed that they were in all probability scud missiles.⁷ This served to cast doubt on the truthfulness of Saddam's claims that he had not been developing a weapons programme; adding further to the justifications for military combat with Iraq.

The world waited for the 'shock and awe' tactics that had been promised by the US.⁸ They did not come until the end of the first week and even then they were rather muted. Instead, American and British bombing targeted Iraqi command and control facilities, intending to break up the Iraqi military, so that no one knew who was in charge. Initially, concentrating on the south of the country,

the US/UK forces advanced into Umm Qasr, before moving towards Baghdad. They met little resistance on the way, but were hampered by sandstorms.

In the south of Iraq it took 21 days of often ferocious fighting to destroy Saddam's regime. There were still plenty of battles to come aimed at flushing out pockets of resistance, but Saddam had lost his overall control.

THE KURDISH JERUSALEM⁹

On the northern front a further crisis began brewing on 21–22 March when Turkey announced that it had sent troops across the border unilaterally to Iraqi Kurdistan.¹⁰ This caused the US to fear a 'war within a war' scenario between the Kurds and the Turks. However, Turkey later retracted this statement,¹¹ although it did amass thousands of troops on the border with Iraqi Kurdistan and the threat that they would unilaterally cross into Kurdish territories remained.

At a final round of talks with Turkey on 25 March, the US admitted failure at reaching an agreement with Turkey, and turned in earnest to working openly with Iraqi Kurds.¹² The northern front had been opened, making the estimated 80,000 *peshmergas* the second largest coalition troop contribution.

On the night of 26 March more than 1,000 members of the US 173rd Airborne Brigade arrived in Iraqi Kurdistan by means of a well publicised airdrop over the Kurdish airfield at Harir. The first ground battles in the north were not against Iraqi troops but against the Ansar al-Islam, who were cited as being strategically a more dangerous enemy, located at the rear of the Kurdish/US forces. *Peshmergas* and US Special Forces moved into the mountainous terrain held by the Ansar al-Islam, identifying targets and calling in air strikes from US jets. These tactics appeared to prove effective militarily as within days the Ansar al-Islam allegedly retreated to Iran.¹³

After ten days of war in Iraq there was still no sign of a major US troop build-up in the north. Kirkuk remained under Iraqi government control, and although there had been some bombing along the front line, the *peshmerga* busily fighting to their rear had not fired a single shot at them. When the Kurds finally turned their attentions to their front line, they adopted the same tactics as those against the Ansar al-Islam; operating behind Iraqi lines indicating targets for jets to bomb. There were some skirmishes with Iraqi troops in the areas near

Chamchamal, but they quickly gave up and the *peshmerga* pushed into Iraqi government territory north of Kirkuk.

The fall of Baghdad on 9 April affected the Iraqi resistance in the north. Government troops fled allowing the *peshmerga* to enter Kirkuk virtually unresisted the next morning.¹⁴ They were given a hero's welcome.

Seeing Kirkuk fall so easily, the Iraqi forces in Mosul decided to surrender the city. The KDP acted as an intermediary and negotiated that the US stop bombing Mosul.¹⁵ On 9 April the Iraqi forces laid down their arms and the city waited for the US forces to come. They did not.

Although scenes of joyful celebrations in Kirkuk and Mosul were broadcast all over the world, things quickly got out of hand as looting began. The US had been unprepared for such a speedy capitulation by Saddam's forces in the north and consequently there were not enough coalition troops on the ground to maintain order. The US tried to blame the PUK/KDP for taking Kirkuk and Mosul too fast. Others blamed the US, such as the Human Rights Watch, London director of the Middle East and North Africa division who stated that 'They had a long time to plan for issues such as this, but it seems nothing was done.'¹⁶

With a lack of US forces on the ground, it was up to the Kurdish security forces to restore order and prevent further looting. At a meeting in the Ba'ath party headquarters in Kirkuk, the leaders of the PUK and KDP stated that they were trying to stop the looting 'but the local people are very angry. They have been so oppressed and tortured ... It's going to take a couple of days to sort out.'¹⁷

Initially the PUK sent police and engineers from Iraqi Kurdistan to enforce security and reinstall basic services in Kirkuk, and they set up committees to return looted property to its owners.

There were other negative aspects to looting, however, mostly relating to land. Arab villagers complained that Kurds were reversing Saddam's 'Arabisation' process of ethnic cleansing by expelling them from land that had originally been owned by Kurds. Hundreds died in these interethnic clashes, causing thousands of Arabs to flee the areas for fear of reprisals. The Arabisation process had deeply scarred Iraq. The leader of the KDP, Massoud Barzani, issued a statement condemning the looting and attacks on Arabs, saying 'No Kurd is allowed to attack the property, life or integrity of any Arab citizen in any village, district or in the centre of main cities.'¹⁸ Furthermore, he stated that 'the Arabs have full right to self-defence in such

incidents'.¹⁹ PUK officials also denied that, contrary to reports, expulsion did not represent their official policy, but conceded that some Kurds could have pretended to be PUK officials in order to 'pursue criminal activities'.²⁰

There were also occurrences of Arabs killing Kurds. One such incident arose when Arab villagers occupied an abandoned army checkpoint and fired randomly at several Kurdish cars. They claimed that some Kurdish looters had tried to appropriate their petrol station and that this was their defence strategy.²¹

There were further tensions between the Kurds and Turcomans. These were provoked and worsened by Turkey's actions during this time. Turkey announced that there were more than 70,000 troops along the border ready to enter Iraq, having seen the *peshmerga* pour into the cities of Kirkuk and Mosul.²² Their justifications were that they needed to protect the Turcomans. However, the US knew that the Kurds would not accept an invasion by Turkey and in order to prevent another war tried to assure Turkey that the Kurds were ultimately under their control. To that end the Kurds made it clear that the *peshmerga* would leave Kirkuk and Mosul as soon as sufficient US troops had arrived to control the cities.²³

The US, in concession, also agreed to allow Turkish military observers to assess the situation in Iraqi Kurdistan²⁴ and pledged US\$ 1 billion in aid to bolster Turkey's troubled economy.²⁵ In return, General Hilmi Ozkok promised that Turkish troops would not move into Iraqi Kurdistan before consulting the US. Tensions heightened, however, amid accusations that Turkish troops had deliberately fired shells on villages in Iraqi Kurdistan.²⁶ On 27 April US forces announced that they had intercepted attempts by Turkish military intelligence to smuggle arms in aid consignments to the Turcomans in Kirkuk.²⁷ This did not come as a great surprise to the Kurds as Turkey had regularly intervened surreptitiously on the border for a number of years.

Despite all of these issues, Kirkuk returned to normal within a very short period of time under the PUK's control. Businesses were open as usual and rubbish was even being collected a few days after its fall. In Mosul, however, some areas remained under control of Ba'ath loyalists and fedayeen militias, allowing a cycle of revenge killings to be established.

Ultimately, the situation in Iraqi Kurdistan was not as bad as that in the south despite a much smaller US military presence. The PUK and KDP were credited with managing a difficult situation particularly

well, in light of the state of affairs in the rest of Iraq. There was no mass exodus and no massacre of Turcomans. Moreover, the Kurds did not rise to Turkish provocation and let the US coalition place Kirkuk and Mosul under their auspices.

The Kurds had made promises to the US; they had proved themselves to be reliable.

WAR OVER?

Commentators give different dates for the day the war in Iraq ended. Some refer to dates in mid-April while others refer to 1 May 2003.

KHRP contacted US Central Command and asked them for the official date the war ended. KHRP was informed that 'major combat operations' ended on 1 May 2003 as announced by President Bush on board the USS *Abraham Lincoln*.²⁸ However, when asked if this meant that the war ended on that date, US Central Command would not answer the question directly and reiterated that major combat ended on 1 May. KHRP then contacted the press desk at the Coalition Press Information Centre (CPIC), who replied by email that 'the official end of "Major Combat Operation" Pres Bush declared was 01 MAY 03. But please do not confuse, we are still at war.'²⁹

THE CURRENT SECURITY SITUATION

The security situation in Iraq has been tense since the declaration of the end of 'major combat' on 1 May 2003. Individual factions have been targeting both military and civilian personnel, particularly in road convoys. It is believed that these attacks are being carried out not only by Iraqis, but also by foreigners who have flooded into Iraq to offer their support.³⁰ To that end no non-Iraqi males between the ages of 18 and 45 are allowed to travel to Iraq unless they can justify their reasons for being there. However, this policy has not prevented the unrest.

At the time of writing, the number of US forces killed in Iraq since the outbreak of the war is over 400. On the Iraqi side, there are no accurate figures as to the total loss of citizens' lives through combat or civilian casualties.

There have been a number of particularly shocking attacks, such as the bombing of the International Red Cross headquarters in Baghdad on 27 October 2003 that killed twelve people. In addition, on 19 August 2003, a huge truck bomb struck the UN headquarters in Baghdad,

killing over 20 people including the UN Special Representative of the Secretary-General to Iraq, Sergio Vieira de Mello. Mr de Mello was also the UN High Commissioner for Human Rights. These types of attacks carried on throughout November/December 2003, and a number of casualties amongst foreign nationals in Iraq, including reconstruction workers, diplomats and intelligence officers, have been reported. Missiles are also being used to target planes at Baghdad International Airport and even a DHL cargo aircraft was struck.³¹ Iraqi casualties have resulted from these incidences; for example when a bomb exploded outside the Italian police headquarters in Nasiriya, 27 people were killed and 79 wounded, including Iraqi nationals.

Such attacks have caused increased social tensions leading to a number of demonstrations, which in turn have added to the security problem.

Just one day after the announcement of the capture of Saddam Hussein, street battles and demonstrations against the coalition erupted in west Baghdad as well as other cities in the Sunni area. Since the capture of Saddam there have been a series of suicide bomb attacks, explosions and drive-by shootings raising insurgency to a new intensity.³² Attacks have shifted emphasis from coalition forces to local Iraqi police working with the coalition. Tony Blair cautioned that 'the terrorists and Saddam's sympathisers will continue and, though small in number and in support, their terrorist tactics will still require vigilance, dedication and determination'.³³ However, the US claimed that capturing Saddam had provided them with some details to combat underground cells through documentation found in his briefcase.³⁴ Geoff Hoon, the Secretary of State for Defence, stated that 'Although in recent weeks there has been a decline in the number of security incidents in Iraq, following a peak in November, the security situation remains challenging'.³⁵

Iraqi Kurdistan has remained relatively tranquil in comparison to the south of the country, as observed in an article from Erbil on 14 November 2003 which stated that 'there were no concrete barriers outside the hotel or US soldiers with weapons poised. Not even a local armed guard was visible'.³⁶ This is mainly due to the strong Kurdish establishment in Iraqi Kurdistan and the history of maintaining a civil society over the past twelve years. The worst attack to date was in November 2003 when at least four people were killed and 40 injured in a suicide bomb attack outside the offices of the PUK in Kirkuk. Such attacks have been rare in the north but a surge in roadside ambushes and assassination attempts is occurring, allegedly caused by

the Ansar al-Islam returning to the north from Iran and joining forces with members of Saddam's regime.³⁷ A statement that purportedly came from Osama bin Laden, threatened increased terrorist activity in Iraq, named Kurds as legitimate targets and praised the Ansar al-Islam for their current activities.³⁸ Following the capture of Saddam, a volley of incidences have occurred in Mosul, which included the killing of Iraqi policemen, although not to the same extent as in the south of Iraq.

SECURITY STRATEGY

According to President Bush,

Saddam loyalists and foreign terrorists may have different long-term goals, but they share a near-term strategy: to terrorize Iraqis and to intimidate America and our allies. In the last few months, the adversary has changed its composition and method, and our coalition is adapting accordingly.³⁹

The strategy that the coalition has recently employed to deal with the current security situation is to announce the establishment of an indigenous counterinsurgency force comprising up to 850 troops from five political factions, including the KDP and the PUK.⁴⁰ They are going to be deployed in and around Baghdad and will work under the auspices of US Special Forces. This is the first step towards an eventual coalition handover of national security to the Iraqis along with the announcement by the UK that it was sending 500 fresh troops to Iraq suggesting that it was for the purposes of training Iraqi policemen.

The effectiveness of the initial 850-man force will allow the coalition to gauge the viability of a larger multiethnic force in the future. As most of the resistance is coming from the Sunni population, the majority of the force is Kurdish and Shi'ite. However, there has been some criticism by independent Governing Council members that 'this is a very big blunder ... We should be dissolving militias, not finding ways to legitimise them. This sends the wrong message to the Iraqi people.'⁴¹

Kurdish *peshmergas* have been assisting US forces in the towns of Mosul and Kirkuk with local security measures. This new plan, however, will catapult the Kurds from being regional, ethnic entities with separate militias into national political entities, and may enhance their standing and status on a broader national scale.

Current Executive Structure in Iraq

SADDAM'S IRAQI OPPOSITION

Following the First Gulf War, the Iraqi National Congress (INC), an umbrella organisation for the main Iraqi opposition groups to Saddam's regime, was established. It was formally constituted when the PUK and KDP attended a meeting in Vienna in conjunction with dozens of opposition groups in June 1992. In October of the same year, major Shi'ite Islamist groups joined the coalition when the INC met in Iraqi Kurdistan. The Kurds played a valuable role in the INC, as they were the only member group with armed forces and a presence on Iraqi territory. Moreover, the members of the INC's first executive committee included the KDP leader, Massoud Barzani. In relation to Kurdish politics, the INC has been committed to the concept of a federal Iraq from the outset,¹ which assured the Kurds of their autonomy within a post-war Iraq.

In 1995 the INC attempted to launch an offensive against Saddam but it ended in failure although the CIA backed it. A year later, the Iraqi army destroyed its base in Erbil, Iraqi Kurdistan,² and the INC would remain quiet on the political scene until the run-up to the 2003 war in Iraq.

In its preparations for military action against Iraq in 2002, the US enlarged the scope of the INC and built up its capabilities. To that end, the KDP and PUK were two of six major opposition groups invited to Washington for meetings with senior State and Defense Department officials in August 2002. As military action approached, President Bush authorised US\$ 92 million to be split between these different groups, including the PUK and KDP, to train and assist with their activities.³

The opposition began to plan their role in post-war Iraq by holding a conference with major opposition groups attending in London in December 2002. The meeting ended with an agreement to form a 65-member follow-up committee, which met in February in Iraqi Kurdistan. There they formed a six-seat committee, which included the PUK and KDP's leaders, to prepare for a transition regime.

On 15 April 2003, the US began the process of establishing a post-Saddam successor. They organised a conference in Nasiriya of approximately 100 Iraqis from various groups. Several Shi'ite clerics, however, boycotted the meetings and called for the establishment of an Islamic state. On 26 April another meeting was held in Baghdad, which ended with an agreement to hold a broader meeting within a month, to determine an Iraqi interim administration.

POLITICAL RECONSTRUCTION

During April 2003, the US tasked a military general to direct civilian reconstruction, working through a staff of US diplomats and other US government personnel. He headed the Office of Reconstruction and Humanitarian Assistance (OHRA). On 6 May 2003, a former US ambassador, Paul Bremer, who was also tasked with political reconstruction, replaced him. He created the Coalition Provisional Authority (CPA) which subsumed the OHRA.

Since the fall of Saddam Hussein, the US/UK have sought UN backing for their administrative efforts in Iraq. On 8 May 2003, the Permanent Representatives of the US and UK to the UN wrote a letter to the President of the Security Council to inform them that they had established the CPA, to deal with all executive matters, in Iraq.⁴ In this regard UN Security Council Resolution 1483 was adopted, authorising CPA activities in the post-Saddam period.⁵ Furthermore, Resolution 1483 recognised that an Iraqi Governing Council would be established, but would not assume the responsibilities of the CPA until an internationally recognised representative government was formed.

In relation to the further conference with Iraqi opposition groups, the US had decided that another conference would not produce an acceptable Iraqi government. In parallel with the April meeting in Baghdad, the five most prominent opposition groups had met with the US, including the KDP and PUK. The group was subsequently expanded to seven. In July 2003, a conference of 900 Iraqi notables demanded the quick establishment of an Iraqi government to combat the security issues that had been dominating Iraq since the fall of Saddam Hussein. The group wanted a six-month mandate, renewable once only to draw up a Constitution for Iraq and not a council as favoured by the US and recognised by Resolution 1483.

However, the US ignored these demands and in accordance with CPA Regulation 6, the Iraq Governing Council was established on 13

July 2003 as the principal body of the Iraqi interim administration reflecting the seven-party grouping.⁶ The Governing Council had 25 members, of which five were Kurds.

The CPA was criticised for the slow pace of its reconstruction efforts, and in response to this criticism and the security problems, decided to give more power to the Governing Council than was initially envisioned. Thus, the Governing Council was given the power to approve the budget, select and dismiss ministers, appoint diplomats and set up a preparatory commission to decide how the new Constitution would be written.

The Governing Council has failed to gain approval and widespread support among Iraqis because of the selection process, which has been seen as biased. This was fuelled by several of its members complaining publicly that the CPA was not even affording them the limited powers that they were promised. Moreover, even if the Governing Council had the authority to make decisions, they lack the power to enforce them. From the CPA's side they criticised the length of time it takes to reach agreement on council decisions. It took the council over six weeks to settle on a Governing Council President and in the end it was decided to rotate the position between nine council members.

Security, however, is the main source of dispute between the Governing Council and the CPA. Some of the council members pressed for the US to hand over responsibility for security, particularly at religious sites, to the Iraqis, as they know the local culture and speak the language. In response a security committee was established comprising US military and civilian officials, as well as three council members, but no concrete plans have been made public in this regard other than the 850-man multiethnic force discussed in the previous chapter.

In September, the Governing Council announced a cabinet of ministers following weeks of political wrangling. Hoshiyar al-Zebari, a member of the KDP, was named Foreign Minister. The appointment of a Kurd as Foreign Minister demonstrates the political weight of the Iraqi Kurds, particularly in light of the fact that this would not allay Turkish fears that too much Kurdish power would lead to an independent Iraqi Kurdistan. Furthermore, the only female minister is a Kurd and is charged with the Ministry for Public Works. The ministers were given special advisors from the international coalition to assist them in their positions.

A few days after the Iraqi Foreign Minister's appointment, the tenuous issue of Turkey sending troops to Iraq as peace-keepers arose.

The Foreign Minister made it clear that Turkish troops were not welcome under any terms and that rather than assisting with Iraqi security it would lead to a worsening of the situation. The Turkish Prime Minister ignored his warnings and stated that Turkey would decide for itself on such a deployment. The Turkish parliament then approved plans to dispatch troops to Iraq for a one-year term. The Governing Council as a body rejected this plan and stated that it would extend occupation and delay the transfer of sovereignty back to Iraqis. In the end, Turkey shelved these plans given the animosity they created not only with the Iraqi Kurds but also with the Governing Council as a whole.

Under Resolution 1511 the Governing Council was to provide a timetable and a programme for drafting a new Constitution and the holding of democratic elections by 15 December 2003.⁷ However, on 15 November 2003, the Governing Council announced the proposal for accelerated transfer of sovereignty to a transitional government.⁸ The new proposal, agreed with the CPA, sets a timetable for drafting the 'fundamental law' by 28 February 2004. A Transitional National Assembly, elected by 'Governorate Selection Caucus'⁹ will then be created no later than 31 May 2004. Upon election, the members of the Transitional Assembly will meet to elect an executive branch and appoint ministers. By 30 June 2004 the new transitional administration will be recognised by the coalition, and the CPA and Governing Council will dissolve. Sovereignty over all issues, from finances to security will then be invested in the Transitional National Assembly.

Coalition forces would then change from the 'legally' defined 'occupation forces' into a 'military presence'. Under the Transitional Assembly's auspices, a written constitution and bill of rights will be drawn up and national elections organised by 31 December 2005.

The agreement states that the fundamental law will include 'a federal arrangement for Iraq, to include governorates and the separation of powers to be exercised by central and local entities'. What exactly the federal arrangement will be is unclear. Furthermore, once the arrangement is made, would it be possible to change it when a permanent constitution is drafted? The Iraqi Kurds want to deal with these issues now rather than wait until the time comes to draft the constitution as it is likely that whatever federal arrangement is made in the fundamental law will prevail.

This decision represents a complete reversal of US policy for post-war Iraq. It was caused by the lack of ability of the Governing Council to select a committee to write a constitution, and the worsening security situation in Iraq, which has caused numerous coalition forces casualties. It also addresses the Bush administration's domestic pressure to devise an exit plan in time for the presidential campaign season.

Following the announcement of the proposal, the Governing Council wrote to the UN Security Council outlining the timetable for a return to self-rule and asking for a new resolution in June to abolish the occupation. It was initially reported that the US would be seeking a new resolution to recognise the agreement with the Governing Council; however, Colin Powell stated that 'we believe that, for the time being, the authorities contained in the last UN resolution, 1511, are enough for us to do what we are doing'.¹⁰ In a UN Security Council debate the Russian ambassador questioned the CPA's failure to submit the 15 November agreement and why the UN were not mentioned in its text.

There has been a backlash towards the new proposal by the most senior Shi'ite cleric Grand Ayatollah Ali Sistani, who called for general elections rather than the Transitional Assembly model. Despite Iraqi census officials submitting a detailed plan to carry out a census on the entire population in the summer of 2004, the US rejected following this route.¹¹ It argued that the country is not ready for national elections, for fear that candidates would be targeted and voters unduly pressured. Furthermore, it is understood that the US is worried that in national elections the Shi'ites will gain an advantage, turning Iraq into a Muslim state similar to that of their neighbours, Iran. The Governing Council announced that it never saw the consensus plan and that it supported the US plan for provisional government through regional caucuses.¹² However, a committee has been established by the Governing Council to revise the selection process to the Transitional Assembly although the CPA has stated that it is willing to consider minor modifications only. An information campaign to convince Iraqi people that the new plan is the optimal choice for them is due to start shortly.

In the meantime the Governing Council continues drafting the 'fundamental law', with the hope of completing in the period allowed for in the agreement.

At the local level, Iraq is divided into 18 local governorates, three of which are Kurdish. In the Kurdish regions they continue to elect local council members via local elections. However, in the other areas of Iraq, the local council members have been elected from a pool of hundreds of notables, the number of members depending on the population of the province.

15

Current Legal and Human Rights Issues

THE COALITION PROVISIONAL AUTHORITY

The CPA is charged with exercising powers of government on a temporary basis and under CPA Regulation 1 is 'vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant UN Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war'.¹

There is an initial legal inconsistency identifiable in this regulation. It entered into force on the date of signature, which was 16 May 2003, whereas the UN Security Council adopted Resolution 1483 on 22 May 2003. Therefore the CPA could not 'exercise' its powers of government under Resolution 1483 in the period between 16 May and 22 May, as it did not exist.

Applicable law in Iraq as defined in Regulation 1, are the laws in force in Iraq as of 16 April 2003, insofar as those laws are not suspended or replaced by the CPA, superseded by legislation issued by the democratic institutions of Iraq, in conflict with Regulations/Orders issued by the CPA, or they do not prevent the CPA from carrying out its duties.²

HUMANITARIAN INTERNATIONAL LAW OBLIGATIONS

There are many who would challenge the legality of the war and the continued occupation of coalition forces in Iraq. However, KHRP will not endeavour to debate this controversial issue as for the purposes of this publication it is sufficient to say that the Geneva Conventions apply once a given set of factual circumstances arises, regardless of the legality of the initial resort to armed force.

In the case of occupied territory, the provisions of the Fourth Geneva Convention continue to apply beyond the general close of military operations.

The general legal consensus is that the US/UK are exercising their occupying powers *through* the CPA.³ UN Security Council Resolution 1483 noted the letter of 8 May 2003 from the US/UK representatives to the Security Council, and recognised ‘the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the “Authority”)’.⁴

The preamble recognises that the US/UK are obliged as states by the international laws relating to occupation but they are defined as working ‘*under*’ the command of the CPA and not *through* the CPA. While it is quite clear that the Geneva Conventions apply to the US/UK when they are acting as states, do they apply to CPA decisions as a body? This is a very important question, as organisations such as Amnesty have criticised the CPA for promulgating laws that are outside their mandate as Occupying Powers.⁵ However, if the CPA as a body is not an occupying power, which is arguable given the definitions of Resolution 1483, then these criticisms have no legal basis.

To compound this argument, the preamble of Resolution 1483 recognises the US/UK as Occupying Powers but does not specifically recognise any other coalition forces as Occupying Powers, and indeed it further notes that ‘other States that are not occupying powers are working now or in the future may work under the Authority’.⁶ This strengthens the argument that the CPA itself is not bound by the laws of occupation. However, what alternative legal basis in international law the CPA may have is unclear. In recent times international law has developed to recognise such bodies as the United Nations Mission in Kosovo (UNMIK), which administered that region and continues to do so. Although the CPA is not a United Nations established administration, its operation under international law may be of a similar nature.

Resolution 1483’s acknowledgement that other countries are working under the CPA who are not Occupying Powers begs the question of who exactly these countries are and what criteria are used to determine their occupation status. For example, do the Geneva Conventions apply to Italian forces in Iraq although Italy has not specifically been recognised as an Occupying Power and remained non-combatant during the actual war?

As noted above, the Geneva Conventions apply from the outset of any occupation or conflict. There are two types of occupation under the Geneva Conventions. The first is the case where the occupation is

'carried out under the terms of the instrument which brings hostilities to a close: an armistice, capitulation, etc.'.⁷ The International Committee of the Red Cross (ICRC) Commentary explains that 'In such cases the Convention will have been in force since the outbreak of hostilities or since the time the war was declared.'⁸ The application of the Convention in this situation applies for one year after the general close of military operations. However, certain provisions of the Convention continue to apply after one year has expired so far as the Occupying Power continues to exercise governmental functions. For those states that have ratified Protocol I to the Geneva Conventions, the provisions of that Protocol and the Conventions continue to apply fully for the duration of the occupation.

The second situation is when 'cases where the occupation has taken place without a declaration of war and without hostilities, and makes provision for the entry into force of the Convention in those particular circumstances'.⁹ In this case the Convention continues to apply fully for the duration of the occupation.

In relation to Iraq, it remains to be determined when occupation actually started under the Conventions as, according to the CPIC, the US is still at war.¹⁰

In addition, the question arises as to whether the Geneva Conventions are applicable to the *peshmerga*. Iraq did not adopt the Additional Protocol to the Conventions relating to the Protection of Victims of Non-International Armed Conflicts. The Geneva Convention relative to the Protection of Civilian Persons in Time of War applies only to state parties in relation to occupation and therefore the *peshmerga* cannot be deemed an occupier. However, the *peshmerga* are bound by Common Article 3, which defines the provisions of law relating to prohibited acts of parties in a non-international conflict and continue to remain so bound, particularly if the war is not actually over, but applies regardless as they are fighting the Ansar al-Islam and ex-Saddam loyalists who are internal threats.

INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS

There is perhaps a danger that a fixation with crimes of the Ba'athist regime distracts attention away from the coalition's obligations to adhere to human rights standards that they claim to value and uphold.

There are three human rights modalities in which international human rights law may be applicable in Iraq. Firstly, one must explore

the issue of the law of state succession as Iraq has ratified some international human rights instruments. Secondly, human rights law is incorporated into the mandate of the CPA by way of Resolution 1483 and by the UN Charter itself. Finally, human rights obligations of the governments of the coalition states may apply directly to the conduct of their troops/personnel in Iraq.

Succession

Iraq is a party to all the major human rights treaties, and as such the human rights obligations prior to the 2003 war remain binding on the current administrative authorities in Iraq. This is due to the principle of state succession, which provides for automatic succession with respect to human rights obligations.

Human rights obligations pass with control of territory and the beneficiaries of the rights are entitled to maintain them. This legal principle was clarified by the Human Rights Committee when it stated that

once people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant.¹¹

Furthermore, Iraq's membership of the UN would also bind the CPA to the human rights obligations contained within the Charter. By means of Articles 55 and 56 of the Charter, the CPA is obliged to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

The CPA acting as the current 'executive' authority in Iraq is therefore bound by the human rights obligations in these instruments.

UN mandate

In Resolution 1483, the UN Security Council recognises the creation of the CPA and expressly mandates the CPA to assist the people of Iraq through 'promoting the protection of human rights'.

As the CPA is responsible for protecting and promoting human rights under Resolution 1483, the only way that this objective can

be achieved is through compliance with international human rights standards.

Furthermore, acting under Chapter VII of the Charter, the Security Council calls upon the CPA,

consistent with the Charter of the UN and other relevant international law, to promote the welfare of the Iraqi people through effective administration of the territory, including in particular the working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future.

Thus, the CPA is mandated with compliance of international human rights standards.

Do human rights obligations of coalition governments apply to their troops/personnel in Iraq?

The legal situation in Iraq is unique in the world today, as rather than being administered by the international community through the UN as in Kosovo, the CPA was established by the coalition states themselves.

In Kosovo it is difficult to establish a direct link between states and the actions of their troops/personnel since orders are given through UNMIK or the Kosovo Force (KFOR). In Iraq, on the other hand, the coalition states, particularly the UK and US, directly make the decisions and give orders to their personnel/troops.

Taking the example of obligations of the UK under the European Convention on Human Rights (ECHR) system, for acts committed in Iraq by its personnel, this issue can be examined.

According to the case law of the ECHR, when a contracting state exercises effective control of an area outside its national territory, it may be responsible for acts committed by its authorities on this territory. The persons affected by those acts are considered to fall 'within the jurisdiction' of that state and the state is therefore obliged to secure their Convention rights. Accordingly, a victim of a violation of the Convention, which occurred in the territory effectively controlled by a state, can file an application in Strasbourg against that state.¹² Therefore, if it could be shown that the armies of the UK exercise an effective control over the area they are in charge of, and a violation of the ECHR occurs, there is a prima facie case under the Convention.

The case of troops/personnel from one member state of the Coalition following orders from another member state

In Iraq the situation may arise where one state's troops are put under the command or follow orders of another's. Were such a situation to lead to human rights abuses, the question arises as to which state action should be pursued against.

It appears logical that a case be brought against the state that gives the orders, even if those orders are carried out by troops from another state. However, the troops following the orders are obliged not to engage in acts which are contrary to the human rights obligations of their own state. Therefore a case could be pursued against both states in question.

Filing an application

According to Article 1 of the ECHR the 'High Contracting Parties' to the Convention shall secure to everyone 'within their jurisdiction' the rights and freedoms defined in the Convention. This same rule applies to other human rights mechanisms.

Therefore an application under a human rights mechanism could not be taken against the CPA itself. Such an application would no doubt be declared inadmissible by the courts as being incompatible *rationae personae* (that is, does not fall within the jurisdiction of the relevant body) within the provisions of the mechanisms.

A victim would therefore need to establish a direct chain of command to a given state or states, assess what human rights instruments they have ratified and violated in this instance, and then take the case before the relevant judicial authority.

Exhausting domestic remedies

Before filing an application to any human rights mechanism, a petitioner must in principle use all the procedural means that are available within the domestic legal system of the violating state.¹³ This includes both judicial and non-judicial procedures.

In the context of Iraq this could mean that an applicant would have to submit his or her case to the domestic courts of the state concerned. The main reason for this is that the principle of exhaustion of domestic remedies under the ECHR for example is based on the subsidiary nature of the competence of the court: the state, whose authorities are accused of having violated the Convention, must be offered the possibility of redressing the situation before the Strasbourg

Court intervenes. The domestic courts in Iraq, although under the authority of the CPA, are not directly under one member state and therefore could not be used to exhaust domestic remedies. Secondly, it could be argued that since there is local immunity for the acts of CPA officials in all capacities, then the remedies that are normally available in Iraq would not be effective.

An applicant from Iraq may be exempt from bringing a case to the member state's domestic court on the basis of the reasoning in the Issa case of 2000. Here it was found that it was too expensive for victims to bring a case to Turkey and therefore they could not be expected to exhaust domestic remedies.

If the argument is that domestic remedies are not effective and therefore a victim is exempt from exhausting such remedies, the application should be filed in Strasbourg within six months following the date when the facts of which the applicant complains occurred.

Furthermore, exhaustion of domestic remedies would not have to be established where an 'administrative practice' (namely where a clear repetition of acts incompatible with the human rights mechanism and their official tolerance by the authorities) has been shown to exist and is of such a nature as to make proceedings futile or ineffective.¹⁴

16

The Question of Autonomy

With uncertainty hovering over the 'fundamental law' of Iraq as well as the final constitution, how best to preserve Iraqi Kurdistan's existing autonomous powers within a new political framework is still being negotiated. However, it is assumed that Iraqi Kurdistan will enjoy unprecedented autonomy recognised both by the constitution and the international community.

In December 2003, the Kurdish parties submitted a draft for a voluntary federation of Iraqi Kurdistan with the rest of Iraq to the Governing Council. The draft details that all the territories which belonged to Iraqi Kurdistan when Mosul was forcibly annexed to Iraq in the aftermath of the First World War should become officially part of Iraqi Kurdistan. Furthermore, all cities that had a Kurdish majority based on the 1957 census should be part of the voluntary federation.

Both the coalition and the Arab factions are proposing a federalist plan at governorate levels, which means that Kurdistan as an entity would disappear in exchange for a decentralised rule, without any guarantees for the Kurds.

It remains to be seen what the coalition and Arab parties will make of this proposal. However, as for the right and the future of self-determination and autonomy in Iraqi Kurdistan, this will be dealt with in Part III.

17

The Anfal Campaigns: The War Crimes Tribunal

AN ENDURING LEGACY

The Anfal campaigns left a mark not only in the collective memory of the Kurdish people but also on the daily lives of its immediate victims. An estimated 7,000 families are the direct survivors of Anfal, dependent on the charity the government is able to provide, or on short-term labour opportunities for themselves or their children. Old men and women crowd outside the offices of the Ministry of Human Rights in Sulaimaniya, still hoping for information about their loved ones, or to be housed outside of the old resettlement complexes that rise imperceptibly out of the dusty plains of north-eastern Iraq; their inhabitants kept apart from the rest of Kurdish society, entertaining little hope of being properly integrated.

Fifteen years is perhaps a shorter time in the life of an individual than it is in the news-jaded world at large. The memories of survivors are fresh, 15 years after the event. One man, Kamal Jalal, described how on 5 May 1988, the Republican Guard and the *jash* came to his village near the town of Qoi and took his father, mother, three sisters and six brothers away before burning the village. By the time Kamal was a 14-year-old *peshmerga* in 1991,

All of the young men that had survived Anfal joined the uprising. I went to the town of Harija and I found an official who could tell me about my family. I said, 'Tell me what happened to my sisters, brothers and mother or I'll kill you.' He said, 'They're all dead. They died at [the prison camp] Nugrat Selman. If they weren't executed, they starved to death.' I have no hope that they'll ever come back.

Others still cling to the hope that with the end of Saddam Hussein, disappeared loved ones might reappear.¹

At least in the PUK areas, where the majority of Anfal survivors now live, the regional government insists² that its assistance makes

a positive and worthwhile difference to their lives. The ministries provide access to health facilities, a pension of approximately US\$ 40 per family per month, and educational benefits, including positive discrimination for children of Anfalak families, to increase their chances of going to university. In Sulaimaniya a Ministry of Human Rights, Displaced Persons and Anfal was established by the Kurdish administration in 1999, before which, according to its director of Anfal issues, no organisation dealt methodically with the plight of an estimated 7,000 remaining families directly affected by the Anfal campaigns.³ The ministry coordinates social services, landmine removal and facilitates returns to destroyed villages.

But despite government help and worldwide concern, depression, self-harm, and suicide attempts are commonplace amongst 'Anfalak'. With the end of Saddam's regime, many experienced a renewed flush of hope that disappeared loved ones will reappear – only to grieve again. The director of a local women's NGO in Erbil described how 'Anfal widows are unable to move on, they still wear black and they can't be persuaded to move on.'⁴ Social isolation and lack of counselling contribute to the difficulties faced by victims.

The discovery of mass graves in Iraq at the end of hostilities in 2003 has begun to shed light on the fate of the 'disappeared'. As many as 300,000 victims are believed to have been buried in 263 mass graves across Iraq.⁵ The largest grave is estimated to contain the bodies of up to 2,000 people.⁶

THE IRAQI SPECIAL TRIBUNAL

Plans for a tribunal have been discussed for several years among human rights campaigners and opponents of Saddam's regime, to bring those responsible for crimes against humanity to justice. For obvious reasons the end of the Ba'athist regime has opened up the possibilities for justice to be sought on behalf of victims of the Iraqi government, whether Kurds, Sunni or Shi'ite.

On 10 December 2003, the Statute of the Iraqi Special Tribunal, to try members of Saddam's regime for genocide, war crimes and crimes against humanity, became law.⁷ The Tribunal has jurisdiction over any Iraqi national or resident, accused of committing these crimes between the period 17 July 1968 up to and including 1 May 2003.⁸

The Tribunal will deal with crimes against the people of Iraq, including the Kurds, Arabs, Turcomans, Assyrians, Shi'ites and Sunnis, whether or not they were committed during armed conflict.⁹

Furthermore, it includes crimes committed outside Iraq, for example during the wars with the Islamic Republic of Iran and the State of Kuwait.¹⁰ Defendants may also be tried in absentia as according to Ahmad Chalabi, a member of the Governing Council, Saddam would have been 'accused and charged for committing major crimes against humanity and against the Iraqi people, and he will certainly fall under the jurisdiction of this court' in absentia.¹¹ Since his capture on 13 December 2003, this circumstance is no longer applicable for Saddam. However, the statement is significant for other members of his regime as they may be tried in absentia.

There was no clear date set for the Tribunal to commence work but it has been indicated that trials will not start for months.¹² Prosecutors will use the collection of documents seized from the former regime by US forces as evidence. Evidence will also come from the excavation of some of the 270 mass graves in Iraq that are believed to hold at least 300,000 sets of remains. The new court is expected to cost £70 million¹³ and the funding will come from the regular budget of the Government of Iraq.

The trials will be open to the public, human rights groups and news media, which suggests that they could be televised. Defendants will have the right to a lawyer and to appeal, and the Iraqi penal code, except for some additions introduced by Saddam's regime, will be applicable.

THE DEFENDANTS

Some of the chief perpetrators of the crimes outlined in the Statute of the Tribunal, including Saddam Hussein and 'Chemical Ali', are already in the custody of coalition forces. The first suspects brought to trial could include the top officials on the US 55 'most wanted' list. Furthermore, there are currently over 5,500 detainees in US custody, but it is not clear how many of these are war crimes suspects.

It is unclear whether the Governing Council wishes to bring more than the 55 people on the US list to the Tribunal. There is a danger that if they do, the court will become overloaded with cases and will not be able to work effectively, in a similar fashion to the European Court of Human Rights. In the Nuremberg trials following the Second World War only 23 cases were tried, and the War Crimes Tribunal for the former Yugoslavia has indicted less than 100 people in eight years.

THE DEATH PENALTY

The Governing Council is insisting that the Tribunal will be given the authority to impose the death penalty. The death penalty, which was suspended by the CPA, remains in Iraq's statute books, and is popular with Iraqis as well as the US. It is understood that the transitional government, scheduled to take over sovereignty in July 2004, will make the decision on the death penalty.¹⁴ However, from an Iraqi perspective it appears a foregone conclusion that the Tribunal will have the power to impose the death penalty.

The outcome of the decision on the death penalty poses not only issues relating to human rights in general, but also practical issues relating to European coalition partners such as Britain, Italy, Poland and Spain, as they would be forbidden by the European Convention on Human Rights from handing over prisoners to a court with the power to sentence them to death.

INTERNATIONAL JUDGES

A further contentious issue with the Statute is the role of international judges on the court's panel or international prosecutors. An initial discrepancy can be noted in the Statute as Article 4 states that the tribunal may 'appoint non-Iraqi judges who have experience in the crimes encompassed in this statute'. However, Article 28 provides that 'the judges ... shall be Iraqi nationals'. Iraqi lawyers will argue the cases and will be assisted by international advisors who will also monitor the proceedings. The Statute does not require that judges and prosecutors have experience working on complex criminal cases and cases involving serious human rights crimes. Nor does the law permit the appointment of non-Iraqi prosecutors or investigative judges, even if they have relevant experience investigating and prosecuting serious human rights crimes. In the Yugoslav and Rwandan tribunals international experts argued the cases and international judges decided the cases. The Iraqi structure poses difficulties for a number of reasons.

Iraqi judges have not had any experience in these types of cases, and given their complexity there is a fear that the trials will not be carried out expediently and judiciously. A committee has been set up to remove all judicial officials that had links to Saddam's Ba'ath party. During Saddam's regime, all the senior judges were Ba'ath party members, while most legal officials were at least nominal members of

the party. This committee is reviewing every judge and prosecutor in Iraq for membership of the Ba'ath party and complicity for human rights violations or corruption. If any judge or prosecutor is found to be in violation of these standards, the committee will dismiss him or her from office. Paul Bremer stated that the goal of these actions was to rebuild an independent and transparent judicial system, but stressed that it is an ongoing process which would inevitably take some time. Therefore it will be extremely difficult to find Iraqi lawyers with experience and who have no proven links to the Ba'ath party.

Furthermore, by using members of the Iraqi judiciary alone there is another concern as to whether 'the Iraqi population would consider individuals who were part of the legal system under Saddam Hussein's presidency to possess the required neutrality, since in countless instances they would be adjudicating cases involving the Saddam Hussein government'.¹⁵

On a practical level this clearance process may stall the work of the Tribunal, in that the Tribunal may need to wait for an investigation of lawyers/judges to be completed before being able to commence a case, even if all the evidence is collated and the case is ready to begin.

On the other hand, the defendant is entitled to have non-Iraqi legal counsel but only if the principal lawyer is Iraqi. The accused will face serious charges and therefore should have the right to choose the best person to represent him or her regardless of that person's nationality. Furthermore, it impacts the weight of a conviction as it could be argued that the only reason the defendant was convicted was because he or she did not have access to the best principal lawyer for the job but was confined by nationality.

These issues combined with the wisdom of letting victims of the regime try their own tormentors diminish the credibility of the Tribunal both nationally and internationally. International support is vital to offset any criticisms that the Tribunal is a coalition tool to perform 'victors' justice'.

THE CRIMES

For the purposes of the Statute, 'genocide' is defined in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide as ratified by Iraq. As described in previous chapters, the Anfal campaigns at the very least pointed to a prima facie case of genocide, confirmed under Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁶ For such a

crime to be proven it would have to be established that there existed the requisite intent to destroy a group in whole, or in part.

The Special Rapporteur on Iraq stated that the Iraqi government's operations may well have amounted to genocide within the meaning of the Convention and that 'the Anfal Operations constituted genocide type activities which did in fact result in the extermination of a part of this population and which continue to have an impact on the lives of the people as a whole'.¹⁷ Article 4 of the Convention envisages such acts being tried by a competent tribunal where the act was committed, or by an international penal tribunal having jurisdiction.

One possibility may have been for other state parties to the Genocide Convention to submit disputes relating to 'the interpretation, application or fulfilment' of the Convention, including state responsibility for genocide, to the International Court of Justice (ICJ). But the outcome of such a submission would have been limited. Reparations for the Kurds could be sought, including compensation for destroyed or confiscated property, since the purpose of an international claim for reparation is that 'reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability have existed if that act had not been committed'.¹⁸ Court orders for the cessation of illegal acts, for compensation for the victims or for other forms of redress might be possible – even for an undertaking to change legislation or practices to prevent further violations. But though it is open to the ICJ to determine a state's responsibility for acts prohibited by the Convention and issue orders for reparations, it has as such no criminal jurisdiction. Moreover, enforcement would have been impossible.

The establishment of the Tribunal in Iraq should satisfy the requirements of Article 4 and lead to some form of justice for the Kurdish victims of genocide if a case can be proven. However, there is a danger that a defendant could argue successfully that the Tribunal is not 'competent' within the meaning of Article 4. Moreover, if the court is clouded with scepticism as to its capabilities and impartiality, it will have a detrimental effect on the overall justice and recognition for the crime of genocide in relation to the Kurds.

'Crimes against humanity' are defined in Article 12 of the Statute and a number of acts are listed 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'. Interestingly, although international law instruments are referred to expressly for the

purposes of defining genocide and war crimes, no mention is made of a specific international instrument when defining crimes against humanity. However, Article 12 does refer to the 'fundamental norms' of international law.

In defining 'war crimes' the Statute refers to the Geneva Conventions and customary international law, as well as attacks against 'personnel, installations, material, units, or vehicles involved in a peacekeeping mission in accordance with the Charter of the United Nations'. The Tribunal also has the power to prosecute persons who have committed crimes under Iraqi law. Furthermore, there is no statute of limitations on these crimes.

In interpreting the Articles dealing with the various crimes, the Trial Chambers and the Appellate Chamber may resort to relevant decisions of international courts or tribunals as persuasive authority for their decisions. This highlights another concern relating to the Tribunal that such huge crimes are being prosecuted in a court with no established legal history.

There are many other criticisms of the Statute. One example is that it does not require the standard of proof to be beyond a reasonable doubt, and another is that there is a lack of protection of witnesses and victims or security for the tribunal and its staff. This has proved to be a major issue in the Yugoslav War Crimes Tribunal¹⁹ and yet it is not adequately addressed in the Statute.

It is essential that justice when done is impartial, rigorous and obeys the highest standards of probity – to resort to quick-fix 'victors' justice' or political showcase trials the conclusion of which is foregone, would be to do an injustice not only to defendants but to the victims and their families. According to the head of Iraq's Governing Council, Saddam and other defendants will appear before the Iraqi Tribunal and get a fair trial before this Iraqi court. However, with all the concerns expressed over the Statute it is hard to see how this will be achieved.

18

The Internally Displaced: The Current Situation

GENERAL SITUATION

The displacement of so much of the Kurdish population of Iraq remains an enduring legacy of the treatment of the Kurds by the Ba'athist regime.

As of autumn 2003, the situation remains dire for many. The KHRP fact-finding mission in September 2003 saw a number of camps in the area around Sulaimaniya, and saw the appalling conditions in which many IDPs still subsist. Not all the camps have the same provenance; it appears that the most recent arrivals endure some of the worst conditions. However, many victims of the Anfal campaigns, displaced almost 16 years ago, still inhabit the resettlement complexes 'provided' by the Ba'athists at the time their villages were destroyed.

THE TAKIYEH CAMP

The Takiyeh camp is perhaps indicative of a number of others spread out upon the arid plains around Sulaimaniya. Most inhabitants have been recently – within the last two years – expelled from the Kirkuk region, or have returned from Iran where they had been granted refugee status. In total the camp houses some 400 families. Shelter is minimal, in the most part in the form of UN standard-issue tents for emergency relief, the majority of which have almost certainly been used several times before. The canvas, in many cases, is splitting and patched. Some of the structures have been built with extremely limited resources, by the inhabitants themselves and at their own expense. Water for domestic consumption arrives by tanker, and is stored in aluminium drums without shade or other cooling apparatus. It must therefore be drunk at room temperature or cooled with the aid of ice-blocks, which the inhabitants of Takiyeh must purchase. Cooking is undertaken in communal mud-built ovens. In the absence of any other form of fuel, residents forage for scraps of wood in an almost completely barren environment. Transport to Sulaimaniya and back, the nearest centre of any kind of employment opportunity,

costs ten dinars a day; yet the earnings that temporary labourers from Takiyeh can expect are little more than 20 dinars per day (approximately US\$ 2).¹

Amongst inhabitants who are promised imminent improvements that have yet to be realised, resentment of UN agencies, NGOs and the local administration is high. One resident told the KHRP mission, to the audible assent of other camp inhabitants, that they had effectively been ignored by every institution that had the capability to positively affect their lives. The ultimate dream, he said, of his family and others, was to return to Kirkuk from where almost all of them had been expelled. His frustration lay both in the fact that they had not been given any assistance in returning to Kirkuk, nor, as a temporary measure, in improving conditions in the camp,

It's possible to go back but we have no proof of ownership of property. I can do nothing. Our only hope is to get help from the international organisations. There are thousands of them, but they never do anything. Imagine what it's like here for the children. They have no future, no education, nothing. And imagine what it's like in the winter. The snow here can be a metre deep. Children die every day. There are no jobs because we're too far from the centre of Sulaimaniya. Sometimes the international organisations come here. They write reports and take photographs, and we never see them again. The Red Cross came here, and never came back. Once, some Americans came. One of them opened up a bag full of hundreds dollars and said, 'You see this money? It's all for helping you and your family.' And then they got into their Land cruisers and drove away. That was about a year ago. Next time an NGO comes here with empty promises, we'll just kick them out. We've been neglected and ignored.²

Given the conditions in which IDPs live in camps such as Takiyeh, these are understandable complaints; though perhaps given the scale of the IDP problem in the region it is inevitable that some will continue to inhabit inadequate settlements for the short to medium future.

THE ANFAL CAMP AT SURESH

The village of Suresh, near Chamchamal, is a resettlement camp originating from the Anfal campaigns of 1988. After the destruction

of their villages, those villagers not taken away to prison camps or that had not fled towards Iran were directed towards such camps, often bare patches of scrub without buildings or shelter, and there rehoused, tens or hundreds of kilometres away from the places where their villages had been. The Suresh camp lies off the Kirkuk–Sulaimaniya road. Most of its inhabitants lived originally in the villages around Qader Karam, roughly 80 kilometres south.

The camp as it now exists consists of a few hundred single-storey buildings, largely constructed by breeze-blocks. These have been built by the inhabitants, who have dubbed the settlement ‘New Qader Karam’. Most are victims of the third Anfal campaign conducted in the Germian area between 7 and 20 April 1988. As in Takiyeh, water is brought by tanker. As victims of the Anfal campaigns, each family is paid a monthly pension of 400 dinars per family by the local administration (approximately US\$ 40). Because of their distance from any major settlement, it is difficult for inhabitants to find work; no employment possibilities exist within the Anfal camps themselves.

THE UN-HABITAT CAMP AT BAZIAN

The UN-HABITAT constructed settlement of 450 houses at Bazian is a positive indication of what can be achieved with a concerted allocation of resources. Although some distance from Sulaimaniya, they are close to the main road and, for those with private transport, access to the city is good. The houses are well constructed bungalows with front yards and parking space. The majority appears to be equipped with satellite television. The village is widely regarded as a model for future development (although at current rates of construction it will be some decades before all the displaced persons in Iraqi Kurdistan are accommodated in anything approaching comparable conditions).

Amongst inhabitants, the main concern is the lack of adequate facilities and services; one inhabitant claiming,

There’s a small hospital quite nearby, but it isn’t really big enough. We only have eight hours of electricity a day, which isn’t long enough, and we have to buy water, which is brought every day by tanker. The children have to go to school in Sulaimaniya.³

Despite some privations, including a lack of running water, shortage of electricity, and distance from medical and educational facilities,

the UN-HABITAT settlement is constructed to a high standard and provides a model for further construction. But it only addresses the needs of a fraction of the IDPs in the region.

Currently, nearly 60 per cent of IDPs in Iraqi Kurdistan live in collective towns. Many families own their houses, and, according to UN-HABITAT have established the necessary socio-economic framework to continue living in these towns. It also believes that it should be a priority for the organisation to give attention to the upgrading of those towns in order to meet the fundamental objective of the Settlement Rehabilitation Programme which is to ensure adequate living conditions within sustainable human settlements.

THE PROBLEM OF MINES

Many of the IDPs in the northern governorates are those whose original homes are, or were prior to their destruction, located in sites within the Kurdish autonomous region (KAR). There were numerous reasons behind their reluctance or inability to return home. In many cases whole villages and towns have been destroyed, and with them complete social and physical infrastructures. The presence of minefields is another disincentive. UNOPS, alongside dedicated mine-action groups such as MAG (Mines Advisory Group) have operated mine-clearing schemes since 1996. Nonetheless, UNOPS noted that while the number of mines laid is unknown, as at September 2001 it had identified '3,400 mined areas covering 900 square kilometres of land required for reconstruction, resettlement, agricultural purposes and the rehabilitation of basic services such as electricity and water, affecting approximately 1100 communities'.⁴ In 1998, the Secretary-General of the UN reported that minefield clearance would take between 35 and 75 years.⁵

REVERSING THE 'ARABISATION' PROGRAMME

While strides have been made to rehouse displaced persons (and where possible return them to their former homes) within the Kurdish-administered region, the end of the recent conflict in Iraq vastly increases the scope of resettlement. But alongside this new opportunity came the potential for new conflicts to be unleashed, as Kurds crossed the border of the autonomous region into what was Saddam's Iraq.

The international community's apparent inability or lack of willingness to establish even the most basic mediation or conflict resolution mechanism by which property disputes could be resolved exacerbated the impression of an unregulated free-for-all, upon the end of the major combat operations. Both of the main Kurdish political parties, the KDP and the PUK expressed their commitment to a suitable legal mechanism by which property claims could be adjudicated.⁶

Nonetheless, even among some liberals within the Kurdish diasporas, otherwise committed to the rule of law and a multiethnicity in the 'new Iraq', there exists a perception that justice, however rough, was being done.⁷ Those brought into the Kurdish region by the Saddam Hussein regime are largely believed to have been Tikriti Arabs, 'fascists', pro-Saddam, fervent supporters of the regime, and compensated for their move with money, property and other considerations. In addition, Kurds point out that after the uprisings of 1991, many Arabs seized the opportunity to vacate the region and return to their traditional homelands. In the present circumstances, the argument is that they will once more leave of their own accord.

Elections in Kirkuk for a new 30-member municipal council, held under the auspices of the US military seemed to ease some of the simmering tensions between the many groups in the city, but the resettlement, property restitution and ethnic tensions between Kurds, Arabs and Turcomans remain ongoing issues which the international community will have to monitor closely.

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Current Economic/Humanitarian Issues in Iraqi Kurdistan

SANCTIONS AND EMBARGOES

The UN has lifted the full economic sanctions that were imposed against Iraq in 1990 and obviously with the fall of Saddam, the Baghdad embargoes no longer apply. The only measures remaining are an arms embargo, a ban on the trade of stolen Iraqi cultural property, and a requirement to transfer to the Development Fund for Iraq all assets belonging to Saddam Hussein, senior members of his regime or entities controlled by them.

THE OIL-FOR-FOOD PROGRAMME

On 21 November 2003 the OFFP run by the UN ended in Iraq. Security Council Resolution 1483 authorised the termination of the programme on 21 November and the handover of all activities to the CPA. In Resolution 1511, the Iraqi Governing Council was recognised as a legitimate Iraqi entity and to that end the CPA has transferred the responsibility for the programme to them. The programme will continue to run until the end of June 2004, at which stage the Transitional National Assembly should be functioning.

In Iraqi Kurdistan, the Governing Council turned over responsibility for the uncompleted projects of the three northern governorates of Duhok, Erbil and Sulaimaniya to the KRG's Office of Project Coordination located in Erbil. The CPA agreed to provide support to the Office of Project Coordination via providing specialists in procurement and international contracting to advise on relevant issues.

Of the US\$ 8 billion raised through the OFFP in Iraq, at least half remains unspent. Under Resolution 1483, the monies as yet unused are to be placed in a central fund for the development of Iraq. US\$ 3 billion has already been transferred and the remainder will be transferred when the programme closes.

Over the summer of 2003 the Iraqi ministries and the CPA re-evaluated the contracts agreed under the OFFP and purport to have made considerable savings where corrupt interventions by the previous regime have been stopped. However, 80 per cent of the contracts eligible for review by the CPA will continue and the remaining contracts will be held until an internationally recognised Government of Iraq decides on their future.

Although the authority to manage the programme has transferred, regarding the actual distribution of the food it was agreed that control of this task would remain with the World Food Programme until June 2003. In anticipation of transferring this task to national officials, the WFP continues to train Iraqis to manage transportation, warehousing and databases, as well as monitor and renegotiate contracts to keep the food aid flowing. Since April 2003, the WFP has supplied the Iraqi population with more than 2.1 million tons of food.

CURRENCY

On 15 October 2003 the public in the whole of Iraq were able to start exchanging the Old Iraqi Dinar (OID) banknotes for a new set of banknotes with a wider range of denominations and much improved security features. The exchange, which is a simple 1:1 conversion of the Old Iraqi Dinar and a 1:150 exchange for the 'Swiss' dinar notes that circulated in the Kurdish north of Iraq, is bringing a standard currency to the whole country for the first time in many years. The banknote exchange is coinciding with the start of foreign exchange auctions run by the central bank, which are bringing stability to the value of the dinar.

Initially, after the war the value of the dinar rose sharply in Iraqi Kurdistan. In the months leading up to the US-led invasion of Iraq, it was widely speculated in the money markets of Kurdish towns and cities that the US invasion would precipitate a return to pre-1991 currency values and that the OID would revert to a value of US\$ 3 to 1 OID. In this expectation, those with dollar savings bought up OID; with the presence of US troops and injections of dollar capital into the local economy, those in possession of dollars continued to buy up OID where they could, with the value of the dollar plunging as a result.

As the US government largely took on responsibility for the payment of dollar wages of government employees in Iraqi Kurdistan,

an estimated 300,000 heads of household, spending power for many families has been substantially curtailed.

In its attempt to simplify salary claims, the US administration devised a ten-point status-based pay scale. So far, payment of salaries has not met expectations, nor has it met anything like pre-war levels. As of mid-June 2003, the monthly salaries of teachers, once in the dollar-equivalent range of US\$ 250–400, had declined to US\$ 80. Some categories of employee, including the *peshmerga* forces whose assistance was so valuable to US military aims, have received no payment at all.

NON-GOVERNMENTAL ORGANISATIONS AND INTERNATIONAL ORGANISATIONS

UN work in Iraq has virtually come to a halt since the bombing of the UN headquarters, as the Secretary-General has moved all UN staff to neighbouring countries.

Aid workers in Iraqi Kurdistan have also been affected by the recent security assaults on NGOs and the UN, as well as the truck bombings in Erbil, in August. However, MAG did not withdraw from the area as they reasoned that the threats to the population of Iraqi Kurdistan from mines is greater than to their employees from bomb blasts.

The UN did withdraw many of their international staff from the once safe haven of the north. The World Food Programme also closed their offices, but handed the food distribution to the US. The ICRC continues to maintain a reduced presence in the north despite the closure of its offices in the south.

On 27 November 2003, it was reported that Japan will provide US\$ 1.9 million in grants to help the reconstruction of communities in Iraqi Kurdistan. The money will help finance the reconstruction of schools and renovation of sewer systems in Mosul. It will also provide ambulances to the health and welfare bureau and upgrade waterworks in Ninev.

The US military have spent US\$ 100 million on 13,000 humanitarian projects in Iraq and infrastructure improvements. This money has come from assets of Saddam's regime that were seized by US troops. How much of this money is being spent in Iraqi Kurdistan is unclear and the information is not readily available.

Although some international aid workers have left Iraq since the attacks on the UN and Red Cross, NGOs have been expanding as funders have increased the amount of aid to Iraq. In particular, groups

that are funded by USAID and DfID (Department for International Development) have been expanding rapidly due to the financing of reconstruction projects. A spokeswoman for USAID stated that 'our NGOs are doing fine. We just don't want them named ... They're continuing to expand.'¹ Again it is unclear how many are based in Iraqi Kurdistan and receiving funds from USAID.

Many of the new members of NGOs are Iraqi nationals who are aware of the topography, culture and languages of Iraq, which makes it safer for them than for international personnel.

On 27 November 2003, the CPA promulgated Order Number 45 on Non-Governmental Organisations, which requires NGOs to register in Iraq, and unless they register they may not carry out programmes in Iraq. International organisations are obliged to be accredited by the Ministry of Foreign Affairs but not to register. There are a number of duties imposed on NGOs seeking to operate in Iraq: providing complete lists of any previous visits or activities in Iraq; complete statements of revenue and expenses and assets and liabilities for the current year and the previous three years; and projected budgets for the next two years. For local NGOs, particularly in Iraqi Kurdistan as they remain poorly funded, it may be extremely difficult to provide this information and it is at the discretion of the NGO Assistance Office to authorise registration in this type of circumstance.

It remains to be seen what impact Order 45 and the current security situation will have on NGO operations in Iraq in the future.

OIL

Since the war, experts have identified expected problems relating to water seeping into oil deposits in both the southern and northern oilfields of Iraq. They have stated that years of poor management damaged the fields and some warn that the US drive to return to pre-war production may lead to a reduction in their productivity in the long term.

CPA officials have acknowledged the problems, but are counting on oil revenues to help to pay for Iraq's reconstruction. To achieve this they have adopted a policy of aggressively managing the oilfields to keep the oil flowing. External repairs are being made to the pipelines, but the CPA have not considered delving below the surface to assess the extent of the problem, as they are worried that the Arab world would see this as further evidence of the US intending to control Iraq's oil.

In a recent interview, however, Rob McKee, the senior oil advisor for the CPA, stated that while some might overstate the underground problems, he believed that the reservoirs did demand attention.

US\$ 1.7 billion has already been set aside for maintaining Iraq's oil supply, and the money has been split between paying for imported fuel and fixing the Iraqi pipes, pumps and transfer stations, according to officials. Approximately US\$ 2 billion has been approved for oil infrastructure repairs in 2004, including about US\$ 40 million to begin the study of the reservoirs. This work is particularly important, because while Iraq sits on one of the world's largest deposits of oil, most of it is drawn from two older fields, Rumaila in the south and Kirkuk in the north.

Recent estimates of Kirkuk's condition are also bleak, with an American oil executive saying that Iraqi engineers had recently informed him that they were now expecting recovery rates of only 9 per cent in Kirkuk, without more advanced technology. At the time of writing, the pipeline bypasses the IT-2 pipeline, 90 miles south of the Turkish border. The IT-1 and IT-1a pumping stations (and the Zakho metering station straddling the Iraqi-Turkish border) are functional, though require substantial overhauling.

There is not yet a firm price tag for modernising Iraq's oil industry, but it will clearly be enormous.

The oilfields suffer from another problem in the post-Saddam era; explosions. At the end of November in Kirkuk there were three separate explosions within minutes of each other. Oilfields have been struck almost weekly since 1 May in Iraq, at pumping stations and along the miles of pipelines that are difficult to protect. The attacks have all but shut down the flow of barrels of exported crude through Kirkuk's pipelines.

This insurgency has also cost the coalition in terms of revenues for reconstructing Iraq and adding to the cost of repairs. Although the coalition forces are patrolling the pipelines, the attacks are virtually impossible to thwart and the Iraqi national fund continues to lose money.

These two issues have cast doubt on the predictions that Iraqi oil production will return to pre-war capacity of 3 million barrels per day by the end of 2004.

Quite how the nascent government of the Kurdish region intends to manage contracts signed with foreign investors during the regime of Saddam Hussein is unknown. In March 2003, Barham Saleh, Prime Minister in the PUK region of Iraqi Kurdistan, insisted that they

'would not be honoured'.² While numerous agreements ran into difficulty well before the beginning of hostilities in 2003, the Russians in particular have extensive interests in the northern oilfields: Tatneft and Zarubhezneft have signed (UN-approved) contracts at Bai Hassan, Saddam and Kirkuk oilfields – Tatneft to drill 33 new wells, Zarubhezneft to drill a number of wells at Kirkuk. In total, Deutsche Bank estimated in late 2002 that Iraq had signed contracts worth up to US\$ 38 billion with oil companies from Russia, France (TotalFina Elf), Spain (Repsol-YPF), Italy (ENI), India (ONGC) and China (CNPC), a number of which related to concessions in and around Kirkuk.

Part III
The Future

20

Self-Determination and Autonomy¹

WHAT IS SELF-DETERMINATION?

Self-determination – the right of peoples freely to determine their political status and to pursue their economic, social and cultural development – is a compelling legal concept for many groups seeking greater autonomy, protection and freedom from a repressive authoritarian regime. The precise scope of the principle of self-determination – both as to its substantive content, the legal rights it confers and the entities to which it applies – is still vaguely defined. This tends to make it particularly attractive as an elastic principle, which can be moulded to fit a variety of very different situations and aspirations.

Yet its very lack of precise definition and application have made self-determination a highly controversial, politicised and confused concept. This, coupled with the tendency to associate claims by non-state entities to self-determination as capable of being met only by the achievement of full independence as a sovereign state, has limited its value as an objective legal basis for the protection and defence of human rights and as the impetus for political change within a state. This is regrettable since the objective and fair application of the elements of the principle of self-determination could provide the basis in many situations for measures to protect human rights, to guarantee the fair treatment of minority groups, to foster democratic institutions and to serve as an engine for political, social and economic development without necessarily bringing about the dismemberment of a state.

The right of self-determination is now generally accepted as a recognised international legal principle, even if its precise scope is unclear. The UN Charter includes as one of its basic purposes in Article 1(2) 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ...'. The same phrase occurs in Article 55 which calls for the promotion of economic and social cooperation, including observance of human

rights, in order to create the conditions necessary for 'peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'.

The right to self-determination and the duty on all states to promote it is also incorporated as Article 1 in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The principle of self-determination has been most commonly invoked in respect of colonial territories, in particular the two types of territory placed under a special regime by the UN Charter – trust and non-self-governing territories. The Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly Resolution 1514(XV) of 1960, reaffirmed the right of peoples to self-determination in the context of calling for a speedy and unconditional end to colonialism in all its forms.² It recalled the important role of the UN in assisting the movement for independence in trust and non-self-governing territories. The International Court of Justice has also held that the principle of self-determination applies to all colonies.³

Trust territories and non-self-governing territories are terms of art developed by the UN; there is no comprehensive legal definition of such territories. The Trusteeship System, established in Chapter XII of the UN Charter, essentially replaced the League of Nations' system of mandate territories. The Charter states that the trusteeship system applies to existing mandate territories, to territories 'detached from enemy states as a result of the Second World War' and to territories voluntarily placed under the system by the states responsible for their administration. The purpose of the trusteeship system was four-fold and underscored the linkage between the different elements, the furtherance of international peace and security, the progressive development of the territories towards self-government or independence in accordance with the freely expressed wishes of the people, encouraging respect for human rights and recognition of global interdependence, and equality of treatment for all UN member states and their nationals.

It was initially left up to states to determine which territories they considered to be 'non-self-governing' and thereby subject to the provisions of Chapter XI of the Charter. In 1959 the General Assembly established a Special Committee to study the criteria and in 1960 adopted Resolution 1514(XV) setting out some rather restrictive guidelines as to which territories should be included in the definition.

The principal characteristic was a territory that was 'geographically separate' and 'ethnically distinct' from the country administering it. If that was met, other historical, political, economic and other factors which arbitrarily placed the territory in a subordinate position became relevant. The General Assembly has, on several occasions, determined that a particular territory qualified as non-self-governing with or without the approval of the administering state but it has generally followed the basic criterion of geographical separateness which would exclude from the concept many groups struggling for some form of autonomy within the territorial borders of a state. States responsible for such territories were expected to protect the people against abuses, ensure their political and social advancement and to develop their self-government and free political institutions taking account of their political aspirations.

The 1960 Colonial Declaration, which reaffirmed the right of 'all peoples' to self-determination, suggested, however, that self-determination is not limited to colonial territories but might have a wider application. Ten years later the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN, annexed to Resolution 2625(XXV) of 1970, stated that every state has an obligation to promote the realisation of the right of self-determination and a duty to respect this right of peoples in order to promote friendly relations among states and to bring a speedy end to colonialism.⁴ Other references to self-determination in international instruments and subsequent, but inconsistent, state practice indicates that the right is not limited to colonial situations, although it is still not possible to delineate with any legal certainty a category of territories or peoples to which the right clearly applies.⁵

There is no general agreement on the definition of 'peoples' for the purposes of self-determination. Although common characteristics such as ethnicity, language and religion, a territorial connection, a common historical tradition and self-identification as a distinct group, would all be relevant, it is certainly not accepted that every minority or indigenous group automatically has a legitimate claim to self-determination. The territorial approach has resulted in the principle being applied to territorial units which contain a mix of different groups. It is also invoked to defend the rights of entire states to determine their own political, economic and social systems, free of external interference.

The issue is further complicated by the fact that UN references to self-determination are almost always accompanied by statements defending the territorial integrity of states. The Colonial Declaration stated that '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 UN'. A similar reference appears in the 1970 Declaration on Friendly Relations but here it is limited to 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'.

In as much as a claim to self-determination is sought to be exercised by secession, international law is effectively neutral. There is no generally accepted right of secession but it is not necessarily prohibited and once secession has occurred in practice it may have legal consequences. A secessionist group that is militarily successful in its attempts to break away from an existing state and that fulfils the basic criteria of statehood⁶ may be able to function as an independent state and may subsequently be recognised as such by all or some of the international community, depending on the political context in which secession has occurred.

It has been suggested that, in addition to colonial territories and existing states, there may be another category of 'self-determination units': 'entities part of a metropolitan State but which have been governed in such a way as to make them in effect non-self-governing territories'.⁷ The Committee of Rapporteurs, appointed by the League of Nations to investigate aspects of the dispute over the Aaland Islands, stated that 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 situation, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees'. There is, however, no conclusive body of legal principles or state practice to clarify application of the right of self-determination in respect of this possible third category, which remains 'acutely controversial'.

THE KURDISH CLAIM TO SELF-DETERMINATION

Kurds in Iraq are concerned that their political ambitions are being swallowed up by political, ethnic and security problems in the rest

of the country.⁸ A claim to self-determination by the Kurds if actual or perceived to be a claim for independence from Iraq would meet with little, if any, political support today. The US would be hesitant to allow the Kurds to take this step for a number of reasons: Turkey, Iran and Syria are opposed to a Kurdish free state on the borders with their countries due to their large Kurdish population and therefore Turkey would more than likely act on its continuous threats to invade Iraqi Kurdistan; Kurdish self-rule would lead to a situation in the rest of the country whereby the Muslim Shi'ite population would be a majority, turning Iraq into another Islamic Republic mirroring Iran; and the control of the Kirkuk and Mosul oilfields by the Kurds would leave the Sunni triangle without any source of financial earnings. The international community has consistently defended Iraq's territorial integrity and have been at pains to stress that they do not challenge the territorial integrity of Iraq nor would they support an independent political entity in Iraqi Kurdistan.

Furthermore, even if the case can be made that the Kurds are a 'people' for the purposes of self-determination, the legal and practical difficulties are enormous in claiming self-determination in respect of a people divided between a number of states. It would have to be determined whether self-determination was claimed on behalf of the Kurdish people as a whole, which implies a high degree of commonality of political goals shared by the Kurdish populations in all the states they currently inhabit, or simply by the Kurds in one of these countries, a claim which might not enjoy the same degree of international legitimacy.

The principle of self-determination is not, however, relevant only to claims for full independence. The term has two distinct meanings: 'the sovereign equality of existing States, and in particular the right of a State to choose its own form of government without intervention' and 'the right of a specific territory (people) to choose its own form of government irrespective of the wishes of the rest of the State of which that territory is a part'. Resolution 1514(XV) envisaged the exercise of self-determination through the options of free association or integration with an independent state, with safeguards to ensure that these options were exercised by a people freely and voluntarily through informed and democratic processes. Integration depended on an advanced state of self-government with free political institutions and had to be opted for in full knowledge and through impartial democratic processes. The 1970 Declaration on Friendly Relations

added another option – ‘the emergence into any other political status freely determined by a people’.

This confirms that the principle of self-determination not only has an external aspect (such as emergence as an independent state) but also has internal aspects by which peoples have the right to determine their political and form of government and to pursue their development within a given territory. Free and participatory choice on the basis of equality are the conditions for the exercise of the internal aspects of self-determination. The Covenant on Civil and Political Rights is intended to make the right of self-determination of political status through democratic means applicable to all nations’ citizens. When the Covenant came into force, self-determination ceased to be applicable only to specific areas and became a universal right. It also became a principle of inclusion – the right to participate – rather than exclusion (secession). The right now allows the peoples of all states to participate freely, fairly and openly in the democratic process of governance freely chosen by each state.

There are close links between self-determination, the existence of a representative government and the protection of human rights. The Human Rights Committee in its General Comment on Article 1 of the International Covenant on Civil and Political Rights stated that the realisation of self-determination is an ‘essential condition for the effective guarantee and observance of individual human rights ...’. A government such as that in Iraq which was not freely elected and continues not to be freely elected, denies its people the most fundamental human rights in not fulfilling its obligations to guarantee self-determination for its people.

The right to self-determination extends beyond protection from violence and repression and implies the free determination of political status, the existence of open and participatory institutions that reflect and safeguard that status, and the opportunity to pursue economic, social and cultural development.

The development of the concept, scope and legal principles of internal self-determination is still in its infancy, particularly the extent to which the concept relates to specific self-determination rights of oppressed groups within a state as opposed to the right of the state population as a whole. It has been suggested that human rights norms and standards may provide a framework of legal rules to balance the competing rights and interests inherent in claims to self-determination. The advantages of reliance on self-determination are that it is a collective right of a people, rather than the sum of the

rights of individuals, and one in respect of which all states share an obligation to promote its realisation. The drawbacks are that it does not yet provide a firm basis of clearly defined rights applicable in identifiable political contexts and that reliance on it inevitably raises the fear of secession and the fragmentation of states. This is not to say that the principle of self-determination is irrelevant in the Kurdish context, but only that it probably does not provide a sufficiently firm basis at the present time on which to ground international responsibility.

AUTONOMY

'Unless they believe that their position within a future Iraq will ... consolidate their hard-won autonomy, it is uncertain that a majority would opt to remain within the current boundaries, despite what their more pragmatic leaders may tell them.'⁹ Some of the younger generation of Kurds do not speak Arabic and wonder what benefit it would be to be part of the rest of the state when they have had a de facto independent state for twelve years.¹⁰

There is no generally accepted definition of the concept of 'autonomy' in international law. Autonomous regions are regions of a state that are usually in possession of cultural and/or ethnic distinctiveness, and that have been granted separate powers of internal administration without any detachment from the state of which the region is a part. Such regions, however, are not recognised as states, and may never be deemed thus until they have reached an advanced stage of self-government.

There is presently no generally internationally recognised right to any form of autonomous status. However, the development of minority rights protection beyond the traditional areas of language, culture and religion to encompass measures to protect and promote the identity of minorities and to secure their participation in decision-making and public life envisage far more extensive political and economic rights for minorities. The full exercise of these rights in some situations may well require a form of autonomous status. According to a 1990 UN report, autonomy 'represents the highest possible level of minority rights'.

Autonomy is, however, increasingly recognised as a useful concept and means by which to address competing claims for political and minority rights. State practice offers a wealth of different autonomy and internal self-governing arrangements to respond to a wide variety

of political contexts, claims to minority protection and the realisation of other international rights and obligations. However, while regional autonomous entities are accorded only limited status under international law, the increasing frequency of claims to autonomy, and the effect upon the international legal order that such claims will have, make the concept of autonomy ripe for review.

Autonomy for a group or part of a territory within a state is generally the result of an internal political and legislative arrangement, which may well enjoy entrenched constitutional or other special protection. It will not usually grant the area any internationally recognised status or devolve powers normally associated with statehood, such as in the areas of defence or foreign affairs. In some cases, however, an autonomous area may have a limited capacity to enter into international agreements on issues within the scope of its reserved powers, such as cultural or economic matters. It will usually encompass a local or regional executive, legislature and judiciary and may grant authority in a wide range of matters such as education, health, housing, social welfare, culture, religion, land, resources and local security as well as providing for some means of financing itself through taxation or otherwise.

Autonomy has long been accepted as a political option in Iraq and must be at least the starting point for discussions on the status of Iraqi Kurdistan. Iraq committed itself over 25 years ago to the principle of Kurdish autonomy and did establish the basic parameters and institutional structures for such autonomy (whatever the shortcomings of these arrangements and however imperfectly they have been implemented since). Since then it has held out the autonomy arrangements for the Kurds as evidence of its accommodation of and commitment to the promotion and protection of the rights of the Kurdish minority. However, an acceptable autonomy arrangement must be one which is acceptable to the Kurds, which allows them to preserve and develop their identity as a group and which fosters open and participatory institutions of self-government. It must genuinely secure the promotion and protection of all the rights guaranteed to them under legally binding treaties as well as the principles and standards set out in the 1992 UN Declaration on the rights of minorities. Most importantly, it must reflect the will of the Kurdish people and be developed in a process which allows them full and equal participation.

Previous experience has shown that there can be no confidence in the international community's commitment to any form of genuine

autonomy for the Kurds. It is imperative that future negotiations be conducted under international supervision, not just with the coalition, and that recognised international guarantees are secured.

A UN MANDATE?

There have been many who have called for the UN to take over administration of Iraq from the US-led coalition. A number of the UN's recent peace-keeping operations have also imposed a high degree of international protection and supervision in various countries. In Cambodia, for example, the UN established a Transitional Authority with considerable powers to oversee the process leading to elections. The 1989 Paris Conference brought together 18 countries, the Cambodian parties and the UN Secretary-General to negotiate a political settlement under UN supervision. It included the five permanent members of the Security Council and key regional powers. The Agreements on a Comprehensive Political Settlement in Cambodia were signed in October 1991 and endorsed by the Security Council which also approved and supervised the implementation plan. The UN Transitional Authority in Cambodia (UNTAC) comprised military and civilian components, including an extensive human rights monitoring operation. Cambodian administrative bodies in the areas of foreign affairs, defence, public security and information were placed under the direct control of UNTAC which also had control and supervisory powers over any administrative bodies which could influence the elections and the authority to reassign or remove any government personnel. The interim national authority, the Supreme National Council, delegated to the UN all powers necessary to implement the political settlement. UNTAC remained in place until free elections had been held and a new government was installed.

In Kosovo, following the 1999 conflict, the UN established UNMIK, an interim administration which was unprecedented in both scope and structure.¹¹ UNMIK is made up of other multilateral organisations such as the EU and the OSCE working under a UN leadership. There are some similarities between Kosovo and Iraqi Kurdistan in that both are provinces of another country rather than states in their own right. However, in Kosovo UNMIK has transferred responsibilities to local institutions as part of its commitment to 'gradually introduce self-government to Kosovo'.¹² Furthermore, on 12 December 2003, the UN Security Council issued a presidential statement expressing

support for the 'standards for Kosovo'.¹³ These written standards include functioning of democratic institutions, rule of law, freedom of movement, returns and reintegration, economy and property rights, and Kosovo's status will ultimately be determined by its institutions' abilities to meet these standards.¹⁴

It is not, of course, suggested that any of these prior international arrangements can or should provide a blueprint for the future international protection of Iraqi Kurdistan. Each was tailored to a particular historical and political context. The special circumstances, characteristics and needs of each situation must dictate the form and nature of supervision and protection. Moreover, although it is not too late for the UN to adopt overall control over the transition to independence in Iraq, it is highly doubtful that it would do so given the establishment of the CPA and the gulf between the go-it-alone attitude of the US and the multilateral approach of the UN since the beginning of the road to war. These examples do, however, indicate considerable international creativity in devising special arrangements to meet the particular needs of a territory where there is the political will to act. If the international community is willing to face up to its responsibilities in Iraqi Kurdistan, it is quite possible to devise an arrangement that meets the political and security needs of this particular situation.

There are a number of reasons why some sort of a UN mandate is necessary for Iraq. As regards security, the notion of coalition forces remaining in Iraq following the transfer of power will continue to cause a backlash of violence within Iraq and lead to further security problems. A UN mandate would also impact the security situation for NGOs as they would not be working under the auspices of the 'hated' US but rather the UN. Furthermore, if the Transitional Assembly continues to host those that were once 'invaders' and Occupying Powers they won't be seen as impartial and it will detract from their ability to govern the country. It is important to bear in mind that a government can retain UN-authorized peace-keepers for a period of several years without forfeiting its sovereignty, as for example the UN peace-keeping mission to Cyprus.¹⁵

There are several specific areas that the UN should assume responsibility as a matter of urgency: the UN should participate in the creation of an effective war crimes tribunal and a land commission, and it should assist with elections and the transfer of power to Iraqis. Moreover, the UN should expediently adopt a resolution specifically recognising the new plan for Iraqi transition by 1 July 2004. Such a

resolution should also recognise the US/UK forces remaining in Iraq as peace-keepers, if UN peace-keepers themselves do not take over from them. As regards Iraqi Kurdistan it is imperative that the UN recognises that the Kurdish region is the only part of Iraq that has the elements in place for immediate self-government.

ECONOMIC ISSUES

Despite its considerable shortfalls, the Oil-for-Food Programme constitutes the mainstay of the economy of Iraqi Kurdistan, and one of its only assured sources of income. Landlocked, mountainous, and traditionally reliant on an agrarian economy, now damaged by decades of conflict and insecurity, the reconstruction of Iraqi Kurdistan poses numerous challenges and is beset by uncertainty. The safe haven was a de facto state established by the no-fly zone above the 36th Parallel; revenues raised from the charging of border tariffs – one of the few significant supplements to oil-for-food revenue – is, likewise, a de facto form of taxation. As at time of writing, the status of Kirkuk – and hence its oil production facilities – is uncertain. What is probable is that regardless of the eventual form of the Iraqi constitution, a revenue-sharing formula will be developed between the Iraqi central government and the KRG, or reconstituted regional government of Iraqi Kurdistan.

Oil and international assistance should not be seen as the be-all-and-end-all of the economy of Iraqi Kurdistan. Key to the region's long-term survival is the regeneration of agriculture and the development of relevant industries. Research is and must continue to be undertaken regarding the flight of rural communities to overburdened towns and cities: agriculture is a mainstay of the Kurdish economy. But to restore the agricultural economy to full capacity will require the continued reconstruction of rural towns, drainage, water provisions, health and education services, if displaced families are to be encouraged to return. In Kurdish areas outside of the safe haven, the legacy of the Arabisation policy needs to be tackled, leading eventually both to the restitution of property and the creation of a system of property registration that will encourage capital flow through micro-lending. Research also needs to be adopted into the impact of the Arabisation process into farming patterns and land tenure.

For the foreseeable future, the public sector will remain the largest employer in the region. At the time of writing, the majority of government employees have received little or no pay for several

months; they are, however, saved from the mass redundancies seen elsewhere in Iraq under coalition administration. However, the knock-on effect of a crisis in the rest of Iraq could be considerable. Degradation of the economy of northern Iraq has precipitated feuds between the two main Kurdish parties before. Both parties are now working toward regeneration of the economy and declare old enmities to be a thing of the past; nonetheless, outside observers suggest that fault lines could well be reopened if regional economic security is not met.

Since the creation of the safe haven, Iraqi Kurdistan has made considerable strides towards a stable economy but outside assistance from multilateral and other sources will continue to be needed in substantial volume if the region is to thrive.

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The Tribunal and the Victims

INTRODUCTION

Clearly, there is a need for impartiality in the operation of any tribunal. It must be fair, respecting the basic norms of procedural and substantive due process required under international law,¹ and include the rights of the accused as enshrined in the defining documents of international human rights law.² In addition, any tribunal must be (and, critically, must be seen to be) independent; difficult if controlled by a new Iraqi government or the US-led occupation forces.

KHRP is troubled that the current structure for the tribunal is not concerned with justice due to its structure and the strong possibility of the authority imposing the death penalty.³

A UN TRIBUNAL

It is clear that an international tribunal would enjoy greater legitimacy in the eyes of the world, and benefit from the considerable experience of previous tribunals. An international contingent of judges representing the combined jurisprudential and experience of a cross-section of legal systems would create the requisite impression of impartiality.

The US administration, however, is thought to have been opposed to using the Rwanda and Yugoslavia models as templates, largely on account of their costliness and duration. Each has cost somewhere in the region of US\$ 80–100 million per annum, and is of indefinite duration. Neither do they make provision for the death penalty, which the US and Iraq are particularly keen to maintain.⁴

The first two of these reservations seem surmountable. Given the huge scale of atrocities committed by the Ba'athists and the breadth of their victims – Shi'ite Arabs, Marsh Arabs, dissidents, Turcomans and Assyrians in addition to Kurds – it can only be expected that if justice is to be done to the proceedings they will be time-consuming. Nonetheless, there is little or no reason why a cap could not have been placed on the length of any UN-created tribunal, and indeed in the current Iraqi Statute there is no cap mentioned. The ultimate cost

of rebuilding Iraq (and the cost of failing to do so successfully) and the financial scale of the international tribunals, while substantial, are almost certainly worth paying if they promote justice, accountability, the resumption of the rule of law, and Iraq's reintegration into the community of nations. The Rwandan and Yugoslavian trials were almost universally perceived as impartial, fair and independent (although charges of 'victors' justice' have sometimes been levelled at the International Criminal Tribunal for the former Yugoslavia (ICTY)).

Putting aside the morality of the death penalty, as the London Director of Human Rights Watch observed, 'the example of the Romanian dictator Nicolae Ceausescu – shot after a summary trial in 1989 – reminds us how things should not be done. That execution hindered long-term justice in Romania.'⁵

Furthermore, a UN tribunal would have a mandate under Chapter VII of the UN Charter, which would require all member states of the UN to comply with the tribunal's orders, including its indictments and arrest orders for high-profile figures. Both the ICTY and the ICTR (International Criminal Tribunal for Rwanda) have Chapter VII mandates.

Thus, an ad hoc tribunal operated under the auspices of the UN would offer international legitimacy and practical legal experience to the Iraqi people.⁶ In addition 'by allowing the United Nations to perform a job at which it excels and for which it has a proven track record, the United States will finally get what we tried so desperately hard, and failed, to obtain before invading Iraq: broad-based international support'.⁷

A HYBRID COURT

A UN tribunal could embrace Iraqi participation by including Iraqi judges and prosecutors. In 2000, following a UN resolution, it was decided to establish the only hybrid court in existence – the Special Court for Sierra Leone. Unlike the Rwandan or former Yugoslav tribunals, the court sits in the country where the crimes were committed. One of the primary differences between this type of court and the ICTY or ICTR, is the mandate under which they were created. The latter were established by the Security Council under the auspices of Chapter VII of the UN Charter. Therefore, these tribunals operate under UN jurisdiction and not the domestic governments concerned. The Special Court for Sierra Leone, however, was created

by a treaty between the UN and the Sierra Leone government which put it under joint UN–Sierra Leonean jurisdiction. Both local and international judges and prosecutors staff the Sierra Leone court. The Chief Prosecutor was appointed by the UN and the Deputy by the Sierra Leonean government, with the Chief Prosecutor taking responsibility for final decisions.

This model is favoured for Iraq for a number of reasons: the ICTY proceedings in The Hague, and ICTR proceedings in Arusha, made it practically impossible for ordinary citizens to follow the tribunal's cases; and locating a court in the country involved assists local judicial officials in gleaning knowledge from internationals to rebuild the country's judicial system. The drawback of not being able to assert primacy over other states as in Sierra Leone could be defused in Iraq by placing a hybrid tribunal under Chapter VII of the Charter. There is no legal reason why this could not be done. As regards costs, the hybrid model is believed to be cheaper than the ICTY and ICTR and more efficient, which addresses any budget concerns of the US.

With the prior establishment of this type of court in Sierra Leone, Iraq and the US could learn from their mistakes and set up a hybrid court to deal with Iraqi war crimes which has the benefit of the wisdom of precedence.

THE INTERNATIONAL CRIMINAL COURT (ICC)

As regards the International Criminal Court (ICC), Iraq is not a signatory and neither is the US. The US has spent considerable time opposing the ICC and could not be expected to cooperate with it on Iraq. Regardless of these issues the new court is not retrospective and can only preside over crimes committed after its establishment in July 2002. Furthermore, the ICC will try a case only in the event of domestic courts being unwilling or unable to act.

Although Saddam and his officials have committed crimes since July 2002, even if Iraq were to ratify the Statute of the Court, KHRP would not advocate this route, as the bulk of his crimes would be excluded. This would not provide justice for all of Saddam's victims and recognition of his heinous crimes towards the Kurds, particularly during the Anfal campaigns.

A TRUTH AND RECONCILIATION COMMISSION

Several organisations have called for an Iraqi truth commission that would paint a full picture of human rights abuse in Iraq over the

past 25 years. A legitimate Iraqi government should consider such a commission to give victims a voice, consider means to assist victims and prevent further violations. The commission should not grant amnesty for international crimes as it would undermine the rule of law and provoke anger and cynicism among victims.

The commission could explore ways of promoting reconciliation and harmony between the ethnic groups in Iraq. It could also examine the role other countries have played in supporting and sustaining Saddam's rule. It would serve as a potent reminder to the international community of the consequences of supporting repressive rule in the world.

Edie Vandy, a Sierra Leone national and political analyst, stated of the Truth and Reconciliation Commission's hearings stage in Sierra Leone that 'For the victims, it provided a forum to speak out and to be heard ... and by speaking out, there was an innate healing power behind it all, regardless of any material or physical compensation that might be provided at the end of the day.'⁸ He further added, 'One critical element that ushered in the war, and which was re-echoed throughout the deliberations, was the denial of justice, or the lack of it.'⁹

THE WAY FORWARD

KHRP advocates that a hybrid tribunal is established under the auspices of the UN and in consultation with other organisations in this field.

The Governing Council drafted the Statute without consulting any outside parties or allowing for public comment. KHRP agrees with Human Rights Watch that a group of experts should have been created to suggest appropriate ways for the tribunal to function, particularly in relation to accountability mechanisms, evidence and selection of judges/prosecutors.¹⁰ Should Iraq insist on continuing down the path of a domestic tribunal it is still possible to convene such a group and alter the Statute appropriately.

KHRP has specialised in working with Kurdish victims of human rights abuses for over ten years and has represented hundreds of victims at the European Court of Human Rights. KHRP has also engaged in fact-finding missions to northern Iraq. In relation to legal structures KHRP, in conjunction with other non-governmental organisations, drafted a Joint Response to Proposals for Reform of the European Convention of Human Rights. For these reasons KHRP

is adept, in partnership with other organisations, to advise on how best to meet the needs of the victims and establish a Tribunal, which has the highest legal regard.

Justice Murphy wrote in the Yamashita case: 'If we are ever to develop an orderly international community based upon a recognition of human dignity, it is of the utmost importance that the necessary punishment of those guilty of atrocities be as free as possible from the ugly stigma of revenge and vindictiveness.'¹¹ KHRP fears that in the case of Iraq this will not be the outcome if the present course is maintained.

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The Land Question

I thought the Kurds would want revenge on Iraq Arabs for the things Saddam did to them. In fact most of them blame the Ba'athists, not the Arabs themselves, and here every Kurd has welcomed us.¹

While the 'Arabisation' process has deeply scarred Iraq, and admittedly in the first few days following the liberation of Kirkuk and Mosul posed a security threat, things have quietened down since then. However, the land ownership issue needs to be addressed as expediently as possible not only for human rights reasons but also to ensure that security problems do not arise from internal sources. Jay Garner, the retired general overseeing Iraq's post-war reconstruction, promised a Bosnia-style commission to resolve disputes between Arabs, Kurds and Turcomans displaced in Iraqi Kurdistan during Saddam Hussein's regime in April.² This has not happened.

THE IRAQI PROPERTY RECONCILIATION FACILITY

CPA Regulation 4 established an Iraqi Property Reconciliation Facility (IPRF) to resolve claims resulting from the Arabisation process in Iraq.³ It is tasked with collecting property claims and resolving such claims 'on a voluntary basis in a fair and judicious manner'. Under this regulation a fund may also be established to be used in connection with the work of the IPRF.

There are a number of uncertainties in Regulation 4. Firstly, it is unclear whether the IPRF would apply Iraqi law in relation to property rights and what its relationship would be with the courts. Furthermore, it does not deal with procedures in relation to cases being referred from the courts. Moreover, it does not indicate whether victims will actually receive compensation or whether the fund will be used merely for operational purposes. There are no procedures outlined for an enforcement mechanism, nor is there any indication of what status the facility will have in relation to the Iraqi legal system.

The International Organisation for Migration (IOM) was contracted to implement critical aspects of the IPRF. It was tasked with conducting a fact-finding and information campaign; developing a standardised claim form; establishing a series of claim registration offices; and offering facilities where property disputes could be settled through voluntary mediation.⁴ Furthermore, IOM agreed to develop a long-term strategy for dealing with such disputes.

However, due to security concerns, IOM was unable to implement its programme and withdrew its staff.⁵ IOM has also asserted that it failed to implement the project as a result of 'lack of expertise and insufficient staffing'.⁶ Moreover, 'concerns arose about IOM's unwillingness to engage with experienced humanitarian and human rights actors to ensure that the process reflected sensitivity to the human rights dimension of the property claims issue'.⁷ In response, IOM admitted that it did not attend regular meetings with humanitarian and human rights groups and rarely sought consultation with such groups.⁸

Concerns about the lack of consultation with such groups, IOM's position as a contractee of the occupation administration and not an independent humanitarian organization, and IOM's lack of expertise and capacity caused intergovernmental and nongovernmental organizations to distance themselves from the IPRF process. The process remains in limbo.⁹

THE WAY FORWARD

The establishment of an effective property dispute mechanism is imperative as the deprivation of a person's right to his or her property is a fundamental human rights violation. However, a balanced mechanism should be put in place with consultation with such organisations as KHRP, which has a background in legal procedure, knowledge of procedures in other countries such as Kosovo, and more importantly local knowledge of victims' needs and the events which caused the land disputes in the first instance.

KHRP, although advocating a property commission, understands that victims of forced displacement have the right to reclaim their former property but this right must be balanced against the rights and humanitarian needs of the current occupants as many have lived there for more than a decade. Lessons can be learnt from other property

mechanisms such as Bosnia and Kosovo, although all processes are designed for the particular situation in an individual country.

In the first instance it is necessary to establish a retrospective cut-off date for claims to be handled as it is not dealt with in Regulation 4. The coalition should draw on the resources of organisations and groups who have been involved in Iraq for a number of years to propose an acceptable date. Provisions for implementing the facilities' decisions should also be included in the regulation. The amount of funding needs to be decided as well as sources of funding for the future in order that the IPRF is not rendered inefficient at a later date due to lack of funding. Those who are displaced because of IPRF decisions need to be provided for in advance. There is adequate government-owned land in Iraq for this purpose, but social and human rights concerns must be taken into consideration. Objective criteria need to be decided upon to sort out which claims will be dealt with first. Either earliest claims first, or last claims first, or the like. Information on the process needs to be publicised worldwide to inform Iraqis outside of Iraq of the ability to take case under the procedure.

In addition, the regulation does not provide for enough offices. Mobile teams should be established to target the people who live in rural areas. The regulation does state that international staff will work in the offices; however, it should be made clear what role they take. They should be hired as Chairs of committees to ensure that no prejudices influence decisions. There should also be a definition of the qualifications necessary to work for the IPRF, which include some legally trained personnel, and the international staff members should have experience of such cases.

A property commission is not specifically provided for under the Fourth Geneva Convention, but the IPRF could secure legality by establishing it for the purposes of public security, which is the case in Iraq. A thorough assessment needs to be made (if not previously undertaken by the CPA) of whether certain provisions of Iraqi law need to be suspended for the IPRF to be working within domestic law, as although CPA regulations currently supersede Iraqi law, in the future the IPRF cannot operate if conflicting with domestic provisions. Furthermore, the UN should adopt a resolution authorising the IPRF. There should be no opportunity in the future for doubts as to the IPRF's legality.

The urgency of establishing an operational mechanism is not only for the purposes of justice, but it is also essential that a property restitution process is in place before reintegration of returnees, so

as to ensure that an outbreak of violence does not occur upon their return. Moreover, given the extreme poverty of the displaced it is important to have a system established to support them so that they do not have to resort to criminal or other activities to survive.

International assistance should be obtained from the Permanent Court of Arbitration in The Hague, the OSCE, the IOM, the UN and non-governmental organisations.

Addendum

Since the writing of this publication, CPA Order 5 'Establishment of the Iraqi De-Baathification Council' has been rescinded. KHRP contacted the CPIC by telephone on 23 December 2003 to enquire why this regulation was rescinded but has not received a response to date. CPA Order 1 'De-Baathification of Iraqi Society' has not been rescinded to date.

What bearing the rescinding of Order 5 will have in the operation of the Iraqi Special Tribunal in relation to the vetting process for judges and lawyers remains to be seen.

Appendix 1

Articles of the 1920 Treaty of Sèvres Relating to Kurdistan

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.

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 II

The Kurdistan Regional Government Provisional Constitution for the Federal Republic of Iraq

PART I – ESTABLISHING THE FEDERAL STATE

Article 1

Iraq is a federal state with a democratic, parliamentary, pluralistic, republican system that will be called the Federal Republic of Iraq.

Article 2

The Federal Republic of Iraq consists of two regions:

i) The Arabic Region that includes the middle and southern regions of Iraq along with the Province of Ninevah in the north excepting the districts and sub-districts that have a Kurdish majority as mentioned in the item below.

ii) The Kurdish Region that includes the Provinces of Kirkuk, Sulaimaniya and Erbil within their administrative boundaries before 1970 and the Province of Duhok and the districts of Aqra, Sheikhan, Sinjar and the sub-district of Zimar in the Province of Ninevah and the districts of Khaniqin and Mandali in the Province of Diyala and the district of Badra in the Province of Al-Wasit.

Article 3

Power is inherent in the people as they are the source of its legitimacy.

Article 4

The people of Iraq consist of the two principal Arabic and Kurdish nationalities and this Constitution affirms the national rights of the Kurdish people and their enjoyment of them within the Kurdistan Region based on federalism as it also affirms the legitimate rights of the minorities within the framework of the Federal Republic of Iraq.

Article 5

Baghdad shall be the capitol of the Federal Republic of Iraq.

Article 6

The Federal Republic of Iraq shall have a flag, an emblem, and a national anthem that shall reflect the union between the Kurds and the Arabs and that shall be regulated by law.

Article 7

The state religion is Islam.

Article 8

Arabic is the official language of the federal state and the Arab region. Kurdish shall be the official language of the Kurdistan Region.

PART II – BASIC RIGHTS AND RESPONSIBILITIES

Article 9

- i) Citizens are equal under the law without discrimination due to sex, race, colour, language, religion, or ethnic origin.
- ii) All are guaranteed equal opportunity under the law.

Article 10

The family unit is the foundation of the community, the protection and support of which is guaranteed by the state. Mothers and children are also afforded protection under the law. The law upholds the basic moral and ethical values of the community among its citizens.

Article 11

- i) An accused person is presumed innocent until proven guilty in a court of law.
- ii) The right to legal defence is guaranteed at all stages of an investigation and trial in accordance with the law.
- iii) Trial proceedings must be open unless otherwise declared closed by the court.
- iv) Punishment is personal. Nothing can be treated as a crime, nor can any punishment be ordered and carried out unless defined in the law. No act is punishable unless it is considered to be a crime at the time of commission. No punishment can be administered that is greater than what is written in the law.

Article 12

- i) The integrity of the individual shall be protected and all types of torture, physical or psychological, are prohibited.
- ii) No one can be captured, detained, jailed, or searched except in circumstances defined in law.
- iii) The sanctity of the home shall be protected and cannot be entered or searched except in accordance with procedures laid out in the law.

Article 13

The privacy of postal, cable and telephone communications is guaranteed and cannot be disclosed except when deemed necessary to serve the needs of justice and security in accordance with the parameters and procedures laid out in the law.

Article 14

A citizen cannot be prevented from travelling abroad or outside the country nor prevented from returning home to the country. Movements within the country shall not be restricted unless specified in the law.

Article 15

Freedom of religion, belief, and the practice of religious duties is guaranteed provided they do not conflict with provisions of this Constitution and the Regional Constitutions or with federal laws and provided they do not go against general moral and ethical standards.

Article 16

Primary education is compulsory. The federal and regional governments shall combat illiteracy, guarantee for their citizens the right to a free education in all its stages of primary, secondary, and university, and guarantee the development of technical and vocational studies.

Article 17

The right of academic research shall be guaranteed. Outstanding achievement, innovation and creativity shall be encouraged and rewarded.

Article 18

Freedom of expression, publication, printing, press, assembly, demonstration, and forming of political parties, unions and associations shall be guaranteed by law.

Article 19

The right to political asylum for all those persecuted because of their political beliefs shall be guaranteed. Political refugees shall not be extradited.

Article 20

i) Work is a right and duty of every citizen and the federal and regional governments shall make efforts to create work opportunities for every capable citizen.

ii) The state shall guarantee good working conditions, work towards raising the standard of living as well as the skills and knowledge of all working individuals. The state shall provide social security benefits in cases of illness, disability, unemployment, or old age.

iii) No individual shall be forced to carry out a job unless the purpose is to carry out a public service according to the law or in the case of emergency or natural disaster.

Article 21

The state and regional governments shall guarantee the right of ownership and this shall be regulated by law.

Article 22

The state guarantees to protect public health through consistent efforts to provide medical services in the fields of prevention, treatment and medication.

Article 23

Paying taxes is a duty of every citizen and such taxes shall not be levied, collected or amended except by law.

Article 24

Citizens have the guaranteed right to raise complaints and write petitions to the proper authorities and the authorities shall consider these within a reasonable period of time.

Article 25

The judiciary is the source of the protection of rights mentioned in this part. The Courts will decide what punishment and/or fine is warranted from any of the parties concerned.

PART III – FEDERAL GOVERNMENT AUTHORITIES CHAPTER 1 – FEDERAL LEGISLATIVE AUTHORITY

Article 26

The federal legislative authority, the ‘federal parliament’, is made up of two chambers – the National Assembly (Chamber of Deputies) and the Assembly of the Regions.

Section 1 – National Assembly

Article 27

- i) The National Assembly is made up of representatives of the people within the two regions elected through direct, secret, general ballot as regulated by law.
- ii) Each citizen, 18 years of age or older, of sound mind and in good standing in the community has the right to vote.
- iii) Each citizen, 25 years of age or older, of sound mind and in good standing in the community has the right to stand for election to the National Assembly.

Article 28

The Federal Parliament has a five-year term commencing with the holding of its first session.

Article 29

The electoral process and its procedures shall be regulated by law.

Article 30

- i) No individual can hold a position in the National Assembly, the Assembly of the Regions, the Regional Parliament, or the local municipal and administrative councils, at the same time.
- ii) A member of the National Assembly cannot hold another public position or office at the same time.

iii) A member of the National Assembly shall be considered to have resigned from any public position or office from the date that he/she swears the oath of office.

Article 31

The National Assembly shall hold its first session presided over by the oldest member. A president, vice president and secretary shall be elected from among its members through secret ballot.

Article 32

The National Assembly can meet with the presence of a simple majority of members present. Votes are also by simple majority.

Section 2 – The Assembly of the Regions

Article 33

The Assembly of the Regions is made up from representatives from each of the Arab and Kurdistan regions provided that the principle of equal representation is upheld.

Article 34

Each region evaluates the performance and can dismiss its representatives in accordance with the methods specified in the Regional Constitution and/or law.

Article 35

The Assembly of the Regions participates on an equal footing with the National Assembly in the practice of the federal legislative authority.

CHAPTER 2 – FEDERAL PARLIAMENT AUTHORITIES

Article 36

The Federal Parliament shall have the following authorities:

- i) Declare war and conclude peace where a 2/3 majority will be required
- ii) Amend the Federal Constitution
- iii) Ratify international treaties and agreements where a 2/3 majority will be required

- iv) Enact federal legislation
- v) Vote of confidence in the federal cabinet and its members as well as withdrawal of such confidence
- vi) Approve the federal budget
- vii) Levy, regulate, and abolish taxes and duties
- viii) Supervise the work of the federal executive authority
- ix) Draft internal rules and procedures for personnel and staffing, determine positions, appoint staff, determine salaries, and approve the budget of the Federal Parliament
- x) Look into and verify the membership in the National Assembly and the formation of the committees.

CHAPTER 3 – FEDERAL EXECUTIVE AUTHORITY

Section 1 – President of the Federal Republic of Iraq

Article 37

The President of the Federal Republic of Iraq is the head of state and the Commander-in-Chief of the Armed Forces.

Article 38

The President shall be elected through direct, general, secret ballot for a period of five years and may stand for re-election once.

Article 39

All candidates for President shall be:

- i) an Iraqi citizen whose parents must both have been born in Iraq
- ii) at least 40 years of age
- iii) a citizen in good standing in both his/her civil and political rights

Article 40

The President of the Federal Republic of Iraq shall take the following oath of office in the presence of a joint session of the Federal Parliament:

‘I swear, by God Almighty, to respect the Constitution of the Federal Republic of Iraq, to defend the independence and sovereignty of the country, and to work diligently for the realization of the interests of the people, freedom and honor.’

Article 41

In the case of the resignation, demise, or inability to perform the duties of the President of the Republic of Iraq, his/her deputy shall take over the duties of the presidency for the remainder of the term of office.

Article 42

The President of the Federal Republic of Iraq represents the federal state abroad and concludes treaties in its names and acknowledges and receives foreign diplomats and missions.

Article 43

The President of the Federal Republic of Iraq shall assume the following duties and responsibilities:

- i) Protecting the independence and territorial integrity, and the internal and external security of the Federal Republic of Iraq
- ii) Appointing the Vice President of the Federal Republic of Iraq after having been nominated by the Assembly of the Regions
- iii) Announcing the federal cabinet after it has won a vote of confidence from the National Assembly
- iv) Calling general elections for the National Assembly
- v) Proclaiming federal legislation
- vi) Appointing Iraqi diplomats and representatives to Arab and other foreign countries and to international organizations and conferences
- vii) Instructing the Armed Forces and Internal Security in accordance with national interests
- viii) Declaring states of emergency, which shall be regulated by law
- ix) Conferring military ranks on members of the Armed Forces and the Internal Security as well as dismissing or retiring members from those services
- x) Conferring medals or awards
- xi) Appointing individuals of special ranks such as those in the judiciary, the chief prosecutor, general prosecutor and the deputies in the federal state

Article 44

The President of the Republic of Iraq shall be indicted by a 2/3 majority of the Federal Parliament and shall be put on trial in a

joint session of the High Court and the Assembly of the Regions presided over by the President of the High Court and any sentence passed must be by a 2/3 majority.

Article 45

The President of the Republic of Iraq shall remain in office carrying out his/her duties during the period of his/her indictment and trial.

Section 2 – Council of Ministers (Cabinet)

Article 46

The Council of Ministers constitutes the highest executive authority in the Federal Republic of Iraq and practises its responsibilities under the supervision and guidance of the President of the Republic of Iraq.

Article 47

The Council of Ministers shall be made up the prime minister, his/her deputies and a number of ministers who shall represent both regions in proportion to the regions populations.

Article 48

Upon the election of the President of the Republic of Iraq from one region, the Prime Minister shall be appointed from the other.

Article 49

- i) The Prime Minister designate shall submit the names of his/her cabinet to the President of the Republic of Iraq for his/her approval.
- ii) Following approval by the President, the Prime Minister designate shall introduce his/her cabinet to both the National Assembly and the Assembly of the Regions for a vote of confidence following which the President shall issue the necessary decree for the formation of the cabinet.

Article 50

The Council of Ministers shall assume the following responsibilities:

- i) Carrying out federal legislation
- ii) Protecting the safety and security of the land

- iii) Preparing federal draft legislation and submitting it to the Federal Parliament
- iv) Preparing the federal budget
- v) Supervising the federal ministries, institutions and public agencies
- vi) Issuing federal orders and regulations
- vii) Concluding loans, grants and supervising financial affairs
- viii) Appointing, promoting, and retiring federal civil servants

Article 51

The President of the Republic of Iraq may chair meetings of the Council of Ministers and request special performance reports from the Council and the Ministries.

Article 52

- i) The Federal Parliament may withdraw confidence from
 - a. The cabinet and it shall be considered no longer in office from the date of the withdrawal of confidence;
 - b. A minister and he/she shall be considered no longer in office from the date of the withdrawal of confidence.
- ii) The cabinet shall continue in office until a new cabinet is formed.

CHAPTER 4 – HIGH COURT (CONSTITUTIONAL COURT)

Article 53

The High Court shall consist of a number of members, persons of high integrity, qualifications, and experience, chosen from among the judiciary and law professors teaching at universities who have had at least 20 years of practice or teaching and each region shall designate half of the members of the Court.

Article 54

The President of the High Court shall be on a rotational basis. Each member shall assume the presidency for a period of one year at a time.

Article 55

Members of the High Court cannot be dismissed except in the case of indictment due to lack of integrity. Their indictment, trial and sentencing shall be carried out by the Assembly of the Regions.

Article 56

Members of the High Court shall not be retired due to age unless there is a personal request to that effect.

Article 57

The High Court shall look into and adjudicate the following:

- i) Interpretation of the Constitution with regard to conflicts that arise in relation to the rights and duties of the federal institutions or conflicts within the various authorities;
- ii) Conflicts arising out of the implementation of the Constitution between the federal and regional levels;
- iii) Conflicts that arise out of the implementation of the Constitution or those that may occur among the regions.

Article 58

The High Court shall issue its decisions on a simple majority basis and, in the case of an even split, the President of the High Court shall decide.

CHAPTER 5 – RESPONSIBILITIES OF THE FEDERAL GOVERNMENT

Article 59

The federal government shall assume the following responsibilities:

- i) Declaring war and concluding peace
- ii) Setting out foreign policy and diplomatic and consular representations
- iii) Concluding international treaties and agreements
- iv) Defending the country by utilizing all branches of the Armed Forces
- v) Issuing currency and planning monetary and banking policy
- vi) Defining standards for weights and measures and designating salary policy
- vii) Drafting general economic planning aimed at development in the regions in the areas of industry, commerce and agriculture
- viii) Ordering federal general audits
- ix) Overseeing federal security affairs
- x) Citizenship, residency and foreigners' affairs
- xi) Oil resources
- xii) Nuclear power

PART IV – REGIONAL CONSTITUTIONAL STRUCTURE

Article 60

Each region shall draw up its own constitution taking into consideration the following:

- i) Shall adopt the republican system
- ii) shall not contradict the terms of this Constitution

Article 61

Citizens of the region shall, through direct, general and secret ballot, elect their representatives to the Regional Assembly, the 'Regional Parliament,' and the electoral process and ratio of representation shall be regulated by a law.

Article 62

The responsibilities of the Regional Assembly and its relation with other authorities shall be set out in the Regional Constitution.

Article 63

The regional executive authority shall be made up of:

- i) Regional President
- ii) Regional Council of Ministers

Article 64

Citizens of the region shall elect a President, to be called the Regional President, and he/she shall be the head of the executive authority and he/she will also represent the President of the Federal Republic of Iraq within the region on official state occasions.

Article 65

Rules and procedures for the election of the Regional President, his/her term of office, responsibilities, relationship to the Regional Council of Ministers, and to other public authorities in the region shall be designated in the Regional Constitution.

Article 66

The Regional Council of Ministers consists of the prime minister, his/her deputies and a number of ministers and the Council shall carry out its regional executive responsibilities under the supervision and guidance of the Regional President.

Article 67

The rules and procedures to form the cabinet and its responsibilities and its relation to the Regional President shall be designated in the Regional Constitution.

Article 68

The independent judicial powers in the region that will consist of all levels of courts including the Regional Cassation Court which shall look into civil and criminal and other cases and this shall be regulated by a regional law.

Article 69

The region shall assume various responsibilities except those delegated to the federal government in accordance with this Constitution and in particular in Chapter 4 of Part III.

Article 70

Conflicts that may arise between the federal and regional authorities among the regional authorities in relation to the responsibilities designated in this Constitution shall be referred to the High Court, 'Constitutional Court' for adjudication.

PART V – FISCAL RESPONSIBILITIES

Article 71

Taxes shall not be levied, collected or altered unless by a federal or regional law.

Article 72

The federal authorities alone may levy and collect export and import, 'custom,' duties.

Article 73

The Regional authorities shall levy the following taxes:

- i) income
- ii) inheritance
- iii) agricultural land and property taxes
- iv) property registration fees
- v) court fees

vi) licence fees

vii) water and electricity charges

Article 74

Each region shall have a share of the revenues from the oil wealth, grants, and foreign aid and loans in proportion to their population in relation to that of the total population of the country.

PART VI – MISCELLANEOUS

Article 75

No changes to the borders of the two regions can be made except with the approval of the Assembly of the region concerned.

Article 76

i) Citizens of the Kurdistan Region shall be appointed to the various positions in the federal ministries and other bodies both inside and outside the country and in particular in the deputy minister, director general, or other high level positions according to the ratio of the regional population to the total population of the Federal Republic of Iraq.

ii) The above-mentioned principle shall apply to the following:

- a. Appointment of ambassadors, members of diplomatic and consular corps and federal representatives in international and regional organizations and bodies
- b. Appointment to the Armed Forces and Federal Security
- c. Participation in official Iraqi delegations and negotiations for the purpose of concluding international treaties
- d. Acceptance of students for fellowships and scholarships as well as study abroad
- e. Admission of students to academies, military and police colleges, and training programmes both inside and outside the country

Article 77

The *peshmerga* forces and their various divisions shall constitute a part of the Armed Forces of the Federal Republic of Iraq.

Article 78

Redress the effects of Arabization and deportations that took place in some parts of the Kurdistan Region. The deported Kurdish citizens

from areas of the Province of Kirkuk and from Makhmoor, Sinjar, Zimar, Sheikhan, Khaniqin, Mandali, and others should return to their previous homes in those areas. As well, the Arab citizens who were brought by the authorities into those areas at any time since 1957 should return to their original homes.

Article 79

This Constitution shall be the highest law of the land and all other laws issued in contradiction to it shall be considered null and void.

Article 80

The terms of this Constitution cannot be amended unless through a 2/3 majority vote by members of both the Federal and Regional Assemblies.

Article 81

The Federal Republic of Iraq shall be accountable to the United Nations organization for guaranteeing the rights, the boundaries, and powers of the two regions designated in this Constitution and the Regional Constitutions.

Article 82

The structure of the Federal Republic of Iraq and its political system as laid out in this Constitution cannot be changed unless through a decision by the legislative authorities in the Federal and Regional levels. Action contrary to this shall afford the people of the Kurdistan Region the right of self-determination.

Appendix III

United Nations Guiding Principles on Internal Displacement

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

- (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
- (b) States when faced with the phenomenon of internal displacement;
- (c) All other authorities, groups and persons in their relations with internally displaced persons; and
- (d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I – GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II – PRINCIPLES RELATING
TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

- (a) When it is based on policies of apartheid, 'ethnic cleansing' or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III – PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;

- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
- (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and

with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV – PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V – PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow

internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

Notes

Web addresses are given where it is believed they will remain stable for some time. Articles from newspapers are mostly from the online version of the newspaper and can be found online for free (at the time of writing) using their URL.

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6. Barham Salih, 'A Kurdish Model for Iraq', *The Iraq Foundation* (10 December 2002) <www.iraqfoundation.org/studies/2002/dec/10_model.html>.
7. Kom, 'The Men Who Put the Kurds Into Iraq'.
8. In any event, the question of voluntary adhesion by the inhabitants of Mosul to an independent Kurdish state was rendered moot by the collapse of the Treaty of Sèvres.
9. Historical sources include: McDowall, *Modern History of the Kurds*; KHRP, *Safe Haven*; and Marion Farouk-Sluglett and Peter Sluglett, *Iraq Since 1958: From Revolution to Dictatorship* (London: I.B. Tauris, 2001).
10. In 1918 Sheikh Mahmud had presented a document signed by 40 tribal chiefs to Sir Arnold Wilson demanding the granting of certain rights to the Kurdish people. He then revolted against British rule in Sulaimaniya in 1919 and was captured.
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 - The International Covenant on Economic, Social and Cultural Rights (date of ratification: 3 January 1976)

- The International Convention on the Elimination of All Forms of Racial Discrimination (date of ratification: 13 February 1970). Iraq has not made the declaration under Article 14 of this Convention recognising the competence of the Committee on the Elimination of Racial Discrimination to consider complaints of violations submitted by individuals. It also made a reservation to Article 22 indicating that it did not accept the jurisdiction of the International Court of Justice over disputes between state parties as to the interpretation or application of the Convention
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 11. These include the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Geneva Conventions for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; the Geneva Convention relative to the Treatment of Prisoners of War; the Geneva Convention relative to the Protection of Civilian Persons in Time of War.
 12. The following acts are absolutely prohibited: (i) violence to life and person, including murder of all kinds, mutilation, cruel treatment and torture; (ii) taking of hostages; (iii) outrages upon personal dignity, in particular humiliating and degrading treatment; (iv) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.
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Kurdish Human Rights Project

The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental organisation committed to protecting the human rights of all persons living within the Kurdish regions irrespective of race, religion, sex or political persuasion. It is based in Britain and was founded in 1992.

OUR AIMS

- To protect the human rights of all persons in the Kurdish regions regardless of race, colour, gender, religion, language, political persuasion or other belief or opinion.
- To promote awareness of the human rights situation in the Kurdish regions of Iran, Iraq, Syria, Turkey and the former Soviet Union.
- To procure the abolition of torture by state authorities throughout the region.
- To raise public awareness of the plight of the Kurdish people in the region and expose human rights violations of Kurdish people wherever they occur.

OUR METHODS

- Conducting investigations and producing reports on the human rights situation of Kurds in Iran, Iraq, Syria, Turkey and the former Soviet Union by, amongst other methods, organising trial observations and fact-finding missions.
- Representing individual complainants before the European Court of Human Rights.
- Advising, training and assisting indigenous human rights groups and lawyers in relation to regional and international human rights mechanisms, including the European Convention on Human Rights and the United Nations.
- Promoting awareness of the plight of the Kurds amongst the European Parliament, the Parliamentary Assembly of the Council of Europe, the OSCE, national parliamentary bodies and intergovernmental organisations, including the United Nations, through publication of reports and reliable data.

- Monitoring legislation, including emergency legislation, its application and effects.
- Liaising with other independent non-governmental human rights organisations working in the same field.
- Co-operating with lawyers, journalists, academics and other experts concerned with human rights.

KHRP CORE PRINCIPLES

KHRP is committed to abiding by the following core principles in all its activities:

- Working with local partners, and liaising with local communities, in defining the scope and planning the implementation of our programmes.
- Responding to needs: identifying the greatest needs and effective strategies to respond to them.
- Acting pro-actively: challenging human rights abuses and environmental concerns in the Kurdish regions before they become a systematic part of the social and/or legal fabric.
- Employing equal opportunities in services and activities KHRP provides and in employing and dealing with staff and others.
- Transparency: with funders, beneficiaries and the public.
- Learning from our mistakes: building effective monitoring and evaluation systems.