

THE ROLE PLAYED BY THE KURDISTAN REGIONAL GOVERNMENT IN THE RECONSTRUCTION OF THE IRAQI STATE

**Submitted by Sairan T. Ahmad to the University of Exeter as a thesis
for the degree of Doctor of Philosophy in Middle East Politics,
January 2012.**

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Abstract

The Iraqi Kurds have stood firmly at the forefront of many changes and challenges in the Middle East and Iraq since 1991, taking the opportunity to stand firm and to become a semi-autonomous entity with an establish regional government. Events after 2003 offered a second historical opportunity to determine their present and future position on the Iraqi political map as a major partner constructing the new Iraqi State and developing their region. The thesis aims to address and challenge the claim that the Kurds have become more integrationist than secessionist since the collapse of Saddam Hussein's regime.

Through a descriptive and analytical narrative of the evolution of the KRG's situation and the Kurds' assertion of their national demands towards Iraq. The study identifies four major dimensions of KRG policy towards Iraq. These include the need to address chronic problems and political disputes through commitment to the new Iraqi Constitution; to apply federal system and maintain democratic principles guaranteeing the rights of all ethnic and religious minorities, through full implementation of Article 140; to resolve the legitimacy of KRG's international and regional oil contracts through real power sharing between regional governments and the federal government; address the dilemma of the rights and duties of the Kurdish forces (*Peshmerga*) vis-a-vis the Iraqi army. As national forces protecting the Kurdish region, the Peshmerga also fought Saddam Hussein's regime participated with US troops in its downfall and joined in fighting terrorism elsewhere in Iraq.

Iraqi factions and parties need genuine political will to overcome tribal and religious differences. Strengthening the current political consensus and implementing a constitution to prevent violations by factions or political groups will help to secure Iraq as a unified state, and to prevent regional interventions of the sort that have so far led to insecurity and destabilisation.

Dedication

To the Kurdish people, who have been denied the right to establish a state on their territory and who struggle constantly to defend their national identity.

Acknowledgments

First of all, I would like to express my limitless thanks to my supervisor Professor Gareth Stansfield. This research could not have been successfully completed without his invaluable contribution. I am sincerely grateful for his continuous guidance and support throughout this long and solitary journey. I benefited greatly from working with him and found him an inspiration for both his vast knowledge and humility.

My heartfelt thanks also go to Dr Clemence Scalbert (as second supervisor), Dr Klejda Mulaj and Professor Hashem Ahmadzadeh for their advice. I owe a particular debt of gratitude and appreciation to Professor Dlawer Ala'ddin for his wonderful support and for his willingness to resolve our financial and administrative problems as a KRG' Minister of Higher Education and Scientific Research.

Further, my deep gratitude to Professor Borhanedin A. Yassin, who was ready to offer insightful suggestions and encouraging comments; his encouragement and guidance were invaluable. Importantly, my special thanks go to Professor Sherzad Najjar, Professor Nouri Talabani, Lorin Suleiman and Mevan Omer for their invaluable suggestions and comments and unlimited assistance. I am indeed privileged to express gratitude to Mrs Lindy Ayubi who read accurately and thoroughly. Finally, I am deeply obliged to all the individuals who agreed to be interviewed, and thank them most warmly.

My special thanks go to my husband Amanj Kareem and to my brothers and sisters for their enduring support and unceasing encouragement; they raised my spirits and helped to bring this project to a successful close. Finally, I wish to honour and remember my mother, who passed away before I obtained the scholarship to start my PhD. I would like to express my limitless thanks for her unwavering love and support, and for her constant encouragement to embark on an academic future.

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List of Acronyms

ADM	Assyrian Democratic Movement
CPA	Coalition Provisional Authority
DC	The Democratic Christians
IAEA	International Atomic Energy Agency
IAF	Iraqi Accord Front
ICP	Iraqi Communist Party
IGC	Iraqi Governing Council
IHEC	Independent High Electoral Commission
INDF	Iraqi National Dialogue Front
IIA	Iraqi Interim Authority
IIG	Iraqi Interim Government
IKF	Iraqi Kurdistan Front
IKP	Iraqi Kurdistan Parliament
IMK	Islamic Movement of Kurdistan
INA	Iraqi National Accord
INC	Iraqi National Congress
IPC	Iraqi Petrol Company
ITF	Iraqi Turkmen Front
KAD	Kaldo-Ashur Democratic Party
KCU	Kurdistan Christian Unity

KDP	Kurdistan Democratic Party
KNA	Kurdistan National Assembly
KNOC	Korea National Oil Corporation
KPDP	Kurdistan Popular Democratic Party
KRG	Kurdistan Regional Government
MOU	Memorandum Of Understanding
NA	National Assembly
OFF	Oil For Food Programme
OIF	Operation Iraqi Freedom
OPC	Operation Provide Comfort
PASOK	Kurdistan Socialist Party
PR	Proportional representation
PUK	Patriotic Union of Kurdistan
RDF	Rapid Deployment Force
SCIRI	Supreme Council for the Islamic Revolution in Iraq
TAL	Transitional Administrative Law
UIA	United Iraqi Alliance
UN	United Nations
UNSC	United Nations Security Council
UNSCOM	United Nations Special Commission
UNSCR	United Nations Security Council Resolution
WMD	Weapons of Mass Destruction

INTRODUCTION

The Kurds knew they had to be a part of Iraq, of the Iraqi government. They knew they couldn't be independent...they were adamant that they had to be part of the new Iraq. I never saw a movement on their part to be independent. But they did demand that they keep their autonomous region, because they had written the Constitution back in 1992; they had had their first elections back in 1992; they had set up a parliament in the early 1990s; and they had their own governmental system. They didn't want to take that apart, and I don't blame them, because they had a well-run, well-structured government.¹

(Jay Garner, 15 July 2009)

BACKGROUND

The Kurdistan Region, or Iraqi Kurdistan,² is appearing as a new de facto entity that has found territorial authority in one of the most sensitive areas in the Middle East. Kurdistan has progressed politically since 1991; it achieved self-rule status in 2003, and since 2005 has been a federated region. The elections held in 2005 received intense public participation and support for the main Kurdish political parties – the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). The PUK and the KDP have governed and ruled the region since 1991, especially after the withdrawal of the Iraqi government (in the form of its military forces and its administrative structures) from the region. It is a fact that Kurds benefited from the liberation of Iraq and the removal of Saddam Hussein, and that this has brought about

¹ Jay Garner is a retired lieutenant general of the US Army. He was first appointed to the Kurdistan region following the Gulf War, when he was pulled out of retirement to lead US reconstruction efforts in Iraq after 2003. Under the leadership of Paul Bremer, he played a significant role and has remained an active commentator on the region and the US strategy there ever since. See Elizabeth Dickinson, “Seven Questions: Jay Garner”. Available at <URL:<http://www.krg.org/articles/detail.asp?smap=02010200&lngnr=12&nr=73&anr=30584>> Access Date: : 15 July 2009

² According to recent statistics from the Ministry of Planning the population in the Kurdistan Region numbers 4,910,742. See Kurdistan Region Government, Ministry of Planning, *Kurdistan Region Population, 2007*; Available at <URL: <http://www.mop-krp.org/detail.aspx?page=statisticsbysubjects&c=sbsPopulation&id=359>>. Access Date: 15 August 2010 and also see Kurdistan Region Statistics Office, *KRG Population - 2007*, Available at <URL: <http://www.krso.net/detail.aspx?page=statisticsbysubjects&c=StatisticsbySubjects&id=359>> Access Date: 15 August 2010.

the biggest historical opportunity for Iraqi Kurds. From 1991, Kurdistan was gradually transformed, both politically and administratively, into a quasi-independent entity. Since 2003, Kurds have in addition been actively involved in the reconstruction of Iraq, while also maintaining a degree of independence over their own affairs.³

The 2009 election in Kurdistan region was different from earlier ones, in that there was an opportunity to move closer towards democracy, since the significant success achieved in this election was also creating an active opposition within the parliament.⁴ It should be noted here that most of the parties and groups in the Kurdistan region support the adoption of a federal system in Iraq, and that almost no-one has raised the slogan of independence. However, this does not mean that they have conceded this outcome but rather that practicality has dictated a more realistic approach at this stage.⁵ In addition, the results of the 2009 elections were expected to have an impact on internal political and governance developments within the KRG as well as affecting relations with the Iraqi government, which had been under stress because of Nuri al-Maliki's aspirations towards centralisation policies on the one hand, and the KRG's gradually increasing moves towards sovereignty on the other. In fact it was felt that a stronger and more democratic KRG might have a significant impact on the

³ In the current period, Kurds in Iraq are dispersed across at least seven governorates in Iraq, of which only three are currently under the control of the Kurdistan Regional Government (Sulaymaniyah, Erbil and Dohuk), while more than 45 percent of the Kurdish areas (known as "disputed areas") remain under the control of Iraqi government, pending their final resolution under Article 140 of the Iraqi constitution. These areas include the province of Kirkuk, and the towns of Kifiri, Khanaqin and Baladrooz in Diyala province; Akra, Shekhan, Al-Hamdaniya, Tel Kaif, Tall Afar and Sinjar in Mosul province; Tooz in Salahaddin province; and Badrah in Wasit province. Although the Kurds constitute a majority in most of these cities, the Turkmens and the recently settled Arabs claim sole ownership of the city concerned.

⁴ The two major parties unified their candidates into what was called the "Kurdistani List", which might have seen the end of the 50:50 system in the Kurdistan parliament; however, for the first time both the major parties found themselves facing genuinely strong opposition, posed by the independent "Gorran List" (Change List) led by the former deputy of the PUK, Nawshirwan Mustafa. As well as the Change List, four additional parties, the Islamists in alliance with the Socialists and the Kurdistan Workers' party, made up another opposition list called the "Chaksazi u Xzmatguzari List" (List of Service and Reform). Somewhat unexpectedly the Islamists appeared to be less interested in these elections, compared with previous ones.

⁵ The Kurds are aware that the long history of refusal by any country to offer serious help to the Kurds was justified on the grounds that Kurdish demands for independence endangered the territorial integrity of these countries and threatened their national security. In many cases, they maintained that Kurdish legal rights should be respected and protected, but only within an autonomous arrangement in an existing state, while separatism would only lead to war, and ultimately would be rejected by the international community.

Kurds in the neighbouring states, as well as contributing to the stability that peace and security would bring to the Middle East.

It is evident that there are several international difficulties as well as regional and national obstacles (both economic and social) confronting the Kurds. First, the Kurds have been accused by some Arab and Turkmen groups of expanding their territory and their control over resources with the intention of building the foundations of an independent Kurdish state. The Kurds are also worried about the current political approach in Iraq which is focused on sectarian division and political consensus rather than on national unification. Secondly, from a regional point of view, the Kurds are aware that Turkey, Syria and Iran wish to challenge the KRG and interfere in its internal affairs. These countries have manipulated their allies in the new Iraqi government in order to create barriers to Kurdish ambitions, particularly in relation to the implementation of Article 140. They often express resentment publicly towards a more powerful KRG, and claim that the Kurds are blocking peaceful co-existence between different ethnic groups by the demarcation of regional boundaries and through proceeding with the development of Kurdistan's oil resources. The Kurds, on the other hand, emphasise that these places were subjected to ethnic cleansing and Arabization. It follows from the over-emphasis by Turkey, which has drawn several red lines for the Kurds, that any political gain by the Iraqi Kurds is likely to create a problem for the Kurds in Turkey who may decide to demand similar political gains. Thirdly, the international powers, particularly the United States, will put pressure on the Kurds to be more flexible and to offer concessions on their territorial and economic demands. Therefore, the Kurds will find it difficult to protect the relative independence they once enjoyed, and will in due course find it virtually impossible to seek independence.

However, Kurdistan is taking advantage of a period of stability and has established democratic law, which gives a firm basis for undertaking further development, even though there is more that needs to be done to enable the Kurdistan region to continue on its road to progress. Recent tensions between the Kurdish leaderships and the administration of Iraqi Prime Minister Nuri al-Maliki have increased. Kurds are being accused of crossing the green line, especially with regard to Kurdish claims to Kirkuk province (Kurds aspire in particular to return to incorporating Kirkuk as part of the

Kurdistan region), and to parts of three other historically Kurdish-populated provinces of Diyala, Mosul and Salahaddin, which currently lie outside the present borders of the Kurdistan region. In the context of these various areas, the Kurds insist on a referendum through implementation of Article 140 which calls for a referendum to decide the fate of Kirkuk and other disputed areas, and which takes account of the fact that it might be impossible to have a stable Iraq if the border between the two sides remains unstable.

The Kurds have endeavoured to reach a compromise with the central government in Baghdad over implementing the constitution (including Article 140), integrating the Kurdish fighting forces, the *Peshmerga*, within the Iraqi army, and recognising KRG oil contracts. Obviously, there have been disputes between the two parties over the oil law, with the Iraqi government claiming that the oil contracts were illegal and accusing the Kurds of having negotiated behind the scenes without Baghdad's knowledge. In addition, the Iraqi government blame those countries that have approached the Kurds and treated them more or less as an independent nation. For this reason, progress recorded in Kurdistan has not been embraced by Baghdad, even though the increased revenue would be beneficial to the country as a whole.

On the other hand, it is argued that the tensions between the two sides might increase and erupt into violence with the withdrawal of US troops. Indeed, the US was intending to withdraw all its troops and leave Iraq by 2011; however, they started to withdraw from the major cities on 30 June 2009. At the same time, US officials were attempting to mediate between the two sides to resolve their disputes and also to make sure that fighting would not start in the region as soon as the Americans left Iraq.⁶ It is possible that if these problems remain unresolved, the situation may lead to conflict with the Iraqi government and this will threaten stability and peace in Iraq. It is worth repeating that the KRG wish to resolve these issues peacefully and in accordance with the terms and conditions enshrined in the Iraqi constitution. Despite the circumstances and whatever the differences might be, it does not mean that the problems are

⁶ During his visit to Baghdad and Erbil at the end of July 2009, and at meetings with both Maliki and Masoud Barzani, US Secretary of Defence Robert Gates argued with reference to tensions between the Kurds and the Iraqi government, that the US was ready to help resolve disputes over boundaries and hydrocarbons before they left Iraq. See "Ruling bloc wins Iraqi Kurd poll", Available at: <URL: http://news.bb.co.uk/1/hi/world/middle_east/8175097.stm> Access Date: 29 July 2009.

insurmountable or cannot be solved; indeed, both sides claim that they depend on the constitution and on the jurisdiction of the federal courts.

The Kurds have constantly explained that the Iraqi constitution which was endorsed in December 2005, has become the foundation of a new democratic and federal Iraq, and that this reflects the collective desire of all Iraqi people to prevent a repetition of past violence, while providing a new opportunity to improve the lives of all the country's citizens. In this regard, the KRG has made it clear that the exploration and production of oil and gas that has led to the Kurdistan region's present export trade, is within the terms of the constitution of Iraq. It can be seen that some of the serious problems between the two parties is related to the lack of a federal hydrocarbons law or a revenue-sharing law.

1. AIMS AND OBJECTIVES

The main focus of this research is based on the observation that the Kurds are supporters of integration with Iraq rather than opponents. They insisted on accommodating themselves to the new situation that emerged after 2003, and became pro-Iraqi, and since then they have given great support to the Iraqi state. This study attempts to analyse facets of changes which have occurred in Kurdistan Region as well as in Iraq, in order to provide a clear insight to the study of Kurdish aspiration in new Iraqi state post 2003. To achieve this objective, the study observes that the Kurds are trying to give a legal and constitutional framework on their gains which have been earned since 1991. Further this study attempts to examine the most significant period of the Kurds attitude and its interaction with the Iraqi state post 2003. This in turn, requires reference to the impact of most important events and the consequences that occurred during the years 1991-2003.

After the removal of Saddam's regime and the adoption of the constitution, the Kurds became partners in the governing of Iraq and during the rebuilding of the country have continued to participate in forming a new political system and creating mechanisms to guarantee justice and promote reconciliation with Iraq's diverse

political and social groups.⁷ The Kurds have seriously attempted in proving their attitude to ensure further political progress and produce a unified, democratic Iraq, believing that within Iraq they could maintain their power and secure their rights. Furthermore, their new discourse since 2003 has been to promote federalism. However, while the Kurdish leaders clearly favoured remaining within Iraq, orthodox Kurdish opinion, as expressed in both Kurdish and non-Kurdish literature, was not satisfied with re-joining Iraq, and was inclined towards independence, being of the opinion that the Iraqi government could not be trusted to keep promises in the future, and that the dominant Arab view was reminiscent of the previous era which had always denied the Kurds their basic human rights. Overall it would seem that the Kurds have been insistent on resolving issues with the Iraqi government, with the aim of guaranteeing a future for the Kurdish people and preventing any repetition of their tragic history. They have continuously claimed to be seeking a relationship within the framework of the constitution of a federal, democratic Iraq.

This thesis is a contemporary historical narrative of changes and developments on the positions and strategy of the Kurds to achieve their national demands in a civilised and rational form. Given to the impact of the significant events of Iraq's invasion of Iran; also, Iraq's occupation of Kuwait until the attacks on 9/11 and their implications to alter International community's attitude toward Iraq, and the light on Kurd's suffering for long decades of tyranny by previous Iraqi regimes. In addition, this thesis will focus on defining the role and contribution of the KRG in post-Saddam state-building efforts in Iraq, whether institutional or constitutional processes, which should be considered in the broader context of testing the federal model in post-war Iraq. The thesis could argue that it is an attempt to explain the tension between the efforts to build a strong Iraqi state to protect its territory and peoples, on the one hand, and the power of that state domestically, on the other.

⁷ The Kurds have participated effectively in the Iraqi government since the liberation of Iraq in 2003. Opportunities for Kurds in Iraqi politics have grown dramatically, and they have obtained some of the highest positions, especially after the Kurdish coalitions won 75 major seats in the Iraqi parliament; this led to the appointment of the Kurdish leader Jalal Talabani as Iraq's first Kurdish president after the 2005 Iraqi elections. In addition, the deputy prime minister, the deputy leader of the Iraqi parliament, the minister of foreign affairs, and the chief of staff are all Kurds; this was because, after having done so successfully for 12 years, the Kurds were the only ones in Iraq who knew how to govern and lead.

Further, through this narrative the research attempts to determine whether Iraqi Kurd's aspiration after toppling Saddam regime was in the form of separatists or Integrationists. This study focus is an attempt at providing an understanding and considering of the core differences and disputes between KRG the Iraqi government in the four levels (the Constitution/ federalism, the implementation of Article 140, Oil contracts, and case of Peshmerga) and how to resolve through negotiations and national reconciliation, which is a shared responsibility shouldered by the political forces, opinion leaders, religious scholars, intellectuals, civil society organizations, and all active forces in the Iraqi arena.

2. RATIONALE AND MOTIVATION

The significance of this study is reflected in the analysis of the status quo of the Kurdistan region, which is going through periods of tensions, harmony and negotiations in order to resolve some of the chronic issues that have remained unresolved by all the previous governments. For example, concerning Kirkuk and the other disputed areas, the dispute between the Kurds and the Iraqi government over Kirkuk has lasted more than 80 years and has often resulted in violence. The crucial issue is highly problematical for both sides, and must therefore be resolved, relates to the era of Saddam Hussein. This is the issue of the accelerated practising of ethnic cleansing, by expelling or killing Kurds and Turkmen, or by subjecting them to nationality 'corrections' (whereby non-Arabs are forced to declare themselves Arabs), along with the settlement of Arabs into Kurdish areas. These developments have created difficulties and problems that determine the administrative demarcation between the Kurdistan region and Iraqi government.

The importance of this subject, which will be defined and analysed in the course of this discussion, is related to the current and future state of Kurds as a nation in this part of Kurdistan. Moreover, Kurds are involved in promoting the culture of democracy, not only in Kurdistan but also in Iraq; Kurds have helped Iraq's evolution into what it is today. Furthermore, this extension of the culture of democracy will directly or indirectly have an effect on the Kurds in the other parts of Kurdistan (in Turkey, Iran and Syria).

Additionally, this thesis has examined the main controversial issues between the two sides and suggests the following solutions:

1. The constitution is based on the rules of the political balances between Iraqi factions, but also takes into account the interests and wishes of each of the three components (Shiites, Sunnis, and Kurds). Even so there are Constitutional gaps and contradictions that should be addressed in the Iraqi Constitution without prejudice to the rights of minorities and the federal regions. On the other hand, it seems clear that some groups wish to exploit this issue in order to exaggerate the problems between the KRG and the Iraqi government. For this reason, the Kurds have consistently confirmed their adherence to the constitution, and that maintaining their rights as enumerated in the constitution represents a red line that should not be crossed.

2. Appropriate solution could be through the formation of other federal regions. One trend in Iraq supports the creation of other federal regions, whereas another trend strongly opposes the application of any idea of federalism as a whole.

3. Concerning the type of political morality that should be followed in Iraq, it would be necessary to create trust among all Iraqi parties; they should also respect their commitment to agreements made between them. The lack of trust between the Iraqi parties neither serves the stability nor ensures the unity of the territory of Iraq, since instead of recognising the rights of other parties they resort to conspiracy and attempt to evade their responsibilities. The historic responsibility for the political parties to decide the fate of Iraq and to face what might happen in the future rests on the status quo.

4. The Iraqi Government, the federal region, and civil society organisations need to act on all levels across Iraq to promote political awareness of federalism and make it understood that the application of federalism will maintain the unity of Iraq and will not divide it. Some Iraqi politicians have frequently made confessional statements;⁸

⁸ On 16 August 2011 the Iraqi Prime Minister declared in a speech (published in the Iraqi media) that the federal system was not favoured by the Iraqi people. This speech was contrary to Iraqi demands, particularly as the citizens in the provinces of Diyala and Basra had recently demanded federal regions.

this is likely to lead to provocation and disorder that in turn will lead to increased unrest among the Iraqi factions.

5. Article 140 should be applied at all stages, because of its importance not only for the Kurds but also for the whole of Iraq, but with significant difference at its core. Disputes between the provinces of Anbar and Karbala, and also between the provinces of Baghdad and Salahaddin are due to administrative changes only, while in the Kurdish areas, deliberate administrative and demographic manipulation has been implemented. Given the nature of religious and ethnic composition of Iraqi society, the only path to maintain the unity of Iraq is security, and respect and commitment to the constitution to ensure the peaceful coexistence of all its parts. Therefore, the Iraqi government must genuinely intend to implement Article 140. A new Iraqi government must also prove in practice that it is working to eliminate the process of Arabization that was so widely exercised by the Baath regime. What is currently happening in the Iraqi arena seems to confirm the opposite, since evidence indicates that the process of Arabization by the new Iraqi government is occurring in another form and in new styles in the disputed areas.⁹

6. While the success of the oil sector is critical to the success of the Iraqi economy, the KRGs want to push ahead unilaterally with developing oil fields within their region. They also want each of the country's regions to receive a portion of all the revenues in Iraq, including oil revenue, according to the size of its population, particularly as the new Iraqi constitution allows a federal unit to retain a large percentage of revenues collected within its borders, with the rest being collected by the central government. The Iraqi government has deliberately neglected the issue of an oil revenue-sharing law, and is unwilling to give the regions the broad powers

⁹ It is evident that many Arab political parties are trying to follow the same methods used by the Baathist regime to change the demographics in the Kurdish areas, known as 'disputed areas', and currently outside the control of the KRG administration. In an interview with Mahmoud Sangawi (a prominent military leader and member of the PUK's political bureau) via satellite on 15 August 2011, he accused the Iraqi forces of collaborating with terrorist groups on a large scale to expel Kurdish citizens living in the disputed areas. He said the PUK had many documents to prove this, adding that the *Wali* of Diyala, a prominent al-Qaeda terrorist leader, had been arrested carrying half a ton of TNT, but released after six hours. Sangawi had also seen a list of names of terrorists who had blown themselves up, simultaneously killing large numbers of citizens; however, the Jalawla administration considered them martyrs and the Iraqi government gave them salaries. In addition, over 67,000 acres of agricultural land owned by Kurdish families in Diyala, but occupied by resettled Arabs (*wafideen*) had not been returned to its owners due to some Arab political parties in the government encouraging the *wafideen* to stay.

granted by the Iraqi constitution to extract and manage the oil sector by regions. The main controversial debate will concern the capability of a federal government and attempts to centralise and control all oil contracts that have been held by international oil companies. Applying a federal system will provide for a fair distribution of revenues according to Iraq's demographic structure, and will also prevent the federal government from controlling oil resources. It must be remembered that the KRG's have made serious attempts to avoid the re-centralisation of Iraq, since their people have paid a heavy price to obtain the gains mentioned in the Iraqi constitution.

7. It is also quite important to focus on the KRG's problems inside the Kurdistan Region itself. The Kurdistan Regional Government should respond to and deal more moderately with the demands of the opposition on the most sensitive issues; these include: the elimination of administrative corruption at all levels of government; the transparency of oil contracts and how resources are spent and distributed; and a real union between administrative units, particularly the financial and military affairs, i.e., the formation of a united Peshmerga force to protect the region under the KRG's control (not run by the main PUK and KDP parties). This will solve the internal problems and disputes between the Kurdish parties and Iraqi Prime Minister Nouri Al-Maliki have a positive impact on the KRG, giving it a united voice in its dealings with the Iraqi government.

3. RESEARCH QUESTION

In this thesis, I wish to analyse and examine the question as to whether or not KRG's were driving towards total independence before the 2003 war, and whether they transformed into enthusiastic pro-Iraqis from 2003 onwards. In this context, I shall endeavour to address the hypothesis that the KRG's have been effective supportive elements for the Iraqi State since 2003, that they do not want to secede from Iraq and that they wish to compromise and make serious efforts to achieve their legitimate rights and protect their gains via the Iraqi political process. Through a survey, I will try to address the following questions:

- a. How did the KRG's protect the gains that they had made within the new structure of Iraq during a seven year period, and how they achieve the others? In other words, how were the KRG's able to achieve the gains that are mentioned in the Iraqi constitution?
- b. Why are there fears about the KRG demands? Do the KRG's constitute a factor for stability or fragmentation in Iraq?
- c. Does the federalizing for Iraqi State and the implementation of Article 140 only guarantee the bringing of KRG rights, or should they be seeking another guarantee?
- d. Why did Kurdish aspirations change in post-Saddam Iraq? What are the ways by which the re-organisation of the KRG-Iraqi government relationship has been taking place in Post-Saddam Iraq, and what effects has this reorganisation produced?
- e. Why are the Kurds interested in annexing the Kirkuk province to the Kurdistan region? Do Kurds give up to join Kirkuk within the KRG or should they be resorting to military actions?

4. OVERVIEW OF RESEARCH

The introduction provides the reader a summary of the work reported in this thesis and the outline and structure of this research. As the purpose of this thesis is to introduce the reader to the complexities of the political situation of the KRG's within Iraq, and the changes that happened in the political arena at the level of regional and international towards Iraq and its implications over the Kurds.

Chapter one focuses on theoretical frame work and methodology. The study uses this chapter to give details on the theory of integration and non-state actors. Besides, this chapter refers to the consociational theory, which whilst is similar to other theories of conflict regulation such as integrationist theories, nevertheless it is strongly connected with the modes of democracy (which include elections, cabinets, parliament, and civil service), Further, this chapter extends through the federalism theory as an arrangement for a pluralistic society of diverse peoples aiming at a union of parts.

This chapter helps give an understanding of the ideologies and the various interpretations of the non state-actors' role on the political stage. It is only through tracking these three theories that the necessary grounds attempt to tackle and understand the KRG's position during the successive governments up to the creation a new Iraqi government post 2003.

Chapter two takes a comprehensive look at the brief history of the Kurds and their situation in Iraq during the Ottoman Period and the British Mandate and the Kurdish revolutions that followed up to Iran -Iraq war: 1980-1988.

In chapter three an attempt is made to identify the respective events and the different factors that influenced and caused the first Kurdish elections in 1992 and formation of Kurdistan Region Government. It also attempts to observe how Kuwait's invasion resulted in radical changes inside Iraq and in the region, including the establishment of Safe Havens for the Kurds and UN's reactions to ratify the UN's SCR 688, and the SCR 986 (Oil-for-Food programme) and its impact on the Kurdistan Region. This chapter helps give an understanding of the factors that had significant impact to the outbreak of internal fighting between the two main Kurdish parties, and how it led to administrative division between them.

Chapter four tackles the progress of the political situation in the Kurdistan Region since 2003 that started as a result of Iraq' liberation. This chapter is an attempt to demonstrate the US administration's effort to restructure the Iraqi State through the formation of the interim government of Iraq and helps the Iraqi factions to write a new constitution for their country.

Chapter five addresses the first major focus and the most original contribution of this study which is the repercussion of the new Iraqi constitution on the Kurds, which gave the KRG's a broad power to manage their area. The second section of the chapter studies the impacts and objectives of the implementation of the federal system within the Kurdistan and Iraq.

Chapter six deals primarily with the intricacies of the case of Kirkuk through the examination of the various reasons and objectives that lay behind implementing the

process of Arabization by the Iraqi regime in the province of Kirkuk and its environs, which is affected seriously to change the demographic ethnic composition in the city of Kirkuk. Chapter seven goes on to tackle the phases of Article 140 of the Iraqi constitution which is necessary to implement a road map between the KRG and the central government in Baghdad in order to settle their disputes and determine the fates of the disputed areas. Although it is apparent that the Arabs (whether Sunni or Shiite) with Turkmen have united to stand strongly against the notion of Kirkuk's inclusion in the Kurdistan Region and their alliances focused on how to prevent the implementation of Article 140.

Chapter eight addresses KRG's policy on oil contracts, which have been conducted with international and regional companies. This chapter covers a complicated issue which is raised between the KRG and Iraqi government about the legitimacy of those contracts. From the KRG's view it is deemed that those contracts are legal and it is exercising its legitimate right derived from the constitution.

The final chapter addresses the issue of the Peshmerga (Kurdish forces) in post-Saddam Iraq and the negotiations between the two sides to recognize the rights and duties of the Kurdish forces by the Iraqi government as similar to the Iraqi military forces.

Chapter 1:

THEORETICAL FRAMEWORK AND METHODOLOGY

INTRODUCTION

Identifying a theoretical model to enable analysis of the contemporary political situation in the Kurdistan region is a highly problematic process, especially given the speed with which events are changing in the Kurdistan region and Iraq, as well as in the wider Middle East. The Kurdistan region has been affected by instability in the international situation and more specifically within the Middle East. On the other hand, to understand this subject it is necessary to combine reflection on past issues with speculation as to future events, particularly with regard to the current US withdrawal from Iraqi cities and the challenges that will result from the elections that will take place both in the Kurdistan region and Iraq. This thesis will examine current and emerging evaluations of the Kurdistan region, thereby, to a certain degree, bringing into contention those aspects that can be described as analytical, and those that may be determined as prescriptive.

Events during the past two decades and specifically what has been happening to the position of the Kurds in Iraq will be subject to evaluation and discussion. The collapse of Saddam Hussein and the subsequent participation of Kurds in the Iraqi government have given them opportunities to become a major component in the present and future government of the whole of Iraq.

In effect, the Kurds have been gaining experience in the administration of their de facto government in Iraq since 1991, and the Kurdistan region has been relatively peaceful and prosperous since the fall of Saddam Hussein. However, the political autonomy of the Kurds, and their territorial and economic demands have caused friction with Prime Minister Nouri al-Maliki and other Arab leaders of Iraq, and with neighbouring Turkey and Iran: nor do the major outstanding issues between the Kurds and the Iraqi government seem to be close to resolution. After the Iraqi government reduced the role of Kurdish representation in the mixed provinces, tensions increased and there were reports that these disputes between Kurdish forces and Iraqi

government forces had the potential to erupt into violence. In this context, the Kurdish leaders confirmed their desire to remain as part of Iraq and showed their support for full negotiations, in order to resolve the disputed issues and to prevent the stability achieved in the Kurdistan region and also throughout Iraq from being undermined.

The Kurdistan region does not, however, have its own regional constitution. Currently (summer 2010), the KRG has legislative and executive authority in the areas defined by the Iraqi constitution, consisting of three provinces (Dohuk, Erbil and Sulaymaniyah), and its duties include allocating the regional budget, health, education and security. The KRG exercises considerable powers of autonomy within a federal Iraq, taking into consideration the fact that any new constitution in Kurdistan cannot contradict that of Iraq.

While it is true that the political situation in the Kurdistan region is distinctive, the region itself is not a State recognized by the international community, or by other States in the Middle East, due to its geographical location at the sensitive intersection of the boundaries of Syria, Iraq, Iran and Turkey. Furthermore, Kurds are subjected to the effects of relations between the interests of the international political powers and the interests of the states that include Kurds in the Middle East; this of course influences the interactions that arise from such alignments. In terms of institutions, attributes and characteristics, the internal political system has evolved rapidly with the development of administrative systems and a growing civil society in the Kurdistan region.

The impact of changes in the global economy and in regional geopolitics has created new opportunities for studying the political system in the Kurdistan region. Kurds now occupy a significant position in the foreign policies of various states, which can be attributed to several interrelated factors, including in particular the participation of international and regional companies for the exploration of oil in this region. It is therefore important to note that the subject of the Kurds has been discussed in terms of the impact of Kurdish issues on the relations and interests between and among the states in the Middle East that possess significant Kurdish populations. In this respect, it may possible to depend on international relations theories to analyse and understand the political situation of the Kurdistan region.

Regarding the use of international relation theories, Gareth Stansfield notes that, “it is an impossible task to provide a truly insightful analysis of the Iraqi Kurdistan predicament from the starting point of the domestic political system”, pointing out that the de facto Iraqi Kurdistan may be positioned within theoretical interpretations of the characteristics of the State. There is an argument to the effect that

...the theories of politics and government which exist under the umbrella of comparative politics are founded in the analysis of established, and often State, systems, and the discipline of comparative politics originates in the study of nation States and the liberal democratic politics. Comparative politics has been developed and is used to investigate the governance and politics of nation states. Nonetheless, this does not prevent it from been applied to Kurdistan region.¹⁰

There are, however, aspects of political systems that have been addressed in the theoretical literature. A focus of this survey is to identify the political system that has developed in the Kurdistan region since 2003, and to discover aspects of the development of the political system in the current political conditions in the Kurdistan region as well as in Iraq as a whole. It is for this reason that the study intends to use the theory of a consociational political system as a basis for analysing the challenges and factors the Kurds face to maintain political stability in their region, a precedent that has been addressed by this method in other literature. Stansfield suggests arguments as to why this theory can be employed in the case of Kurdistan, stating that the future peaceful development of the political system in Kurdistan region can be achieved by the adoption of a consociational model. However, it is argued that the splitting up of administration between two major parties as a result of political cleavages after 1996 might have destroyed the consociational system, despite the cooperation of the elite and the association of administrative activities between the areas of the two parties.¹¹

Nevertheless, we can argue that the consociational system has not lost its importance, particularly during the last decade when the two main parties reached a conviction,

¹⁰ Gareth R. V. Stansfield, *Iraqi Kurdistan: Political development and emergent democracy*, (New York and London: Routledge Curzon, 2003), p. 18

¹¹ *Ibid.*, p. 21.

this was only through political consensus and that cooperation would maintain the security and stability of the status quo of Kurdistan Region. According to these facts, an analytical and descriptive route is pursued to achieve the objective of the study. It could be argued that the nature and scope of this thesis is of a qualitative nature, which deals mostly with accounts of contemporary historical events. Besides, given its empirical nature, the study focuses on how and why these policies and decisions were made by Kurds. In this chapter we try to tackle the theories of Integration and Non-State Actors, consociational theory and federalism theory, in order to understand the development and changes in political situations and its repercussions.

1.1 THEORY OF INTEGRATION AND NON-STATE ACTORS

Depending on the international relations theories, which have been illustrated in the process of State interaction at the governmental level, I will attempt in this study to elucidate the interaction of the non-state relationships. In the study of international affairs, actors in the international community must be taken into account. It has been argued that in this context, domestic political issues and cross-cultural and social relationships, for instance, are important elements. Despite this, the primary actors in present world politics are still nation-states or sovereign States, which are the most important units of analysis in the study of international relations. Thus, it becomes apparent that many political scientists argue that nation-states are the first for understanding and explaining world political behaviour.

This tendency of thought has depended on several postulates to the state-centric model; first, global politics are dependent on the interaction of nation-states. Secondly; while such states are equal in sovereignty they are, however, considerably different in size and power. Thirdly; nation-states are independent and distinguishable from one another. Fourthly; the governments of nation-states, especially their foreign-policy agents, are only participants in world politics.

Nevertheless, it can currently be seen that non-state actors, as entities other than states, have interacted with the international community, and that, according to Philip

Taylor, most of the incidents of international conflict since the Cold War have largely involved non-state actors.¹² Taylor also notes that non-State actors include multinational corporations, stateless groups (e.g., the Palestine Liberation Organization, the Basques, the Kurds), terrorist organizations (the Irish Republic Army, Black September, and so on), regional international organizations (the Organization of American States), and the United Nations Security Council and General Assembly. He is critical of the state-centric model which ignores the existence and importance of regional international organizations,¹³ and has suggested that in this context it is necessary to identify the purpose and functions of non-state actors, in order to create a framework for analysis of non-state actors. These must then be classified to construct a typology of the units (including size, memberships, geographical location, function, purpose, longevity, importance, and so on). In addition, he argues that to understand the behaviour of any non-state actor it is necessary to be clear about their objectives, the nature of their structures and processes and how they organise themselves: “the simplest definition of non-states is that they are entities other than nation-state actors that interact in the international political system”.¹⁴

In this regard, some of the more traditionalist scholars maintain that non-state actors are unimportant in the study of world politics, whereas others stress the importance of such components. Borhanedin Yassin suggests that the traditionalist view is expressed in the state-centric model, which is based on several assumptions; thus, states are equally sovereign regardless of size and power; world politics are exclusively based on the interaction of states; the relationship between domestic and foreign policies is not relevant; there is no authority above that of the state; and the world is divided into states with governments exercising overall control.¹⁵ With regard to international integration as an insignificant area within international relations, Taylor indicated that according to some international political scholars (such as Altiero Spinelli), theorists of international integration consisted of functionalists, the confederalists, and the federalists. Other such scholars (such as Charles Pentland) have indicated four

¹² Phillip Taylor, *Non-state Actors in International Politics From Trans-regional to Sub-state Organization*, (Boulder and London, Westview Press, 1984), pp. 3-5.

¹³ *Ibid.*, pp. 3-5

¹⁴ *Ibid.*, pp. 19-20.

¹⁵ Borhanedin A. Yassin, *Vision or Reality? The Kurds in the Policy of the Great Powers 1941-1947*, (Malmo, Sweden: Lund University Press, 1995), p.21

schools: the pluralists, the functionalists, the neo-functionalists, and the federalists. These schools might represent explanatory capabilities, depending on the aspect or stage of the integration process. Additionally, Pentland assigned intellectuals such as C. J. Friedrich, W. H. Riker, Peter Hay, George Liska, and Amitai Etzioni to the federalist school.¹⁶

1.2 CONSOCIATIONAL THEORY

It has been argued that consociationalism is concerned with “consociational democracy” which is defined by the following four conditions: a grand coalition, proportionality (which include elections, cabinets, parliament, civil service, etc.), mutual vetoes, and segmental authority (depending on whether each social segment has its own sphere of authority, either territorially or functionally).

In terms of the evolution of the political situation in Kurdistan region in particular and in Iraq in general, it can be useful in this study to depend on explanatory theories which are devoted to the analysis of political and ethnic conflicts; therefore I pay particular attention to consociational theory as a normative theory that is pertinent to the concept of the establishing and progressing of democracy. An interesting interpretation of the concept of consociationalism is provided in the theory developed by Arend Lijphart, and its relevance to pluri-national places; thus it can be a state, a place within a state, or a place that crosses state borders. Scholars such as John McGarry and Brendan O’Leary base this subject on the concept of a pluri-national place and its relevance to discrete national identities; thus “the dominant political party or parties, or its popular civic associations, are nationalist in character and support the classical nationalist goals of self-determination (autonomy or independence)”¹⁷ It is reasonable therefore to assume that this theory can be possible and to depend on it in the present study.

¹⁶ Taylor (1984), *op. cit.*, p. 31.

¹⁷ John McGarry and Brendan O’Leary, ‘Consociational Theory and Peace Agreements in Pluri-National Places: Northern Ireland and Other Cases’, in *The Failure of the Middle East Peace Process? A Comparative Analysis of Peace Implementation in Israel/ Palestine, Northern Ireland and South Africa*, ed. Guy Ben-Porat. (New York: Palgrave MacMillan, 2008), p. 70

The theory started as an attempt to explain how democracy remained stable in the deeply-divided societies of Switzerland, Austria, and other places. Indeed, it is evident that consociational democracy was discovered in several other countries, including Colombia, India, Lebanon, etc. Although controversies continue as to whether it is contemporary and more relevant to the transitional regime type, it has reduced the effects of deep societal divisions. It is also crucial to note that although the consociational theory has been critiqued by integrationists, it is very accommodating towards minority groups, whether defined as nations, or as ethnic, linguistic, or religious communities, which in turn leads to empowering the ethnic elites who have an interest in maintaining division along ethnic lines.

It has also been claimed that consociational institutions have been working to entrench divisions. According to McGarry and O'Leary, other commentators object to the way consociationalists focus on political elites rather than supporting the mobilisation of civil society organizations in order to convert society towards progress and development. Their arguments have shown that they can support consociations if it is appropriate to do so, although they argue that consociational institutions can be seen by minority nations as too integrationist. It has also been asserted that the focus is on integrating diverse groups within States through accepting them as groups, rather than pursuing secession or division as a way of resolving conflicts.¹⁸ It could be argued that during the past two decades, there have been settlements, and also efforts to reconcile a number of issues that are pluri-national in origin, as happened in Bosnia-Herzegovina, Cyprus, Macedonia, Moldova (Gagauzia), Papua New Guinea (Bougainville), the Philippines (Mindanao), Sudan (the South), Northern Ireland, as well as Iraq (Kurdistan region). However, in some of these, the issue is not power-sharing but the achievement of territorial autonomy.¹⁹

According to Yassin, scholars have used several trends to illustrate the Kurdish dilemma, based on a variety of factors within or outside the framework of the Kurdish community. Some have focused on the social and economic aspects of the Kurdish question, while others have depended on the ethno-political nature of the issue.²⁰

¹⁸ *Ibid.*, p.71

¹⁹ *Ibid.*, p.85

²⁰ Yassin (1995), *op. cit.*, p.15

From its establishment up until the present, the Iraqi State has attracted the attention of the Great Powers from both strategic and economic perspectives. As a part of this context, especially in the post-Saddam era, the Kurds have taken on a new role in its development; they offer an interesting field of study, since they reveal a strong interactive relationship between a numbers of factors with an emphasis on the international dimension. It is a fact that since 1991 the Kurdish dilemma in Iraq has attracted increasing attention from the international community as well as regional policymakers.

In the case of Iraq and Kurdistan as the pluri-national community and despite the considerable instability of the situation, the process of democracy has been promoted. I want to refer here to the situation outlined by Yassin who maintains that

...the Kurds have long been a critical political factor in the region in which they are found by residing in a number of neighbouring countries, by being consistently involved in political upheavals against the central powers in those countries; though of Kurds and especially Kurdish political movements with one another across official State boundaries; and being involved in and affected by Great Power policies in the area.²¹

I think that what is even more important in this context is that this theory could be applied to resolving intra-state conflicts and promoting consensual democracy, especially since Iraq's new constitution has emphasised autonomy for the regions, with immediate recognition for Kurdistan as a region, while provisions for power-sharing at the central level are relatively weak and informal, since they are based on political consensus and this, in turn, is subject to change in political equations within Iraq.

In addition, the Kurds want a weak central state because of bad experiences with all the previous Iraqi governments, even though they were permitted some power-sharing for autonomy. They have struggled for the insertion of a clause in the "Transitional Administrative Law" section of Iraq's interim constitution confirming that Iraq is composed of several nations as "a country of multiple nationalities", and that Arabic

²¹ *Ibid.*, p.22.

and Kurdish are both official languages, with the aim of consolidating these items in the permanent constitution. In this regard, some scholars have argued that the aim of nationalities is to seek a special form of collective territorial autonomy, in which their homeland has a unique autonomy and therefore possesses a distinct status when compared with other regions belonging to the State's dominant national community. In this context, one needs to consider that the weakness of this theory is that at times it could be difficult to determine whether such matters have been addressed by traditional consociational theory.

In fact, for the Kurds the current priority is to unify Iraq and attempt to achieve a real sharing of power through a system of federation in Iraq and to expand its current borders to incorporate Kirkuk and other disputed areas into the Kurdistan region. It should be noted that supporters of such "integrative" federalism include Donald Horowitz, Andreas Wimmer, the Dawishas, and Kanan Makiya; the latter three writers have explicitly supported such arrangements in Iraq and Kurdistan. In terms of evaluating this theory, McGarry and O'Leary have asserted that not all ethnic groups are secessionists, and that it is not true that ethnic divisions are necessarily more intractable than class or religious disputes. Integrationists believe that, generally speaking, minority nationalities try to obtain collective self-government; therefore, they suggest dividing nationalities into multiple federal units as a preferred strategy, thereby making it more difficult for them to secede. In addition, it can be said that the minority divisions into units could lead to facilitating the construction of alliances between varieties of groups, as well as to reinforcing central State "nation- building". The counter argument, on the other hand, is that, in particular circumstances stateless nations will persistently oppose integrationist partition; hence; such a situation promotes conflict rather than reducing it. In any event, it has been stated that the consociational theory is similar to other theories of conflict regulation, particularly integrationist theories, at least in its early modern forms which focused on institutional prescriptions that coincided with a State's territory.²²

²² McGarry, and O'Leary (2008), *op. cit.*, pp. 77-78

1.3 FEDERALISM THEORY

As a principle and in practice, federalism has been used increasingly in the international arena, particularly during recent decades. One might describe it as a way of protecting a country's territorial integrity; on the other hand, most recent ethnic movements are interested in federalization as an important political step towards identity recognition, a high degree of autonomy in the international community, and political unity.²³ Federalism may be considered as an arrangement for a pluralistic society of diverse peoples aiming at a union of parts. On the other hand, federal polities limit governmental power by dispersing it among administrative levels with independent sources of authority that aim to protect the diversity of political entities, particularly ethnic minorities. From this point of view, it has been argued that federalism aims "to be the toleration of difference rather than the overcoming of difference in a wider unity."²⁴

It seems that a federal solution can be an appropriate method for organizing national and ethno-national communities so that they can live with differences. It is widely believed that the real spread of federations occurred in the period after the Second World War, mostly in former colonies in Asia and Africa, as well as in Europe, which can be turned to as an appropriate political model for uniting multi-cultural societies. Today, federations represent some of the largest nations of the world: the Russian Federation (replacing the former USSR), Canada, USA, Australia, Brazil, Argentina, Venezuela, Mexico, Germany, India, Nigeria and Tanzania. In another sense, most of the governments of the world are currently under a federal form of government of one type or another.

It can be said that the failure of socialism in the socialist bloc, and the involvement of globalisation, have current relevance to the federal idea, particularly when a world marked by centralised nation-states and national sovereignty is not appropriate for federalism. The extent of the impact of globalisation on the nation-state is a subject of

²³ Ann Ward and Lee Ward ed., *The Ashgate Research Companion to Federalism*, (UK: Ashgate, MPG Books Group, 2009), p. 567

²⁴ Ward, Ann and Sara MacDonald, 'Nascent Federalism and its Limit in Ancient Greece: Herodotus and Thucydides', in *The Ashgate Research Companion to Federalism*, Ann Ward and Lee Ward (eds.); (United Kingdom: Ashgate, MPG Books Group, 2009), p. 137

some debate among scholars,²⁵ and despite some differences, all agree that today's nation-state has not lost its importance, even though it is argued that globalisation has undermined the basis of these unitary centralised nation-states to such an extent that the sovereignty of the nation-State is much diminished. Thus, federalism can be an appropriate way for countries suffering from ethno-national conflicts in many parts of the world to avoid the problems that arise in various political circumstances, particularly post-colonial, post-communist, and post-conquest, and at different stages of incorporation within the international community.²⁶

Our methodology is constructed upon the theory of federalism and focuses on the new situation after the political changes in Iraq and in the region after 2003. Due to the nature of the complex ethnic composition inside Iraq, it may be concluded that expanded opportunities for all Iraqi ethnic groups to participate in the political process might be achievable through a federal system, in turn permitting diversity among regions, allowing flexibility in problem-solving and providing opportunities for experimentation and innovation. From the experiences of countries around the world that apply such a system, federalism appears as a successful political principle for find solutions to the key problems, particularly linguistic in nature, for minority groups. From this perspective, the question is to what extent can federalism solve Iraq's chronic problems of ethnicity? In other words, in what conditions would it be appropriate for the Iraqi government to adopt a federal solution, or should it be restricted? One might justifiably argue that a new political situation in Iraq requires a commitment to a new contractual arrangement between political parties. It must be understood that federalism has ability to create varying balances between provincial and federal powers. An important dimension supporting this theory is the conviction that federalism would provide protection for minorities and enable cultural, linguistic, religious, and ideological diversity to flourish. Another consideration is that a federal

²⁵ Given the nature of developments and political events during the nineteenth century, all trends and motives among states were towards nation-building, particularly by nation-uniting. Most nations were born by nation-uniting, and adopted 'unity-in-diversity' as a new kind of idea. Arguably, in an era of the worldwide fragmentation of national identity and the nation-state, the role of federalism becomes critical. Certainly many scholars are convinced that the nation-state still remains the principal actor within the global political order. In addition, most countries that enjoy multiculturalism, racial, ethnic, and gender consciousness are challengers of national identity, and there is no doubt that federalism was a product of America's experiences in the British Empire and the work of "Revolutionary Assemblies". Harihar Bhattacharyya, *Federalism in Asia, India, Pakistan and Malaysia*, (London: Routledge, 2010), pp. 8-9

²⁶ *Ibid.*, pp. 9-12

government should try to ensure greater social and economic equity through social welfare and civil rights programmes.

1.3.1 THEORISTS OF FEDERALISM AND THEIR ROLE IN THE SUCCESS OF THE THEORY OF FEDERALISM

The theory and practice of federalism has evolved over centuries. As most would argue, the notion of federation developed and was derived from confederations of independent city-states in antiquity, to the secular and religious institutions of classical and biblical times, and so into the contemporary world; thus federalism remains a permanent political possibility for the arrangement of human society.²⁷ During the seventeenth and eighteenth centuries, the fundamental ideas of federalism, particularly with regard to the notion of popular sovereignty and the decentralisation of power between two levels of government were developed by Hobbes, Locke, Harrington, and Montesquieu.²⁸

In paying attention to the theorists and advocates of federalism, Thomas Jefferson's theory,²⁹ who put the theory of federalism to use, which is regarding the success of

²⁷ According to political theorists federalism has historical roots, particularly in the republican or democratic institutions in Athens as described by Herodotus, when Greek cities formed a federal alliance to save Greece from subjugation to the Persian Empire. Alternatively, it has been thought that the federal idea originated in the Bible, and that the original use of the idea was theological and referred to the partnership between humans and God. Ann Ward and Sara MacDonald, "Nascent Federalism and its Limit in Ancient Greece: Herodotus and Thucydides"; in *The Ashgate Research Companion to Federalism*, Ann Ward and Lee Ward (eds.); Ashgate, MPG Books Group, United Kingdom, 2009, p.15; and also Cited Ann Ward and Lee Ward (eds.), *The Ashgate Research Companion to Federalism*, Ashgate UK, MPG Books Group, 2009, p. 567

²⁸ The theories of Hobbes, Locke, Rousseau and eventually Montesquieu and Madison in the seventeenth and eighteenth centuries had a significant impact on the federal notion of transforming secular political principles and techniques. From this perspective, Montesquieu explained how "federal polity [would] be composed solely of republics rather than monarchies or some combination of the two." Cited in Ann Ward and Sara MacDonald, *ibid.*, p.15
Sharada Rath, *Federalism Today: Approaches, Issues, and Trends*, Sterling publishers private Limited, Printed in India, 1984, p. 182

²⁹ Thomas Jefferson (who became the third US President in 1801) was both a prominent theorist and a practitioner of federalism. Some have argued that Jefferson rarely had an opportunity to put his theories into practice, even though he thought that republicanism should consist of the institutions responsive to the will of the people and a people actively engaged in political affairs. But he was clearly interested in how to organize national and local governments, and was persuaded that popular election and strict accountability were the best means of securing the best service for the citizenry. It is generally agreed that Jefferson contributed significantly to interpreting the constitution during the 1790s, particularly with regarding to the constitutionality of a national bank. Peter McNamara, "Thomas Jefferson's

the American republican experiment emphasized that the advantages of federalism were liberty, security, and happiness. For this, Jeffersonian federalism “presupposes a considerable homogeneity among citizens and a fundamental agreement on basic political principle.”³⁰

Elazar’s political theory of federalism was rooted in the Latin word *foedus*, which in Hebrew means the ‘covenant’.³¹ Daniel J. Elazar remarked that “federalism is more than an arrangement of governmental structures; it is a mode of political activity that requires the extension of certain kinds of cooperative relationships throughout any political system it animates.”³² Bhattacharyya draws attention to another of Daniel Elazar’s beliefs that “the federal idea is resurfacing as a significant political force in humanity’s transition from the modern to the post-modern epoch.” According to Elazar, federalism as a political principle combines the two principles of self-rule and shared rule, and in this context he remarks that shared-rule (common purpose) and self-rule (specific regional purpose), as it were, entail decentralisation in respect of self-rule. Obviously, what this illustrates is that political institutions, such as free elections, free criticism, and representative institutions are based on democracy, which implies that democracy provides the basis for the legitimacy of such a combination, as well as being necessary for federalism, and thus for the sake of diversity. Irrespective of the difference, Elazar is convinced that federalism seeks to maintain both unity and diversity at the same time, noting that, “it is a mistake to present unity and diversity as opposites”.³³

The American political scientist William Riker was another contributor to the theory and history of federalism who paid particular attention to the idea of the “bargain of

Enlightenment Idea of Federalism”, in *The Ashgate Research Companion to Federalism*, ed. Ann Ward and Lee Ward (United Kingdom: Ashgate, MPG Books Group, 2009), pp. 208-18

³⁰ *Ibid.*, pp. 222

³¹ Covenants are also distinguished from compacts and contracts by the belief that God is the guarantor, even though Daniel Elazar, twentieth century American Jewish intellectual, believed that compacts were more similar to covenants than contracts. At the end, covenants, compacts, and contracts all seek liberty for their members, but each of them explains the relationship between liberty and morality in a different way. See Glenn A. Moots, “The Covenant Tradition of Federalism: the Pioneering Studies of Daniel J. Elazar”, in Ann Ward and Lee Ward (eds.), *The Ashgate Research Companion to Federalism*, Ashgate, MPG Books Group, United Kingdom, 2009, pp. 391-97

³² Alain-G. Gagnon, “The Political uses of Federalism”; in *Comparative Federalism and Federation: Competing traditions and future directions*, ed. Michael Burgess and Alain-G. Gagnon, (Great Britain: Harvester Wheatsheaf, 1993), p. 17

³³ Bhattacharyya (2010), *op. cit.*, pp. 12-5, pp. 97-98, p.150

federalism”. According to Riker, “The politicians who offer the bargain desire to expand their territorial control [while] the politicians who accept the bargain are willing to do so because of some external military-diplomatic threat or opportunity.” In addition, Riker found himself at odds with the way “the administrative theory of federalism” concerned “the division and sharing of administrative responsibilities”, which were supposed to preserve guarantees to the states, and argued that the central government was maintained by “administrative centralization”.³⁴ In another place, Riker indicated that federalism was “...a form of government which implies arrangement of tiers of government ‘in a permanent agreement’ that ensures that governments at the constituent and central tiers always exist and retain their assigned duties.” According to this view, federation was a bargain about government which depended solely on simple trust.³⁵

Harihar Bhattacharyya pays particular attention to the views of the Canadian, Ronald Watts concerning how a federal political system could be activated as a political organisation mixing shared-rule and self-rule. Watts defines federation as

...a compound polity combining constituent units and a general government each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers and each directly elected by its citizens.³⁶

Wessel’s focuses on the views of the Australian scholar K. C. Wheare, who considered that particularly with regard to the “federal principle”, the division of powers between a state’s national and regional authorities could be performed in a co-ordinated and independent manner within its own specific sphere.³⁷ In Wheare’s

³⁴ Benjamin Kleinerman, William Riker’s “Rationalist” Federalism, in *The Ashgate Research Companion to Federalism*, ed. Ann Ward and Lee Ward, (United Kingdom: Ashgate, MPG Books Group, 2009), pp. 414-8

³⁵ Bhattacharyya (2010), *op. cit.*, p. 13

³⁶ *Ibid.*, p. 13

³⁷ According to Wessels, the theory of federalism can be attributed to the classic work of K. C. Wheare on federal government (1967). There were other contributions, on origin, operation and significance (1964) by W. H. Riker, and on the nature of federalism (1968) by W. S. Livingstone. See D. P. Wessels, The Division of Powers in a Federation, in *Is Federalism the solution? Principles and proposals*, D. J. Kriek, et al., (South Africa: HSRC Publisher, 1992), pp. 36-7

opinion a number of factors had to be present when states or communities wished to unite in one or another federal form:

1. a feeling of military uncertainty with a consequent need for common defence;
2. a common need to act independently of foreign powers;
3. the expectation of greater economic advantages from such an association;
4. the existence of one or other joint political association in the past;
5. geographical proximity;
6. the existence of similar political institutions.³⁸

One should mention here that Riker adopted Wheare's concept of "division of powers" and the belief that in a federal state there would be two levels of ruling authorities with each side acting within its own sphere of competence and protected by a constitution.³⁹ Riker defiantly stressed that federalism had a functional and structural basis, particularly when he observed that "the political process in federalism is a relationship of continuous negotiation between the leaders of the central and regional governments."⁴⁰

Beyond this, Marchildon believes that the appearance of what is known as postmodern federalism "directly relates to the historically and territorially defined national minorities seeking a high degree of self-determination."⁴¹ In his view,

³⁸ Kriek, D. J., (Chief ed.), D. J. Kotze, P.A.H. Labuschagne, P.F.G. Mtimkulu, P.K.R O'Malley (Co-ed.), *Federalism the solution? Principles and proposals*, (South Africa: HSRC Publisher, 1992)., pp. 16-7

³⁹ It was clear that federation as a political entity was composed of a plurality of sub-units, the aim of which was to preserve each member-state. On the internal level, the federal state is directed to establish a new and collective political status, along with a federal constitution; therefore, the main duty of the federal state as the supreme power should be to protect the existence of each member state under the new constitution and also to resolve conflicts among member-states. In turn, each member state that becomes a party to a federal state should have to change its condition in order to subordinate itself to the new federal state. In other words, it loses its capacity to dictate its own unity. Conversely, each member state will cede a portion of its sovereign power to the federal state. Regarding the international level, Schmitt pointed out that the federal power had the responsibility and the right to defend the territory and existence of the federation. Nicolas Patrici, "Looking into Medusa's Eyes: Carl Schmitt on Federalism"; in Ann Ward and Lee Ward (eds.), *op. cit.*, pp. 306-7; and also cited Wessels, D .P., *op. cit.*, p.37

⁴⁰ D. J. Kriek et al.(1992), *op. cit.*, pp. 16-8

⁴¹ For Marchildon, the key features of the postmodern federation are represented by five characteristics, including:

1. recent devolution and decentralization;
2. reflecting a high degree of formal and informal asymmetry;
3. protecting and vigorously promoting key minority language rights;

postmodern federations are required to make major amendments for minority nationalists and their languages in sub-state territories. Thus, the concept of postmodern federalism is a new form which seeks to alter the differences between unity and diversity into peaceful and democratic political association, rather than secession and partition. It has also been argued that the decentralising of power and responsibility from the central government to sub-state units has occurred rapidly in the postmodern federations, whereas there is a comparatively stable relationship between centralisation and decentralisation in the classical federations.⁴²

1.3.2 DEFINITIONS OF FEDERALISM

Into the new millennium, the concept of federation has prompted renewed attention from scholars, opinion-makers and political elites and rulers. It is reasonable to say that the idea and the nature of the federal State can be illustrated through definitions and descriptions put forward by theorists and scholars. Some scholars have observed that federalism can be considered as a “struggle between centripetal and centrifugal forces that result in ‘coordinate, cooperative or coercive’ federalism.”⁴³ Although the political benefits of federalism are currently increasing and developing to include the maintenance of the country’s political independence, achievement of economic growth and self sufficiency, accommodation of regional diversities and, finally, maintenance of a balance between unity and diversity.

4. experiencing the rise of regionally based nationalist political parties and the decline of ideologically oriented pan-national political parties;

5. struggling constantly to construct alternatives to secession, partition and violence.

The central governments in the postmodern federations have made considerable efforts to reach democratic solutions as a final alternative to secession and partition. However, the central States are having to face the constant threat of secession or partition by their opposition parties as a real possibility within the federalist framework, particularly when the demands of the national minorities are for greater autonomy, despite central government’s concessions. Similar situations have arisen in the cases of the Basque Country and Northern Ireland. Greg Marchildon, “Postmodern Federalism and Sub State Nationalism”; in A. and L. Ward (eds.), *op. cit.*, p. 442, pp. 450-51.

⁴² The term “decentralisation” is generally used in the context of formal federations such as Canada and Belgium; the same process is often described as “devolution” in previously unitary states such as Spain and the UK. See Greg Marchildon, *ibid.*, pp. 441-7

⁴³ Haig Patapan, Australian Federalism: An Innovation in Constitutionalism, in *The Ashgate Research Companion to Federalism*, ed. Ann Ward and Lee Ward, (United Kingdom: Ashgate, MPG Books Group, 2009) p. 497

Sharada Rath refers to Robert Garran, who defined federalism as “A form of government in which sovereignty or political power is divided between the central and local government so that each of them within its own sphere is independent of the other.” As Rath sees it, federalism is a dynamic process, not a static institutional pattern, noting that the process of federalising a political community occurs particularly when a number of separate political communities enter into arrangements to discover solutions, adopt common policies, and make joint decisions on joint problems.⁴⁴

Meanwhile A. V. Dicey points out in his definition, that “a federal state is a political invention which is intended to reconcile national unity and power with the maintenance of the rights of the separate member states.”⁴⁵ It would appear that the majority of researchers focus on the basic issue, which concerns the protection of individual liberty in a federal system. According to Glenn A. Moots, federalism is a form of justice, emphasizing liberty and citizen participation.⁴⁶ However, others have argued that federation is possible only where a common law that binds all citizens is possible, while Elazar considered that federalism could offer significant assistance towards achieving both local and global peace.⁴⁷

For opponents of the idea of federalism, the key problem is the demand for regional financial equality, and more financial assistance for achieving revenue equalization among the autonomous units, when development of all parts of the country, particularly in developing nations, is an urgent necessity. According to Sharada Rath, in determining the failure or success of a federation, the factors to consider are external dangers and foreign reactions. In fact, the creation of any new federation will have a direct impact, by affecting both the attitude of other countries towards this new creation, and the attitude of the new federation towards other countries.⁴⁸

It is logical to assume that the many fundamental factors involved, such as the economy, external dangers, and foreign reactions, emerge as incompatibilities.

⁴⁴ Sharada Rath, *Federalism Today: Approaches, Issues, and Trends*, (India, Sterling publishers private Limited, 1984), p. 185

⁴⁵ D. J. Kriek et al.(1992), *op. cit.*, pp. 14-5

⁴⁶ Glenn A. Moots, *op. cit.*, p. 402

⁴⁷ *Ibid.*, pp. 408-10

⁴⁸ Rath (1984), *op. cit.*, pp. 192-93

Therefore, the success or failure of any attempt at federalism depends upon the formula adopted by a federation to manage the crisis and grow.⁴⁹ In other respects, most scholars consider that a constitution has dual functions, whereby one side serves to strengthen the supreme authority of the unified state by carrying out all constitutional functions by the various levels of authority, and upholding internal and external sovereignty, while the other circumscribes the sphere of competency of the two levels of authority. In this context, constitutional federalism, according to Wessels, "...means that the national and regional governments are by law equal, autonomous and co-ordinate institutions that receive their powers from the constitution, and which also enjoy protection through the constitution in terms of their status and functions."⁵⁰ Thus, it can be concluded from some of the foregoing definitions that the units or states of which a federation is composed are looking towards unity rather than uniformity and concentrating on the rights of member-states. In this context, it may be generally understood of federation that a federal union can be formed through reconciling various visions, diversities, ideologies and influences.

It is reasonable to affirm the political uses of federalism in the long term, particularly in the area of conflict management, which is strongly linked to the protection of minorities. For most ethnic groups and territorially-structured communities, federalism has become an important contributor to accommodating the problems that occur within multicultural and multilingual communities. From this perspective, it is possible to understand how federal systems might be able to manage "...significant crises, whether economic, political or structural, [that] emphasize most often cross-cutting cleavages, political elite behaviour, political instrumentalities or, alternatively, administrative arrangements."⁵¹ In short, one can conclude that the main objectives of federal union can be put into creating a mechanism of federal governance with a strong parliamentary centre, which in turn would guarantee cultural autonomy for regions with strong linguistic, religious, tribal or territorial identities. The key goal is

⁴⁹ *Ibid.*, pp. 186-8

⁵⁰ Wessels, D .P., *op. cit.*, p. 42

⁵¹ Alain-G. Gagnon, *op. cit.*, pp. 15-18

presented as reducing regional and economic disparities through fiscal federalism and planning.⁵²

1.3.3 FEDERALISM IN PRACTICE: AS A POLITICAL ENTITY

After the Second World War the idea of federalism was warmly received and gained considerable momentum among countries in Latin America, Asia and Africa, and even in Western Europe. It should be noted here that the pre-1945 federations, such as the USA, Canada, Australia and Switzerland⁵³, are commonly known as classical federations, while the new federal governments set up in the post-1945 period were founded as colonial federations, and either imposed by the imperial power or developed by a process of negotiation between nationalists and the imperial government⁵⁴. Thus institutional federalism⁵⁵ began to take shape during the British colonial period, in Malaya (1948), Rhodesia and Nyasaland (1953), Nigeria (1954), the West Indies (1958), and South Africa (1959).⁵⁶ The French also attempted during this period to set up colonial federations in Indo-China, in French West Africa, and in French Equatorial Africa, while the Dutch imposed a federal constitution on Indonesia in 1949.⁵⁷

⁵² Akhtar Majeed, India: A model of Cooperative Federalism, in *The Ashgate Research Companion to Federalism*, ed. Ann Ward and Lee Ward, (United Kingdom: Ashgate, MPG Books Group, 2009), p. 504

⁵³ Switzerland is at the top of the unitary nation-states; having been the first country in Europe in the nineteenth century to adopt a federation. The Swiss Confederation (which had lasted from 1291 to 1848) has remained a paradigm case of the successful accommodation of diversity, particularly with its successful transformation into a federal union in 1848. Bhattacharyya (2010), *op. cit.*, p. 97

⁵⁴ In practice, however, some of these federations collapsed in the post-1945 period, during the critical times just before or shortly after withdrawal of the imperial powers; this happened, for example, with the British experiments in the West Indies and in Rhodesia and Nyasaland; while others were transformed into unitary political unions. Rath (1984), *op. cit.*, p. 183

⁵⁵ Nicolas Patrici, "Looking into Medusa's Eyes: Carl Schmitt on Federalism"; in Ann Ward and Lee Ward (eds.), *op. cit.*, pp. 306-7

⁵⁶ For the first time there was a 'federation' for India, according to the Government of India Act of 1935 (passed in the British parliament), which was partially implemented at the provincial level only after April 1937. Cited Bhattacharyya (2010), *op. cit.*, pp. 45-51

⁵⁷ Sharada Rath looks at how circumstances arise, develop and impact on the political system: e.g., in Indonesia, the Dutch-imposed federal structure was replaced at independence by a unitary state. The collapse of constitutional government in Pakistan and its replacement by military rule in 1958 ended ten years of troubled federal government; the Libyan federal structure created in 1951 was recast as a unitary model in 1963; and Eritrea, federated with Ethiopia in 1952, lost its autonomous status in 1962. Cited Rath (1984), *op. cit.*, pp.182-83.

It has been argued that the Soviet-model federations in the former USSR and Eastern Europe did not contain the true content of federalism and lacked any real motive for power-sharing and hence real autonomy, due to their highly centralist, undemocratic, and mostly rhetorical approach. Apparently the legitimising of a negative principle of nationhood lay behind the failure of the socialist federations, and was the reason why the Soviet model ultimately failed to offer any durable space for accommodating ethno-national diversity.⁵⁸ Needless to say, the failure of the so-called ‘socialist’ federations did not signify the failure of federalism as such, but did offer a lesson or two to the rest of the world for rethinking the modes of accommodation of ethno-national identities for state unity.⁵⁹

The Communist leadership in the former Yugoslavia adopted a federal system in the 1970s to resolve a number of governance-related challenges. Yugoslavia’s 1974 constitution allowed decisions to be made by a process of coordination rather than majority rule – in other words, each republic possessed a de facto veto over federal decisions, and in addition established a collective rotating presidency to ensure the participation of each republic in the formation and execution of federal measures.⁶⁰ However, in October 1990, Slovenia and Croatia jointly declared a “confederal arrangement” with a purely consultative parliament and a Council of Ministers. Indeed, the dismantling of Yugoslavia caused a horrifying civil war and the tragedy of

⁵⁸ Bhattacharyya (2010), *op. cit.*, pp. 8-9

⁵⁹ From the experiences and policies followed by countries that adopted a federal system it was clearly essential for their governmental bodies to have control of the Supreme Court of the Constitution in order to prevent any avoidance or misrepresentation. The three essential governmental organs of a federation are:

1. A sizeable freely-elected assembly representative of all the units, which needs to stand for a fixed term of some years. Relative state membership of the assembly may conveniently be related to the population by certain formal rules; but it is essential that it should be adjustable (and adjusted) to changing population movements.

2. An elected Upper House or Senate of a fixed and limited number of members, with equal representation of all states. Only through this medium can the smaller and weaker states feel that they can make a positive contribution to national policy decisions.

3. A central (or general) government of quite a small number of members, capable of taking decisions quickly, probably preparing the first draft of the national budget, and probably playing an important role in introducing new legislation or suggesting constitutional amendments. See *Federalism: Failure and Success A comparative Study*, (Great Britain: Macmillan press LTD, 1978), pp. 3-7

⁶⁰ Yugoslavia consisted of six republics (Serbia, Croatia, Slovenia, Bosnia, Montenegro, and Macedonia) and two “autonomous provinces” within Serbia (Kosovo and Vojvodina), as well as a number of national groups with long histories (Croats, Serbs, Slovenes, and so on). Cited James Read, John C. Calhoun’s Federalism and its Contemporary Echoes, in *The Ashgate Research Companion to Federalism*, ed. Ann Ward and Lee Ward (United Kingdom: Ashgate, MPG Books Group, 2009), pp. 253-54.

ethnic cleansing, during which more than 100,000 individuals were killed and millions were forcibly relocated or turned into refugees.

It seems too that in scholarly research, US federal doctrine has become an interpretive guide, in both the judiciary and the legislature. However, most interpreters have concluded that federalism initially appeared as a mechanism for sharing power along territorial lines in the US and Latin America, and in Canada, while also contributing significantly as a state-building technique, and it has been argued that the regional governments created during the late colonial period were regarded as the approximate equivalent of the founding US colonies. The Latin American federations followed the US model of dual federalism relatively closely by reproducing the US bi-cameral legislature (Senate), particularly with regard to territorial representation on an equal basis. However, there were some important differences between them, related to constitutional amendment procedures, and also to the constitutional status of municipalities.⁶¹ It can be seen from the brief outline above that the countries that have adopted a federal system have been subjected to enormous economic, social, and political pressures for change, and that the main goal underlying this principle aimed to protect them from external pressures, provide economic benefits, and preserve broadly-shared values concerned with federation and national units.⁶²

In focus on practicing federalism there have been significant debates among scholars about a strong connection between democracy and federalism; this in turn has a positive correlation with national or cultural pluralism. Certainly federalism has become an important institutional instrument for guaranteeing political stability and improving democracy. On the other hand, among the political theorists the German Carl Schmitt was explicitly against the idea that there was any positive correlation

⁶¹ It should be noted that the Latin American federations granted constitutional recognition to the municipalities and assigned jurisdiction as well as fiscal resources to them, while municipalities were absent from the US constitutional text.⁶¹ From this perspective, Riker argued that, “the federal form invented by the US that has been copied by so many governments in the last 200 years [has caused] the development of federalism throughout the world.” He also explains that this invention was very important, not only for the US but for the rest of the world, “because it allows the expansion of states without either conquest or the sacrifice of some amount of local sovereignty. Kleinerman (1994), *op. cit.*, p. 416

⁶² Ralph J. K. Chapman, ‘Structure, Process and the Federal Factor: Complexity and Entanglement in Federations’, in *Comparative Federalism and Federation: Competing traditions and future directions*, ed. Michael Burgess and Alain-G. Gagnon, (Great Britain: Harvester Wheatsheaf, 1993), p.69

between federalism and democracy, regarding them as opposing principles.⁶³ He was convinced that federalism was a concept associated with relations between States, and affirmed that federalism was concerned with pluralism.⁶⁴ In this context, Elazar noted that federalism should be distinguished from democracy or republicanism, but insisted that “democracy may be necessary, though not sufficient, to federal integration of power.”⁶⁵ In this context, the limitations of federalism are the limitations of political association itself. In the most obvious sense, despite the considerable developments in federalism over the centuries, federalism today has the ability to provide security, and also to protect civil and religious liberty; this in turn, is reflected in promoting self-government consistent with cultural, ethnic, linguistic, and regional distinctiveness. Consequently, it has led to the federal system achieving wide acceptance as a successful political process by the majority of nations and states that make up the international community.

CONCLUSION

The applicability of a federal system can take different forms, and in this context Ronald Watts is surely right when he argues that federation-building in diverse societies requires power-sharing with territorially-based communities, in addition to the various consociational arrangements of power-sharing.⁶⁶ It has been argued that in all political systems, stability and legitimacy are both composed of important and

⁶³ According to Schmitt, any constitutional theory of federalism would be faced with three main incompatibilities, as follows: the first concerned the right of self-preservation of each member state. In this context, the main aim of the federation was the preservation of each member-state; equally, each member-state would have to relinquish its right to self-preservation for the sake of the federal state. The second contradiction, strongly connected to the first, concerned the right of self-determination. At a certain point, each member-state entered the federation in order to protect its political independence; at the same time, the federation’s right of self-determination would be achieved through the federal capacity for intervention. The third contradiction related to the issue of sovereignty, which had the potential to cause significant tension between the unity of the federation and the plurality of the member-states. This possible conflict between member-states and the federation could be considered a conflict between sovereigns. However, Schmitt identified a remedy for these contradictions, stating that they could be resolved through a theory of democracy, especially since the main characteristic of democracy was homogeneity. In this context, Schmitt had already elaborated elsewhere that sovereignty was an indivisible principle because, in a democratic federation, sovereignty was the people. Nicolas Patrici, *op. cit.*, pp. 308-10

⁶⁴ Schmitt also stressed that federalism, as a political concept, hindered democratic sovereignty, particularly in relation to the many contradictions within the Weimar Constitution. He stated that while this constitution was incompatible with principles of liberalism and democracy, it contained a liberal legal structure and also sought democratic legitimacy. Nicolas Patrici, *ibid.*, p. 298.

⁶⁵ Glenn A. Moots, *op. cit.*, p. 401.

⁶⁶ Harihar Bhattacharyya, *op. cit.*, pp. 173-74

difficult concepts, but in federal systems they are considered problematic because of the varying nature of the state.⁶⁷ One important aspect is that federal states can be created on different foundations. They usually have a territorial basis, but can also have other bases. In emphasizing “territorial units”, Kriek argued that the territorial areas could serve as units of federations, which in turn could be subdivided into city-states on the one hand and states on the other.⁶⁸

Indeed, federalism can contribute to the process of nation-building over two levels of government, by attempting to have interdependent spheres of jurisdiction, while at the same time playing a coordinated and collaborative role in achieving common national objectives. It has been said that a federation’s success depends on finding a way that will bring mutual satisfaction. Thus, it will be secured against internal disruption, particularly when citizens feel more proud of their nationality than of any details of their state’s rights.⁶⁹ Federalism has been instrumental in uniting different communities, and at the same time it has been cooperative in involving decentralisation in the political process. One should mention here that there are phases of development in each federation and every federation differs in its goals. The purpose of a federation is embedded by the goals it serves. In other words, federations were formed mainly to achieve political unity and to maintain a political entity. Here one may ask about the role of the federal government in developing national compromises on essential issues that concern national unity, and in maintaining economic stability.

As has been discussed, federalism offers an excellent opportunity for minority and other ethnic groups to enjoy internal security and stability, while maintaining some equilibrium between unity and diversity, and gives various advantages to minority groups that enable them to play a significant role in running their own domestic affairs. Opponents of this notion, on the other hand, consider that adopting this system

⁶⁷ Michael Burgess, “Federalism and Federation: A Reappraisal”; in Michael Burgess and Alain-G. Gagnon (eds.), *Comparative Federalism and Federation*, *op. cit.*, p. 10

⁶⁸ From a practical standpoint, Kriek notes that city-states serve as units of federations; thus Hamburg, Bremen and West Berlin are units of Germany; Vienna forms a unit of Austria, and Basle and Geneva are cantons of the Swiss Federation. In general, states comprise the basic units of a federation, such as Illinois, Michigan and California in the USA; Ontario, Quebec and Alberta in Canada, and Bavaria, Baden-Wurttemberg and Lower Saxony in Germany. See D. J. Kriek, *op. cit.*, pp. 18-19.

⁶⁹ Sharada Rath, *op. cit.*, p. 195

will encourage cultural or religious minority groups to demand the greatest possible measure of decentralization to protect themselves, particularly when they claim greater dependence on the government's finance and resources. This dependence can lead either to unitary trends or to take steps to secession. Similarly, the majorities can also be regarded as a great danger to federalism because of their aspirations towards centralisation. In this case, the only authentic protection for federalism is through strong regional or group parties.⁷⁰ Here, the key factor behind federal stability lies in enabling regional diversities to express themselves adequately. If such opportunities are not acceptable, the movement for secession may gain momentum, leading finally to disintegration. Another requirement for federal stability is the encouragement of cohesion among the regional groups on aspects which they have in common. Thus it is important that institutions are designed to encourage cohesion rather than conflicts.⁷¹

Another significant point is that in federations, sovereignty is tied to the existence and entrenchment of regional territorial entities. Representation is a crucial issue in virtually all federations, and concerns two main principles. Every federation considers that in principle each of its citizens has an equal right to vote. On the other hand, the federation usually assists with the exercising of that vote in two ways; first, to elect members of the regional government, and second, to elect members of the national government.⁷² As many have argued, federalism is not the remedy for all ills. However, it is characterised by its capacity to accommodate socio-cultural diversity and ethno-regional or national identity, particularly in countries that are marked by socio-cultural diversity. Additionally, among the essential features of the federal system is its ability to provide a legal means to enable both federal and provincial governments to share power, despite the many differences of culture, religion and language that prevail within a country. Federalism today is able to achieve different goals. It can be used to fight regional disparities, and has also been used to resolve deep societal cleavages in plural societies.

⁷⁰ D.J. Kriek, "The theory and practice of federalism", *op. cit.*, p. 30

⁷¹ P. K. Sharma, *op. cit.*, p. 28

⁷² Preston King, *op. cit.*, pp. 98 99

Iraqi society undoubtedly possesses a difficult and complex structure in terms of its composition, being heterogeneous, and having many languages, cultures and religions differences. Despite the religious differences between the Sunni and Shiite communities, there is no serious problem in the coexistence of these groups with each other, more than is used politically to implement the political goals for the benefit of specific groups, whether in or outside Iraq. Consequently, the federal system will face enormous challenges for stability, promoting a culture of tolerance, and finding reconciliation among conflicting views. All Iraqi groups and parties should be aware that under the federal structure there is tremendous scope for cooperation, and for greater participation of the population in the political and economic activities that are at the core of successful federalism. Nor would it be wise for the Iraqi federal government to neglect the rights and duties of the KRG as a federal unit. The Iraqi federal government should be expanding its policies, in order to satisfy every region; this in turn will lead to a desire on the part of the provinces to take economic development policies into their own hands. The KRG also wishes to tackle the intentional negligence on the part of the federal government. From this perspective, the KRG should sketch out the structure of its economic plans to counter the policies that will have had such deleterious effects on their region.

Chapter 2:

THE KURDS IN IRAQ

INTRODUCTION

“The Kurds are an ancient people with a past full of political, scientific, literary, artistic and military activities. These people resided and are still residing in a land that is considered the cradle of human civilisation. Kurdistan has been the Kurdish people’s homeland since the dawn of history. Their homeland Kurdistan is rich with waters, oil, minerals, agricultural, merchandises and animal products.....The history dealt them a lousy deal so they were denied not only their national state, but the simplest of human rights also. The devious powers divided them according, to their greedy materialistic ambitions between artificial uncivilised states.....”

(Dr. Jawad Mella, 2005)⁷³

2.1 A GENERAL OVERVIEW ON KURDS AND KURDISTAN

Some historians argue that the Kurds as an ancient people were often dominated by various groups, and as a result of numerous invasions by Hittites, Assyrians, Babylonians, Armenians, Persians, Parthians, Mongols and Greeks, they often faced migration.⁷⁴ These areas have been called Kurdistan⁷⁵ since the 13th century. The

⁷³ Dr. Jawad Mella, “*Kurdistan and The Kurds Divided Homeland and a Nation without State*”, (London: Western Kurdistan Association (WKA), 2005).

⁷⁴ It is generally acknowledged that the Kurdish land is called the “cradle of Humanity” because of the emergence of different civilizations in this land, such as; Elamites, Hitties, Hurrites, Medes, Mittanis, Karduchoi, Corduenes, Sassanides, Assyrian, Greeks, as well as other people who either originated in this area or invaded it. According to Jemal Nebez the strongest hypothesis for the origins of the Kurds is that they are derived from the Medes. Jemal Nebez, *The Kurds History and Culture*; (London: Western Kurdistan Association (WKA), 2004), pp. 9, 15, and also see Mustafa Al-Karadaghi, *Application of the principle of self determination to the Kurdish Nation*, *Kurdistan Times*, No. 3 December 1993, p.43.

⁷⁵ The name Kurdistan accurately means the land of the Kurds in the Middle East. It is described by David McDowell: ‘The heart of this area consists of the extremely rugged mountains of the Zagros range, running in ridges north-west to south-east. In the west these mountains are continuing hills falling into the Mesopotamian plain. To the north the mountains turn into a plateau which in turn transform into the highlands of the Armenian Anatolia’. David McDowell, *The Kurds: a Nation Denied*, (London: Minority Rights Group, 1992), p.7

term 'Kurd' is perhaps derived from the Latin word 'Corduani'.⁷⁶ There are various arguments about the term "Kurdistan". It emerged for the first time from the Turkish Seljuk Prince Saandjar, when he created a district under this name. However, there are no fixed maps or boundaries for Kurdistan, which indicates the detrimental political situation of Kurds, since they are denied a nation by Turks, Persians and Arabs.⁷⁷ However there are other opinions. Prince Sharaf Khani Badlisi asserted in his book '*Sharafnama*' that the term Kurdistan appeared and was used for the "Darsim" province, while Hamadulla Al-Mustawfi in his book *Nuzht Al-Qulub fi Al-Masalk wa Al-Mamalk*, indicated that the city of "Bahar" was the capital of Kurdistan. Another belief is that the cities of Kermanshah and Shahrazur were drawn under Kurdistan's map in *Buldan Al-Khilafa Al-Sharqiya*.⁷⁸

Further, according to linguistic experts, the modern Kurdish language belongs to the western Iranian Branch of the Indo-European family. However, there are various linguistic dialects which were and indeed still are used by Kurdish people. The two main dialects that are practised today are Kurmanji in the north of Kurdistan (Southeast of Turkey) and Sorani which is used by the majority of Kurds in Iraqi Kurdistan, in the South-East of Sanandaj and the Mahabad region in Iran.⁷⁹

⁷⁶ However, it has been argued that, Zagros was inhabited by a variety of groups and tribes who were ethnically and linguistically related, among whom the Kurds and the Elamites were the most famous, but we do not possess any written documents about kingdoms in the Zagros highlands "Kingdom of Gutium, Kingdom of Lullu, Kingdom of Nairi and The Enlightened Kingdom of Urartu, and two strong empires of "Kassite" and "Hurri-Mittani which controlled Mesopotamia and the surrounding lands". Thereby, all evidences derived from the writings of the cuneiform of the Sumerians, Akkadians, Babylonians and Assyrian. Another view is that Kurds inhabited the surrounding area between the "Wan River" and the mountains under the slopes of the rivers Tigris and Euphrates, as well as areas of the Zagros mountain range up to the border with the tribes of North Lor in Iran. And while the word 'Kurd' may not derive from a single source, most Kurds believe they originate from the Medes. According to some historian's opinion the Xenophon faced a cruel beating by Karduchoi "Kardu or Gutu" during his famous withdrawal to the Black Sea in 400 BC.⁷⁶ In this regard, Kerim Yildiz asserts that as a result of immigration, the Kurds were created from Indo-European tribes such as the "Guti, Kurti, Mede Mard, Karduchoi, Gordyene, Adianbene, Zila and Khaldi", from the Zagros mountain region. Walid Hamdi, *Kurds and Kurdistan in the British Documents*, in Arabic (Sjel Al Arab Press, 1991), p.15, and also see Kerim Yildiz, *The Kurds in Iraq: The past, Present and Future*, (London: Pluto Press, 2004), p.7; and also cited Mustafa Al Karadaghi, "Introduction to the Ancient History of the Kurdish Nation", *Kurdistan Times*, Vol. 2, No. 6, March 2001, USA (Editor and Publisher Mustafa Al Karadaghi), pp 3-4

⁷⁷ Muhammad Amin Zaki, *The History Of Kurds and Kurdistan: From the ancient period till now* (In Arabic) Second edition, Baghdad, 1961, pp 5-6

⁷⁸ *Ibid.*, pp 5-6

⁷⁹ David McDowell (2000), *op. cit.*, p.9

2.2 THE KURDS AND POWER POLITICS IN IRAQ

Scholars have agreed that modern Kurdish history began with the appearance of the Ottoman Empire. It is known, according to geopolitical terms, that Kurdish areas were located under the influence and authority of the Safavi (Persian) and the Ottoman Empires. However, the Kurds had also enjoyed semi-independent principalities that were strengthened and recognised by the Ottoman Sultans.⁸⁰ Thus, the Kurds directly implicated in the hostilities between the Ottoman Empire and the Safavid Empire, particularly, when the Sultans deliberately to use the principalities as barrier zones between the two Empires.⁸¹

It is quite evident that the period of the First World War and its aftermath represented an important phase in the growth of Kurdish nationalism. However, Kurdish national awareness had grown rapidly, especially during the latter part of nineteenth century, a period during which the Kurds, like the other national movements of the Ottoman Empire, were eager to attain their independence.⁸²

However, there were a number of reasons and circumstances why the Treaty of Sevres was stillborn and replaced by the Treaty of Lausanne. It is worth noting here that the Allies began to renege on their promises to the Kurds at the London

⁸⁰ These principalities could assume certain responsibilities, mainly the collection of taxes and the defence of their own territories. It should be noted that during the 16th century, three quarters of Kurdistan came under the domination of the Ottoman Empire while the rest was occupied by the Safavid Empire. Borhanedin A. Yassin, *Vision or Reality? The Kurds in the Policy of the Great Powers 1941-1947*, (Sweden-Malmo: Lund University Press, 1995). p.42

⁸¹ Sa'ad Jawad, *Iraq and the Kurdish Question 1958-1970*, (London: Ithaca Press., 1981), p.3

⁸² It is also interesting to speculate the British and the French government asserted that their aims in coming to the region were to liberate peoples under Ottoman rule and to give the native populations freedom to establish their own national governments and administrations. The Allies promised self-determination to the people living under the control of Ottoman Empire in order to maintain their own vital interests. They were interested in seeing to the disintegration of the Ottoman Empire and to securing a new balance of power, to ensure that the Ottomans would never return to their previous position. To reach these aims, they needed a non-hostile relationship with the people who had existed under Ottoman rule. It should be mentioned, that with the disintegration of the Ottoman Empire, the Kurds, like other ethno-national groups within the Empire, found themselves with a historical opportunity to achieve independence. The national minorities of the Ottoman Empire, including Kurds, welcomed US President Woodrow Wilson's declaration that nations could have the right freely to determine their own destiny. His proposal comprised fourteen points. Points 5 and 12 gained the attention of the Kurds as it was specifically tailored to their cause. Point 5 concerned the finding of an equitable and sincere settlement for all conflicts while Point 12 claimed the minorities within the Ottoman Empire should be assured the opportunity for autonomous development. Borhanedin A. Yassin, *op. cit.*, p. 45

Conference in 1921.⁸³ In fact, the future of the Kurds in Iraq was profoundly influenced by the progress of negotiations and decisions that took place in Lausanne (which was signed on 24 July 1923). Even though the Treaty of Sevres was not ratified, it could be considered one of the most important declarations since it provided for an autonomous Kurdish State in Eastern Anatolia.⁸⁴

It is generally acknowledged that the period from 1920 to 1931 embodied the most serious challenge posed by the Kurdish leaders.⁸⁵ They requested the League of Nations to construct an independent Kurdish State, or to grant the Kurds political and national rights within Iraq; however their efforts were unsuccessful. In addition, this period witnessed more political activity and the founding of many parties.⁸⁶

⁸³ The change in the Allied position was due to various factors involving their specific interest in absorbing the Kurdish area of Anatolia into what became known as the Republic of Turkey along with the advance of the Turkish nationalist movement, led by Mustafa Kemal Atatürk. According to Article 3(2), "The frontier between Turkey and Iraq shall be laid down in friendly arrangements to be concluded between Turkey and Great Britain within nine months". It is evident that according to evolving events at the time of the negotiations, the Kurdish question had not been mentioned at Lausanne. Therefore, in addition to the private negotiation that followed the signing of the Treaty of Lausanne between Turkey and Great Britain (Sir Percy Cox and Fethi Bey representing Britain and Turkey respectively) they decided to take the matter on to the Council of the League of Nations. The Council at its thirtieth session, 20 September 1924, started its deliberations on Mosul. Great Britain still argued for delimitation of a frontier line and Turkey for the whole province of Mosul. See Henry A. Foster; *The Making Of Modern Iraq*, (Great Britain,; Williams and Norgate, 1936), pp. 152-53

⁸⁴ Foster argues that Article 64 obviously indicated the Kurds' desire to gain independence from Turkey, and in this case the Kurds were allowed an independent State; the Kurds in the Mosul vilayet would not be prohibited from a voluntary adhesion to such a state.⁸⁴ In 1920, a referendum was held in Iraq to approve the accession of Prince Faisal as King in the new monarchy, but the Kurds of Sulaymaniyah refused to participate in the election and the province of Kirkuk voted against the Prince. Foster, *ibid.*, p. 153, and also see Derk Kinnane, *The Kurds and Kurdistan*, (London and New York: Institute of Race Relations Oxford University Press, 1964), p.36

⁸⁵ It is important here to note that the first half of 1920 witnessed an attempt to establish an independent Kurdish State, or at least to settle the Kurdish problem by the formation of several Kurdish autonomies. Here, one of the most heated and a controversial discussion is that if the British were willing to solve the Kurdish problem, it would have been possible to do so during the period 1920-1932 at which time Iraq was a British mandate. Iraq became independent in 1932, and it was quite evident that the British had maintained considerable influence on Iraqi governmental policies during and after this period. It would seem that political developments in that period ran counter to Kurdish nationalist ambitions. Wadie Jwaideh, *'Kurdistan National Movement: Its origins and Development'*, (United States of America: Syracuse university press, 2006), pp. 128-30

⁸⁶ e.g., the Hiwa party, the most influential political party, was established in 1930, and Komalay Azadi Kurd, (the Kurdish Freedom Association) was also founded in Sulaymaniyah in 1935. Other political organisations appeared at this time, including Komalay Zhianaway Kurd (the Association for Revival of the Kurds), founded in 1942 in Iranian Kurdistan. Borhanedin A. Yassin, *op. cit.*, p.120, 143

2.2.1 THE KURDISH SITUATION DURING THE OTTOMAN PERIOD

Throughout their history the Kurds have been subject to the various Empires that have dominated the area. The Ottoman sultans were able to expand their own sphere of influence over the region known as Mesopotamia or 'Iraq' today. During the 16th and 17th centuries the area was divided into three provinces or Vilayet: Mosul, Baghdad and Basra. These three provinces were under the rule of the "*mamluk*" military caste, but were allowed to have military forces that were supported and acknowledged by Ottoman sultans for the sake of the survival of their authority in these Vilayets. It also enabled them to defend their domains from the Safavid Shah of Persia and others. The Ottomans wished to sustain alliance with the powerful Arab tribes in Baghdad and Basra and also with a number of semi-independent Kurdish principalities in the Mosul vilayet.⁸⁷ The Mosul vilayet (current Iraqi Kurdistan) was controlled by three Kurdish principalities of Baban, Badinan and the Soran dynasties in the different historical periods.

The struggle between the Ottoman Sultan Salim and the Safavid emperor Shah Ismail in 1514 at the battle of Chaldiran was produced a very crucial problem for the Kurds through divide their country between the two empires, which could be considered as the first division of the Kurdistan. However, permit Kurdish tribes and the feudal chiefs greater power and more status in their emirates which they duly used against each other. McDowall notes that the political structure of Kurdistan was established and practised in 15 main emirates until the 19th century.⁸⁸

It was obvious that direct Ottoman rule was intended to weaken Kurdistan by obliging it to confront numerous crises from the late 18th century up till the First World War, particularly when the power of some tribal chiefs reached the point where they no longer needed further support, as was the case of the Kurdish Prince of Soran, known as Muhammad Pasha of Rawanduz, who tried to unify a great part of Kurdistan. A

⁸⁷ Charles Tripp, *A History of Iraq*, (Cambridge: Cambridge University Press, 2002), pp. 8-9.

⁸⁸ David McDowell (1992), *op. cit.*, pp 26-7

number of reasons and circumstances lay behind his defeat by the army of the Ottoman Sultan in the 1830s.⁸⁹

2.2.2 THE SITUATION OF THE KURDS DURING THE BRITISH MANDATE

There was a dispute between some mandatory powers over the ownership of the Mosul Vilayet. According to the Sykes-Picot agreement in 1916,⁹⁰ France was given possession of Mosul Vilayet, but the discovery of oil in Kirkuk might have been one of the reasons which caused a change, in 1918, in the original agreement whereby Britain was given control over Mosul. Consequently, the League of Nations granted France mandates over Syria and Lebanon and also approved a right to Great Britain over Iraq and Palestine.⁹¹

On 30 October 1918 British forces occupied the Mosul Vilayet (current Iraqi Kurdistan or Southern Kurdistan) after defeating the Ottoman power.⁹² On 1 December 1918, the British chose Sheikh Mahmud Barzaji⁹³ as a suitable person to head the Kurdish government, and appointed as *Hukumdar* (governor).⁹⁴ For the

⁸⁹ Mir Muhammad was able to control one of the strongest emirates in the area bounded between two Zabs and Iranian boundary. He expanded his power over the Koi-Sanjaq, Erbil and Altun-Copur and Raniya. See McDowell(2000), *op. cit.*, p 38

⁹⁰ Madhar Ahmad argued that the secret diplomacy of the Sykes-Picot accord was devoted to determining how the Arab countries subject to the Ottoman Empire were to be partitioned. According to Sykes-Picot, Britain had ceded Mosul province to France because it did not wish to have spheres of influence adjacent to Russia. In addition, Kurdistan had an important place in the secret negotiations of the Allies, commensurate with their interest in this area. Kamal Madhar Ahmad, *Kurdistan During The First World War*; trans. Ali Maher Ibrahim, (London: Saqi Books, 1994), p.105.

⁹¹ It is also arguable that the right of the creation of a Kurdish state was accepted following First World War in the Treaty of Versailles. However, the treaty was denied by force on behalf of the newly created Republic of Turkey. In this context we seek to highlight that the two separate Kurdish republics and one Kurdish Kingdom declared sovereignty, i.e., the “Republic of Ararat (Northern Kurdistan/Eastern Turkey), the Republic of Mahabad (Eastern Kurdistan/Iranian Kurdistan) and the Kingdom of Kurdistan (Southern Kurdistan/ Northern Iraq)”; each of these fledgling states was duly crushed by military intervention.

⁹² The armistice signed at Mudros between the Turks and the Allies deeply influenced the destiny of the people of the Mosul Vilayet, and it is useful to note that the modern State of Iraq came into being with the Mosul Vilayet as one of its essential parts, although the Mosul issue remained contentious. Kamal Madhar, *op. cit.*, p.105

⁹³ The well-known religious leader Sheikh Mahmud (1882-1956) was officially appointed to Governor of Kurdistan, who was later, crowned King of Kurdistan. This Kurdish state existed from 1919-1924. Jemal Nebez, *op. cit.*, p. 36

⁹⁴ Sheikh Mahmud as the head of the leading Saiyid family in the region he had religious influence and a huge number of followers. The Civil Commissioner, Sir Arnold Wilson, who was in Sulaymaniya at

British government, the difficult issue, caused by the seriousness of the internal situation and the instability prevailing from the end of 1918 until 1921, was the need to deal with the Kurdish question in Mesopotamia.⁹⁵ In this context, there were various views; some suggested it as a State, or States, under their “tutelage”;⁹⁶ others suggested including it in the Arab Kingdom of Iraq that was in the process of being established.⁹⁷

According to Major Noel, the British sought to gain Kurdish support with the object of opposing the Pan-Islamic propaganda of the Turks and their efforts to turn the Kurds against the British. Great Britain supported the proposed Kurdish autonomy or independence⁹⁸ as a means of creating a barrier zone between the Soviet Union and the area of British interest, especially between the Soviet Union and Turkey, Turkey and Iranian Azerbaijan, and Turkey and Central Asia, as well as to contain any possible expansion of Soviet influence into the Middle East following the October Revolution. The second group was against the existence of the Kurdish separate entity.⁹⁹

What should be mentioned here that the serious tension had evolved between Sheikh Mahmud and the British. The British believed that Sheikh Mahmud had planned to expand his powers to include all the Kurdish areas of Iraq, since he had exaggerated

that period confirmed Sheikh Mahmud as *Hukumdar* (governor). David McDowell (2000), *op. cit.*, p. 156

⁹⁵ In Mesopotamian, British government set up a military administration under Arnold Wilson as acting Civil Commissioner during the absence in Persia of Sir Percy Cox, the Civil Commissioner, despite there were a disagreement over the future status of Mesopotamia between these two officers. See D. K. Fieldhouse (ed.), *Kurds, Arabs and Britons: The Memoir of Wallace Lyon in Iraq 1918-44*, (London and New York: I. B. Tauris, 2002), p.7

⁹⁶ The British view of the Kurdish question seems to have been divided during this period of time; in other words, those in Kurdistan supported Kurdish participation in high office while those in Baghdad took a dim view of the Kurds.⁹⁶ The first group, which included several British officials, supported the idea of Kurdish independence. Major E. M. Noel, a British Officer who was involved in Kurdish affairs at this time, wrote about the suggestions made by Colonel Arnold Wilson for the founding of an independent Kurdistan under British rule, to include the areas of Van, Bitlis, Diyarbakir. See Derk Kinnane, *op. cit.*, pp. 36-7

⁹⁷ The British accepted the demands that were explained in the letter by Sherif Hussein of Mecca to establish the new state for Arabs in the area of lower Mesopotamia which is composed of Vilayet Basra and Baghdad, as a prize for his uprising against the Turks. See Chaliand, Gerard (ed.), *People Without The Country: The Kurd and Kurdistan*, (London: Zed Books Ltd, 1993), p.144.

⁹⁸ According to Colonel Arnold Wilson, who visited Sulaymaniyah in December 1918 and met some 60 leading Kurdish chiefs, there were two aspects that the Kurds of that period needed to consider. The first was that it was uncertain if Iraqi Kurdistan would be put under British administration, while the second was that Kurdistan must be separated from Iraq and governed directly by British authority David McDowell (2000), *op. cit.*, P. 156, and also see: Borhanedin A. Yassin, *op. cit.*, p. 47

⁹⁹ Borhanedin A. Yassin, *ibid.*, p. 49

his authority beyond the realms of what he had previously accepted, thinking that he was in a position to achieve their interests in the region by turning to the Turks against them.¹⁰⁰ When the British decided to reduce Sheikh Mahmud's power and influence, he responded by organising a rebellion, and on 22 May 1919 the first recorded revolution occurred in the Kurdish cities.¹⁰¹ Sheikh Mahmud's forces attacked Sulaymaniyah, and raised the flag over the British political office; this uprising also extended to Erbil and Mosul. However, In November 1922, Sheikh Mahmud proclaimed himself King of Kurdistan, and agreed to limited self-rule inside the new Iraqi state. In July 1924 the British drove him out of Kurdistan permanently.¹⁰²

After the invasion, the British forces could impose the integration of the three of Mosul, Baghdad and Basra into a new State of Iraq under the League of Nations Mandate administered by them.¹⁰³ The Allies imposed their conditions on the Ottoman Turks at the Versailles Peace Conference in 1919, which obliged the Ottomans to sign the Sevres Peace Treaty with the Allies, according to which Turkish rule was restricted to Western Anatolia. As well as this the British were awarded the right to establish a state for the Kurds and Armenians and promised, moreover, according to Articles 62, 63 and 64 to give the Kurds independence following a year of autonomy.¹⁰⁴ Britain was granted the mandate for Iraq under the Treaty of San Remo, and established a provisional government in Baghdad, with Prince Faisal as

¹⁰⁰ Wadie Jwaideh, *op. cit.*, pp. 193-94

¹⁰¹ By the spring of 1922, the situation in Iraqi Kurdistan had deteriorated to such an extent that the British decided to bring Sheikh Mahmud back from exile, In September 1922, Sheikh Mahmud was reinstated to his position of authority, only to use the Kurds against the Turks, who had territorial ambition over Mosul and Kirkuk. On 12 September 1922 Sheikh Mahmud arrived in Baghdad; on 30 September 1922 Sheikh Mahmud was arrived Sulaymaniyah accompanied by Major Noel. In the course of the negotiation that took place there, Sheikh Mahmud undertook not only to prevent the Turks from occupying the town of Sulaymaniyah, but also to expel them from other parts of the division. He also agreed not to interfere in the affairs of the Kirkuk and Erbil divisions. Borhanedin A. Yassin, *op. cit.*, p. 199

¹⁰² It has been argued that the emergence of a Kurdish entity was not acceptable after it had been agreed with the League of Nations, who had indicated that Kurdish rights should be protected in a new state in Iraq. This statement was made following the announcement of Iraq's admission into the League of Nations in 1932. While this gave Iraq its independence, it remained under British tutelage until 1958. During this time both British air and ground forces with the new Iraqi governments were involved in suppressing the third uprising of the Kurds and destroying their entity. See Stephen C. Pelletiere, *The Kurds: An Unstable Element in the Gulf*, (Boulder and London: Westview Press, 1984), pp. 62-3, and also see Helen Cook, *The Safe Haven in Northern Iraq: International Responsibility for Iraqi Kurdistan*, (London: University of Essex and the Kurdistan and the Kurdistan human Rights Project, 1995), p. 10

¹⁰³ Charles Tripp, *'A History of Iraq'*, (Cambridge: Cambridge University Press, 2002), p 30

¹⁰⁴ *Kurdistan Times*, No. 4, November 1995, p xi

King of Iraq. It became clear that according to the Anglo-Iraqi Treaty negotiations, Britain supported Iraq's claim to the Mosul vilayet being attached to Iraq.¹⁰⁵

Focusing on the British Mandate period over Iraq indicates that the guarantee of autonomy for the Kurds within Iraqi borders had been reinforced and reaffirmed during this period. It had become a basic condition to make Iraq a recognised State in the international community, but these guarantees were not achieved. On the other hand, elections were necessary for ratification of the treaty if Iraq was to become an independent state. On 6th September 1930 the Kurds refused to participate in the election and demonstrated against it in Sulaymaniyah; this caused the death of 30 protesters and many others were wounded at the hands of the British and Iraqi governments who responded with brute force.¹⁰⁶

However, it has been argued that, Britain was only interested in securing oil by incorporating Mosul into the newly-formed Iraqi State.¹⁰⁷ Nevertheless Dr. Borhanedin Yassin holds a different view; he believes that Britain's goal was to contain expansion of Shiite influence into the Middle East, and also to keep balance between the two religious entities in the region. Thereby, the establishment of strong Sunni's entity in Iraq had not, at the time, been achieved without the integration of Mosul into the newly-formed Iraqi State. Thus, the frontier problems between Turkey and the Iraq mandate have been frequently discussed during 1923-1926, and the fate of the Kurdish issue in the Mosul Vilayet was directly suspended to the outcome of these discussions.¹⁰⁸

2.2.3 THE GROWTH OF NATIONAL CONSCIOUSNESS AND THE EMERGENCE OF RESISTANCE MOVEMENT

Although the Kurds were widely scattered in Turkey, Iran, Iraq and Syria, they have always had the universal wish for self determination. The development of ethno-nationalism is largely correlated to the existence of a common language, race, religion

¹⁰⁵ Sa'ad Jawad, *op. cit.*, pp. 7-8

¹⁰⁶ Borhanedin A. Yassin, *op. cit.*, p.119

¹⁰⁷ *Kurdistan Times*, No. 4, November 1995, p. 114; Also see: Stephen C. Pelletiere, *op. cit.*, p. 58.

¹⁰⁸ Interview through Telephone with Dr. Borhanedin Yassin, on 12 August 2009, Sweden

and historical experience. The spread of doctrinaire nationalism among the Kurds, as a result of active participation by Kurdish intellectuals, was in large measure a reaction against Armenian, Turkish, Arab and Persian nationalism. The outbreak of movements in that period hastened the emergence and growth of doctrinaire nationalism among the Kurds and encouraged them to demand freedom. The appearance of a Kurdish nationalist press and the establishment of Kurdish associations and societies gave further strong motivation to Kurdish cultural and political activity.¹⁰⁹

Kurdish identity and the aspirations of Kurdish nationalism increased among Kurds soon after the attempts to establish the Republic of Mahabad. Although this failed within the year, it was during this period that vast progress took place, and there is evidence suggesting that Kurdish nationalism was increasingly under the influence of the leader Mustafa Barzani.¹¹⁰ The national parties, especially the Hiwa Party, supported Barzani in utilising nationalism, and it is argued that the impact of socio-economic changes encouraged its rapid growth among the Kurds throughout the Second World War and its aftermath, not only in Iraq, but also in Iran, Turkey and Syria.¹¹¹ Madhar Ahmad argues that the slogan of an autonomous Kurdistan, as well as idea of the right of self determination became the crucial demand of the people, especially among the intelligentsia, who were influential in encouraging the populace

¹⁰⁹ In this context, one should mention the small groups of Kurdish nationalists living in exile that continued to work for an independent Kurdistan. Some of them turned to Russia and others to England, such as General Muhammad Sharif Pasha who was chosen by the Kurdish nationalist organisation to represent the Kurds at the Peace Conference and who sought to promote Anglo-Kurdish cooperation. He suggested that the British should guarantee the Southern Kurds autonomy under British protection. In this context, Jwaideh argued that, in December 1914, General Muhammad Sharif Pasha offered his services to the British expeditionary forces in Mesopotamia, evidently with the object of obtaining some assurances with regard to the future of Kurdistan, but he failed to reach an understanding with the British. On the other hand, members of the Bedir Khan family, especially ‘Abd Al- Razzaq Beg and Kamil Beg Bedir Khan, maintained strong and amiable relations with the Russians; at some point before the war Sheikh Sayyid Taha appears to have entered into formal relations with the Russians. Wadie Jwaideh, *op. cit.*, pp. 128-30

¹¹⁰ What it should be noted here, that the sequence of events in the Barzan region caused the eruption of the First Barzani rebellion in 1931-1932 by Sheikh Ahmad of Barzan, who was a leader of the Naqshabandi order. However, the uprising (1943-1945) led by Mulla Mustafa was initially quite isolated from political Kurdish activities, and its aims were confined to a specific area in Barzan. It is important to note that Barzani eventually succeeded in his endeavours to create compatibility between different elements. He also contacted various tribes and urban elements, through collaboration with Kurdish political organisations, in order to obtain their support. Consequently, in 1945, Barzani decided to establish a new political party-in-exile. On 16 August 1946, just after the collapse of the third Barzan revolt in 1945, “The Kurdish Democratic Party” was established. See Abdulkader Brifcani, *Mustafa Barzani: Leader of the Modern Kurdish National Movement*, (London New York: Kegan Paul International, 2000), p.59; and also see Borhanedin A. Yassin, *op. cit.*, p.222

¹¹¹ Borhanedin A. Yassin, *ibid.*, pp. 46-8

to move towards a new phase of the liberation struggle after the war.¹¹² It is also argued, on the other hand, that the First World War influenced the emergence of the first Kurdish nationalist movements in Turkey and Iraq. The spread of the idea of self determination was supported by the two leaders, Lenin, the Soviet leader, and US President Wilson; this encouraged the Kurds to demand an independent state.¹¹³

There are various reasons for the progress and spread of Kurdish nationalism, including the imposition of Ottoman rule, and the negative reactions of feudal and princely Kurdish families to a central authority which led to a society with the poor social and economic conditions that were common in Kurdish areas.¹¹⁴ Borhanedin Yassin points out that during the First World War, the Kurdish elite and educated urban individuals played a major role in the development of Kurdish nationalism, as well as in the politicisation of Kurds. This coincided with the rise of the modern State system in the Middle East. The eventual dismantling of the Ottoman Empire was also a significant factor in the progression of ethno-national identities of ethnic minorities that had been under its rule.

It is evident that the nature of the conflicts between the Kurds and the Iraqi government has had historical roots in the deliberate neglect by previous governments to find a reasonable solution to the Kurdish problem; instead they constantly implemented a repressive approach towards the Kurds and their grievances. The general view of the Kurdish revolt seems to have been that the Kurds created a real danger to Iraq's territorial aims and were also an obstacle to achieving the notion of the dominance of 'Arabness' in Iraq. It should be noted that each government that came to power during this period presented an armistice that was only for negotiations until matters had been arranged for the Kurds to continue as before.¹¹⁵

¹¹² Kamal Madhar Ahmad, *op. cit.*, p.129

¹¹³ Faleh A. Jabar and Hosham Dawod (ed.), *The Kurds; Nationalism and Politics*, (London, San Francisco Beirut: Saqi Books, 2006), p.15.

¹¹⁴ Shams C. Inati (ed.), *Iraq: Its History, People and Politics*, (New York: Humanity Books Press, 2003), p.167

¹¹⁵ Gareth R. V. Stansfield, ' *Iraq: People, History, Politics* ', (Great Britain: Polity Press, 2007), PP. 103-04

In October 1964, Kurdish demands for self-government again included the areas of Sulaymaniyah, Kirkuk, Irbil and Mosul, which would be governed by the Kurdish people through their own parliament and other significant ministries, such as foreign affairs, finance and defence. They agreed to be controlled by the Iraqi government, and this time made no mention of oil revenues or the Kurdish army within the Iraqi army. These two vital matters had been stumbling blocks in all previous negotiations.¹¹⁶

It is significant that when all the Iraqi Arab authorities came to power, they initially signalled their intention of respecting the ambitions of the Kurdish people and agreed to recognize the political rights of Kurds. Shortly after having achieved power, these promises ended and the leaders turned towards defeating the Kurdish revolutions by force; for example; Abdul Selam Arif on 18 November 1963,¹¹⁷ Abdul Rehman Arif on 14 April 1966; and the Baath Party under President Ahmed Hassan Al-Bakr, with his vice-president, Saddam Hussein on 17 July 1968. When the Baath regime returned to power in Iraq they dealt with the issue by implementing the same methods; killing and oppressing the Kurdish question. However, under international pressure, especially from the Soviet Union, the Iraqi government announced the “Statement of 11 March 1970” which assured autonomy for Kurdistan.¹¹⁸

At the time the “Statement of 11 March 1970” between the KDP and the Iraqi government represented a historical achievement. It included a 15-point proposal to

¹¹⁶ In June 1964, tensions increased between Barzani (President of the KDP), and the KDP politburo headed by Ibrahim Ahmad (Secretary of the KDP), which led Barzani to drive the KDP politburo and followers out of Iraqi Kurdistan, in order to put an end to the political career of Jelal Telebani. In spite of this, Telebani remained active in the Kurdish national movement, appearing again in the political arena, especially after Barzani’s revolution had collapsed in 1975. Telebani also benefited from the tensions between Baathist parties in Iraq and Syria in establishing the headquarters of a new party under the name The Patriotic Union of Kurdistan (PUK) in Damascus. The PUK obtained support from Syria to participate in the Kurdish resistance taking place in Iraqi Kurdistan. Stephen C. Pelletiere; *op. cit.*, pp. 135, 139, 185

¹¹⁷ Barzani was permitted to return from his exile in the Soviet Union after the military coup by Abdul Kerim Qasim in 1958. Under the leadership of Abdul Salem Aref (November 1963 to April 1966) a war was launched against the Kurds in June 1963. In negotiations between the Kurds and the central government in 1963, the Kurds demanded autonomy. After the overthrow of Aref’s government Mustafa Barzani agreed to a ceasefire in January 1964. *Ibid.*, pp. 133-34, 152

¹¹⁸ It should be noted that in 1970 Iraq was considered a follower of the Russian camp and that they not had any relations with the United States since 1967 because of US support for Israel. For this reason the Iraqi government had insisted on abandoning contracts which supplied oil to Western markets and instead turned to the Russians in 1972, from whom they obtained and armed themselves with various weapons. *Ibid.*, pp. 165-66

implement an autonomous scheme in Iraqi-Kurdistan within four years, and authorised the participation of Kurds in the Iraqi parliament. But until 1974, apart from the Revolutionary Command Council, Iraq still had no parliament and had no permanent constitution since a military force ruled the country.¹¹⁹ A plebiscite was planned for October 1970 to determine the area predominantly run by Kurds; but this never took place, despite the peace agreement that included the Kurdish demand for equality, home rule and participation within Iraq.¹²⁰ In order to eradicate the Kurdish movement and to extend its control over the entire Kurdish region, the Iraqi government wished to resolve its boundary differences with Iran at the OPEC conference in Algeria. In 1974, on the basis of the “Algiers Pact” between Iraq and Iran, and with mediation from the Algerian president Houari Boumedienne, the Iraqi

¹¹⁹ Nevertheless, these promises too were broken in March 1974 when the Iraqi government decided unilaterally to apply limited autonomy, in a move deliberately intended to weaken the accepted version of the agreement. The Iraqi government created a legislative assembly in Iraqi Kurdistan with 80 members under the dissident KDP member Hashem Akrawi. This legislative assembly was not the result of free elections, but its members were selected and appointed by the Iraqi government. Without this power, the whole process of reconciliation was dangerously undermined by the Iraqi government. In addition the Arabisation policy in Kirkuk and other Kurdish areas continued to be assiduously applied. Alexis Heraclides, *The Self Determination of Minorities in International Politics* (Great Britain: Frank Cass and Company Limited, 1991), pp. 134-34; and also see Edmund Ghareeb, *ibid*, p. 172

¹²⁰ The most significant points in this agreement were:

1. It recognised that the Kurdish language should be considered equal to Arabic, be an official language and be the language of instruction in the areas manned by a majority of Kurds. Elsewhere, in the rest of Iraq, it should be taught as a second language.
2. The Kurds were to be recognised in the interim constitution, which should be amended to read: “The people of Iraq are composed of two principal nationalities; The Arab nationality and The Kurdish nationality. This constitution recognizes the national rights of Kurdish and all of nationalities within framework of the Iraqi unity.”
3. To eliminate any discrimination between Arabs and Kurds regarding participation in the government and holding any important and sensitive public offices such as ministries or army commands, etc.
4. The administration, including government officials such as district officers, directors of police and directors of security, etc. were to be elected among the Kurds in the Kurdish province.
5. Women, students, youths, teachers etc., would have the right to set up their own organisations and the government would supply them.
6. Workers, employees, government officials, civilians and the military, who had lost their jobs during the hostilities, should return to service.
7. There were to be economic plans and equal development schemes for the Kurdish Provinces along with the rest of Iraq. Also pension salaries were to be paid to the families of members of the Kurdish armed movement who had been martyred or who were incapacitated or disfigured.
8. The Governorates Law would be amended to conform to the contents of the 11th March Statement.
9. One of the Vice-Presidents of the Republic should be a Kurd. However, some of these terms were implemented directly, such as the appointment of five Kurdish ministers to the cabinet, while others were discussed but left without any solution. One of the thorny problems concerned the delineation of the autonomous region with the Kurds demanding that the province of Kirkuk be included in the Kurdish region. They also demanded the authority to preserve their own forces and establish contact with foreign powers. See Michael M. Gunter (1992), *op. cit.*, p.14; and see also: Stephen C. Pelletiere; *op. cit.*, p. x; pp. 173-74.

government decided to appease Iran by transferring some territory in order to be able to use the Shatt Al-‘Arab waterway provided that Iran agrees to end its aid to the Kurds.¹²¹

The collapse of most Kurdish revolutions came about as a result of various factors, most of which have been put forward by Kurds themselves in their attempt to draw the appropriate lessons from previous disasters. In this context, Alexis Heraclides argued that the prime Kurdish mistake was excessive dependence on Iran as it was deemed untrustworthy from the beginning; however, it might be reasonable to counter this on the grounds that the Kurds at that time did not have an alternative means of support. Another error was the naive belief in the existence of a guarantor. Barzani miscalculated when he acted on the basis that the aid from Iran and the US would never stop, even though the US had been reluctant to support the Kurds and had little stake in the conflict. Nevertheless, it may be useful to pay attention to the argument that Barzani was not hardly concerned with presenting the Kurdish case in the Third World and in Socialist countries; as well as this, his inability to obtain the support and sentiments of the Arab Left, who were traditionally sympathetic to the Kurdish cause, meant that Barzani did not have the required diplomacy to carry the Kurds through this ordeal.¹²² To conclude, it is noteworthy that the re-establishment of association between the Great Powers during the two World Wars effectively removed all Kurdish efforts to found their entities and collapse their movements in each State.

¹²¹ However, the heavy fighting between the Kurds and the Iraqi government soon led to the breakdown of negotiations. On 7 March 1975, according to the agreement Iran closed border traffic to Kurds, Iranian aid was abruptly terminated, and all provisions of the Kurdish movement were stopped; and the Kurdish resistance was thus brought to an end. Consequently, the Kurdish revolution for which Barzani had gone into exile in Iran, collapsed and others surrendered. Michael M. Gunter, *ibid.*, p.18; See Gerard Chaliand (ed.), *ibid.*, p.7

¹²² Within this context, it would be realistic to analyse reasons why the Kurdish rebellion did not have the chance to succeed and did not achieve their aims during that period.

1. The Kurdish movement failed to succeed in mobilising the human potential of the Kurdish people.
2. Most of the Kurdish rebellions were under religious leaders, Sheikhs, who had a negative influence on the whole of the Kurdish movement.
3. The Kurdish movement was thwarted by its leadership, especially during the Barzani Revolution and its aftermath. The Kurdish leadership deliberately rejected attempts to be reconciled with each other, sometimes even depending on their enemies to settle their conflicts.

It is necessary to analyse the events and disputes at this period on two levels, international and internal, and how these led to the weakness of the Kurdish movement. The Kurds did not find any long-term allies to support them because the interests of international powers were directed towards countries that contained a majority of Kurds, rather than towards the violation of human rights of the Kurds as a race.

2.2.4 THE KURDS' SITUATION DURING THE IRAN-IRAQ WAR 1980-1988

The Iraq-Iran war brought the Kurds new opportunities and new disasters. During the war both sides began to support and arm each other's Kurdish opponents. However, in 1983-84 there were unsuccessful attempts at negotiation between the Iraqi government and the PUK to settle their differences. The PUK demanded an increase in autonomy in the Kurdish region and withdrawal of Iraqi forces from the area under PUK control. They also demanded financial support and the dissolution of Kurdish tribal forces (Jash).¹²³ In 1985, under the influence of Syria, Libya, and Iran, the two main parties, KDP and PUK, initiated contact. Moreover, in 1987 they created the "Iraqi Kurdistan Front", whose goal was to attain wider autonomy and bring down the regime.¹²⁴

The consequences of the Kurds' activities against the Baath Party and their cooperation with Iran led to revenge by the Iraqis and to increased repression of Kurdish people. The Iraqi army was involved in widespread and systematic use of chemical weapons against both military and civilian goals, especially in 1986 when there were strengthened relations between the Kurdish movement and the Iranian government, and the promotion of a truce between the PUK and KDP. In response, and following the end of the Iraq-Iran war, Iraqi troops launched severe operations against the Kurds, under the name 'The Anfal campaigns',¹²⁵ which took place during the period from 29 March 1987 to 23 April 1989.¹²⁶

¹²³ 'Jash', the term meaning Kurdish irregulars who are loyal to the government and were recruited to the Kurdish tribal forces; the government pays them for any activity against the Peshmerga. See Edmund Ghareeb, *op. cit.*, p.174

¹²⁴ Saddam Hussein drove Iraq to a destructive war in 1980-1988, However, the United States government implicitly supported the Iraqi government because the Islamic Republic of Iran was viewed as a major threat. This war cost Iraq nearly \$100 billion of debt, which was used mostly in military mobilization and equipment. Large army forces reached nearly a million in size and destroyed the economic infrastructure. It was estimated that around \$200 billion of investment was needed to repair the damage that overwhelmed the country as a result of the war. In this context, Dr. Stansfield stated that Iraq was granted debts and supports mainly by the Arab countries, especially Saudi Arabia and Kuwait, of between \$US 50-55 billion, and from the West and Japan \$US 25-35 billion, as well as \$US 10 billion from the former Soviet Union. See Liam Anderson and Gareth S. V. Stansfield, *The Future Of Iraq: Dictatorship, Democracy, Or Division*, (New York, Palgrave Macmillan, 2004), p.84, Also see Michael Clarke, 'The Diplomacy that Led to War in Iraq', in *The Conflict in Iraq 2003*, ed. Paul Cornish, (New York: Palgrave Macmillan Ltd, 2004), p. 28

¹²⁵ The term "Anfal" refers to one of the verses of the Qur'an. It was a serious military operation used by the Baath Party and was intentionally anti-Kurdish; its goals were to devastate all the villages of Iraqi Kurdistan, in order to eliminate support for the Peshmerga forces and to stop their acquisition of

The first Anfal campaign was initiated in the Jafayati valley villages of Bergalou and Sergalou. The second Anfal campaign began on 22 March 1988 with the chemical bombardment of the village of Sawsenan. On 13 March 1988, the Iranian army had shelled the town of Halabja in order to control it. In response, the Iraqi army counter-attacked on 16 March, with heavy air strikes which included attacks of napalm, phosphorus and chemical weapons. Although the Human Rights Watch organisation has the name of 3,200 victims, they estimate that between 4,000 and 7,000 people were killed.¹²⁷

In short, during the eight years of war, the Iraqi government was widely supported by Arab countries and by Western industries who supplied financial aid and weaponry. This motivated the Iraqi government to practice oppression over its citizens. And although the United Nations, and the international community in some cases, condemned the Iraqi government's violation of human rights no-one was ever seriously punished.

supplies. It is stated that the destruction caused by the Anfal campaigns included the execution of 50,000 to 100,000 Kurdish civilians. In other words, more than 5,000 villages were completely looted and destroyed by troops, and anywhere that was defined as a "prohibited area" was regularly bombarded with troops and artillery. It subsequently caused the destruction of the Kurdish rural economic infrastructure and displaced around 1.5 million people. Moreover this operation included the Arabisation of the city of Kirkuk. It is also worth noting that the first attack in which chemical weapons were used against the Kurds by the Iraqi government started in the villages of the Balisan valley and Sheikh Wasan. These initial attacks were followed by intense bombing by the Iraqi air force. Helena Cook, *op. cit.*, pp. 12-3; and also see Kerim Yildiz, *op. cit.*, pp. 25-6.

¹²⁶Saddam Hussein appointed his cousin Ali Hassan Al-Majid as supreme commander of these campaigns and gave him unlimited power over the entire Kurdish region. He also directed the Iraqi army's First and Fifth Corps

¹²⁷ It is worth noting that in the first campaign, disappearances were restricted to men and teenage boys, who were never seen again. However, in the second campaign the disappearances also included women and children, who were separated from the men and teenage boys into groups according to age and sex. The third Anfal campaign was described as a series of severe attacks from both airborne and ground troops, which spread in the Germiyan areas, including Leilan, Aliawa, Qader Karam, Chamchamal, Tuz- Khurmatu and Qoratu. The campaign included the mass destruction of villages, a rapid increase in the eradication of the Kurdish countryside and also the displacement of thousands of Kurds. The final campaign started in Badinan, on 25 August 1988. The Iraqi army recorded the arrest of over 13,000 civilians in this campaign. In addition to this, there were attacks of poisonous gas and the shooting of numerous civilians, a pattern that in fact was common to all the Anfal campaigns. Furthermore, locations in the central and southern regions of Iraq had been converted by the Iraqi government into camps for Kurdish civilians. For example, the camps in Tikrit included Topzawa, and Dibs which were set up especially for female prisoners. Another camp was Nugra Salman for elderly male and female prisoners. Individuals in these camps suffered from terrible conditions, with a lack of food and water and appalling sanitization. Many died on the way to the camps as they were kept inside the vehicles at scorching temperatures with very little hydration, which resulted in the deaths of a number of prisoners. Most were driven to mass graves and were never to be seen again by their relatives. Kerim Yildiz; *ibid.*, pp. 28-9.

CONCLUSION

During and after the First World War the Great Powers, especially Britain, strengthened the formation of several new States in the Middle East, among which were Iraq, Turkey and Syria. These new States were internationally recognised entities with clearly determined boundaries; this, however, caused the partitioning of Kurdish land between these States and created a geopolitical dilemma for the Kurds from which they are still suffering. Simultaneously, their language, culture and nationalism were severely affected by this partition, and this also represented a serious obstacle to Kurdish unity as far as a nationalist programme and strategy was concerned. It is obvious that these States did not try to solve the Kurdish problem according to democratic principles. Instead, they tried to resolve it by force, thinking that they would reach their goals by violence and suppression.¹²⁸

Indeed, the Kurds have struggled to obtain the right to self determination which includes defending, developing and maintaining their culture and identity for many decades. The Kurds as a nation are divided among four States: Turkey, Iran, Iraq and Syria, which do not recognize the right of self determination, excluding the recent situation in Iraq. Additionally, Kurdish ambitions for gaining independence or autonomy emerged and were widespread as a result of increased Kurdish nationalistic activity within this period. One of the chronic problems for the Kurds in the period after the First World War was that new independent States were formed from the disintegration of the Ottoman and Persian Empires. There was a determination to create and centralise new identities based on central control and loyalties to the largest ethnic and religious groups, in order to integrate and forcibly assimilate other minorities.

It is worth reiterating Pelletiere's view that the Kurdish national movement was not separatist; during the time they were asking for autonomous rule for Kurdistan they were asking to share power with the Arabs ruling in Iraq; however the Kurds were denied any access to the Iraqi government. Mustafa Barzani, in all his rebellions, declared the Kurds were fighting for autonomy, not for independence; he believed that it was only through negotiations that they could obtain their rights and that this

¹²⁸ Wadie Jwaideh, *op. cit.*, pp. 128-30

was preferable to the continual fighting that had been going on for decades.¹²⁹ In discussing this matter, some Kurdish intellectuals were critical of Barzani when they thought that Barzani should not have rejected the 11 March 1970 settlement out of hand; his rejection of the project and consequent run-up to the war as a result of his confidence in Western powers (especially the US) showed an inaccurate evaluation of these powers and an incorrect view that Western interests would take care of the Kurds.

During the last century, all previous regimes in Iraq had proposed truces with the Kurds, often on conditions that appeared attractive. In all negotiations with all previous Iraqi governments, the Kurds demanded democracy for Iraq and autonomy for the Kurds. When these negotiations come to play, the Iraqi government, as with all the previous governments, failed to keep its word because it truly did not want to settle or to reach an actual compromise with the Kurds. However, the situation in Iraqi Kurdistan is different from that of other countries in which Kurds are settled. These countries believe that Kurds pose a significant threat to their national security and territorial integrity. This situation leads to these countries forgetting their disputes and unifying to crush any Kurdish rebellion that might evolve into a real war of national liberation. In short, the Kurdish question often emerges and disappears on the international scene as a result of external, regional, or international strategic interests and designs. Moreover, the location of Kurds overlaps State borders, which makes them vulnerable to interference and manipulation by regional and international powers, so that their national rights are more likely to be exploited.

¹²⁹ Stephen C. Pelletiere, *op. cit.*, P.28, 131

Chapter 3:

THE KURDISTAN REGIONAL GOVERNMENT (KRG) 1991-2003

INTRODUCTION

In fact, the Kurds suffered seriously from the Iraqi regime from 1980 into the 1990s, especially in 1991 with the mass exodus, but for the first time (since the Sevres Treaty), these predicaments put the Kurds on the political map in the accounts of the political forces in the international arena. It could be said that Iraq's invasion of Kuwait and the miscalculations of Saddam Hussein in Kuwait in 1990 gave the Kurds an opportunity for the inclusion of Kurdistan in the Iraqi State, since the West and neighbouring powers would not allow the Kurdish region an independent existence outside Iraq.

By 1992, however, the Kurdistan region was suffering under international and internal sanctions. The Iraqi government imposed a total ban on all foodstuffs, medicine, and petroleum products in the Kurdish region, and isolated the region from the rest of Iraq. This was an attempt by Iraq to oblige the Kurds to reach a political settlement. It is undeniable that all these circumstances, as well as the internecine fighting that took place between the KDP and PUK affected the internal political situation in the Kurdistan Region causing instability and uncertainty.

The present chapter examines the international response to the plight of the Kurds in Iraq between 1990 and 2003, and explains how far the intervention achieved a positive humanitarian outcome to save the Kurds in the immediate aftermath of the Gulf War and the establishment of a no fly zone over northern Iraq. Western military forces were also claimed the legitimacy of the humanitarian justifications, especially after the Security Council had adopted Resolution 688 by providing armed protection for the Kurds in northern Iraq. The chapter also investigates the reasons why Saddam Hussein decided to withdraw his forces and cut the administration in the three Kurdish governorates, consequently the IKF forced to establish a local administration in their region and followed by establishment the Kurdistan National Assembly (KNA) on 8 April 1992 through holding democratic elections on May 1992, which is

represented one of the most democratic processes that had ever been conducted, not only in Iraq but in the wider Middle East as well. Eventually, establishment the first cabinet was formed on 4 July 1992. It is important to note that this chapter is necessary to understand the changes and developments of events with its implication, which happened post 2003, also to challenge all obstacles whether inside or from Iraqi neighbouring States to restrict their national rights.

3.1 THE KUWAIT CRISIS AND THE OUTBREAK OF THE UPRISING IN KURDISTAN REGION

Saddam was warned over and over again to comply with the will of the United Nations: Leave Kuwait, or be driven out. Saddam has arrogantly rejected all warnings. Instead, he tried to make this a dispute between Iraq and the United States of America.

(President George Bush - January 16, 1991)¹³⁰

Indeed, the Iran-Iraq war was expensive and eight years of brutal warfare left terrible after-effects on the economy of Iraq; this made Saddam Hussein desperate for a financial solution to his rapidly failing economic and political situation.¹³¹ Beyond this, most scholars argue that the 1991 Gulf War is still one of the most interesting military campaigns in modern history; it came at a specific time after the lengthy Cold War that ended in 1989 with the fall of the Berlin Wall.¹³²

¹³⁰ The History Place Great Speeches Collection, 'The President George Bush Accounting War Against Iraq'. Available at: <http://www.historyplace.com/speeches/bush-war.htm>; Access date 19 November 2011.

¹³¹ Saddam Hussein demanded that the Arab countries, especially Kuwait and Saudi Arabia (who do not weaken their economies by exceeding their agreed quotas), should reduce their oil production; this impacted on oil prices which declined to less than the OPEC-agreed per barrel level. Saddam stated that Iraq had made sacrifices against the Persians on behalf of the Arab countries, anticipating that for this reason the Arab countries would see their financial aid to Iraq in terms of donations instead of loans. Kuwait was constantly accused of aggressive behaviour against Iraq, and of having benefited from the Iran-Iraq war by accumulating wealth, while Iraq had made great sacrifices to defend the Arab nation's soil. In this way, Saddam had found his justification for invading Kuwait, especially when the Kuwaiti government made it abundantly clear that they were not prepared to reduce the debt or assist in lowering oil prices. Gareth Stansfield, *Iraq: People, History, Politics*, (Great Britain: Policy Press, 2007), pp. 124-25. Also see Alastair Finlan, *Essential History: The Gulf War 1991*, (Oxford: Osprey Publishing, 2003), p. 25; and see also Anderson and Stansfield, *The Future of Iraq: People, Dictatorship, Democracy, or Division*, (New York: Palgrave Macmillan Press, 2004), pp. 83-4

¹³² Alastair Finlan, *ibid.*, pp. 7, 10

After the Iran-Iraq war, relations between Iraq and Kuwait deteriorated, especially when Kuwait insisted that the Iraqi government had to repay its debt to the Kuwaiti government. In turn Iraq requested that the debt should be excused because it had been incurred during the defence of Arab nationalists and national dignity. The Iraqi Government also criticised Kuwait for its aggressive stand against Iraq which included stealing from the Rumaila oilfield.¹³³ Consequently, on 2 August 1990, under the guidance of Ali Hassan Al-Majid the Iraqi troops occupied Kuwait after all the Princes and ministers had fled to Saudi Arabia. On 28 August 1990, Saddam decided on the full annexation of Kuwait as the 19th province of Iraq.¹³⁴

The international community came to the conclusion that peace initiatives to end the crisis would not work with the Iraqi regime, and they believed that Saddam would not withdraw voluntarily without exposing the regime to armed conflict. Consequently, the UN Security Council was obliged to pass Resolution 678 on 29 November 1990; if a withdrawal was not completed before 15 January 1991, they would permit member States to use all necessary measures in order to evict the Iraqi army from Kuwait.¹³⁵

¹³³ The war took most of the world by surprise. Initially Saddam Hussein announced that there had been a coup in Kuwait and that the new government had requested assistance from the Iraqi army to protect it, but the weakness of these allegations was not heeded by the international community and did not hold up. Sarah Graham-Brown, *Sanctioning Saddam: The Politics of Intervention in Iraq*, (London. New York: I. B. Tauris Publishers, 1999), p. 7

¹³⁴ Despite mediation attempts by French and Russian officials to end the crisis, Saddam refused to comply with or take advantage of the efforts made by Iraq's regional and western friends to encourage withdrawal of the Iraqi troops. They warned him that if he continued to pursue such a policy this would increasingly aggravate attitudes and pressure from the international community. The situation led to the difficulty of any of Iraq's closest regional friends being able to offer support. Saddam Hussein also appeared to have miscalculated when he tried to manipulate the inclusion of the issue of Palestine with the withdrawal from Kuwait. He insisted that the Palestine problem was to be resolved as part of a regional settlement before the question of Kuwait was dealt with. However, the international community rebuffed this proposal as well, and thus the Western countries had the legitimacy to embark on preparations for military action and the chastisement of Saddam. The use of force was viewed as the most likely outcome. It was quite evident that since the 1970s the US had given priority to the stability of Saudi Arabia (and the other oil rich States in the Gulf), as the largest oil producer and a major trading partner of the US and the West. It should be noted that, at the beginning of preparations to attack Iraq, main forces which included 265,000 American and 8000 British troops reached the Middle East under the justification of defending Saudi Arabia in September 1990. In the same context, Tom King, the British Minister of State for Defence explained his views to the House of Representatives on 7 September 1990 that the troops were there to defend Saudi Arabia, not to attack Kuwait or Iraq, and also to emphasize that the embargo imposed by the United Nations needed to be implemented effectively. *Ibid.*, pp. 8-9

¹³⁵ However, Saddam did not wish to comply with a UN-determined deadline. For this reason, the US and its coalition, including European forces and the Arab armies of Syria and Egypt, launched

3.2 THE KURDISH UPRISING IN THE NORTH

The invasion of Kuwait was seen as bringing new opportunities and much hope for the Kurds to restart military activities. However, on 3 August 1990, the Iraqi Kurdistan Front (IKF) which included the PUK, KDP, the Iraqi Communist party and also several smaller Kurdish parties, condemned the invasion and demanded Iraq's withdrawal. The Kurdish leaders also decided to suspend all operations against the Iraqi government until the end of the crisis.¹³⁶

The Kurds notably began their uprising by imagining that members of the coalition might be coerced into supporting them against the Iraqi regime;¹³⁷ from the Kurdish perspective the coalition members had betrayed them, when they gave the Iraqi regime the green light to crush their uprising. On the other hand, the attitude of the coalition leaders (especially those of the US) could be construed as a factor that raised concerns among a number of coalition members about Iraq's territorial integrity if the Shiites were to take up the reins of authority in Iraq. In other words, there was also concern that weakening the Iraqi State's hold on the south would allow the Iranians more influence. At the same time, this inter-connected strongly with Turkish fears that a possible Kurdish State might provoke a wider uprising among Turkey's Kurds.¹³⁸

Operation Desert Storm which imposed on Iraq the need for immediate and unconditional withdrawal from Kuwait. This was Iraq's last chance with a deadline of 23 February. It has been argued that Operation Desert Storm confirmed the power of the UN Security Council as a New World Order policeman, despite the limits of its role. In the name of the liberation of Kuwait, the coalition forces attacked Iraq on 17 January 1991 resulting in the expulsion of Iraq from Kuwait. Fighting was over in less than 48 hours and Kuwait was free once more. See David M. Malone, *The International Struggle Over Iraq: Politics in the UN Security Council 1980-2005*, (New York: Oxford University Press Inc., 2006), p. 84, 101. Also see Stansfield (2007), *op. cit.*, p. 128

¹³⁶ Furthermore, the IKF reconfirmed its commitment to the ceasefire against the Iraqi government through the statement issued in December 1990. The Kurds also attempted to obtain the support of the Kurdish militias that were allied to the regime; their numbers were believed to have risen to around 200,000. At the same time the Kurds tried to strengthen their efforts with other Iraqi opposition groups, and looked increasingly for support from their regional and international contacts. Edmund Ghareeb; 'The Kurdish Issue', in *Iraq: Its History, People, and Politics*, (ed.) Shams C. Inati, (New York: Humanity Books, 2003), pp. 175-6

¹³⁷ It is worth noting that the expulsion of the Iraqi army from Kuwait and resentment and hatred of the military regime. With the arrival of some of the army's advance troops in the city of Basra, there were several uprisings with popular backing against anyone related to the regime, which enabled them to gain control of the government centres. Other spontaneous uprisings immediately began to occur in the southern cities of Amarah, Nasiriyah, Karbala and Najaf. See Toma Tomas, "Al-Tariq" (The Way), No. 38, Available at: <http://www.iraqcp.org/members4/0070705w2.htm>; Also see Liam Anderson and Gareth R. V. Stansfield (2004), *op. cit.* PP. 87-8

¹³⁸ Edmund Ghareeb; *op. cit.*, pp. 176-7

In Iraqi Kurdistan, the uprising started in the town of Raniyah near Sulaymaniyah on 4 March 1991, and from there extended to the major Kurdish cities. Under the unifying banner of the Iraqi Kurdistan Front (IKF), the partisans (*Peshmerga*) of the KDP, PUK and other Kurdish political parties were able to control the rebellion and organise it as best they could. Consequently, it led to Iraqi Kurdistan being put under Kurdish control on 19 March 1991.¹³⁹ Importantly, both before and during the uprising, many *mustashars* and the pro-government Kurdish militias known as *Jash* forces joined the Kurdish side, and became a part of the parties' *Peshmerga* forces, especially after they were convinced that Saddam Hussein had been weakened; however, some of them retained ties with the Iraqi government.¹⁴⁰

Compared with the uprising in the south,¹⁴¹ it is clear that the northern uprising under the banner of the Iraqi Kurdistan Front (IKF) was considerably more organized and better formed. Despite that the victory of the rebel movements of the Kurds and Shiites continued for a short period only,¹⁴² largely because the coalition failed to

¹³⁹ John Bulloch and Harvey Morris, *No Friends But the Mountains: The Tragic History of the Kurds*, (New York & London: Penguin Books Ltd, 1992), p. 14.

¹⁴⁰ Sarah Graham-Brown, *op. cit.*, p. 217

¹⁴¹ Despite wide participation of the soldiers in the south uprising, whose numbers were not inconsiderable for military regiments even with their light weapons, various factors meant that they failed to topple the regime; first, because of the spontaneous nature of the uprising as noted previously; secondly, the absence of opposing political leaders, especially in the south, where the uprising began; thirdly, the lack of unity among opposition groups at the country level, and at the level of sectors that had incurred an uprising, and the lack of coordination between the disparate and often isolated forces. Such factors prevented the uprising from seizing power and deciding the fate of the regime in Baghdad. Additionally, the presence of the security forces and a Republican Guard that was well-armed with tanks, artillery and aircraft helicopters, land-land rockets and chemical weapons, as well as the participation of members of the Iranian Mujahidin and some elements loyal to the Palestinian authority was sufficient to suppressing the lightly armed uprising.

¹⁴² The heated discussions with respect to the political miscalculation that occurred during the uprising and caused its failure, identified some of the following factors:

1. Internal factors included the narrow-minded nature of the factions of the uprising (in the south) while their slogans reflected their sectarian character; such trends prevented them from planning to take advantage of military units for joining in the uprising, especially those who did not participate in acts of repression against the people. In light of such conditions, talk about the establishment of an "Islamic republic" along the lines of the Islamic Republic of Iran, contributed to raising fears among domestic and public opinion in the Arab and international community.

2. The effects of regional and international factors of keeping Saddam Hussein in power were significant; the predominant trend among the majority of Arab, regional and international powers did not want the regime of Saddam Hussein to fall at the hands of a victorious and popular uprising. The US administration would have preferred a coup which removed the top few candidates, which meant the head of the regime only. Meanwhile, the Gulf countries expressed their concern regarding the possibility that regime change might backfire and open the way to the appearance of a Shiite republic

offer the necessary assistance.¹⁴³ However, the regime had been weakened by the coalition's attack and by the spring of 1991 had lost control of 16 out of Iraq's 18 provinces. It was obvious the situation was developing badly for the Kurds and Shiites when Washington and London made it clear that they had no plans either to change or destroy Saddam's regime.¹⁴⁴ In short, as a result of the war that erupted over the invasion of Kuwait and its aftermath, in terms of casualties the effects were as follows: killing of 100,000-120,000 soldiers and 5,000-15,000 civilians during the war, and the deaths of 4,000-6,000 people after this war, while, the victims of the uprising at the hands of the Iraqi regime were estimated at between 20,000-50,000 individuals.¹⁴⁵

as an extension of Iran. On the other side both the Iranian and Turkish governments rejected a democratic alternative which would give the Kurdish people a chance to enjoy their nation fairly and to have the right to self-determination within the framework of a democratic, unified Iraq. Behind the political scenes, it was certainly instructive to see how the Iraqi people were coping. They had been left without any support and were subjected to the full wrath and coercion of Saddam's troops. By allowing the regime leeway to deal with the popular uprising with such brutal ferocity it was able to re-exert its authority over the whole of Iraq. *Political and organizational report of the Fifth National Conference of the Iraqi Communist Party* (in Arabic), Available at: <http://www.iraqcp.org/framse3/moat5w4.htm>.

¹⁴³ Another contentious issue to analyse and interpret was the deal made on 3 March between the coalition's military commanders, led by General Norman Schwarzkopf, and the Iraqi leaders in *Safwan* in southern Iraq over signing the cease-fire agreement. Although their discussions focused on Iraqi forces and how they were unlikely to pose a threat to the allies, they were granted use of military helicopters; however, the civil unrest in southern and northern Iraq was ignored. This could be interpreted as giving the green light for the Iraqi regime to go ahead and use helicopters, as well as artillery and ground forces, to suppress the uprisings. Saddam duly gave close family members and supporters, especially the Republican Guard, absolute powers to quell the rebellion; to end a very tense situation Ali Hassan al-Majid was made Minister of Interior, Izzat Ibrahim al-Douri was sent to the south and Saddam's son-in-law, Hussein Kamil, was appointed Minister of defence. The regime was able to crush the insurgency with great ferocity in mid-March. The repression of the uprising coincided with the Security Council's decision to impose permanent ceasefire terms on Iraq. Sarah Graham-Brown, *op. cit.*, pp. 18-9

¹⁴⁴ Some opposition groups may have triggered concerns among the allies that parties opposed to Saddam's regime were influenced by neighbouring powers, particularly Syria, Iran, and Saudi Arabia, with whom they had stronger links, such as the Supreme Council for Islamic Revolution in Iraq, Dawa, and the Islamic Movement of Kurdistan. These groups showed more animosity towards the US which they described as the 'Great Satan', than they did against the dictatorial system in Baghdad. On the other hand, there were other reasons why the allies drew back from removing Saddam at that period. It was obvious the US took regional sensitivities into account before involving itself in a military campaign the political consequences of which were not known. Gareth Stansfield (2007), *op. cit.*, p. 133, 138

¹⁴⁵ Figures from the Iraqi Red Crescent suggest that 6,000-7,000 civilians were killed during the war, and another 6,000 died because of contaminated water. According to a report by the Iranian government, the mortality rate among children who were displaced as Kurdish refugees to Iran in March 1991 reached 1,300,000, which translates to 1,000 children a day. Eventually, it was estimated there were 15,000-30,000 deaths among refugees in Iran and Turkey, but there were never any estimates of deaths that might have occurred in other places such as Saudi Arabia, where more than 30,000 Iraqi refugees reached its border. Reliable health sources predicted the deaths of some 170,000 children under the age of five in the year following the war. See *Political and organizational report of the Fifth National Conference, ibid.*

3.3 THE ESTABLISHMENT OF SAFE HAVENS FOR THE KURD AND ITS PROTECTION

After crushing the uprising in the south, Saddam ordered the Republican Guard to move into the rebel Kurdish areas. From 28 March onwards, the Kurds were forced out of the major cities and into the mountains bordering Iran and Turkey. Between 1.5 and 2 million Kurdish civilians began fleeing into the snowy mountains, fearing for their lives and remembering the Iraqi terrorist actions against them during the Iraqi *Anfal* operations in 1988 which had involved not only the unrestrained use of chemical attacks on Kurdish populations but had also systematically destroyed villages, towns, and the agricultural economy of the mountain regions.¹⁴⁶

What is noteworthy, when the international news agencies eventually started to report to the outside world the plight of Kurdish refugees who were freezing and starving following their panic-stricken flight to the mountains, public opinion in the West was outraged and aroused. This had a significant impact on their governments and created intense pressure to resolve the crisis with military and humanitarian action and to impel the international community to take action by establishing a 'safe haven' for refugees in northern Iraq.¹⁴⁷ Help eventually reached approximately one million desperate Kurds at the Turkish border on 28 April 1991.¹⁴⁸

¹⁴⁶ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (New York: Oxford University Press, 2000), p.159. and also see: David M. Malone; *op. cit.*, p. 85.

¹⁴⁷ Here another important point to be taken into account was that initially the UN had not supported the establishment of enclaves, but after the allied forces had initiated OPC, the UN signed a memorandum of understanding (MOU) with the Iraqi government to allow for UN humanitarian aid inside Iraqi territory. In this regard, it should be pointed out, that differently from OPC, the UN plan was to seek Iraqi consent and cooperation; nor did the UN plan provide for any military protection. In this context, Malone notes that President Mitterrand, who was severely criticised the international community that should not forget the plight of the Kurds, stating that it would be the imperative duty of the Security Council's "political and moral authority" to protect them. Sophie Thomashausen, *Humanitarian Intervention In An Evolving World Order: The Case of Iraq, Somalia, Kosovo and East Timor*, Africa Institute of South Africa, South Africa, 2002, pp. 33, 36; Also see David M. Malone, *ibid*, pp. 74-5, 86

¹⁴⁸ The idea of providing a 'safe haven' for Kurds was appeared when the Turkish authorities insisted to bring the refugees out of the mountains to the plains inside Iraq, instead of into the populated valleys on the Turkish side, which in turn made it easier for the Western relief agencies to send them humanitarian aid. Some political analysts have interpreted Ozal's words as being a reminder to the US and Britain that the Turkish authorities still dreamt of recovering Turkish domination of northern Iraq.¹⁴⁸ It should also be noted that both Turkey and Iran had written formally to request the UN Security Council to take international action to stop the flow of a million Kurdish refugees from the north, and 500,000 Shiites from the south across their territorial boundaries since this would threaten their territorial security. This move coincided with the visit of US Secretary of State James Baker to the region, and a declaration that they would not leave the Kurds to die in the mountains of northern Iraq.

Meanwhile the international aid agencies had launched a massive aid operation to help the refugees. The factors and reasons already noted above lay behind the decision of the Allies to create a Western umbrella protected by the forces of the US, the UK, and France. In what became known as Operation Provide Comfort,¹⁴⁹ a small area was identified in northern Iraq around the cities of Imadiya and Zakho and under allied pressure; Iraqi forces withdrew from Zakho, which was proclaimed a safe haven by the coalition members in April 1991. It is necessary to reassert that, these operations achieved their humanitarian objectives by providing food, clothing and shelter to the displaced refugees in the safe haven and guaranteeing safe routes for Kurds to their homes in northern Iraq. At the same time, the Allies activated Operation Southern Watch to prevent the Iraqi aircraft bombing of Shiite civilians and army deserters in the southern marshlands. For this reason, some political analysts argue that the actions of the coalition forces cannot be considered a violation of the UN Charter. There was also a consensus that the Iraqi government had infringed international law. Furthermore, the Allies themselves confirmed that the purpose behind the use of force was not meant to galvanise the Kurds or allow the Shiites to become independent from Iraq, nor to change Iraq's government or to violate its territorial integrity.

It is quite evident that, this humanitarian catastrophe had led the UN Security Council to pass Resolution 688 on 5 April 1991,¹⁵⁰ in order to terminate the repression of

Nicholas J. Wheeler, *op. cit.*, p. 142, 148, and also see John Bulloch and Harvey Morris, *No Friends But the Mountains: The Tragic History of the Kurds*, (New York & London: Penguin Books Ltd, 1992), p. 2

¹⁴⁹ The combined US-UK operation known as Operation Provide Comfort II (OPC II) enforced the no-fly zone above the 36th parallel until the operation was officially ended in late 1996 (to be immediately replaced by Operation Northern Watch in January 1997). OPC II, known to the Turkish as Operation Poised Hammer, was established by the allied powers, when a group of eight nations set up a Rapid Deployment Force (RDF) of 2,500 troops that was to react to any reprisals taken against the Kurds by Saddam Hussein's forces. The initial plan for Operation Provide Comfort (OPC) was to build six camps that would shelter around 60,000 refugees. Over 20,000 troops from 13 countries participated in protecting Kurds in an area of 5,500 square kilometres in the Dohuk governorate. These relief camps would be constructed in Zakho and Dohuk and displaced people would be transporting from mountains to the 'safe havens' and then to their homes. Planes flew daily observation runs above the 36th parallel from *Incirlik* airbase in south-eastern Turkey; permission for this operation had to be renewed by the Turkish government every six months. In this context, Malone suggests that the OPC was not only for humanitarian relief, but also laid a foundation for more positive economic and political development of the Kurdish region, which in effect was able to experiment with autonomy under international protection. Sarah Graham-Brown, *op. cit.*, pp. 107; David M. Malone, *op. cit.*, p. 89, 93

¹⁵⁰ What should be mentioned, a key issue here was whether the Security Council should legitimise the use of force to save the Kurds, and the legitimising of the safe haven by alliance in the wider international community. Clearly the Western States legitimised their intervention as in conformity with Resolution 688, as well as being justified under the doctrine of humanitarian intervention. In this

citizens in Iraq. This resolution represents one of the important events in changing the fate of the Kurds in this region. However, while Resolution 688 provided immediate humanitarian assistance to the Kurds, there were growing fears that the situation was deteriorating; this prompted the US and Britain to impose 'no-fly zones' to prevent Iraqi aircraft from flying north of the 36th parallel.¹⁵¹

In this context, one important dimension was that a clear political message had been sent by the coalition to Saddam Hussein that the international community would continue to provide protection for those who had returned from the mountains, despite the withdrawal of the Western forces from Iraq. The no-fly zone in the north would also remain in operation and would be watched by Western air forces. Any future attacks against the Kurds by the Iraqis would mean harsh reprisals by the allies.¹⁵² Simultaneously, at this point Talabani and Barzani were obliged to open negotiations

regard, the UK foreign Secretary, Douglas Hurd commented that the situation "recognizes extreme humanitarian need". Some member States (such as China) expressed concern that the draft resolution should not violate Article 2(7), while the French Foreign Minister, stating that the situation needed more serious action, reminded member States that it was their duty to intervene to save the Kurds. Thus, while Resolution 688 did not authorise military enforcement action, it could be described as a contribution to the promotion of international security. Wheeler points out that the resolution was not adopted under Chapter VII, but came under Chapter VI which relates to the peaceful settlement of disputes where the Security Council recommends taking action. This position was also confirmed by UN Security General Perez de Cuellar who stated that the UN establishment was not in favour of military action under Resolution 688, and this Resolution was not "put in the framework of Chapter VII". In discussing this matter it must be remembered that the enforcement action and the consequences of Iraq's repression as a threat to international security, if adopted under Chapter VII, would have opened up various options for military enforcement action. David M. Malone, *ibid.*, p. 91; Nicholas J. Wheeler, *op. cit.*, P.146; Sarah Graham-Brown, *ibid.*, p. 106.

¹⁵¹ Here another important point to be taken into account was that the allied military presence in northern Iraq could be established on the authority of the UN and without Iraqi consent, and Perez de Cuellar confirmed that the safe havens could be formed without Iraq's consent but under the care of the UN. By focusing on the legitimisation of intervention, Perez de Cuellar declared that in the absence of Iraqi consent, any deployment would require explicit authorisation by the Security Council. In response to growing pressure from critics in parliament and media calls for action to save the Kurds rather than abandoning them, the British Prime Minister John Major sent a letter to the UN Secretary General on 2 May, in which he first introduced the idea of a UN police force to protect the Kurds. He proposed that allied forces could be replaced by a UN police force, and that Resolution 688 provided sufficient authority for this. On April 16, Major had also proposed the creation of 'safe enclaves' and had confirmed that their composition was legal and provided for in Resolution 688. Meanwhile, he asserted that the Plan did not involve interference in Iraq's internal affairs, but merely granted a population safety from persecution. The proposal also received backing from the US and the EC (European Community) governments, particularly from President Mitterrand, which prompted the British Foreign Secretary to declare that Britain, France, the Netherlands, and Italy had decided not to end their operations in northern Iraq whilst the Kurds remained at risk. Nicholas J. Wheeler, *ibid.*, pp. 153-7; David M. Malone, *ibid.*, p. 88; Gareth Stansfield (2007), *op. cit.*, pp. 134-35

¹⁵² When the Iraqi army increased its activities in the southern marshes area, there were reports and allegations of shelling and air attacks, as well as the draining of the ancient marshlands. This situation, in turn encouraged the coalition members to declare the imposition of a no-fly zone south of latitude 32 on 26 August 1991, because of concerns over human rights and to provide access for humanitarian aid to reach people in need. Nicholas J. Wheeler, *ibid.*, p. 157; Sarah Graham-Brown, *op. cit.*, pp. 107-8.

with Saddam Hussein on autonomy for Kurdistan. In spite of the continuing negotiations between the Kurds and the Iraqi government, the Kurdish Peshmerga forces had at the same time taken control of Erbil and Sulaymaniyah in July 1991.¹⁵³

3.4 THE UNITED NATION'S RESOLUTIONS ON IRAQ AND THEIR IMPACT ON THE KURDS

Obviously, the first international cooperative action towards Iraq was taken on 20 July 1987, when the UN ratified UNSCR 598 which aimed to end the Iran-Iraq war. It should be noted that the first resolution against Iraq was adopted on 6 August 1991 by UNSCR 661 (with Cuba and Yemen abstaining), when the UN imposed a comprehensive economic blockade on Iraq by appealing to its members to desist from financial activities and economic transactions with Iraq and Kuwait. Despite this, provision remained for the import of essential civilian needs, such as foodstuffs and medical items, and in fact a Sanctions Committee was established to oversee the implementation of this resolution. This was the first time the UN had endorsed and implemented such a comprehensive mandatory economic embargo against any of its members, since imposing economic sanctions against Southern Rhodesia in 1960. It is worth noting that Iraqi Kurdistan was included within the terms of the UN sanctions against Iraq, despite repeated requests from the Kurdish parliament and its administration.¹⁵⁴ This meant that the Kurds were isolated and punished from both sides, i.e., by UN sanctions as well as the Iraqi government.

¹⁵³ Historically, the Kurds had suffered bitter experiences with Saddam's regime and how it had reneged on his promises. Here it should be noted that the coalition and the relevant UN agencies had been urging the Kurds to enter negotiations with the Iraqi government. Because of these negotiations, which might reflect on their standing, the allies were in a good position to accomplish their tasks, which included solving the refugee problem to encourage the mass return of most of the remaining refugees in Turkey, along with the need to protect the Kurds and change the view that this was 'interfering' in the internal affairs of Iraq. For the Kurds it was the chance to obtain more gains and peace. There were different views towards Baghdad among the Kurdish leadership of the Kurdish political groups within the IKF, but they were well aware that if they did not cooperate with the Iraqi government it would have serious consequences for the returning refugees. In addition the Turks had declared that they were not prepared to host a large new Kurdish population, so from that side also there was no alternative but to negotiate. Sarah Graham-Brown, *ibid.*, p. 36

¹⁵⁴ The situation between the Iraqi government and the UN was severely strained in June 1992, especially in relation to UNSCOM's research team and the access by its inspectors to places suspected of concealing weapons of mass destruction (WMD); security problems for UN and NGO aid staff had also increased. In the meantime, the Iraqi government requested changes in the terms of the UN's humanitarian involvement. It should be remembered that, during the period of siege until his regime collapsed in 2003, Saddam Hussein had exploited the rapidly-growing social discontent under UN

As was clear from the provisions of Resolution 661, imposing an international economic embargo on Iraq was the situation at hand. It should further be noted that Resolution 678 retained the same ban on Iraqi oil exports but adjustments were to be made that would allow Iraq to import foodstuffs according to the 661 Sanctions Committee which referred to “materials and supplies for essential civilian need”.¹⁵⁵ In the context of the sanctions on Iraq, one of the most important decisions to restrict Iraq was Resolution 686, which was adopted by the Security Council on 2 March 1991; it emphasised an explicit threat to punish through the use of armed force if Iraq did not meet all the UN’s demands, especially those related to accepting responsibility under international law for war damages and loss during the occupation, to fully disarming, and to recognising Kuwaiti sovereignty and releasing all prisoners and detainees.¹⁵⁶ On 3 April 1991, the Security Council passed Resolution 687 for the cessation of the Gulf War and also for creating the framework within which Iraq had to operate. Needless to say, according to Resolution 687, Iraq was considered responsible for all damage inflicted on Kuwait, and was obliged to accept this, without limitation or condition. Therefore, Security Council Resolutions 686 and 687 both offered the formal structure of a permanent cease-fire, but also indicated the future intricacy of the UN’s role in Iraq.

sanctions as an effective form of propaganda in the Arab World as well as in the war with the international community. He blamed the UN, as well as the US and UK governments, for the continuing deterioration of the Iraqi economy and the deaths of Iraqi children as a result of the sanctions. Sarah Graham-Brown, *op. cit.*, pp. 7-8, 56, 108

¹⁵⁵ In light of such conditions, the basic provisions of this Resolution, including forcing Iraqi compliance, contained the demarcation by the UN Commission of the Iraq-Kuwait border; its acceptance was mandatory. UN observers would monitor a demilitarised zone that extended six miles into Iraq and three miles into Kuwait, and Iraq was also to accept the sovereignty of Kuwait. In accordance with the Compensation Commission, 30 percent of all Iraqi oil revenues were to be deducted for compensation and return of stolen Kuwaiti property. The most significant issue for the western States was how to compel the Iraqi government to allow the unconditional and complete identification and destruction of all chemical and biological weapons, and of all ballistic missiles with a range of more than 94 miles and related production facilities, or their total removal under international supervision. It should be referred here to the legal clauses imposed by the UN concerning reduce or lift the prohibitions. This was dependant on the policies and practices of the Iraqi government, and included the implementation of all relevant Security Council resolutions. Moreover, if the embargo on Iraqi exports was to be lifted, Iraq had comply with all the requirements set forth in paragraphs 8 to 13, which concerned Iraq’s agreement to destroying, removing or rendering harmless all weapons of mass destruction under international supervision. The United Nation, International Law, and the War in Iraq, Resolution 687 (1991), *op. cit.*

¹⁵⁶ David M. Malone, *op. cit.*, p. 77

As it mentioned above, in the face of mounting pressure, the Security Council passed SCR 688 on 5 April 1991;¹⁵⁷ this Resolution condemned Iraqi repression, and demanded that the Iraqi government respect human rights and cease persecution of the Iraqi people, particularly of the Kurds, despite objections from some Security Council members who regarded it as intervening in Iraq's internal affairs. For the Kurds, this Resolution was a true reflection of their own destiny as they had been given support by the international community for the first time in the modern history of Iraq. To begin with, Resolution 688 was intended, through diplomatic means, to reduce the suffering of the Kurd and Shiite refugees, and focused on the cross-border situation in order to convey humanitarian aid to all those in need of assistance in all parts of Iraq, with or without Iraqi consent.¹⁵⁸

Since the last century the Kurds, sadly, have always been the victims of prevailing geopolitical realities and the interests of regional countries with great power in the political arena. Although, the United States and its allies have in general taken a more sympathetic line with Kurds, and provided protection for the no-fly zone, their concerns as to whether the Kurds would seek greater independence have remained. The events that followed the withdrawal of coalition forces, and unexpected political

¹⁵⁷ It is reasonable to assume that the Resolution 688 contained several crucial elements. First, it looked at how to deal with the threat to international peace and security in the region as a result of the crossing of the border by a massive flow of refugees, since, according to Article 39 of the UN Charter, the Security Council was the only apparatus authorised to determine what comprised a threat to international peace and security. Secondly it considered how to compel Iraq, through diplomatic means, to respect the fundamentals of human rights and to put an immediate end to the repression faced by all Iraqi civilians, expressing hope for open dialogue that would take place to ensure that the human and political rights of all Iraqi citizens were respected. Thirdly it examined how the agencies would be enabled to convey all facilities necessary for the work of providing international humanitarian aid and organisations to all in need of assistance. Fourth it looked at how the collaboration between the UN Secretary General and the Iraqi government would be managed, so that the humanitarian efforts to help the refugees in the region could continue. Finally, it required all member States and humanitarian organisations to participate in the relief operations in order to gain immediate access to all those in need of assistance in all parts of Iraq. Sophie Thomashausen, *op. cit.*, P. 26, 30

¹⁵⁸ The draft of this Resolution, initially proposed by France and Belgium, had the support of the UK and the US. However, the formula did not satisfy all the members of the UN; it was endorsed by ten members who voted in favour, while the three who voted against it were Cuba, Yemen and Zimbabwe, and China and India abstained. The Resolution also raised a legal dilemma in the international community and for international law, related to whether the Security Council was acting within the framework of Article 2 (7) of the UN Charter or was in violation of the Charter. Wheeler notes that according to paragraph 6 of this resolution, legal authority was granted for the safe havens when there were "appeals from all member States and to all humanitarian organizations to contribute to these humanitarian relief efforts", while others argued that the resolution would allow the States to depend on military action in order to access humanitarian aid in human crises. David M. Malone, *op. cit.*, p. 86; Nicholas J. Wheeler, *op. cit.*, P.143, 153; Sophie Thomashausen, *ibid.*, p. 33

vacuum caused by the withdrawal of Iraqi forces, led to the 1992 elections to choose a parliament and establish a de facto government in the north of Iraq.

The UN had imposed sanctions against Iraq but the UN, through Security Council, issued Resolution 986, from which the Iraq people benefited considerably when the UN allowed a significant amount of oil to be sold by Iraq in order to purchase humanitarian supplies; with a determined 13 percent of the revenues guaranteed for the Kurdish authority in the Kurdistan region.

3.5 THE FORMATION OF THE IRAQI KURDISTAN FRONT (IKF) AND ITS IMPLICATIONS

Indeed, the IKF was urgently required to play effective and influential role,¹⁵⁹ both politically and militarily after the legal vacuum left by Iraq's withdrawal from Iraqi Kurdistan.¹⁶⁰ Although the IKF was not capable of forming an effective administrative body to manage the government or to provide the appropriate services, it resembled an umbrella organisation that included all the differing attitudes and parties in the Kurdish arena. In this context, it should be noted that the most important aspects of vulnerability in the IKF affected the contraction and reduction of the role of

¹⁵⁹ The devastation of the Kurdish area and the ferocious scale of the genocide of the Kurds during the Anfal campaigns led to a convergence among the Kurdish Parties. On the eve of the suspension of the war between Iraq and Iran, all the Kurdish parties agreed to sign the Charter of Kurdistan Labour and the draft of the Iraqi Kurdistan Front (IKF); the signing took place on 12 June 1988 at the headquarters of the Iraqi Communist Party in *Khoakourk*, in the territorial triangle near the Iraqi-Turkey-Iran border.¹⁵⁹ The Kurdistan Front included eight parties; the KDP, PUK, Socialist Party of Kurdistan, Kurdistan Socialist Party-PASOK, People's Democratic Party of Kurdistan, Kurdistan Organization for the Iraqi Communist Party (ICP), and Front Kurdistan; these were later joined by two more, the Kurdistan Workers' Party (KTP), and the Assyrian Democratic Movement (ADM), who had obtained approval to join the Front. In order to manage IKF work, it was decided that Masoud Barzani and Jalal Talabani would both lead by rotating through every six months. Samir Tabla, "Profiles of the date of the movement of supporters of the Iraqi Communist Party" *Al-hewar Al- Mutemedn*, No. 1954,, <http://www.ahewar.org/debat/show.art.asp?aid=100456>, accessed on 22 June 2007

¹⁶⁰ As many observers have noted, the Iraqi withdrawal from the three provinces in the north of Iraq created a new and unusual situation for the Kurds, and may be considered as a basis for two key issues: first, it was a unique opportunity to gain democracy and a chance for it to be implemented and practised in this part of Iraq for the first time. Second, as the sole chance it also was possible to create a base in the Kurdistan Region for the Iraqi opposition, from which to overthrow the regime. The common trend over the past century towards the emergence and existence of any Kurdish entity has been to assert that it would destabilise the region; it has always been claimed that the Kurds represent a constant source of internal instability. Thus it would be difficult to envisage how Iraq's neighbouring countries, who have a large subset of Kurds in their own lands, would accept the emergence of an independent Kurdish entity.

the Front. These eight parties had separate political structures and their own armed Peshmerga, as well as the ability to veto any proposals or actions by the Front. In January 1992 the IKF formally withdrew from autonomy negotiations with the Iraqi government,¹⁶¹ after their disappointment at the lack of progress made and because of the dire circumstances prevailing at the time. As a political dividend for the Kurds, the Front was therefore determined to show great enthusiasm for holding elections for a regional parliament and simultaneously to replace the regional assembly that had existed under Baathist rule.

During and after the uprising, the IKF emerged to maintain the security of citizens and the defence of the Kurdish people by the establishment of IKF committees in provinces and districts to replace the previous government departments and policy units after the withdrawal of the Iraqis. In addition, the Peshmerga forces from all the parties in the Kurdistan Front organised joint teams to maintain security in the cities, until the establishment of the Kurdistan Regional Government and its police units and security structures. The monopolization of power by the PUK and KDP had paralysed and dismantled all these committees and their activities. Some analysts have argued that the situation was a serious mistake by both of the major parties. But in practice that monopoly of power led to bloody conflict between them, and left casualties and considerable material damage. In addition, that conflict led to paralysis of the work of Parliament, and the division of Kurdistan between the two administrations.¹⁶²

¹⁶¹ Negotiations between the IKF under the premiership of Jalal Talabani and the Iraqi government began officially on 18 April 1991, as coalition forces were about to arrive in Zakho. In these negotiations the Kurds submitted four papers to the Iraqi government. The first dealt with democracy and human rights in Iraq and called for an end to the Baath party's monopoly of the political system in Iraq through the separation between State and party. It also required a free press in Iraq and a freely elected convention to draw up a new Iraqi constitution, and called on the government to accept international laws and norms set by the world community with regard to human rights. The second paper presented by the Kurdish delegation dealt with autonomy and the borders of Iraqi Kurdistan. It demanded that security in Iraqi Kurdistan should be left to the Kurds, and that all schools and universities should be free of government control. It also called on the Iraqi government to recognize the areas of Khanaqin, Mandali, and Kirkuk as part of the Kurdish area. The third paper concerned the normalization of relations between the Iraqi government and the Kurds, and called for the government to end its policies of Arabising Kurdistan and trying to change the region's demography. The fourth paper covered territorial integrity and the strengthening of national unity, which was quickly agreed to by both sides. As it was clear that Talabani led the first phase of negotiation with the Iraqi government and Barzani led the Second phase. In spite of that, these negotiations failed, however, some analysts returned to the US and the British had a role through the pressure has been exerted on the Kurdish leaders. Following of these course of events the Iraqi government withdrawal its forces from Kurdistan and imposed an economic blockade on the region. Edmund Ghareeb; *op. cit.* p. 178

¹⁶² www.iraqcp.org/members4/0070705w2.htm, *op. cit.*

3.6 THE KURDISH ELECTIONS IN 1992 AND THE ESTABLISHMENT OF KRG

The miscalculations of Saddam Hussein in Iraq and in the wider region created a historic opportunity for Kurds to form an administration in their area, especially when Saddam Hussein decided to withdraw his forces and cut the administration by reducing the wages and emoluments of all public employees who remained in the three governorates. At the end 1991, he also cut off funds for investment and the running costs of public institutions from the three northern governorates, and shut down (at least until 1996) the small number of industries located in the Kurdistan region that had been integrated with other parts of Iraq. The Kurdish administration depended for its income on customs revenues, most of which came, in difficult circumstances, from trade with Turkey and Iran; these internal obstacles created a set of political and economic problems for the Kurds. After the failure of the autonomy talks, Saddam's aim in his policies was to put pressure on the Kurds to oblige them to return and renegotiate.

On May 1992, for the first time in the history of this region, the Kurds succeeded in holding free elections and in the areas under Kurdish control, people participated in the elections enthusiastically and in large numbers in order to choose the Kurdistan National Assembly (KNA);¹⁶³ they also took part in the presidential elections. In this election, Most of the main political groups participated in the elections, with the exception of the Conservative Party and the Iraqi National Turcoman Party, and the

¹⁶³ The legal principles and procedures of the administrative body of the KRG were detailed in Law No. 1, which was proclaimed and collectively accepted by the Kurdistan National Assembly (KNA) on 8 April 1992. The structure of the KNA is based on a secret poll in a closed list and consists of 105 seats. Each seat represents about 30,000 votes, with an exception made only for the Christians minorities who are guaranteed five seats within the Assembly; otherwise all the small parties should get at least 7 percent of the total votes in elections for seats in the Kurdistan Parliament. Thus, the KNA works according to proportional representation, with the vote to the party lists and not the candidate. Moreover, the parties are free to combine with each other, which is what happened between the PUK and the Workers' Party (called *Parti Zahmat Keshan* in Kurdish), and also between the KDP and the Kurdistan Socialist Party (PASOK). Regarding participation of other parties in the electoral competition there are, in addition to the two major parties, the Kurdistan Popular Democratic Party KPDP, Iraqi Communist Party ICP, Islamic Movement of Kurdistan IMK, and Independents. The Christian lists include the Assyrian Democratic Movement ADM, Kurdistan Christian Unity KCU (which is pro-KDP), Democratic Christians DC (pro-PUK), and the Kaldo-Ashur Democratic Party KAD (pro-ICP). David M. Malone, *ibid*, p. 93; Also see Gareth R. V. Stansfield, *Iraqi Kurdistan: Political development and emergent democracy*, (New York and London: Routledge Curzon, 2003). p.122, pp. 125-6

two main Kurdish parties, KDP and PUK, obtained the overwhelming majority of the votes; the KDP obtained 50.8 percent of the vote, while the PUK took 49.2 percent. The two parties agreed to maintain an equal balance in the formation of the new Kurdish government.¹⁶⁴

However, one of the main challenges that faced the election, and which remains problematic to the present time, was/is the absence of a regional census, not only in Kurdistan but also in Iraq, as a result of the demographic changes resulting from the Arabisation policy and the brutal suppression by the former Iraqi regime.¹⁶⁵ But despite all the odds, the Kurdish legislative assembly explained, and confirmed, in Law No. 1 that in rearranging their relationship with the Iraqi government, federalism would be the best solution. Although a fragile experiment in self-governance, the Kurds survived and prospered and directed their efforts towards guaranteeing the political and cultural rights of all groups residing in the Kurdish regions. On the other hand, they should perhaps have endeavoured to alleviate the tension and fears of neighbouring countries by reassuring them that they did not threaten anyone's territorial integrity, that they were capable of maintaining unity and peace in their areas, and that they were not intending to break away from Iraq.¹⁶⁶

In an evolving situation, the first cabinet was formed on 4 July 1992, according to Law No. 3 of 1992. It was composed of 15 ministers and five ministers of State in addition to the prime minister and his deputy.¹⁶⁷ Alongside a rivalry between the

¹⁶⁴ The polling process was for election of the KNA as well as for the leader of the Kurdistan Liberation Movement and took place on the same day, as noted. The candidates for the leadership position were Masoud Barzani of the KDP, Jalal Talabani of the PUK, Sheikh Othman Abdul-Aziz of the IMK, and Dr Mahmud Othman of the KSP. As expected, both Barzani and Talabani seized control of the ballot and were able to secure an absolute majority, as their parties had obtained in the KNA elections. Brown has argued that, however, the original vote for the KDP was 45.3 percent and the PUK 43.8 percent. But the results were changed to 50.8 percent for KDP and 49.2 percent for PUK after the re-distribution and the addition to the two main parties of the votes from the smaller parties that received less than the 7 percent of the vote required to correct the spelling of obtain a seat. Sarah Graham-Brown, *op. cit.*, pp. 219-20

¹⁶⁵ Gareth Stansfield (2003); *ibid.*, p.129

¹⁶⁶ Most of the debates that concerned the Kurds made remarkable progress towards achieving their goal through the holding of elections according to Law No. 1 on 19 May 1992; the elections which were under the supervision of international observers, either individuals or human rights organisations. Western observers and the Western media expressed their admiration for the large number of people who turned out to vote. Edmund Ghareeb, *op. cit.*, p.182

¹⁶⁷ The Presidium of the KNA was also divided between the two major parties, with Jawher Namiq Salim of the KDP becoming the Speaker, and Muhammad Tawfiq his deputy. The KNA opened the first session on the same day in the parliamentary building in Erbil. Dr Fuad Masum was appointed as

parties, the KNA, the PUK and KDP bargained to divide the KNA's 105 seats equally between them, in a system known as '50-50',¹⁶⁸ excluding the five seats assigned for the Christian minority. This '50-50' eventually led to paralysis of the government in much of its work and put many constraints on its progress, as a result of the dominant spirit of competition, rivalry and partisanship among party supporters. A difficult problem between the two major parties which would become an outstanding issue was related to the nominating of one of the two main candidates for the leadership. It has been argued that by the non-acceptance of any one of them the concession to the other party has led both Barzani and Talabani to stay out of the administrative structure of the KRG, which had meant that political competition has continued between them; it also meant that the decision-making process was done within the framework of the political bureaus of the KDP and PUK, which in turn led to the paralysis of the KRG through the politicization of its system at every level.¹⁶⁹

Throughout 1993 until 1996, the KRG's situations was deteriorated seriously, due to the neighbouring powers, particularly Iraq and Iran, were seriously affected by the worsening situation through tightened internal sanctions on the Kurdistan region. Despite the strong rivalry between PUK and KDP, these factors caused a weakening of relations between the two parties, and the KNA failed to build on its achievements with the first and second cabinets which were under the premiership of Kosrat Rasoul in the PUK.¹⁷⁰ The Kurdistan Region thus ended up being divided geographically and

prime minister in the first cabinet, and Dr Roj Nouri Shawais was his deputy prime minister. It was clear that the majority of ministries would be divided between the PUK and KDP, with all ministers and their deputies having the same political influence.

¹⁶⁸ Certainly, this form of governance (the polarisation of the political system), by which we mean the division of power, started from the Council of Ministers and extended to all the administrative sectors and the governmental structures, including municipal functions, schools, health facilities and so on. Although it appears that in practice the Peshmerga forces were under the control of the Ministry of Peshmerga Affairs, in fact both the PUK and the KDP retained full control of their respective forces.

¹⁶⁹ The overall participation rate reached 982,649 votes cast; 12,079 votes deemed void and/or unreadable. For Masoud Barzani, votes cast: 466,819 or 47.51 percent; for Jalal Talabani 441,507 votes or 44.93 percent; for Sheikh Othman Abdul-Aziz 38,965 votes or 3.97 percent; for Mahmud Othman 23,309 votes or 2.37 percent. Gareth Stansfield (2003), *ibid.*, pp. 130-1; Also see Sarah Graham-Brown, *op. cit.*, pp. 219-20.

¹⁷⁰ As mentioned, the outcomes of the tension between the PUK and the KDP came to a head in August 1996, with the result that each party established its own third cabinet (1996-1999), either from among its own partisans or among individuals from other allied parties in the areas under its control. For example, on 1st September 1996 the KDP decided to dissolve the previous cabinet and established the third cabinet under the premiership of Dr Roj Nuri Shawais, with Nechirvan Barzani as his deputy in Erbil. At the same time, the PUK claimed that they had a legal right to re-establish the government with all the ministries in the second government in Sulaimaniya. Therefore, the PUK proceeded to

politically between the KDP, which dominates the two major cities of Erbil and Dohuk, while the PUK controls the city of Sulaymaniyah and its environs, as well as some parts of Kirkuk such as Darbandikhan.¹⁷¹

It is plausible to think that, the situation of elections and its aftermath also reflected the endemic divisions within Kurdish society. Certainly there was a complete division in measures that had been practised between the two major parties for all managerial positions; thus, if a minister was a PUK member then his deputy would have to be a member of the KDP. It is reasonable to conclude that the level of national affiliation was not sufficiently strong when most of the Kurdish population showed loyalty to their parties before the supreme national interest. On the other hand, the parties worked to enhance their position, and used the authorities and government interests to serve and strengthen their status. Consequently, they and their leaders gained tremendous personal wealth, most of illegally. Personal rivalry reached a level that could split Kurdistan region completely; one can imagine that the effects would be felt for decades afterwards.

3.7 THE OUTBREAK OF INTERNAL FIGHTING BETWEEN THE PUK AND KDP

It is undeniable that, the KDP's refusal to share customs income from the Ibrahim al-Khalil checkpoint on the border between Turkey and Iraq was one of the reasons that led to the emergence of the internal conflict between the PUK and KDP.¹⁷²

establish the third cabinet in late 1996 under the premiership of Kosrat Rasoul, with a coalition of parties that had not participated in the Erbil cabinet. There were heated discussions concerning the PUK's inability to establish the KNA in Sulaimaniya since a legal quorum could not be achieved as long as the MPs of the KDP and the Christian remained in Erbil. Given these critical circumstances, what happened again was that neither Masoud Barzani nor Jalal Talabani participated in the formation of the government. Gareth Stansfield (2003); *ibid.*, pp. 152-5; pp. 161-2

¹⁷¹ A highly problematic issue arose when the two main party leaders decided to stay outside the parliamentary and administrative structures in a new Kurdish government, which in turn led to paralysis in the administration. In fact, the PUK and the KDP have both focused on enhancing the prestige of their parties instead of supporting and strengthening the government. Specifically the KDP and PUK deliberately did not submitted a portion of the custom revenues that they had collected for the finance ministry of the Kurdish government, which directly undermined the administration's political position in the KRG, and created difficulties with governmental activities; it also reduced progress in delivering basic services to the Kurdish people. Edmund Ghareeb, *op. cit.*, p.179

¹⁷² What should be pointed out here is that after the imposition of the blockage over Iraq and until the collapse of Saddam's regime, he had established an oil smuggling route to Turkey which passed through areas controlled by the KDP so that they would be far away from the eyes of international

It was also obvious that the situation between the KDP and the PUK deteriorated in a most atrocious manner between 1994 and 1996. The situation was both dangerous and unstable, and both sides had prepared their troops and their equipment for battle. Talabani claimed that Barzani controlled the most significant strategic points of Kurdistan; therefore he wanted to obtain some of this revenue. A combination of the factors mentioned above resulted in fierce fighting between the two sides, with the final result that the PUK was able to remove the KDP from the major areas in the region without them having reached the border crossings with Turkey.¹⁷³

In the summer of 1996, there was a serious and worsening escalation in the fighting between the KDP and PUK. Barzani found himself in a weak position, which in turn gave him an incentive to establish strong links with Baghdad (even though it had economic and military relations with Turkey). The cooperation between the KDP and Saddam Hussein's forces shocked the Kurds and the world. At the time that negotiations were in progress, another round between the PUK and KDP was held in London, hosted by the UK and the US. The KDP had justified its request under the pretext of foreign threats from the Iranians through Iran's alliance with the PUK. This situation had been requested out of the need to defeat of the PUK and to restore the areas that had been taken by the PUK during the period of fighting. Thus, with the cooperation of Iraqi government troops, 30,000 Republican Guards and KDP forces entered Erbil and were able to take control on 31 August 1996. By 11 September, the KDP appeared to be in control of most of Iraqi Kurdistan. In addition, the KDP announced a new government at the parliament building in Erbil in September 1996.¹⁷⁴

observers. Anderson and Stansfield note that these circumstances have assisted the KDP in particular, since the senior members of the Barzani family were involved in, and earned an enormous fortune from the taxation of this illegal trade, especially during the time when the Iraqi government had imposed its internal embargo over the Kurdistan region and the Kurdish fighting was launched. Liam Anderson and Gareth R. V. Stansfield (2004), *op. cit.* p. 174

¹⁷³ Intra-Kurdish fighting has as a historical background the bitter relationship between the parties in the political arena in Iraqi Kurdistan. From the foundation of the PUK in 1976 there were several periods of increased tensions between the PUK and KDP, when they were in the mountains; or between the PUK and other Kurdish parties, such as the Islamic Movement of Kurdistan (IMK) which appeared to be making some gains in the areas under PUK control. Edmund Ghareeb, *op. cit.* p. 180

¹⁷⁴ What is interesting here is that, at a time when the Kurds were still under the protection of allies within the safe haven, the Iraqi forces had actually pulled out of this area in late October 1991. Certainly the Iraqi army's incursion caused considerable embarrassment to the Kurds themselves and to the US in particular, when the Iraqi army's raid on Erbil had been undertaken on the basis of an

When Saddam's forces withdrew from the region shortly afterwards, it is quite clear that in retaliation for this situation, the PUK was able to regroup its forces in Iran and begin the counterattack with Iranian weapons and support. By the end of October they had been able to retake the majority of the areas that had been previously lost and had arrived at the nearest point to the city of Erbil. The PUK then announced a new government based in Sulaymaniya, which was managed by Kosrat Rasoul. Since then, however, hostility between the PUK and KDP has been reduced, and since 1997 they have shown their desire for a peaceful initiative with each other and with other ethnic and religious minorities within Iraqi Kurdistan.

One of the most salient consequences of the intra-fighting between the KDP and PUK¹⁷⁵ in 1994 resulted in the diminishing of international support for the Kurds.¹⁷⁶ In short, As a result of the erroneous policies and the irresponsible behaviour exercised by the PUK and the KDP, which fought for geographic and economic dominance and ended up dividing the region between them, their citizens were left

invitation by one of the two main Kurdish parties, and could not be considered as a hostile act. On the other hand there was a further dilemma in that Saddam Hussein was seeking a unique opportunity to achieve his target of attacking both the serious threats to the PUK, and also removing all the opposition parties with bases in Erbil (including the INC, SCIRI, the Iraqi National Turcoman Party, and the Islamic Action Organisation) in the Iraqi Kurdistan Region. The Iraqi Deputy Prime Minister, Tariq Aziz, claimed that Masoud Barzani had sent a message to Saddam Hussein on 22 August 1996, in which he appealed for assistance, in spite of the fact that Barzani had also appealed to the administration of President Bill Clinton for help on 21 August 1996; his request was ignored, but was not heeded. See Sarah Graham-Brown, *op. cit.*, pp. 117, 232. Also see David M. Malone, *op. cit.*, p. 93

¹⁷⁵ It is a reasonable to assume that the Kurdish nationalist movement and its conflicts with the regional governments often had a regional dimension but did not to come to fruition. The painful truth that had been repeated several times throughout the history of the Kurdish movement was that the Kurdish parties tried to rely on external forces as allies in their struggles for power. The Iraqi Kurdish political forces found themselves locked in conflict with their governments, and this led to alliances with other countries – in most cases with Iran, Syria and Turkey, as in the case of the PUK. Finally, the emergence of the Kurdish-controlled enclave in northern Iraq in 1991 created a new political situation for the neighbouring countries to interfere with, using other methods. Another dilemma was that both Turkey and Iran had maintained an intelligence presence in Iraqi Kurdistan since 1992; meanwhile, since there was a political vacuum and turmoil in northern Iraq, the intra-fighting gave these neighbours the necessary justification to intervene militarily and with impunity and to order the closure of their border so that Kurdish rebels could not infiltrate. One of the painful truths was that both the PUK and KDP were sometimes forced to assist and participate with Turkey and Iran in battles with their own Kurdish opponents. Sarah Graham-Brown, *ibid.*, p. 228

¹⁷⁶ Given the ongoing unrest in the Iraqi zone of Kurdistan the European governments where there had initially been much sympathy towards the Kurds decided to diminish their support, particularly, when the PUK and KDP started to devote most of their energies to publicly accusing and denigrating each other. On the other side, for example, US aid organisations and other humanitarian organisations had been withdrawn from the Kurdistan region, and in December 1996 France proclaimed that it was ending its participation in the northern no-fly zone; European governments did not want to offer neutrality or support for either of the two parties. The most significant consequence of the fierceness of this war, which eventually became apparent and continues to affect Kurds till now, was that huge numbers of Kurds had left the country or were trying to leave.

fearful and despairing for the future. It should be noted here that during the time that the war was in progress between the PUK and the KDP, the regional States, consisting of Iraq, Iran, Turkey, and Syria, had held a high-level meeting for their representatives. The key point at this meeting concerned the common fear of the emergence of a Kurdish entity in northern Iraq, and how to take necessary measures to abort this de facto entity.¹⁷⁷ The most significant consequence of the fierceness of this war eventually became apparent and continues to affect Kurds, and was behind the huge numbers of Kurds trying to leave and leaving Kurdistan.

3.8 RECONCILIATION WITH THE ADMINISTRATIVE DIVISION OF THE KURDISTAN REGION BETWEEN THE PUK AND THE KDP

Indeed, both the US and the UK expressed their serious concerns about Iran's apparent influence in northern Iraq, which requested them to step up their attempts to find a permanent solution to the problem and arrive at a settlement between the two parties. After significant efforts by Kurds and friends of Kurds inside and outside the Kurdistan region, Jalal Talabani and Masoud Barzani signed a peace agreement in Washington in September 1998 aimed at putting an end to the fighting and instability in the Kurdistan region.¹⁷⁸

¹⁷⁷ While the Kurds were preoccupied with their dreadful internal clashes, the Turkish government launched an operation into northern Iraq and over 35,000 troops with helicopters and fighter jets crossed the border from 20 March until the end of May 1995. The Turks alleged that the threat posed by the presence of the PKK bases in northern Iraq had a negative impact on Iraqi Kurdish civilians. The Turkish Generals were undoubtedly continuing with the incursions they had been making since the mid-1980s against the PKK guerrillas. However, from the autumn of 1992 until 1995 they started in earnest to invade the safe haven, in the name of a "final offensive" to liquidate PKK bases in northern Iraq. It is important here to recognise that the two main parties, whether on a large scale or in some cases at a limited level, were involved or were forced to participate in the joint campaigns against the PKK. This went on into 1994 and caused great embarrassment for the KRG. Related to this was the fact that the US had earlier shown its support for these operations. The situation had evolved to one of continuing deterioration in the border areas and to the displacement of its population, which in turn led to protest and condemnation of this invasion by most of the European Members and NATO allies, especially France and Germany. It also put pressure on the Clinton administration to compel the Turkish troops to withdraw from the Kurdistan Region at the end of May 1995, even though they resumed their attacks in July of the same year. Gerard Chaliand (ed.), *A People Without A Country the Kurds and Kurdistan*, (London, Zed Books Ltd, 1980 and 1993), p.4, 164

¹⁷⁸ Eventually, with the backing of the US and UK governments, the KDP and PUK agreed to make the ceasefire permanent. Turkish officials and the Turkish army's General Staff also participated in these negotiations sessions. Both sides decided to rectify the bad and dangerous situation that had occurred in the past, and for this they intended to stop the media attacks, organise an exchange of prisoners, and restore the civil service.

The result of internal and international efforts yielded another success between the two parties when they reached an agreement to resolve serious disputes. In order to prove their good intentions, both sides were allowed to open partisan offices in the cities under its control. The results of the settlement had obviously achieved some gains, such as the plan to reunite the Kurdish Parliament with a division of 51 seats for the KDP, 49 for the PUK, and 5 for the Assyrians. They then held a joint meeting of the Kurdish Parliament, at which they called for preparations for new elections in Iraqi Kurdistan, and also discussed crucial issues that concerned the future of the Kurds in light of a possible war in Iraq.¹⁷⁹

In fact, a number of reasons and circumstances could be taken into account for development and stability in the Kurdistan region; it was related to the revenue inflows to the region produced by SCR 986 (the Oil-for-Food programme), on 20 May 1996, as well as to an improvement in the relationship between the KDP and PUK. Under this resolution the Iraqi government was allowed to export \$US 2 billion of petroleum products for a six-month period that was renewable. Accordingly, and as determined by UN agencies, the share of the Kurdistan region was approximately 13 percent of the proceeds from Iraqi oil exports and was guaranteed for the three northern governorates, which are largely under Kurdish control. Consequently, the observations and mediation by the United States had a positive and effective role in the normalising of political relations between the two parties, culminating in the Washington Agreement in September 1998. This in turn had a significant impact and markedly improved the economic developments that took place in the region in the period from 1997 to the end of 2003.¹⁸⁰

¹⁷⁹ Edmund Ghareeb, *op. cit.*, p. 180

¹⁸⁰ Gareth Stansfield (2003), *op. cit.*, P. 149; and also see Liam Anderson and Gareth R. V. Stansfield (2007), *op. cit.*, P.177.

CONCLUSION

The exodus of Kurds from the oppression of Saddam Hussein might be regarded as a rare tragedy in modern history, which shook the conscience of the world. It should be noted that the international media (mainly in the West) played an important role in bringing the plight of the Kurdish refugees along the Turkish and Iranian borders to world attention. Thus, under the pressure of international public opinion, actions had to be taken; this led to the establishment of safe havens and no-fly zones (north of latitude 36, and then south of latitude 32) which impacted on the human rights situation in Iraq. This in turn led to protection from Iraqi reprisals for the Kurds in the north and the Shiites in the south. However, there were differing views, including the scepticism of many non-aligned countries that the Western powers might be using human rights issues and their support within the UN for nations or minority groups as a stick to beat their enemies. The controversial issue here was that human rights issues would contain a challenge for their own domestic policies.

On 5 April 1991 the UN Security Council adopted Resolution 688, the first international document to refer to the Kurds since the League of Nations had done so in 1925 when deciding on the fate of the Mosul province. For the first time, the international community faced a unique humanitarian disaster. As a result of a mass exodus, Kurds fled for fear of persecution of the Iraqi government. Thereby, they expressed great concern about the cross-border attacks that were threatening 'international peace and security'. However, on the ground the numbers of refugees continued to increase enormously. In turn, the evolving situation led to the setting up of a safe haven near Dohuk under the protection of the coalition, which contributed to providing the Kurds with a unique opportunity to set up a de facto government to manage their own affairs and decide the nature of their relations with the Iraqi government. The safe haven was a measure of humanitarian action by the international community to deflect the imminent threat of death and starvation facing the Kurds. In these conditions, it seems sensible to conclude that the Kurdish leadership had no choice but to seek a reasonable outlet with the regime in order to reduce the humanitarian disaster that was taking place in the mountains. Politically, it is reasonable to conclude that SCR 688 was used to legitimise a new principle of sovereignty as a relative concept. According to this analysis, the United Nations

would allow the use of force when a state relied on vicious measures in its treatment of its own people; this in turn could be considered a threat to international peace and security, but was needed to end persecution by the State and to protect civilians in Iraq.

In practice the Kurdistan region faced some difficult situations and considerable instability during the period from 1991 to 2003. These unstable conditions were created by a number of factors: first there was the economic embargo imposed on Iraq (including Iraqi Kurdistan) by the United Nations (UN), as well as the embargo that was imposed by the Iraqi government itself over the three Kurdish-controlled provinces of Sulaymaniya, Erbil, and Dohuk. Second were the several internal clashes that erupted between the Kurdish political parties, and particularly the bloody hostilities that occurred in 1996 between the major parties, the PUK and the KDP. Third were the interventions of regional forces, especially Turkey, Iran and Syria, in the internal affairs of the region, including border closures, the constant bombardment of the border areas and the incitement of groups loyal to them against the regional government.¹⁸¹

It is reasonable to conclude that the Gulf crisis and its aftermath led to modifications in the political structure in Iraq as well as in the region. It is quite evident that, the Kurdistan region underwent a period of transition after 1991. In spite of all the odds, the Kurds managed to create a de facto State in the Kurdish area through the holding of democratic elections and the formation of the legislative, executive and judicial apparatuses, as well as, the fact they already had an independent military force (Peshmerga) and parliamentary provisions for managing their own government in their area. With regard to their relations with the international community, their representatives worked independently, away from Baghdad's control. It has to be remembered that from the point of view of the conventional opinion of a number of

¹⁸¹ The neighbouring powers, especially Turkey, Iran and Syria, have promoted tension and created problems for the Kurdish authority for their own domestic reasons. Moreover, they do not accept the authority of the Kurds over their regions, and approach the situation in Iraqi Kurdistan as a question of an authority vacuum. However, some of these views changed after October 2009, especially when economic relations began to be promoted between Turkey and the Kurdistan Region.

politicians and researchers, this period was a real opportunity for the establishment and institution-building of a Kurdish State.

In the political environment of Iraqi Kurdistan, the 50-50 power sharing system produced a bureaucratic system for the Kurdish government and its administration that paralysed the government so that it became difficult to deal with serious problems in the region. There is no doubt that the split that they had caused included aspects of geographical and political affiliation and organisation within their respective areas of authority and caused enormous problems for the administration of the region. This caused an outbreak of fierce fighting between them that fairly rapidly split the Kurdistan Region into two administrations and came near enough to eliminating the government experience completely. In other words the mechanisms for sharing power within the Kurdish administration caused the rivalry between the PUK and the KDP to shift from competition to military friction on a ferocious level in 1994. Both sides maintained mutual hostility and competition for resources, and influenced and controlled most of the administrative positions of the Kurdistan Region. What happened at the end of August 1996 reflects the painful fact that the Kurdish leaders, in their struggle for power, turned to the regional powers for support. However, neither side could win more than a temporary victory.

Although various calamities had occurred as a result of the internal fighting between the PUK and KDP, the Iraqi Kurdistan region had witnessed progress and was distinctly flourishing when compared with other parts of Iraq. Despite the fact that the Kurds currently have their own governing institutions, control over their territory, defined borders, and capable armed forces, their possible impact on other Kurds in other parts of Kurdistan in the near future will certainly remain a major concern in the region.

Chapter 4:

THE KURDISTAN REGION, POST 2003: NEGOTIATING THE IRAQI CONSTITUTION

“We have always been ready in the past, and we are ready and willing now to negotiate with the federal government to solve these issues according to Constitutional principles and within a federal, democratic Iraq”

(The KRG’s President Masoud Barzani, 19 July 2009)¹⁸²

“The Kurdistan Region has always worked to be a part of the solution not the problem in Iraq. We contributed in the political process, which culminated in the creation of the Iraqi constitution. We want to emphasise our full commitment to working with all parties and abiding by the Iraqi constitution to support a democratic, federal Iraq”.

(The KRG’s President Masoud Barzani, 8 April 2009).¹⁸³

INTRODUCTION

It is important to note that the changes and events that occurred in the Iraqi political arena directly influenced development and progress at all levels in the Kurdistan region. This was particularly true after the collapse of the Iraqi regime. As discussed, in the wake of the 2003 war the KRG’s gained an historic opportunity to take their rightful share in government, and also acquired the power to expand their autonomous territory in the Kurdistan Region, under the protection of the US and Britain and within the framework of a federated Iraqi State. They also tried to resolve problems with Baghdad through negotiation and consensus. Another crucial point is that the

¹⁸² KRG.org; “Khurmala Dome begins providing fuel to power the Kurdistan Region”, 19 July 2009 ; Available at:

<URL:<http://www.krg.org/articles/detail.asp?rnr=223&lngnr=12&smap=02010100&anr=30604>>

¹⁸³ Part of speech given by President Masoud Barzani at his meeting with US President Barack Obama during the latter’s first trip to Iraq following his inauguration in January 2009. See KRG.org, “*President Barzani meets President Obama in Baghdad*”, Erbil, Kurdistan/ Iraq. Available at: <URL:<http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&rnr=223&anr=28774>> Access Date: 8 April 2009.

changes brought about by the war caused some major concerns for the Kurds, particularly after 2003, including the Kurdish leadership's interest in sustaining their autonomy at least at the level previously enjoyed between 1991 and 2003; the control and management of oil resources in the Kurdistan Region; and how to maintain control of the Kurdish military forces as protector forces for their region.¹⁸⁴ Indeed, within Iraq, the three main groups (Shiite, Sunni and Kurds) have different aims and interests. For the Shiite, the crucial goal was to control the State. The main duty of the Kurds was to ensure that their national rights existed in the constitution, while the Sunni groups wished to retrieve something of their glory years.

It is important to note the significant changes and developments that have occurred in the post-2003 period, Regime change and the establishment of the Transitional Administration in Iraq, as well as writing the permanent constitution, holding general elections for the formation of the national government by all the Iraqi factions and restoring full sovereignty for the Iraqi State, could all be regarded as significant events in bringing about real change, not only for Iraq but for the region as whole. At the same time, during the course of these events it is reasonable to think that these changes became a vital part of a new history for the Kurds in Iraq, particularly since the KRGs played a major and active role in maintaining the success of all these events. Obviously, these changes can be considered the first step in steering Iraq and the Kurdish Region towards democratic transformation. From this point of view, all these events need to be mentioned in this chapter.

This chapter concentrates first on the Iraq 2003 War, which brought many changes to Iraq and specifically to the Kurdistan Region, as well as to the whole Middle East. However, there was considerable talk regarding the legitimacy of the war, and the political model for a post-Saddam Iraq has also been contested, on the grounds that the concept of the extension of democratic politics was intimately intertwined with the

¹⁸⁴ Gareth Stansfield, *The Transition to Democracy in Iraq: Historical Legacies, Resurgent Identities and Reactionary Tendencies*, in (eds.) Danchev A, Macmillan J, *The Iraq War and Democratic Politics*, London: Routledge, 2005, 134-159, P. 144

war.¹⁸⁵ Whereas most analysis of the Iraq War focuses on the US position as an occupying power in Iraq and their remarkable concentration on Iraq's oil reserves in starting the liberation of Iraq.¹⁸⁶

One important dimension in this context was the liberation of Iraq set a historical precedent for the Kurds to achieve their aims, and it is expected that most of the debates will revolve around whether this conflict can offer the Kurds an opportunity to gain influence, not only in the Iraq but also in the region. It has to be remembered that from 2003 the Kurds set out to change direction in order to achieve their demands within Iraq. Interestingly, the KRG's understood that even though their attempts to gain control of additional territory in Kurdistan, including the large cities of Kirkuk, Khanaqin and etc, might be possible through application of the Constitution and not by force.

This chapter examines the extent, and the possibilities, of the democratization process in Iraq, and also attempts to explain the circumstances and reasons that made the Kurdish leaders decide against any endeavour for independence at this stage, in order to avoid risking what they had already gained, and also to preserve their status within the framework of a federated Iraqi State. One should mention here that, however the Kurds in Iraq have obtained constitutional recognition. The first legal step started in 1958 with a "Provisional Constitution" which acknowledged Kurds as a distinct national group, stating that "the Kurds and Arabs were accepted as associates in the state of Iraq and their respective national right". The second constitutional recognition came in the "Provisional Constitution" of July 1970 and was adopted after the Baath Party had come into power in 1968. Whereas, the challenges post-2003 for the Kurds who participated for the first time in the construction of Iraqi constitution.¹⁸⁷ For the Kurds, considerable challenges have emerged after 2003, which constitute a strategic

¹⁸⁵ Alex Danchev and John Macmillan (eds.), *The Iraq War and Democratic Politics*, (London and New York: Routledge, 2005), pp. 1-4

¹⁸⁶ This post-Saddam period was critical for the Sunni groups since, for the first time in the history of Iraq, power was no longer retained in their hands only but was transferred to the hands of the majority [Shiite](#) groups and was also shared with the Kurds.

¹⁸⁷ Helen Cook, *The Safe Haven in Northern Iraq: International Responsibility for Iraqi Kurdistan*, Human Rights Centre, University of Essex and the Kurdistan and the Kurdistan Human Rights Project, London, 1st Edition, 1995, p. 23

shift in changing their political situations, particularly after they have a chance to participate for the first time in writing the Iraqi constitution.

The main question here is how the Iraqi factions can share power and manage the State in a democratic way or through political consensus. In addition, it is also important to discuss how they could establish and consolidate democracy in post-Saddam Iraq. Obviously, the critical issue for the Kurds is that Iraq must be moving towards democracy, which in turn helps them to achieve their demands. Besides, the Kurds persisted in their demands which they saw as essential for protecting their autonomous status, at least at the level enjoyed during the 1990s.

4.1 PREPARATIONS FOR THE WAR

It is clear that the US military could successfully have destroyed the Taliban within three months of the events of 9/11, and prepared itself to counter al-Qaeda in Iraq. The fact is that the US was the main engine for war against Iraq, having in addition managed to obtain support from the majority of public opinion, who believed that Saddam Hussein had been directly implicated in the events of 11 September 2001.¹⁸⁸

It could be argued that several significant issues have been suggested as the basis for the US attack on Iraq. First, disarming Iraq of its `was a serious matter, (a) due to the possible use of WMD in terrorist acts inside the US or against US targets abroad; and (b) to halt terrorism that might have been sponsored by the Iraqi regime itself. The Bush administration claimed there were links between Iraq and international terrorism,¹⁸⁹ and especially with al-Qaeda organization. Thus, arguments over Iraq's possible use of WMD were directed towards a regional context; i.e., the existence of WMD in Iraq threatened not only the US but also neighbouring states in the region. A second consideration, which subsequently ignited much controversy in the US and internationally, concerned issues of regime change, achieving the democratisation of Iraq, and defending the human rights of the Iraqi people.

¹⁸⁸ John Sloboda and Hamit Dardagan, "The Iraq Body Count Project: Civil society and the democratic deficit", in Alex Danchev and John Macmillan (eds.), *The Iraq War and Democratic Politics*, (London and New York: Routledge, 2005), p. 220

¹⁸⁹ Ephraim Kam, "The War in Iraq: Regional Implications"; in Shai Feldman (ed.), *After the War in Iraq: Defining the New Strategic Balance* (Eastbourne UK: Sussex Academic Press, 2003), p.102

Most the members of the Republican Party (in USA) accepted that the risk of WMD and the related issue of terrorism posed a strategic threat to them and therefore represented a potent justification for paving the way to war. It is also interesting to note the important issue of the “Axis of Evil”, invented in 2002 by the Bush administration and associated with international security. The term was applied to states that were to be considered as a rogue states, having been identified as supporting international terrorism or else involved in the proliferation and transfer to terrorist organizations of WMD. This pre-emptive doctrine was also designed to remove major restrictions posed by international law and the UN Charter on the use of force. At the same time, the US administration affirmed its commitment to sustaining its superiority in the international arena, especially in the military field.

On 29 January 2002, US President George W. Bush declared a new doctrine of pre-emptive action against America’s enemies¹⁹⁰ when he declared in his State of the Union speech, “I will not wait on events while dangers gather. I will not stand by as peril draws closer and closer.” Analysts took this to mean that the US would not allow any dictatorial regimes that possessed the most destructive of weapons to bring catastrophe to international society. It has been suggested that the rhetorical approaches adopted by the second Bush administration predicted Iraq’s possession of Weapons of Mass Destruction (WMDs) and its involvement with terrorism groups in general and Al Qaeda in particular. Certainly this rhetoric became the slogan for the entire anti-Iraq campaign.¹⁹¹

In this context, it should be noted that on 19 September 2001, both David Johnston and James Risen have revealed the links between Iraq and Al-Qaeda, reporting allegations by American intelligence officials that “Mohamed Atta, a suspected

¹⁹⁰ President Bush announced a new US foreign policy which became known as the ‘Bush Doctrine’, involving pre-emptive war, in his speech at the graduation ceremonies at the West Point Military Academy, New York, in June 2002. According to this policy the US would proactively seek out and destroy countries that might pose a future danger. The aim was to protect US security and required the military to be ready for pre-emptive action when necessary, in order to defend liberty and their lives. After three months, this new US National Security Strategy was made public, and declared that since the best defence was a good offence, the US would use its military pre-emptively against terrorists. Marilyn G. Piety and Brian J. Foley, “Their Morals are Ours: The American Media on the Doctrine of “Pre-emptive War”, in Alexander G. Nikolaev and Ernest A. Hakanen(eds.), *Leading to the 2003 Iraq War: The Global Media Debate*, (London: Palgrave Macmillan, 2006), p.67

¹⁹¹ Nikolaev and Hakanen (eds.), *Leading to the 2003 Iraq War: The Global Media Debate*, (London: Palgrave Macmillan, 2006), p.2, p.23

hijacker on American Airlines Flight 11, which struck the World Trade Centre North Tower, met several months ago with an Iraqi intelligence official in Europe.” At the same time, during the period from the Gulf War until the collapse of Saddam’s regime, the Iraqi regime was continuing its attempts to obstruct the UN’s relief efforts, and planned, in addition, to re-take the no-flight zone by arming and financing a branch of Al-Qaeda in Iraq calling itself the Jund al-Islam (Soldiers of Islam) in the northern borders near the Iranian Islamic Republic. Consequently, Assistant Secretary of Defence Paul Wolfowitz, speaking on 20 September 2001 on the impact of these changes, announced his country’s intention of a tough military response, which would have included Afghanistan, and “terrorist bases” in Iraq and Lebanon.¹⁹²

It is true that these events heightened the focus on Iraq; however, as has been argued, the US, despite immense effort, was unable to find any credible links between Saddam Hussein, Al-Qaeda terrorists, or even WMDs.¹⁹³ Even so, there were some concerns in the US about the possibility that Iraqi chemical and biological weapons would be used against US troops and Israel. In the Arab world there was a clear expectation by public opinion that war was inevitable and that the US would take very severe action against Iraq; this was described as ‘American imperialism’. In turn, following the terrorist attacks on New York and Washington DC, the UN Security Council adopted Resolution 1368 (2001) which required the international community to respond immediately by denouncing these attacks, while calling on all states to

¹⁹² W. Lucas Robinson and Steven Livingston, “Strange Bedfellows: The emergence of the Al Qaeda-Baathist news frame prior to the 2003 invasion of Iraq”, in G. Nikolaev and Ernest A. Hakanen (eds.) *Leading to the 2003 Iraq War: The Global Media Debate*, London: Palgrave Macmillan 2006, p. 29.

¹⁹³ According to Geoff Simons, it is misleading to argue that the UN inspectors found no WMD in Iraq, since by 1997 they had announced the destruction or removal of large quantities of WMD as follows:

- “- an assembled supergun;
- the components for four other such guns and one tonne of propellant;
- 151 Scud missiles, 19 mobile launchers, 76 chemical and 113 conventional warheads for Scud missiles, 9 conventional warheads for Al-Fahd missiles, a substantial amount of rocket fuel and component chemicals, decoy missiles and decoy vehicles, guidance and control sets, etc;
- equipment for the production of missiles and components;
- more than 480,000 litres of chemical warfare agents, including mustard agent and the nerve agents sarin and tabun;
- more than 28,000 filled and nearly 12,000 empty chemical munitions;
- nearly 1,800, 000 litres, more than 1,040,000 kilograms and 648 barrels of some 45 different precursor chemicals for the production of chemical warfare agents;
- equipment and facilities for chemical weapons production;
- Biological seed stocks used in biological weapons development”.

See Geoff Simons, *Targeting Iraq: Sanctions and Bombing in US Policy*, (London: Saqi Books, 2002), pp. 13, 59-60.

work together to bring the perpetrators to justice, and to condemn states and parties who provided assistance to, supported, or harboured, the perpetrators of such acts.¹⁹⁴ Nevertheless, the most serious trouble faced by the US in preparing for the war campaign was related to widespread reservations expressed by the regional states as well as internationally, especially as the final outcome might well threaten the political system of the countries in the region.

It could be argued that for the US administration, achievement of its objectives might in the long run depend on their achieving success in Iraq. Hence, their first step was to try to convince or compel other countries to give up support for terrorists and at the same time prevent them from having access to WMD.¹⁹⁵ At the same time, these regional countries were concerned about a hidden agenda on the part of the US to redraw the map of the Middle East. However, the US did understand, and accommodate, the concerns about granting more hope to the Kurds as well as supporting them towards a stronger position in Iraq.¹⁹⁶

To critics of the international policy against the Iraqi regime, the events of early 2003 confirmed a view that the international community had become convinced that Iraq had deliberately been “in material breach” of the ceasefire terms, and had violated international law as presented under the terms of SC Resolution 687. On the other hand, the international community was divided by concerns about taking action in the form of military intervention, and how to gain international legitimacy for the use of force. Supporters of the US, particularly the UK and Spain, urged the US to obtain a unanimous consensus for Security Council Resolution 1441 before it went to war.¹⁹⁷ Aside from this, it is also plausible that, as well as foreign powers, domestic Iraqi interests might also have had a particular concern about the removal of Saddam’s regime.

¹⁹⁴ It should be noted that during this period the US administration, through their official missions, had clearly proclaimed to both their Arab allies in the Middle East and their European allies that they would be taking into account all the preparations to take unilateral action to achieve ‘regime change’ in Iraq if necessary. Geoff Simons, *ibid.*, pp. 30-31, 48-50

¹⁹⁵ Ephraim Kam, *op .cit.*, p.102

¹⁹⁶ Ephraim Kam, *ibid.*, p.102

¹⁹⁷ Daniel F. Baltrusaitis, ‘*Coalition Politics and the Iraq War: Determination of Choice*’, (Boulder CO: First Forum Press, 2010), p.3

The situation at this time was undoubtedly an historic opportunity for the KRG's to turn the attention of the US towards them, since they now found themselves at the forefront of the moves to expel the Iraqi forces from areas south of the Green Line, including Kirkuk, particularly when the Turkish parliament refused to allow coalition forces to enter Iraq via Turkish territory.¹⁹⁸ Regardless of this, there were negotiations and a memorandum of understanding between the two sides that would allow the establishment of a second front. Although the Turkish government did not allow the US to open a northern front, they realised that they would pay the price of their policy, and on 20 March 2003, they sought to restore their relations with the US by providing minimal logistical support to US Special Forces and by permitting US military aircraft to overfly their territory, although use of the Incirlik airbase was restricted in order to minimise any increase in US strikes against Iraq. The Turkish parliament asserted that Turkey's role would be of a humanitarian nature and to assist in the reconstruction of public services. Furthermore, on 8 October 2003 the Turkish parliament approved deployment of approximately 15,000 troops in Iraq.¹⁹⁹

4.2 IRAQ'S LIBERATION AND REPERCUSSIONS ON THE KURDISTAN REGION

The 2003 War²⁰⁰ and its outcome is one of the most important events to have taken place in this new century, and had a formidable impact, not only on Iraq but also on the other countries in the region, most notably the Arab states. Even so, the war did

¹⁹⁸ One should mention here that the Turkey government as one of the stronger advocates of US policy in the Middle East; they now found themselves in a political quandary as to how to maintain the balance between external pressures to support the alliance forces in an invasion of Iraq and the intense domestic opposition to participation in such a war. In fact, the Turkish government had relied for many years on significant support of many types (financial and/or military aid) from the West, and particularly the US. It would therefore have been very difficult for Turkey to waive such foreign aid, especially the substantial financial aid from the US to Turkey which reached nearly US \$6 billion in grants and US \$24 billion in loan guarantees. Ephraim Kam, *op. cit.*, p.103

¹⁹⁹ The US began to plan in earnest for action against Iraq by seeking allies to support military action in the region. For this purpose, Paul Wolfowitz visited Turkey on 14 July 2002 to discuss the US plan for the collapse of the Iraqi regime with the Ecevit government. See Daniel F. Baltrusaitis, *op. cit.*, p. 152-4

²⁰⁰ The 2003 War (19 March to 1 May 2003), which is known as the Iraq War, or Operation Iraqi Freedom, and took 21 days to topple Saddam Hussein's regime under the leadership of US with participation three countries (United Kingdom, Australia, Poland) with its troops during the initial invasion phase, and 36 other countries were involved in its aftermath. Although, the invasion of Iraq was strongly opposed by France, Germany, New Zealand, and Canada due to their allegation that there was no evidence of weapons of mass destruction in Iraq. Besides, there were worldwide protests against the Iraq war.

not lead to direct change in the political map, but altered political direction and planning in the international system as well as in the region. This conflict is also considered to have been one of the most controversial wars fought by the US and the UK in the post-World War II period, and in terms of technology and intensity as well as in terms of alliances and international groupings, was arguably one of the biggest; it also created a high level of public protest and caused major public diplomatic and political divisions between the Western democratic states.²⁰¹

The US and UK leadership justified the invasion to achieve three aims were to disarm Iraq of weapons of mass destruction, to end Saddam Hussein's alleged support for terrorism, and to free the Iraqi people. In this context, Macmillan points out that Tony Blair defended the 2003 War in his Chicago speech in March 2004 by indicating that, since it was a defensive war of necessity, this war came within the context of the wider “War on Terror”. He also reaffirmed that there was a connection between Iraq and humanitarianism, asserting especially that their duty was not only regime change as a justification for war, but that the main goal of the war was “to enforce UN resolutions over Iraq and WMD” in order to prevent the threat from materialising.²⁰²

An important issue confronting US planning in the region, which aroused equal concern in Iraq and its neighbours, was, as noted, the conflicting interests among the three groups (Shiite, Sunni, and Kurds) which might potentially lead to violent power struggles, since the possibility of a governmental vacuum could lead to the division of Iraq through the secession of the Kurdish area in the north and the Shiites in the south; this in turn would frustrate US efforts to set up a stable state in Iraq.²⁰³

In the context of the Turkish attitude in the Iraqi crisis, the Turks expressed their fears that regime change and its repercussions in Iraq could be at the expense of the safety of their own territories, they had, of course, experienced the political impasse in 1991 that had caused an influx of refugees within their borders. Therefore, they found

²⁰¹ According to Isaac Ben-Israel, this war took 20 days (until the capture of Baghdad, a total of 30 days); the US and coalition used 730 warplanes and flew 36,000 sorties; and 29,200 bombs were dropped. There were approximately 400,000 troops, including 225,000 Americans and 30,000 British (plus an additional one million paramilitaries), along with 2,200- 2,400 tanks (including 750 T-72s). Isaac Ben-Israel, “The Revolution in Military Affairs and the Operation in Iraq”; in Shai Feldman(ed.), *After the War in Iraq: Defining the New Strategic Balance*, (Eastbourne UK: Sussex Academic Press, 2003), p.56-7

²⁰² Alex Danchev and John Macmillan (eds.), *The Iraq War and Democratic Politics*, (London and New York: Routledge, 2005), p.7

²⁰³ Ephraim Kam, *op. cit.*, p.103

themselves in a position which forced them to take precautions against the possibility of the recurrence of such experiences. The second threat facing them was that the situation might lead to a strengthening of the Kurds and the possibility of Kurdish autonomy transforming the Kurds into an independent entity, or else to the possible creation of a federal structure in Iraq that would provide greater independence for the Kurds. From Turkey's point of view, such a development could quickly trigger unrest among its own large Kurdish minority that would demand similar gains. Turkey's opposition to the Iraqi Kurds' takeover of Mosul and Kirkuk or the northern oil fields stemmed from the fear that their economic independence would enable them to push for political independence.

Ultimately, it is reasonable to remember, the likely evolution of the Kurdish situation towards forming a Kurdish State became an issue of major concern to the Turkish government. The Turkish state also feared the impact of the war and the prospective economic devastation of Iraq on its trade relations. It seems reasonable to assess and compared the extent of the devastation that afflicted the Kurds and their cities and towns during the Iran-Iraq war and in the aftermath of the 1991 Gulf war, to their situation in the war of 2003 when, paradoxically, the Kurdistan Region was safer than the rest of Iraq. The only major combat in the Kurdistan-held area was in the mountainous area near *Khormal* on the Iraqi-Iranian border, where the US aerial bombardments prepared the way for a ground attack by the PUK against the positions of the local Islamist Ansar al-Islam, who were supported by both the Iraqi regime and the Iranian republic.²⁰⁴

4.3 THE COALITION PROVISIONAL AUTHORITY (CPA) AND THE INTERIM GOVERNMENT OF IRAQ

The result was predictable, given that the invasion of Iraq and its aftermath had caused the disintegration of existing State structures and institutions including key ministries (e.g. the Information Ministry and Ministry of Defence, etc), and the dissolution of the Iraqi army on 23 May 2003. Despite that, the building of a new

²⁰⁴ Michiel Leezenberg, 'Iraqi Kurdistan: contours of a post-civil war society', in *Reconstructing Post-Saddam Iraq*, Sultan Barakat (ed.), (London and New York: Routledge, 2008), pp. 67-8

liberal and democratic polity was proclaimed under the cover of a variety of Security Council resolutions. After the collapse Saddam's regime, a period of rapid change occurred through a series of events and their repercussions. The first problem concerned the formation of an appointed interim government and the handing over of power to this body. It was difficult process, but matters needed to be addressed with some urgency; such as the training of Iraqi police, and the augmenting of civic defence and paramilitary forces in order to take over dealings with insurgency and the application of public order.²⁰⁵

In order to enhance the legitimacy of the interim government, the Coalition Provisional Authority (CPA) appointed an Iraqi Governing Council (IGC) four months after the collapse of Saddam regime. Its composition was on the basis of ethnic quotas and it was intended to represent the various components of the religious, sectarian, ethnic and clan aspects of Iraqi society and included 13 Shiite members, five Sunnis, five Kurdish members (Jalal Talabani, Masoud Barzani, Salahaddin Bahaeddin, Mahmoud Othman, and Dara Nur-Al Din), one Christian (Younadem Kana), and a Turkmen (Sondul Chapouk). The IGC acted as the first provisional government of Iraq from 13 July 2003 to 1 June 2004. Within two months of its establishment the IGC had chosen a cabinet that would represent at least some of the significant segments of Iraq's national political forces.²⁰⁶

In the view of some scholars, regime transition is a dangerous process that does not necessarily lead to a democratic government. In the case of Iraq, the results were a cause for many debates, and assessment of the situation suggested that Iraq, in the long run, could be devoid of the most basic requirements for democracy. Therefore, in order to reach its aim, the US moved ahead to put in place plans for managing Iraq after the dismantling of the regime and to assist the population to cope with the difficult period before the return of sovereignty to Iraq.

After the collapse of the regime the basic task of US administration was to establish the Office of Reconstruction and Humanitarian Assistance (ORHA) under

²⁰⁵ Paul Rogers, 'Iraq and the war on terror: twelve months of insurgency 2004/2005', (I. B. Tauris, London, 2006), p.30

²⁰⁶ Adeed Dawisha, "The Prospects for Democracy in Iraq: challenges and opportunities", in Sultan Barakat (ed.), *Reconstructing Post-Saddam Iraq*, Routledge, London and New York, 2008, p. 163

administrate retired General Jay Garner. This body would at this stage take an advisory role only, in determining its aims and objectives of supporting the Iraqi Interim Authority to draft a new constitution and organise elections for a new government that would assume sovereign functions.²⁰⁷ Indeed, Garner and his staff were forced to leave Iraq in mid-May 2003, due to the deteriorating situations during this period. One of the most intense problems, which could not have been predicted, was the emergence of strong Shiite religious groups coinciding with the outbreak of fierce violence.²⁰⁸

Following Garner's departure, on 12 May 2003 General Jay Garner and the ORHA were replaced by Ambassador L. Paul Bremer and the Coalition Provisional Authority (CPA).²⁰⁹ One should mention here that the Bremer's policy caused increasing anti-occupation sentiment, and the resurgence of a wave of violence and militant activity against coalition forces. It seemed to some scholars that the policy of de-Baathification was a serious mistake.²¹⁰ Besides, Bremer was criticised for focusing on the superficial elements of democracy-building instead of probing deeply into the effectiveness of civil society and political culture.

²⁰⁷ From the beginning of the liberation of Iraq, there were miscalculations in assessing the circumstances overall, and in calculating how the Office of Reconstruction and Humanitarian Assistance (ORHA) could possibly manage to make speedy provision for the basic needs of the population while simultaneously applying concepts of democracy for a democratic transition and handover of power. However, once basic services had been restored, their administration would be transferred to an Iraqi Interim Authority. Rangwala, Glen, 'The democratic transition in Iraq and the discovery of its limitations' in (eds.) Danchev A, Macmillan J, *The Iraq War and Democratic Politics*, (London: Routledge, 2005), p.162

²⁰⁸ Gareth Stansfield, "The transition to democracy in Iraq: Historical legacies, resurgent identities and reactionary tendencies", *op. cit.*, p. 15

²⁰⁹ Bremer was known for being more stringent than Garner with regard to military action. However, it has been argued that, among Bremer's many mistakes, a crucial error was the miscalculation that led to his decision to dismantle by decree the entire Iraqi army, numbering nearly 400,000 troops, all at the same time, on 23 May 2002. More serious trouble occurred when Bremer disbanded this huge army without any oversight (and failed to demand surrender of their weaponry when the war was abandoned), or at least ensuring their source of livelihood (particularly as the soldiers' pay was cancelled). Moreover, the majority were forbidden not only to hold any rank, but also from taking up any public employment. Consequently, the Iraqi people and their property were left undefended and had to rely heavily on private security companies whose major task was to protect foreign officials, reconstruction personnel, equipment and major installations. Since the majority of the Iraqi army were likely to have been pro-Saddam, it was plausible to imagine that they might well decide to join the Islamist organisations associated with Al-Qaeda.

²¹⁰ It was clear that, the inspiration for the policy was de-nazification in post-war Germany, which was applied to rid the State apparatus of supporters of the system without loss of essential personnel. However, the opposite happened in Iraq, where the cleansing policy in practice led to stripping the public institutions of people with managerial experience along with the staff of the civil service. Sultan Barakat, *Reconstructing Post-Saddam Iraq*, (London and New York: Routledge, 2008), p.16

Given the deterioration of the security situation, which had worsened and political negotiations between ethnic and sectarian groups had halted, on 15 November 2003. Further, the number of US casualties had increased, which prompted the US administration to change direction from a long-term agenda to the much shorter-term task of nation building, acceleration of the establishment of an interim Iraqi government, and to the transfer of sovereignty at the earliest possible date. The CPA's first task was to restore security to Iraq through building new Iraqi institution that could help secure major facilities, so that when the US forces departed, the Iraqis would be able to take responsibility themselves for providing security. The CPA started a programme to train a 40,000-strong Iraqi army, about 10 percent of the size of the pre-war Iraqi force, and began to return around 40,000 Iraqi policemen to their former jobs. It also recruited 7,000 individuals into the Iraqi civil defence force to protect oil-pumping stations, electricity substations and other facilities.²¹¹

Clearly the important task for CPA at this stage was to draft the Basic Law and the interim constitution by 28 February 2004, in preparation for moving to a permanent constitution and holding general elections before 31 December 2005. Therefore, the CPA officials duly selected an Iraqi Governing Council (IGC); however, the legitimacy of its formation was challenged by those who opposed the liberation of Iraq. The IGC in the meantime gained regional support, particularly from the Arab League in September 2003. It should be noted that the fundamental task of the IGC was to speed up preparations for drafting the new constitution before seeking to prove its legitimacy through a referendum. Likewise, it appears that one of the thorniest issues was the difficulty of reaching a collective decision with the sectarian groups. In some cases, they were forced to appeal to prominent religious figures, such as Grand Ayatollah Ali al-Sistani, for a fatwa to address outstanding issues.²¹²

Needless to say, the CPA had sought assistance for establishing numerous local groups in the Iraqi cities under its supervision. The CPA also announced that its initial reconstruction plan was based on four main pillars – justice, security, governance, and infrastructure. As a first step, the (CPA) granted considerable financial aid to, and

²¹¹ Kenneth Katzman “Political Scenarios in Post-War Iraq”, in *Iraq Reconstruction and Future Role*, Emirates Centre for Strategic Studies and Research, 2004, pp. 100-1

²¹² Gareth Stansfield, “The transition to democracy in Iraq: Historical legacies, resurgent identities and reactionary tendencies”, *op. cit.*, pp. 151-2.

supported thousands of projects for participation in the reviving of infrastructure and repair; this in turn was a step towards expanding the infrastructure and would lead to economic recovery.²¹³ The CPA acted for and provided advice to the Iraqi leadership until sovereignty was transferred to the Iraqi Interim Government in June 2004; this body was replaced by the Iraqi Transitional Government May 2005.²¹⁴ The basic point implicit in the Transitional Administrative Law was that it was a temporary substitute for the Constitution and the basis for the governments of both Allawi and Jaafari, from 30 June 2004 to 31 December 2005 and even to the four months before the formation of the Cabinet of Nouri al-Maliki, at which point they were to elect the parliament, write the permanent constitution, and apply Article 58 (but the application of this Article was deliberately neglected). The Iraqi Governing Council IGC also issued four resolutions regarding elimination of the consequences of an ethnic cleansing policy:²¹⁵

A- Resolution No. 50 issued on 29 March 2003, was intended to repeal all laws, decisions, regulations, and directives and instructions and orders issued by the so-called Revolutionary Command Council and also by other Iraqi official bodies for the purpose of changing demographics and political realities in Iraq.

B- Resolution No. 51 on 29 September 2003, stated that those politicians who had been dismissed or forced to leave their jobs due to political reasons, exclusively, for the purposes of service and retirement, should be returned to their functions immediately.

C- Resolution No. 117 on 29 November 2003, stated that all decisions, instructions, data and orders that had led to the withdrawal of citizenship or cancellation and forfeiture of Iraqi individuals since 1958 should be cancelled, and Iraqi nationality with enjoyment of all their legal rights should be granted to them.

²¹³ Richard H Brown, 'Reconstruction of Infrastructure in Iraq: end to a means or means to an end', in Sultan Barakat (ed.), *Reconstructing Post-Saddam Iraq*, (London and New York: Routledge, 2008), pp. 197-8

²¹⁴ Kenneth Katzman and Alfred B. Prados, 'The Kurds in Post-Saddam Iraq' CRS (Congressional Research Service) Report for Congress, on 12 December 2006, p.4, Available at: <URL:<http://fpc.state.gov/documents/organization/79340.pdf>> , Access Date 20 April 2009

²¹⁵ "*Application of Article 140 to ensure peaceful coexistence*"; publications of the Joint Committee on Article 140 by the third branch of the KDP and the second centres of the PUK, pp .9-11

D- Resolution No. 5 on 13 January 2004, indicated ratification of the law establishing a High Authority to resolve property disputes.

4.4 THE FORMATION OF THE INTERIM GOVERNING COUNCIL OF IRAQ AND TRANSITIONAL ADMINISTRATIVE LAW (TAL)

The Transitional Administrative Law (TAL) was signed on 8 March 2004 by the Interim Governing Council of Iraq as a Supreme Law of Iraq during the transitional period. Its main aim was to design a way to establish a representative and sovereign Iraqi government that would protect fundamental rights and provide a stable political structure, but which would expire once a government had been elected under a permanent constitution and taken office; this was expected to be no later than 31 December 2005. The head of government was appointed on 28 June 2004, with the advice of UN envoy to Iraq through Al-Akhdar Brahimi. The first Prime Minister, Iyad Allawi, often described as a moderate Shiite from the Iraqi National Accord party was acceptable to the US administration, and was a former member of IGC.²¹⁶ The deputy for National Security, Barham Salih (PUK) was chosen by the IGC to be deputy of the Interim Prime Minister of Iraq. IGC also chose Ghazi Mashal Ajil al-Yawar as the first President, a ceremonial post;²¹⁷ he was defined as a Sunni Arab tribal leader. Two vice-presidents, Ibrahim Jaafari (Islamic Dawa Party) and Rowsch Nouri Shawais (KDP) were also appointed. Despite considerable pressure, Allawi took over the reins of power on 1 June 2004; consequently, the Governing Council and CPA were dissolved as a first step to transferring sovereignty to the Interim Government and in preparation for the general elections that were to be held in 2005. Allawi's cabinet was not immune from criticism by members of his government and

²¹⁶ Kenneth Katzman and Alfred B. Prados, 'The Kurds in Post-Saddam Iraq', *op. cit.*, p.4

²¹⁷ It is clear that the US needed to prove its success in Iraq; it had to present the success of its policies in the Middle East, and strengthen its role with its allies and within the international community. Therefore, the main issue became how to bring stability, and provide security for Iraq. Furthermore, the US sought to exert control over the transition process by choosing reliable allies to take positions, given the sensitivity of the sovereign state. Although, the US's preferred candidate, Adnan Pachachi, who was known to be a moderate liberal democrat, was a highly suitable figure, the IGC instead selected the Sunni Arab Ghazi al-Yawar for this post.

also by opinion in the Arab world generally, particularly over his use of military forces and his violent dealings with the rebels.

It became apparent that the political rights of Iraq's diverse sectarian and ethnic groups needed to be guaranteed. Owing to the immediate effects of granting legitimacy to the IGC, the most prominent political leaders in the Iraqi arena participated in the IGC forum: Jalal Talabani (PUK), Masoud Barzani (KDP), Iyad Allawi (Iraqi National Accord), Ahmed Chalabi (Iraqi National Congress), Ibrahim al-Jaafari (Islamic Dawa Party), Abdel-Aziz al-Hakim (Supreme Council for the Islamic Revolution in Iraq), Adnan Pachachi (Assembly of Independent Democrats), Mohsen Abdel Hamid (Iraqi Islamic Party), Ezzedine Salim (Islamic Dawa Party). Interestingly the IGC included two women in its structure, Sondul Chapouk, representing the Turkmen faction, and Aquila Al-Hashimi, who served in the IGC until she was assassinated on 25 September 2003 (and was replaced by Salama al-Khufaji on 8 December 2003).²¹⁸

Article 36 of the TAL stated that the National Assembly would elect the head of state and its two deputies to form the Presidency Council (PC), whose main function was to represent the sovereignty of Iraq and oversee the higher affairs of the country. The Presidency Council would be elected on the basis of a single list and by a two-thirds majority vote of the members' votes. In addition, the National Assembly had the power to dismiss any member of the Presidency Council for incompetence or lack of integrity by a three-fourths majority vote of its members; in the case of a vacancy in the Presidency Council, the National Assembly should, on the basis of a vote of two-thirds of its members, elect a replacement to fill the vacancy.²¹⁹

To pre-empt future constitutional deadlocks, negotiations over the distribution of powers with the United Iraqi Alliance (UIA) dealt with the government establishment, in effect reflecting the Kurdish position on acquiring certain sovereign rights as an entitlement of the Kurdish nation, along with the speedy implementation of Article

²¹⁸ Kenneth Katzman and Alfred B. Prados, *op. cit.*, p.3

²¹⁹ For details see Law of Administration for the State of Iraq for the Transitional Period, available at <http://www.dostoor.jeeran.com.2010%عراقية%20%دساتير/htm>

58. Ibrahim al-Jaafari, as Prime Minister, was therefore assigned to form the new government on 3 May 2005. The cabinet included nine Kurdish ministers amongst the 37-member Council of Ministers. Appointed 7 April 2005, Jalal Talabani was the first Kurd in Iraq's history to occupy the position of Head of State.²²⁰

The inevitability of conflicts and of different and contradictory views among the Shiite blocs themselves threatened the stability and formation of the new government. For instance, the long-standing hostilities between SCIRI and the Sadrist movement were reflected in the win by al-Daawa's Ibrahim al-Jaafari (supported by the Sadists) over SCIRI's Abdul Mehdi in the internal UIA election on 12 February 2006. However, the al-Daawa-Iraqi Organization was allocated 12 seats of the UIA's total of 128 seats.²²¹ When al-Jaafari began to form his cabinet, it seemed obvious that he was serious about countering Kurdish aspirations, a key point in his government's priorities for the transitional period. In fact, Al-Jaafari deliberately not wanted Iraq to be "democratic and federal" and he made no mention this phrase when he was sworn in; he also neglected to mention Kirkuk or the implementation of Article 58 in the speech he made before the National Assembly (NA).²²² It has already been argued that his attitude stemmed from his intellectual background and was based on his aggressive non-acceptance of the rights of the other party. It is crucial to note that most of this hostility to Kurdish demands was instigated through external agendas by Iraq's neighbouring States which have been passed through their pro- Sunni and Shiite parties.²²³

²²⁰ Nawshirwan Mustafa, "the issue of Constitution/ How the Kurds can participate in Writing New Iraqi Constitution", on 20 May 2005, [www. Reform-Kurd.com](http://www.Reform-Kurd.com)., in Sbey. Com. Available at: <URL:http://www.sbey.com/ku/article_detail.aspx?ArticleID=737&AuthorID=36&AspxAutoDetectCookieSupport=1>, on 3 Sept 2008

²²¹ Liam Anderson and Gareth Stansfield (2004), *ibid.*, p.144

²²² Nawshirwan Mustafa, "the issue of Constitution/ How the Kurds can participate in Writing New Iraqi Constitution", on 20 May 2005, *op.cit.*

²²³ Charles G. MacDonald and Carole A. O'Leary argued that the spark that launched the crisis between the Kurdish leadership and Jaafari Government regarding his visit with his delegation secretly to Turkey in 2006. Obviously, one could assessment that, their discussion was related how to create obstacles to the provisions of Article 58 of TAL, particularly, return back of the property claims, resettlement, and boundary adjustment process . Carole A. O'Leary and Charles G. MacDonald (eds.), 'The Kurdish Identity in a Democratic Iraq and Beyond', in 'Kurdish Identity Human Rights and Political States', (eds.) Charles G. MacDonald and Carole A. O'Leary, (USA: University Press of Florida, 2007),P.159-60

There is no doubt that this open hostility on al-Jaafari's part created problems constant problems for the Kurds, which made him unacceptable to the Kurdish people, ordinary people as well as politicians. The Kurds were certainly not alone in opposing Jaafari's nomination, but the position taken by the Kurds against his policies was the main reason why he stepped down from his post and was replaced by al-Daawa's Nuri al-Maliki, who was more acceptable to other factions and was approved by the Council of Representatives on 20 May 2006. In order not to repeat the bitter experience of al-Jaafari, the Kurds had confirmed their support for a national unity government under Maliki, doing so in the form of a written agreement for the full implementation of Article 140. Maliki had already pledged to abide by these changes, and explicitly affirmed it in declaring his government's agenda.²²⁴

A notable point in the debate on returning sovereignty to Iraq is that when sovereignty was officially returned to the new Iraqi Interim Government (IIG) on 30 June 2004, UNSCR 1546 deliberately did not refer to the TAL, or to the Kurdistan Region.²²⁵ It is plausible to see this as a way of avoiding the issue by failing to give the Kurds any kind of international recognition, ignoring their rights as enshrined in Article 58, and stopping any international legitimacy being given to the Kurdish veto. However, the Kurds managed to obtain several powerful ministerial posts, including deputy prime minister for national security (Barham Salih, PUK), one of the two vice-presidencies (Rowsch Shawais, KDP), and foreign minister (Hoshiyar Zebari, KDP). In this regard, Borhanedin Yassin paid particular attention to the one of the biggest strategic mistakes of the Kurdish leaders, particularly Jalal Talabani and Hoshiyar Zebari, when they stated that they were working to take Iraq out of Chapter VII of the UN Security Council. In turn, that meant the end of the work of SC Resolutions 688 and 986. In addition, the exit from Chapter VII meant the return of full sovereignty to Iraq. In other hand it also demonstrated the tight grip on Kurdish citizens and the threat to their society. In the most obvious sense, however, the Kurds, according to Resolution 986, were the biggest beneficiaries, having been allocated 13 percent of revenues for a Kurdistan Region under direct UN control.²²⁶

²²⁴ Liam Anderson and Gareth Stansfield (2004), *op. cit*, p.174-5

²²⁵ Liam Anderson and Gareth Stansfield, '*Crisis in Kirkuk: The Ethnopolitics of Conflicts and Compromise*', (United State of America :University Pennsylvania press, 2009), p. 119

²²⁶ Interview with Dr. Borhanedin A. Yassin through Telephone, on 12 August 2009, Sweden

4.5 THE PROCESS OF ELECTIONS (GENERAL AND PROVINCIAL ELECTIONS) IN THE KURDISTAN REGION AND IRAQ

One of the important developments in the Iraqi arena was the elections, on which hung the hopes of all factions of the Iraqi people. It is argued that with this election, the most important task for the new Iraqi government was to establish a form of domestic sovereignty. It is clear that the elections were held in a legitimate manner; nevertheless Kurdish and Shiite parties apparently dominated the entire process. The electoral turnout in the Kurdistan region, as well as in the main Shiite areas in Iraq's central and southern provinces, reached high levels; an energetic rush to participate by voters produced a high level of turnout. In contrast, turnout in the main Sunni areas was below ten percent of the electorate.²²⁷

On the eve of preparations for the first elections in Iraq there was considerable talk about withdrawing the Sunni political group from the formation of the government as a way of protesting about the siege of Fallujah and deteriorating security. Because of escalating violence in the Sunni triangle, the Islamic Party and the Sunni Muslim Clerics' Association used these reasons as a justification to withdraw and urged Iraqis to boycott the planned January elections. In addition, in mid-November 2004, 47 political parties and groups declared their boycott of the election, alleging that it did not reflect the will of the Iraqi people or their demand for sovereignty and independence. The Sunni groups therefore decided to withdraw 275 candidates from the elections. In response, 40 political parties connected to al-Hawza and Ayatollah al-Sistani also rejected and delayed the election. In March 2004, the Kurds had initially faced the refusal by the Sunni / Shiite blocs and Ayatollah al-Sistani to accept that they had the privilege/right of veto on the proposed the interim constitution. In an apparent effort to sustain the process, the Kurds preferred to maintain a balance between the Sunni demands for postponing the election and the insistence of the Shiites, as a means to maintaining on their demands.

²²⁷ Paul Rogers, *Iraq and the war on terror: twelve months of insurgency (2004/ 2005)*, London: I. B. Tauris & Cold Ltd, 2006), p. 103

The Iraqi election took place on 30 January 2005 under exceptional circumstances of intensive, uncontrolled insurgency, insecurity, and military force. These elections included electing 275 members of the transitional national assembly, electing the parliament of the Kurdish region, and governorates councils. According to the Supreme Independent Election Commission, 111 lists competed for the 275 seats. The lists included 7724 candidates whose names were not known to voters. Further, in the January elections voting was for the whole list rather than for its candidates. 13 lists competed in the elections of the Kurdish parliament, while tens of lists competed in the elections of the 18 provincial councils. The council of every governorate is composed of 45 members, except Baghdad's council which has 55 members. In spite of, the whole process was criticised by political observers, both internal and international due to many breaches occurred. However, 25 Iraqi towns and cities (Sunni provinces) boycotted the elections. It has been argued that the participation rate in the Sunni provinces ranged from 2% to 25%,²²⁸ and insurgents attacked election officials, candidates and voters. Given prevailing living conditions and the political legacy of dictatorship, the election had taken place quite successfully.²²⁹

It is first necessary to concentrate on a significant issue related to the January 30, 2005 elections; this was an unofficial referendum that had been held in the Kurdistan region in parallel with the general elections in Iraq. Nearly 99 percent of those polled had voted for independence rather than to be part of Iraq.²³⁰ This referendum movement, apparently founded in mid-July 2003, was an organized movement for a specific goal inside Kurdistan. In just one month, starting on 25 January 2004, Kurdish NGOs (nongovernmental organizations) collected 1,700,000 signatures on petitions demanding a vote on whether Kurdistan should remain part of Iraq. The way it operated was similar to the formation of a mass opinion-based social movement.

²²⁸ What should be indicated here that major electoral lists were participated are: "The Unified Iraqi Coalition" of major Shiite political parties, both religious and secular, which they gained the blessings of Ayatollah Sistani. There were "The Iraqi List" headed by ex-prime minister Iyad Allawi, and also "The Kurdish Alliance" composed of the PUK and KDP, and other small Kurdish parties. Moreover, the Christian parties formed two coalitions, while "The People's Coalition" included the Iraqi Communist Party. See IISS (International Institute for Strategic Studies). Volume 17, march 2011. Available at:

<URL:<http://www.iiss.org/publications/strategic-comments/past-issues/volume-17-2011/march/winds-of-change-in-iraqi-kurdistan/mobile-edition/>>

²²⁹ Tareq Y Ismael & Jacqueline S Ismael, 'The Iraqi predicament: People in the Quagmire of the Power Politic', (Pluto Press: 2004), p.60

²³⁰ Kenneth Katzman and Alfred B. Prados, op. cit., p.5

Yassin described how some members of the Independent High Electoral Commission (IHEC) wondered whether the major parties had been deflected away from the context of its goals. For example, Halkawt Abdulla, a member of IHEC announced in a speech²³¹ in front of the Iraqi Governing Council that their campaign was not about the independence of Kurdistan but was simply to create an opportunity for the Kurdish people to decide their own fate by guaranteeing their national rights in the constitution, and because voluntary union between many nationalities was an initial condition for the success of stability and democracy in Iraq.²³² In this context, it is reasonable to conclude that the two main parties were enabled to exploit this movement to put them under its control, and consequently to achieve partisan advantage.

From a broader perspective, the results of this referendum had practical significance. It was also clear to the Kurdish leaders that it was difficult to move towards independence as they would be facing intensive rejection by regional and international states. If they were challenged to move in this direction, though steadfast it might be a fragile state that survived. In this context, Dr. Borhanedin Yassin noted that the referendum committee had started its activity in the transitional period before ratification of the Iraqi constitution. It would appear that the Kurdish leaders had many paradoxes in their attitudes and their work. One critical issue was whether the Kurdish leadership were using the results of referendum for their political interests; it was also said that the representatives of referendum movement were subjected to political pressure to withdraw from the project.²³³

The results of the votes counted were announced by the Iraqi Election Commission on 13 February 2005. Out of the 58 percent voter turnout, the United Iraqi Alliance list (supported by Ayatollah al-Sistani) won 51 percent of the votes and obtained 140 seats, the Kurdish Alliance won 75 seats, the Iraqi list (Allawi's list) won only about 14 percent of the votes (40 seats), and Al-Yawer's list won 5 seats. The remaining 20 seats were distributed among several small lists including 3 seats won by the Turkumani list. Moreover, the unified Iraqi coalition list won 11 out of 18 provincial

²³¹ This speech was published in *Khabat* Newspaper, on 1st March 2003.

²³² Borhanedin A. Yassin, *Iraq after Saddam Hussein and the Fate of Southern of Kurdistan* (in Kurdish), (Dohuk: Hawar press, 2008), pp. 61-3

²³³ Interview with Dr. Borhanedin A. Yassin through Telephone, on 12 August 2009, Sweden.

councils. The two main Kurdish parties (the Democratic Kurdish Party under the leadership of Masoud Barzani and Patriotic Union of Kurdistan led by Jalal Talabani) won 89.5% of the votes in the elections of the 111 members parliament of the autonomous Kurdish region.²³⁴ Despite the backing of the US Allawi failed to win the election. Some observers analysed this loss as a failure of the US policy in Iraq. On the other side, other Shiite lists won 11 seats and minor parties took the very few seats that were left.²³⁵

Given such conditions, the outcome of the 2005 elections²³⁶ clearly put the KRG's in a powerful position, from which they could make their mark on the permanent constitution. In 2005, the PUK and KDP reached a power-sharing agreement to rule the Kurdistan Region and act as an influential political bloc within Iraq as a whole.²³⁷ As mentioned above, the United Iraqi Alliance (UIA) obtained the majority of seats in the NA, which enabled them to gain a two-thirds majority of NA members, or 183 out of 275; essentially this meant that they could form a government without the participation of the Kurds. Nevertheless, to form a broad-based government, and in order to confirm its legitimacy they needed the participation of all the other factions represented in the National Assembly. Based on this, the participation of the Kurds was deemed to be necessary for any incoming government to succeed, at the present time or in the future, given that the Kurdish Alliance occupied 27 percent of seats. The essential logic of political participation in the new Iraq was based on political consensus between factions.²³⁸ In the December 15, 2005 elections²³⁹ the Kurdistan

²³⁴ IISS (International Institute for Strategic Studies), *op. cit.*

²³⁵ Tareq Y Ismael & Jacqueline S Ismael, *op. cit.*, p.60-1

²³⁶ Proportional representation (PR) was adopted in the January 2005 elections (both federal and local) as an appropriate system in the on-going absence of a general census. Furthermore, proportional representation would depend on each party's share of the vote. In the case of Iraq, it could be said that all ethno-sectarian groups had a chance to be represented.

²³⁷ Carnegie Endowment for International Peace, 'The Kurdish Parties' on 27 November 2009. Available at: <<http://www.carnegieendowment.org/publications/special/misc/iraqielections2010/inde>> Access Date: 5 December 2009.

²³⁸ The Independent High Electoral Commission of Iraq, 'IMIE Final Report of the December 15, 2005, Iraq council of Representatives Elections', Available at: <URL: <http://www.ihec-ir.com/ftpar/regulation2005/finalreport2005.pdf>> Access Date: 25 May 2009

²³⁹ The electoral system pursued in the January elections as follow: "(a) the total number of parliamentary seats was calculated on the basis of one seat for every 100,000 citizens; (b) 230 seats were allocated for competition in Iraqi provinces according to proportional representation of electoral lists in each province; (c) each province was allocated a fixed number of seats according to its population size; (d) 45 seats were opened for proportional representation of lists on a national scale, these seats were called "compensatory" seats; (e) the quota of women representation was set at 25% of

Alliance controlled 53 seats, down from the 75 after the January election, but Talabani remained as President and Hoshyar Zebari is also remained Foreign Minister.

The Kurdish worries undoubtedly increased with each prospective election since the Arab and non-Arab factions increased their participation and strengthened their positions by opposing Kurdish demands.²⁴⁰ Thus the two major Sunni blocs, the Iraqi Accord Front (IAF) and the Iraqi National Dialogue Front (INDF) were respectively allocated 44 seats and 11 seats in the NA, while the Sadri bloc (known as one of the most militant movements and hostile towards Kurds) obtained 29 of the UIA's total of 128 seats. Besides, the "Kurdish Islamic Union" won 5 seats. The "Reconciliation and Liberation" list led by Misha'n Al-Jibouri won 3 seats. The "Missionaries" list close to Shiite leader Muqtada Al-Sadr won 2 seats. One seat was won by each of the following groups: the Iraqi Nation Party (liberal), the Turkmen Front, the Yazidis list, and "Al-Rafedain National List" (Christian).²⁴¹ It is argued that their participation had the effect of maintaining the balance of political power in the Iraqi NA. Although the Iraqi factions had various political and ideological differences with each other, but, they emerged as a unified body to oppose the Kurds on a variety of issues, particularly regarding the implementation of Article 140, control over the hydrocarbons sector, and varying degrees of federalism.

In February 2008, the Iraqi parliament passed a Provincial Powers Act by a parliamentary majority, although they had reservations about giving the Prime Minister power to dismiss a governor of a province, or enabling the Prime Minister's party to control central government in Baghdad. However, a Provincial Elections Law needed to be passed within three months of this Act being passed. It should be noted that the Presidency Council (consisting of President Jalal Talabani, who is Kurdish, Vice-President Adel Abdul Mehdi, a Shiite Arab, and Vice-President Tariq al-Hashimi, a Sunni Arab), had the power to veto laws.

the National Assembly seats, or 69 seats". See IISS (International Institute for Strategic Studies). Volume 17, march 2011. Available at:
<URL:<http://www.iiss.org/publications/strategic-comments/past-issues/volume-17-2011/march/winds-of-change-in-iraqi-kurdistan/mobile-edition/>>

²⁴⁰ Kenneth Katzman and Alfred B. Prados, *op.cit.*, p.6

²⁴¹ IISS (International Institute for Strategic Studies). *op. cit.*

According to Article 50 of the draft Elections law, a number of seats in the provincial assemblies would be reserved for religious minorities such as Christians and Yazidis, but in the final draft this clause was removed, with legislators citing a lack of census data for determining the appropriate number of seats. Applying human rights principles became highly problematic in this case as it was agreed that the rights of these minorities had been ignored, which is why removal of the minorities' clause was criticised by the UN Special Envoy. As a result of internal and international pressure the minority clause was restored on 3 November 2008: it provided for six special seats (three for Christians, one each for Yazidis, Mandeans and Shabaks). The security situation and the actual turnout in this election was noticeably better, compared with the 2005 elections when many candidates were assassinated and many bombs exploded.

The prevailing view among the US administration and all the Iraqi factions was that the local elections represented an essential step towards developing democracy and promoting national reconciliation, and would be continue to be necessary to stabilise the country. As political observers commented, such elections would also help Sunni groups to participate in the country's politics. Governorate or provincial elections were held in all parts of Iraq on 31 January 2009, to replace the local councils in 14 of the 18 Iraqi governorates (with the exception of the Kurdistan Region). On 19 February 2009, the Supreme Elections Commission , announced on the results of the elections as follow :that the list of the "State of Law Coalition" backed by Prime Minister Nouri al-Maliki won 126 seats out of a total of 440 seats in 14 provinces where local elections were held. The "State of Law Coalition" took the lead in 10 provinces and occupied 28.5% of total seats in the 14 provinces. It should be noted the Kurdistan List achieved considerable success in these elections. For example, List Brayati (which is mean Brothers) list gained 14 seats in Mosul, while the Kurds obtained 89 percent of votes in Sinjar, 87 percent of votes in Makhmur, and 96 percent of votes in Sheikhan. For this reason, the elections can be seen as a

referendum for the people in these places, which they wished to see returned to the Kurdistan Region.²⁴²

While, in the Kurdistan Region were the Iraqi Kurdistan legislative elections to vote for the parliament and the presidential elections; the ballot for the president that took place on 25 July 2009 was the first direct presidential vote in the Kurdistan Region. However, people who were living at the time outside Iraqi Kurdistan (in the disputed territories) were not allowed to vote. It should be noted that the election of the president of Kurdistan was achieved directly through popular votes, with around one million citizens of Kurdish population eligible to vote. Furthermore, the elections had originally been planned to take place on 19 May, but were delayed until 25 July 2009.

Here one should note that the Kurdistan Regional Government's parliament, or the Kurdistan National Assembly, is composed of representatives from the various parties and lists, and elects its 111 members every four years, with 11 seats allocated for minorities (five for Assyrians, five for Turkmen, and one for Armenians).²⁴³ By law the quota for women²⁴⁴ is at least 30 percent of the parliamentary seats. Following the first election held in the region in 1992, no further elections were held there until 2005 when they coincided with the election of the Iraqi Interim Government and elections for governorate councils. The most important change in the 2009 elections was that the open list system adopted for the Iraqi governorate elections, was applied elsewhere in Iraq, while, the closed list system had been used for the Kurdistan legislative election in 2005. In reality, 19 political entities and five political alliances participated in the elections and the turnout reached 78.5 percent.²⁴⁵ The most

²⁴² However, "Al Hadbah List" in Mosul won the majority of seats in Nineveh and was able to secure 19 seats of the 37 seats in the province. On the other hand, 6 seats were allocated for minorities out of a total of 440 seats in all provinces. Two seats were allocated for Christians and Sabi'a in Baghdad, three seats in Mosul for Christians, Shabak and Yazidis, and one seat for Christians in Basra province. See IISS (International Institute for Strategic Studies). *op. cit.*

²⁴³ Among the others, the Turkmen parties that participated in the Kurdistan Region included the Turkmen Democratic Movement, Erbil's Turkmen List, Independent Turkmen List, and Turkmen Reform List which also contained the Movement of the Independent Turkmen (an affiliate of the Iraqi Turkmen Front). Other minorities also participated, despite being small in number and lacking supporters, including for example, Unified Chaldean List, Chaldean Syriac Assyrian Autonomy List which comprised Khaldu-Ashur Communist Party, and the Assyrian Patriotic Party, and National Rafidain List.

²⁴⁴ Kurdish women gained 39 of the seats in the Kurdistan parliament according to IKP Law No. 1, Article 22, as amended in Article 10 of Law No. 47 for 2004, the third amendment of Law No. 1 for 1992.

²⁴⁵ Some statistics on the results of the vote, Awene Newspaper, Available at:

significant lists were as follows: the PUK and KDP continued their electoral coalition in the Kurdistan List. The Kurdistan Islamic Union and Islamic Group in Kurdistan formed a coalition with two secular parties (the Kurdistan Socialist Democratic Party, and the Future Party) that were called the Service and Reform List. As well as the Change list and the Islamic Movement of Kurdistan, there was a Social Justice and Freedom List (that included Kurdistan Communist Party, Kurdistan Toilers Party, and Kurdistan Independent Work Party, Kurdistan pro-Democratic Party and Democratic Movement of Kurdistan People).

Despite mutual recriminations among the main parties in power and the opposition parties over violations during the electoral campaign, the opposition, particularly the Change List, made serious accusations about the two main parties, claiming that they had resorted to threats and fraud by using all the opportunities offered by their party, and by the government budget for their personal interests. The two parties punished the opposition's supporters by cutting off financial grants to those who had been taking them, particularly the PUK. In the event, the election resulted in the Kurdistan List obtaining 60 seats and the Change List 25 seats, while the coalition of four Kurdish parties, the Social Justice and Freedom List, gained 13 seats. In other words, the Change List won 112,000 votes, the four coalition parties took 42,000 votes, and the Kurdistan List obtained 400,916 votes in Erbil province. In Sulaimaniya province, the situation was reversed, with the Change List winning 286,664 votes, while the Kurdistan List obtained 253,759 votes and the four coalition parties took 133,527 votes. In Dohuk province, the Kurdistan List were in the majority with 333,000 votes, the coalition of four Kurdish parties came second, winning 44,000, while the Change List gained 18,000 votes.²⁴⁶

It is a fact that the main parties monopolized power for two decades. The opposition parties were involved in the political process after the creation of the KRG, but theirs was mostly a supporting role for one or other of the main parties. For this reason one

<URL: <http://www.awene.com/Direje.aspx?Babet=Hewal&Jimare=4482>>; Access Date: on 26 July 2009.

²⁴⁶ Some statistics on the results of the vote, Awene Newspaper, Available at: <URL: <http://www.awene.com/Direje.aspx?Babet=Hewal&Jimare=4482>>; Access Date: on 26 July 2009.

can say that the election of 25 July 2009 was the first competitive election to have aroused real enthusiasm among the Kurds in the Kurdistan Region. The emergence of a new political group in the election (the Change movement, headed by Nawshirwan Mustafa)²⁴⁷ as a genuine opposition party to the KDP-PUK alliance affected the political process, both directly and indirectly, in Kurdistan Region for the first time. The Change movement decided to stay opposition in parliament after they had won 25 seats.

4.6 THE NEW IRAQI CONSTITUTION AND ITS REPERCUSSION OVER THE KURDISTAN REGION

It is important to note that the constitution is the only legal basis on which political life is organised for the Iraqi people who participated for the first time in the construction of their constitution. The constitution issue was among the most important issues facing the new Iraq, and was a fundamental task for the Transitional Authority, since it had to achieve the requirements of the international resolutions, achieve access to freedom and independence, and promote the new era of humanitarian law and civil society in Iraq.

It is also quite evident that, since the founding of the Iraqi State, the matter of the constitution has been one of the most controversial issues in determining or denouncing the rights of factions and ethnic groups. The Iraqi State has witnessed several constitutions at various stages that reflected both developments and relapses as follow: First: the Constitution of the Kingdom of Iraq (The Fundamental Law) in June 10, 1924 borrowed heavily from western secular constitutions, issued (with British support)²⁴⁸. Secondly, the Interim Constitution was adopted after the Republic

²⁴⁷ Nawshirwan Mustafa is a prominent Kurdish politician who participated with Jalal Talabani in founding the PUK in 1976 in Damascus and became deputy Secretary General of the PUK after the Barzani rebellion collapsed. He also founded the *Komalai Ranjdaran* party and was its Secretary General in 1970; the "*Komalai Ranjdaran*" (a strong wing of the PUK) was dissolved and merged in the PUK to increase internal PUK unity. After separating from the PUK, Nawshirwan Mustafa established the Movement for Change and became leader of the official opposition in the Kurdistan Region.

²⁴⁸ "The Constituent Assembly then considered a draft constitution drawn up by a constitutional committee. Discussion on the draft constitution by the Constituent Assembly lasted a month, and, after minor modifications, it was adopted in July 1924. The Basic Law, as the constitution was called, went

was established on 14 July 1958. Third, the Law of the National Council of Revolutionary Command No. 25 of 1963, on 4 April 1963; the Interim Constitution of 1964. Forth: the Interim Constitution of 1968. Fifthly, the Iraqi State Administration Law for the Transitional Period, 2004, which it could be deemed to be the first opportunity for the Kurds to participate in writing the draft of Iraqi constitution.²⁴⁹

In same context, some scholars are argued that the Treaty of Sevres, signed 10 August 1920 could be regarded as a first constitution for Iraq until The Fundamental Law was passed in 1929. The Interim Constitution was adopted after the Republic was established on 14 July 1958. Then followed the Constitution of the Kingdom of Iraq on 1925; the Second Amendment Act of the Basic Law for the year 1925; the Interim Constitution of 1958; the Law of the National Council of Revolutionary Command No. 25 of 1963, on 4 April 1963; the Interim Constitution of 1964; the Interim Constitution of 1968; and the Iraqi State Administration Law for the Transitional Period, 2004.²⁵⁰

into effect right after it was signed by the king on March 21, 1925". See "Iraq since 1918 British occupation and the mandatory regime". Available at

<URL:<http://www.angelfire.com/nt/Gilgamesh/1918.html>>

²⁴⁹ Nawshirwan argued that the Basic Law of 1924 was written by British experts. The Kurds did not have any role in this Constitution and they were involved in the bloody conflicts, for example the Sheikh Mahmud's Revolutions (1930-1931), Barzan's Revolutions (1943-1945), the uprising September 6, 1930, and the demonstrations 1948, 1952, 1956. Besides, the political parties and organizations were not allowed to work in public. Moreover, the Interim Constitution 1958 was wrote by (National Democratic Party, particularly by the Lawyer Hussein Jemil). However, in this constitution, particularly in Article 3, it mentioned that "the Arabs and the Kurds are partners in this Country". Despite that, the longest Kurdish Revolutions had started in September 1961 It was made clear that, the Kurds did not have any role in the interim constitution in 1964. Indeed, what happened was a complete violation of what had been agreed before between the Kurds and Iraqi government . Beyond this, the Arabization operations continued against the Kurds in this period. Besides, what was very much painful and a disaster for the Kurds, when the internal fighting started between the Kurdish parties themselves. Finally, though, the Interim Constitution of 1968 recognized that "the Iraqi state is composed of the two main peoples Arabs and Kurds", but in this period, the fiercest processes of Arabization, Anfal, deportation and destruction of all Kurdish villages had been exercised against the Kurds by the Baathist regime. On the whole, it should be said that all these constitutions did not lead the creation of a national sense or national identity of the Iraqi people. In addition, it is important to remember here that, these constitutions did not also address the sectarian differences and unable to form any political consensus to maintain the internal security of Iraq.

Nawshirwan Mustafa, "the issue of Constitution/ Constitutions and One Result", on 19 May 2005, [www. Reform-Kurd.com.](http://www.Reform-Kurd.com), in Sbeiy. Com. Available at:

<URL:http://www.sbeiy.com/ku/article_detail.aspx?ArticleID=737&AuthorID=36&AspxAutoDetectCookieSupport=1>, on 3 Sept 2008; Also see: Iraqi Basic Law of 1925 (in Arabic), By Investigator Foundation for Culture and Guidance,; Available at:

<URL: <http://www.dostoor.jeeran.com/الصفحة%20الرئيسية%20للدساتير%20العراقية>.htm>; Access Date: 29 July 2010

²⁵⁰ Iraqi Basic Law of 1925 (in Arabic), By Investigator Foundation for Culture and Guidance,; Available at: <URL: <http://www.dostoor.jeeran.com/الصفحة%20الرئيسية%20للدساتير%20العراقية>.htm>; Access Date: 29 July 2010

This was a very difficult period for the Kurds who had to write the draft constitution so that they could preserve what they had achieved. In a personal interview, Frsat Ahmad ²⁵¹ indicated that the Kurds were shocked when the other Arab parties displayed the draft constitution for the first time, since they had deliberately violated the agreement with regard to the issue of what was published or changed, and it was no longer in the form previously agreed between the Iraqi Parties. For this reason the two main parties, the KDP and the PUK, formed what was known as the Committee on Attribution for backing the Kurdistan bloc. This was made up of members of the KRG parliament under the chairmanship of Masoud Barzani, President of Kurdistan Region, with the addition of Jalal Talabani, President of the Republic of Iraq, who set out to create a political meeting point in Baghdad where all the Iraqi leaders would meet.²⁵² The Committee that supported the Kurdistan Alliance List during the writing of the constitution was headed by Kamal Kerkuki and ten members of the Kurdistan parliament; they visited Baghdad three times in 2005 to participate in these meetings, which were also attended by both Masoud Barzani and Jalal Talabani, several members of the Politburo, and others such as “Dr. Mahmoud Othman, Dr. Hussein, Balisani, Dr. Sadi Barznji, Dr. Munther Al Fadhil Karim Bahri, Aref Tayfour, Masrur Barzani...etc”²⁵³

Dr Nouri Talabani (who was a member of the Legal Committee) described how, a few months before joining the negotiating team to participate in the writing of the constitution in Baghdad, the 59 members of the Kurdistan parliament representing all the Kurdish political parties requested that the draft constitution prepared in December 2003 with the assistance of the Legal Committee should take into account all the changes and political developments after the fall of Saddam so that it could be used as a basis for negotiations with the Arab and other political groups. This was agreed by the presidency of the parliament (which was controlled by the majority of

²⁵¹ Frsat Ahmad, who is a Member of Parliament of the Kurdistan Region. He was one of the individuals who participated in the writing of the Transitional Administrative Law and also the New Iraqi Permanent Constitution.

²⁵² In general the work of this committee (Committee on Attribution) was to support, and also give guidance and feedback to the Kurdish members in the committee on writing the constitution, and discuss with the Arab parties about having the right to vote. Interview with Frsat Ahmad, on 2 April 2009, Erbil, Kurdistan Region/ Iraq.

²⁵³ Interview with Frsat Ahmad, on 2 April 2009, Erbil, Kurdistan Region/ Iraq.

PUK and KDP) and the draft constitution was endorsed before the Kurdish negotiating team went to Baghdad.²⁵⁴ They were therefore able to insist on the contents which represented the demands of the Kurdish people. Dr Nuri added that the deliberate decision not to put this draft in front of the parliament had fallen on the presidency of the parliament (Adnan Mufti from PUK headed this specific session for Parliament). It is reasonable to believe that it was a political decision of the supreme authorities of the two main parties that the constitution of Kurdistan would not precede the constitution of Iraq. Tariq Jambaz²⁵⁵ supported this idea and argued that the Kurds had been preparing the project for the Iraqi Kurdistan Constitution and also for Iraq since 17 November 2002. He believed that the second task of the Parliament of Kurdistan was the adoption of the Constitution of the Region, because the new Iraqi constitution had recognised all laws, decisions and contracts issued in the KRG. Thus, if the Kurdistan region had owned their constitution, it would have earned its legality.

From this point of view, it could be said that the Kurds had made a strategic mistake, when they postponed ratification of the constitution of the Kurdistan Region and worked to create the Iraqi constitution. Moreover, if the constitution of the Kurdistan Region had preceded the Iraqi constitution, there were many things at that time (including the rights of the Kurdish people) that they would not have had to prove in the Iraqi constitution, since they would have been fixed in the constitution of the Kurdistan Region. It should be said that the jurists and the Kurdish people were constantly demanding a constitution for the Kurdistan Region: however, the ignition of internal conflicts between the main parties (PUK and KDP) was one of the most important factors that led to ignore this project and ratification was postponed until now (time of writing this theses).

In fact the presence of a constitution is essential for any civilised society in order to determine the political system and define the rights and duties of the citizen. Obviously, the absence of a constitution means the absence of the rule of law in

²⁵⁴ Interview with Dr. Nouri Talabani, on 12 April 2009, Erbil, Kurdistan Region/ Iraq

²⁵⁵ Tariq Muhammad Said Osman (Jambaz) was a member of the Kurdistan Parliament (second session of the Parliament of Kurdistan in 2005), and was one of the 15 members nominated to review the draft of Kurdistan constitution. The first reading of this project was conducted 2006, after the receipt of some 5000 proposals and comments from academics, jurists and politicians and others. Interview with Tariq Jambaz, on 4 April 2009, Erbil, Kurdistan Region/ Iraq.

general (except in the case of the UK, which it is not have a written constitution but an un-codified one).²⁵⁶ Dr. Nouri Talabani asserted that he was the first to prepare the draft constitution of the Kurdistan Region. Having, as their first step, announced a federal system as the base of their relations with the Iraqi government, it was supposed that the second step taken by the Kurds would acceptance of the constitution for their region. On the other hand, it should be noted that the Kurdish people also criticised their political leaders for their interest in Iraqi issues, and the conflicts between Shiite and Sunni groups over Kurdish issues. Some did not deny this fact, justifying their attitude that the Kurds, like any Iraqi group in the Iraqi parliament, should have the word on all Iraqi matters. Further, any conflicts between Shiite and Sunni would significantly impact on the fate of the Kurds.²⁵⁷

By focusing on the essential issues challenged and discussed during this period, the question of the right to self-determination gave rise to serious discussion in the bargaining committees while the Iraqi constitution was being written. The Kurds wished to take this subject as a constitutional article and the strongest guarantees for the Kurds. In discussing this matter, Dr Nuri argued that the Preamble did not have any legal force compared with the constitutional articles, because if the Arab parties accepted inclusion of the issue as a separate article in the constitution, indirectly it meant recognition of the right of self-determination.²⁵⁸ Frsat Ahmad held a different view, justifying the attitudes of the Kurdish leadership and noting that

...during the Transitional Administrative Law, which was set only for one year...the Kurds and other Iraqi parties were directed towards administrative issues, not to the vital issues that were crucial in this period. Indeed, Kurds were not guided in the direction of self-determination during this stage [since] it was the interim constitution. Nevertheless, in the process of writing a constitution they insisted on including it as an article in the new permanent constitution.²⁵⁹

²⁵⁶ In fact, the constitution of the UK is the set of laws and principles, which much of the British constitution is embodied in written documents, within statutes, court judgments and treaties. Besides, the constitution has other unwritten sources, including parliamentary constitutional conventions and royal prerogatives.

²⁵⁷ Interview with Dr. Nuri Talabani, on 12 April 2009, Erbil, Kurdistan Region/ Iraq

²⁵⁸ Interview with Dr. Nouri Talabani, on 12 April 2009, Erbil, Kurdistan Region/ Iraq

²⁵⁹ Interview with Frsat Ahmad, on 2 April 2009, Erbil, Kurdistan Region/ Iraq.

The Kurds did not succeed in their attempt and as a result it was agreed that this wording would be included in the preamble. Although this issue was a separate article in the constitution at the beginning of the constitution-writing process, following severe opposition from the Arab parties it was put in the preamble, where it asserted that “The adherence to this constitution preserves for Iraq its free union of people, of land, and of sovereignty”. In the Kurdish leadership’s view this represented a guarantee of self-determination for the Kurds, so that if the other Iraqi factions would not adhere to this constitution the Kurds would have the right to take any steps to protect both their status and their rights. Kurdish leaders (especially Masoud Barzani) constantly repeated that the only guarantee for the unity of Iraq depended respect for the constitution by the Iraqi parties.²⁶⁰

It is necessary to point out that the Kurds have obliged a series of compromises to be made, as the Shiite groups have also done, although to a lesser extent than the Kurds. The main reason was to refute the serious concerns of the Sunni community during preparations for drafting the constitution. The SCIRI and Kurdish leaders were harshly criticised for overriding the political consensus which was intended to be adhered to and approved by all the factions, since their decisions were taken behind closed doors. In terms of solving the anticipated problems this could have been predicted, particularly given the absence of Sunni participation in the drafting of the constitution. Thus, increasing the number of Sunni Arab members (15) on the constitutional committee made the procedure appear acceptable to all groups.²⁶¹

²⁶⁰ There is no doubt that placing this article in the preamble gave rise to different interpretations by the jurists, according to whom the preamble is part of the constitution, and therefore has the same legal power as the provisions of other articles in the constitution. A second groups of jurists argued that the preamble had no legal force, compared with provisions of other constitution articles, while a third group stated that the preamble had the same legal force as the provisions of other articles, provided that there was an article in the constitution clearly indicating this situation.

²⁶¹ As noted, selecting the 55 members for the committee was among the core functions of the NA, and the selection was done on 10 May, to leave time to draft the new constitution. The UIA (United Iraqi Alliance) had 28 places and the Kurds had 15 places on the committee. However, participation of Sunni Arabs on the committee was low, compared with other Iraqi groups; thus, only two Sunni Arabs participated, one representing the UIA and the other Allawi’s INL. These situations influenced the role of these two lists in controlling the content of the new constitution. Liam Anderson and Gareth Stansfield (2009), *op. cit.*, p.134-5

For the Kurds, the constitution was a significant gain,²⁶² and included positive points that should be taken into consideration. In this respect Frsat Ahmad noted that the most important issues for the Kurds were that.²⁶³

1. Any matters not excluded in Article 110 would be in the hands of the regions;
2. The current reality of the Kurdistan region, including the three powers of legislation, execution and judicial powers, would be recognised.
3. Concerning the existence of common issues between the federal government and the KRG, if there was a discrepancy in the laws between the two parties, priority would be given to the laws of Kurdistan Region.
4. Should any laws or any articles in the constitution be modified in order to reduce the authority of the Kurdistan Region, such laws would not come into effect if the Kurdistan parliament had not accepted them, and only if they had been accepted in a referendum. This represented a strong and positive point for the Kurds. Amendment of the constitution would not be achieved, if it was rejected by two thirds of the votes of three provinces. For Kurds, this point, in effect, was a guarantee to protect their rights in the constitution, in the event of the other Iraqi parties wishing to undermine the gains of the Kurds.
5. Ongoing recognition of all the laws passed in the province of Kurdistan: otherwise, as a condition, changes in laws by the relevant authorities in Kurdistan Region must not be contrary to the constitution of the federal union.

In this context, Dr Nouri Talabani argued that the Iraqi constitution undoubtedly contained positive aspects,²⁶⁴ but at the same time there were negative features.²⁶⁵ He

²⁶² However the Kurds in Iraq have obtained constitutional recognition. The first legal step started in 1958 with a "Provisional Constitution" which acknowledged Kurds as a distinct national group, stating that "the Kurds and Arabs were accepted as associates in the state of Iraq and their respective national right". The second constitutional recognition came in the "Provisional Constitution" of July 1970 and was adopted after the Baath Party had come into power in 1968. See Helen Cook, *The Safe Haven in Northern Iraq: International Responsibility for Iraqi Kurdistan*, Human Rights Centre, University of Essex and the Kurdistan and the Kurdistan Human Rights Project, London, 1st Edition, 1995, p. 23

²⁶³ Interview with Frsat Ahmad, on 2 April 2009, Erbil, Kurdistan Region/ Iraq.

felt that the real fear for the Kurds emanated from committing themselves to the constitution in terms that could not be retracted. In the prevailing situation, the effective participation of the Kurds in the creation of a new Iraqi State after 2003 means that there is no longer any excuse for the difficulties they experienced or the hostile attitudes they faced on the part of Arabs or other Iraqi groups. Dr Nouri Talabani has argued that the Kurdish parties themselves were responsible for the dilemma that the Kurds had not had a constitution for more a decade before they joined Iraq. Even if the Kurds had a constitution of sorts, it was simply an interim arrangement that worked as a basis for administering their region, particularly after they had adopted federalism. It is logical to suppose that it would have been recognised by the Iraqi Constitution in the same way that they accepted laws promulgated by the Iraqi Constitution after 1992.²⁶⁶

According to Nechirvan Barzani, the Iraqi Constitution is a landmark document of great importance to all the people of Iraq, Kurds included. Nechirvan Barzani also

²⁶⁴ It is true that, the new Constitution recognises the unique position for the Kurds which includes adopting federal State as a political system in Iraq. Moreover, it recognises that Iraq is a country of multi nationalities, religions and sects (Article 3), which it affirms that all the nations, sects and groups will participate in a form of military and security service (Article 9/1st A). Further, with the federal system, the powers are shared between both federal government and regional governments. Besides, the Kurdish language is as official a language as the Arabic language of Iraq has mentioned in (Article 4/1st). The essential point, the Constitution indicates that “No law that contradicts the principle of democracy may be established” as well as “any law that contradicts the rights and basic freedoms may be established” (Article 2/ 1st b, c). Iraqi Council of Representatives; *Iraqi Constitution*, Media Directorate. www. Parliament. iq.

²⁶⁵ In fact, Kurds have good reason to be worried about their future. There are some of Articles in the constitution which are the subject of controversy between the different sects and groups in Iraq that threaten the democratic process in Iraq. In Article 2 of the constitution, it indicates that Islam is the basic foundation for the country’s law as a main source of legislation, and no law may contradict the fixed provisions of Islam. Although, it states that the full religious rights for all individuals and the freedom of creed and religious practices is guaranteed. It is noteworthy that the majority of intellectual and secularists have expressed their concern over this Article, which may lead the State to be run under Islamic rule or Sharia as a fundamental source of legislation. On the other hand, this article may be exploited by Islamic groups or threaten the democratic process. It may even hinder the practice of human rights in Iraq in the future under the name of hostility for the provisions of Islam. In this point, it is argued that there are huge contradictions in the comparatives between religious law and individual liberties, which remains vague and can be subject to different, even opposing, interpretations. In this Article it declares that no law may contradict Islamic provisions, at the same time it also states no law may contradict democratic principles and essential rights and freedoms mentioned in this constitution. On the other hand, when it declares that Islamic rule is a “source” for Iraqi law, it means that the Islamic provisions should be the main basis for new laws and those that will be created in the future. It is obvious that the definition of freedom and that of individual rights differ under both concepts. It is significant to realise that fear would pave the way for Iraq towards an Islamic State (much like Iran), this leads to concern that Islamic law would undermine the constitution’s individual rights. On the other hand, such this illusive language does not only disadvantage Kurds, but it restricts the whole democratic process and human rights of the entire Iraqi populations. Article 2, Iraqi Council of Representatives; *Iraqi Constitution*, Media Directorate. www. Parliament. iq.

²⁶⁶ Interview with Dr. Nouri Talabani, on 12 April 2009, Erbil, Kurdistan Region.

stated that, regardless of the size of the Kurdish political presence in Baghdad, the concern for the fate of the Kurds as minorities was perhaps a bit overstated. The federal nature of Iraq is enshrined in the Constitution, and the only way Kurdish progress could be thwarted would be through unconstitutional actions. Even an Arab majority united on all issues in the Council of Representatives, would be unable to ratify unconstitutional legislation. And if the Council of Representatives chose to ignore the Constitution, the Kurdistan Region would be forced seriously to reconsider its position and cooperation with the rest of Iraq. But this is all very speculative, and the more likely scenario for the future is continued coalition building and political wrangling between parties, which is part of the admittedly messy process of democracy.²⁶⁷

Looking at the evolving situation, however, the new Iraqi Constitution was criticised for not being sufficiently representative or having a unified vision for ruling the new Iraq. After several months of wrangling and with intense pressure from the US, the Constitution was signed on 28 August 2005. One notes that, before integrating with Iraq in 2003, the Kurdistan region had emerged as a de facto semi-autonomous region that had chosen a federal system for its inter-dependence with the Iraqi government. In drafting the structure of the Constitution this trend was strongly reflected, since the provinces were given the right to integrate and establish federal regional autonomous zones with limited ties with the central government; this would enable them to establish their own courts and local security forces. Thus, as some have argued, in the most obvious sense the central government's powers were limited largely to foreign policy and financial issues.²⁶⁸

Given the ongoing unrest between factions to reach a final formulation of the constitution, and in order to take into account the interests of other parties, the mechanism for amending the constitution had been delineated in Article 126 of the constitution. Article 126 (1) stated that “the President of the Republic and the Council of the Ministers collectively, or one-fifth of the NA members, may proposed to amend the constitution”. Ratification of procedural amendments also required a two-thirds

²⁶⁷ Interview with former Prime Minister Nechirvan Barzani, and received his responses through email, on 6 May 2010.

²⁶⁸ Yucel Guclu, “The Turcomans and Kirkuk”, p. 97-8

vote in the NA and needed popular approval through a general referendum.²⁶⁹ Ironically, in order to balance the different interests between Iraqi factions, the Iraqi Constitution was founded on the basis of political consensus. Here the controversial debate was concerned with amending the Iraqi constitution, which had been included to satisfy the Sunni groups. On the other hand, the only legal guarantee of the rights of the Kurds in Iraq was that the Kurds were able to reject any amendment regarding Kurdish gains through two-thirds of the votes in the three provinces. To them the significant threat concerned the extent of being able to maintain these guarantees in the Iraqi Constitution, which depended on the kind of consensus that would be practised in the parliament. At this stage, the Sunnis and other Iraqi groups were intent on amending and changing Articles in the permanent Constitution, with the possibility that these changes might be substantial and include all Articles. In this context, regarding the continuing demands to amend the constitution, President Jalal Talabani (in his interview with the Arabia satellite) was quoted to say “We agree to amend some articles of the Constitution, but we do not allow any touching the rights of the Kurdish people which is earned and approved by the Iraqi Constitution for the Kurdistan region, who have voted by 12.5 million Iraqis”.²⁷⁰

It is crucial to note that according to Article 61c of the Iraqi State Administration Law for the Transitional Period, the permanent constitution would be approved by a simple majority in a popular referendum unless vetoed by two-thirds of voters in three or more governorates. Seemingly, the Kurds ensured their rights through controlling the three overwhelmingly Kurdish provinces of Sulaymaniyah, Erbil and Dohuk, which enabled them to use the ‘threat of withdrawal’ to guarantee that their rights would not be compromised. It might be argued that the Sunni Arabs could have utilised the same Article as a blueprint for political pressure, which might also have created a constitutional crisis since they comprised a demographic majority in the three provinces of Anbar, Salahaddin and Diyala. In this regard, the Kurds were more determined and articulate about a workable and equitable federal system, compared with the various Shiite and Sunni groups. However, certain compromises had to be

²⁶⁹ Iraqi Council of Representatives, “Iraqi Constitution”, Media Directorate; and also see: Available at: < URL: <http://www.parliament.iq/manshurat/dastoreng.pdf>>, Access Date: 25 June 2009.

²⁷⁰ President of the Republic: “*Iraq is no longer isolated, and the countries of the world began to understand the importance of Iraq and its role in the region*”. On 31 March 2009. Available at: <URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=7097&type=interviews> Access Date: 15 June 2009.

made, such as compelling a Kurdish parliament to work within the general parameters of territorial federalism alongside a commitment to the Iraqi constitution.²⁷¹

CONCLUSION

For more than a decade one of the most heated discussions against the coalition forces led by the Bush administration and the UN inspectors in Iraq in the face of enormous opposition both within the countries that made up the coalition and outside it, concerned the fact that they had failed to find WMD. The Iraqi regime was one of the fiercest dictatorial regimes in the region; it had exercised terrorism for over thirty years and the rational logic for this fact (and also its dire consequences in Iraq as a corollary), required that the regime should be removed. It is a fact that the War on Iraq caused the biggest shift in the lives of the Iraqi people towards shaping their new government and determining their future. It also served as a launching pad for the spread of democracy in the region, since the failure of this policy would lead to further destabilization in the Middle East. It also had the immensely important effect of enabling terrorist groups to enter and use Iraq as a battleground. Interestingly, after US forces had entered Iraq, the US administration constantly declared that the main goal in Iraq was to bring new democracy and a new style of economy for the Iraqi people in a unified State.

The primary goal of this 2003 War or Operation Iraqi Freedom, as the US announced, would be to act against global terrorism, and that this aim would be achieved would be through Iraq. For this reason the US administration made it clear that it was necessary to overthrow the Iraqi regime, and having assured the stability of Iraq, to provide international and regional support to a new, broadly-based government that would include all the various factions and ethnic groups. It is quite evident even now that among the hottest topics discussed since the liberation of Iraq concerned Iraq's political transition from a dictatorship that had imposed itself on political and social life in Iraq for more than 35 years to the development and success of a culture of

²⁷¹ Adeed Dawisha, 'The Prospects for Democracy in Iraq: challenges and opportunities'; in Sultan Barakat (ed.), *Reconstructing Post-Saddam Iraq*, (London and New York: Routledge, 2008), p.164-5

democracy and opening up opportunities for popular political participation. Despite this, it could be said that the liberation of Iraq also exploded the legacy of sectarian, religious and national differences between the various Iraqi groups, and in particular widened the gulf between the political forces of both Sunnis and Shiites. In a larger sense, the 2003 War and the repercussions that followed had a detrimental effect that destroyed the infrastructure of the Iraqi economy. In addition, the legacy of sanctions, corruption and rampant nepotism have also taken their toll.²⁷² Despite such facts, what has been more interesting is that some analysts of the Iraq war have concentrated on the democratic transformation that formed a historic watershed in reshaping the political map of the region and redesigning the moral reconstruction of the Middle East.

The unique situation for the Kurds in Iraq emerged when the international community became aware of their situation, prompting an enhanced international humanitarian focus on their plight. The seeds had been sown after the liberation of Kuwait, while the second phase of change in favour of the Kurds occurred in the aftermath of the liberation of Iraq. This meant the KRG's became a significant element in guaranteeing security and stability, not only inside Iraq but also in the wider region. For the Kurds, the big challenges during the past twenty years or so were their efforts to rebuild their infrastructure with outside support, and the development of local socio-economic frameworks so as to strengthen Kurdish identity. They succeeded in winning international attention which to some degree would help to ensure that they would no longer face genocide and that ignorance of their national rights could no longer be used as an excuse to marginalise them.

It is quite clear that the KRG's participated enthusiastically in the formation of the new Iraqi government. In addition, and compared with the rest of Iraq, the US forces and their allies were welcomed in the Kurdistan Region. Since the liberation of Iraq,

²⁷² It should be pointed out that the extent of the tragic destruction and looting of a large part of Iraq's cultural heritage and infrastructure was initiated because of the invasion. As explained and portrayed by the Western media this was not a deliberate consequence of an explosion of freedom by exploited people. Ironically, US troops observed the burning and the looting of Baghdad while they were guarding the Ministry of Oil, but were unresponsive and indeed even refused to intervene when people requested their help. Gareth Stansfield, "The transition to democracy in Iraq: Historical legacies, resurgent identities and reactionary tendencies" (2005), *op. cit.*, p 136

the KRG's have become a significant element in offering support to US forces and have participated actively in liberating some of the big cities and towns. In addition, the strongest parties (Kurds, Arabs and other factions) were participants in the IGC, and also in the ITG, and more recently in the sovereign government that was established after the elections of December 2005. In a sense, the KRG seems to have believed that an appropriate method of resolving decades-worth of chronic political issues would be through their participation in an Iraqi Government.

Since 2003 the Kurdistan region has, in fact, taken a leading role in the building of the new state, along with its modern economy and political structures. In other words, it has become a key player in the rehabilitation of the Iraqi state as a federal, democratizing, pluralistic state that will have a positive impact upon the whole of Iraq, and will ultimately benefit all Iraqis. Nor is it difficult to see that the terms for the relationship between the Kurdistan Region and Iraqi government are set by the Constitution, which sets out a clear framework for the structure of the state and its key institutions. For the first time in Iraq's history, and despite contradictions and differences, the constitution of 2005 was drafted by representatives of every Iraqi political faction. In this context, the Kurdistan Region may be regarded as both a permanent and legislative fixture in the Iraqi political arena.

One must also take into consideration, however, the relatively large numbers of researchers who have argued that the Iraqi constitution could be regarded as a sectarian constitution and that the Iraqi parties within the government were often acting in their own sectarian interest. Nevertheless, most Iraqi factions resented giving the Kurds disproportionate powers through the Constitution, in which Article 61 became known as the "Kurdish veto". Significantly, all the political parties were involved in a political deal that included national reconciliation, constitutional review, de-Baathification, oil revenue sharing, provincial elections, and the future of Kirkuk.

In fact, the principle of power-sharing was initially rejected by the Sunni groups, who boycotted the first national election and voted overwhelmingly against the Constitution. They were strongly opposed to articles of the Constitution that had been developed according to consensual principles such as federalism, Iraq's identity, the allocation of oil income, and the question of Kirkuk. On the other hand, the Shiite

groups constitute a majority in Iraq, and they have focused on simple majority rule against consociational power-sharing. It is not difficult to envisage, that the principle of power-sharing would not have been exercised without the insistence of the US. and support by the KRG. It was assumed that power-sharing arrangements might not be sustainable after the withdrawal of U.S. troops; however, developments in the Iraqi political arena demonstrated the need for the sharing of power to continue, in response to the wishes of the Iraqis, rather than being imposed by the US.

Given the current situation and the political composition in Iraq, it would be very difficult to allow any appearance of a dictatorship, as a model of the previous regime. According to the Iraqi Constitution, the institutions of the Iraqi State were formed in a manner that would prevent all powers being gathered in the hands of one individual. Nevertheless, there is a real fear of any movement towards centralisation and militarism which might in turn lead to the creation of a dictatorship. In spite of this, it is difficult to determine just how the emergence of a new democratic system as well as the consolidation of democracy can succeed in Iraq. Over time, democratic institutions have been neither promoted nor taken root, in Iraq or in the broader Middle East. Arguably, this is because neither the political parties nor the majority of the Iraqi people have had democratic development in mind; nor have they ever practised this in Iraq. It is expected that the future will carry great promise and at the same time considerable fear for Kurdistan. The positive side represents the willingness of the US and EU to protect Kurdistan from unwanted interference, whether by the Turks or other neighbouring countries. There is a real fear of the possibility of the Kurds' enemies, both past and present, exploiting the unresolved competition between the main Kurdish parties.

Regardless of the facts, it should be indicated here that the KRG has had a significant part in enhancing and supporting the decentralized authority given to Regional Governments in the new Iraqi Constitution. The KRG has always been interested in the consociational principles that form the cornerstone of the success of the federal system in Iraq, and that constitute a form of ethnic power-sharing government to ensure peaceful coexistence and the rights of the Iraqi components. However, there is a lack of consensus among Shiites, Kurds and Sunnis about most issues, including principles of power-sharing and what Iraq is and ought to be. Despite that, most Iraqi

factions, as well as the international community seem currently to favour a power-sharing arrangement for the future Iraq.

Overall, the Kurds faced considerable challenges after 2003, as a result of a strategic shift in their political situation, including the fact that they were able for the first time to participate in writing the Iraqi constitution. The 2005 elections clearly put the KRG in a powerful position, from which it was able to make its mark on the permanent constitution; in addition the KRG arrived at a power-sharing agreement to govern the Kurdistan Region and to act as an influential political bloc within Iraq as a whole. Beyond this, the KRG endeavoured to become part of the solution rather than the problem in Iraq by attempting to resolve problems with Baghdad through negotiation and consensus. The KRG confirmed its full commitment to working with all parties and to abiding by the Iraqi constitution to support a democratic, federal Iraq.

Chapter 5:

REPERCUSSIONS OF THE FEDERATIVE SYSTEM IN THE KURDISTAN REGION AND IRAQ

(We say to our Iraqi brothers: Geography compels us to live together and not succumb. We prove to the Iraqis that we want a union voluntary, not compulsory, that is our choosing and our will, when we have, decided to live with the Iraqis in the unified federal democratic Iraq)

(President Jalal Talabani) ²⁷³

INTRODUCTION

Kurds have chosen a federal system to shape their relation with the Iraqi government since 1991. Nevertheless, the most serious challenges occurred in 2003, when the Kurds reaffirmed this federal model as a condition to rejoin the Iraqi government and their ability to include it in a new constitution. On the other hand, in a press conference on 6 March 2003, US President George W. Bush declared a new system in Iraq for the Shiite, the Sunni and the Kurds, so that they could unite Iraq and live together in a federation State. What many observers find controversial is what kind of federation was meant; i.e., was it “territorial”, “administrative” or “ethnic”? ²⁷⁴ In light of such conditions, it must be noted that there were several significant challenges for the US administration and for the future of Iraq that were related to the ethnic composition of the Iraqis. A national unity government was formed in May 2006, but the real fear was whether these groups would unite to carry out a sectarian instead of a national agenda.

²⁷³ Iraqi President Jalal Talabani in a comprehensive dialogue with (Free Hour), “*Some of the representatives of the Sunni Arab extremists and their aim to foil the Constitutional process*”, on 14 September 2005. Available at: <URL:http://www.iraqipresidency.net/news_detail.php?language=arabic&id=2223&type=interviews> Access Date 5 March 2009.

²⁷⁴ Brendan O’Leary, John McGarry, and Khaled Salih, ‘*The Future of Kurdistan in Iraq*’, (United States Of America: University of Pennsylvania Press, 2005), p.29

It should be pointed out that the structure of the federal system in Iraq is described in the Article 45 of the new constitution as three executive powers, legislative and judicial, as well as numerous independent commissions. Furthermore, it is indicated that those three authorities exercise their specialty and tasks on the basis of the principle of separation of powers. The administrative relations between the Kurdistan region and the Iraqi government are based on a federal system.

In this chapter discussion moves principally between two levels of analysis , as an institutional arrangement, federation can, on the one hand, take the form of a sovereign state, particularly as it is a specific organisational system that includes structures, institutions and techniques. On the other, it is different from other states, where the central government incorporates its regional units into its decision-making procedures according to some constitutionally-entrenched practices. Regarding the fears of those who oppose the federalism idea, it has always been asserted that federal institutions involve a division of power, and that through legally applied methods obstructions could be created to prevent the state utilising its full resources to increase economic productivity. It is a logical assumption that the federal system could be applied to communities composed of two or more groups differing in language and culture. Thus, given the reality of Iraq and the evidence of increasing tensions between two trends, the Shiite and Sunni groups stressed a common interest in acting through a central government, while the only federal unit in Kurdistan Region (KRG) have tended to try and obtain more self-government.

5.1 FEDERALISM AND ACHIEVING PEACEFUL COEXISTENCE AMONG THE IRAQI FACTIONS

At the beginning of the liberation of Iraq, in December 2003 and January 2004, many observers, politicians and intellectuals who had presented their proposals before the putting together of the Transitional Administrative Law of March 2004, declared that the federation should be based on the idea of Iraq's 18 governorates. It is important to note that at its core, this proposal signified the Saddam era, and was put forward for purposes of ethnic manipulation, especially in Kirkuk, in order that it could be presented as “non-ethnic” or as ethnically neutral. Additionally, some worried

opponents alleged that territorial federalism, would lead to the creating of the independent entities of Kurdistan, Shiastan and Sunnistan. For this reason there was trend that sought to dissolve Kurdistan in order to steer clear of dividing the country. These groups justified their arguments on the basis that the experiences of Lebanon and the former Yugoslavia had shown how any kind of “territorial” or “administrative” federations that depended on national and ethnic divisions had failed in practice.²⁷⁵

Kurdish politicians announced on several occasions that their commitment to stay in the new post-2003 Iraq would depend on two principles: “power-sharing between the Arabs and the Kurds, and treating Kurdistan as one geographic and political entity in the proposed federal system.” The Kurdish parties strongly identified their position in order to accept reintegration into Iraq after 1992, through a parliamentary bill and a draft constitution for a two-unit federation in a future Iraq, one to encompass Kurdistan and another to include the rest of Iraq. Subsequently, the federation was accepted and recognised by the majority of Iraqi opposition groups at a conference in London in December 2002, and it was also suggested that the permanent constitution of post-Saddam Iraq should be drafted on the base of “the national composition of Iraq”. In this way, the demands by the Kurds (for Federalism) were confirmed and imposed through the Transitional Administrative Law (TAL).²⁷⁶

Dr. Borhanedin Yassin claims that although the Kurdish representatives participated in the Nasiriyah meeting on 14 April 2003, issues surrounding the Kurds and the name of Kurdistan were not mentioned at this conference. Furthermore, the second paragraph of the fourteenth items for this meeting insisted that the identity of a new State should not be structured on an ethnic or a regional basis, but solely on Iraqi identity.²⁷⁷ The Nasiriyah conference was attended by various groups of politicians, tribal leaders and exiles supported by international mediators. Its key objectives were to draw up a new political map of Iraq, and also in the short term to take the first steps towards restoring order in Iraq and in the long term, towards building democracy. This conference was considered the first meeting of all the Iraqi parties, the US, and

²⁷⁵ Brendan O’Leary, John McGarry, and Khaled Salih, *ibid.*, p. 30-3

²⁷⁶ Brendan O’Leary, John McGarry, and Khaled Salih, *ibid.*, p. 34-5, p.48

²⁷⁷ Borhanedin A. Yassin, ‘*Iraq after Saddam Hussein and the Fate of Southern of Kurdistan*’ (in Kurdish), (Duhok: Hawar press, 2008), pp. 31-2.

its allies; its aim was to develop the Transitional Administration Law (TAL), despite sharp differences between the Pentagon and the US State Department regarding the managing of Iraq until a new constitution could be agreed through democratic elections.²⁷⁸

An interesting interpretation of the concept of federalism was provided in Article 4 of the TAL; it evoked more contentious concepts, such as federation, democracy, and pluralism. An important point to note is that the TAL created a federal democracy as well as a necessary base for a flourishing federation, as explicitly stated in Article 4:

The system of government in Iraq shall be republican, federal, democratic, and pluralistic, and powers shall be shared between the federal government and the regional governments, governorates, municipalities, and local administrations. The federal system shall be based upon geographic and historical realities and the separation of powers, and not upon origin, race, ethnicity, nationality, or confession.²⁷⁹

As well as recognition of the TAL, the existing territory of Kurdistan and the Kurdistan National Assembly with its government were recognised, along with the Kurdish language as a second official language for Iraq; the region was also granted the right to protect its own internal security. It had triggered a vital issue what kind of federation would be appropriate for Kurdistan? and what sort of federation would be more effective for Iraq to enable it to move towards becoming a democratic and pluralistic country?

In focusing on the “legitimizing of ethnic identity” it has been argued that the nation-state could be regarded as an out-dated model,²⁸⁰ nevertheless, a federal solution

²⁷⁸ Leigh Sales, “*Nasiriyah hosts meeting of Iraq's political factions*”, on 15 April, 2003. Available at: <URL: <http://www.abc.net.au/worldtoday/content/2003/s832700.htm>>, Access Date: on Tuesday 2 may 2009

²⁷⁹ <http://www.constitution.org/cons/iraq/TAL.html>.

²⁸⁰ To protect the interests of their minorities, certain measures have been adopted by several countries, including the following:

1. a constitution of administrative units on the basis of homogeneous nationalities, practised to a great extent in Switzerland, the USSR and Yugoslavia;
2. recognition of more than one language as official languages, as tried in Switzerland, Canada and South Africa;
3. minority representation in the cabinet, as in Switzerland and Canada;

could offer a way out of crises, particularly when there were any national, ethnic, linguistic, or racial claims. On the other hand, arguably, by the possibility that ‘confederalism’ or the ‘new confederations’, might represent a significant method of preserving key issues, being strongly correlated with globalisation, which in turn could limit economic excesses, support federal democracy and human rights, and balance individuals and groups. With regard to decentralisation, it has been argued that certain fundamental provisions should be taken into account, as follows: first, regarding identity it is assumed that an identity based on decentralisation is more federal in character than one based on population, which in turn may be constitutionally guaranteed by the central government through any method. Secondly, the process of devolving power and resources is based on identity, particularly when it is strongly connected with the recognition of identity (defined as language, region, tribal affiliations, or a combination thereof). Third, the most important issue linked with decentralisation is that of democracy, which means that decentralized bodies are democratically elected by local citizens.²⁸¹

Frsat Ahmad took the view that the shape of the federalism applied in the Kurdistan region had the features of confederation rather than federalism, and showed that, in the case of conflicting laws between a federal government and the Regions in most federal systems on the international scene, priority was given to the federal government, whereas in the Iraqi experience priority was given to the laws of the Kurdistan Region.²⁸² In contrast, Tariq Jambaz maintained that it was difficult to think about, or move towards a confederation as a suitable solution for regulating the relationship between the KRG and the Iraqi government in the first stage of the formation of the KRG from 1991 to 2003. At this stage, the objective and subjective conditions for the Kurds meant they were not eligible to obtain this gain.²⁸³

4. fundamental rights for protecting minority interests, as in the constitutions of the USSR, Switzerland, Yugoslavia and Canada;

5. an assumption of special responsibility by the federal government in respect of minority rights in constituent units, as in Canada. See P. K. Sharma, *Federalism And Political Development : (Developed and Developing Areas)*, (India: University of Delhi, Pragati Publications, 1979), p.62

²⁸¹ Harihar Bhattacharyya, *Federalism in Asia, India, Pakistan and Malaysia*, (London: Routledge, 2010), p.153

²⁸² Interview with Frsat Ahmad, on 2 April 2009, Erbil, Kurdistan Region/ Iraq

²⁸³ Interview with Tarq Jambaz, on 4 April 2009, Erbil.

As already discussed, until the fall of the former regime there were quartet or tripartite meetings between neighbouring countries that were against the experience of the KRG and worked to weaken it, while, Borhanedin Yassin²⁸⁴ had a completely different view on this matter, saying that although the mainstream political movement in Iraq had adopted a federative system instead of autonomy, the federative system that developed later within the context of the Iraq constitution was weaker than certain autonomy arrangements found elsewhere in the world. Furthermore, he claimed that, after 2003 the Kurds had some significant opportunities for independence that were not available in 1991. For this, the main parties (PUK and KDP) bear historical responsibility for the fate of the Kurds since 1991, and what the future will hold for them. It is widely thought that for long periods the PUK and the KDP adopted the principle of autonomy, arguing strongly that they were forced to accept this principle because they had no alternative due to the inadequacy of the political conditions of the regional and international powers. In this context, Dr. Borhanedin Yassin argues that the two main parties lost opportunities for the Kurdish people at both the strategic and tactical level.²⁸⁵

The federation as a normative logic had a corollary to be reflected in the new Iraqi constitution, which included the restructuring of state-building through adopting economic and political systems different from the previous ones and on the basis of solid guarantees for the rights of all factions through adopting the federal system. It was evident, as indicated in Article 116, that “the federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations.” In a sense, the Iraqi constitution espoused the basis of administrative decentralization in the running of administrative units. Furthermore, the federal

²⁸⁴ On the tactical level, the two main parties succeeded in silencing the voices that called for independence, thereby also stopping the Kurds from using their only means of pressure against the Arabs in Iraq, so that the only option left to them was to integrate with Iraq. In short, the Kurds themselves made a formidable mistake by showing this vision to the Arab parties and other factions in Iraq; the Kurds could not secede and had no options other than to join the Iraqi State. Perhaps most significantly, the Kurds did not mention independence, even at the tactical level. Instead, it raised three hopes, which tied them even more firmly to Iraq, as follows:

- 1, create hope through the US administration for the New Iraqi State;
- 2, created hope among the Shiite and Sunni groups of dealing with each other;
- 3, create hope by the Kurds for the New Iraqi State. Interview with Dr Borhanedin Yassin, an academic and a political activist living in Sweden and lecturing at Lund University. This interview was organised through email.

²⁸⁵ Personal Interview with Dr. Borhanedin Yassin through email, on 12 August 2009, Sweden.

authorities, as identified in Article 109, would work “to preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system.”²⁸⁶

In light of the fact, the US administration strongly supported the establishment of a federal system to guarantee the rights of both the centre and the regions through the constitution, and as a path towards deepening the roots of democracy in the country. It was reasonable to imagine that the federal system would serve as the cornerstone of ensuring the territorial integrity of Iraq as a key issue, something that has continued to worry all the parties, whether internal, regional or international. In addition, to ensure divisions between the authorities, and responsibilities between the centre and the regions, meant limiting the powers of the centre and increasing powers of the regions.²⁸⁷ Thus it was necessary to concentrate on the situation following the liberation of Iraq, when the Arab parties and the US authorities proposed a very strongly majoritarian, centralised and mono-national federation. In addition, Sunni Arabs consolidated a centralist political model. For example, Adnan Pachachi’s draft suggested a national or a central, but not a federal government, while Shiite Arabs tried to form a strong federal government, and sought to ensure resources and power for the southern governorates. Were there to be a strong federal government in Arab-dominated Iraq, it would mean the presence of unified armed and security forces, and governorates that would be heavily dependent on the federal government.

In the current situation the Kurdistan Region is a sole region with its own police, internal security, and judiciary, and from 19 March 2003 its borders were also recognised. According to O’Leary, McGarry, and Salih, a federation might be decentralised with a strongly empowered federation-wide majority; or a federation might be centralised with a consensus in organising the regions’ share in power in the federal government. In this context, it was argued that the most successful model of federation for Kurds and the one that would be more suitable for Kurdistan depended on geographic and historical facts and the separation of powers, rather than on origin, race, ethnicity, nationality, or confession. In other words, it could be said that the legal status of the political process of the Kurdistan Region was going in two

²⁸⁶ Iraqi Council of Representatives, “Iraqi Constitution”, Media Directorate; and also see: <URL:<http://www.parliament.iq/manshurat/dastoreng.pdf>>

²⁸⁷ Adeed Dawisha, ‘The Prospects for Democracy in Iraq: challenges and opportunities’; in Sultan Barakat (ed.), *Reconstructing Post-Saddam Iraq*, (London and New York, : Routledge, 2008), p. 163.

directions: the first towards a strongly-centralized federation in the management of natural resources and fiscal policy; and the second towards a more decentralized federation if the benefits of natural resources were equitably distributed.²⁸⁸

In practice, one of the most significant advantages of a federal system is maintaining the integrity between diverse groups particularly in a state that consists of heterogeneous ethnic groups. In the case of Iraq, it was felt that the federal system was the only way of keeping the territorial integrity of Iraq, because the three major ethnic groups had radically different and generally incompatible aims and perspectives that would have made it impossible to obtain a consensus on the most significant political issues. In this context, Ali Babakhan pointed out that “the applying federalism in Iraq could lead to peace and security in Iraq and in the whole Middle East”. As Babakhan noted that the federalism as a phenomenon was linked to the principles of minority rights (ethnic, religious) and a weakened central state during the twentieth century. In this view, it is logically to assume that the federalism would form only viable option for the Kurds, which would provide wider participation in all political institutions and would balance the role of the individual and group.²⁸⁹

Aside from this, there is a different view of federalism by others, who have argued that the application of the federal system might lead to civil war if it was based on ethnicity and not territoriality. In evaluating and comparing the Iraq case with the Lebanese case, it was clear that the confessional system guaranteed the political rights of each of Lebanon’s diverse communities, rather than keeping them, as a coherent entity, committed to Lebanon, with the result that the country ended up with a catastrophic civil war.²⁹⁰ On the contrary, Iraqi President Jalal Talabani, draws attention to the importance of the federal system, and criticized the central system in the following terms: “I think that central system was a cause to all the problems in Iraq. Central is led to the sectarian persecution and to the national oppression and to dispel the wealth of Iraq alone. Conversely, the federal would lead to satisfy the

²⁸⁸ Brendan O’Leary, John McGarry, and Khaled Salih, *op. cit.*, p. 59, p.69

²⁸⁹ Ali Babakhan, ‘Federalism as a Model for Democracy’, in “Kurdish Identity Human Rights and Political States”, (eds.) “Charles G Macdonald and Carole a. O’Leary ”(USA: University Press of Florida: 2007) pp.166-7

²⁹⁰ Adeed Dawisha, *op. cit.*, p.163

people due to ensure the distribution of power and wealth fairly among them". Talabani stated that those who oppose the federal, might be did not understand the core of federalism or their mentality is still the country's mentality of totalitarianism. Nowadays, there are 76 countries in the world practicing federalism, for example, UAE kind of federalism, Pakistan, a kind of federalism. Why federalism in Iraq has become a division.²⁹¹

It has been suggested that in order to achieve voluntary and genuine integration in Iraq, "...Kurdistan and the rest of Iraq would best be reconstituted in a bi-national, multi-ethnic, and multi-religious federation." It has also been shown that pluri-national federations are workable, particularly through territorial autonomy for historic national minorities. As some analysts have demonstrated, such bi-national federations have succeeded and flourished for a century and a half in Canada, Belgium, and Switzerland, and for stabilising Iraq might be regarded as better models and road maps than the centralised federation that was proposed by American academics and administrators. It has also been argued,

“...that pluri-national federations or multi-national federations had failed to stay as a democratic system throughout the communist and post-communist world (Yugoslavia, Czechoslovakia, and the USSR; Ethiopia). It has been pointed out; the secessions from the USSR, of Slovenia and Croatia from Yugoslavia, and of Bangladesh from Pakistan conform to this pattern. Moreover, the situation in the post-colonial world, in sub-Saharan Africa, South Asia, and the Caribbean are faced with the same fate.”²⁹²

A positive element in the federal system described in the Iraqi Constitution was that it did not enable the central government to impose governing institutions and mechanisms on the regions. This principle was confirmed in Article 120, which allowed each region to adopt a constitution of its own that defined its power structure and its authorities, as well as the mechanisms for exercising such authorities, provided that they did not contradict the main Constitution. On the whole, Article 119 (1 and 2)

²⁹¹ Jalal Talabani's interview with Al-Sabah Newspaper, on 16 January 2006. Available at: <URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=2562&type=interviews> Access Date: 5 May 2009

²⁹² Brendan O'Leary, John McGarry, and Khaled Salih, *op. cit.*, p. 36-7, p.70-1

elaborated the ways in which one or more governorates would be able to organise a region. These formations depended on a request being made, and had to be voted on in a referendum through one third of the council members of each governorate or by one tenth of the voters in each of the governorates that were intending to form a region.

One of the main challenges for both the central and the regional governments was formulated in detail in Article 121 (1, 2, 3, 4, 5), which referred to the regional powers. Paragraph (1) stated that “the regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.” In light of this it was imperative for the authorities in the regions to take account of cases involving a contradiction between regional and national legislation with regard to issues outside the exclusive authority of the federal government, namely those outlined in Article 121 (2). In this case, priority would be with the regional power, which had the right to amend application of national legislation within that region.²⁹³

The third paragraph of the same Article addressed the allocation of a fair share of the national revenues to regions and governorates for performing their duties and responsibilities, and taking into account their resources, needs, and the size of their population. Under Paragraph (4), however, offices for the regions and governorates would be established in embassies and diplomatic missions, in order to pursue cultural, social, and developmental affairs. The final paragraph defined a region’s responsibilities and requirements, which enabled the regional government to organise its internal security, such as police, security, and defence forces. It could be said that, on the basis of this Article, the Kurdistan Region was granted significant powers to manage the region and to establish new administrative units.²⁹⁴

On the whole, it is a reasonable to assume that “applying federalism in Iraq would require the region of democracy and human rights in the popular culture and in the political party program.” Among the scholars, Ali Babakhan has convinced that “federalism provides a workable solution for Kurds because they can exercise their

²⁹³ Iraqi Council of Representatives, “Iraqi Constitution”, Media Directorate; and also see: Available at: < URL: <http://www.parliament.iq/manshurat/dastoreng.pdf>> Access Date: 10 January 2010

²⁹⁴ Iraqi Council of Representatives, “Iraqi Constitution”, Media Directorate; *ibid*.

rights in a representative democracy.” In addition, Babakhan observes “the Iraqi Kurdish experience could promote national unity in a federal context and relive the apprehensions of Iran and Turkey”. Most importantly, Babakhan emphasis on the possibility strengthens claimants for a peaceful solution of the Kurdish questions in Iran and Turkey of applying federalism there too.²⁹⁵

5.2 RESERVATIONS AND FEAR OF FEDERALISM

It was clear that federation as a political entity was composed of a plurality of sub-units, the aim of which was to preserve each member-state. On the internal level, the federal state is directed to establish a new and collective political status, along with a federal constitution; therefore, the main duty of the federal State as the supreme power should be to protect the existence of each member state under the new constitution and also to resolve conflicts among member-states. In turn, each member state that becomes a party to a federal state should have to change its condition in order to subordinate itself to the new federal state. In other words, it loses its capacity to dictate its own unity. Conversely, each member state will cede a portion of its sovereign power to the federal state. Regarding the international level, Schmitt pointed out that the federal power had the responsibility and the right to defend the territory and existence of the federation.²⁹⁶

Given the nature of functional and structural basis in federalism, it is necessary to point factors that work together to form federations, including:

First, there should be a desire on the part of the initiators of an agreement to widen their sphere of influence in a peaceful way, usually to overcome an external military or diplomatic threat, or otherwise to prepare for military or diplomatic aggression or expansion;

²⁹⁵ Ali Babakhan, *op. cit.*, pp.166-7

²⁹⁶ Nicolas Patrici, Looking into Medusa’s Eyes: Carl Schmitt on Federalism, in Ann Ward and Lee Ward (ed.), *The Ashgate Research Companion to Federalism*, (United Kingdom: Ashgate, MPG Books Group, 2009), pp. 306-7; and also cited Wessels, D .P., “The Division of Powers in a Federation”, in *Is Federalism the solution? Principles and proposals*, D. J. Kriek, et al., (South Africa: HSRC Publisher, 1992), p.37

Second, there should be a readiness on the part of those concurring in the agreement to give up a measure of their state's independence for the sake of co-operation because they desire protection against a military or diplomatic threat, or because they would like to have a part in future aggression or in the expected advantages flowing from co-operation.²⁹⁷

In line with the principles already noted, Preston King has argued that a federation may be viewed as a sovereign state because of following facts:

1. "its representation is preponderantly territorial;
2. this territorial representation is characteristically secured on at least two sub-national levels (referred to as local government and regional government)
3. the regional units are incorporated electorally, or perhaps otherwise, into the decision procedure of the national centre; and
4. the incorporation of the regions into the decision procedure of the centre can only be altered by extraordinary constitutional measures, not for example by resorting to a simple majority vote of the national legislature, or by autonomous decision of the national executive".²⁹⁸

Denial of the entity to a Kurdish presence, whether in a greater or smaller Kurdistan, was clearly rejected not only by Turkish officials, but also among Arab politicians on the Iraqi Governing Council (IGC), as well as among US intellectuals who jointly counselled against an "ethnic federation" in 2002-2004.²⁹⁹ Ironically, some Arab politicians, who had previously supported Kurdish demands for their own federal unit in Iraq, declared their opposition to the existence of Kurdistan from the new positions evolving in Baghdad. The number of voices raised against this type of federal or federalist arrangement was expected to increase, whether among opponents of Shiite and Sunni extremists, Baathists or Arab nationalists, and also with those allies who had backtracked from their previous positions. Jamal al-Din³⁰⁰ asserted that the Shiite

²⁹⁷ D. J. Kriek et al., *The theory and practice of federalism, in Federalism the solution? Principles and proposals*, (South Africa: HSRC Publisher, 1992), pp. 16-8

²⁹⁸ See Preston King, "Federation and Representation", in Michael Burgess and Alain-G. Gagnon (eds.), *Comparative Federalism and Federation: Competing traditions and future directions*, (Great Britain, Harvester Wheatsheaf, 1993), p. 94.

²⁹⁹ Brendan O'Leary, John McGarry, and Khaled Salih, *op. cit.*, p.4

³⁰⁰ The seminar was held in honour of the Iraqi Shiite cleric and Ahrar Party leader, Iyad Jamal al-Din, who was a member of the Iraqi parliament in its first term (2005-2009). The seminar was arranged by

supported the Iraqi identity of Kirkuk, and the notion that the oil had to be under the eye of central government for its revenues to be appropriately distributed; in this regard neither the city governor nor any other official should play any part. To defend his view, stated that should be encouraging the administrative federation and they will not support federalism on the basis of ethnic's federation, which would lead to form federation of Kurdistan, the federation of Shiastan and federation of Sunnistan.

It has been claimed that the main cause of the overt hostility of the Sunni Arabs and Iraqi nationalists towards the federal project generally,³⁰¹ was because other regions such as the Kurdistan Region were allowed to be autonomous. Indeed, the possibility of the formation of a 'Shiastan' that would include nine provinces in the south had strong support from Kurds and Shiite (particularly supporters of Abdul Aziz al-Hakim). Another reason behind the belief that establishing federations would lead to the isolation and marginalisation of the Sunni areas, was that Iraq's energy resources were located in the Kurdish and Shiite areas. It was well known that the Sunni groups had made their participation in the government conditional on the Constitution being amended; the reason they insisted on this requirement was because they did not actively participate in the process of drafting the constitution. In due course the Iraqi parliament approved the formation of a Constitutional Review Committee, which was scheduled to complete its work within one year; however this was delayed because of postponement caused by Article 140 and the need to find a solution for the future of Kirkuk.³⁰²

The Henry Jackson Society (HJS) under the title "The New Democracy in Iraq", in the House of Commons, London, on 24 June 2010.

³⁰¹ Post-war Iraq has suffered from massive bombings that have continued to occur and have in turn led to the highly unstable situation. Many observers have interpreted and defined the situation as popular resistance by the Sunni groups, especially the remnants of the Baath Party, because of non-participation in government and their sense of injustice that they have lost control of the reins in the post-Saddam era. Sunni Islamist clerics have been accused of collaborating with, and supporting al-Qaeda operatives who have come to Iraq from other countries by providing foreign volunteers with shelter and assistance. Certainly some Shiite factions (Sadrist) have become more active and have clearly announced their strategy against the occupation. Here the controversial issue is the significant involvement of these groups in the government, despite the massive bombings that still occur almost daily in Baghdad and many southern cities. Those in the resistance have claimed to be targeting US forces, but they are also assassinating Iraqis who are cooperating with the US, as well as attacking the oil-exporting pipelines and water and other infrastructure facilities. It has been argued that the aim behind these attacks is to slow down the pace of reconstruction and thereby turn the Iraqi populace against the occupation.

³⁰² James A. Baker, III, and Lee H. Hamilton, *The Iraq Study Group Report*, Printed in the United States of America, 2006, p. 18

In so far as the Sunni groups expressed their worries that federalism is a threat and it could break up the Iraqi community. Moreover, they emphasized that the revenue from oil-rich areas could be lost under a federal system, as the Shiite would have reach over the area of oil in the south and Kurds in north. While, they themselves, live largely in central areas that are devoid of oil and leave them powerless. Regarding the fears that the federalism in Iraq fuelling sectarianism? Talabani answered that “I strongly oppose this, and this charge is not justified. On the contrary I think that the federalism and democracy would treat all the Iraqi problems, because democracy and federalism those lead to fair distribution of wealth and power between the Iraqis and Iraq's various regions”. Besides, the current union in Iraq is optional and a voluntary union. He added that, historically, Islam was based on a confederation. Islamic States had a kind of confederation. Moreover, the Iraqi state during the Ottoman period is divided into three states: state Shahrazur (which is known later Mosul mandate), Baghdad mandate and the Basra mandate. This was based on the facts of geography.³⁰³

In this context, it has to be remembered that the recommendations of James A. Baker, and Lee H. Hamilton had shown that if Iraq was divided into three autonomous regions with a weak centre, it would cause several problems for Iraq since it would be difficult to find the means of solving them, particularly because of the administrative difficulties involved in delineating each region’s boundaries. The Kurds were shocked and strongly rejected these recommendations, stating that “The United States should support as much as possible central control by governmental authorities in Baghdad, particularly on the question of oil revenues.” They also suggested that the US should stay in Iraq and not abandon Iraq.³⁰⁴

The debate that aroused the most controversy concerned the distribution of powers between the federal government and regions as set out in the Iraqi constitution. To deal with the changes anticipated in the Iraqi arena, as well as to maintain a balance between the various factions, was necessary to determine the strength of each party.

³⁰³ Jalal Talabani’s interview with Al-Hayat Newspaper, on 19 September, 2005. Available at: <URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=2240&type=interviews> Access Date: 15 March 2009

³⁰⁴ James A. Baker, III, and Lee H. Hamilton, *ibid.*, p.39

The constitution allocated Articles 109, 110, and 113 to the powers of the federal government, while Article 114 concerned competencies to be shared between the federal and regional authorities. Articles 116, 117, 118, 119, 120 and 121 specified the powers of regions.³⁰⁵

A core issue in these Articles relating to federal authority was detailed in Article 110 and its nine paragraphs: paragraph 1 included formulation of foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; ratifying debt policies and formulating foreign sovereign economic and trade policy. Paragraph 2 was allocated to the wording and execution of national security policy to protect and guarantee the security of Iraq's borders and to defend Iraq. The basic point in this Article was affirmed in paragraph 3, referring to the framing of fiscal and customs policy, including, "issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank." Paragraph 6 dealt with cases regulating "issues of citizenship, naturalization, residency, and the right to apply for political asylum"; while paragraph 8 concerned the organisational and planning policies for water resources from outside Iraq, while guaranteeing the rate of water flow to Iraq and its equitable distribution inside Iraq in accordance with international laws and conventions. Matters concerning general population statistics and census were covered in paragraph 9. Last but not least, Article 113 dealt with issues relating to archaeological sites, manuscripts and coins that would be under the jurisdiction of the federal authorities with the cooperation of the regions and governorates, as regulated by law.³⁰⁶

One of the most heated discussions, specific to the federal system, concerned the division of power between the federal government and the regions with regard to the oil and gas sector. Articles 112 and 115 articulated power-sharing and dealing with disputes about the division of powers. Another important consideration in the federal system concerned the way powers would be shared between the federal authorities

³⁰⁵ Iraqi Council of Representatives, "*Iraqi Constitution*", Media Directorate; and also see: <URL:<http://www.parliament.iq/manshurat/dastoreng.pdf>>

³⁰⁶ Iraqi Council of Representatives, "*Iraqi Constitution, ibid.*"

and regional authorities. Article 114 and its seven paragraphs indicated that the management of customs duties, regulation of the main sources of electric energy and its distribution, formulation of environmental policy and general planning policies, public health policy, educational policy, and preparation of an internal water resources policy would all be expressed in a way that would guarantee their even-handed distribution in consultation with the regions; the interests of governorates not organized within a region would also be taken into consideration and be regulated by a law. Thus, according to Article (115), “All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organised in a region.” In the case of disputes priority would go to the law of the regions and to governorates not organised in a region. In fact, Article (115) meant that important powers could be granted to the regions.³⁰⁷

Yassin was strongly critical of the federal system in Iraq as having been constructed on contradictory bases, particularly when Kurdish politicians claim fraternity between the Kurds and the Arabs. At the same time, Kurds struggling for “their identity” are confronting a complicated reality, since the autonomy or federal arrangement is providing a rather complicated dual identity, of being a Kurd on the one hand and an Iraqi on the other. Being an Iraqi further complicates the identity structure, because according to the third paragraph of the Iraqi Constitution, Iraq is either a founding and active member of the Arab League or Iraq belongs to and is a part of the Arab nation; alternatives that might yet be modified in the event of modification to the Constitution. In any case, either as part of the Arab nation or a member of the Arab League, there will be further complications for the identity of the Iraqi state as well as for its strategic depth, which in turn implies political and security complications for the Kurds in Iraq. In addition, as a member of the Arab League, and according to the Arab Joint Defence Agreement within the Arab League, Iraq is obliged to defend any Arab country that is facing or potentially will face external aggression. This agreement was signed by Nouri al-Saad, representing Iraq, in 1952.³⁰⁸

³⁰⁷ “*Iraqi Constitution*”, *ibid.*

³⁰⁸ Interview with Dr. Borhanedin A. Yassin, receiving his response through email, on 12 August 2009, Sweden

In the relevant sense of the term ‘evaluation of the situation’, as Al-Najar ³⁰⁹ states, the critical issue between the Iraqi factions related to the exercise of political consensus as a strategic policy in Iraq after 2003. This political phenomenon may wield some influence with regard to peaceful coexistence in Iraq. In Al-Najar’s view, ³¹⁰ political consensus is no longer practised as it was in 2004-2005, having recently become the sort of political equilibrium that is necessary for establishing common ground between political factions with different views as to its effects on current and future events in Iraq. Some (including Kurds) are convinced that equilibrium is needed in ruling Iraq. Among others there is a tendency to reject the notion of practising any political consensus in Iraq. In fact, the constitution may be amended in a manner consistent with the reality of political change in Iraq, and should in any case be part of such political equilibrium. In addition, if the constitution does not play a strong role, it is to be expected that the features of dictatorship will reappear in the Iraqi political arena.

5.3 OBSTACLES OF THE IMPLEMENTATION OF FEDERALISM AND ITS IMPLICATIONS

It may be of interest to note that it had triggered concerns that the rise of regionally based nationalist political parties and the decline of ideologically oriented pan-national political parties; struggling constantly to construct alternatives to secession, partition and violence. The central governments have made considerable efforts to reach democratic solutions as a final alternative to secession and partition. However, the central States have to face the constant threat of secession or partition by their opposition parties as a real possibility within the federalist framework, particularly when the demands of the national minorities are for greater autonomy, despite central government’s concessions. ³¹¹

³⁰⁹ Professor Sherzad al-Najjar, PhD, University of Vienna, 1986, currently teaches in the Faculty of Law and Politics in Erbil and Sulaimaniya,

³¹⁰ Interview with Dr. Sherzad Al Najjar, on 28 March 2009, Erbil.

³¹¹ Greg Marchildon, ‘Postmodern Federalism and Sub State Nationalism’, in *The Ashgate Research Companion to Federalism*, (ed.) Ann Ward and Lee Ward, (United Kingdom: Ashgate, MPG Books Group, 2009), p. 442, pp. 450-51.

From the experiences and policies followed by countries that adopted a federal system it was clearly essential for their governmental bodies to have control of the Supreme Court of the Constitution in order to prevent any avoidance or misrepresentation. Moreover, in order to remove obstacles and also to succeed the experience of federalism should create the three essential governmental organs of a federation, which are follows:

1. A sizeable freely-elected Assembly representative of all the units, which needs to stand for a fixed term of some years. Relative state membership of the Assembly may conveniently be related to the population by certain formal rules; but it is essential that it should be adjustable (and adjusted) to changing population movements.
2. An elected Upper House or Senate of a fixed and limited number of members, with equal representation of all States. Only through this medium can the smaller and weaker States feel that they can make a positive contribution to national policy decisions.
3. A central (or general) government of quite a small number of members, capable of taking decisions quickly, probably preparing the first draft of the national budget, and probably playing an important role in introducing new legislation or suggesting constitutional amendments.³¹²

In the same context, D. J. Kriek's elaborate discussion of the federal parliament suggests that it would consist of two houses, the lower house and the upper house. In general, the lower house would be constituted through common suffrage, based on proportional representation and regular elections, while the upper house would be established on a geographic basis. In this case, as Kriek notes, every state or unit would possess parliaments and governments constituted in the same way as the federal structures. The two houses of parliament would have the same powers, except that the lower house would have more power over the budget and finances, while the upper house would have the right to ratify treaties as well as senior administrative and diplomatic appointments.³¹³ It is evident that the core of federalism is two-level government (national and state), and although the names may differ, the principle is

³¹² Ursula K. Hicks, *Federalism: Failure and Success A comparative Study*, (Great Britain: Macmillan press LTD, 1978), pp. 3-7

³¹³ D. J. Kriek, "The Federation Plans of the Democratic Party", in D. J. Kriek et al. (eds.), *Federalism the solution? Principles and proposals*", *op. cit.*, pp. 233-34.

the same. In addition, there are two kinds of federal organisation; one coordinates, the other is cooperative. It has been argued that in coordinative federalism both levels of government operate independently within the field set for them by the constitution.³¹⁴

In emphasizing the nature of a federal system, Hicks argues that such a system has the dual purpose of creating a nation and preserving the identity of the units or States. For this reason, it is important to note that constitution and institutions are positioned appropriately for both purposes. It is crucial for a federation to possess a constitution, particularly as the constitution provides several institutions; in fact national policy will not be implemented effectively without all these institutions, which are:

1. a representative assembly of all citizens, chosen from the units (or States), or depending, proportionately, on their relative populations;
2. a House of States (or Senate), also normally providing resolutely equal representation of all states;
3. a Council or Cabinet which, however, may vary from one federation to another and which gives direction and coordination to the whole (the relative power of (2) and (3));
4. a chief Minister or President who may (though not necessarily) exercise total executive power, although this depends on the will of the Assembly;
5. a Supreme Court, answerable to the government as a whole, as chief interpreter of the Constitution.³¹⁵

However, these explanations may lead to understanding the comprehensive view of the course of events in other federations in the world, if compared with case in Iraq, it is fair to say that the federal system in Iraq lacks to a fundamental pillar of a federal system which is the upper house to guarantee the rights of federal units. The significant challenge for the federal government is how to cope with such imbalances and survive. From this perspective, the factors causing these imbalances include ethnic differences, particularly language and religion. In fact, the features of today's imbalances have emerged to a greater degree in the new federations of Third World countries, where they occur due to relative economic and fiscal incompatibilities among the units, particularly with regard to demands for economic planning and

³¹⁴ Hicks argues that ...the modern world federal systems have largely abandoned the coordinate model in favour of cooperative federalism in which the relations of Centre and State are much closer because they are essentially dynamic and flexible. But in all forms the central problem is intergovernmental relations: economic, political and social. Ursula K. Hicks (1987), *op. cit.*, pp. vii-viii.

³¹⁵ Ursula K. Hicks (1987), *ibid.*, p. 175

development, and for regional economic equality and financial autonomy for the states.³¹⁶

It is first necessary to indicate that, the Arab Nationalists had claimed that the new Iraqi federation should be built around the 18 governorates of Iraq. Obviously, their key goal was to prevent any change in the boundaries of the governorates, as established by Saddam; they justified their claim on the basis that the current governorate boundaries would not prevent either ethnic or religious groups from having local territorial majorities. For example, the Kurds were the demographic majority in the three governorates of Dohuk, Erbil, and Sulaimaniya, as well as in Kirkuk, while the Shiite Arabs were the majority in the nine governorates of Basra, Muthanna, Misan, Dhi-qar, Qadisiyah, Wasit, Babel, Karbala, and Najaf, and probably in Baghdad. In the four remaining governorates of Anbar, Diyala, Salahaddin, and Nineveh, Sunni Arabs formed the majority.³¹⁷ In this context, Iyad Jamal al-Din³¹⁸ pointed out that, in order to end the matter of disputed areas in Iraq, the federal system could apply in Iraq based on the 18 provinces in the currently-known borders, which would have various authorities and powers. This solution would accelerate progress and development in these provinces, but was not meant in any way to abolish the rights of the Kurds. In his view, the problem known as ‘the disputed areas’ was not confined to the Kurdish areas, but includes the border problems between Anbar and Karbala, as well as between Basra and Amara.

However, upon coming into force, Article 117 (1)³¹⁹ of the Iraqi constitution explicitly and clearly recognised the Kurdistan Region as a federal region, while the second paragraph of Article 117³²⁰ would recognise new regions established in accordance with constitutional provisions. From the point of view of the Kurds, the

³¹⁶ Sharada Rath, *op. cit.* pp. 188-91

³¹⁷ Brendan O’Leary, John McGarry, and Khaled Salih, *op. cit.* , p. 66-7

³¹⁸ The seminar for the Iraqi Shiite cleric and Ahrar Party leader, Iyad Jamal al-Din, in the House of Commons- London, on 24 June 2010.

³¹⁹ Article 117 (1) indicated that: (This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.) Iraqi Council of Representatives, “*Iraqi Constitution*”, Media Directorate; Available at: <URL: <http://www.parliament.iq/manshurat/dastoreng.pdf>>

³²⁰ Article 117 (2) indicated that: (This Constitution shall affirm new regions established in accordance with its provisions.) Iraqi Council of Representatives, “*Iraqi Constitution*”, Media Directorate; Available at: <URL: <http://www.parliament.iq/manshurat/dastoreng.pdf>>

most dangerous threat to the whole federal process was the amendment procedure of the constitution that had been imposed under pressure from neighbouring States. Their key concern was when their rights would be subjected to the amendment, whereas the Sunni groups were regarded as the sole guarantor for protecting the integrity of Iraq, which necessitated inclusion of their rights in the text of the constitution.

In analysing the position of the Kurds in Iraq, it appears that most scholars supported the principle that has been called ‘federation of Iraq and federacy of Kurdistan’. They considered that the federacy was “a distinctive governmental unit with an entrenched federal relationship with the central government [which would simultaneously create] a semi-sovereign territory different in its institutions and constitutional competencies from the rest of the state.” In a federacy the division of powers between the federacy and the federal government is clearly recognised, in a way that cannot be unilaterally altered by either side. In spite of this, it is allowed to establish arbitration mechanisms, domestic or international, to resolve any difficulties that might arise between the federacy and the federal government in the future. The significant element here is that the status and powers of federacy can be considered as protected, which can prevent any changes in its status or powers.³²¹ Sherzad al-Najar³²² noted that Federalism could be applied in Iraq, but queried whether it would lead to maintaining political equilibrium or to a failure of the political process in Iraq? On balance, it could be said that this dilemma correlates to the activate role of the Kurds in Iraq, but will it be continuous, static, or in some way altered? In other words, will the role of the Kurds in Iraq continue or is their role likely to be a temporary situation.

The other crucial point is the majoritarian system that is not institutionally incompatible with power-sharing. This principle is not seen as constituting a threat to national unity in countries that are a long way from democracy,³²³ although, arguably, it might be difficult to imagine the success of this system in the Middle East particularly, where communities are deeply divided along ethnic lines and lack a democratic system. At the present time the real fear of the Kurds for the future of Iraq is the belief by the majority of Iraq's communities in the mentality of the central

³²¹ Brendan O’Leary, John McGarry, and Khaled Salih, *op. cit.*, p. 79-80

³²² Interview with Professor Sherzad al-Najar, on 28 March 2009, Erbil,

³²³ Liam Anderson and Gareth Stansfield, *op. cit.*, p..211

government and the dimensions of the Federal Government. What would be the gains for Kurds in the position of a sovereign Iraq under exceptional political circumstances and on the basis of political consensus. Though this consensus might become unworkable or fail to continue in the future, depending on the ratio of votes, it remains a fact that in terms of votes the Kurds are a minority when compared with Arabs.

CONCLUSION

By its commitment to a federal status within Iraq, the KRG challenged centralism, which initially made it unacceptable to its neighbours and to most of the Iraqi groups although it currently enjoys the opportunities, stability, and freedoms that the resulting autonomy has brought. Undoubtedly, any return to a centralization of power in Baghdad would bring ruin to all Iraqis. In other words, the ongoing violence should not be interpreted merely as the state lacking the power to impose order and provide physical security; hence, long term stability would not be achieved through a centralized power structure. For this reason, the KRG seeks to find a genuine partnership with the federal government on the basis of respect and commitment to the Constitution. What is noteworthy about this debate is that all the major political blocs are aware of the need to adhere to the provisions of federalism as outlined in the Constitution.

One should mention here that, among Iraqi factions the KRG has been a big supporter of a federal system in Iraq and is very eager to maintain its position. It has been interested in increasing the power of its region and to enhance the level of autonomy that it had enjoyed during 1991-2003. Significantly the KRG made strenuous efforts to guarantee national rights in Iraq. However, the Iraqi Constitution indicated that Iraq should consist of the two main nations (Arabs and Kurds) with the other minorities.

Another important point is the fact that there are serious problems with the Shiite and Sunni groups who are already suspicious of Kurdish requests when the Kurds hold significant positions and heightened autonomy. If this issue is considered in terms of

national merit, and takes into consideration the fact that Iraq consist of two main national groups, Arabs and Kurds, it becomes a different case. It is a fact that the principle of power sharing has been applied, apparently for the first time in Iraqi history. However, for entities that have had a majoritarian system, it may be difficult to accept, which is why they are attempting to reduce the power of the regions and strengthen the centre. For this, the perseverance of the Iraqi people in constructing a road to democracy may be sufficient to solve this dilemma in the future.

Indeed, the culture of dictatorships and of power, which has been deeply rooted in Iraqi society for decades, has had a negative effect on the mentality of the majority of Iraqi political figures towards accepting democracy and heading in a beneficial direction. The Kurds and other Iraqi leaders often claim that they do not want a divided country. In practice, not all the Iraqi parties are working toward a united Iraq and genuine national reconciliation. In this context, it one wonders why the security situation cannot be improved? In simple terms, the best analysis of this situation is that all Iraqi parties have acted in support of involving their militias in the Iraqi forces. On the other hand there is the possibility of the involvement of Sunni Arab tribes in al-Qaeda.

The KRG initially advocated publicly for federalism for Iraq after October 1992, and this was recognised by the Iraqi opposition. Simultaneously, the KRG announced that they respected the territorial integrity of Iraq and envisaged their future within the framework of an Iraqi State. However, alongside substantial involvement in the affairs of Iraq, the KRG's also sought to maintain self-government in their region as well as to retain a significant relationship with the international community. As already pointed out, there were also efforts made by a majority of Arabs (both Sunni and Shiite) to concentrate on a geographic federalism arrangement based on the boundaries of the 18 governorates established under Saddam's regime, which might have weakened the concentration on the historically-partitioned Kurdistan.

The Kurds realised that the basic purpose behind the idea of the federal governorates would keep the KRG within the current administrative boundaries without annexation of any disputed areas. The KRG's strongly rejected the idea that a federal Iraq should be based on the old governorates, which meant the loss or concession of their national

rights. Successful federation in Iraq must be a voluntary union with the key aim of gathering and keeping peoples together, not separating them. An important point in this context is that the Kurds understood they had no right to force the Iraqi government to choose any kind of federation of the rest of Iraq, but saw themselves as having every right to choose the kind of federal arrangements they wanted for Kurdistan. In light of such conditions, I have argued that effective application of the principles of international human rights can be depended on as a way to exercise national self-determination in response to Kurdish ambitions to claim at least a federacy for Kurdistan.

Irrespective of the difference between Iraqi factions, the essence of the features of the political system, which is currently applied in Iraq, depends on political consensus. In this context, we agree with His Excellency President Jalal Talabani when he said that “the principle of consensus will remain required to maintain a balance and maintenance of the country's stability and unity. But that must be by stages until full stability is achieved and disappear all the dangers that threaten it. However, the political consensus should not become scattering to the state institutions and “divided” loyalties on the basis of national, religious or sectarian or partisan, but should be efficiency, fairness and full equality between citizens is the basis adopted for building the institutions of the state”.³²⁴

Indeed, to form a stable and democratic government in Iraq, it would be necessary to promote federalism in Iraq by enabling regional governments to have both political and financial power; these are essential elements in ensuing protection for the various ethnic and religious groups in Iraq by preventing ethnic conflict and separatism. On the other hand, and in order to prevent an emerging government being dominated by one ethnic or religious group, the Iraqi people would be able to build democracy only through the federal system. Thus, in terms of the principle, federalism would give the KRG control over many political and economic issues as well as the ability to protect

³²⁴ Interview conducted by the “Moscow News” newspaper with President Talabani, on 25 April 2010. Available at:
<URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=8997&type=interviews>
Access Date: 5 May 2010

Kurdish identities against the sort of assaults to which they had been subjected in the past.

Overall, in order to pursue the democratization approach in building the Iraqi state, it will be necessary to focus on building local capacity in order to create viable institutions through participation in the state-building process. In this context, and given the situation in Iraq, the KRG has had a significant role because it has both experience and viable institutions for local capacity-building. Furthermore, the new federalism allows for such local capacity-building, particularly when the Iraqi Constitution grants regions and governorates the authority to move forward with economic initiatives. Hence, the Kurdistan Region, as a federal entity of Iraq, possesses a great deal of autonomy while the federal government of Iraq deals with financial, defence, and foreign affairs policy. The KRG is therefore keen to ensure popular participation and to contribute to a collective civic culture beyond securing ethnic, religious, and cultural rights through dedicating revenues to education, health, infrastructure, and other sustainable development needs. Indeed, the KRG is aware that democracy guarantees protection of its autonomy, and also maintains Iraq as a united entity in the future.

To conclude, the effect of a federal system upon the Kurdistan Region and the Iraqi state will be to guarantee rights through the constitution and to act as a roadmap towards deepening the roots of democracy in Iraq. It was logical to imagine that the federal system would act as the cornerstone in ensuring Iraq's territorial integrity, a key issue that has continued to worry all the parties, whether internal, regional or international. It was felt that the most significant advantage of a federal system in Iraq was that it would maintain the country's territorial integrity, since the three major ethnic groups had radically different and generally incompatible aims and perspectives that would have made it impossible to obtain a consensus on the most significant political issues. In light of this, I feel that Iraq's problems can be dealt with through federalism and democracy, which will lead to a fair distribution of wealth and power among the Iraqis and Iraq's various regions.

Chapter 6:

THE ISSUE OF KIRKUK AND ITS REPERCUSSIONS FOR THE KURDISTAN REGION

(...I do believe, personally, that Kirkuk has a special meaning for Kurds and that it should be part of our Region. But that decision does not belong to me, in the final analysis, but to the citizens of the disputed territories. They must be given the right, and that is what is most important.)

(Nechirvan Barzani, on 6 May 2010)³²⁵

INTRODUCTION

It was clear that the successive Iraqi regimes practiced the process of Arabization, in particular, after the seizure of power by the Baath Party, the policy of Arabization has been exercised on a large scale with more aggressive and effective, which the Kurds and Turkmens were expelled from the city and replaced with Arabs from the south and centre of Iraq; these incomers were given 10,000 dinars along with houses and agricultural lands. Further, most of those citizens, particularly Kurds had been expelled from their city after the 1997 census and their refusal to register themselves as Arab. In its broadest sense, the Arabization process led to more demographic change in Kirkuk than occurred in any other city in the region, particularly from 1960 onwards. Kirkuk was subjected to all types of unremitting destruction through Arabization and Baathification. Further, the administrative boundaries were altered only to make the Kurds a minority in this city, which is today, formed the essence of the differences between Iraqi government and KRG. In this sense, the Arabization of Kirkuk could be identified as a State atrocity against the Kurds.

In post-Saddam Iraq, Kirkuk's identity became a critical issue. Particularly for the Kurds, Kirkuk not only signified the existence of oil wealth and reserves, but had also become an important symbol and a catalyst to mobilize the spirit of Kurdish nationalism. Kurds intended to unite Kirkuk with the Kurdistan Region, although

³²⁵ Interview with former Prime Minister Nechirvan Barzani, and received his responses through email, on 6 May 2010.

there had been antagonistic reactions from Turkmens, Arabs, and Christians. While the Christians participated in the KRG and also enjoyed close ties with the Kurdish parties in the Kurdistan Region, some Turkmen parties, particularly the Iraqi Turkmen Front (ITF)³²⁶ were openly hostile to the political hegemony of the Kurdish authority and censured the PUK and KDP for having worked on the marginalisation of other minorities while gaining managerial positions for themselves. The ITF opposed both a referendum on the future status of Kirkuk, and demands for special status for the city. Consequently, the Kurds accused the ITF of seeking to involve Turkey directly in the dispute; however, other Turkmen groups, such as the Turkmen National Association and the Turkmen Reform Movement, supported the integration of Kirkuk into the Kurdistan Region.

It is clear that, the struggle to determine the identity of this city has actually altered since 2003. The future status of the Kirkuk district was one of the most sensitive and longest-standing issues that needed to be resolved between the Iraqi government and the Kurdistan Regional Government. In particular, when the “Arab and Turkmen resentment toward Kurd actions led Coalition authorities to view Kirkuk as a potential ‘powder keg of ethnic hatred,’ on the verge of erupting into civil war”.³²⁷ Regardless of how daunting the challenges are, the Kurds continue to insist on the restoration of Kirkuk’s demography to the period before Arabization. Even so, every event aimed at resolving the issues around Kirkuk and other contested cities has been deferred and justification has always been found to do it. For most of the Kurdish population, the most contentious question concerned the likely fate of these disputed areas, particularly Kirkuk, if they were left to the mercy of future manipulation and machination.

Sorting out all other disputes depended upon its resolution and on establishing real stability. The outcome of the 30 January 2005 elections gave Kurdish ambitions a new momentum, but the most contentious question was the fear that Kirkuk’s future had

³²⁶ The Iraqi Turkmen Front (ITF), was established as a political organisation in 1995. It announced that it represented the Turkmen people in the whole of Iraq and sought recognition for their national minority. The ITF is one of the political parties that has stood against federalism for Iraq, which would give considerable power to the Kurds. In the 2005 elections, the ITF obtained only one seat in the Iraqi National Assembly.

³²⁷ Peter W. Connors, ‘The US Army in Kirkuk : governance operations on the fault lines of Iraqi society, 2003-2009’, the Combat Studies Institute (CSI) Press publications, November 2011. Available at: < URL: <http://usacac.army.mil/CAC2/CSI/RandPTeam.asp>,>, p.9

yet to be settled. It was agreed that the period for implementing this would extend until the end of 2007 at the latest, although nobody could predict how long it might take to patch up the disputes. The Kurds had also demanded a referendum on the governance of the city, and this too remained an open and heavily-debated question. The question here was how to remedy the serious injustices caused by the practices of the previous regime in changing the demographic and ethnic structure of the strategic regions in the Kurdish areas, particularly in Kirkuk and Khanaqin.

However, the Kurdish leadership set out to expand their federal region by re-joining areas that had been extracted from the Kurdistan region, and particularly Kirkuk; most Kurds demonstrated their strong support for such a move. Nevertheless, their demands were countered by the Turkmen and Arab political leaders who accusing the Kurds of aggravating the situation and threatening dire consequences in response. To cover this subject adequately in the present chapter, it is necessary to indicate the process of Arabization and its repercussions, how it was practised and seriously impacted on the Kurdish community politically, economically and socially. The chapter looks at other ethnic groups who live with the Kurds in Kirkuk and its environs, and examine their attitudes to prevent the Kurdish efforts to achieve their aim of returning Kirkuk to the Kurdistan Region as a vital part of Kurdistan, historically, geographically and demographically. The background of this chronic dilemma is examined, including the challenges and obstacles, whether internal, regional or party political, that have opened the door for intervention on the regional or international level.

6.1 THE EMERGENCE OF ARABIZATION IN KIRKUK

The root of the problem of Kirkuk goes back to the period when the British founded Iraq. In the context of World War I, there appeared to be a vital interest related to the discovery of a large oil reserve in Kirkuk; this essentially altered the impact of British policy towards the Kurdish issue in general and the fate of Kirkuk in particular. Given the differing interests of the Great Powers, the British administration annexed to the

Iraqi Kingdom the Vilayet of Mosul, and denied Kurdish right to establish state.³²⁸ In December 1924 King Faisal I visited the cities of Kirkuk and Mosul, to encourage the population of both areas to join the new Iraqi State. There is no doubt that, with the emergence of the new Iraqi State, both the British and the new Iraqi government cooperated seriously to exclude the Kurds from the political arena, in order to control the operations and projects of the oil companies. For obvious reasons the British were solidly behind the creation of the ruling Iraqi monarchy and the mandated Iraq would have guaranteed British control over the oil riches. For this reason, the British backed down on their promises to implement the 1920 Treaty of Sevres, and Kurdish aspiration was buried in the post-war arrangements of Sykes-Picot.³²⁹

All of the Kurdish efforts failed, particularly when British strategy during that period included annexation of the former Ottoman Vilayet of Mosul to the newly-established Iraqi State under the British Mandate. In this Context, Ali Babakhan's argument is correct: that "the Kurds were the victims of British colonialism and their claims were classified as a isolationist and the Sunni elite sat enthroned in the Iraqi government with a British Colonial Mandate".³³⁰ In 1921 the British Mandate authorities arranged a referendum in the Kurdish areas to oblige the Kurdish population to agree to become part of the Iraqi Kingdom. However, some parts of the Kurdish areas, such as the Sulaimaniya area, refused to take part in the referendum. Nevertheless, at its 37th Assembly in Geneva, on 16 December 1924, the League of Nations decided the fate of the Kurdish people in this part: i.e., all the land below the "Brussels Line" (the present Iraqi-Turkish border) was to be incorporated into the Iraqi Kingdom, based on the recommendations of a fact-finding commission sent to the area by the League of Nations.³³¹ The Kurds' national aspiration and their struggle was for some kind of autonomy at that time, but the British supported the new Iraqi government in fighting the Kurds, justifying this on the grounds that they were a destabilising element against

³²⁸ Dlawer Ala'Aldeen, *Playing by the Rules*, in "Iraq since the Gulf War Prospects for Democracy" Fran Hazelton (ed.), (London & New Jersey: Zed Books Ltd, 1994)

³²⁹ The fate of the Kurds of the Mosul *vilayet* was suspended between Turkey and the New Iraqi State, particularly the British mandatory area, since both sides insisted on possessing these lands. The League of Nations therefore decided to hold a plebiscite in Mosul on the issue. See Henry D. Astatjian, *The Struggle For Kirkuk: The Rise of Hussein, Oil, and the Death of Tolerance in Iraq*, (Westport CN and London: Praeger Security International, 2007), pp. 47, 70.

³³⁰ Ali Babakhan, *Federalism as a model for democracy*, in "Kurdish Identity Human Rights and Political States" ,Charles G MacDonald and Carole A. O'Leary (eds.), (University press of Florida: 2007)

³³¹ Nouri Talabani, *Arabization of the Kirkuk Region*, Erbil, Aras Press, 3rd ed., 2004, p. 11.

Iraq's sovereignty and hegemony. Such insights meant there was no Kurdish participation in the newly-created power structure in Iraq.

The process of changing the ethnic character of Kirkuk started under the British Mandate in Iraq in 1925, when the oil companies brought in a large number of skilled Arab, Assyrian and Armenian workers from other parts of Iraq to Kirkuk. The process of the Arabization of the Kirkuk region fell into three stages: (a) the monarchy; (b) the first republican period (1958-1968); and (c) the second republican period (1968 to the Liberation of Iraq). In turn, the third phase can be divided into three sub-stages: (i) from 1968-74, representing the Baath consolidation; (ii) from 1974-87, which can be described as 'routing the Kurds'; (iii) from 1987-2003, characterized by the Baathist 'final solution'. In fact, the Kurds have struggled to maintain their national identity from dissolving within the frame of other nationalisms during their long revolts against all successive Iraqi governments for changing the ethnic character of Kirkuk.³³²

Essentially, from British mandate times there was a deliberate policy of keeping the Kurds away from housing and recruitment, and compared with the other ethnic groups, relatively few Kurds were employed in the oil company even though the Kurds were a majority of the city's population. On the other hand, the company employed various tactics to settle thousands of Assyrians, Armenians, Turkmens and Arabs. Arguably, the process of Arabization began from the time of King Ghazi, during the cabinet of Yassin Al-Hashimi, who helped the Arab Ubaid tribe to occupy and inhabit the Hawija district of Kirkuk in 1935. In other words, from the era of the monarchy there were also carefully planned and executed schemes to settle nomadic Arab tribes, such as the Al-Ubaid and Al-Jubur, in the Kirkuk province, which could be seen as part of the process of Arabizing Kirkuk.³³³ In other sense, the core of the

³³² Nouri Talabani, *Arabization of the Kirkuk Region*, *ibid.*, p. 25-6

³³³ It should be noted that the Britain had a considerable share in the Iraqi Petroleum Company (IPC), at the end of 1925; however, the oil began to flow from the Baba-Gurgur field on October 27, 1927. In addition, the Iraq was begun exporting crude oil at the end of 1934. Furthermore, the dual pipeline was opened to transport crude oil from Kirkuk to the Mediterranean ports of Haifa and Tripoli in 1935. In point of fact, it is clear that to date most of Iraq's oil was extracted from Kirkuk. Nouri Talabani; "*Arabization of the Kirkuk Region*", *ibid.*, p. 27

royal regime's policy can be regarded as the initial phase of the Arabization of these areas.³³⁴

The process of Arabization was continued after the coup on 14 July 1958, by Qasim's regime. Dr Jamal Rashid has argued that the policy began to intensify under various fanatical Arabs, led by Abdul Salam Arif, Nazim Al-Tabqajaly, Abdul Rahman Taher, and Yahiya Bazaz, who exploited the tragedy of 14-15 July 1959.³³⁵ One should mention here, that "under General Abdul Salam Arif, the pretence was that the Kurds were Arabs of the mountains".³³⁶ During the course of this period, the tensions rose in Kirkuk, particularly as the Kurds had had an opportunity to exert their authority in the city, and to assert the Kurdish identity of Kirkuk and its environs. This event was instigated by officials of the Iraqi Petrol Company (IPC) as a means of expanding the policy of Arabization) through transferring Arab families to Kirkuk may have been to provide a supply of workers, which played an important part in the Iraqi government's Arabizing of the city of Kirkuk.³³⁷ At the same time, however, the Iraq Petroleum Company (IPC) had a positive part to play in the socio-economic development of the society. Nevertheless, the marginalised and shrinking role of both Kurds and Turkmen in the management of the city of Kirkuk led to continuing tensions among the Iraqi factions.³³⁸

It seems apparent that, during and after 1963, all experts and workers were expelled from the company by the Baathists.³³⁹ In this context, it is generally acknowledged that Kirkuk was subjected to the worst process of Arabization following the coup of February 1963, a phase characterised by the destruction of all 13 of the Kurdish villages near the oil fields, and the expulsion of Kurds in Dubz by settler Arab tribes, particularly the Awas Sadid from the Delem tribe. Many low-ranking civil servants were transferred to southern and central Iraq. Significant numbers of Kurdish workers were dismissed from the oil company and replaced by Arabs, and all Kurdish names

³³⁴ Henry D. Astatjian, *op. cit.*, p. 14.

³³⁵ Jemal Rashid Ahmad, '*Kerkuk u Nawcey Germiyan u Mafi Kontrolkirdinyan Le Layen Kurdewe*', (Kirkuk, Germiyan's Region and the right to control by Kurds), (published in Kurdish), Mukiryani Establishment For Research and Publication, Dohuk, 2008, p.57

³³⁶ Ali Babakhan, *op. cit.*, p.162

³³⁷ Jemal Rashid Ahmad, *op. cit.*, p.57

³³⁸ Henry D. Astatjian, *op. cit.*, pp. 14-15.

³³⁹ Jemal Rashid Ahmad, *op. cit.*, p.57

for public places, streets, neighbourhoods and markets were changed to Arabic names by the various regimes. After the military coup on 17 July 1968, the Iraqi regime used different ‘Arabization’ measures in order to change the ethnic character of the Kirkuk city.³⁴⁰

In fact, from 1976, the regime separated the districts of Chamchamal and Kalar and attached them to the neighbouring Sulaymaniya governorate, while the Kifri district was attached to the Diyala governorate, and the Tuz-Khurmatu district was attached to the Salahaddin (Tikrit) governorate, although this district had been Arabized since 1963, and Arabs had been brought to the Hawija district since the mid-1940s. All the administrative boundaries were altered to make the Kurds a minority in the city of Kirkuk. In the same way, many villages in the Qara Teppa County in the Kifri district were detached, and then attached to the Jalawla County in the Diyala governorate, with their Kurdish residents forced to transfer to the Anbar governorate.³⁴¹

However, after the taking of power by the Baath Party, the policy of Arabization escalated. The name of Kirkuk was changed to Taameem; the destruction of hundreds of Kurdish villages was synchronous with the expulsion of thousands of Kurdish families, and in their place the settling of Arabs who were known as “the ten-thousand-dinar people”, or “the twenty-thousand-dinar people”, depending on the size of their government grants. These Arab newcomers (wafideen Arabs) had been armed by the previous regime and awarded houses and agricultural lands that had been stolen from Kurds and Turkmens. Meanwhile, most of the Kurdish deportees were put into concentration camps such as “Al-Sumud”, “Al-Quds”, and “Al-Qadissiyah”, where they suffered the worst living conditions as well as strict surveillance by the security services. Further, due to the Baathist regime’s practice of forcible removal, a number of Kurds and Turkmen families were even obliged to record themselves as Arab, in order not to be expelled from the city and lose their homes and livelihoods in Kirkuk.³⁴²

³⁴⁰ Nouri Talabani, *Arabization of the Kirkuk Region, op. cit.*, p. 25-6

³⁴¹ Nouri Talabani, *ibid.*, p. 54-5

³⁴² Nouri Talabani, *ibid.*, p. 20-21

In another sense, the process of Arabization was strictly planned and systematically carried out to expel non-Arabs, particularly Kurds from the city and environs of Kirkuk. As the situation evolved, the Baathist regime resorted to strategies of terror and incitement, persecuting the Kurds and forcing them to leave for southern or central Iraq while simultaneously resettling waves of tens of thousands of Arab families with guaranteed housing that had been built for them in various residential sections of the city of Kirkuk. In addition, most of the new settlers were offered jobs, and were also appointed to the police and security departments, the intelligence agencies, and the government departments. The Iraqi regime confiscated the homes and properties of the Kurds on a large scale, while simultaneously forbidding them to buy homes or properties in Kirkuk under any circumstances. In addition, they were forbidden to sell their properties in Kirkuk except to Arabs. It has been argued that the state practised official fraud by adding many names to the 1957 census.³⁴³ (See Table 1)

In this context, Dr Nouri Talabani describes how, from the 1970s until the end of 1989, the Baath party built residential neighbourhoods for the Arab newcomers inside the city of Kirkuk as follows:

- Following the Agreement between the Iraqi government and the Kurdish movement on 11 March 1970, the Baath built a new neighbourhood, Al-Karamah, between the two Kurdish quarters of Azadi and Iskan, which included 600 housing units for Arab newcomers.
- A new Arab neighbourhood, Al-Muthanna, consisting of approximately 500 housing units was built near Al-Karamah between 1972 and 1973.
- Over 200 building plots were distributed to Saddam's "Qadissiyah Martyrs" near the Kirkuk-Sulaymaniyah road between 1981 and 1982.
- A new neighbourhood, Al-Andalus was constructed near the Kurdish neighbourhood of Rahim-Awa, which is near the Kirkuk-Erbil road.
- In 1979, around 2000 housing units (Arrapha) were built under contract by a state company.

³⁴³ Nouri Talabani, *ibid.*, p. 39-44

- Two hundred Arab newcomers to the Kurdish neighbourhood of Imam-Qasim benefited from a distribution of 10,000 dinars, given as a grant, despite having bank loans to build their houses.
- A neighbourhood, Al-Wuhda, was built that included 200 residential units; a further 150 houses were built under the name Al-Hurriyah; another neighbourhood, Dur Al-Amn, consisting of 220 units was built near the Kurdish quarter of Shorija.³⁴⁴

Following the Kurdish uprising and its collapse, the Kurdish population faced severe retaliation from Ali Hussen Al-Majid, who oversaw the destruction of around 200 homes belonging to Kurds and Turkmens in the Almas quarter, near Gawur Baghi. The deterioration in the living conditions of the Kurds in Kirkuk was drastic. Kurdish citizens were forced to choose either to go to southern Iraq, in which case they were allowed to take their possessions; otherwise, if they chose to remain within the Kurdistan Region, all their possessions were confiscated. It is generally agreed that the most dangerous stage of the Arabization process was prior to the 1997 Census, when non-Arabs in Kirkuk were forced by the Baath regime to complete a special form for “Changing National Identity”, thereby registering themselves as Arabs; otherwise they faced expulsion.³⁴⁵

In the aftermath of the Kurdish uprising in 1991 until its collapse in 2003, the regime continually and systematically plotted to expel Kurdish residents once and for all from Kirkuk and environs as well as from Khanaqin. According to a report by Amnesty International in November 1999, an Iraqi government decree imposed by the office of the President of Iraq, ordered the deportation of 1,468 families and the confiscation all of their properties which were to be offered to pro-government Arabs that had been brought in from other regions in Iraq between 15 April and 15 June 1998. In September 1999 the US State Department also confirmed the fact that the Iraqi government had used forcible methods to deport Kurdish and Turkmen families to southern governorates, meaning that approximately 900,000 citizens had been internally displaced throughout Iraq.

³⁴⁴ Nouri Talabani, *ibid.*, p. 44.48

³⁴⁵ Nouri Talabani, *ibid.*, p. 48

According to internal and international reports in 2004, there were tens of thousands of Kurdish families from Kirkuk living in appalling conditions in tents and camps in the Kurdistan Region. Thousands of those families had fled in fear from the Republican Guard and Special Forces units, specifically after the Kurdish Peshmerga forces had taken control of the city at the end of the Gulf War. However, according to the agreement signed between the Kurdish leaders and the Iraqi regime at the end of April 1991, it was agreed that they would be allowed to return to their houses and jobs. The various UN agencies involved were constantly obliged to intervene with the Iraqi government to allow these Kurdish residents to return to their homes under the supervision of international observers, in accordance with the 1991 UN Security Council Resolution No 688. However, the Iraqi regime refused to permit them to go back to their places.³⁴⁶ Overall it could be concluded that the Arabization of Kirkuk until 1991 resulted in the expulsion of more than 61,390 Kurdish residents from 218 villages. In addition, the Iraqi regime had destroyed nearly 3,840 villages, including 1,957 schools, 2,457 mosques and 271 small clinics by the end of 1989. It is assumed that the number of people expelled from Kirkuk between 1991 and 2000 was approximately 120,000 individuals.

6.2 THE ETHNIC COMPOSITION OF THE CITY OF KIRKUK

It has been argued that the ancient name of Kirkuk was Arrapha and was ruled by a succession of empires, such as the Babylonian, Median, Persian, Parthians, Macedonian, and Ottoman. Subsequently, Kirkuk is slowly evolved into an ethnically mixed city inhabited by Kurds, Arabs, Turkmen, and Assyrians.³⁴⁷ Over the long term, the Kirkuk region, and Kurdistan in general, were strategically located during the periods of conflict between the Shiite Safavid Empire and the Sunni Ottoman Empire. During these times, the greed of the rulers and conflicts of interest regarding territory resulted in several battles between the occupiers over Kurdish areas. The Safavids managed to recover Kirkuk in 1743, but the Ottomans regained it according to the Peace Treaty of 1746 and it remained part of the Ottoman Empire until the end of World War I when British forces took control in May 1918. These wars were

³⁴⁶ Nouri Talabani, *ibid.*, p. 48-50

³⁴⁷ Peter W. Connors, *op. cit.*, p.1

destructive and extremely damaging for the Kurdish regions, and the Kurdish population paid a heavy price.³⁴⁸

Historical documents confirm that the Kurds formed a majority of the inhabitants of Kirkuk. The Ottoman encyclopaedist Shamsadin Sami stated, in his famous *Qamusl al-A'ala'm*, that the Kurds formed three quarters of the residents, the rest being Turkomans, Arabs, and Others. There were 760 Jews and 460 Chaldians also residing in the city, as confirmed by other historians and encyclopaedists. These regions were under the supremacy of the local Kurds, who were lords of the governorate of Ardalan; however, Ottoman power was established there through the activity of the pashas of the province of Shahrazur. Kirkuk, which was one of the 32 districts in the governorate became the residence of the pashas of Shahrazur but later was destroyed by the Safavid Shah Abbas I.³⁴⁹

The tremendous importance of Kirkuk was due to its location on the trade routes that passed through the entire area between the areas ruled by the Safavid and Ottoman Empires; the Ottomans occupied three-quarters of Kurdistan which was returned according to the Zahab Treaty with Persia in 1639. The Ottomans were interested in controlling these trade routes and settled their loyal military personnel in the Mosul Vilayet.³⁵⁰ At the end of World War I, the Ottoman administration tried hard to persuade the Kurds to opt for inclusion within the Ottoman Empire. They also endeavoured to create an association with Kurdish and Turkmen leaders in the region, in order to reclaim the Mosul Vilayet and also to restore their influence in the area.

³⁴⁸ Dr Nouri Talabani indicated that the Ottoman rule of the Vilayet of Mosul was divided into three governorates (Turkish, sanjak; Arabic, liwa') of Mosul, Kirkuk and Sulaymaniyah. After the collapse of the Ottoman Jurisdiction in 1918, three districts (qada') situated to the north of the Lower Zab River were detached from Kirkuk to form the governorate of Erbil. In 1925, under the Iraqi administration, Kirkuk became a governorate consisting of the four districts of Kirkuk Central, Kifri, Chamchamal and Guil. See Nouri Talabani, *op. cit.*, pp. 8-10, 76.

³⁴⁹ Nouri Talabani, *ibid.*, p.8-10.

³⁵⁰ According to Dr Nouri this route, known as the "Sultans' Route" by many historians, began at Tel-Afar and Mosul in the north, passed through Erbil, Perde (A'Itun-Copri), Kirkuk, Daquq and Kifri, before diverging either to Baghdad or to the cities of Khanaqin and Mandali on the present Iraq-Iran border. Historians believe that the Turkmens were brought to these areas by the Ottomans as part of the forces of Sultan Murat IV, to protect the routes, particularly when the Sultan recovered Iraq from the Safavid Persians in 1638, and many Turkmen military personnel who settled in the region later moved into commerce and other professions. At the same time, the Ottomans offered their generals and fiefs vast tracts of prime agricultural land. However, the Turkmens themselves claim that they migrated into Iraq during the Umayyad and Abbasid caliphates to serve in the armies of those dynasties. See Nouri Talabani, *ibid.*, p.11-13.

It is not hard to understand why the minority group of Turkmens in Kirkuk would claim that Kirkuk belonged to the Turkmen in the post-Abbasid period. Yucel Guclu notes that, according to the first Ottoman-Iranian truce at Amasya on 29 May 1555, Kirkuk belonged to the Ottoman dominions. Furthermore, the Kirkuk region was the capital of the Vilayet of Shahrazur until 1879, and an important centre during the Ottoman rule, being composed of the districts of Kirkuk, Erbil, and Sulaimaniya. History states that the name Shahrazur was given to the *sanjak* of Kirkuk (corresponding to the present districts of Kirkuk and Erbil) by Mithat Pasha, governor of Baghdad (1869 to 1872), while the historic Shahrazur stayed outside in the new *sanjak* of Sulaimaniya. Certainly the Ottoman Empire had been reluctant to lose areas of the Vilayet of Mosul following World War I, even though British troops could occupy Kirkuk according to the Mudros Armistice of 31 October 1918. Yucel Guclu misleadingly describes how “Kirkuk resembles the Turkish towns of Anatolia rather than those of Arabia, and also exaggerates when he says that the majority of Kirkuk’s population was Turkish.³⁵¹ Conversely for these allegations, Iraqi President Jalal Talabani replied to say “*if we go back to the history of Iraq, we find Kirkuk is a Kurdish city and the Talabani’s tribe are of the oldest inhabitants. Further, there is a map of the Kurdistan region dating back to the Ottoman Empire shows that the city is part of Kurdistan, which bore the stamp of the Ottoman Caliph, and so on for all the Encyclopaedias, which confirmed this fact. But, when the Baathist came to rule in 1963 was the city of Kirkuk residents a mix of Kurds, Turkmen and Arabs at that time formed a small percentage, which is estimated 5 percent of the total population*”.³⁵²

In another sense, however, and whatever the circumstances of their coming to the region, the Turkmens of Kirkuk always provided strong support for the Ottoman Empire and its culture during its rule in Iraq. A more controversial subject concerns the estimated Turkmen population, estimated at 2.1 to 2.4 percent of the total population of Iraq during the 1920s and 1930s (See Table 2). It is initially necessary to concentrate on the official Iraqi census of 1957, which is generally agreed to be dependable in providing accurate data for that period, since it goes back to the time

³⁵¹ Yucel Guclu, *The Turcomans and Kirkuk*, p. 49-50

³⁵² Jalal Talabani’s interview with Al-Sabah Newspaper, and asked Talabani about his words earlier when he stated that Kirkuk is the Jerusalem of Kurdistan and they wondered if he expected it to become the city "Kashmir" Iraq, on 16 January 2006. Available at:
<URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=2562&type=interviews>
Access Date: 5 May 2009

before the demographics of Kirkuk were destroyed by the Arabization policy. It can be regarded as an adequate census for all ethnic factions, and certainly confirms the same proportion of Turkmens as making up 2.16 percent of the total population. However, this percentage was deliberately altered by the Iraqi regime through the process of demographic adjustment that obliged many Turkmens to register as Arabs (See Table 2). In view of the irreconcilable differences, some Turkmen scholars are exaggerating to estimate their figures that they make up ten to fifteen percent of Iraqi society.³⁵³

The process of Arabization was reflected in a declining proportion of Turkmen.³⁵⁴ Anderson and Stansfield offer the most adequate analysis of the facts surrounding this issue, pointing out that according to the 1957 census, Turkmens comprised 37 percent of the population of Kirkuk city against 33 percent for the Kurds and 22 percent for Arabs. However, Turkmens were a plurality but not a majority in the city. Within the province as a whole, Kurds made up around 48 percent of the population, with Arabs at 28 percent, and Turkmens at 21 percent, meaning that the Turkmens comprised the smallest of Kirkuk's three ethnicities (See Table 3, Table 4, Table 8).³⁵⁵ The Turkmen minority is currently spread across many areas in Iraq, particularly in Kirkuk and the surrounding areas; they have also settled in Erbil, Talafar, Kifri, Daquq, Altin Kopri, Tuzhurmatu, and Kara-Tepe. They have also lived in Baghdad, concentrated mostly in the north-eastern neighbourhoods of Adhamiyye, Raghiba Khatun, and Waziriyye.³⁵⁶

³⁵³ Gareth Stanfield and Hashem Ahmadzadeh, 'Kurdish or Kurdistanis? Conceptualising Regionalism in the North of Iraq', in "An Iraq of Its Regions Cornerstones of a federal Democracy?", (eds.) Reidar Visser and Gareth Stanfield, (London: Hurst Ltd, p.139)

³⁵⁴ Nouri Talabani, "*Arabization of the Kirkuk Region*"; *op. cit.*, p. 14-18

³⁵⁵ Liam Anderson and Gareth Stansfield, "*Crisis in Kirkuk: The Ethnopolitics of Conflicts and Compromise*", (USA :University Pennsylvania press, 2009), p. 236-7

³⁵⁶ According to Yucel Guclu, use of the word Turkmen is due to the British from the time they set up Iraq in 1920. Yucel Guclu , *op. cit.*, p. 26

6.3 IMPORTANCE OF THE CENSUS IN 1957 FOR THE ISSUE OF KIRKUK

It appears that after the foundation of the modern Iraqi State in 1921, and despite the demographic mosaic of Kirkuk, the Arabs remained a fairly insignificant minority in the ethnic composition of Kirkuk, which did not help the strategy of consecutive Iraqi governments, who insisted that Kirkuk was part of Arab Iraq. The scheme to change ethnic compositions was initiated during the period of the royal regime in Iraq, and as already discussed; the purpose in beginning the Hawija Project in Kirkuk was to change the ethnic balance of the Kirkuk province through settling various nomadic Arab tribes.³⁵⁷ Therefore, Kurds assert to have had a plurality in Kirkuk prior to Arabization if compared with Turkmen and Arab newcomers, not having arrived until the Ottoman Empire. What it should be mentioned here, that Kurds emphasize that, the original indigenous Arabs of Kirkuk were simply nomadic tribesmen who settled in the region, as opposed to those Arabs who came to Kirkuk under the recent Arabization process. Thereby, Kurds deem both Turkmen and early Arabs as legitimate residents of Kirkuk and worthy of becoming protected minorities in the city. For Kurds, the Turkmen and Arabs who lived in Kirkuk before 1957 they are Kirkukis. However, the Arab tribes are not originally from Kirkuk, but they settled a long time ago and became Kirkukis (See Chart 2).³⁵⁸

The large numbers of Arabs in Kirkuk led to a real change in the demography of Kirkuk. As Dr. Nouri Talabani indicated, the percentage of Arabs in Kirkuk increased from 28.2 percent of the total population according to the 1957 census, to 44.41 percent according to the 1977 census. At the same time, the Turkmen population decreased from 21.4 percent according to the 1957 census to 16.31 percent according to the 1977 census. The population of Kurds decreased during the same period from 48.3 percent to 37.53 percent. After the 1977 census the Iraqi government did not produce any official statistics.³⁵⁹

³⁵⁷ Henry D. Astatjian, *op. cit.*, p. 14.

³⁵⁸ Interview with Edalat Saleh, on 15 April 2009, Erbil.

³⁵⁹ Nouri Talabani, *op. cit.*, p. 51-3

According to the 1977 census, the percentage of Turkmens was nearly 1.15 percent of the total state population (See Chart 3). The 1957 census had recorded the Turkmens' share in Kirkuk at 21.4 percent but this had declined to 16.75 percent in the 1977 census. In Mosul their numbers had decreased from 4.8 percent in 1957 to a mere 0.99 percent in 1977. A small percentage of Turkmens was found in Erbil, at 5.0 percent in 1965, rising slightly to 6.5 percent in 1977, and there was also a small population in the town of Perde/A'ltun-Copri, which fell from 7.7 percent in 1965 to 5.7 percent in 1977.³⁶⁰ From this it is a reasonable conclusion that Kirkuk was a Kurdish city, particularly if Kirkuk's pre-Baathist boundaries were to be restored, and also because their higher birth rate would have put the Kurds in the majority of the population in Kirkuk (See Table 5).

The Baathist regime deliberately expelled nearly 250,000 Kurds and Turkmens from their homes, including an estimated 120,000 during the 1990s. Several international organisations working in these areas, such as Human Rights Watch, have described how some of the internally displaced Kurds had returned to their city and were living in dreadful conditions, in temporary tents, abandoned factories, and the city's football stadium, while awaiting the resolution of their property claims and restoration of their property that had been occupied by the Arab settlers. These organisations had encouraged the Iraqi government to tackle the urgent humanitarian needs of the thousands of internally displaced Kurds and other non-Arabs in and around the city of Kirkuk; at the same time, over 6,000 land claims descended on officials of the Iraqi Property and Claims Commission, which had been established in January 2004 by the CPA and is currently managed by the Iraqi government.³⁶¹

The Turks also accused the Kurds of having conducted demographic changes in Kirkuk while ignoring all historical grievances against Kurds as indigenous people who had been were expelled and robbed of their property by the Baathists. As one analyst noted, the US administration was tempted to give financial assistance to Turkey by lending it nearly US \$8.5 billion in return for keeping calm and not intervening unilaterally in Northern Iraq. Despite US promises to support Turkish

³⁶⁰ Nouri Talabani, "*Arabization of the Kirkuk Region*"; *ibid.*, p. 14-18.

³⁶¹ Nouri Talabani, *ibid.*, p. 51-3

troops against the PKK they remained silent about attacks against Kurdish fighters and the bombing of the Kurdish-Iraqi border villages.³⁶²

It appeared that most of the Turkmens were worried about the strong levels of co-operation on matters of intelligence, support and manpower between the two main Kurdish parties and the US troops, particularly when the US military relied on Kurdish forces to fight against insurgents in the region. The elections of 30 January 2005 had effectively put the Kurds in charge of managing the provincial government as well as controlling key positions within Kirkuk's security forces. Yucel Guclu alleges that Turkmen and Arab residents in Kirkuk accused the Kurds of attempting to alter the demographic structure of Kirkuk, particularly after the PUK and the KDP had begun a process of "Kurdification of Kirkuk" by transporting into Kirkuk displaced Kurdish families from the northern governorates who had never lived in Kirkuk, or who came from as far afield as Iran and Syria; by January 2005 their numbers had risen to around 150,000. These endeavours by the two main parties had an impact on changing the ethnic balance of Kirkuk. It was assumed that the number of Kurds in any future census would increase and thus affect the results of any future referendum on the fate of these areas. Naturally it would also influence the interests of the regional state players.³⁶³

The historical injustice faced by the Kurds was more painful when they witnessed how the aggressor and oppressor had become the owner of their rights, while they themselves who had been oppressed and exploited for more than three decades now faced assault charges and denial of their rights. For this reason the Kurds strongly refuted allegations of the "Kurdification of Kirkuk". Accusations that they had brought huge numbers of Kurds from the three Kurdish governorates aimed at making gross changes in the demography of Kirkuk was simply slanderous propaganda. Certainly, the status of Kirkuk differed from that of the other districts, such as Khanaqin, Aqra and Sheikhan in Nineveh that had been under KRG control since 1991, and which the Kurds refused to call "disputed territories" (See Table 9, Table 10, Table 11, Table 12, Table 13, Table 14). Some observers note that these districts

³⁶² Daniel F. Baltrusaitis, *Coalition Politics and the Iraq War: Determination of Choice*, First Forum Press, United State of America, 2010, p.158.

³⁶³ Yucel Guclu, *op. cit.*, p. 95

could be regarded as “disputed in the technical sense”, as they were not seriously claimed by any other Iraqi factions. However, a similar situation applied in the Makhmur district, which went out of the control of the KRG, but the Kurds insisted on their claim as it was a part of Erbil.³⁶⁴

According to the regional assembly elections on 30 January 2005, the Kurds won 59 percent of the votes. However, the Arab incoming and Turkmens accused the Kurds of having rigged the elections by bringing in huge numbers of Kurdish voters from the three Kurdish governorates. Given the ongoing unrest in the rest of Iraq, Kirkuk’s council could be described as one of the successful multi-ethnic councils in Iraq, since every faction had been given the chance to participate, but it appeared that the Turkmen groups on the council, supported by the Shiite Arabs, consistently pursued a policy of creating crises as a way of boycotting council meetings. They also requested the removal of any Kurdish symbols, such as Kurdish flags, from various areas in the city.

One should mention here that the Kirkuk Provincial Council had adopted and depended on the principle of consensus in forming its committees, one of which was the Committee for Article 58 and the Victims of Ethnic Cleansing Policies, which was responsible for monitoring procedures for normalising the situation in the Kirkuk province according to the new Iraqi Constitution. Several committees political, cultural, economic and social were also set up to manage and deal with the council’s various responsibilities.³⁶⁵ The Kirkuk Council insisted on promoting a spirit of brotherhood and establishing principles of equality and collective effort in order to provide services to citizens and prevent sectarianism and sedition among the diverse communities in the city. Rizgar Ali Hama Jan from the PUK was appointed by the Kurdish parties as Chairman of Kirkuk Provincial Council, and the Kurdish candidate Abdel Rahman Mustafa was elected to the post of mayor of Kirkuk with Ismail al-Hadidi as his deputy. The Kirkuk council consisted of thirty members, with three

³⁶⁴ Liam Anderson and Gareth Stansfield, “*Crisis in Kirkuk: The Ethnopolitics of Conflicts and Compromise*”, *op. cit.*, p.182

³⁶⁵ These included, for example, the Agriculture and Irrigation Committee; Hiring and De-Baathification Committee; Projects, Reconstruction and Public Services Committee; Oil and Mineral Resources Committee; Education and Higher Education Committee; Security and Public Safety Committee; Legal, Election and Referendum Committee; Social and Religious Affairs Committee; Economy and Finance Committee; and Legal, Election and Referendum Committee.

chosen “assistants to the Mayor” a Kurd, Hassib Rozbayani, to head up a committee on resettlement and displacement issues; a Turkmen, Irfan Kirkuki, to supervise de-Baathification; and a Christian, Sargon Lazar, to organize governmental affairs.

By 3 August 2004 several international organisations felt that failure to resolve the competing property and land claims in the disputed areas might cause the situation to explode into an armed confrontation between Kurds and Arab settlers, and that such a crisis could overwhelm the region, with potentially serious consequences. It was thought that a reasonable solution would be to determine the numerical strength of each group in the population by means of a census, not only in Kirkuk but throughout Iraq, and that a reasonable compromise could be achieved through equal power sharing, in turn providing guarantees to protect the rights of other minorities. The prevailing status quo was that the Kurdish leaders might be prepared to concede on the idea of incorporating Kirkuk into the Kurdistan Region and agree to share power equally. The most serious problem with equal power sharing was that the Kurds had no incentive to agree unless offered something in return.

Finally, we can deduce that the suitable solution for Kirkuk and other disputed territories through finding permanent and serious solution for correcting ethnic cleansing and changing the national reality, only through holding a fair census, after removing the effects of deportations, ethnic cleansing and changing demographic realities. It is a reasonable track, if based on census 1957 or 1977, to settle the political dilemmas with regard to know the indigenous population as well as to refute the allegations against the efforts to join these areas to the Kurdistan region forcibly (See Chart 4, Chart 5).

It is plausible to suppose that, the Kurds should adhere to the principles announced at the London Conference, held in 15 to 16 December 2002 by the Iraqi opposition, and which includes:

1. return of the displaced to their homes, restoration of their property and award of compensation for damage and losses;
2. return of the *wafideen* Arabs, brought in by the Baathist regime to settle in the aforementioned areas, to their places of origin;

3. return of the Faili Kurds and all expatriate Iraqis under the pretext of Iranian assets and guaranteeing their enjoyment of Iraqi nationality and return of their property;
4. abolition of all administrative procedures by the Baathist regime since 1968, which targeted demographic facts in Iraqi Kurdistan.³⁶⁶

6.4 REGIONAL AND INTERNATIONAL INTERVENTIONS IN THE KIRKUK ISSUE

Fearing that the possible development of an independent entity would negatively impact on its own Kurds, the Turkish government announced its opposition to any change in the Kurdish situation in northern Iraq and pursued a strategy to confront all the post-2003 political implications. They identified the red lines that the Kurds would not be permitted to override in case the entire region was threatened with disintegration, and consistently pressed the US administration not to allow the Kurds to take over Kirkuk and its oil revenues. Turkey, as a significant regional player, was extremely annoyed by the results of Iraq's January 2005 elections, which enabled the Kurds to gain ground through holding political positions, particularly in Kirkuk. In the Turkish view, the emergence of a Kurdish administration in northern Iraq represented a serious challenge for their regional policy and also facilitated the establishment of a de facto Kurdish state.³⁶⁷

Turkey wanted the US to keep the Kurds out of both Mosul and Kirkuk, and accused the US of failing to fulfil their promises, because the Kurds had violated an agreement made at an Iraqi opposition meeting in Ankara on 19 March 2003 that was intended to prevent them entering the cities of Kirkuk and Mosul. When the war started, 20,000 Kurds entered these cities, with more than half of them settling there. The KDP sent Peshmerga forces to Mosul on 12 April 2003. While the Arabs and Turkmen residents expressed opposition to a Kurdish presence in Mosul (as a Baathist stronghold), the

³⁶⁶ Liam Anderson and Gareth Stansfield, *Crisis in Kirkuk: The Ethnopolitics of Conflicts and Compromise*, *op. cit.*, p. 108-9

³⁶⁷ Daniel F. Baltrusaitis, *op. cit.*, p.158.

Kurdish residents greeted the arrival of the *Peshmerga* with great enthusiasm.³⁶⁸ The first US troops entered Kirkuk on 11 April 2003 and order was gradually restored. The US administration relied on the Kurds as a strategic ally and also provided military and financial support for them to secure the stability of the situation.³⁶⁹ More precisely, President Jalal Talabani was remarkably explained the situation, when he said “*In the eve of the Liberation of Iraq, particularly, after Turkey refused to allow the landing of the US aircraft in their territory. For this reason the U.S. forces came with their forces to the Sulaymaniyah and the Harir district for preparation of their entry to Kirkuk*”. Talabani illustrated how they succeeded to send hundreds of pieces of weapons into the city and formed armed cells. Moreover, some pieces of the Iraqi army were also involved in the uprising to liberate the city. Talabani argued that “*we took the Americans with us to deliver the city of Kirkuk due to sensitive situation, which were not assumed to be due the existence of the Peshmerga forces alone*”.³⁷⁰

In March 2000, there was tension between the ITF and the KDP, to the extent that military skirmishes occurred between them. The most serious tension occurred in Kirkuk because of the strong involvement of the Turkish side in internal Kirkuk issues. To prevent the escalation of instability and conflict beyond Kirkuk’s borders, the KDP formed another political bloc (the Turkmen National Association, consisting of five constituent parties mainly from Erbil) that would be more loyal to the KRG than to Ankara.³⁷¹ There are several reasons why the Turkmen-Arab alliance rejected Kurdish efforts to dominate the governance of Kirkuk and their mutual aim of preventing the implementation of Article 140. This also facilitated intervention in the Kirkuk issue and the involvement of external forces, particularly the Turkish government which justified this on the grounds of protecting their nationals. During the Saddam era, the Turkish government effectively ignored violations against the Turkmens of Kirkuk, but after 2003 they made constant threats to invade Northern

³⁶⁸ Yucel Guclu , *The Turcomans and Kirkuk*; p. 45

³⁶⁹ It is necessary to pay particular attention to the loss of Republican People's Party in general elections in Turkey in November 2002 was affected directly on the American plan in its war against Iraq. Despite that, the Turkish government was first beneficiary financially to cooperate with the US. Despite that, the AKP rejected to form a consensus to allow the U.S. forces from Turkish territory due to their alleged adherence to Islamic principles, besides, at that time public opinion was against the Turkish intervention in Iraq. See Baltrusaitis, *op. cit.*, pp. 190, 210-11.

³⁷⁰ President Talabani's interview with channel Al-Hurra "Free", on 13 April 2008 Available at: <URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=5503&type=interviews > Access Date: 5 May 2009

³⁷¹ Liam Anderson and Gareth Stansfield (2009), pp. 68-96

Iraq, declaring that to prevent the ethnic domination of Kirkuk by the Kurds, expelled Kurds were not to be allowed to return to their homes. Baker and Hamilton in their report have shown, one essential dimension of the Turkish goal of strong support for the Turkmen minority was to use their influence to obstruct the incorporation of Kirkuk into Iraqi Kurdistan. At the same time Turkish companies were investing widely in the Kurdistan Region.³⁷² Turkey certainly intervened directly in the affairs of Kirkuk on several occasions, and the convening of a special conference on Kirkuk in Ankara, noted above, is evidence of blatant intrusion by Turkey and incitement of Turkmen groups to counter Kurdish influence in Kirkuk. Thus, Prime Minister Erdogan's warnings in January 2007 suggested there might be repercussions against Turkey's regional objectives, especially when he warned that any violent reaction by the Kurdish leadership against conducting a referendum would be unacceptable and harshly dealt with.³⁷³

The Kurds accused the ITF of being under the influence of Turkey's plans; this was why the ITF urged cancellation of the referendum on Article 140 and demanded that the city was put under federal government control. The ITF had claimed several times that it preferred to give special status to Kirkuk; on the other hand, ITF was strongly opposed to federalism for Iraq, which would lead to the establishment of a weak Iraq and a powerful Kurdistan Region as a strong unit among the constituent federal units. Similarly, a coalition between Turkmens and Arabs would have had serious repercussion both internally and externally, and would have reflected a particularly negative view by most of the Western media that any referendum process would add to the increasingly complex situation in the city or even lead to civil war.³⁷⁴ In this context, it is not difficult to envisage, why the Iraq Study Group Report, published in 2006 by the US Government, described ethnic hostilities in Kirkuk as an explosive powder keg and made the recommendation that the referendum on the future of Kirkuk be delayed to avoid potential violence. According to Peter W. Connors, "the annexation of Kirkuk to the Kurdistan Regional Government, which recognized region within the federal nation of Iraq, might be a realistic scenario. However, a constitutionally mandated referendum addressing whether Kirkuk should remain

³⁷² James Baker and Lee Hamilton, *The Iraq Study Group Report* (Washington, DC: GPO, 2006), p. 30.

³⁷³ Anderson and Stansfield (2009), *op. cit.*, p. 158.

³⁷⁴ Anderson and Stansfield (2009), *ibid.*, p. 158.

within Iraq or join Iraqi Kurdistan was postponed repeatedly between 2007 and 2010. If this referendum occurs and passes, however, non-Kurdish residents of Kirkuk, who are opposed to annexation, are likely to revolt, thus adding to the mounting ethnic tensions in the city”.³⁷⁵

It should be noted that the UN played a significant role, according to Chapter VII of its Charter, since Security Council Resolutions 1483 (2003), 1511 (2003), and also 1546 (2004) reaffirmed the sovereignty and territorial integrity of Iraq. Interestingly, a call for the establishment of the UN’s mission for Iraq (UNAMI) on 15 August 2003 demanded the UN should play a major role in assisting the Iraqi people, including establishment of institutions for representative government; assistance in holding elections and drafting the constitution; and contributing to the preservation of security and stability in Iraq. The UN was also supporting the Iraqi people to benefit from their freedoms and privileges by helping to improve Iraqi oil revenues and development funding for Iraq. Shwani³⁷⁶ confirms the UN’s leading role in dealing with many of the critical issues, including its intervention over the time-frame for writing the new constitution; its important role in endorsing key laws, particularly in relation to national reconciliation and to electoral law; and its discussion of democratic issues such as protection of the rights of journalists and women, etc. At the same time, and in light of the legal situation in Iraq, the Kurds and other Iraqi groups tended to believe that any moderate international forces would have been able to find a solution to the problem of the disputed areas, but in the context of Article 140.³⁷⁷

Ironically, the political equations turned against the Kurds, particularly when they felt their rights might be sacrificed to protect the interests of others. Notably, only one week before the Article 140 deadline expired, Stefan De Mistura, the UN special envoy to Iraq, proposed a delay of six months for implementation of Article 140; a suggestion the Kurds accepted, finding themselves heading towards a deadlock. In fact, the Kurds were angry with De Mistura’s initial report. He stated that criticism by the Kurds on Aqra, Hamdaniya, Makhmur and Mandali had been taken into

³⁷⁵ Peter W. Connors, *op. cit.*, pp. 1-2

³⁷⁶ Khalid Salam Said Shwani, member of the Iraqi parliament, a member of the monitoring committee on the implementation of Article 140 of the Iraqi parliament, and also a member of the Commission on Article.

³⁷⁷ Interview with Khalid Shwani, on 22 April 2009, Kirkuki.

account, and agreed to provide his options with regard to his latest report on Kirkuk on 22 April 2009. Presumably international forces, in particular the US and UK ambassadors and officials of the EU mission, were behind the wording of the recommendations since they had attended some of the meetings. Obviously, if De Mistura's options succeeded, these solutions would have international legitimacy. In fact the final decisions on these problems were not taken by the UN, which had more of a facilitating role in trying to bring together the differing views and opinions of the various factions with regard to Kirkuk. In this context, the UN's options would not be binding for any parties, but would remain as a recommendation if the parties were not satisfied.

Regarding Governorate or provincial elections in Iraq, De Mistura proposed holding elections in all governorates except Kirkuk, deferring the Kirkuk elections for six months in order to find an acceptable compromise. This proposal was debated on 6 August 2008, the Iraqi Turkmen Front, the Iraqi Accord Front, and the Sadrist Movement, all of whom objected to the reference in the draft law to the referendum on the status of Kirkuk and insisted on delaying the entire election until a solution had been found. In terms of the evolving situation, Shwani asserted that "we asked the UN to interfere in order to reach a consensual solution to Article 23." This Article mentioned that the higher committee (which contained members from both sides, i.e., Kurds and Iraqi federal government officials, under UN supervision) has the right to require technical assistance and advice on reaching a final agreement from UN. All De Mistura's experts were foreigners, since the Kurds refused to rely on experts from neighbouring countries (Turks, Iranians, Arabs) who, since they were interested in the issue of Kirkuk, were certainly not neutral. The other parties also refused to appoint any expert of Kurdish origin.³⁷⁸

Given the precarious situation, Stefan De Mistura proposed four options on Kirkuk. The first concerned the implementation of Article 140 in accordance with the political agreement. For example, how would the requirements of the Article be carried out? The administrative boundaries of the city of Kirkuk which would participate in the referendum were in question. Who had the right to participate in this referendum?

³⁷⁸ Interview with Khalid Shwani, on 22 April 2010, Kirkuk.

And what kind of questions would be included in the referendum? The second option suggested that Kirkuk should be made a local administration for a period of three to five years, managed by the Federation government and the Kurdistan Region, after which the referendum would be carried out. (The same method was applied for the agreement between London and Dublin regarding Northern Ireland.) The third option proposed that Kirkuk would remain inside Iraq as an Iraqi province like the other Iraqi provinces: the UN was aware that this option was very weak, since if the Article was subjected to a constitutional amendment, it would be rejected by the three Kurdish provinces. The fourth option recommended that Kirkuk was made an independent region for a period of three to five years, after which the referendum process would be carried out.

In Frsat Ahmad's view, the UN representative had intervened expecting to increase the disputes between the two sides, Arabs and Kurds. De Mistura had tried to offer assistance in finding a settlement between the two parties, but was unable to impose his own views, or any of the proposals, but could only offer recommendations, advice or tips, with approval from the parties concerned.³⁷⁹ Nermeen Osman³⁸⁰ took a similar view on the UN's involvement in the Kirkuk case, considering it an intervention of affirmative action since several proposals had been made and presented at the request of the Iraqi side.³⁸¹ While, Kamal Kirkuki³⁸² had a different point of view, particularly on the role of the UN representative in Iraq who, he felt, complicated the Kirkuk issues rather than solving them. Kirkuki believed that De Mistura wished to find a solution that would satisfy Iraq's neighbours and other Iraqi parties by sacrificing the interests of the Kurds.

Additionally, Kamal Kirkuki also mentioned that the US itself had created considerable obstacles to the control of Kirkuk and by adding to the Kurdistan Region. However, there was a law in Kirkuk that any person in the previous regime

³⁷⁹ Interview with Frsat Ahmad, on 2 April 2009, Erbil.

³⁸⁰ Nermeen Osman, was Minister of Environment of the Iraqi federal government, and vice chairman of the Article 140 Committee since 2006, and also she is responsible for the financial Committee for the same Article.

³⁸¹ Interview with Nermeen Osman, on 26 April 2010, Sulaymaniyah

³⁸² Dr Kamal Kerkuki is a member of the KDP politburo and was Deputy Speaker of the IKP in its second term in 2005. After the third round of elections was held in July 2009 in the Kurdistan Region he became the Speaker of the IKP and is assisted in his duties by the Deputy Speaker, Dr Arselan Bayez.

who had occupied a high position in the Baath Party (e.g., being a Task Force member or a member of the Division) would not be allowed to return to their previous function. For example, around 555 persons had held high ranking positions in the Baath Party in Kirkuk. For six months, the Kurds in the Kirkuk provincial council rejected all requests to return them to their positions, until the US exerted pressure on the Kurdish leaders and got them to agree to return all of them to their former positions, especially in Hawija, believing that this policy might bring security and stability in these districts. In fact the opposite happened, and this misconceived policy led to an increase in terrorist acts, bombings, and assassinations, as well as intimidation of Kurdish families and threats of expulsion.³⁸³

In this context, in order to find a way of the political crisis with Iraqi government, Baker and Hamilton suggest in their report that reconciliation would require the re-integration into the political process of Baathists and Arab nationalists, and the exclusion of prominent figures left over from the regime of Saddam Hussein.³⁸⁴ Clearly, key recommendations have been put into practice; however their implications have reflected negatively on the security situation, particularly when the militias of the various political parties were dismantled and tribal groups, such as Al-Sahwa (the Awakening) were engaged in the Iraqi army, where their affiliation was tribal more than national. At the same time, the engagement of many of Baathists in the Iraqi forces added to the complexity of the security situation. All these factors have been very relevant to the explosions that still occur daily in Baghdad, and to the disputed areas, especially Kirkuk and its environs. On the other hand, on a related matter, Kirkuki said that before assuming the post of US Vice-President, Joe Biden had visited Kirkuk, seeking opinions and with a different perspective on the division of power in Iraq and the proposed division of the country into three regions. Emphasising his view of this matter, Biden noted that George Bush was wrong not to have taken his proposal into consideration. In this context the Turkmen had said that they wanted to find a solution for Kirkuk that would satisfy all parties. Biden argued that in a system of democracy it was not a requirement to satisfy all parties; some might be satisfied and others not. Nevertheless, it was necessary for all parties to

³⁸³ Interview with Kamal Kirkuki, on 20 April 2009, Erbil

³⁸⁴ Baker and Hamilton, *op. cit.*, pp. 63-5

respect the majority decision.³⁸⁵ In this context, Edalat Omer Saleh³⁸⁶ pointed out that De Mistura had intervened in the issue of Kirkuk at the request of the Iraqi parties and particularly the US to find a balanced solution between the differing views of the Arabs and the Kurds. In her view, De Mistura's initial plan caused a serious problem for the Kurds and left the Kurdish people and politicians in a pessimistic mood. Although he had received all the documents and reports confirming the changes that had been made by the previous government in the Kurdish areas, he nevertheless played the role of negotiator between the Iraqi parties, rather than offering logistical assistance.

6.5 THE CHALLENGES FOR KIRKUK POST 2003

In general, the non-resolving matter of Kirkuk was strongly connected to the existence of oil deposits, with this province yielding 40 percent of Iraq's oil, and 70 percent of its oil products. Consequently, in the event of Kirkuk returning to the Kurdistan Region it would have a potential role in the formation of a Kurdish State. In reality it is hard to resolve the issue of Kirkuk because the city holds the richest oil well in Iraq, from which the economy developed in a way that put Iraq on the world oil map and was a key resource for the Iraqi economy.

After the collapse of Saddam Hussein's regime, Kurdish Peshmerga were able to enter Kirkuk. Control was imposed over the entire city in order to maintain political balance and reduce fears of any outbreak of violence between the ethnic communities, as well as to prevent any intervention by Turkish forces in the framework of justifying protection for the Turkmen. The US administrative structure in Iraq, the Coalition Provisional Authority (CPA) took over management of the city. As mentioned previously, the CPA was interested in setting up a successful democratic experiment in Iraq, and therefore called for elections for the councils in every Iraqi province with their candidates chosen according to demographic weighting.³⁸⁷ Thus, Kirkuk held

³⁸⁵ Interview with Kamal Kirkuki, on 20 April 2009, Erbil

³⁸⁶ Interview with Ms Edalat Omer Saleh on 15 April 2009. She was a consultant at the Ministry of Human Rights in the KRG's fourth cabinet, Advisor on Anfal Issues for the KRG's Ministry of Extra-Regional Affairs in the fifth cabinet, as well as director of the Center for the Anfal for five years.

³⁸⁷ Adeed Dawisha, "The Prospects for Democracy in Iraq: challenges and opportunities", in Sultan Barakat (ed.), *Reconstructing Post-Saddam Iraq*, (London and New York: Routledge, 2008), pp. 163-4.

elections to determine their council, which was composed of Kurds, Sunni Arabs, Sunni Turkmens, and Christian Assyrians. It cannot be denied that complete responsibility for the security of the city of Kirkuk remained in the hands of the US military, rather than with the Kurdish forces although the US relied on the Kurdish troops. Particularly, they relied on the internal security forces of the two Kurdish parties and the Emergency Services Unit in controlling counterinsurgency activities. The police force naturally remained dependent on ethnic quotas, with Arab police protecting Arab areas in and outside the city, such as Hawija, and Turkmens performing similar functions in Turkmen neighbourhoods.

It has been argued that, according to the status quo, the US administration was responsible for managing security in Kirkuk but was unable to prevent the streams of internally displaced people, amounting to around 72,000 mainly Kurdish refugees who had been arriving in and around the city of Kirkuk since April 2003,³⁸⁸ while, Arab and Turkmen leaders accused the Kurds of illegally relocating non-Kirkuki Kurds from the Kurdistan Region to Kirkuk to exaggerate the numbers to an estimated 300,000-400,000.³⁸⁹ Given the dangers and the progression of events during that period, approximately 20,000 internally displaced Kurds were motivated and encouraged to return to Kirkuk, particularly during August 2004 when the two main parties (PUK and KDP) offered practical support for them to return to their places.³⁹⁰ One should note, however, that the deportee Kurds who returned to Kirkuk faced several serious problems; most did not have homes to return in the city, while properties belonging to resettled Arabs had often changed hands many times since the deportation of the original Kurdish owners including most of the returnees. In addition, the federal government deliberately allocated inadequate budgets to Kirkuk, which was why the KRG and the US Provincial Reconstruction Team programme both offered significant financial assistance to rebuild the governorate's infrastructure.

Both Arab and Turkmen groups were given the right to determine for themselves the number of displaced Kurds who had the right to return to Kirkuk. Even though these groups admitted that Kurds had suffered from the policy of Arabization by the Iraqi

³⁸⁸ Personal Interview with Dr. Nouri Talabani, on 12 April 2009, Erbil.

³⁸⁹ Liam Anderson and Gareth Stansfield (2009), *Crisis in Kirkuk, op. cit.*, pp. 137-8

³⁹⁰ Interview with Dr. Nouri Talabani, on 12 April 2009, Erbil.

regime, they claimed that only around 12,000 Kurdish families expelled from Kirkuk had the right to return. Based on an average family size of six, the increase would be nearly 70,000, according to ITF and Arab estimates. It is not difficult to see that the total number of Kurdish returnees would be between 230,000 and 250,000, based on the 75,000 or so Kurds who registered to vote between the January and December elections. Furthermore, despite allegations by the ITF and Arabs of dishonesty by Kurdish returnees, the Iraqi government considered the returnees' participation in the elections of January and December 2005 was legitimate. On the other hand, according to international sources such as Human Rights Watch, around 120,000 individuals, mainly Kurds, were Arabized between 1991 and 2002. The Kurdish parties refused to accept the entirely unfair and unreasonable allegation that just 12,000 families had the right to return, and strongly defended the right to return of the displaced Kurds and their descendants, who had been expelled from Kirkuk after 1968.³⁹¹ Although there were significant administrative problems and difficulties associated with the return of displaced Kurds, and it was more helpful to push for action at the normalisation stage of Article 140, most of the relevant directorates in the governorate were under Kurdish management, which helped to facilitate much of the allocation of land to returning Kurds who needed it, as well as the transferring of their documentation.

With regard to the US strategy for confronting this complex issue at the beginning of the liberating of Kirkuk, Dr Nouri indicated that the Americans did not intend to do anything for Kurds in Kirkuk, nor did they have any plans for Kirkuk.³⁹² In fact they asserted that they would not allow the Kurds to take any action to change their circumstances until the political situation had stabilised and security had returned to the area of Kirkuk. Dr Nouri linked this to UNSC Resolution 688. When the US and their allies had been determining the 'no-fly' zone, they had intentionally excluded Kirkuk so that, if they wished, they could put these areas under Kurdish authority, although in the event this was not done. Dr Nouri had pointed out to them that if Saddam Hussein fell, no one would be able to prevent displaced Kurds from returning to their homeland and to Kirkuk, especially those who living in horrible conditions in the camps. For these reasons, the Americans decided to allow the displaced Kurds to

³⁹¹ Liam Anderson and Gareth Stansfield (2009), *Crisis in Kirkuk, op. cit.*, p. 221

³⁹² Dr. Nouri Talabani indicated that he had taken part in a meeting regarding the issue of Kirkuk that was held by an American institution that had had strong contacts with the Foreign Minister before the fall of the Iraqi regime.

return to their places on condition that they did not complicate the situation by all returning at the same time. Despite this, significant blame lies with the Kurds themselves as they had accepted that the fate of these areas would be determined in accordance with articles 58 of the TAL and then Article 140 of the Permanent Constitution. In Dr Nouri's view, the matter should have been resolved between the two parties, Arabs and Kurds, before they had started to negotiate the permanent constitution. Consequently, there would have been no need to include Articles 58 and 140. As long as Article 140 remained pending and unresolved, the only way was for Kurds to insist on its implementation.³⁹³

Yucel Guclu exaggerates in saying that Kirkuk has been subjected to the rush of outsider Kurds in large numbers. The incoming Arabs and Turkmens were afraid of how events would develop after the War, when the administration in Kirkuk was transfer largely into the hands of the Kurds. At the same time, the continuing progress in the political situations is clearly encouraging the Kurdish leadership to be prepared for Kirkuk, rather than Erbil, to be the capital of the Kurdistan Region.³⁹⁴ It should be remembered that when the violence between ethnic groups was increasing at the time of the liberation of Iraq, the US depended on the Kurdish security forces which they found more trustworthy than other ethnic groups. The US had always exerted real influence over the Iraqi factions, and particularly on the Kurds, but at the same time was keen for all ethnic groups to participate in the multi-ethnic police force and also to deal with the city according to their presence in the population. Overall, according to a quota system in Kirkuk this was adopted by the US, the Kurds constituted 40 percent of the police force, Arabs 27 percent, Turkmens 25 percent, and Christians 8 percent. The security of the KRG included the internal security forces of the KDP and PUK that been protecting the city.³⁹⁵

In November 2006, the provincial council, which was effectively controlled by the Kurds with 26 of the 41 seats, was fiercely boycotted by its Arab and Turkmen members who claimed that they were excluded and marginalised in the making of political decisions. Importantly, this period witnessed the beginning of a strategic

³⁹³ Interview with Dr. Nouri Talabani, on 12 April 2009, Erbil.

³⁹⁴ Yucel Guclu, *op. cit.*, p. 26

³⁹⁵ Anderson and Stansfield (2009), *Crisis in Kirkuk*, *op. cit.*, p. 107

alliance in Kirkuk between the Arab and Turkmen blocs. Interestingly, the Sadrists also urged their supporters to show more effective opposition against the Kurds and the US, claiming that on many occasions they had formed a joint coalition or protection force with the Arabs and Turkmens to coordinate political activities against the Kurds.

Despite the escalation of such accusations, the Kurds excluded any prospect of relying on a violent solution. The Arab newcomers and Turkmens had frequently threatened that implementation of Article 140 would inevitably require the application of violence. These groups did not accept the notion that Kirkuk was “Kurdish city” or that the Kurds had a right to ownership of the city based on justification of their suffering at the hands of a previous regime that had largely benefited the incoming Arabs (wafideen) or the resident Sunni Arab tribes. As for the attitudes of the Kurdish allies, the Shiite SCIRI party was considered a key ally in its support for the return of Kirkuk to the Kurdistan region. It could be said that in evaluating these alliances, the perceptions of the Kurdish leadership were misplaced, particularly on the many occasions when Ammar al-Hakim repeated the slogan “The Iraqism of Kirkuk and the Unity of Iraq” and declared that they did not agree to incorporating Kirkuk into the Kurdistan Region. This was a contentious political issue, and on several occasions the majority of Iraqi factions had alleged that Kirkuk was a miniature Iraq. In their own defence, the Kurds declared that if similar conditions and allegation applied in Kirkuk, then they had in turn to be applied to both Mosul and Bagdad as well.

In order to find a way out of the Kirkuk issue with Iraqi government, Iraqi President Jalal Talabani confirmed that *“the issue of Kirkuk needs accuracy as well as correctness and democracy and to be resolved through the normalization of the situation as a first step. The second step would be through the return of families of Kurds and Turkmen who were displaced, as well as for the Arabs who flocked to this city should go back to where they came. After then develop solutions to satisfying all the parties and the city should be administrate by all, and the distribution of wealth among all. Talabani affirmed that they cannot accept the change in the demographic or forcing people to change their nationality. The spirit of brotherhood must be spread gradually in Kirkuk. However, this is not find now because everyone calls for Kirkuk and everyone says that they are the majority there, and they should get rid of*

these terms". Talabani proudly indicated that *"the PUK has hacked this subject and the only party now, which has members in its ranks Arabs, Turkmen and Kurds very large proportions, and I hope that everyone adopts the same approach"*.³⁹⁶

According to Nermeen Osman, the Kurds needed a large lobby that included the UN, to support its demands and its point of view. As has been seen, one of the difficult issues related to the hostility towards Article 140 by most of the political parties who had worked to bring other Arabs into the disputed areas, rather than working for the returning Arabs (wafideen Arabs) coming back to their original places. In discussing this matter, Nermeen Osman confirmed that they could not use pressure or threats to compel any persons, particularly the Arabs who had come from the south and centre of Iraq, to go back to their places of origin since return was now optional. On the other hand, if anyone took the compensation that was being offered (a sum of 20 million Iraqi dinars) they would lose their right to vote and participate in a referendum to decide the future of these areas. According to the Iraqi constitution, all Iraqi citizens have the right to settle and live anywhere in Iraq except in the disputed areas, when acceptance by the Article 140 Committee should be obtained.³⁹⁷

Focusing on the evolving political process and its repercussions, Shwani argued that in Iraq there was a democratic consensus between political groups which was not only necessary at that time but was also necessary for the whole political and democratic process in Iraq. It has been argued that democratic consensus for states that include only one nation means majority rule, whereas states that are multi-ethnic and multi-national, such as Iraq, should respect the rights of ethnic groups and minorities, something that can only be achieved through democratic consensus. Meanwhile, no Iraqi factions could monopolise the Iraqi government absolutely, due to a mechanism established in the Constitution for resolving important issues, whereby 138 votes were required, a percentage that would not be obtained without consensus among the political factions.³⁹⁸

³⁹⁶ Jalal Talabani's interview with Al-Sabah Newspaper, on 16 January 2006. Available at: <URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=2562&type=interview> Access Date: 5 May 2009

³⁹⁷ Interview with Nermeen Osman, on 26 April 2010, Sulaimaniya.

³⁹⁸ Interview with Khalid Shwani, on 22 April 2010, Kirkuk.

CONCLUSION

There is no doubt that the thirty years of Saddam Hussein's rule destroyed Kirkuk's ethnic balance, with the aim of guaranteeing the dominance of Arabs and to consolidate control over the region's oil fields. The policy of "ethnic identity correction" as a basic strategy of the policy of Arabization practised by the Iraqi regime against Kurds, Turkmens and Assyrians required them to register themselves as Arabs; otherwise, they had to leave the city. The regime successfully used these tactics as a justification for expelling the city's indigenous inhabitants.

After the liberation of Iraq and the fall of the dictator regime, the political parties and political organisations, in consultation with the Governing Council and Coalition Provisional Authority, promulgated the Transitional Administrative Law (TAL) for Iraq, which remained in effect until Iraq's first general election and the choosing of the first Iraqi government. Following the selection of the Iraqi National Assembly the permanent constitution was formulated, and these two processes represented the basis on which the problems of the disputed areas would be resolved. In this context, it is not difficult to imagine, given the continued unrest in Iraq, that the US was in a hurry to control the situation in Iraq, and undoubtedly this came at the expense of the interests of the Kurdish side. In the current situation with Iraq, the issue of Kirkuk has been the most hotly contested in the disputed areas, and is not yet resolved, remaining open to negotiation between the two sides. Indeed, and in fact, the return of Kirkuk to the Kurdistan Region is the ultimate goal of all Kurds, who strongly defend the annexation of Kirkuk to the Kurdistan Region according to the basic factors of geography, history, nationality, demography, and morality.

In fact, the new Iraqi State was born with a kind of demographic diversity, with ethnic loyalties, and with diverse interests and divisions, even though the majority of Iraqi factions were interested in having Kirkuk as a part of Iraq, and not of Iraqi Kurdistan. However, there was no sign of any consensus or vision among the various factions for determining the nature of Kirkuk's future. The rather different aims and tensions between the ethnic groups also created conditions that could have made it difficult to resolve the complex and on-going problem of Kirkuk's status. According to Article 140 of the constitution of 2005, when a decision had finally been reached a

referendum on Kirkuk's future status would be held by the end of 2007, but this was postponed for as long as possible. Eventually the implementation time for Article 140 was extended for six months, to expire in June 2008, an example of the Iraqi government apparently playing for time. On the other hand, some Kurdish politicians themselves believed that the reasonable way to settle the issue of Kirkuk and the implementation of Article 140 might be through the adoption of legal techniques and relying on a referendum. In turn, other ethnic groups did not force the issue of determining the fate of Kirkuk. Certainly, reliance on the legal method based on the Constitution would not permit interference from the neighbouring countries. It is true that, the effects of these events have deepened in the composition of the Kirkuk's community, which is led to continuing the ethnic tensions in Kirkuk and most ethnic grievances remained unresolved. All ethnic groups, whether Kurds Arabs, and Turkmen were more concerned with pursuing their ethnic interests than they were with accepting compromise or understanding the democratic procedures.

It is also worth noting that terrorists continue to target Kirkuk because of its diversity. In addition, the former regime had a strong foundation in Kirkuk and some of its members still exist. One important dimension in this context is that the nature of the Sunni-Shiite confrontation is quite different from Kurdish claims to control Kirkuk and other disputed areas. However, both the Iraqi government and the KRG have similar interests in protecting their popular interests in Kirkuk, and preserving gains made since 2003. The basic point implicit in this argument is strongly connected with economics, which plays a critical role in both exacerbating and easing friction between the Arab-Kurdish minority, as it does in every aspect of Iraqi tension and efforts to reach political accommodation. Meanwhile, the KRG is increasingly at odds with Prime Minister Al-Maliki over the lack of progress in resolving the status of Kirkuk and other disputed territories. Even so it is almost impossible to conceive that there would be a political group that would apparently support ceding any part of the disputed territories to the Kurds, least of all Kirkuk and its surrounding areas.

Iraq's neighbours (Turkey, Iran and Syria) are undoubtedly anxious about the situation in Iraq, and obviously the policies and actions of its neighbours will greatly affect Iraq's own stability and prosperity. However, because these states were more interested in their own affairs than in helping Iraq achieve stability, they were better

able to influence events, which in turn often led to Iraq being undermined, even though they agreed that they would prefer a unified Iraq. There are several reasons for the deteriorating situation in Iraq caused by the policies and actions of Iraq's neighbours. Many Arab states were deeply concerned about changing events in Iraq that might threaten their own internal stability, and also resented two specific issues; the shift towards democracy in Iraq, and growing Iranian influence in the region. Ultimately, they believe that the impact of developments in Iraq is crossing shared borders and could lead them to intervene to protect their own interests. While, Turkey and Iran are seriously worried about the transfer of these changes to its borders, in particular, the new situation of the Kurds could encourage Kurdish minorities in their countries that they have the same demands.

In this context, it is important to note that external interventions and the efforts of Iraq's neighbours to exert influence within Iraq, particularly on the sensitive issue of Kirkuk, are unresolved. The US as well as Iraq's neighbours have the greatest interest and influence in Iraq, with the Turkish government continually warning the KRG that incorporating Kirkuk into the Kurdish region constitutes a red line. This stems from the fact that Turkey's priority in Iraq was its territorial integrity, followed by the acquisition of oil and gas. Interestingly, in the current Iraqi situation it is not in Turkey's interest to have political tensions between the KRG and Iraqi government.

The UN proposed their strategy in June 2008 as part of its attempt to resolve the disputed areas between the KRG and the Iraqi government, while the Iraqi factions, Kurds, Arabs, and Turkmen rejected the UN's proposal. If De Mistura's 'options' are examined carefully, each option has clearly been expressed in a manner consistent with the interests of any of the Iraqi factions whether Kurds, Arabs or Turkmen. As noted, Article 140 as a constitutional article had the legal commitment of the Iraqi parties, but it would be more significant for its international legitimacy if the UN's proposed solutions were accepted.

Overall, it would appear that the Kurds were well positioned to gain recognition for the Kurdistan Region in the international and regional arena, and for its powers to be formalised within an Iraq federation, but to determine Kirkuk's status would require negotiation with Iraq's Arab majority, particularly with the Shiite parties, because

many of the Arabs who had moved to Kirkuk were Shiite – with whom the Turkmen Shiite were all too pleased to ally themselves. In addition, the Sunni groups had taken up a challenging position and stood against any attempt to incorporate Kirkuk into the Kurdistan Region.

The challenges facing Kurdish leaders are daunting. For decades the Kurds faced accusations of “separatism” because they demanded their national rights. There is also a suspicion that the Kurdish leadership is secretly planning to divide Iraq and separate from it through the establishment of an independent Kurdish state, which is why they have been attempting to add the Kirkuk region to the existing area. They understand that, with hostile neighbours, it would be very difficult to take steps towards an independent Kurdistan; therefore they have constantly repeated that they would prefer to be within a democratic, federal Iraqi state, despite the majority of Kurds favouring independence. As has constantly been discussed, the last word on this sensitive issue is that the political process in Iraq cannot be completed or succeed if there is no real participation by political and ethnic groups. Indeed, a fundamental issue for the Kurds is how they can effectively retain Article 140 and prepare for a free referendum on the status of Kirkuk. At the same time, the Kurds have shown their political willingness to achieve national reconciliation and security.

The prevailing status quo is that the uncertainty over Kirkuk's status has impeded local development. For this, the KRG is constantly striving to improve Kirkuk's situation, whether constitutionally or institutionally. Admittedly, the KRG has participated unilaterally and decisively in the rebuilding of the infrastructure the city of Kirkuk through reconstructing the institutional organs of the state and to some extent by activating and reviving both government institutions and service. Indeed, the KRG has offered significant support to the Council of Kirkuk by providing electricity and water supplies, restoring roads and streets, rehabilitating schools and hospitals, and establishing Kirkuk University. Additionally, the KRG has organised facilities to enable internally displaced people to return to their homes and to recover their confiscated property and has provided them with at least the basic services. After 2003, Kurdish Peshmerga were able to enter Kirkuk to maintain the political balance, ease concerns about any outbreaks of violence between the ethnic communities, and combat terrorism to sustain the security of the Kurdish people in

those areas, thereby contributing greatly to improving the security situation in Kirkuk province. It is worth noting that the costs of all these projects and security measures were paid by the KRG out of the annual budget of the Kurdistan Region.

Finally, one of the most sensitive issues that needed to be resolved between the Iraqi government and the KRG was the future status of the Kirkuk district. This required a serious attempt to find a permanent and serious solution for correcting ethnic cleansing and changing the national reality. This had to be done on one hand by holding a fair census, after having removed the effects of deportations, ethnic cleansing and changing demographic realities. On the other hand, a reasonable compromise could be achieved through equal power sharing that would in turn provide guarantees to protect the rights of other minorities. As a result all the parties would be satisfied that Kirkuk could be administered collectively and wealth distribution equably.

Chapter 7:

IMPLEMENTATION OF ARTICLE 140 AND THE CASE OF KIRKUK

(We are committed to the application of Article 140 of the Iraqi constitution and we promise that we will absolutely not compromise on this issue or on the rights of the people of Kurdistan. On the contrary, what is extremist and racist is the denial of agreements and articles of the constitution.....)

(Masoud Mustafa Barzani, on 21 July 2009) ³⁹⁹

INTRODUCTION

The city of Kirkuk had a multi-ethnic population that includes Kurds, Turkmens, and Arabs (and a smaller Christian community), with each ethnic group aiming to win local power and control in Kirkuk. The historical problem of Kirkuk's status had also become a strategic problem, being part of a core of dilemmas over the "disputed internal boundary" between the Kurdistan region and the rest of Iraq. Indeed, in the prevailing situation in Iraq, with fears that tensions might reach breaking point, it was obvious that the status of Kirkuk was one of unparalleled prominence in Iraq's politics. Arguably, the future of Iraq could depend on finding a resolution of the status of Kirkuk, provided that it would be acceptable to all Iraqi parties.

Indeed, there were intense political disputes among the Kurds, Arabs, and Turkmens regarding the Kirkuk region, even though the Kurds were the majority in the city that they regarded as Kurdish. Further, the disputes were also related to gaining the national rights for which the Kurds had sacrificed and struggled for many decades. Further, various problems with carrying out Article 140 on the domestic level needed to be addressed. Historical differences between Sunni and Shiite due to hatred and religious divergence were evident, but there was also a principle of coherence through

³⁹⁹ Iraq Kurd leader vows 'no compromise' over oil city", 21 July 2009 Available at: <URL:http://www.kuwaittimes.net/read_news.php?newsid=Mjc1NTEzMjA=> Access Date: 5 August 2009

the Iraqism of Kirkuk and the Unity of Iraq that drew them to the issue of Kirkuk. Therefore, it is not surprising to see that those who had benefited as a result of the policy of Arabization and had occupied the property of Kurds and Turkmens, were the ones who now stood firmly against implementing Article 140, alleging that it would be a process of ethnic cleansing by Kurdish political parties in the Kirkuk Governorate.

Indeed, a serious obstacle and fundamental disagreement in the talks between the Kurds and the Iraqi government, which has been ongoing since 1970 and continues to the present day, concerns the future status of Kirkuk and its environs. From this point, much of the criticism for this was directed at the Kurdish leadership, who agreed to postpone a solution (by implementing Article 58, which was subsequently converted to Article 140) until after the census and the installing of a permanent constitution. Internally, the Arab political factions, whether Sunni or Shiite, have in all circumstances and conditions rejected the idea of annexing Kirkuk to the Kurdistan Region and have condemned any concept of federalism out of hand. In fact, political reality in Iraq would not accept the exclusion of any political factions, particularly Kurds, from a government of national unity.

In this chapter we are trying to illustrate one of the most pressing problems, as an important post-2003 issue concerned the sluggish mechanism of the commission set up to resolve property disputes in Iraq; this in turn, was a crucial step for the implementation of Article 140. However, from a humanitarian perspective, it would be only right to work to return property to its original owners and encourage the Kurds to return to Kirkuk. On the other hand, the fundamental problem was that all Iraqi political parties were trying to gain influence in the city of Kirkuk. In view of the irreconcilable differences over Kirkuk, the attitudes of the Iraqi factions did not change with regard to the future of Kirkuk. Besides, the Iraqi government was responsible for implementing Article 140, and that it had provided the Committee with a budget for doing so, even though, directly or indirectly it had produced obstacles to delay the process.

This chapter seeks to analyze the effects of Article 140 and its content of the entire political process in Kurdistan and Iraq, then the interpretation of the major constraints

on the part of other groups (Arabs and Turkmen) to prevent Kirkuk to join Kurdistan. However, there have been attempts towards compromise and consensus in reaching a resolution through Article 140 of the new Iraqi constitution, which has become a constitutional mechanism for approaching notions of equal power sharing and maintaining stability and security, not only in the specific region but for the whole of Iraq. Determining the future of the city and identifying the nature of relations between the two sides, i.e., the Kurdistan Region and the Iraqi federal government, is seen as one of the outstanding problems to be addressed. The Kurds took the view that all moral, historical, geographical, demographic and constitutional arguments would support their belief that Kirkuk was part of Kurdistan, and stated that they insisted on, and would never relinquish the implementation of Article 140 as a constitutional document, which had been endorsed through a democratic process by an overwhelming majority of the Iraqi population in a free and fair vote. Groups opposed to implementation of Article 140 maintained that the entire process was outside the framework of the Constitution.

Finally, it could be argued, despite continuing unrest over the situation of Kirkuk, the Kurds eventually achieved numerical superiority, enabling them to control Kirkuk. A problematic issue that had to be dealt with was whether the Kurds would agree to compromise or resort to military action. It is worth reiterating, Kurdish leaders had frequently declared their belief that Iraq would fall apart if the Iraqi Constitution was violated. In spite of that, The Kurds had grasped that the only way to solve this had to be from within a new Iraq, and by consensus and agreement among all Iraqi parties and ethnic factions. However, if it was perceived from a broader perspective that Kurdish politicians had made a fatal error, the new generations would pay a high price. Incorporating the issue of Kirkuk with the problems of the disputed territories in the whole of Iraq meant that any dispute over territory in any part of Iraq was covered by Article 58, and then Article 140. In other words, the Kurds have insisted that the future status of Kirkuk must be resolved peacefully, through norms of compromise and consensus; therefore they refuse any attempt to force an unacceptable solution on them. The most contentious political debates among some Western observers, as well as international trends, would prefer compromise on this complicated issue, but the Kurds fear any settlement imposed at the expense of their interests.

7.1 ARTICLE 140 AND ITS IMPLICATIONS FOR THE FUTURE OF KIRKUK

The post-2003 political climate offered a unique and historic opportunity for Kurds to participate genuinely in writing the permanent constitution and to flag up sensitive issues. The situation during their long struggle to achieve autonomy meant that Kirkuk was included, particularly as the Kurds were regarded as the perennial victims of the instabilities in Iraq. It was assumed that had the Kurds wavered on the issue of Kirkuk, all the previous governments, as a consequence, might conceivably have been willing to give decentralization to the Kurds. In this context, Dr. Jamal Rashid looked closely at the issue of decentralisation put forward by the previous Iraqi governments, particularly after the coup on 8 February 1963 when they were prepared to recognise a decentralisation for Kurds that might include Sulaymaniyah, Erbil, Dohuk, Chamchamal, provided that not include the city of Kirkuk, Khanaqin, Duz, Kifri, Sinjar and Zumar. Thus the Baathist regime's Agreement on 11 March 1970 resulted in adoption of the same 1963 proposal, the only difference between the two proposals being that the later Agreement put Erbil at the centre of their area of autonomy.⁴⁰⁰

The London conference that was held on 15-16 December 2002 by the Iraqi opposition offered a strong statement about the ambitions of the Iraqi people inside Iraq and also the world for a new future. It discussed various decisions and recommendations on some of the most complex and serious subjects, including the issue of disputed territory, deportations, ethnic cleansing and changing the national reality. Proposed solutions included holding a fair census, after removing the effects of deportations, ethnic cleansing and changing demographic realities, in Kirkuk, Makhmur, Khanaqin, Sinjar, Shekhan, Zumar, Mandali and others, as well as in the rest of Iraq, under international supervision, before holding any elections. The participants unanimously agreed on a set of principles and the conference called for implementation in this respect through:⁴⁰¹

It is imperative to take into consideration that, the Article 58, section (A-C) was suspended resolutions of disputed areas territories, particularly Kirkuk until a general

⁴⁰⁰ Jemal Rashid Ahmad, *ibid*, p.54

⁴⁰¹ “*Application of Article 140 to ensure the peaceful coexistence*”; the Publications of the Joint Committee on Article 140 by the third branch of the KDP and the second centres of the PUK, pp. 7-9

census has been conducted, in order to enable displaced people who have been compulsorily deported and expelled from their home and region are compensated or returned home.⁴⁰² Article 58, section B of the TAL clearly indicated the demographic manipulations and changes made to the administrative boundaries by the previous regime through expulsions, expropriations, and the process of Arabization, and called for these injustices to be remedies, stating that,

The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the event the Presidency Council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.⁴⁰³

It is quite evident that the Kurdish negotiators during the drafting of the permanent constitution were able to insure the inclusion of Article 140 which was an amended version of the TAL's Article 58. According to Article 140, a census and a referendum were to be held before completion of the first stage in the implementation of Article 140, which was the normalisation stage. This was regarded as the more complex part of the process, since it required the resolution of property disputes and was likely to take some years to resolve. Although the Kurds insisted on a referendum, there was no guarantee that they would have the necessary numbers to win a referendum, and that they would therefore have to depend on the restoration of the districts that had been separated from Kirkuk by the Baath regime, which would greatly escalate the proportion of Kurds in Kirkuk compared with other ethnic groups.

⁴⁰² Carole A. O'Leary and Charles G. MacDonald, 'The Kurdish Identity Kurds in a Democratic Iraq and Beyond', in *Kurdish Identity Human Rights and Political Status*, (eds.) Charles G. MacDonald and Carole A. O'Leary, (University Press of Florida, 2007), p. 258

⁴⁰³ The Transitional Administrative Law, Available at: <URL:<http://www.dostoor.jeeran.com/2010%دساتير%20%عراقية>.htm>, Access Date: 25 August 2009

In order to strengthen the Kurds claim to implementing this Article, Shwani noted that on this issue the political parties were split into two groups. The first group had faith in the implementation of Article 140, including the Kurds who believed fully in its implementation, while others, such as some of the Shiite groups had faith in its implementation according to their specific interests. For example, Article 140 indicated a return to the administrative units formed when Saddam Hussein, by presidential decree, had cut off some districts from their provinces and added them to other provinces as part of a politically-motivated attempt at demographic change. In this situation, the Kurds were interested in returning the districts of Chamchamal, Kifri, Kalar, and Duz to Kirkuk. In contrast, the district of Zab, which had been annexed to Kirkuk since 1984, was to be returned to Mosul province. Some Shiite groups were encouraged to find appropriate solutions to the problems of the administrative borders between the Shiite and Sunni provinces, particularly with regard to the provinces of Anbar, Ramadi and Karbala, where the Nukhaib, Aeen-Zala, and Rahala districts had been separated from Karbala and annexed to Ramadi. In this context, when the Kurds discussed the annexation of Kirkuk's administrative borders, some of the Shiite groups opposed the proposition on the grounds that all the problems relating to administrative boundaries should be resolved in one deal.⁴⁰⁴

The second group did not have faith either in Article 140 or in the Constitution; nor did they believe that there were places or problems that were known as disputed areas. Within this group was the Iraqi Front for National Dialogue led by Saleh Mutlaq, and a number of Independent Arabs who had defected from Mutlaq's group. There was also the National Dialogue Council, led by Khalaf al-Olayan; this was composed of dissidents from the Accord Front (which itself consisted of three wings: the Islamic Party led by Tariq al-Hashimi, the National Dialogue Council, and the Conference of People of Iraq led by Adnan al-Dulaimi). In speeches in the media and in some of its positions, the Islamic Party declared its adherence to Article 140, wishing to preserve the alliance with the Kurds. The Islamic Party, in fact, had faith in the implementation of Article 140, but only in terms of solutions to their own problems, while concurrently working for non-implementation of the Article, while Tariq al-Hashemi was regarded throughout as one of the obstructionists against returning administrative

⁴⁰⁴ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

units to Kirkuk. The Turkmen Front in general held the same opinions as the other Arab parties, and took a strong stand against the implementation of Article 140.⁴⁰⁵

In fact, the Kurds had long been plagued by the Baath regime, which had made significant changes in Iraq's administrative map since their coup and taking over power in Iraq. Therefore, the historical mistake by the Kurdish leaders of accepting solutions for Kirkuk's boundaries that also involved solutions for other governorates meant that the resolution of Kirkuk's boundary issue then became dependent on the settlement of other boundary disputes among the southern governorates. However, as Kaka Rash⁴⁰⁶ has pointed out, the significant lesson to be learnt is that the Kurds were supposed to insist on Kirkuk as a Kurdish city and not accept that the fate of the Kurdish city was subject to a referendum. At the time the two main parties were in a stronger position than other Iraqi parties in terms of political balance. A continuing problem was Kurdish suspicion about the Iraqi government, since Article 140 did not apply only to Kirkuk but to all factions and ethnic groups affected by the policy of racial discrimination in the 28 disputed areas throughout Iraq. The main office in Kirkuk worked for Kirkuk and the surrounding area, the sub-office in Sinjar was interested in Sinjar, Mosul and Sheikhan, and the Khanaqin office was established for Khanaqin and the surrounding areas, including Jalawla, Maidan, and Kalar. Thus the mechanisms put in place for Kirkuk would be similarly implemented in each of the other areas.⁴⁰⁷

After the collapse of Saddam Hussein, the Kurdish people had hoped to merge most of the liberated Kurdish areas to the Kurdistan Region, but these hopes have never been achieved. As Nawshirwan Mustafa noted that, this was due to two main reasons: the US's authority did not allow the Kurds to take such a step; on the other hand, according to the Article 53 of the TAL, which is recognized the KRG's administration borders which are limited to (Erbil, Sulaymaniyah, Dohuk, and some towns of Kirkuk, Nineveh and Khanaqin) and it was signed by both President Jalal Talabani and Masoud Barzani on 19 May 2003. Therefore, all these areas were under the

⁴⁰⁵ Interview with Khalid Shwani, on 22 April 2010, Kirkuk.

⁴⁰⁶ The famous Kaka Rash, otherwise Babakr Sediq Ahmad, was a member of the Council of Kirkuk province, and also a member of the Higher Committee for the Implementation of Article 140, and head of the office of Kirkuk.

⁴⁰⁷ Personal interview with Kaka Rash, on 22 April 2010, Kirkuk

control Saddam's regime is remained outside of the KRG's authority. Most importantly, among significant mistakes that have passed on the Kurdish leaderships, when they accepted that both (Kirkuk and Baghdad) do not allow them to unite with any provinces in order to establish any federal region. In other words, this means that the Kurdish leaders agreed secretly, that Kirkuk may be constructed a federal unit alone in the future.⁴⁰⁸ In this context, Nawshirwan Mustafa also alludes that another strategic mistake of the Kurdish leadership during their opposition to Saddam Hussein's regime (1991-2003), they were not insisted on finding solutions to the dilemma of the Kurdistan's borders with the coalitions forces (particularly USA) and the Iraqi opposition which has postponed to this day.⁴⁰⁹

American attitudes to the future status of the Kirkuk district and the sensitive nature of Article 140 were unambiguous: the solution depended on the Iraqi constitution and should be implemented in full, while the future of Kirkuk had to be determined by Iraqis themselves without outside interference. However, the Kurds were shocked and upset by the Baker-Hamilton Report in December 2006, it suggested delaying a referendum on Kirkuk in order to avoid communal violence, and based on Recommendation 30, also called for international arbitration.⁴¹⁰ In this context, Khalid Shwani indicated that paragraph 22 in Prime Minister Maliki's programme mentioned his road map for the implementation of Article 140, which would start with a normalization phase, expected to end on 31 March 2007; followed by a second phase in which a general census throughout Iraq would be concluded by 30 July 2007; while the final stage would be a referendum which would take place on 15 November 2007. With the establishment of his government, Maliki decided to form a committee to monitor the implementation of Article 140, but after a vote by his cabinet on 20 May 2007 he decided to postpone the setting up of this committee. This delay

⁴⁰⁸ Nawshirwan Mustafa, (the issue of Constitution/ Where is the border of the Iraqi Kurdistan), on 5 June 2005, [www. Reform-Kurd.com](http://www.Reform-Kurd.com) in (Sbey. Com). Available at: <URL:http://www.sbey.com/ku/article_detail.aspx?ArticleID=737&AuthorID=36&AspxAutoDetectCookieSupport=1>, on 3 Sept 2008

⁴⁰⁹ Nawshirwan Mustafa, (the issue of Constitution/ The demands of the Kurds in Iraq's new constitution), on 27 May 2005, [www. Reform-Kurd.com](http://www.Reform-Kurd.com); in (Sbey. Com). Available at: <URL:http://www.sbey.com/ku/article_detail.aspx?ArticleID=737&AuthorID=36&AspxAutoDetectCookieSupport=1>, on 3 Sept 2008 .

⁴¹⁰ James A. Baker, III, and Lee H. Hamilton, *The Iraq Study Group Report* (Washington, DC: GPO, 2006), p.65-6

certainly had a negative impact on the work of the three stages, which had identified periods of four months for the implementation of each phase.⁴¹¹

Edalat Omer Saleh noted that the absence of political courage within Iraqi politics in general caused disruption and time-wasting in implementing Article 140. Certainly all the politicians who have been in power (e.g., Allawi, Jaafari and Maliki) have believed that the implementation of this Article under their leadership represented an historical error on their part. In this sense, they lacked the courage to carry this historical burden, and therefore avoided putting it into practice. Ms Saleh also referred to a personal interview in 2008 in which Ibrahim al-Jaafari announced that “one of the actions that he had undertaken during his time as a cabinet member, and which made him very proud of himself, was his refusal to allow Article 140 to be implemented.” Ms. Saleh believed that the political daring of the Kurds was successful to some extent in some difficult situations. Kurdish politicians were also able to show political courage when faced with extreme pressure from internal groups, as well as from external, particularly regional, parties, and were not slow to take up positions, particularly when they felt that their rights were being violated or were at risk. At the time, the Middle East was enjoying a period of non-political stability which, in the absence of international recognition of their rights, put the Kurds in a position that made it difficult for them to be able clearly to announce their rights and their claims. They could not behave threateningly or risk the use of troops because any negative response from neighbouring countries would be a difficult challenge for them.⁴¹²

7.2 ESTABLISHMENT OF THE COMMITTEE FOR ARTICLE 140

In practice, the implementation of Article 140 was strongly opposed by many Iraqi factions (Arab and Turkmen), meaning that it was in serious danger of being considered null and void. Arab and Turkmen leaders have been prepared to adopt any means and use whatever powers they can to prevent the implementation of Article

⁴¹¹ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

⁴¹² Interview with Edalat Omer Saleh, on 15 April 2009, Erbil

140. Despite that, On 29 May 2007 all decisions were issued by Commission 140 (which we are mentioned below), and ratified by the Council of the Iraqi Prime Minister, based on the official order No. 6756 of 19 April 2007 which had been released for all relevant ministries in order to facilitate transactions for the people covered by these decisions.

Edalat Omer Saleh indicated that the question of disputed areas was a significant subject between the KRG and Iraqi government, and during the Fifth Cabinet of the KRG (May 2006 to October 2009), a special Ministry for Extra-Regional Affairs was created to deal with this issue, and Dr Muhammad Ihsan was appointed as Minister. The work of this ministry was based on the constitutional Articles, in particular Articles 58 of (TAL) which then amended to Article 140 of Iraqi Constitution, and the areas withheld from the Kurdistan Region were Sinjar, Khanaqin and Kirkuk. Edalat Abdullah indicated that the Ministry's actions were carried out both in theory and in practice. Practically, visits were made to these areas to study their cases and determine the types of problems and demands.⁴¹³

Given to the ethnic composition of the city the Kirkuk office of the Committee to Implement Article 140 of the Constitution consisted of three Arabs, three Kurds, two Turkmens, and a Christian. This Committee was established on 28 March 2006, and was headed by Hashim al-Shibli, but following his resignation, Rayed Fahmi was appointed as Chairman. Although al-Maliki had explicitly declared his commitment to implementing Article 140, his hidden aim was apparently to try not to carry it out, as was made more obvious when he deliberately decided to add two members to the committee: Ahmad al-Baraq, a secular Shiite Arab, and Anwar Beyreqdar, a Sunni Turkmen. The Kurds objected to the addition of any members of the ITF's parties, but although the ITF publicly declared their opposition to Article 140, they lacked the political power to block its implementation.⁴¹⁴ In this context, Kaka Rash explained that this Committee was the Executive Committee, with headquarters in Baghdad. One of the branch offices was in Kirkuk and Kaka Rash was its director; under him,

⁴¹³ Interview with Edalat Omer Saleh, on 15 April 2009, Erbil

⁴¹⁴ Anwar Beyreqdar was a member of the ITF's executive committee and leader of the Turkmen Justice Party, which is one of the ITF's component parties.

two other committees were formed, a fact-finding committee headed by Tahseen Kahiah, and a technical committee led by Mohamed Khalil.⁴¹⁵

In their defence, Kaka Rash pointed out that the work of this Committee depended on the 1957 census. For this purpose a special form was prepared (issued in a manner designed to combat fraud). Any person belonging to Kirkuk who had been recorded by the census in 1957 would be entitled to compensation if they had been affected by, or had left the city or been expelled from it because of the policy of racial discrimination. The forms were to ensure the accuracy of information that was to be sent to the Nationality Department. They were first checked by the two committees and after giving Kaka Rash the figures, would be sent on to Finance Committee⁴¹⁶ in Baghdad (which has a branch in Baghdad and Erbil) where compensation cheques would duly be issued.⁴¹⁷

According to Khalid Shwani, despite the many difficulties it faced in its work, the Higher Committee of Article 140 was quickly able to issue four decisions intended to normalize the situation of Kirkuk.

1. The return of all staff members who had moved away because of the policy of racial discrimination in their jobs.
2. The return of Kurds and Turkmen refugees who had been displaced from Kirkuk, who were given a piece of land (200 square meters) with 10 million Iraqi dinar, and were also able to return to their jobs.
3. the return of Arabs coming from the centre and south of Iraq to their original places, giving them a piece of land (200 square meters) and 20 million Iraqi dinar, as well as letting them have their administrative positions back.
4. Between 1963 and 2003 the Iraqi government confiscated most of the agricultural land owned by the Kurds and Turkmen. Based on the reality of the situation, the higher committee now decided to cancel all agricultural contracts through which

⁴¹⁵ interview with Kaka Rash, on 22 April 2010, Kirkuk

⁴¹⁶ Regarding the Higher Committee for the Implementation of Article 140, Nermeen Osman headed the finance committee as a senior official; Dr. Muhammad Ihsan was Secretary of the Committee; and Kaka Rash was administrator of the Kirkuk office. The fact-finding committee was headed by Tahseen Kahiah; the Technical committee was led by Mohamed Khalil; and Ashur was responsible for the legal side.

⁴¹⁷ Interview with Kaka Rash, on 22 April 2010, Kirkuk

land had been taken from Kurds and Turkmens and given to Arabs for the purpose of Arabizing Kirkuk.⁴¹⁸

Shwani indicated that although these decisions were made at the beginning of December 2006 and were supposed to be ratified by the Prime Minister, they remained in the cabinet until 29 March 2007, since Maliki deliberately delayed acting to ratify them, and transferred the matter to the Council of Ministers to avoid the issue or at least make some major changes. Although aware of these obstacles, the Kurdistan List was able to exert pressure for these decisions to be passed without any change on 29 March 2007, which meant that according to al-Maliki's roadmap, any ratification was delayed until two days before the end of the normalization phase. Thus, there were some 90,000 lawsuits and claims submitted by Kurds and Turkmen demanding to return to Kirkuk, of which only 50,000 transactions have been completed to this day. At the same time, administrative procedures within the court's working systems began with checking the papers of individual returnees, submitting them to the competent authorities, and then paying the appropriate compensation to the claimants, all of which was done slowly and took a long time, thereby contributing automatically to further delays in the process.⁴¹⁹

In discussing the actions of the Implementation of Article 140 committees, Nermeen Osman noted that their work was mostly limited to preparing reports for Parliament. One such report included all changes in the administrative boundaries that the previous Iraqi regime had made since 1975. Another provided information regarding numbers and locations of individual families and houses, and identified the reasons for their departures. In this context, the information in this report had inspired sufficient confidence at the UN for it to be adopted and used as a source for the UN's work in this field. The report's credibility was due to the accuracy of its information, being based on a wide range of material recorded in published information bulletins on Iraq as well as unpublished documents, along with decrees issued by northern organisations of the Baath regime and decisions issued to the provinces. For example, information regarding administrative changes that had happened in districts such as

⁴¹⁸ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

⁴¹⁹ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

Shwan and Qara-Henjir were not mentioned in the Bulletin of the facts of Iraq because it was removed from Kirkuk by the decision of the province.⁴²⁰

Regarding the budget for this Committee, Nermeen Osman has asserted that the budget for the Committee of Article 140 was paid annually and not in one stage, and that since the establishment of their committee until the end of 2009 they had received and spent US \$720 million, and had allocated an amount of 172 million Iraqi dinars for 2010. As noted, the Iraqi government had created two financial committees: the first, chaired by Nermeen Othman, dealt with changes to the administrative borders in the Kurdish areas, while the second dealt with central and southern Iraq and was initially headed by Hanan al-Fatlawi who resigned and was replaced by Dr Muhammad Ihsan. It is clear that to date the Iraqi government has spent a total sum of around US \$900 million on paying compensation to all the Kurdish areas. In short, it seems that the Article 140 committees had decided to pay twice as much for the wafideen Arabs as for Kurds, which meant that they were effectively rewarding the rapist instead of the victim. The policy succeeded in some respects in that it led to the return of many Arabs in Khanaqin and the Sinjar and some others in the Kirkuk area.⁴²¹

One should mention here that, the existence of the Committee for Article 140 was one of the reasons that kept the article alive as a significant political issue. However, there are different trends towards the non-application of Article 140, and arguably, its implementation depended on creating the political groundwork in Iraq for acceptance of the Kurdish conditions. So far this political climate had not existed in Iraq, despite interventions by international and regional countries, i.e., Turkey, Iran, and the Arab States. It became clear that the Iraqi groups believed that implementation of all phases of this Article would not be in their interests, since if these significant areas were added to the Kurdistan Region, it could lead to the Region's economic independence from Iraq. Such thinking obviously created major political obstacles to implementation of the Article, meaning that its implementation would require political will on the part of Iraqi political groups, rather than a simple focus on the

⁴²⁰ Interview with Nermeen Osman, on 26 April 2010, Sulaymaniyah

⁴²¹ Interview with Nermeen Osman, on 26 April 2010, Sulaymaniyah

financial aspect and the preparations for the Commission's work.⁴²² It seemed likely that Iraqi political will and the Kurds' insistence on their national rights represented the only guarantee that Article 140 would be implemented. On the other hand, the Kurds needed to work at all levels to find support, among the major Iraqi political parties as well as from the UN and the international community.

7.3 THE OBSTACLES AGAINST IMPLEMENTING ARTICLE 140

Regardless of the obstacles to implementing Article 140, whether related to the Iraqi government or neglect by Kurdish politicians, after having passed the deadline for implementation by some three years, the normalisation stage remained uncompleted. The Kurds' main concern was that the referendum had not taken place in the areas indicated in this Article. However, it could not be conducted until the administrative boundary changes had been concluded, and the general census that was to be carried out in those areas had been undertaken.

According to Falah Mustafa Bakir,⁴²³ the Kurds expected that after the collapse of the Iraqi regime the political parties in the new Iraq would have different visions. It was supposed that they would be more understanding, so that all parties would be able to rebuild a new Iraqi State under the umbrella of the Constitution, and the Kurdish leadership showed considerable flexibility for other Iraqi parties to open the way for peaceful solutions to all outstanding problems. In his view, by agreeing to put Kirkuk at the forefront of the referendum to obtain a Kurdish identity for Kirkuk and other Kurdish areas, the Kurdish leaders were proving their good intentions and reassuring the Iraqi parties that they supported all peaceful solutions. It was assumed that the Iraqi factions respected the Kurdish approach to putting Article 140 in the referendum. Therefore, the Kurds did not anticipate the obstacles created by these parties over the implementation of Article 140. There is no doubt that all the geographical, historic and demographic documents asserted that these areas were an

⁴²² Interview with Nermeen Osman, on 26 April 2010, Sulaymaniyah

⁴²³ Interview with Minister Falah Mustafa Bakir on 1 May 2009. Bakir was responsible for the KRG's Department of Foreign Relations, overseeing affairs between the KRG and the international community in the fifth Cabinet; he held the same position in the sixth Cabinet. From 2003 to 2006, he served as Senior Adviser and Minister of State for former KRG Prime Minister Nechirvan Barzani.

integral part of the Kurdish areas, and for this reason, the Kurds had relied on the legal and constitutional way as a road map and as the only guarantee for the return of these areas to the Kurdistan Region.⁴²⁴

In addition certain technical factors contributed to delays in implementing Article 140, for example, choosing the chairmanship of the Committee and simultaneously ascertaining the neutrality of the committee members. Another important cause was the allocation of the budget for the Commission on Article 140, which was delayed for two months and also affected the formation of committees and sub-offices. In this context, Nermeen Osman explained that this committee initially faced considerable difficulties regarding the way it set to work, since information and data on the citizens was either random or was largely absent. However, the phase of work on the forms for collecting information and data ended in 2007. The same process was started in central and southern Iraq in May 2010, and the period for this phase was strictly limited. At this stage other sources of assistance were utilised to accelerate implementation of this constitutional Article, such as The Department of Nationality, ration cards, and records of the displaced who had moved with their jobs to their areas.⁴²⁵

Similarly, Khalid Shwani confirmed that the Committee for 140 faced many obstacles created by the general secretariat of the Council of Ministers, the purpose of which appeared to have been to waste time by cataloguing the Kurdistan List within this time frame, along with other obstacles related to the Committee on Property Disputes that was part of the process of normalizing the situation in Kirkuk. Ironically, the Chairman of this Committee was an individual who had no faith in Article 140. He created many difficulties, and was behind the lack of progress in the Committee's work, proof being that there were 43,000 cases before the Committee, but fewer than 7 percent of owners had succeeded in having property returned to them. After completion in the Committee for Article 140 the cases would be sent to the Appeals Chamber of the State Property Committee. One of the significant factors causing the

⁴²⁴ Interview with Minister Falah Mustafa Bakir, on 1 May 2009, Erbil

⁴²⁵ Interview with Nermeen Osman, on 26 April 2010, Sulaymaniyah

postponement of the implementation of Article 140 was that returning answers to this Committee could take up to two years, whether ratified or not.⁴²⁶

The Chairman of the Committee, Hashem Shibli, eventually resigned under pressure from the Arab groups. Moreover, in order to create obstacles to the work of the Commission some names were added by Nuri Al-Maliki on one side without reference to the other political blocs. On 31 March 2007, their members were withdrawn from the Committee on the basis of flimsy arguments that also had a negative impact by delaying implementation of Article 140. On the other side the Iraqi government itself was impeding its operation.⁴²⁷

Additionally, the majority of wafideen Arabs who had resettled in Kirkuk and were supporters of Muqtada al-Sadr threatened the implementation of Article 140 and would provoke armed resistance. For this reason they encouraged their loyal followers to remain in Kirkuk and not to leave Kirkuk by force or without force. The objective behind the alliance of the Iraqi Turkmen Front with the Arab bloc was to obtain regional and international support against moving forward on implementing Article 140. While the Islamic Supreme Council of Iraq (ISCI), which had previously been chaired by ‘Abd al-Aziz al-Hakim, and was now chaired by his son, Ammar al-Hakim, argued that they were more moderate than the rest of the other parties since they were ready to discuss Kirkuk’s future with the Kurds in order to find a way out of this thorny issue. The most critical groups in the various Sunni parties refused to be involved in any discussions and regarded the Kurds’ political views as unrealistic.

What became a common phenomenon in the status of Kirkuk was that from time to time the Arab and Turkmen blocs called for suspension of the Article 140 process, and in protest against Kurdish control over the council threatened to boycott it. However, the Kurds accused the government of procrastination in implementing Article 140. Rather disastrously, every time enactment of Article 140 was postponed, with the excuse of Iraqi national interest and for technical rather than political reasons, the Kurdish politicians accepted the delay. It is also important to remember that the wafideen had not been forced to leave. In fact, the process of normalisation

⁴²⁶ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

⁴²⁷ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

included a policy whereby their departure was voluntary and those opting to leave were compensated.⁴²⁸ Regarding the types of problems, whether legal or political, that impeded the implementation of Article 140; Khalid Shwani argued that most obstacles were political and sometimes administrative, with political purposes underlying them. He explained that the 140 Committee had revealed many obstacles and many violations, and that most of the complaints that had reached them from the people of these areas had been included in the official report to the Iraqi parliament.⁴²⁹

The taking of a general census had not been carried out in Iraq for over 23 years. As Iyad Jamal al-Din has illustrated, political factors were behind the failure to carry out any general statistical surveys. Saddam Hussein was alleged to have inflated earlier figures for fear of other neighbours; for instance, following the invasion of Kuwait, when the UN agreed to the oil-for-food programme, Saddam began to increase the population numbers, announcing that, based on the ration cards, the population of Iraq had swollen to 25 million people. After the fall of Saddam Hussein the new Iraqi government, particularly the Ministry of Trade, adopted the same approach which was dependent on the ration card. Obviously administrative corruption had become generalized all over Iraq, but the Ministry of Trade was one of the largest sectors in which corruption prevailed. It is not reasonable that in four years (2005-2009) the population of Iraq could have shot up to 32 million people. It is clear that the essence of corruption in Iraq is due to the lack of accurate census data.⁴³⁰ On the other hand, the main Arab parties and some other factions had refused for political purposes, to hold a census, particularly in Kirkuk. Another justification for these groups was that the disputed areas were not limited on Kirkuk, but also included areas in central and southern Iraq such as the disputes between Karbala and Rumadi. A critical point facing Kurdish politicians was why they agreed or were forced to link these different issues to the issue of Kirkuk, since the types of disputes between Kurds and Arabs over Kirkuk were completely different from the sorts of disagreements in other areas of Iraq.⁴³¹

⁴²⁸ Interview with Nermeen Osman, on 26 April 2010, Sulaymaniyah

⁴²⁹ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

⁴³⁰ The seminar was arranged by The Henry Jackson Society (HJS) under the title "The New Democracy in Iraq", in the House of Commons, London, on 24 June 2010.

⁴³¹ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

What was very much more surprising for Kurds, when the Arab and Turkmen blocs in the Iraqi parliament deliberately linked the issue of Kirkuk to the provincial elections law and proposed to delay the election in the Kirkuk Governorate until after the referendum had been held to decide its status. It was first necessary to concentrate on the Kurdish position, involving protests on a secret ballot for setting up a power-sharing arrangement with Kurds in the Kirkuk region, like that which enabled both Turkmen and Arabs to get the same amount of power. On the other hand, the Arabs and Turkmen blocs wanted to adopt a version that would postpone a decision on Kirkuk while authorising the election in other provinces.

In this charged political atmosphere, this had notable effects on the specific proposal regarding Kirkuk. As the situation evolved, these groups (Arabs and Turkmen) were able to pass Article 24 of the bill by 127 out of 142 members of parliament (MPs) without any Kurdish representation. This Article required power in Kirkuk to be shared equally among the major ethnic communities. The Arab and Turkmen blocs were supported by parliamentary Speaker Mahmoud Mashadani, who succeeded in organising a secret ballot to ensure Article 24's passage. In turn, the Kurdistan Alliance boycotted this meeting of Parliament when, as expected, President Jalal Talabani used his veto power to reject a previous version of the bill; the Presidency Council of Iraq also decided unanimously to reject the bill because of the Kirkuk clause, and sent it back to the parliament to review. Because ratifying the law for provincial elections had stalled, these events contributed to delaying the October 2008 election. Thereby, negotiations continued on 10 September 2008, the law was finally passed on 24 September 2008, and elections were expected to be held by 31 January 2009. The compromise reached was that Kirkuk would be dealt with separately, and elections in Kirkuk and the three Kurdish autonomous provinces would be held at a later time. In short, For the Kurds, the effects of these events and actions among the parliamentarians created an atmosphere of mistrust of the previous coalitions and their political agreements with the main Iraqi parties.⁴³²

On 22 July, the Kurds were faced with two choices: first, whether the vote on Article 24 of the Provincial Elections Law No. 36 of 2008, should be in public or secret; but

⁴³² Interview with Khalid Shwani, on 22 April 2010, Kirkuk

the Kurds did not altogether trust their allies to vote for their side. The second option was that originally this Article was not intended to be voted on. There is no doubt that these groups had plotted and planned to vote by secret ballot, and the Kurdish list was aware that the option for a public vote on the Article would fail. Therefore they refused to agree to the Article being subjected to a vote, and decided to boycott the meeting. However, some Kurdish politicians were shocked to see that all the Iraqi groups, including Shiite, Sunni and Turkmens, whether allies or opponents of the Article, had united against the interests of the Kurds and also voted for Article 24. As a result of these conspiracies, the veto was used against the Article in the Council presidency and it was re-sent to the Iraqi Parliament. Thus, Article 23 was born as an alternative to Article 24 and was accepted by the Kurds. Clearly, all attempts to link the matter of Kirkuk to the election law were simply political manoeuvres by Sunni groups in order to delay the elections in Kirkuk, as well as to disrupt the political process, even though they knew that they could not obtain the necessary votes to win in the Provincial Council. This secret planning by Arab and Turkmens to pass a draft election law for the provincial councils represented something of a political disaster or a political conspiracy in the history of the new Iraqi parliament.⁴³³

In domestic terms, the events of 22 July 2008 represented a coup as far as Article 140 was concerned. In focusing on these events, Shwani has noted that what happened on 22 July was programmed and planned by chauvinistic Arab parties supported by other parties within the government, and with the assistance of the embassies of several countries that were able to write an alternative Article. The Kurdistan List or Kurdistan Alliance asserted that the election should be held in Kirkuk in the same way as in the rest of the provinces in Iraq, and the Kurds took a firm stand against any postponement of elections ostensibly justified by non-implementation of Article 140 because not all Kurds and Turkmens had gone back to Kirkuk. In the Iraqi parliament, prejudiced Arabs in Mosul, Tikrit and Diyala had collected signatures with the aim of postponing the Kirkuk election, which was supposed to be held based on the division of power among the four ethnic factions (Kurds, Turkmens, Arabs and Christians) in Kirkuk with a ratio of 32 : 32 : 32 : 4. However, the Kurdistan List rejected attempts to delay the election process, and used their allies in the Iraqi parliament, particularly

⁴³³ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

the Supreme Islamic Council, Islamic Daawa Party and National Coalition List, in order to resolve this problem, against the other groups including Sadrists, Virtue Party, Islamic Party, and Iraqi List.⁴³⁴ According to Edalat Omer Saleh the numerous technical and political obstacles in the disputed areas meant that large numbers of people were deprived of the right to vote, while terrorist acts caused delays in the transfer of ration cards for the evacuees returning to their original places as well as failure to register them on the voter lists. These difficulties created problems for the 256,000 families in the disputed areas who were unable to vote; nevertheless, the Kurds managed to gain a considerable number of votes in these areas.⁴³⁵

7.4 SEEKING SOLUTIONS TO CHRONIC DILEMMAS OF THE ISSUE OF KIRKUK

Given such conditions concerning Article 140 and addressing the case of Kirkuk two directions became apparent between Kurdish intellectuals and their politicians. First, they believed that the annexation of Kirkuk was a legitimate right of the Kurdish people, and that it was therefore incumbent upon Kurdish politicians to prove this right and impose it on other Iraqi parties before entering into any negotiations with them, in which case it would not be necessary to put this issue as an article in the Constitution. A second and alternative belief was that the presence of this Article in the constitution gave more guarantees for the Kurds. In this respect, Masoud Barzani asserted on many occasions that putting Article 140 into the Constitution meant granting it legal legitimacy. In this way, obstacles could be put in the way of any Iraqi factions trying to change or deny this right; meaning that the three provinces would be able to reject any attempt to change or abort this Article. In fact, the Arab parties aimed to procrastinate over implementation of Article 140 on the grounds that, due to “terrorist operations”, it was impossible to put into practice the general statistical processes which represented the second step after “normalization” and which would be followed by a referendum on Article 140.

⁴³⁴ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

⁴³⁵ Interview with Edalat Omer Saleh on 15 April 2009, Erbil

One of the most heated discussions about the situation in Kirkuk was that, without any serious intention to implement Article 140, the challenges would be more complex and the consequences more severe. In order to reach a real solution it would have to be through compromise, with each party making concessions to the other. At first sight it seemed that equal power sharing or agreeing to put Kirkuk under administrative control of the Kurdistan Region would be difficult to concede, and it is tempting to suggest that there was a tendency to compromise, either to equal power sharing inside the Kurdistan Region or no power sharing outside the Kurdistan Region. In any event, if Kirkuk was incorporated into the Kurdistan Region, the Kurds would have to reassure all the other ethnic groups that their rights and power-sharing would also be guaranteed.⁴³⁶ As we have seen, the Kurds realised the seriousness of the political positions of those who sought either to derail the implementation of Article 140 or else to abolish it completely. From this standpoint, the most powerful political weapon available to the Kurds derived from the Iraqi constitution, which gave them the ability and the power to block any amendment procedure by exercising their right of veto.

It was suggested that the long-demanded reconciliation by the Arab-Turkmen blocs should be implemented on the basis of equality through a new power-sharing deal, whereby each of the three main ethnic groups would receive 32 percent of the administrative positions in Kirkuk, with a four percent share reserved for Christians. Interestingly, the Arab bloc claimed it would appoint Arabs to the posts of deputy governor and deputy head of the Judiciary council, while the Kurds insisted that the agreement should cover appointments at all levels, from the directors of the various directorates down to low-level workers. As a result, after nearly a year of negotiations over seats, five members of the Arab bloc had their positions restored and ended their boycott of the Kirkuk council on 4 December.⁴³⁷

In terms of power-sharing, and unhappily for many Kurds, Jalal Talabani had referred on numerous occasions to the “Brussels model” for Kirkuk within the framework of consociational democracy. Further, to response about the possibility applicability the model of Iraq in Kirkuk, Iraq, as if the Arab or Turkmen be a governor in Kirkuk?

⁴³⁶ Interview with Dr. Nouri Talabani, on 12 April 2009, Erbil

⁴³⁷ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

President Talabani replied: *“Yes, we said when the normalization of the situation in Kirkuk be achieved, and when the people of Kirkuk decide their fate. At that time, we will support that the Turkmen or the Arab native take a position of the governor or mayor. Additionally, even at this time, I personally called for model Brussels in Kirkuk, demanded the distribution of positions as follows”* (32: 32: 32:4).⁴³⁸

In simple terms, some Kurdish analysts and intellectuals announced that this statement meant giving up of the Kirkuk as a Kurdish land (*Kurdistanibuny Kirkuk*), which completely contradicted earlier statements that not an inch of land of Kirkuk would be relinquished. It should be noted that the Kurds had insisted on power-sharing based on a numerical proportion of the population for each of the groups in Kirkuk. For the ITF and Arab groups, equal power sharing among Kirkuk’s ethnic groups (except Christians) in this context, according to the formula of 32:32:32:4, was seen as a rare opportunity for managerial positions and for preventing the Kurds from monopolising power in Kirkuk. In terms of these strongly divergent positions, Iraqi President Jalal Talabani has clarified and said *“We said that in Kirkuk, Kurds, Arabs and Turkmen must distribute the jobs equally (32%) for the Arabs and (32%) for the Kurds and (32%) for the Turkmen and (4%) for the Christians, but it should be reflected in every levels and functions. Whereas in the oil company of Kirkuk from within 15 thousand workers and staff, there is (450) Kurdish workers exists in the company. Indeed, this distribution of functions which came at the time of Saddam Hussein aimed at Arabization and the expulsion of Kurds, Turkmen workers and bringing Arabs from the south of Iraq”*.⁴³⁹

The facts were clear and unambiguous; however, the Kurds were highly sensitive to the notion of the division of power in Kirkuk. As shown by Kaka Rash, since the more experienced Kurds had obtained 26 seats in the Kirkuk province it was natural to take the post of Governor and other senior positions. However the Kurds were

⁴³⁸ Interview President Talabani with Al-Hurra, on 7 October 2007, Available at: <URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=4676&type=interviews> Access Date 5 April 2009.

⁴³⁹ Interview with President Jalal Talabani in the Al- Iraqiya satellite, on 25 February 2008. Available at: <URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=5290&type=interviews> Access Date: 5 April 2009

wrong to neglect the participation of other ethnic groups in the higher administrative positions in the city, and their mistake led to objections and criticism of their policy both within and outside Iraq, based on the need for power to be divided according to consensus politics. It was apparent that, as noted above, Kurds were not against the division of authority (i.e., 32:32:32:4) according to Article 23. It was clearly a lack of confidence between these factions in implementing Article 23 in a single phase. As it mentioned above, the Kurds themselves demanded that any division should include all levels, from governor to the lowest-ranking civil servants.⁴⁴⁰

The Kurds were concerned about non-application by the Turkmens and Arabs in Kirkuk of other paragraphs of this Article, particularly in instances where those who had demanded, and benefited from, higher positions would break their word about implementing other paragraphs of Article 23. As noted, these groups were applying the political agendas of neighbouring states. The Kurds therefore insisted on the application of this article as a whole and not in stages. Politically it would have been in the interests of the Kurds if they could succeed in recovering the districts that had been taken away and re-joining them into Kirkuk, given that they formed a majority in numerical terms compared with Arabs and Turkmens. Thus, holding referendum in these districts might make it possible for these areas to be restored to the Kurdistan region.⁴⁴¹

Several outstanding problems regarding the various possible futures for Kirkuk that need to be addressed have been outlined here. Thus there has been the debate as to whether Kirkuk should become part of the Kurdistan Region or remain outside Kurdish boundaries or be given a special status. Acceptance of such an outcome might, in the long run, provoke serious repercussion and pose a significant challenge to regional security. However, it should be noted that the various possibilities suggested for Kirkuk's special status, whether inside or outside the Kurdistan Region, represented a compromise solution: (1) Kirkuk would gain a special autonomous status inside the Kurdistan Region, with power-sharing arrangements for its governance; (2) Kirkuk would be inside the Kurdistan Region with autonomous status

⁴⁴⁰ Interview with Kaka Rash, on 22 April 2010, Kirkuk

⁴⁴¹ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

but without any mechanism for power sharing; (3) Kirkuk would be outside the Kurdistan Region with special autonomous status; (4) Kirkuk would be outside the Kurdistan Region with an autonomous status and under majority (presumably Kurdish) control. According to Article 119, governorates were allowed "...to form regions that have powers in excess of governorates". Therefore, based on this Article the possibilities for creating a special status for Kirkuk outside the Kurdistan Region would be achieved, in the event of the Kurds in Kirkuk being accepted.⁴⁴²

Various ideas about resolving the Kirkuk issue were put forward as recommendations. From Dr Nouri Talabani's perspective,⁴⁴³ Kirkuk could be returned to the Kurdistan Region as an autonomous Region, which would give its citizens the right to run their oil and gas resources while taking account of what was stated about exclusive powers according to the Iraqi Constitution. If this suggestion was accepted, it would establish two councils, one 'legislative' and the other 'administrative'. The Legislative Council would be selected by the citizens of Kirkuk, while the president and the members of the Administrative Council would be appointed by the first council. Thus, the two councils would have responsibility and authority for managing political affairs, the economy, reconstruction and development, and education so that, for example, they would decide about keeping the Peshmerga forces in Kirkuk city, and whether to invite in the Iraqi forces. If this proposal succeeded, it would in effect be regarded as the guarantee for protecting Kirkuk's autonomy. Perhaps most significant, it could be arranged through an international conference under UN supervision as a way to find common ground, and to prevent any parties (whether the Kurdistan Region or the Iraqi government) from changing Kirkuk's new status in the future. This reality would be recognised by the constitutions of both the Kurdistan Region and the Iraqi State, and at the same time would inhibit any outside interference by the regional states.⁴⁴⁴

One of the scenarios suggested by researchers to resolve the issue of Kirkuk has supported an autonomous region of the city of Kirkuk, with its pre-1968 borders, to be officially part of the Kurdistan Region through a free referendum. Kirkuk would have its own constitution and budget, as well as its own security forces. The distribution of

⁴⁴² Anderson and Stansfield, '*Crisis in Kirkuk: The Ethnopolitics of Conflicts and Compromise*', (United State of America :University Pennsylvania press, 2009), pp. 204-6.

⁴⁴³ Interview with Nouri Talabani in *Awene* newspaper, no. 189, 9 September 2009

⁴⁴⁴ Interview with Nouri Talabani in *Awene* newspaper, no. 189, 9 September 2009

posts and administrative positions and resources at all levels would be made equally between ethnic groups and with a full guarantee of cultural and religious rights, which should be protected and must not be exceeded by either Iraqi government or the KRG. It was also argued that this compromise represented a reasonable resolution that granted the Kurds “ownership” over Kirkuk, but without real control or powers. In that case, it could be deemed that Kirkuk did not belong to any group.⁴⁴⁵ In this context, some Western scholars suggested to giving Kirkuk special status within the Kurdistan Region, handing over its control to the central government, and delaying any solution for ten years. Depending on consociational politics and the compromises offered by each of the Kurdish and Arab parties, an understanding could be reached whereby control over the management of Kirkuk’s oil would remain in the hands of the federal government, while creating a special status for Kirkuk within the boundaries of the Kurdistan Region.⁴⁴⁶

Additionally, Dr Nouri Talabani proposed that, in a situation where Article 140 was not implemented and the Iraqi government did not seriously find a resolution, the district from Prde to Sirwan Lake in the Kirkuk area could be made into an autonomous region, provided that it was to be part of the Kurdistan Region. Citizens in these areas would be able to have representatives in the parliament of Kurdistan, from among whom the Deputy Prime Minister could be selected.⁴⁴⁷ Dr Nouri Talabani also suggested to the Kurdish authority that the Kurds might agree to waive the district of Hawija, and merge it with the Salahaddin province. Historically this district had been part of Kurdistan, but now had a majority population of Sunni Arabs and had become the centre of the Baath Party, meaning that it would be difficult to control its re-entry into the Kurdistan region. Also other areas could be integrated into the Kurdistan region more easily. The Sunni groups at this time were in a weak position, and had the Kurds suggested such a proposal to them, they might well have agreed to return areas withheld from the Kurdish provinces by the Iraqi regime to the

⁴⁴⁵ Anderson and Stansfield, *Crisis in Kirkuk, op. cit.*, pp. 231-2

⁴⁴⁶ Anderson and Stansfield, *Crisis in Kirkuk*, *ibid*, p. 189

⁴⁴⁷ Nouri Talabani, a citizen from Kirkuk and a jurist, was one of the individuals whose views were sought by the US, UK and UN in 2008 on resolving the Kirkuk issue.

Kurdistan Region. However, the situation changed, and they became strongly opposing to giving back Kirkuk to the Kurdistan region.⁴⁴⁸

In response to the stinging criticisms made by the majority of Kurds and the intellectual elite against their Kurdish politicians in Baghdad, was that the Kurdish negotiators did not use the 'the veto power' that gave them political power to defend the gains, including Kirkuk, that they had already made in the TAL. The Kurdish politicians were accused of having given up this right and bargained with the Sunni and Shiite parties over political posts and party interests, and some critics even reached the point of arguing that the politicians should bear the historical responsibility. In focusing on this issue, Nechirvan Barzani has asserted that the Kurdish leaders (Talabani and Masoud Barzani) had not made concessions over Kirkuk:

Our demands are the same, and our concerns are the same. We simply heeded the advice of the Americans and the United Nations to utilize their technical expertise. It was a bitter reality, for all Kurds, that Article 140 was not implemented by 2007, as was assured in the Constitution. However, we must be pragmatic and reasonable. Thousands of claims on property, housing, the right of return, and other important issues take time to resolve. The relevant authorities simply have not had the capacity to move forward. At the same time, the strategy to delay consideration by leaders in Baghdad has been absolutely unacceptable, and this is why you have heard all of our leaders, myself included, urge the federal government to adhere to its constitutional responsibilities. And we will demand due attention to these issues from the coming government before we join any coalition. The US does, indeed, fully understand our position and supports the implementation of Article 140, particularly the peaceful resolution of any disputes. We are for peaceful resolution as well, of course. The US support for Article 142 is not a problem. Barzani confirmed that he has no objection to Article 142; every constitution must have stipulations for amendments. It is essential to recall, as I mentioned earlier, that Article 142 cannot take any action if 2/3

⁴⁴⁸ Dr Nouri mentioned to another political meeting concerning Kirkuk issue in the office of Nechirevan Barzan in 2004, which attended also Peter Gilbert as a consultant who was former ambassador to the U.S. in Bosnia. He also endorsed the view of Dr. Nouri and even suggested to them that it is better not to request Tal Afar that has the same problem as Hawijah. Personal interview with Dr. Nouri Talabani, on 12 April 2009, Erbil

of three governorates (for example our three governorates) reject it. I do not worry at all about Article 142.⁴⁴⁹

Perhaps the most significant item in this analysis, with its focus on the obstacles to implementing Article 140 as discussed above, was the situation from Nechirevan Barzani's perspective, and his argument that it was important to pay close attention to the wording of Article 140, when one takes into consideration the progress achieved on Article 140 over the last few years and how the Kurds can 'annex' Kirkuk to the Kurdistan Region. Barzani also insisted that the issue of the disputed territories was about justice, not about land. The primary objective was to ensure that all those forcibly displaced by the previous regime, not only the Kurds but also all the Arabs, Turkmens, Chaldeans, Assyrians, and other ethnic and religious groups, had the right to determine their fate, as stipulated in Article 140. Furthermore, Nechirvan Barzani also mentioned his firm belief in the importance of power sharing and minority protection in diverse cities and governorates such as Kirkuk; "The Kurdistan Parliament has such provisions for minorities in our Region, and this has helped ensure a sense of security and shared responsibility." If it was decided that Kirkuk should join the Kurdistan Region, he considered it of the utmost importance that all citizens and all ethnicities should be included in the government; "Kurds are tolerant people and this is and should remain a source of pride."⁴⁵⁰ In this matter, Dr Nouri Talabani expressed the same idea, noting that the Kurds were always being accused of seeking to control Kirkuk to gain possession of its rich oil and gas fields. The Kurds had therefore to prove through their actions that this was not the case and was not a reason for returning Kirkuk to the Kurdistan Region; they must seek, on the contrary, to exploit these resources for the reconstruction of Kirkuk itself, and to use the benefits to assist all the residents.⁴⁵¹

⁴⁴⁹ Interview with former Prime Minister Nechirvan Barzani, and received his responses through email, on 6 May 2010.

⁴⁵⁰ Interview with former Prime Minister Nechirvan Barzani, and received his responses through email, on 6 May 2010.

⁴⁵¹ Interview with Dr. Nuri Talabani, on 12 April 2009, Erbil

CONCLUSION

In the current situation, the Kurdistan Region is a vital part of Iraq and all the changes and challenges in the political arena in Iraq will directly affect the political process in Kurdistan. At the same time the future of Iraq has occupied a significant place in US strategy, consequently, could say the Kurdistan Region also occupies the same attention. Particularly, when Iraq's stability would reflect the success of US policy and will enhance American credibility as well as US interests in Iraq and in the region, as it has been deemed that, "Iraq is a centrepiece of American foreign policy".⁴⁵² In this context, it could be concluded that achieving stability and opportunities for a better future for Iraq is of vital interest for all sides, and all Iraqi parties are strongly recommended to move forward on national reconciliation. One of the most difficult and significant international challenges in decades for US interests is how to put Iraq together so it can play its part in regional and even global stability. Meanwhile, the US administration wants to avert anarchy in Iraq; it wishes the ethnic balance between Arabs and Kurds in Kirkuk to prevail.

Article 58 of the TAL was clearly intended to resolve the problem of the disputed territories but has also provided the broad outlines of a possible solution to the issue of Kirkuk and the disputed territories. The article did not come into effect during Iyad Allawi's transitional government or the interim successor government of al-Jaafari, but after a permanent constitution had been approved. These circumstances affected the Kurds, and they were deeply angry about the issue of Kirkuk. They then found Article 140 in the Iraqi Constitution: it had been drafted to resolve the complex problem of the future status of Kirkuk and other disputed territories, and was included in the new Iraqi constitution to legitimize rectification of the policies of the former regime, including the crimes carried out among Kirkuk's various ethnic groups. In effect it was a witness to the emergence of an alliance of Sunni and Shiite political blocs towards Kurdish demands on oil, the budget, and Kirkuk. Clearly there was a paradox, with all the Iraqi opponents in the three cabinets' government deliberately delaying the implementation of Article 140 until 31 December 2007. They then claimed, under the pretext of a legal limitations order having expired, that the Article

⁴⁵² Baker and Hamilton, *The Iraq Study Group Report*, (Washington, DC: GPO, 2006) p.2

had lost its legitimacy, could no longer be implemented, and therefore was to be regarded as dead and buried.

However, tensions escalated between the KRG and the Iraqi government over Kurdish demands for control of disputed areas, as the KRG, historically fearful of persecution by the Arab majority, struggled to incorporate all the disputed areas. In view of these chronic differences between the two sides, it was necessary to concentrate first on the implementation of Article 140 which would involve accelerating the approach to Iraqi state-building. In addition, Article 140 required a census and a referendum in Kirkuk and other disputed territories to determine the will of their citizens. Obviously, the delays in holding a census not only made it difficult to assess the merits of competing ethnic and sectarian claims, but also created ambiguity in defining the territorial borders of regions and oil fields belonging to one or another neighbouring region.

The Turkmen perspective focused on support given by the two main Kurdish parties to the displaced persons returning after 2003. The Turkmen believed that the Kurds' actions were intended to strengthen their position in Kirkuk, and did not hide their worries about the numerical superiority of the Kurds in Kirkuk, accusing them of pursuing a Kurdification policy. On the contrary, by focusing on the Kurds' attitudes they established that the rights of Turkmen and other ethnic minorities would be protected constitutionally. Indeed, there was also a cooperative strategy uniting the Arab community, whether Sunni or Shiite, with the Turkmen, in which they stood strongly against the notion of Kirkuk's inclusion in the Kurdistan Region, proposing instead that it retained its current relationship with the Iraqi government or was kept of the Kurdistan Region by being made a region in itself. Nevertheless, the Arab and Turkmen alliances resented Kurdish control of positions of power in the Kirkuk governorate, and were strongly opposed to the implementation of Article 140.

However, the real debate concerned the attitudes of some Turkmen groups, their hostility to the KRG, and their opposition to the application of Article 140. Although they had been subjected to ethnic cleansing by the Iraqi government in Kirkuk, it was not to the same degree that the Kurds had experienced. Some have argued that this was due to some trend associated with Turkish doctrine that denied the existence of the Kurds or the formation of any Kurdish entity in any part of divided Kurdistan.

Nevertheless, the Kurds had understood the concerns of the Arab and Turkmen factions to divide the higher authorities in the province and their participation in the management of Kirkuk. The Kurds announced that they were not against the division of powers between these components provided that this division included all the administrative functions of the highest positions until it reached the service functions. Shwani argued that among the 65,000 employees in Kirkuk, 32,300 were Arabs and only 15,000 were Kurds. It was for this reason, and because the Kurds had insisted that the division should be equal in all positions, that the Kurds were pushed into accepting Article 24.⁴⁵³

The Kurdish goal to control Kirkuk was quite different from the Sunni and Shiite approach to gaining control of the Iraqi government and other mixed cities. In turn, the Kurds favoured reliance on the Constitution to gain control of Kirkuk, whereas the other groups played for time through evasive tactics, and frequently resorted to violence. In fact, the absence of political courage within Iraqi politics in general caused disruption and time-wasting in implementing Article 140. However, as long as the policy of Arabization was recognized by the new Iraqi Constitution, all the Iraqi factions needed to find a peaceful way of solving the dispute since it had been constitutionalized. Furthermore, the new Iraqi government should be committed to implementing Article 140 as a road map for finding a way out of the prevailing political crisis for the Iraqi government and the Kurds. Otherwise these disputed areas would be left unresolved, meaning these cities and Iraq would be left to a dark future of instability that would weaken the capacity of the state and inflame ethnic and sectarian conflict.

Regarding the possibility of the Kirkuk governorate returning to the Kurdistan Region with a special autonomous status, the draft of the Kurdish constitution would need to be amended, although approval had not yet been given for it to expand its powers and prerogatives. It has been argued that “Kirkuk would become a federacy within the Kurdistan Region”⁴⁵⁴ However, all the parties found the status quo unsatisfactory and Article 140’s fate remained unclear after each postponement over spurious technicalities. The question is raised here, if Article 140 was not fully implemented,

⁴⁵³ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

⁴⁵⁴ Anderson and Stansfield, *Crisis in Kirkuk*, *ibid*, pp. 191-2, 231

whether the Kurds adopt other methods for joining up the disputed Kurdish territories, and declare the boundaries unilaterally, particularly as they had the capability and resources to return those areas. The Kurds might have found this a difficult step to take, since the KRG at that time lacked both central government funding and a strong infrastructure to support them. It was arguably, a matter as to whether the Kurds would be obliged to accept a significantly amended version of Article 140, or whether there should be a new, legally sound procedure to determine the boundary of the Kurdistan Region. In any event, if the issue of Kirkuk was not resolved, the real fear for the Kurds was that it might become a chronic problem like Darfur and Kashmir, for which the United Nations had been unable to find a solution. Resolving Kirkuk was linked firmly to the political stances of the other Iraqi factions as well as to the changes taking place in the Iraqi political arena.

For the KRG's, the basic mechanism for implementing Article 140 could be applied in two phases. First, demographically, it represented the return of displaced Kurds who had been Arabized to Kirkuk, and the return of Arab newcomers to their governorates of origin. Second, geographically, it needed the restoration of Kirkuk's administrative boundaries, which had been changed by the previous Baathist regime during its long rule. In other respects, the aims and objectives of Article 140 were not only to resolve the status of the Kirkuk territory but also to find appropriate settlements for other disputed territories in the rest of Iraq. In doing this, dealing with some complex and difficult cases would remove a serious obstacle to a just solution. Regarding the implementation of Article 140, the Kurdish strategy focused on restoring the status of the former administrative boundaries of the governorate that had been deliberately changed in 1976 to make the Kurds a minority in those areas.

The motive for not implementing Article 140 by the Arabs and Turkmens was to avoid giving any legal legitimacy to the Article 140, thereby making it invalid, as well as adversely affecting the Kurdish people. In general, extending the time for its implementation was not in the interests of the Kurds, and led to a lack of credibility among politicians. The Kurdish public felt that they were always paying the price for the errors of the political positions of their leaders, which was counterproductive to general Kurdish goals, and also opened the way to those seeking to obstruct the implementation of Article 140. Thus, despite the obstacles and the Iraqi government's

deliberate stalling over Article 140, the contradictory positions of the two main Kurdish parties could well have been the reason why its aims failed to be implemented.

What could not be hidden were the controversies and distrust among the ethnic groups. Related to this, no accurate census had so far been undertaken, while the country's growth and development depended on the census. Further, the lack of general statistical was a strong factor in the perpetuation of corruption which was also a serious problem for Iraq's entire economy. In this context, it was surprising that the political parties had themselves created obstacles to holding a census. Some ethnic groups appeared unwilling to reveal their true numerical size, particularly in Kirkuk and its environs but also in other disputed areas. If all these considerations are taken into account, what became collective thinking on how to tackle Article 140 and its implementation would rely ultimately on political consensus and political equilibrium. It is logical to say that the creation of Article 140 needed consensus among the Iraqi parties, and therefore, any amendments to the Article would also require consensus, since the only guarantee for its implementation was consensus and equilibrium in attitudes, principles and powers.

The KRG was aware of the fact that Kirkuk faced threats from three different groups; al-Qaeda, Ansar al-Islam, and remnants of the Ba'ath Party. Indeed, this political atmosphere had a noticeable effect on the increase of terrorist attacks that were an attempt to wreck any improvements in the political environment. Certainly the Kurds have made strenuous efforts to guarantee the political and cultural rights of all groups living in Kirkuk and its environs since the KRG recognizes that Kirkuk has different needs from other parts of the region and that the rights of Arabs and Turkmen must be guaranteed. However, in the current situation, all ethnic components within Kirkuk agree that they need to loosen Baghdad's grip on the governorate. They have struggled to gain financial independence from Baghdad with an enhanced power-sharing agreement that has split the top government positions among the three major ethnic groups and that also delivers basic services to its citizens. In this context, it can be assumed that the broader problem with Kirkuk has never been ethnic tensions, but rather state repression of Kurds and other ethnic groups. It is also worth noting that the Kurds in Kirkuk enthusiastically seek a negotiated, peaceful and consensual

solution. Furthermore, all ethnic groups share common interests in providing better services and more security, since improving services for all ethnic components will enhance the possibility of bringing people together politically.

One of the most heated discussions about the situation in Kirkuk was that, without any serious intention to implement Article 140, the challenges would be more complex and the consequences more severe. The major obstacles impeding the implementation of Article 140 were political and sometimes administrative. In order to reach a real solution it would have to be through compromise, with each party making concessions to the other. In other words, the only guarantee of the future of Kirkuk was implementation of this article, which was reliant on the will of the Iraqi government. At the same time, the Kurds needed to work at all levels to find support, among the major Iraqi political parties as well as from the UN and the international community. What could be concluded was that the future of Iraq depended on finding a resolution of the status of Kirkuk that it would be acceptable to all Iraqi parties.

Chapter 8:

CONSIDERING OIL CONTRACTS BETWEEN FEDERAL GOVERNMENT AND KRG

“The KRG's oil contracts are legal, constitutional and legitimate and they are in the interests of Iraqi people”

(President Jalal Talabani) ⁴⁵⁵

INTRODUCTION

After the discovery of oil in Iraq the Kurds suffered various kinds of exploitation and repression. Regrettably, all Iraqi governments have always resorted to violence in order to keep oil out of Kurdish hands, and indeed went further when they deliberated over blocking exploration and development of fields in Kurdistan. Saddam Hussein was determined to use Iraqi oil revenues to finance the military campaigns that destroyed nearly 5000 Kurdish villages, and he spent huge sums on a chemical and biological programme that was used to manufacture the poison gas which killed thousands of Kurdish civilians.

In terms of evaluating the situation post-2003, the Kurdish leadership have declared several times that they have not forgotten what happened in the past, but that they are focusing these days on peace, prosperity and wellbeing for Kurdish citizens, both now and in the future. Thus, they defend the Kurdistan Parliament's act as a legal right when they passed the Kurdistan Oil and Gas Law in August 2007, which authorised the KRG Ministry of Natural Resources to negotiate and agree to long-term oil contracts. A positive point for Kurds is that an abundance of natural resources has meant relying on themselves to secure the supply of oil products in creating a refining industry, and also to use these resources effectively for the benefit of their own population and for all the Iraqi people. Beyond that, the Kurds are aware that ensuring

⁴⁵⁵ Iraqi Kurdistan begins oil exports, on June 1, 2009, Available at:
<URL:<http://www.ekurd.net/mismas/articles/misc2009/6/investkurdistan456.htm>>
Access Date: 22 August .2009

security, stability and prosperity for the Kurdistan Region will require a peaceful and cooperative relationship and coordination with all Iraqi factions.

The equitable distribution of this revenue became a contentious issue in Iraq. One of the significant disputes between the KRG and the Iraqi Government concerned the oil fields within the disputed territories and whether they would be run by the KRG or the Iraqi government, and also the signing of contracts with foreign companies for the exploration, development and production of oil in the Kurdistan Region. Meanwhile, the KRG has defended its attitude that crucial steps have been taken towards reviving this sector and its development because the economy of Iraq and the development of the Kurdistan region and the lives of all citizens in Iraq depend upon it. That is to say, the export of Kurdistan oil is for the benefit of all Iraqi people.

In this chapter we try to find the answer to the dilemma that every adversity, oppression and self-denial the Kurdish people have suffered through the past centuries due to the discovery of sources of oil wealth in their region. The question that would arise here, after all changes have occurred in Iraq and the region, are the Kurds able to alter this political equation in their favour, that will not allow oil to be used again only for the prosperity and development of their region and ensure the well being of its people. In addition, the focus of this chapter would be construed in the discussing of different viewpoints of the parties for the management of this sector, in terms of defending of their own oil policy and even to the extent of their mutual accusations. This chapter reveals a level of deep disagreements over oil rights between Baghdad and Erbil, due to long-delayed hydrocarbons law, prompting fierce criticism by the Kurds. In the meantime, there are seriousness efforts to reach a settlement between the Iraqi federal government and the KRG. However, for the Arab parties, it became apparent that the real fear of the Kurds had obtained significant gains in the Constitution. Significantly, the current problems represent how to diminish these powers through amending the Constitution in order to limit and restrict the KRG's powers and its role to manage the oil and gas sector in the future.

8.1 GREAT POWERS AND THE COMPETITION OVER KIRKUK'S OIL FIELDS

Historical competition over oil fields in Kirkuk by the European powers, particularly Britain goes back to the nineteenth century. The Turkish Petroleum Company (TPC), with a significant British shareholding, was the first company to exploit Kirkuk's oil resources in 1912 and continued its work after the end of the First World War. Britain more or less monopolised the oil resources and other companies, such as the Americans, were not allowed to play a role in the region.⁴⁵⁶ Thus, it is not difficult to imagine the circumstances after the discovery of oil after World War I in Kirkuk, which led to increase ethnic tensions in Kirkuk. It is necessary to point out that, the British had supported strongly the new Iraqi government to draw the official boundaries of the new Iraqi state in 1925, which in turn opened the way for the British to control Turkish Petroleum Company drilled Iraq's first oil well in Kirkuk in 1927.⁴⁵⁷

Perhaps the core issue is that Iraq enjoys the second largest oil reserves in the world, second only to Saudi Arabia. It is stated that Iraq's supplies will enable it to produce 112 billion barrels (13.7 percent of total OPEC reserves). According to Vera de Ladoucette, out of 37 oil fields already discovered, only 15 have been put into production, while Iraq has the potential to produce 4.7 mbd. In addition, there is also the possibility of extending the production of existing fields by about 900,000 bd of oil from fields not yet exploited but ready to be developed.⁴⁵⁸ One critical issue is that concerning its natural resources, the Kurdistan Region is also one of the richest parts of Iraq in terms of metal and water wealth. According to Kaiwan Siwaily, around 40 percent of Iraq's natural resources, including oil reserves and natural gas, are located in the Kurdistan Region.⁴⁵⁹ Policy resource management is an important dimension in the context of government planning. Dr. Siwaily mentioned that the previous Iraqi

⁴⁵⁶ Liam Anderson and Gareth Stansfield, *Crisis in Kirkuk: The Ethnopolitics of Conflicts and Compromise*, University of Pennsylvania Press, Philadelphia, 2009, p.19-20.

⁴⁵⁷ Peter W. Connors, 'The US Army in Kirkuk : governance operations on the fault lines of Iraqi society, 2003-2009', the Combat Studies Institute (CSI) Press publications, November 2011. Available at: <URL: <http://usacac.army.mil/CAC2/CSI/RandPTeam.asp>>

⁴⁵⁸ Vera de Ladoucette, "Iraq in a New Map of Oil Supplies: Implications for Other Gulf Oil Producers", in *Iraq Reconstruction and Future Role*, Emirates Centre for Strategic Studies and Research, 2004, pp. 135-8

⁴⁵⁹ Interview with Dr. Kaiwan Siwaily, an oil and geology expert who worked with the KRG's Ministry of Natural Resources, on 2 May 2009. Erbil

government had issued a Law of Nationalisation of Oil in 1972 and that all the foreign companies were expelled in 1973. However, in simple terms, the policy of the Kurdistan Region towards management of this sector was not clear.

It should be noted that, from the 1960s Iraq had moved towards the nationalisation of all companies in the sector, but the Kurdistan Region continued with its own policy against all the rules for the nationalisation of oil, and the KRG declared an open door policy for natural resource investment, a policy in which the Western world was already proficient. Because of their technological development, industrialised countries were able to manage oil and gas sectors by themselves; therefore their investments were run by their own companies in their own countries. In contrast, Third World countries (such as Iraq) needed to invite in the foreign companies to revive these sectors, particularly if they themselves lacked the capacity to develop their oil and gas sectors. The question of how these companies held the contracts is a controversial one. It is worth noting that, in the case of acceptance to participate in these contracts, it is necessary to determine the kind of contract, i.e., whether it is a “service” contract or a “production sharing” contract. In production sharing, as the name suggests, production will be shared between the companies and the second parties (whether the KRG or the Iraqi government); whereas in a service contract the companies will take wages for their work.⁴⁶⁰

As Khalid Shwani indicates, not only does the Kirkuk case have internal dimensions on the level of those of Iraq and Kurdistan, but it also has regional and even international dimensions. Certainly, the regional countries have a political agenda and have also had a significant impact on delaying the implementation of Article 140. It is worth reiterating all these concerns because of the oil fields in Kirkuk. In fact, all previous Iraqi governments were deliberately draining the oil wealth in the Kurdish areas, especially in Kirkuk, which is considered to include one fifth of Iraq’s oil reserves, and also contains around a third of Iraq’s production, if compared with the giant oil fields in southern Iraq where there was an elaborate scheme to conserve and not deplete them.⁴⁶¹ In light of such conditions, Talabani has raised inquires as to what the Kurds have gained from Iraq as it was scheduled to set up oil refinery in

⁴⁶⁰ Interview with Dr Kaiwan Siwaily, on 2 May 2009, Erbil

⁴⁶¹ Interview with Khalid Shwani, on 22 April 2010, Kirkuk

Koi-Sanjaq and Dr. Ibrahim Bahr al-Alum laid the foundation stone for the construction however he has not yet placed a stone on a stone. So now the Kurdish areas are deprived of a railway as there are none available. However, the strategic projects in Iraq have dedicated billions of dollars but so far there is no strategic project in the Kurdish areas.⁴⁶²

8.2 THE DILEMMA OF LEGITIMATE OIL CONTRACTS AND THE DISTRIBUTION OF POWERS BETWEEN THE FEDERAL GOVERNMENT AND THE KRG

In fact, the new Iraqi constitution is ambiguous, particularly with regard to the jurisdiction of the authorities over the mineral rights of the KRG and the Iraqi federal government. However, both sides have the right for making oil deals with private companies provided that the distribution of revenues is taken into account and taxation is applied fairly. The KRG also insists on benefiting financially from the oil within its region as it is not receiving its share of revenues from Iraq's southern oilfields.

In this context, Yucel Guclu notes that any possibility of controlling Kirkuk, which would mean controlling 40 percent of Iraq's proven oil reserves, would encourage Kurds to an independent Kurdish State and consequently would lead to outbreaks of violence, not only in Iraq but also in the wider Middle East.⁴⁶³ Interestingly, regarding the possibility and fears of secession of the Kurdish region in Iraq, President Talabani stated that: *"this is an illusion and imagination are not unfounded, the Kurdish people voted for the Iraqi Constitution by 95%, more than any other region in Iraq and the first article of the constitution stipulates that Iraq is a democracy, an independent federal standard, and this means that 95 % of the Kurdish people voted for the unity*

⁴⁶² Interview with President Jalal Talabani in the Al- Iraqiya satellite, on 25 February 2008. Available at:

<URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=5290&type=interviews>

Access Date: 5 April 2009

⁴⁶³ Yucel Guclu, *The Turcomans and Kirkuk*, p. 96

of Iraqi democracy based on the Federal and equality, Iraq is a number and unacceptable to be divided".⁴⁶⁴

It is clear that the Kurdish leaders insisted on running their own natural resources and developing new oil resources in the Kurdistan region. According to Yucel Guclu, the Kurds' demands were exaggerated when developing the northern reserves, which was inconsistent with the policy and authority of the central government. Also, the vision of a centralised oil industry created by the coalition authorities clearly indicated in clause E of Article 25 of the Transitional Administrative Law (TAL) of 8 March 2004, that ...management of Iraq's natural resources, which are owned by the people of Iraq, will be conducted in consultation with regions and governorates, with the distribution of revenue through the public budget made in an equitable manner in accordance with demographic distribution in various areas of the country taking into account those areas that were unfairly denied access to revenue by the previous regime, as well as the need and level of development in various regions of the country.⁴⁶⁵

One can conceivably indicate that in the first instance, the TAL gave the Iraqi government exclusive power over the management of natural resources. Moreover, the Iraqi government had full and direct control over appointments and dismissals at the Northern Oil Company (NOC), which was entirely dominated by Arabs (See Table 7, Chart 1, Graph 1). In fact, it is currently quite difficult to envisage the link between Kirkuk's oil and Kurdish independence, since at the time that, the KRG itself did not have a strong infrastructure to rely on when managing an independent entity, particularly as the KRG's budget for the payment of the salaries of public sector workers, political party employees, and Peshmerga forces, was almost entirely dependent on the federal budget.⁴⁶⁶

⁴⁶⁴ President Jalal Talabani: "*Iraq is now on the road chosen by the Iraqi people, and is the path of prosperity and development*", Interview with President Talabani with radio Korea, on 3 March 2009. Available at:

<URL:http://www.iraqipresidency.net/news_detail.php?language=arabic&id=6984&type=interview>
Access Date: 5 April 2009.

⁴⁶⁵ Yucel Guclu, *ibid.*, p. 66

⁴⁶⁶ Liam Anderson and Gareth Stansfield (2009), *Crisis in Kirkuk, op. cit.*, p. 132.

It is worth while mentioning that, the Kurdish leaders expressed their resentment to the US administration, and Baker and Hamilton report on Recommendation 28, which clearly called on the US administration to put oil revenues under the care of the central government to be shared among the population. They also recommended that the federal regions should not be allowed to have control over revenues from future fields, as giving control of oil fields to the regions was incompatible with national reconciliation.⁴⁶⁷ On the other side, the KRG insisting on having direct access and control over the oil revenues, as well as the signing and implementing of investment deals with foreign oil companies.

In Article 109, the Iraqi Constitution indicates the duty of the federal government to "...preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system." It was believed that Kurdish rights had been challenged in the Iraqi Constitution, even though that constitution had taken numerous positive steps to structure a strategy for its oil policy for both sides of central government and the regional governments; the main principle specified in Article 111 states that "Oil and gas are owned by all the people of Iraq in all the regions and governorates."⁴⁶⁸ Indeed, it became apparent that the problem lay in the interpretation of the meaning of these constitutional articles, which in turn had profound implications for the control of oil revenues and for their future use. Thus, According to Article 111 of the Iraqi constitution, the oil and gas belong to all committed Iraqis, which mean that oil revenues must be shared. What was notable about this debate, as has been argued, was that the Kurds had obtained significant gains in the Constitution.⁴⁶⁹ What should be noted here that, the Kurds expected to be able to maintain these gains provided the other Iraqi groups respected the constitution and intended to implement it.

Obviously, the KRG was interested in searching for natural resources and developing independently from Baghdad, at the time the Iraqi constitution was promulgated, there was no mention as to how to distribute oil revenues. Article 112 stipulated that a share of the proceeds should be allocated to regions that were unjustly deprived by Saddam's regime. In this context, Frsat Ahmad thinks that the strategy for the oil

⁴⁶⁷ James A. Baker III, and Lee H. Hamilton, *The Iraq Study Group Report*, New York, 2006, p.65

⁴⁶⁸ Iraqi Council of Representatives, "Iraqi Constitution", Media Directorate, www.parliament.iq

⁴⁶⁹ Iraqi Council of Representatives, "Iraqi Constitution", *ibid.*

sector should be based on a cooperating method with the Iraqi federal government. Moreover, these policies have to be practised through coordination, cooperation or participation with the central government, as indicated clearly in Article 112 (1) of the constitution.⁴⁷⁰ In other words, the Kurds are always alleging their adherence to the Iraqi constitution, particularly Article 112 which granted control over everything other than “present fields” to the regions rather than to the federal government: it is clearly stated that:

the federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country.

The lack of a federal hydrocarbons law, which clarifying the definition and identity of “present fields” meant that it would be necessary to await a legal decision to resolve this outstanding problem. On the other hand, the Kurds have benefited from Article 115, which offered a special grant suggesting that:

...all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.⁴⁷¹

It should be pointed out that one of the serious problems between the KRG and Iraqi government regarding the oil policy concerned the subject of returns and allocated rewarding of investors. In this context, Dr. Ashti Hawrami, the KRG’s Minister for Natural Resources stated that investors in the Kurdistan Region were spending less and achieving more, compared with the Ministry of Oil’s contracts in Baghdad. The Taq-Taq oilfield had been discovered and developed at a cost of less than US \$500 million, and would produce at least 180,000 barrels per day, while Ahdab, an existing

⁴⁷⁰ Interview with Frsat Ahmad, on 2 April 2009, Erbil

⁴⁷¹ Iraqi Council of Representatives, “Iraqi Constitution”, *op. cit.*

low-risk discovered field, was expected to produce 100,000 bpd. However, the contractor was allowed a massive US \$3 billion in cost allowances, ten times higher per barrel of production when compared to Taq-Taq, which meant in effect that investors under the Oil Ministry's contracts were being rewarded for having higher costs. In addition Hawrami explained that:

...in the KRG contracts, investors have strong incentives to invest quickly, leading to much earlier revenue returns to the people of Iraq. Thereby, the investor gets a gross profit share after cost recovery of around 10 to 12 percent. After allowing for exploration risk factors, the risked profit for the investor is less than five percent. All the costs of not finding oil are born by the investor.⁴⁷²

Further, Dr. Ashti Hawrami declared that with the exporting of oil from the Kurdistan region, Iraq's monthly oil exports would increase by 100,000 bd. This would come from the Tawke and the Taq-Taq oilfields. Within a year, oil exports from these two fields alone will probably increase to 250,000 bd. and by the end of the following year, oil exports would have increased to 450,000 bd. Within four years, 1,000,000 bd. could be anticipated. This would increase Iraq's overall oil exports by 50 percent from the present (2009) level.⁴⁷³ He also stated that more than 35 companies from 15 different countries, including Turkey, had entered into contracts. Further, he claimed that the KRG's efforts would generate US \$2 billion in revenue within one year, US \$5 billion within another year and a staggering US \$20 Billion in just four years. He added that the contractors had strong incentives to invest quickly, thereby leading to much earlier revenue returns to the people of Iraq. The investors would receive a gross profit share of around 10 to 12 percent; consequently everyone would share that benefit.⁴⁷⁴ It had been confirmed that the Kurdistan Region had the largest inventory

⁴⁷² Dr. Ashti Hawrami, Minister of Natural Resources; *Commencement of Oil Export Ceremony*, Erbil, Kurdistan Region - Iraq, 1st June 2009, Available at <URL:http://www.krg.org/uploads/documents/Ashti_Hawrami_Speech_Oil_Exports_1June09__2009_06_02_h16m12s39.pdf>

⁴⁷³ Dr Ashti Hawrami, Minister of Natural Resources; *Commencement of Oil Export Ceremony*, *ibid.*

⁴⁷⁴ KRG.org, *Kurdistan Region celebrates historic achievement with first crude oil export*, 02 Jun. 2009. Available at: <URL: <http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&rmr=223&anr=29807>>

and oil reserves, including 45 million barrels of oil, 20 trillion cubic metres of natural gas, and expected oil reserves in this region for more than 50 years. In the Kurdistan Region there were currently three large oil refineries, 22 small refineries in Sulaymaniyah, 16 refineries in Erbil and 15 in Dohuk. Currently there were 40 international companies from 17 countries working in the oil field, some of which would work in the Region for 20 years, take 60 percent of the production, with 40 percent for the Kurdistan Region.⁴⁷⁵

In defiance, the KRG strongly asserts on legitimacy their contract with regional and international companies. In focusing on its contracts, the KRG announced that their contracts with Korea National Oil Corporation (KNOC) were based on a production-sharing contract and commercial terms and conditions. According to this contract model, KNOC would take a 60 percent interest in the Sangaw South Block, with the remaining 40 percent participation interest held by the KRG. KNOC would also take an 80 percent participation interest in the Qush-Tappa Block (published in some KRG block maps as “Block K26”), with the remaining 20 percent participation interest held by the KRG.⁴⁷⁶ One should mention here that on 19 June 2008, the KRG signed two petroleum contracts with wholly-owned subsidiaries of Talisman Energy Inc, with headquarters in Calgary, Canada. One of the Talisman Company’s fields in the Kalar-Bawanoor Block was published on KRG maps as “Block K44”. According to the deal between the two sides, Talisman Block K44 would take a 40 percent interest, and the remaining 20 percent participation interest would be held by the KRG, carried by Western Zagros Limited. Another of Talisman’s field was Talisman Block K39, which they planned to exploit under a service agreement for a two-year exploration programme in the K39 Block.⁴⁷⁷ In order to reach these outcomes the KRG emphasized that their framework for oil investment in Iraq followed the democratic, federal, and free market principles mandated by the Iraq constitution. Therefore, their ambition was for the adoption of a similar constitutional framework in the rest of Iraq

⁴⁷⁵ The issue of oil was discussed in the Kurdistan Parliament, in the presence of the Minister of Oil and Natural Resources, on 22 August 2010,

<URL:<http://www.awene.com/Direje.aspx?Babet=Hewal&jimare=8329>>

⁴⁷⁶ Khaled Salih at KRG.org, Industry and media inquiries, “*KRG and Korea National Oil Corporation sign new petroleum contracts*”, on 25 Jun. 2008

<http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&asnr=&anr=24663&nr=223>

⁴⁷⁷ Khaled Salih at KRG.org, Industry and media inquiries, “*KRG signs petroleum contracts with Talisman Energy*”, 23 June 2008. See

<http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&asnr=&anr=24638&nr=223>

to attract investments that would be specifically designed for Iraq-wide revenue sharing, as an essential element for future stability in Iraq.

Given the nature of the terms involved, it was very interesting to note that several Western companies had taken up licences to explore in Kurdistan, including DNO, a Norwegian firm that had already begun to lay an export pipeline to Turkey. Furthermore, there was a service contract with the UAE's Dana Gas. The DNO's (Det Norske Oljeselskap) discovery significantly enhanced the economic prospects of the Kurdistan Region, but at the same time it also raised the political stakes over who controlled these natural resources.⁴⁷⁸

Regarding possible oil development in the Kurdistan Region, more serious trouble occurred after 2004, when the KRG signed contracts for Tawke and Taq-Taq. On 1 June 2009, the KRG began oil exports with the Norwegian oil company DNO, having completed preparations to export an average of 60,000 bpd from the Tawke oil field to the Turkish port of Ceyhan, via a new 45 km pipeline. In another way the Kurdistan experience could be seen as the first oil pumped from fields in the KRG to be exported from Iraq, thus forming a new strategic position for the Kurdistan Region. However, the problem lay with the Oil Ministry in Baghdad which denounced the two dozen oil deals that had been signed by the KRG because it considered them as illegitimate. Concerning other key obstacles between the two sides, there was still no agreement as to how the foreign firms would be compensated and how the contractors would be paid for their work.⁴⁷⁹

In light of the oil licensing activity, the Oil Minister, Hussein al-Shahristani, accused the KRG of exceeding the powers that had been granted to them, particularly when the DNO⁴⁸⁰ announced on 30 June 2004, that it had entered into an agreement with the KRG to explore for and develop oil and gas in the region. After testing a well drilled at Tawke, a village near the Turkish border, 100 million barrels of oil were

⁴⁷⁸ Ben Lando and Alaa Majeed "Load 'em up: fields in Iraqi Kurdistan begin", *Iraq Oil Report*, on 1 June 2009. Available at: <URL: <http://www.iraqoilreport.com/the-biz/load-em-up-fields-in-iraqi-kurdistan-begin-1556/>>

⁴⁷⁹ Ben Lando and Alaa Majeed, *ibid.*

⁴⁸⁰ Norwegian oil firm DNO was among the first foreign firms authorised to operate an oil-drilling licence in Iraq following the fall of Saddam Hussein. It also has interests in oilfields in the North Sea, Yemen, and East and West Africa.

found in its licence area. In light of such situations, the Oil Ministry in Baghdad argued that any of the KRG's oil deals and all oil exploration had to be approved by the Federal Government. The Kurdish Oil Minister rejected these allegations, insisting that the Iraqi Constitution was clear in giving an administrative role only to the federal Government in the exporting and marketing of oil from existing fields, while the regional governments had exclusive power over undeveloped oilfields and new exploration activity.⁴⁸¹ In this context, Falah Mustafa has noted how, in response to the federal government's criticisms in Baghdad of the KRG's actions as non-transparent and non-constitutional, the Iraqi Oil Minister Hussein al-Shahristani faced formidable censure and was eventually charged because of his failed policies in the management of this sector. Al-Shahristani had spent nearly US \$8 billion to repair Iraq's oil industry, but instead of production levels increasing, overall production actually decreased.⁴⁸²

The KRG blamed Oil Minister al-Shahristani, who opposed KRG's oil moves, and insisted that paying the contractors was up to the KRG. Since the KRG received only 17 percent of state income, this made it impossible for them to cover the contractors' production sharing costs and still afford to run their regional government. In this context, the KRG claimed that, according to the Tawke contract, it was the Iraqi government that should compensate the contractors, but Baghdad refused this claim. It should be noted here that the DNO had a 55 percent stake in the Tawke project,⁴⁸³

⁴⁸¹ The DNO was granted a licence over 250 square miles of Kurdish territory in 2004 and tested their first exploration well, which flowed at 5,000 barrels per day. In fact, the DNO succeeded in finding oil in previously unexplored areas in the Kurdistan region of Iraq, which aroused considerable interest at a time when Iraq's oil industry was struggling to produce even half of its pre-war output. See Carl Mortished, "*Kurdish minister defies Baghdad over oil licenses*", International Business Editor, on June 15, 2006.

<URLhttp://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article674871.ece>

⁴⁸² Personal interview with Falah Mustafa, on 1st May 2009, Erbil

⁴⁸³ The KRG decided to suspend DNO's activities in their region for six weeks and threatened to expel it permanently after the Oslo Stock Exchange had published details of a \$30 million share deal between the KRG and DNO in 2008. DNO's share price fell by 50 per cent the day after the announcement, and the KRG's reputation was also negatively affected by this event due to wide publicity in newspapers and other local and international media. The stake was subsequently bought by Genel Energy, a Turkish company, listed in London as an oil business active in the KRG. It was reported that the KRG's Minister of Natural Resources had played the role of mediator in this deal, and it is reasonable to conclude that his involvement meant that he personally or other prominent individuals in the KRG may have benefited from it financially. It has been estimated that Hawrami benefited from this deal by an amount of up to ten million pounds. The DNO and the KRG alleged that the Oslo Stock Exchange had acted unlawfully by publishing confidential information. In contrast, the Exchange argued that their action in releasing the details came under Norwegian law and was legal. The KRG also defended

and was the operator. Genel was farmed in for 25 percent, and DNO was also the operator of the Dohuk project, in which both DNO and Genel held 40 percent stake. Moreover, DNO had a 40 percent stake in the Erbil project, which was also still in the exploration phase.⁴⁸⁴ It was reported around this time that one of the most influential figures who had recently joined the DNO's board of directors was Zalmay Khalilzad,⁴⁸⁵ a former US ambassador to Iraq; another important figure was Peter Galbraith.⁴⁸⁶ It has been said that the KRG was very interested in the appointment of these personalities who might influence Baghdad into supporting KRG over the disputed oil contracts with companies like DNO.⁴⁸⁷

Another issue that provoked the KRG was that any decision related to contracting for development of the Kirkuk and Bai-Hassan fields in the disputed Kurdish territories, which contained eight billion barrels of crude and a huge volume of gas and had yet to be exploited, required the direct involvement of the KRG as a party to the dispute. In reality, the Kurds were excluded from participation. The largest international companies such as Royal Dutch Shell and ExxonMobil, as well as other companies including Lukoil of Russia, Total of France, and Statoil Hydro of Norway, were competing to obtain contracts to develop Kirkuk's oil fields.⁴⁸⁸ Besides these differences, there was another serious disagreement between the two sides (Iraqi

themselves on the basis that they had bought the DNO shares on behalf of Genel Energy (this Turkish oil firm also invested in KRG oil deals and now owns nearly 5 percent of DNO) to support both companies at a time when financing was difficult and they were not allowed to export oil from Iraq. Furthermore, Hawrami indicated that they take would legal action against the Oslo Stock Exchange for allegedly violating laws of confidentiality. See Robin Pagnamenta, "DNO could be London-bound after Kurdish oil row", *The Times-UK*, 30 September 2009. Available at: <URL: <http://www.ekurd.net/mismas/articles/misc2009/9/investkurdistan506.htm>> Access Date 12 December 2009.

⁴⁸⁴ Ben Lando, "*DNO's Iraq operations suspended*" on 30 April 2011, Access Date: <URL:http://vancongrp.com/index.php?option=com_content&view=article&id=37:dno-iraq-operations-suspended&catid=4:articles&Itemid=11> Access Date: 1st May 2011

⁴⁸⁵ As it was clear, that the Khalilzad was U.S. ambassador to Iraq from June 2005 to March 2007, and then went on to serve as ambassador to the UN for the remainder of the Bush administration. He was also ambassador to Afghanistan from 2003 to 2005

⁴⁸⁶ Peter Galbraith, who was a former U.S. ambassador to Croatia and adviser to Iraq's Kurds on constitutional issues, was deemed as one of the main supporter of the KRG on his battle with the central government to defend on Kurdish national rights. Moreover, it has been reported lately that he was an early investor in DNO's Kurdish contracts.

⁴⁸⁷ Khalilzad nominated to DNO board, the Norwegian firm that produces oil in Iraq's Kurdistan region, on June 16, 2010. Available at: <URL: <http://www.ekurd.net/mismas/articles/misc2010/6/invest595.htm>> Access Date: 5 August 2010

⁴⁸⁸ Alice Fordham and Robin Pagnamenta, "Political disputes threaten sale of rights to exploit Iraqi oilfields", *The Times-UK*, on June 29, 2009. Available at: <URL:http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article6597797.ece> Access Date: 14 August 2009

government and KRG), related to the role of a new Iraq national oil company (INOC), since annexes to the draft law would allocate 93 per cent of Iraq's petroleum reserves to INOC, leaving only seven per cent for the regions, including Kurdistan. For this reason, the KRG alleged that the measure was unconstitutional and threatened to oppose it in the federal parliament.⁴⁸⁹ This protest reflected the conflict between the KRG and Baghdad over who exercised control over oil reserves in the region. The KRG was critical of the proposals for a new INOC, saying that they would reject any concentration of power in the hands of INOC because it would represent a return to the methods of petroleum management of previous Iraqi regimes which had centralised oil power.

In other respects, the federal government in Baghdad was suspicious of Kurdish initiatives to issue licences independently to foreign oil explorers, which could be seen as a stepping stone to Kurdish independence. On the other hand, Baghdad maintained it had sole rights to strike oil deals, which was why the Iraqi Oil Minister warned foreign companies not to sign contracts without the knowledge of the federal Government as they would be illegal. He also blacklisted any companies who signed with the KRG for purchasing Iraqi crude or participating in federal oil deals, and threatened Western companies, such as Western Oil Sands, a Canadian explorer which had signed a production-sharing agreement with the KRG in an area southeast of the giant Kirkuk oilfield, with an expected investment of US \$45 million over four years.⁴⁹⁰ In the meantime, the optimism of the Kurdistan authorities seemed to be bringing investment by oil companies into their region, with Heritage Oil from Canada signing two memorandums of understanding with KRG for an area comprising some 1,300 square kilometres. Sterling Energy, the first company from Britain in the area, also contracted with the KRG for oil exploration in the north.⁴⁹¹

What is noteworthy about this debate, despite the external accusations against the KRG's oil policy, there has also been harsh criticism by the opposition blocs in the

⁴⁸⁹ Carl Mortished, "Kurdish protest puts Iraqi oil law at risk", *The Times*, May 1, 2007. Available at: <URL:http://business.timesonline.co.uk/tol/business/industry_sectors/utilities/article1728869.ece> Access Date: 3 February 2009

⁴⁹⁰ Carl Mortished, "Oil find in Kurdish Iraq fuels tensions", *The Times-UK*, 13 June 2006. Available at: <URL: <http://admin.iraqupdates.net/scr/preview.php?article=8640>> Access Date: 3 February 2009

⁴⁹¹ Jan Jun, Iraq: Oil Prospecting In Kurdish-Administered North Intensifies, Radio Free Europe, on 12 May 2006. Available at: <URL: <http://www.rferl.org/content/article/1068359.html>>

Kurdistan parliament against Dr. Ashti Hawrami, the Minister of Natural Resources,⁴⁹² and of the ministry's policy inside the Kurdistan Region. Accusations were levelled, particularly by the Change movement (*Goran*), the Kurdistan Islamic Union (*Yakgrtui Islami*), and the Islamic Group of Kurdistan (*Komali Islami*), that there was illegal and clandestine smuggling of crude oil in the Region by local companies and influential individuals in the two main parties, with the knowledge of the Ministry of Oil and Natural Resources. Hawrami responded by saying that the allegations were false and incorrect. The opposition blocs also maintained that there were more than 80 illegal refineries distributed across the three provinces that did not have legal licenses from the KRG and that should be closed, and accused the Minister of not giving Parliament sufficient information about how oil revenues should be sold and distributed. In this context, it should be mentioned that accurate information was published through local media about officials and politicians and their family members who had set up small companies to smuggle crude oil to Iran and Turkey.⁴⁹³ The KRG itself began exporting oil for the first time in June 2009, pumping crude through a pipeline to Turkey for sale to foreign markets.

Another significant event in the Middle East concerned an agreement to build a new, 3,300-kilometre gas pipeline called Nabucco, to run between eastern Turkey and Vienna in Austria; it is estimated to be running by 2015. It can be concluded that the KRG has the ability to achieve this US \$8 billion plan to supply natural gas from the Kurdistan Region to Europe via the Nabucco pipeline; at the same time one may reasonably regard the scheme as an important element in the attempt by the European Union to rely less heavily in the future on Russian gas. Disputes over the rights to sign contracts and how to manage disputed territories were undoubtedly exacerbated

⁴⁹² The Heritage Oil Company put Kurdistan on the world's energy map. It has been rumoured that Hawrami bought a stake in the Heritage Company in the autumn of 2008 for £12,095,850 at the time the company was looking for oil in the Kurdistan Region. After the discovery of oil by Heritage, Hawrami sold the same shares for £25,070,709. See: Jon Tomas, "The secret profits of Ashti Hawrami" trans.bySbiey.com., on 22 February, 2010, Available at: <URL: <http://www.sbiey.com/ku/ByaiArticleDetail.aspx?id=516> > Access Date 25 February 2010

⁴⁹³ See the report published in *Rozhnama* newspaper (No. 591, on 10 July 2010), which is funded by, and reflects the views of Goran (the Change movement). It directly accuses the PUK and KDP of having taken US\$250 million monthly from the smuggling of crude oil. As a result of this accusation, the KDP's Political Bureau lodged a complaint against the newspaper, requesting one billion dollars in damages and closing of the newspaper. *Rozhnama* newspaper responded that the purpose of the lawsuit was political. See Awene Newspaper, 'Azad Chalak said: The KDP's Complaint for a political purpose. Available at: <URL: <http://www.awene.com/Direje.aspx?Babet=Hewal&Jimare=8090>>. Access Date: 4 August 2010

by the announcement of this gas export deal in the Kurdistan Region. In this regard, Hawrami stated that:

...we are planning a strategic pipeline to link up with the Nabucco pipeline. This will generate even more revenues for Iraq... Iraq needs to boost exports to at least 5,000,000 barrels per day by the time KRG's production target reaches 1,000,000 barrels per day.

Thus Iraq could be one of the nations to reap large profits by feeding gas into the new pipeline. Hawrami's prediction is based on the fact that the Kurdistan region has a high percentage of natural gas, and now that the region is located on the world map by having become part of the Nabucco project, such projects are likely to have a dramatically positive impact on the prosperity of the Kurdistan Region in the near future; this should be regarded as a great asset for the KRG and must be skilfully nurtured.⁴⁹⁴

8.3 MOVING TOWARDS A SOLUTION FOR THE DISTRIBUTION OF OIL REVENUES BETWEEN THE FEDERAL GOVERNMENT AND THE KRG

It is undeniable that Kurds proceeded to Baghdad to issue a hydrocarbons law in August 2007, which led to the KRG increasing progress in this sector. Disputes between the two sides arose around the time of the establishment of the Iraqi Government's first cabinet, and tensions appeared to have reached the level of verbal exchanges between Baghdad and the KRG regarding the draft oil law. The Oil Minister, Hussein al-Shahristani, angrily accused the KRG and clearly announced his opposition to contracts that were made illegally and were intentionally imprecise. Shahristani also threatened that all the companies who dealt with the KRG would be deprived of any future oil contracts with the federal government and would not be permitted use of Iraqi pipelines to transport the oil produced. However the Kurds felt that they had the right to sign Exploration and Production Sharing Agreements

⁴⁹⁴ KRG.org: 'Hawrami said: 'he constitution gives us the right to sell oil', 19 August 2010. Available at:
< URL: <http://www.krg.org/articles/detail.asp?lngnr=13&smap=01010200&rn=26&anr=36473>>

themselves and this would be done separately from the Iraqi government. Consequently, the KRG was obliged to move forward unilaterally to develop oil fields within its region, and despite all the obstacles it had succeeded in dealing with a large number of international oil companies by the end of 2007. Baghdad's reaction in this regard was expected by the Kurds; the Ministry of Oil duly issued a statement indicating clearly that:

Ownership of Iraq's natural resources, including oil and natural gas, rest with the entire Iraqi people. The authority to exploit or take new decisions relating to the exploration, development, production and handling of oil and natural gas has been and will remain a sovereign right of the central government of Iraq, and such decisions will be made on the basis of Iraqi national laws... As part of this policy companies that wish to be welcomed here in the future should not enter into or try to pursue the implementation of agreements with persons who are not empowered to represent the sovereign government of Iraq.⁴⁹⁵

Falah Mustafa claims that the KRG had approached the Iraqi government with the intention of arriving at a draft agreement with them. It was supposed that this draft, signed by both sides, was attached with the "side letter" that was to be sent to the Council of Ministers and from there to the Iraqi Parliament. However, this procedure appears not to have taken place. Likewise, both sides had accepted the conditions which were mentioned in this letter, and if the Iraqi government did not issue the Oil Law and its accessories until the end of May 2007, the KRG would have had a right to sign its own contracts during this time. At this point it is difficult, if not impossible; to envisage how the KRG's oil contracts were carried out within the legal framework of the Constitution and according to international standards. As well as the existence of contradictions, the KRG set out to carry on signing its oil contracts with some of the international companies. However, the KRG waited until the end of August 2007, when the parliament of the Kurdistan Region had ratified the Oil and Gas Law.⁴⁹⁶

⁴⁹⁵ Yucel Guclu, *op. cit.*, p .67-8

⁴⁹⁶ Interview with Falah Mustafa, on 1st May 2009, Erbil

In order to find a way out of the political crisis with the Iraqi government, the oil contracts in particular needed to be addressed. Falah Mustafa asserted that, among the more difficult of the outstanding problems, the best thing to do would be to draw up structure for the Law of Oil and Gas in a form that would serve all the Iraqi people. In his view, “this direction of thinking should be changed so that every decision should be issued from the centre, under the control of the Iraqi National Oil Company [INOC].” In this context, he later referred to a speech by the Prime Minister which claimed that:

The days have passed when everything would go back to the centre, and we do not want to be at the mercy of Baghdad for the use of and investment in natural resources. According to the Constitution this wealth belongs to all Iraqi people. So Kurds, as a part of Iraq, have the right to invest in its natural resources, and to use its wealth in the development of the lives of Iraqi citizens and also to revive of those Regions.

In this respect Dr. Ashti Hawrami, illustrated the importance of the KRG’s contribution to Iraq’s oil exports and showed how decentralization and competition could increase oil revenues for Iraq. The KRG could own and develop new reservoirs, and does have fields with potential oil and gas resources in significant volumes in Taq-Taq, Chamchamal, and Zakho. Beyond this, fair distribution of the revenues between the KRG and the federal government could be the key to resolving the chronic disputes between the Kurds and Arabs in Iraq. Hawrami also emphasised the need for a modern federal oil law that would establish a clear and transparent framework for managing the oil sector and distributing revenue.

The KRG announced that all contracts issued by the KRG were in the form of the production sharing contracts model (PSC), and that if commercial discoveries were made, these five PSCs would provide an estimated aggregate profit of over 85 percent to Iraq and around 15 percent to the contractors. Under the five PSCs made with the TNK-BP affiliate Norbest Limited, with a Korean consortium headed by Korean state-owned oil company KNOC, with the Hillwood International Energy company HKN Energy, and with subsidiaries of the UK-listed Sterling Energy LLC and Denver-based Aspect Energy LLC , the KRG had the right to a participation interest

to further increase Iraq's profit share and had retained the right to assign third party participation interests to qualified Iraqi and international companies to further stimulate the local economy.⁴⁹⁷ In light of such conditions, the Kurdistan Region would continue to try to attract oil investment.

At the present time, dramatic political and economic changes, internationally and in particular at the regional level, are to some extent prompting formerly hostile views towards the Kurds to change. The Turkish government was confronted by a choice of two possible paths. First, Turkey has seen how the economic development of the KRG, and the establishment their infrastructure through oil wealth and minerals, can lead to a strengthening of the Kurdish state; this in turn may generate a secessionist spirit among its own Kurds. For this reason there has been a tendency to stand up to these changes and prevent them from continuing, which has so far been a Turkish strategy against any Kurdish entity since the creation of the Turkish State. Second, if looked at from the viewpoint of Turkish interests, there are enormous profits to be made by Turkish companies in the region, which is amounted to approximately 6 billion dollar in a year.⁴⁹⁸ In this case it would be in the interests of the Turkish State

⁴⁹⁷ Based on KG block maps, these deals with the foreign companies for oil and gas were explained as follows:

- Award of one PSC for four blocks comprising the Hawler Contract Area (of 1,532 square kilometres) in Erbil Governorate, to Norbest Limited, an affiliate of TNK-BP. The Hawler Area comprises blocks advertised in June as K11, K12, K14, K15, and is considered to be a low to medium exploration risk area.
- Award of the Bazian Block (473 square kilometres) in Sulaimaniya Governorate to KNOC Bazian Limited, owned by the Korea National Oil Corporation, and Korean private sector oil exploration and development companies SK Energy Co Ltd, Daesung Industrial Co, Ltd, Samchully Co Ltd, Bum-Ah Resource Development Corp, UI Energy Corporation, GS Holdings Corp, and Majuko Corporation. The Bazian Block is a relatively low exploration risk area.
- Award of the Sarsang Block (1,226 square kilometres) in Dohuk Governorate to HKN Energy Ltd, a Hillwood International Energy company. The Sarsang Block is considered to be a medium exploration risk area.
- Award of the Sangaw North Block (492 square kilometres) in Sulaimaniya Governorate to Sterling Energy (International) Limited, a wholly-owned subsidiary of Sterling Energy LLC. The Sangaw North Block is considered to be a low exploration risk area.
- Award of the Atrush Block (269 square kilometres) in Dohuk Governorate to General Exploration Partners Inc, a wholly-owned subsidiary of Aspect Energy LLC. The Atrush Block is considered to be a low exploration risk area.

See Khaled Salih at KRG.org, Industry and media inquiries, "*KRG signs five more petroleum contracts*", on 12 November 2007, Erbil, Kurdistan Region, Iraq. Available at: <URL:<http://www.krg.org/articles/detail.asp?lngnr=12&smap=02010100&rn=223&anr=21329>> Access Date 5 April 2009.

⁴⁹⁸ Based on the formal reports by KRG and Turkish governments, see "Kurdistan Invest In Democracy 2011", Newsdesk Communication Ltd, http://www.krg.org/uploads/documents/Kurdistan_Investment_Guide_2011.pdf.

to deal with a wealthy and stable province, rather than oversee its lack of stability and destruction.

Therefore, even though Turkey remains extremely reluctant to open up the road to the Kurdish entity in the region, ironically, the Kurdistan Region offers Turkey the only road to realising its potential as a key entity and a strategic partner of the West. From this perspective, senior officials in the KRG have consistently emphasised that they are interested in working with Turkey as a means of increasing peace and prosperity in their Region, and that there should be further direct contacts between the KRG and Turkey, both economically and politically, to ensure stability for both sides. In fact, economic ties between Turkey and the KRG have strengthened noticeably in recent years, and continue to grow (by 76 percent). Recently (at the end of 2010), Turkey's Genel Energy has been developing the Taq-Taq oilfield jointly with Canada's Addax Petroleum, an oil and gas company based in Calgary, Canada.

Given such conditions, the Kurds believed that if the Iraqi government did not cooperate with the KRG, it would lead to delayed oil exports from the Region; therefore this policy would cause serious damage for the Kurdistan region and for the Iraqi government (it is reckoned so far to have cost Iraq over US \$10 billion). The Kurds have refuted all accusations that their oil contracts were illegal and opaque, and the KRG claims that they have consistently been transparent in their hydrocarbons policy. In fact, all Iraqi factions have become convinced that the only true path to achieving peace and stability, to ensuring political progress in Iraq, and to avoiding territorial disputes, is by passing a modern federal hydrocarbons law for sharing oil revenue in a fair and transparent manner between the federal and regional governments, otherwise the unity and future of the country will be at risk. In fact, the Kurds have relied on Baghdad in ways that make it difficult for them to contemplate substantive changes to the status quo. They have obviously moved to secure their autonomy, but have also become active participants in attempts to forge a new democracy at the centre; albeit one that protects their interests. Regarding this issue, Prime Minister Nechirevan Barzani has stated that:

If there had been a federal oil and gas law, we would have been able to achieve everything much more quickly, and this would have been to everyone's benefit, and would have attracted more foreign investment. In terms of revenue sharing, I believe this will bring the government in Baghdad and the KRG closer to resolving outstanding issues in the oil and gas area.⁴⁹⁹

Furthermore, the Kurdish leadership wishes to prove to the Iraqi government that as far as Iraqi cooperation with the KRG is concerned, the oil and gas belong to all the people of Iraq. They have repeated their confirmation of increased production and have provided substantial revenues to Iraqi funds from which they will receive 17 percent. Regarding these allegations that the KRG's contracts had been signed is a constitutional violation and contrary to the policy of the central government of Iraq. In this context, President Jalal Talabani pointed out to the possibility of resolving this issue, through the display in front of the Constitutional Court to decide the correct interpretation of the Constitution. The President of the Iraqi Republic also said that the resolving issue of Kirkuk lies in Article 140 of the Iraqi Constitution, referring to steps that must be taken such as Normalization, Statistics and the Census, then can be applied of this constitutional Article.⁵⁰⁰

On the whole, one notes that besides progress and increasing prosperity in the Kurdistan Region, there have been significant improvements in Kurdistan's infrastructure and the well-being of most Kurds since 2003. But the two main parties, PUK and KDP, also face strong opposition from within their ranks, as well as from among Kurdish intellectuals and the society at large, because of the real feeling among many Kurds that most of the benefits from the huge development projects have been swallowed up by the interests of party leaders and other high-ranking officials. There are obvious manifestations of corruption, nepotism, tribalism, mismanagement, monopolization of power and marginalization of the parliament, and

⁴⁹⁹ KRG.org, "Launch of Kurdistan Region Oil & Gas Yearbook 2009", 20 July 2009; Available at

<URL:<http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&rn=223&anr=30619>>

⁵⁰⁰ "President of the Republic: the differences between the KRG and the central government is fleeting disagreements can be solved", on 15 April 2009

Available at:

<URL:http://www.iraqipresidency.net/news_detail.php?language=arabic&id=7169&type=interviews>
Access date 25 December 2009.

complaints made against the two ruling parties about these aspects have become standard and cannot be denied. Such complaints are now being openly voiced and discussed, currently by local newspapers such as *Awena* and *Livin* and, more importantly by *Hawlati* and others. Indeed these severe criticisms are now turning from a notional phenomenon to tragic reality, so that the two main authorities (KDP and PUK) cannot be left to their own devices and must take decisive steps to solve these problems.

CONCLUSION

It is true that the natural resources that flow from Kurdistan were fully controlled by Iraqi regimes for a century, and that the benefits of the oil were never permitted to build, unite, and promote a country. Instead, oil was used to finance repression and destruction for the Kurds, especially when the Baath regime invested the country's tremendous oil revenues in chemical weapons and used them against the people of the Kurdistan region. Ironically, Kurdistan today is a place of opportunity in the oil and gas sector since the Kurdistan Region, as authorized by the Iraqi Constitution, is exercising federal control over its oil and gas sector. Indeed, the KRG's policies and efforts are directed towards using the same resources to provide welfare and prosperity for the Kurdish people and guarantee their future. However, these developments have been viewed with concern and even hostility by the Iraqi government, among whose members there are some who believe strongly that such rights should be overseen from Baghdad.

The KRG is clearly keen to accelerate its plans to encourage inward investment in the Kurdistan region, for building infrastructure, improving the delivery of essential services, strengthening the emerging democratic institutions, enacting regional laws and investing in human resources through capacity building programmes in a variety of fields. Since 2004 the KRG has had dealings with Norway's DNO Company to prospect for oil near Zakho and in the Taq-Taq fields. In 2007, the KRG opened the Dana Gas project to make gas available to electricity power stations; it also enacted the federal oil and gas law. In June 2009, and for the first time under the auspices of

the KRG, oil from the Khurmala fields was shipped to international markets through the Turkish port of Ceyhan. The Iraqi President Jalal Talabani described this as “*an historic event, not only for the Kurdish people but for all Iraqis*”, and President Barzani confirmed, “*We have proven in a clear, proper way that we are committed to the constitution of Iraq.*” Ashti Hawrami, the KRG Minister for Natural Resources, detailed the value and importance of the KRG’s contribution to Iraq’s oil exports, explaining how decentralisation and competition could increase oil revenues for Iraq and that the Iraqi constitution required that oil resources should be administered in a way that would maximise revenues for all the people of Iraq.⁵⁰¹ Nechirvan Barzani, KRG Prime Minister, also asserted that “*...in the best interests of Iraq. We are contributing to a better and more stable future for Iraq. Today we want to take a step forward for the Kurdistan Region and for all of Iraq*”.⁵⁰²

The non-Kurds, whether Arabs or Turkmen, believe that the Kurdish struggle to join Kirkuk to the Kurdistan Region is primarily a struggle over oil, and that it may represent a strong motivation towards the establishment of a future Kurdish State. On the other hand, for the Kurds, the Kurdistan Region without Kirkuk does not have the means to survive economically, particularly as Kirkuk includes such a high volume (40 percent) of Iraq’s current petroleum production. In fact, it is currently quite difficult to envisage the link between Kirkuk’s oil and Kurdish independence, since at the time that, the KRG itself did not have a strong infrastructure to rely on when managing an independent entity, particularly as the KRG’s budget for the payment of the salaries of public sector workers, political party employees, and Peshmerga forces, was almost entirely dependent on the federal budget.⁵⁰³

The Kurdish leaders constantly insisted that the Constitution had backed the KRG’s oil deals and laws, and that if the revenues from oil sales were deposited directly into the federal government account, the Kurds would therefore receive only a 17 percent benefit from this, while the rest of Iraq, which ironically had been highly resistant to

⁵⁰¹KRG.org, “Kurdistan Region celebrates historic achievement with first crude oil export”, 2 June 2009. Available at:

<URL:<http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&rnr=223&anr=29807>>

⁵⁰²KRG.org, “PM’s speech at start of oil exports”, Erbil, 1 June 2009. Available at:

<URL:<http://www.krg.org/articles/detail.asp?lngnr=12&smap=02040100&rnr=268&anr=29800>>

⁵⁰³ Liam Anderson and Gareth Stansfield (2009), *op. cit.*, 2009, p. 132.

the idea, would receive the other much-needed 83 percent of these revenues; thus, the revenues had to be handled fairly and transparently.⁵⁰⁴ It is evident that the main point of troubles between the Iraqi government and KRG focused on seeing that power over oil productions should be concentrated at the centre or in the Regions. However, according to the Constitution the KRG's had the right to manage the fields in their areas in cooperation with the Iraqi government. Another point of misunderstanding between them related to the kinds of contracts to be arranged with the international oil companies. Interestingly, despite efforts to reach a settlement, al-Shahristani insisted on applying the service contract, a kind of contract that the major oil companies might have had difficulty in accepting. The KRG preferred the production sharing type of contract that was a formidable motivating factor in getting the private sector involved in production.⁵⁰⁵

In focusing on the Iraqi constitution the Kurdistan Region maintains defined rights in the Constitution to formulate and implements its oil and gas model, all the while recognizing that the resources belong to and should be shared with all the citizens of Iraq. What should be pointed out is that the KRG is seeking to retain as much control as possible over development deals in the Kurdistan Region. The KRG has also succeeded in developing its own fields and has actively created economic diversification through encouraging an investment law. Moreover, it vigorously promotes foreign direct investment, private enterprise in most fields, and government support for the private sector. Meanwhile, the federal government has not been operating at a level required to increase production, rehabilitate the oil fields, and provide basic services. In turn, it should be pointed out that prompt enactment of the federal oil and gas law and a federal revenue-sharing law will be of mutual benefit for the KRG and the Iraqi government; in addition these laws are essential for Iraq's future stability and prosperity. In this regard, and in order to resolve these issues and move towards developing the oil and gas strategy, the federal government's oil ministry should put an end to the policy of blacklisting companies that work in Kurdistan by preventing them from operating in the rest of Iraq.

⁵⁰⁴ Bashdar Pusho Ismaeel, "Kurdistan manoeuvres to become a major feeder to Europe", 31 May 2009. Available at:

<URL:<http://www.kurdishglobe.net/displayArticle.jsp?id=638CFD4670B766EDF93B19D7BF81DC62>>

⁵⁰⁵ Interview with Falah Mustafa, on 1st May 2009, Erbil

It seems apparent that, one of the serious problems between the KRG and Iraqi government regarding the oil policy which pursued with investors. In spite of that, the KRG continued negotiations for further contracts with oil companies and political tension over oil rights mounted between both sides. The Iraqi government also criticised the KRG on the grounds that their proposed contracts had no legal cover. By contrast, the KRG argued strongly against the Iraqi government that they should not resist Kurdish efforts to revive the sector at a time when the Iraqi government was suffering from \$10 billion deficit due to the incompetence of Iraq's Oil Ministry. In looking the differences between the two sides, it is clear that what added to the political confusion, particularly after the failure of the Iraqi parliament to approve a legal regime to deal with foreign oil investment, was the KRG's decision to move forward to seek partners and give oil licences to foreign companies without central government approval if the Iraqi government persisted in being non-cooperative by putting obstacles everywhere.

It is clear that Iraq needs help to reorganise its infrastructure. The current problems in the oil sector should be addressed because the success of the oil sector is critical to the success of the Iraqi economy; therefore, Iraq must maximize its capability in this sector. In addition, the Iraqi government needs help with all aspects of its operations, including expanding oil production, which requires the setting-up of corporate structures and improving oil-sector performance. The main tasks for the Iraqi government include ratifying a draft oil law that defines the rights of regional and local governments and creates a fiscal and legal framework for investment. Both the Iraqi government and the KRG constantly claim that legal clarity is essential in order to attract investment. In this context, former Prime Minister Nechirevan Barzani stated that:

In order to develop, the economy of Iraq must be able to compete internationally and face contemporary challenges. We have moved swiftly from exploration to production and export. We are proud to contribute to Iraq's increased production and revenues. In reality, revenue sharing will bind us together more than any political slogan.⁵⁰⁶

⁵⁰⁶ KRG.org; *PM's speech at start of oil exports*, Erbil, 1 June 2009. Available at: <URL:<http://www.krg.org/articles/detail.asp?lngnr=12&smap=02040100&rn=268&anr=29800>>

It is true that, the discovery of oil in Kurdish territory, as well as Kurdish oil ambitions could easily ignite political conflict between the Iraqi government and the KRG. On the other hand, it represented a valuable accomplishment for the Kurdistan Region. It was a historic event for the KRG's when Iraq's Kurdish President, Jalal Talabani, and Masoud Barzani, President of the KRG, ceremonially opened a pipeline valve in Erbil, asserting that it would bring in much needed revenues not only for the Kurdish people but for all Iraqis.⁵⁰⁷ It is reasonable to state that the KRG's will not allow any return to what happened to them in the past, which is why they insist that the oil should now be used in an entirely different way. Perhaps the focus has now shifted from ways to recover from a disastrous past, characterised by the needs of diverse political groups, towards mutual respect, dialogue and a desire to implement the constitution.

In practice, logic and justice through sharing oil wealth and distributing revenues across all of Iraq will ensure the unification of Iraq and coherence between the different national and other factions. The political system is still adapted to a system of budget allocation, rather than to a constitutionally-required revenue-sharing mechanism. The lack of political will, in addition to direct political interference effectively stopped both the federal draft hydrocarbons law of February 2007 and the draft revenue-sharing law of May 2007 from being completed and reaching Parliament.

What it becomes clear that the Iraqi government will inherit a difficult task. A number of unsolved issues remain, many of which will have a great impact on the Kurdistan Region. Even so there can be great improvements in hydrocarbons and revenue-sharing legislation, to the benefit of all Iraqis. The Kurdish leaders have tried to agree upon and establish a genuine road map for the disputed territories, and the KRG is proud of being able to provide essential fuels to Iraqi domestic and international markets through the three refineries in the Region, whose licenses have been issued in

⁵⁰⁷ KRG.org, "Kurdistan Region celebrates historic achievement with first crude oil export", 2 June 2009. Available at:
<URL: <http://www.krg.org/articles/detail.asp?smap=02010100&lngnr=12&rnr=223&anr=29807>>

accordance with the Iraq Constitution and the Kurdistan Region's Oil and Gas Law of 2007, which granted the KRG Ministry of Natural Resources the authority to negotiate and agree to long-term oil contracts. Meanwhile, the KRG is satisfied with its growing oil and gas sector, and the Region's free trade policies. On the other hand, despite all these realities mentioned above, it is undeniable that, the political and economic situations in the Kurdistan region have undoubtedly improved sharply.

Finally, it is necessary to concentrate on the enactment of the revenue sharing law, since this will be the core that holds the various Iraqi factions together by pushing the supply of investment and essential services to the level of most efficient management the local level. Given to the KRG's ownership of huge reserves of oil, and coupled with its stable security and investment policies, the Kurdistan Region has attracted significant interest from foreign energy companies. Another important consideration is related the development of the gas sector in this region, taking into account the importance of gas for regional states such as Turkey, as well as European usage. In this respect Kurdistan will certainly have a prominent role to play as a gas supplier over the coming years. Consequently, the Kurdistan Region is currently going through rapid economic development, spurred by petroleum revenues. In this context, it could be said that the KRG's policy in the hydrocarbons sector has been successful, and that this represents a shining example of economic success that will go from strength to strength in the future. Hence, it seems reasonable to conclude that the interests of Iraq and Kurdistan are mutual and not antipathetic. From this vantage point, in order to ensure that Iraq will remain united, the best mechanism will be a federal hydrocarbons law that would draw the Kurds closely into the state structure on terms acceptable to both the Iraqi government and the KRG.

Chapter 9:

CONSIDERING THE MILITARY AND THE CASE OF THE PESHMERGA

“Upon the liberation of Iraq, we voluntarily cooperated in the reconstruction of the Iraqi government and state. We were the first among Iraqis to provide regular military forces during that difficult period of transition. Because we believe in the future of Iraq, we actively participated in the political negotiations that led to the endorsement of our Constitution. We will all feel more secure in a federal, democratic Iraq that promotes peace, stability and prosperity for its people”.

(The former Prime Minister Nechirvan Barzani, 1st June 2009).⁵⁰⁸

INTRODUCTION

A significant issue between the KRG and the Iraqi federal government concerned retention of the existing Kurdish armed forces and reorganization of the Iraqi army in a way that would enable them to participate effectively at all levels and ranks. In this respect the Kurds made momentous progress towards achieving their goal, having held high positions in the Iraqi Armies, particularly since 2003; For example, Brusk Shawais of the KDP was appointed secretary general of the Defence Ministry, while General Babakr Shawkat Zebari was top commander of the Iraqi military and others. After 1991, the KRG established its local policing and intelligence services, whose existence was recognized by TAL and subsequently in the Iraqi permanent constitution; in addition, the KRG set up the professional police academies in Erbil and Sulaimaniya. Having thus played a major part in defeating the former Iraqi

⁵⁰⁸ Part of speech given by the Prime Minister Nechirvan Barzani during celebrations at the start of crude oil exports from the Kurdistan Region. See KRG.org, “*PM's speech at start of oil exports*”, Erbil, Available at:
<URL: [http:// www.krg.org/articls/detail.asp?=12&smap=02040100&rnr=2687anr=29800](http://www.krg.org/articls/detail.asp?=12&smap=02040100&rnr=2687anr=29800)> Access Date: 1st June 2009.

government, the Peshmerga then took a significant role in protecting the new Iraqi government after 2003.

One of the critical issues faced by the Kurds was resolving the border problems between the KRG and the Iraqi government, including reinstatement of the areas withheld from Kurdistan. The fact that the Kurds postponed any attempts to find solutions for these areas until after the Iraqi elections and the creation of a new constitution for Iraq can be regarded as a serious error. As suggested by General Ray Odierno, the disputes between the Kurds and the Arabs resulted from the tensions between the two cultures over the oil-rich areas that each claimed as its own territory.⁵⁰⁹ The core of the issue concerned which of the parties would be able to control the Peshmerga forces, and was an administrative matter that had to be resolved. In other words, were the Peshmerga forces to be placed under the control of the Kurdistan region or the Iraqi government?

The main purpose of this chapter is to explore how most of Arabs and Turkmens had wanted to exploit the situation by raising the controversial issue of the withdrawal of the Peshmerga from Kirkuk and other disputed areas. While, the Kurds assert the need to defend the Kurdish component of terror and intimidation that they are exposed daily in the disputed areas by the Wafideen Arabs, who attempt in vain to spoil the democratic change process in building the state of law and civil society, who try to provoke the sectarianism and to create sedition among diverse communities in Kirkuk, despite that the Iraqi Army did not take any measures to protect them. The focus of this chapter about the escalating tension eventually became a direct threat and a confrontation between the Iraqi regular army and the Peshmerga forces, particularly, when Baghdad sent troops from time to time into three areas (Kirkuk, Khanaqin and Diyala) that had up till then been under informal Kurdish control.

⁵⁰⁹ Lara Jakes, "U.S. considers UN peacekeepers for Iraq after 2011; tensions remain between Kurds, Arabs", on 06, July 2010. Available at:
<URL:http://www.cleveland.com/world/index.ssf/2010/07/us_considers_un_peacekeepers_f.html>

9.1 THE STATUS OF THE KURDS IN THE NEW IRAQI ARMY

What should be remembered here that, Iraq's armed forces have a track record of crimes of oppression and mistreatment committed by the troops against the Kurds. To overcome these obstacles and problems during negotiations at the TAL, all factions, and particularly the Kurds, agreed on the need for civilian control over the military and for the tasks of the Federal Army to be confined to external defence, with the police being given responsibility for internal security.⁵¹⁰ Unlike the former Iraqi army, Kurdish Peshmerga had not been subjected to Baathification and had not been involved in genocide or expulsion operations against minority nationalities. Indeed, the Peshmerga had always found themselves defending human rights and the Kurdish national identity, as well as standing against the plots and strategies of the previous regimes to eliminate the presence of any Kurdish entity in the region. In this context, Nawshirwan Mustafa pays particular attention to the Peshmerga's role in the history of the Kurdish national movements, as well as to protect the Kurdish people. Interestingly, the main duty of the Peshmerga during (1961-1991) represented in facing the Iraqi troops. While, their duty changed to protect the KRG during (1991-2003). Obviously, since 2003 the Peshmerga is responsible for maintaining security of the Kurdistan Region and face the threat of terrorism. In addition, Nawshirwan Mustafa asserted that the Peshmerga currently does not represent the KRG's forces, but rather they represent the PUK and the KDP's forces. Indeed, the Peshmerga forces have been controlled by the two main parties and taken their orders from their leaders. Obviously, it is highly problematic, if any disputes were happened between these two parties, they will implicate the Peshmerga in their conflicts.⁵¹¹

According to the analysts, a combination of the factors mentioned above meant that the political prospects of the Kurds and Kurdistan had risen, internationally and internally. The Kurds had participated actively in the liberation of Iraq, particularly after the US, disappointed with the Turkish stance, had looked elsewhere for support;

⁵¹⁰ Brendan O'Leary, John McGarry, and Khaled Salih (eds.), *The Future of Kurdistan in Iraq*, (USA: University of Pennsylvania Press, 2005), p.131.

⁵¹¹ Nawshirwan Mustafa, (the issue of Constitution/ who is protecting the Kurdistan Region?), on 1st June 2005, [www. Reform-Kurd.com](http://www.Reform-Kurd.com); in (Sbey. Com). Available at: <URL:http://www.sbey.com/ku/article_detail.aspx?ArticleID=737&AuthorID=36&AspxAutoDetectCookieSupport=1>, on 3 Sept 2008 .

the Pentagon came to depend on the Kurds as a important alternative in their operations, and in this context, it has been argued that the Kurds had become America's most numerous allies to achieve their goals. Certainly, around 100,000 Peshmerga participated with members of the US Special Forces in Operation Iraqi Freedom. Heated discussions arose regarding the Kurdish military forces, particularly when the two major parties and their Peshmerga seized the artillery and other heavy weapons of the northern Iraqi armies.⁵¹²

In this context, Jabar Yawar⁵¹³ has argued for the separation of two cases, one related to the Kurds' role in the Iraqi Army and the other concerning relations between the Kurdish forces and the Iraqi Army, which became known as the Peshmerga case. The latter is a highly complicated issue between the both sides and remains unresolved. In the Kurdistan Region there are two kinds of forces, one connected to the Iraqi Army while the second is controlled by the KRG. The Ministry of Peshmerga and Ministry of the Interior were established after 1992 and the establishment of the first KRG cabinet. On the basis of a decision by Bremer the Iraqi Army was dissolved in 2003, and both a Ministry of Defence and Ministry of Interior were re-established in 2004. The spokesman for the Ministry of Peshmerga stated that they continued their attempts to solve the Peshmerga issue with the Iraqi government, and that in order to find a way out of the political crisis with the Iraqi government the political process in Iraq had been pursued on the principle of political consensus after 2003 and the formation of the new Iraqi government. This consensus had to include all aspects, including the formation of the Iraqi army, which meant that theoretically the Shiite, Sunni, and Kurdish groupings would each constitute 30 percent of the Iraqi army, while the other factions would account for the remaining 10 percent.⁵¹⁴

Given such requirements, Sirwan Zahawi who has indicated to determining Kurdish rights in the Iraqi Army, there were two trends: first, if based on parliamentary seats, the Kurds by right would have over 21 percent of the Iraqi army; secondly, based on

⁵¹² Peter W. Galbraith, "Kurdistan in a Federal Iraq", in Brendan O'Leary, John McGarry, and Khaled Salih (eds.), *The Future of Kurdistan in Iraq*, University of Pennsylvania Press, 2005, p.270-1

⁵¹³ Interview with Brigadier General Jabar Yawar, deputy minister of the KRG Peshmerga forces, and also spokesman of the KRG's Ministry of Peshmerga Affairs, Sulaimaniya, 15 April 2010.

⁵¹⁴ Karzan Hawrami, "According to the constitution the Kurds should represent one third of the Iraqi army", Erbil, December 2009, <http://www.kurdistanreport.com/Detail.aspx?page=articles&c=news&id=2933>

political consensus, the Kurds would have the right to nearly 30 percent of the Iraqi army. Nevertheless, the actual percentage of Kurds in the Iraqi army was small there were fewer than 5000 individuals. In addition, he added that the presence of Kurds in the administrative units of Iraq are very few or may be non-existent. It is noteworthy that the Kurds have so far neither on the basis of consensus and nor on the basis of their percentage in the Iraqi Parliament did not determine its stake in the Iraqi army. Therefore the Kurds insist on their participation in the Iraqi army, which should be raised their percentage nearly 15% on the base of the consensus.⁵¹⁵ Additionally, President of Iraq Jalal Talabani has underlined these facts , Particularly, when he expressed on his view with the Al- Iraqiya satellite, and said: “There is a rumour that the Sunni Arabs oppressed in the Ministry of Defence, but if we look closely we find that (44%) of Iraqi army officers are Shiites and (42%) of Iraqi army officers were Sunni Arabs and (8%) of the officers Iraqi Army are the Kurds, this is in the republican era, which the President of the Federal republic, Kurd. In this regard, we wonder is this override or it is diminution of the Kurds rights?⁵¹⁶

It is not difficult to envisage, why the Kurds sought for Peshmerga forces to be included as part of the Iraqi Army, even though they had struggled in the past and raised different slogans. Their thinking has often been cited as evidence of changing attitudes and opinions. Jabar Yawar suggested that there was possibly a misconception by most people, because Kurds did not wish to be part of the Iraqi army, which had its own functions. As the sovereign army for all of Iraq, the main duties of the Iraqi army were to maintain the integrity of Iraq’s land, air space, and territorial waters, whereas the specific duties of the Peshmerga forces involved the protection of the Kurdistan region that was under KRG control. The draft law of the KRG’s Peshmerga Ministry defined the duties of the Peshmerga (and the Ministry itself) in the first paragraph of Article 2; these involved guarding and defending the Kurdistan Region, and guaranteeing its national and patriotic interests. Article 2, para.3 stated that, according to the security memorandum, they would be ready to defend the sovereignty and security of the federal government of Iraq; and that they

⁵¹⁵ Karzan Hawrami, “According to the constitution ...”, *ibid*.

⁵¹⁶ Interview with President Jalal Talabani in the Al- Iraqiya satellite, on 25 February 2008. Available at:
<URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=5290&type=interviews>
Access Date: 5 April 2009

would coordinate and cooperate with the federal government in resolving and surmounting security crises (para.4). With the Iraqi federal government they would fight and resist all varieties of terrorism, particularly in Kurdistan (para.5); and in addition would contribute to relief efforts in natural catastrophes and offer necessary humanitarian aid (Para. 6).⁵¹⁷

The KRG as a local government had regional police and security forces, along the Peshmerga forces which were not part of the Iraqi Army but were included in the defence and security system, along with the army, the security forces, the Iraqi police and the regional police. In addition to the Regional Guards, the KRG also sought to increase the proportion of Kurds in the Iraqi army, but it seemed unlikely that the Kurds would play any part in the Iraqi army, either as an independent element in the KRG forces (including security, regional police and Peshmerga) that participated in Iraq's security and defence system, or as individuals within the Iraqi army, the Iraqi police and/or the Iraqi security services.

Regarding the harsh criticisms of the Kurdish leadership over the delay in uniting their respective Peshmerga forces, the two main parties (the PUK and KDP) declared that their real intentions were to unite their forces, that they were working towards that goal, and that both parties possessed heavy weapons. According to Mahmud Sangawi, a member of the PUK's Political Bureau and commander of the Peshmerga forces, these forces consisted of 18 Brigades, numbering between 150,000 and 200,000 troops. Sangawi also noted in mid-2010 that only six Brigades had so far been unified.⁵¹⁸ Given this situation it could be predicted that the spectre of civil war had not entirely vanished, particularly if the PUK and the KDP had both worked to affiliate these forces to their respective parties instead of enabling them to be a driving force for the Kurdish national territory. In turn, the continued lack of integration among the Peshmerga forces of both parties was likely to weaken the Kurds' position in Baghdad.

⁵¹⁷ Draft law of Peshmerga Ministry of Iraqi -Kurdistan Region

⁵¹⁸ Awene Newspaper, "*Mahmud Sangawi said that they have secret plan for Baghdad*", on 29 July 2010, Available at:

<URL:<http://www.awene.com/Direje.aspx?Babet=Babet&Cor=Chawpekewtin&jimare=1497>>

9.2 THE EXACERBATING CRISIS BETWEEN THE IRAQI FEDERAL GOVERNMENT AND THE KRG

Most of these chronic problems had historical roots dating back to the first quarter of the twentieth century and the establishment of the first Iraqi State, and throughout earlier periods of Iraqi rule were certainly linked, directly or indirectly, to the Kirkuk issue which formed the basis for all Kurdish revolts; the lack of success of any previous negotiations during the Kurdish struggle was due to failure to resolve this issue.

The Arab and Turkmen parties were concerned that if the Kurds retained a separate military capability it would be easy for them to secede from a federal command structure in the future; therefore they tried to persuade the US administration, through the Coalition Provisional Authority (CPA), to dismantle the Peshmerga forces. The Kurds resisted this demand, regarding these forces as a symbol of Kurdish national dignity, pride, and also survival, with the latter being proof of their long and bitter struggle against all previous regimes. They insisted on maintaining control over the Peshmerga, while the Arab parties preferred a wholly integrated military structure. The Kurds were also unwilling to call the Peshmerga a “militia”, and due to the level of training and experience among the Peshmerga, avoided comparing them with al-Sadr’s “Mahdi Army” or the Badr Brigades.

The key problem for Iraqi reconstruction was the on-going question of security; thus, the deterioration of Iraq’s security was another key factor behind the CPA’s decision the return of their highly-trained Peshmerga forces. To clarify the issue of Peshmerga, Yawar has discussed the important aspects that led this problem to emerge. As far as the Kurds were concerned, it was probably during Bremer’s period as a civil governor of Iraq, when law No. 90 for dissolving the militia was initiated in 2003. According to this law all forces and militias throughout Iraq were to be dissolved. Given prevailing conditions, the Kurds were asked to redeploy their forces, particularly the Peshmerga, by transferring them to police the environment or police electricity supplies or even retire altogether if they wished to do so.⁵¹⁹

⁵¹⁹ Interview with Jabar Yawar, on 15 April 2010, Sulaymaniyah

Jabar Yawar pointed out that by the forcible imposition of law No. 90, the US failed badly, since this contributed to the deteriorating situation in Iraq and to ever-increasing acts of terrorism, particularly in 2004. Eventually the US Administration was obliged to abolish this law, and in order to control the internal situation, had to speed up the rebuilding of the Iraqi army from among the same former serving officers. Some parts of the Peshmerga forces were transferred under the name of border guards and environmental police. Ironically, various reasons and circumstances meant that many Peshmerga kept their positions, and were given US support to protect the security of the Kurdistan Region and to assist the Iraqi army, particularly in the Sunni zones, to fight against Al-Qaida, as well as helping to return security and stability to these areas. As noted, these situations continued until the ratification of the New Iraqi Constitution in 2005, which clearly recognised all forces in the Kurdistan Region (police, security, Regional Guards).⁵²⁰

In July 2008 there was a tense situation in Kirkuk following a suicide bombing that occurred during a Kurdish demonstration. In response to the attack a group of demonstrators, chanting the national anthem and condemning the massacre, marched in front of the Turkmen party headquarters, whereupon the Turkmen guards fired into the crowd, killing at least 25 Kurdish demonstrators and injuring over 200 people.⁵²¹ It was not difficult to see that political parties lay behind the tensions, particularly as those responsible for the shootings found support from, and hides behind, the Arab and Turkmen parties. However, it should also be noted that most of the time Nouri al-Maliki's government had wanted to exploit the situation by raising the controversial issue of the withdrawal of the Peshmerga from Kirkuk and other disputed areas. Tensions were exacerbated when Maliki sent troops into three areas that had up till then been under informal Kurdish control. The escalating tension eventually became a direct threat and a confrontation between the Iraqi regular army and the Peshmerga forces.

It is quite evident that the issue of conspiracies had been raised, whether at the regional or internal level, and after Kurdish and Iraqi troops had clashed in the eastern

⁵²⁰ Interview with Jabar Yawar, on 15 April 2010, Sulaymaniyah

⁵²¹ Julian Borger, "Kirkuk dispute threatens to plunge Iraq into Kurdish-Arab war", Available at: <URL: <http://www.guardian.co.uk/world/2008/oct/27/iraq>> Access Date: on 28 October 2008.

province of Diyala in 2008, there were real worries that ethnic tensions could lead to war. The Turkmen and Arab political leaders had long accused the Kurdish Peshmerga of existing illegally in the disputed areas. This reality posed a deeper challenge because of the absence of any actual intent on the part of the Iraqi government to resolve the problems. Indeed, The Kurds suffered at the hands of the Wafideen Arabs who served in the security apparatus, but on the other hand did not follow a policy of revenge after they had returned in April 2003 to Kirkuk and the other areas to which they laid claim.⁵²² What remained controversial was the fact that the security situation in Kirkuk was likely to exacerbate the challenges. Additionally, Kirkuk lay outside the areas run by the KRG; however, in practice the Peshmerga fighters and a Kurdish intelligence service (*Asaish*) took a prominent role in ensuring the city's security. They also collaborated well with US intelligence. As many researchers indicated, they might have benefited from lessons drawn from the experiences of other federations; it was therefore suggested some regional armed forces should be retained as they would play a crucial role in maintaining security through the effectiveness of their participation.⁵²³

As a result of the political complications in these areas, particularly in Khanaqin, the KRG and the Iraqi government established a system in the city for the joint management of the entire province. Khanaqin had actually been under KRG control since 2003, but because of being located within the disputed areas, was dealt with equally by institutions of both the Iraqi government and the KRG. Both sides, for example, administered police and security forces as well as colleges and schools. The problem was that both sides considered they had the right to manage these areas, which included also Sinjar, Makhmur, Sheikhan, Zumar, Alton Kopri, Laylan, Duz and Qara Hanjir, and so on.

On the issue of Mosul and the demand to withdraw the Peshmerga forces in the areas that were administratively subordinate to the province of Mosul, Jabar Yawar pointed

⁵²² Whatever their methods, the Kurdish leaders were aware that they might not be able to push out all the *Wafideen*. This implies the possibility of turning to the alternative solution; i.e., depriving those who remained of the right to vote in Kirkuk.

Anthony H. Cordesman; *Success or Failure? Iraq's Insurgency and Civil Violence and US Strategy: Developments through June 2007*, Center for Strategic and International Studies, Arleigh A. Burke Chair in Strategy, Washington, DC, on September 2007, p.93-4

⁵²³ Brendan O'Leary, John McGarry, and Khaled Salih (eds.), *op.cit.*, p.130

out that this represented a political dilemma between the Hadba List (which included most of the advocates and supporters of the former regime) and the List of Brothers (representing the main Kurdish parties and certain groups of Christians, Turkmens, Yazidi and Arabs). In fact, there was a serious dispute between the two Lists, due to the presence of Peshmerga in Shekhan, Zumar, Sinjar, Diyala, etc., areas that were administratively subordinate to the province of Mosul. Obviously the KRG insisted on protecting these Kurdish areas from terrorist attacks, especially as local Kurdish populations had been targeted by terrorist groups in these districts. The inhabitants of this area, which was known as the Sunni Triangle, supported the terrorist acts of al-Qaeda, and aimed to intimidate the population and to expel local Kurds from their places of origin.

Whether or not the Iraqi government dealt with the Peshmerga forces as a militia is debatable, although various reasons and different views have been put forward. The Kurds considered the Peshmerga to have been the liberating power of the Kurdish people during their long political struggle, and a symbol of steadfastness and fortitude in the face of injustice and tyranny imposed by the fascist regimes. On the other hand, some of the Iraqi factions and some of the Sunni and Shiite extremist parties have seen the Peshmerga simply as a militia. However, Jabar Yawar states that the Iraqi government never dealt with the Peshmerga as a militia. Certainly personal statements made by people such as Osama al-Nujaifi or Atheel al-Nujaifi or sometimes representatives of some political blocs would seem to support this view.

It should be noted that the US military had acknowledged disputes between the Kurds and Arabs in the contested territories, particularly in Kirkuk. In fact the Kurds (particularly the Shabak, Yazidi, and other Christian minorities) had frequently been targeted by terrorists groups. A series of bombings in July and August 2009 in a Kurdish village in Mosul provided some of the clearest evidence of attempts to expel other minorities from the city, having caused at least 143 deaths, scores of wounded, and the destruction of an entire village. General Ray Odierno, the American military commander in Iraq, planned to deploy US troops, along with members of the Kurdish

Peshmerga force and the Iraqi Army, throughout the disputed areas so as to prevent groups linked to al-Qaeda from exploiting the tensions between Arabs and Kurds.⁵²⁴

In this context, Mahmud Sangawi commented that those areas (disputed areas) were part of the Kurdistan. As Sangawi noted, the key problems occurred when the Iraqi army included all the groups who exhibited racist, chauvinistic and terrorist behaviours that in turn were responsible for creating political unrest and insecurity in those areas. He also added that broader problems would arise when the withdrawal of US troops got under way, since those groups would simply increase their attempts to expel the Kurdish population in Jalawla and Diyala and in the city and outskirts of Mosul.⁵²⁵

Efforts by Baghdad to form tribal support councils in the disputed areas, under the pretext that a security vacuum existed there, were strongly resisted by the Kurds for whom these areas, particularly Kirkuk, Khanaqin and Jalawla, were an integral part of Kurdistan, even though the Iraqi government described them as “part of the rest of Iraq”. The US army was interested in the formation and in the arming of the Awakening groups for protection of local areas, particularly in the Sunni localities. The Kurds probably had good reason to fear that the councils were created to restrict Kurdish influence in those areas. The Kurdish Peshmerga were able to preserve security in the disputed areas, while also helping to secure threatened oil pipelines and even protecting certain neighbourhoods in Baghdad.⁵²⁶

The major problem for the inhabitants in the disputed areas concerned the probability of a security vacuum being created after the withdrawal of US troops from their areas, although it seemed reasonable to assume that the US administration, having spent more than \$18 billion on restructuring and equipping Iraqi security forces, had reviewed its decision on withdrawal, since it seemed that nearly 50,000 soldiers were

⁵²⁴ Sam Dagher, “Minorities in Iraq’s North Seen as Threatened”, 10 November 2009
http://www.nytimes.com/2009/11/11/world/middleeast/11erbil.html?_r=1&scp=1&sq=minorities%20threatened&st=cse

⁵²⁵ Awene Newspaper, “Mahmud Sangawi said that they have secret plan for Baghdad”, 29 July 2010, Available at
<URL:<http://www.awene.com/Direje.aspx?Babet=Babet&Cor=Chawpekewtin&jimare=1497>>

⁵²⁶ Alissa J. Rubin, “Rejection of Oil Law and Move to Create Tribal Councils add to tensions with Kurds”, *New York Times*, 27 October 2008; Available at:
<URL: <http://www.nytimes.com/2008/10/28/world/middleeast/28iraq.html>> Access Date: 20 December 2008

intended to remain in Iraq to offer logistical assistance and training to Iraq's army. In this regard, Christopher Hill, US Ambassador to Iraq, asserted although US troops would withdraw, American interests in Iraq would remain constant and unchanged.⁵²⁷ Anthony Blinken (National Security Adviser to Vice-President Biden) seems to have pointed out that the Office of Security Cooperation inside the US Embassy would be under the ambassador's supervision, and while its function would be to liaise between the US troops and Iraqi forces, only a few hundred troops, rather than thousands would be required for this. It should be noted here that in 2007 US troop numbers had reached 170,000 soldiers, after which the number had dropped to 50,000 troops, and was expected by the end of 2010 to be few hundred only. On the whole, despite the challenges facing Iraq, including the disagreements between the Iraqi government and the KRG, the US was prepared to assist the Iraqi people to come together to find new political solutions and build a future together as a united country.

What should be indicated here that, the US played an enormous role in calming down the situation in general, and particularly in the disputed areas where it assumed the role of a broker between the Arabs and Kurds to resolve outstanding issues, to control the worsening situations between them, and to prevent possible military attacks by each side. It was felt that if the US troops were to withdraw from Iraq before resolving the outstanding problems and without having settled the major disputes between both sides, this would be the biggest threat to stability in Iraq, since it would lead to a deepening dispute between the Kurds and other Iraqi factions.⁵²⁸ In fact, the Kurds more than any other factions were watching anxiously to see what might happen in the near future in Iraq, and because they would be particularly affected and therefore more vulnerable, they were more interested in the possible redeployment of US troops in the Kurdistan Region. Believing that the US departure might increase their potential exposure to attack by Iraqi forces and also by neighbouring countries, especially Turkey and Iran, Kurdish officials tried to persuade the US administration to keep some of its troops in the Kurdistan Region in the event of the US withdrawal from Iraq. At the World Affairs Council in Denver, Qubad Talabani, the KRG

⁵²⁷ Awene newspaper, on 22 August 2010, Available at:

<URL:<http://www.awene.com/Direje.aspx?Babet=Hemereng&jimare=1232>> Access Date 23 August 2010.

⁵²⁸ "Iraq's Kurds, Arabs face choice: settle or fight", 4 June 2009; article available at <URL:<http://www.ekurd.net/mismas/articles/misc2009/6/kurdsiniraq45.htm>>

representative to the US, pointed out that the US had strategic relations with the Kurdistan Region, and stressed the need for American forces to be permanently present in the Kurdistan Region to protect its security. Talabani also made the significant point that no US soldiers had been killed in the Kurdistan Region.⁵²⁹

9.3 FINDING SOLUTIONS TO RESOLVE THE DIFFERENCES

Most of the major problems that emerged between the Iraqi government and the KRG concerned the constitution, whether related to Article 140, to the Peshmerga issue, to determining the Kurdistan Region's budget, or else to the production and export of oil. Having agreed on the need to pull the country out of the political crisis it was experiencing, along with constant Kurdish claims to be resolving the problems, the two sides formed a higher committee in November 2006, headed by Masoud Barzani, accompanied by the previous Prime Minister Nechirvan Barzani and all the relevant Kurdish ministers, including Natural Resources, Peshmerga Affaires, Finance, and Extra-Regional Affairs, while the Iraqi side was represented by the Prime Minister Nuri Al-Maliki, along with the relevant ministers including Interior, Defence, Finance, and Oil.

The Higher Committee's negotiations led to the creation of a Presidential Commission, composed of; Masoud Barzani, Jalal Talabani, Tariq al-Hashimi, and Nuri al-Maliki. In 2007 five supreme committees were established to resolve the outstanding issues; each dealt with a specific case. The committees continued their work until December 2008, when political problems between Nuri Al-Maliki and Masoud Barzani led to the suspension of all meetings and negotiations between them. There was a perception that the Iraqi government might be moving towards a dictatorship and the monopoly of power by one of the Iraqi factions, moreover it is reasonable to assume that rejection of the federal system by the majority of Iraqi factions (except the Kurds) in Iraq, offered reasonable evidence to support this view. Particularly, when the Kurds believe that achieving their gains depend on the

⁵²⁹ Article from *World Tribune*, "Kurds have demanded for staying U.S. troops in Kurdistan Region", Available at: <URL: <http://www.sbeiy.com/ku/ByaniArticleDetail.aspx?id=787>> Access Date: 24 August 2010.

application of the federal system, while other factions have a contradictory opinion that these changes may affect their interests adversely.⁵³⁰

Jabar Yawar has indicated that each of the five committees arrived at convincing agreements during their negotiations. However, the Presidential Commission created various problems which in turn led to the final solutions being held back. For example, the committee on the Peshmerga was very specific about the issues involved; on 23 June 2007, agreement was reached over eight particular points related to the function and duties of Peshmerga, the type of clothing to be worn, types of weapons, training, how its budget would be expended, and inclusion of a law on retirement. Both parties signed the convention, but when it was offered to Nuri al-Maliki he kept the case file and did not sign. Thus, each committee approached the others over the agreements, but their efforts were undermined in the Supreme Committee. According to Yawar, the Dawa party, and particularly al-Maliki himself were the major factors behind the opposition to, and non-implementation of these agreements, which in turn led to negotiations being suspended and never concluded.

Despite the creation of coordination centres Jabar Yawar also referred to joint checkpoints for controlling the disputed areas. There were joint forces for the military operations in Kirkuk, Diyala and Mosul, in addition to the convention with the Iraqi Minister of Defence with regard to the processing of Peshmerga forces, including the necessary technical and communications equipment training to prepare and support them as part of Iraq's security system. As noted, the coordination committee was created in 2009, particularly after disputes had arisen in 2008 between the Iraqi army and the Peshmerga forces regarding the movement of Iraqi forces towards Khanaqin. This problem emerged more or less during the period of the provincial elections and therefore affected Kirkuk and Mosul as well. Yawar noted that the Peshmerga forces had the right to remain in these disputes areas; however, the Iraqi army claimed the same right, because the fate of these areas had not yet resolved.

To reduce the numbers of Peshmerga, the KRG put a new plan into practice by changing many soldiers into police officers, or transforming them into civil defence

⁵³⁰ Interview with Jabar Yawar, on 15 April 2010, Sulaymaniyah

units, Environmental and Forest Police, some were even allowed to be recruited into an Iraqi border patrol. After the TAL negotiations, the Kurds insisted on having their National Guard as a regional guard to protect the borders of the KRG; naturally these forces were working under regional control, but in certain conditions would operate within a federal government. In this context, Yawar noted that the KRG tried to rely on the Iraqi constitution to settle cases with the federal government that involved transferring Peshmerga forces to the Regional Guards, and from 2006 negotiated continuously with the Federal government. The KRG also created various high level committees, and participated in several meetings in Baghdad, some of which were attended by the President of the Kurdistan Region and also the President of the Iraqi Federal Republic.⁵³¹

According to Rashid Azzawi, a member of the Iraqi parliament (from the Accordance Front), Maliki's visit to the Kurdistan region as well as the creation of two Divisional Forces by the Iraqi Ministry of Defence for the Peshmerga forces did not solve the Peshmerga issue. Kurdish officials in the Region insisted that the Peshmerga budget should be paid by the Iraq Ministry of Defence, but at the same time wanted to keep the Peshmerga under their administration. Azzawi felt that al-Maliki was guilty of a glaring omission, as it was clear that the Iraqi Prime Minister had failed to deal with the Peshmerga as he had dealt with the Awakening Councils.⁵³²

One should mention here that the Provincial elections were held in Mosul in 2009, in which the Kurdish Nineveh Brotherly List obtained the highest number of votes; however they boycotted any participation in local government affairs. Ostensibly, this disagreement was due to the distribution of Provincial Council posts between the two sides; thus, the al-Hadba List managed to monopolise all of the Council seats and managerial positions in the city, which led to the withdrawal of the Kurdish Nineveh Brotherly List. Following meetings held in Baghdad and Ankara, the situation subsequently developed further with convergence between the Arab nationalist al-Hadba List and the Kurdish Nineveh Brotherly List under a UN initiative to resolve the political crisis in Mosul. It has been argued that the two Lists might have found

⁵³¹ Interview with Jabar Yawar, on 15 April 2010, Sulaymaniyah

⁵³² Sbeiy.com, "Rashid Azzawi: Al-Maliki visit to Kurdistan Region has not resolved the Peshmerga issue". Available at : < URL: <http://www.sbeiy.com/ku/newsdetail.aspx?id=19452&cat=1&title=>> Access Date: 12 August 2009>.

their own way to settle the disputes. In the most obvious sense, the resolution of these disputes accelerated the implementation of Article 140.

According to Sheikh Jaffar Sheik Mustafa, the KRG's Minister of Peshmerga, the KRG had agreed to deploy the combined forces in the disputed area and to protect oil pipe lines and checkpoints that would be based throughout the north. However, the Iraqi government and the Arab-led provincial government in Mosul were opposed to the idea, regarding the arrangement as an infringement of their sovereignty, and called for Kurdish troops to retreat from the areas they had occupied outside their region's 1991 borders. Sheikh Mustafa pointed out that the US troops should participate with the joint forces in securing the area and carrying out Article 140 of the Iraqi Constitution. From the official US viewpoint, they were keen to resolve a political standoff between Sunni Arabs and Kurds in Mosul that had simply exacerbated the situation, and were, moreover, optimistic that the joint force would eventually become functional in Kirkuk and other disputed areas.⁵³³

As was to be expected, the Arabs and Turkmen blocs stood strongly against the idea of the spreading of the joint forces, including US troops, Kurds and Iraqis in the disputed (Kurdish) areas. By contrast, the Kurdish politicians in Kirkuk and Mosul expressed their support for this proposal. Najat Hassan, a KDP official in Kirkuk, stated that the Division 12 forces in the Iraqi army, which included all Iraqi factions, the Peshmerga, and the Regional Guards, were to be found along the border areas between the territories and Kirkuk, while the US troops were stationed in their camps, either in Kirkuk or Mosul, even though no actual clashes or problems had occurred between them. From the other side, Abdul Rahim al-Shmiri⁵³⁴ felt that such proposals would increase political tensions and security problems in Mosul, particularly as most of Mosul's population were Arabs, who did not want the presence of Peshmerga and demanded their expulsion.⁵³⁵

⁵³³ Sam Dagher, "Minorities in Iraq's North Seen as Threatened", on November 10, 2009 http://www.nytimes.com/2009/11/11/world/middleeast/11erbil.html?_r=1&scp=1&sq=minorities%20threatened&st=cse

⁵³⁴ Abdul Rahim al-Shamiri, which is known as one of the Arab nationalists and served as the mayor of al-Biaaj district in Nineveh province,

⁵³⁵ "The Arabs rejected the proposals of the spread of the joint forces in the disputed areas", on 19 August 2009; Available at: <URL:<http://www.sbeiy.com/ku/newsdetail.aspx?id=19593&cat=1>> Access Date 20 August 2009.

Despite the outstanding problems, many meetings were held at the end of 2009. In order to liaise with the regions, the Iraqi government established five coordination centres in the cities of Baghdad, Mosul, Diyala and Kirkuk, consisting of an American officer, an officer from the Iraqi government, and an officer of the Peshmerga, whose task was to reorganise administrative coordination and exchange of security information. Amongst other difficult issues between both sides, this concerned the rights or dues of the Kurdistan forces (Peshmerga). According to Yawar there was a special budget earmarked for the highest offices in the Iraqi State (e.g., President of the Council of Ministers, President of the Republic, president of the Parliament, the Minister of Foreign Affairs and the supreme commander of the Iraqi Army). Known as the budget of sovereignty, this special funding was ring-fenced and was not included in the general Iraqi budget. The view was that since the Peshmerga, in providing security for that part of Iraq, undertook the same duties as the Iraqi Army, they should also have an equal share of the sovereignty budget.

Signing an agreement regarding the Peshmerga budget and then releasing the appropriate resources appeared to be an unresolved problem, or at least a disputed item between the KRG and the Iraqi government. Although a clause in the budgetary law scrutinised in the Iraqi Parliament in 2007 had indicated that the financial plan for the Regional Guard was included in the sovereign budget, so far the KRG had not received any of these funds. In the current period, the Iraqi government's failure over four years to pay these dues, which included salaries, military vehicles, food supplies, uniforms etc., caused considerable difficulties for the Kurdish forces and put tremendous pressure over the KRG, which was obliged to deduct from 17 percent of the Territory's overall budget to pay for the Kurdish forces and Ministry of Peshmerga, so that paying for the Ministry of Peshmerga meant eating into the resources allocated to civilian Ministries. In this context, the KRG did their best to implement Clause 5 of Article 121 of the Iraqi Constitution by converting the Peshmerga forces to the Regional Guards in order to resolve this legal problem. In this regard, the KRG's Finance Minister, Bayz Talabani explained that:

The Iraqi government should have provided the four-year budget for Peshmerga forces with the two-year allocations according to the national law. But the Iraqi government still remains silent regarding to such issue, which makes national

allocations short in Kurdistan; because the Kurdistan Regional Government (KRG) must provide it. Although, the Iraqi government allocated the financial allocations of the Peshmerga forces from the national budget annually, but has not been cashed in which the allocations must be released by the Iraqi government.⁵³⁶

Regrettably, one continuing problem was Iraqi suspicion toward the Kurds and the fact that Arab-Kurdish tension had so far not diminished in the Mosul and Kirkuk areas. National reconciliation would be impossible to achieve if Kirkuk's status remained unresolved. The Kurds recognised that they needed to be patient and not retaliate against acts of aggression suffered in the past, particularly with regard to Kirkuk, for if they did they would lose support and international sympathy for their case, but despite this understanding, tensions continued to rise over whether a referendum should be held on the future of Kirkuk, as well as over the future control of oil resources in the Kurdistan Region; its export income also remained subject to bargaining. There were other troubling signs, such as when the Iraqi factions and blocs of political parties sought to discuss the formation of the government or whether to debate any issues vital to Iraq; they even considered resolving their political differences by resorting to the neighbouring countries for advice; this was reflected in the actual role of these countries and their impact on the political process in Iraq.

Even so, beyond the competitiveness and differences among all Iraqi factions, it remains the case that, in order to form a true national partnership that will represent all components of Iraqi society and achieve the aspirations of all the people, the political situation and the constraints faced by the democratic process in the country do require the Iraqi factions to reach a peaceful and consensual solution. Ultimately, they will realise that it is necessary to work together in Iraq against the common enemy of al-Qaeda and its supporters who exploit tensions instead of fighting each other.

⁵³⁶ PUK media, "Iraqi government still freezes budget of Peshmerga forces", 28 July 2010, at http://www.pukmedia.com/english/index.php?option=com_content&view=article&id=4036:iraqi-government-still-freezes-budget-of-peshmerga-forces-&catid=29:kurdistan-region&Itemid=385

CONCLUSION

The Peshmerga forces emerged at the beginning of the Kurdish independence movement in early 1919, while the Iraqi Army was formed with the establishment of its first battalion early in 1921. The Peshmerga had always set out to defend the human rights and national identity of the Kurds, as well as standing against the plots and strategies of the previous regime to eliminate the presence of any Kurdish entity in the region. Between 1961 and 1991 the main task of the Peshmerga involved facing Iraqi troops, but from 1991 to 2003 this duty changed to protecting the KRG. After 2003 the Peshmerga became responsible for maintaining the security of the Kurdistan Region, confronting the threat of terrorism, and protecting people in disputed areas.

It is worth mentioning that, according to the New Iraqi Constitution, all Iraqi factions (Arabs, Kurds, Turkmen, Christians, Yazidi and Shabak) had the right to participate in the Iraqi Army according to their population share. The first problem was that if the Kurdish population was compared with its participation in the Iraqi Army it would be at a minimal figure of around 8.2 percent, whereas when accurate numbers were revealed during the Iraqi elections in 2005 the Kurdish population accounted for more than 17 percent. This matter was obviously regarded as one of the more contentious issues needing to be resolved by the Iraqi government and the KRG. The second problem was the case of the Peshmerga; which was that according Article 121, clause 5 in the New Iraqi Constitution; all Regions could have Regional Guards in addition to police and security forces. In the Kurdistan Region these Guards were/are the Peshmerga.⁵³⁷

In fact, the Kurds are now participating in Iraqi politics and institutions. The Kurdish forces have gained unprecedented constitutional status, and in the Iraqi constitution, the Peshmerga is described as the “guardian of the Kurdistan Region”. Here it is noted that the KRG has more than 100,000 Peshmerga, most of whom provide security in the KRG region and in other cities in the disputed areas where Kurds live. The constitution also considers the Peshmerga as part of the Iraqi defence system, and therefore its budget must be provided by the Iraqi Ministry of Defence. Thus, the

⁵³⁷ Interview with Jabar Yawar, on 15 April 2010, Sulaymaniyah

KRG had the constitutional right to transform Peshmerga forces into Kurdish National Guards and effective police forces, with others serving throughout Iraq in the Iraqi Security Forces. With its security managed by its own defence forces that are also integrated with wider Iraqi power structures, it is the case that the Kurdistan Region remains the country's safest and most stable region.

It is logical to assume that the core of the Kurdish problem in Iraq has always returned to the issue of rule in Iraq. Many scholars have asserted that from the emergence of the first State in Iraq, apart from those who were loyal to the regimes the Kurds always saw themselves excluded from power and their role in the state and its administration marginalised. This probably represents a substantial factor in the Kurds' insistence that Federalism would give them a chance to participate as a main partner in running Iraq, whereas most of the Arab parties, whether Shiite or Sunni, announcing that they would stand firmly against federalism since it would lead to a divided country.

In fact, the Kurdish populations in the disputes areas were subjected to an even more violent campaign of terror and a great many people were uprooted from their homes under the eyes of the Iraqi government; indeed, the government seemed noticeably disinclined to take the necessary measures to protect them. The Kurds therefore focused primarily on taking measures to protect citizens in these districts who were ethnically Kurdish and whose inclusion was favoured by the Kurds; however, the minorities were strictly opposed and also expressed their continued concerns about the existence of Kurdish security services.

The basic dilemma in this regard was whether Iraq would be stable by the end of 2011, at which time all US troops were required to leave the country, according to a security agreement between Washington and Baghdad. Another problem was how to ensure integration between different factions in Iraq. According to General Ray Odierno, the top American military commander in Iraq, in the event of US troops being withdrawn at the end of September 2011, it might be necessary to deploy UN peacekeeping forces to protect the disputed territories if tensions between Kurds and Arabs had not been resolved, and if the Kurdish soldiers had not by that time

integrated into the Arab-dominated Iraqi army.⁵³⁸ Given the likelihood of ongoing unrest in the Iraqi cities, it was expected that the Iraqi leaders might ask the US to review its agreement with the Iraqi government in order that at least some troops might be left behind after 2011 to assist the Iraqi army and police forces to train more personnel and to offer them additional technical support.

What remains controversial is whether the Iraqi forces would have the capacity to protect Iraq's security. Any plans that might have been drawn up to deal with this contingency were not considered crucial by the Iraqi government. According to Babakr Zebari, Army Chief of Staff, the Iraqi forces would not be able to maintain the country's security and defend its sovereignty before 2020. Furthermore, the departure of the US troops would not be in Iraq's interests, and would cause significant harm to the political process in Iraq, and that the Iraqi politicians needed to find other means of dealing with this political vacuum following the withdrawal of the US.⁵³⁹ This statement provoked uproar in the Iraqi political arena, and Ali Dabbagh, an Iraqi government spokesman, stated that Zebari's personal opinions did not reflect the Government's policy, which supported a complete withdrawal of US troops by the end of 2011.⁵⁴⁰

As to what such a withdrawal mechanism should look like, the most important issue was that Iraq's future was now to become the responsibility of the Iraqis. According to a report by the Crisis Group, sectarian violence had the potential to draw fighters from the Kurdish Peshmerga, Shiite militias, and Sunni insurgents, and potentially from Turkey.⁵⁴¹ A report in the *Washington Times* drew attention to the possibility of internal conflicts erupting between Iraqi factions because of the influence of political parties on the Iraqi army, quoting an Iraqi official who stated that the US administration had not succeeded in dismantling the military units affiliated to the

⁵³⁸ The possibility of depending on the UN peacekeepers, according to Chapter 6 of the UN charter, referred to peacekeeping duties such as investigating and mediating disputes. See Lara Jakes, 6 July 2010, Available at

<URL:http://www.cleveland.com/world/index.ssf/2010/07/us_considers_un_peacekeepers_f.html>

⁵³⁹ Miran Osman, "The US's withdrawal from Iraq would harm Iraq significantly", 12 August 2010, <http://www.awene.com/Direje.aspx?Babet=Hewal&Jimare=8213>

⁵⁴⁰ Awene Newspaper, "Ali Dabbagh has answered Babakr Zebari", 14 August 2010, <http://www.awene.com/Direje.aspx?Babet=Hewal&Jimare=8226>.

⁵⁴¹ Anthony H. Cordesman, *Success or Failure? Iraq's Insurgency and Civil Violence and US Strategy: Developments through June* (2007), *op. cit.*, p.94

Shiite parties, the Sunnis and the Kurds in the Iraqi army, and that these units would remain under the influence of their parties. For example, the Eighth Division of the Iraqi Army, affiliated to the Dawa party, was located in Al-Kut and in Diwaniya, the Fifth Division in Diyala province was controlled by the Supreme Islamic Council, the Seventh Division was commanded by the Awakening groups, and the PUK's forces were incorporated in the fourth Division.⁵⁴²

What seems clear from our analysis that the security, unity and future of Iraq will remain at risk if these problems are not resolved. Indeed, the unique window of opportunity for a unified Iraq depends on the will of the political parties to settle their differences and bring the country out of crisis. Simultaneously, it should be clear to all Iraqi factions that Arab Iraqis are incapable of forcing their plans onto the Kurdistan Region, and that the Kurds remain very conscious of the sensitive positioning of their region on the northern border, adjacent to the countries that express feelings of hostility towards them and that continue to take aggressive actions against their region, even though the Kurdistan region has become a market for their neighbours' goods and a source for investment in their companies. Thus, it can be predicted that the future for the Kurds will hold considerable risks but also great political prospects.

In other respects, what is noteworthy about this debate, the Kurdistan Region has two armies (Peshmerga), two security apparatuses and two so far unconnected financial systems. All these factors have resulted in the spread of corruption in all sectors, which in turn controls the Region's political structure. This is creating an atmosphere of dissatisfaction among most of the Kurdish population who call for the situation to be addressed immediately. Unfortunately, the Kurdish administration has no serious intention of resolving this serious issue since it concerns the interests of the main parties, and eminent persons in both parties have been involved.

Despite such facts, the Peshmerga forces played an integral role in enforcing peace between the warring Iraqi Arab factions and were successful in reducing sectarian violence. In addition, the Peshmerga forces cooperated with the US-led Coalition

⁵⁴² Sbeiy. com , "Washington Times: Probability of occur of a civil war due to the Iraqi parties intervene in the Iraqi Army", 12 August 2009. Available at:
<URL:<http://www.sbeiy.com/ku/newsdetail.aspx?id=19447&cat=2>> Access Date 14 August 2009.

Forces in building peace in Iraq, working as a critical part of peace enforcement. Due to escalating sectarian violence in central Iraq throughout 2006 and the first half of 2007, and because of their fighting prowess and neutrality, the Peshmerga agreed, at the request of the US, to be deployed temporarily in the provinces of Baghdad, Diyala, Salahaddin, Mosul, and the environs of Kirkuk, to keep the peace and to participate in civil and military affairs. As already noted, the Iraqi Army has had to face threats as serious as civil war, terrorism, and regional intervention. Notwithstanding, the policy of the new Iraqi government, and of Prime Minister Nouri Al-Maliki in particular, was to work actively to purge Kurdish officers as well as Sunni Arabs from sensitive intelligence and command positions, as part of a broader effort to exercise control over promotions and to appoint commanders who would act to create forces that were more loyal to his groups.

Ultimately, it can be assumed that, in order to reduce tensions between the Iraqi Army and Kurdish forces, both sides should act seriously to develop a joint security agreement that will protect people in disputed areas. In this context, the federal government must commit itself to its previous agreement regarding troop deployment – i.e., to conduct joint patrols along the disputed KRG-Iraq border areas. The priority issues for the Iraqi government and its people are personal security and economic security, alongside the need to fight terrorism. Even so, the most important step in achieving long term security and stability is the need to build national unity and strengthen political reconciliation between Iraq's ethno-sectarian groups in order to eliminate the risk of violent civil war. In turn, the integration of the Kurdish forces into the Iraqi Army will lead to focusing on state building and ensuring unity. Meanwhile, all Iraqis factions should seriously cooperate towards putting their ethnic and sectarian differences behind them.

FINAL CONCLUSION

The tragic history of the Kurds in this part of Iraq emerged from the era of King Faisal, who was appointed by the British as King of Iraq, until the collapse of the Monarchy and the declaration of a republic in Iraq in 1958. During this time the dominant influence of the Sunnis gradually increased, and decades of injustice and persecution followed, resulting from their pursuit of a policy of discrimination based on ethnicity, particularly among groups that refused to merge into the Arab nation, as well as exclusion from power based on ethno-religious prejudice. In fact, all Iraqi governments attempted consistently to exclude the Kurds, not only from positions of influence but from any attempts at assimilation in the country. Indeed, the Baath Party successfully followed a policy of marginalizing most religious factions of Shiite and other national groups such as Kurds, and also succeeded in enforcing its own concepts on society. By strengthening the idea of Pan-Arabism, the Sunni Arabs were able to dominate the State administration and the army, thereby considerably reducing the participation of other factions in ruling the country from 1963 to the collapse of 2003.

Politically the Kurdistan region emerged out of the difficult circumstances that had been caused by the horrific events experienced by the Kurdish people in the 20th century. In 1992, the Kurds formed their government and announced its adoption of a federal system in its relations with Iraq under the protection of no-fly zone established by the United States, Britain and France, which it could be regarded as the first historical opportunity for the Kurds to govern their region by themselves. Although, the Kurdish political elites were not qualified to take over administrative responsibility for the State or to establish a civil society, since they were implicated in internal conflicts and power struggle which led to rampant corruption and divided the KRG administratively between the two major parties from 1997 until 2002. However, despite the difficulties, the Kurds have progressed (significantly, from 1997 onward, the 'Oil for Food' programme had the effect of leading to relative prosperity in the Kurdistan region, especially when the United Nations decided that 13 percent of Iraqi oil sales were designated for Iraqi Kurdistan) to reach a level of development and stability that enables them to have a foothold in Iraq and firmly claim their legal rights.

In focusing on the primary goal of this 2003 war, as the US announced, would be to act against global terrorism, and that this aim would be achieved would be through Iraq due to its military and economic potential weight in the Middle East. For this reason the US administration made it clear that it was necessary to overthrow the Iraqi regime, and having assured the stability of Iraq, to provide international and regional support to a new, broadly-based government that would include all the various factions and ethnic groups. It is reasonable to assume that the Bush administration's efforts to set up a stable Iraq and its overall approach to Iraq's future was a combination of the coalition's role in the country and political changes, such as prohibiting the rule of the old political elite while introducing economic reforms and freeing individuals from the oppression that had existed in the past.

Following the collapse of Saddam Hussein's regime in 2003, a new era began for all Iraqi people, and particularly for the Kurdish people. During its war with Iraq, the US administration had turned its attention to the Kurds, thereby giving them a unique opportunity to participate in the liberation of Kurdish territory, particularly after Turkey had refused to allow US forces to operate from Turkish territory in order to open a northern front against Iraq. In a larger sense, the Kurds were considered as having a strong position within the overall Iraqi opposition movement by siding with the US military and alliance. In any event, all these factors, including political stability, economic development and growing international recognition, have brought prosperity to the Kurdistan region.

After the fall of Saddam Hussein in April 2003, some Kurds believed that Iraqi Kurdistan would be the place for another attempt at achieving an independent Kurdistan. However, during the period from 1991 to 2003 the dream of an independent Kurdistan remained deeply controversial. Whereas, since 2003 the KRG's asserted that they desired to govern themselves within Iraq, and proclaimed repeatedly that they supported a unified Iraq while simultaneously insisting on the application of a constitution that would accommodate their claims. To support these allegations, President Jalal Talabani asserted that the Kurds are not separatists, he announced that, *"if we were separatists, or want evil to Iraq, we allowed the Shiites and Sunnis to quarrel and kill each other, but the contrary we have made every effort*

to reconcile between them".⁵⁴³ Beyond this, the Kurds were never prepared to accept any neglect of the rights that had been included in the new Iraqi constitution, particularly the implementation of Article 140, and in fact nearly all the Iraqi factions, despite the existence of differences and a lack of confidence, participated in a new framework organized for administering Iraq through the establishment of an interim government in late 2005.

It should be said the KRG played a major and active role in maintaining the success of all significant events occurring after 2003, including regime change and the establishment of the Transitional Administration in Iraq, as well as writing the permanent constitution, holding general elections for the formation of the national government, and restoring full sovereignty for the Iraqi State. These changes can be considered as the obvious first step in steering Iraq and the Kurdish Region towards democratic transformation. In this context, these events have signalled the emergence of the KRG as a key player in the political and security equations in Iraq. In particular, the Kurdish leadership has played significant role in Baghdad as part of government, as well as in mediating intra-Arab conflicts and gathering the various political groups together. Consequently the Kurds, as the second-largest ethnic group in Iraq and a main partner for making decisions that would determine the fate of Iraq, supported the drawing of Iraq's regional borders in a way that would guarantee and maintain a unified Iraq.

During the research for this study, it was concluded that federalism would be a suitable form of government for establishing democracy and peace within the presence of ethnic and religious cleavages. The idea was in fact suggested by the US Senator Joseph R. Biden, who called for the establishment of three semi-autonomous ethnic regions linked by a power-sharing agreement in Baghdad.⁵⁴⁴

⁵⁴³ Interview with President Jalal Talabani in the Al- Iraqiya satellite, on 25 February 2008. Available at:

<URL:http://www.iraqipresidency.net/news_detial.php?language=arabic&id=5290&type=interviews>
Access Date: 5 April 2009

⁵⁴⁴ Senators Joseph R. Biden and Sam Brownback, in September 2007 reignited debate over Iraq's political future, and called for giving Kurds, Shiites, and Sunnis control over their own regions. Further, this proposal was condemned and rejected furiously by many Iraqi political parties and Iraqi government that it adopting a clear partition of Iraq into three separate states. Besides, the US's experts, who argue that such a soft partition "would produce extraordinary suffering and bloodshed"

The idea is to maintain a unified Iraq by decentralized Iraqi government based upon the principles of federalism and advocates for a relatively weak central government with strong Sunni, Shiite, and Kurdish regional administrations,” and also he added “The central government would maintain control over “truly common interests” such as border defence, foreign policy, and oil production and revenue sharing.

In the view of Peter W. Galbraith, the emergence of a strongly decentralised Iraqi state to protect the interests of Iraq against Iran and Turkey was to be encouraged. Particularly, Iran has a considerable influence upon whole of the Iraqi political process. Despite that, the US paved the way for Iranian's allies to control Iraqi state. It is necessary to point, that Galbraith had advocated of partition of Iraq into three parts (Kurd, Shiite, and Sunni) depending on their geographic regions and due to each factions possess their own forces.⁵⁴⁵ However, Biden’s idea was rejected by both the international and regional communities, and particularly by Iraq’s neighbours as well as the Iraqi people (except the Kurds), who sought to establish and support a strong central government in Baghdad with a proportional legislative body formed in a way that would ensure participation of district representatives. In this context, the considerable fears of the Sunni groups were justified, since the natural resources were not equally distributed throughout the country (most of the oil being located in the Kurdish region, and southern Iraq).

In light of the Iraqi status quo and due to ethnic tensions threaten Iraq’s long-term stability. In this thesis, we are supporting Biden’s proposal for the establishment of three semi-autonomous ethnic regions that it would be a reasonable and a fair solution for saving Iraq from a quagmire of corruption and terrorism. More importantly, we have become convinced that through the federalizing Iraq will not be allowed to

Greg Bruno, “*Plans for Iraq’s Future: Federalism, Separatism, and Partition*”, Available at: <URL: <http://www.cfr.org/iraq/plans-iraqs-future-federalism-separatism-partition/p14547>> Access Date: 22 October 2007.

⁵⁴⁵ Peter Woodard Galbraith, who was the first US’s Ambassador to Croatia in 1993, and acted an advisor to the KRG in the beginning of 2003. See Kawa Amin, “Peter Galbraith called for the division of Iraq, and the new administration of Obama and Joseph Biden, would be a strong motivation to work in this direction”, Jamawar News, on 17 November 2008, Available at: <URL:<http://www.jamawarnews.com/direje.aspx?babet=kurdistani&jimare=1921&derkewtin=2>> Access Date: 12 April 2009.

arrogance of power by any party or ethnic component alone (whether they are forming the majority or the minority) to take the reins in Iraq, and also will prevent violating the constitution that was voted for by the majority of the Iraqi people. Besides, it could be said that such a "soft division" will achieve justice to all components of the Iraqi people, which in turn would achieve a balance of political participation by all ethnic components and minorities to develop their areas in a suitable way and more quickly.

However, the key problem in the prevailing status quo is that there are serious disagreements on the formation of the federations and regions. In Iraq's current situation, which is characterised by a charged atmosphere of mistrust and a lack of willingness to take responsibility among the political parties and factions, it seems reasonable to conclude that the formation of federations will sooner or later become a truth and a reality in Iraq, and a response to the Arab side, some of whose political parties have accused the Kurds of making impossible demands. The Kurds by contrast have defended their claims as both legal and constitutional. Even so, the deeper problem for the Kurds is on the Iraqi side, since they are solving their problems and pinning all their hopes around the possible consolidation of democracy in Iraq, but are fearful in case such a possibility does not occur. At present the Iraqi government is not working seriously to create any sense of citizenship among the Kurds, and it is reasonable to suppose that the democratization of Iraq will be a long process, and not easily applied at this stage. Given the Iraqi status quo, it is necessary to concentrate first on the vital issue of coordination and reconciliation among different ethno-religious groups, so that instead of pursuing their party interests they will give priority to Iraqi interests and the future of Iraq.

The basic view implicit in this argument is that federalism has political impacts and consequences, not only over the Iraqi community but also over the future policy of the neighbouring countries. Certainly Iraq's neighbours, particularly Turkey, justified their opposition to federalism because it entitled the Kurds to control their own regional government within Iraq and to control Kirkuk's oil fields; the consequences of this would encourage Iraqi Kurds to establish an independent State and secede from Iraq. There was a real fear that such changes in the status quo might reflect directly on the Kurds in Turkey and would encourage them to take the same step.

Therefore, repeated bombardments of Kurdish territory through ground and air attacks by the Turkish government became a recurrent feature, under the pretext of chasing the PKK and guaranteeing Iraq's territorial integrity.

It should be noted here that the KRG's commercial and political relationships with its neighbours and some European countries are contributing increasingly to state building. In particular, the point of view which caused the Kurds to be seen by neighbouring countries as an existential threat to their vital interests has changed. In recent years, political rapprochement has been achieved at high levels through opening consulates in the neighbouring countries, thereby enhancing strong diplomatic and commercial connections in several sectors. In terms of evaluation, these events represent tangible recognition of the KRG and a fundamental and geopolitically significant shift in perceptions of Iraq's post-war era, particularly on the part of the Turkish government, which has yielded significant economic benefits for both sides. Indeed, the Turkish government seeks, through its good relations with the KRG, to influence events in the Iraqi state. It is important at this stage to recognize that the position of the KRG in the Middle East may serve as a bridge between the countries of the region and Europe. And this in turn will reflect positively on the position and status of Iraq in the region.

The Kurds insisted on possessing Kirkuk and reviving its administration under KRG control for both national and economic reasons, and were unwilling to concede on the issue of Kirkuk, whereas the Arab side constantly tried to create obstacles to any move made towards calming the situations in the disputed areas. As a result they usually prevaricated, and avoided implementing agreements that had been signed between them. For this reason, most Kurds were very critical of the Kurdish leadership for having failed over successive years to insist on a speedy political solution to the Kirkuk issue, instead of repeatedly agreeing to its postponement. Indeed, it can be argued that there was negligence on the part of the Kurds themselves for not having achieved their demands, particularly since, in addition to Kurdish MPs in the Iraqi parliament, many senior positions in the Baghdad government were held by Kurds (such as president, deputy prime minister, minister of foreign affairs, commander of the military, deputy leader of Iraqi parliament). Such people had to be held responsible for not having seriously addressed such issues with the federal

government. It should be remembered that, despite the ideological differences between them, all the Kurdish parties agreed that they would not falter on the issue of Kirkuk joining the Kurdistan Region because of their belief that the Kurds had a legitimate claim to the city. Despite the process of Arabization in those areas by successive Iraqi governments, the Kurds still constituted the majority of Kirkuk's population. Therefore, in order to prevent the possibility of ethnic conflicts and separatism in Iraq, Kirkuk had to be included in the Kurdistan region (whether with independent or semi-independent management), with a full guarantee of the rights of other component groups (Turkmens, Arabs, and Christians) through the distribution of managerial positions and in-service facilities.

One of the serious problems between the KRG and Iraqi government concerned the oil fields within the disputed territories and whether they would be run by the KRG or the Iraqi government, along with the signing of contracts with foreign companies for the exploration, development and production of oil in the Kurdistan Region. Furthermore, the oil policy's focus on the subject of returns and allocated rewarding of investors became a contentious issue between both sides. A positive point for KRG was its possession of an abundance of natural resources, which mean that it could rely on itself for securing the supply of oil products for creating a refining industry, and could also use these resources effectively for the benefit of its own people and for the entire Iraqi population. For this reason, the KRG insisted on running its own natural resources and having direct access and control over the oil revenues, as well as the signing and implementing of investment deals with foreign oil companies.

In order to find a way out of the political crisis with the Iraqi government, the oil contracts in particular needed to be addressed. The best thing to do would be to draw up structure for the Law of Oil and Gas in a form that would serve all the Iraqi people. All Iraqi factions have become convinced that the only true path to achieving peace and stability, ensuring political progress in Iraq, and avoiding territorial disputes, is to pass a modern federal hydrocarbons law for sharing oil revenue in a fair and transparent manner between the federal and regional governments, otherwise the unity and future of the country will be at risk. Given such conditions, the Kurds believe that if the Iraqi government does not cooperate with the KRG, this will lead to

delayed oil exports from the Region, thereby causing serious damage for the Kurdistan region and for the Iraqi government.

In the most obvious sense, it is logical to assume that the Kurds have also been among the most active and prominent proponents of the development of a stable Iraqi state, particularly as the Kurdistan region contains largely unexploited natural resources of oil and natural gas; since much of the region's potential is unused, this makes it an important energy source for the international market. Beyond this, the KRG is currently leading the way in Iraq by guaranteeing an environment for both domestic and foreign investors, by being able to offer a legal framework and institutionalized investment activities, and with vast opportunities in a variety of business sectors, particularly agriculture, tourism, and hydrocarbons. The Kurdistan Region can thus be described as a gateway to, and a potential economic base in the rest of Iraq, due to the Region's success in policy engagement, and with the conviction that Kurdistan's success also Iraq's success.

Concerning the Peshmerga case, involving relations between the Kurdish forces and the Iraqi Army, this became a highly complicated issue between the two sides and remains unresolved. For the Kurds, the Peshmerga are considered as a liberating power for the Kurdish people throughout their long political struggle, and a symbol of steadfastness in the face of the previous regime's plots and strategies to eliminate the presence of any Kurdish entity in the region. Since 1991 to the present, the Peshmerga have been responsible for maintaining the security of the Kurdistan Region and confronting the threat of terrorism. Since the Peshmerga (or Regional Guard according to the Iraqi constitution) undertook the same duties as the Iraqi forces – i.e., defence and providing security for Iraq – they ought also to have had an equal share of the sovereignty budget. However, although the Iraqi Parliament had specified that the financial plan for the Regional Guard was included in the sovereign budget in 2007, the Iraqi government has to date (end of 2011) refused to pay these dues. This has caused considerable difficulties for the KRG which has to pay for the Peshmerga from its own budget; this is a serious problem that needs to be resolved.

The KRG faced a major dilemma regarding the security and protection of the inhabitants in the disputed areas after the withdrawal of US troops from those areas.

From the KRG's point of view, the departure of the US troops would mean a potential increase in its exposure to attack by Iraqi forces; nor would this departure be in Iraq's interests as it would cause significant harm to the political process in Iraq. For this reason the KRG tried to persuade the US administration to keep some of its troops in the Kurdistan Region in the event of the US withdrawal from Iraq. Had tensions between Kurds and Arabs not been resolved the alternative would have been to deploy UN peacekeeping forces to protect the disputed territories. In order to reduce potential tensions between the Iraqi Army and Kurdish forces, both sides should act seriously to develop a joint security agreement to protect people in disputed areas. Thus, the most important step in achieving long term security and stability requires building national unity and strengthen political reconciliation between Iraq's ethno sectarian groups to eliminating the risk of violent civil war.

Given the ongoing unrest in the Iraqi state, some might argue that the US needed to have taken a more active role in advising Iraqi leaders on the implementation of Article 140, and in resolving other heated issues between the Iraqi government and the KRG to create a durable political reconciliation. It was widely believed that the US sought success in Iraq, and this goal required the cooperation and participation of all Iraqi factions in reconstructing the government and the state. In this context, the Kurds were aware of the attitude of the US administration which reiterated the need for the KRG to work closely with the Iraqi government in a unified Iraq. At this stage the KRG should really have focused on reconstruction and on providing basic services, eliminating corruption, and working seriously to recover areas that had been withheld from Kurdistan, particularly the city of Kirkuk and its environs.

The disputes between the KRG and Iraqi government ebbed and flowed over the years, while their relations suffered from successive crises. I have personally become convinced that these crises should be permanently resolved according to the Iraqi constitution. Furthermore, the Iraqi factions must work to resolve all the past disputes that have dominated the political stage; they should also feel that they have a real stake in the federal government, and thus try to reach a federal system that will accommodate Iraqi diversity. Iraq's political parties should try to ease the long political stalemate that has directly influenced the revival of sectarian violence and insurgency. In this context, it can be assumed that at this stage all Iraqi parties and

political factions will have to face the main and historical responsibility for saving Iraq's democratisation and preserving the dignity and rights of individuals. Security and stability cannot be achieved by avoiding collective responsibility to protect the democratic process, or by rejecting Iraq's constitutional principles and political agreements. From the analysis in this study it seems clear that any parties or groups emerging in Iraq may find it impossible to seize the reins of power.

Despite all the differences, there was a common desire between the Iraqi federal government and Kurdistan regions to reach compromises; the Kurdish politicians in particular frequently announced that they saw themselves as Iraqis and were interested in Iraqi affairs while, as a second nation in Iraq, they regarded themselves not just as participants but as partners in the political process. The nature of the political process in Iraq was characterised by the way agreements, having been made outside the parliament, and then sought remedy from the Parliament. Attitudes among most of the political parties, whether Sunni or Shiite, had changed towards the KRG and the demands of the Kurds, and many of them were unwilling to compromise. But despite all the distinctions between political parties and factions, there was broad agreement that only negotiations and dialogue would improve the political atmosphere and normalise the situation between the Kurds and other parties in the political process in Iraq, thereby effectively resolving the outstanding problems.

It is crucial to note that, the KRG's situation has seen significant development, both politically and economically, despite the existence of dissent and corruption inside the KRG itself. It is important at this point to recognize that among the main political parties (PUK and KDP) as well as the opposition, there is a real intention for political reform and for reinforcing the pillars of democracy in order to strengthen their position and maintain their gains in the Iraqi State. It cannot be denied that the pressures and internal criticisms from the public and from the Kurdish opposition, particularly towards the two main parties, have had a positive impact. Both parties are being forced to make changes and engage in dialogue with the opposition on the situation inside the province, as well as meeting demands for transparency in the negotiations and agreements that they will have to conduct with Baghdad.

Ultimately, most of the major problems (as mentioned above) that emerged between the Iraqi government and the KRG concerned the constitution, whether in relation to Article 140 and the holding of a referendum on the future of Kirkuk, to the Peshmerga issue, to determining the Kurdistan Region's budget, or else to the future control of oil resources in the Kurdistan Region. Notwithstanding these difficulties, and in order to not lose support and international sympathy for their case, the KRG has recognised the need to be patient and not to retaliate against acts of aggression suffered in the past, particularly in the cases of Kirkuk and other disputed areas. Indeed, beyond the competitiveness and differences among all Iraqi factions, it remains the case that, in order to form a true national partnership that will represent all components of Iraqi society and achieve the aspirations of all the people, the political situation and the constraints faced by the democratic process in the country do require the Iraqi factions to sorting out all their disputes, and to establish real stability by reaching a peaceful and consensual solution.

CHARTS, GRAPHS AND TABLES

NOTE: (The detailed charts, graphs, tables and documents obtained from Kurdistan Regional Government, Ministry of Extra Regional Affairs, Erbil in December 2007, which is Report on the Administrative Changes in Kirkuk and the Disputed Regions)

Table 1: Administrative Unit of Kirkuk Governorate 1957

District	Sub-district	centre	Number of Villages	Total number of Villages
Kirkuk	Centre of Kirkuk	Kirkuk	101	
	Qara Hassan	Laylan	56	
	Alton Kopri	Alton Kopri	61	
	Haweeja	Haweeja	226	
	Shwan	Redan	76	420
Kifri	Bebaz	Bawa nor	68	
	Qere Tepe	Qere Tepe	105	
	Sherwana	Sherwana	145	318
Chemchamal	Chem- Chemal	Chem- Chemal	64	64
	Aghjalar	Aghjalar	62	
	Sangaw	Goptepe	76	
Toz	Toz	Toz	79	
	Daqoq	Daqoq	62	
	Qader Karam	Qader Karam	93	372
Total			1274	1274

**Table 2: Ratio of the Ethnic Population of Kirkuk governorate
1922-1977**

	1922-1924	1957	1965	1977
Kurds	65.1	48.3	36.1	37.6
Arabs	20.9	28.2	39	44.4
Turcoman	4.8	21.4	19.5	16.3
Chaldean, Syrian, Assyrian, Armenian and others	9.2	2.1	5.4	1.7

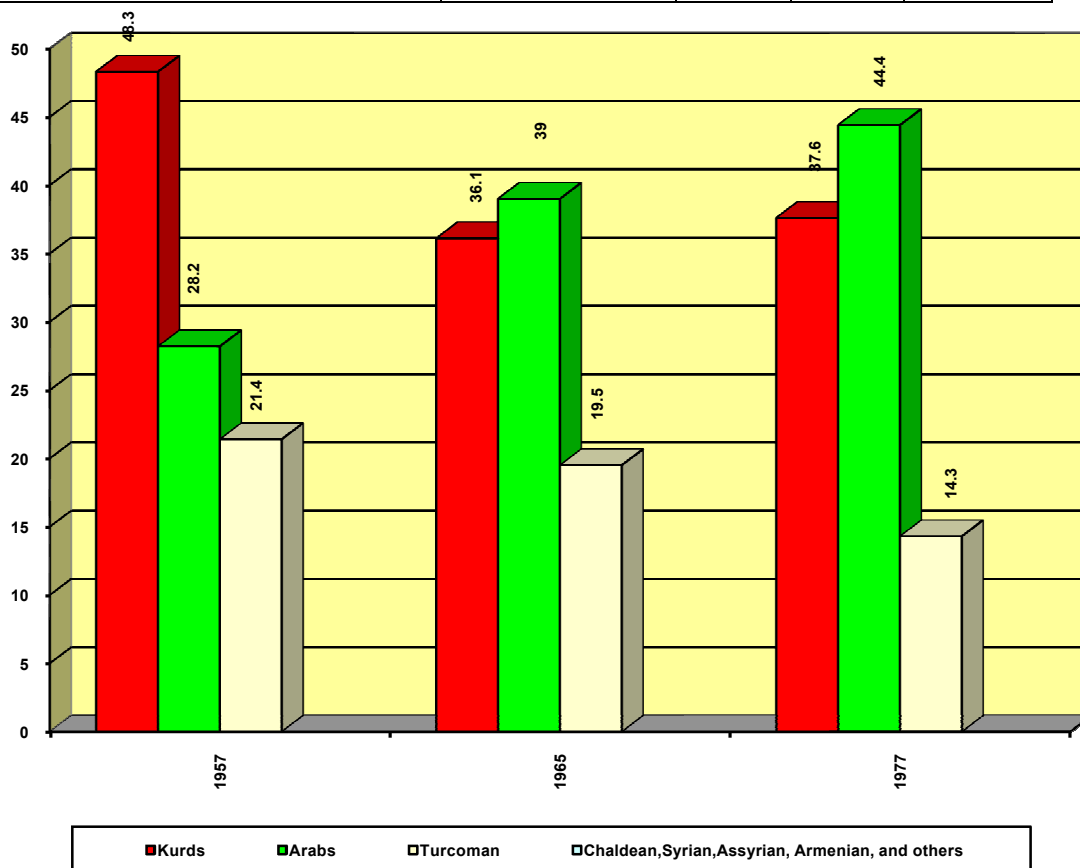


Table 3: Ethnic group distribution of Kirkuk governorate in 1974

	Kurds	Arabs	Turcoman	Syrian, Assyrian, Armenian, Chaldean	Total
Population	386000	93000	132000	6000	617000
Percentage	62.5	15.1	21.4	1	100

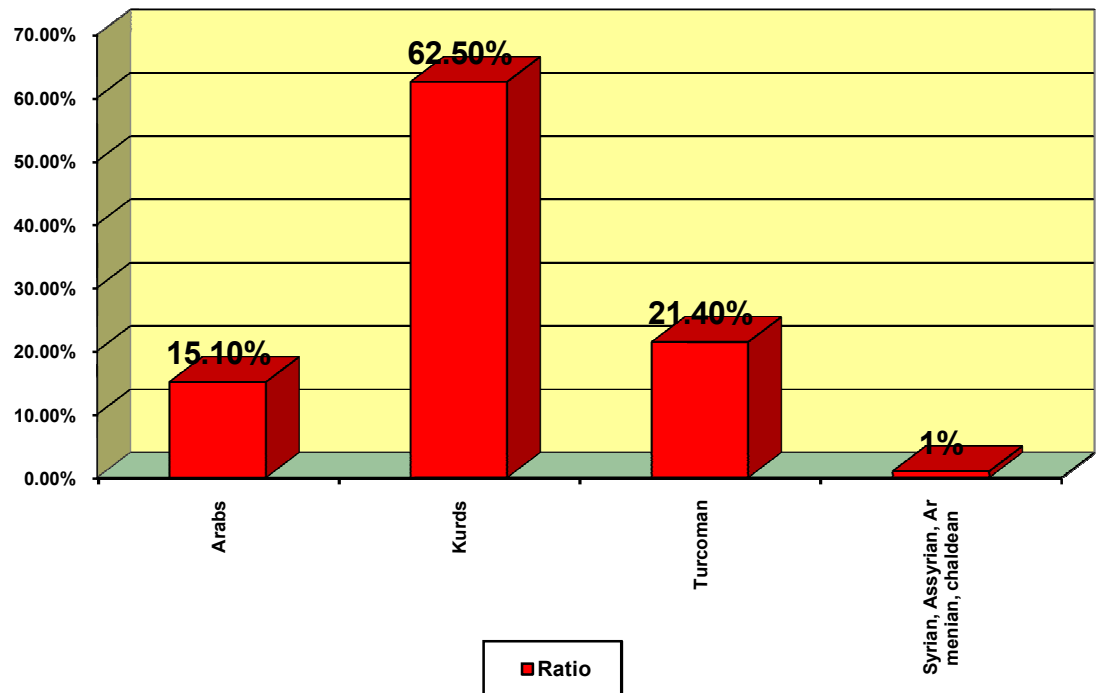
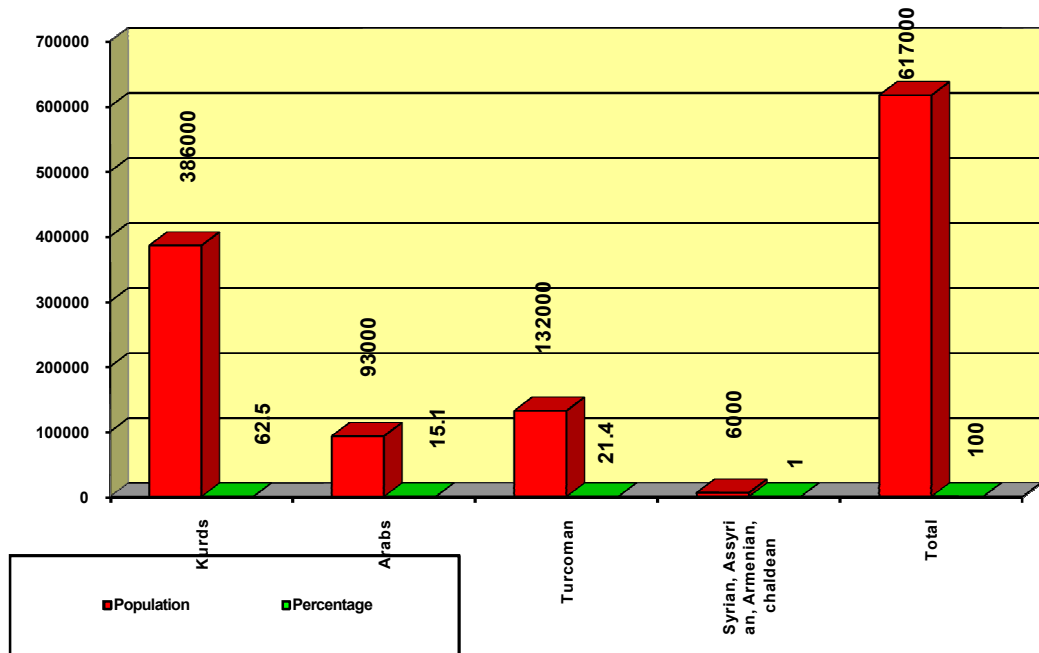
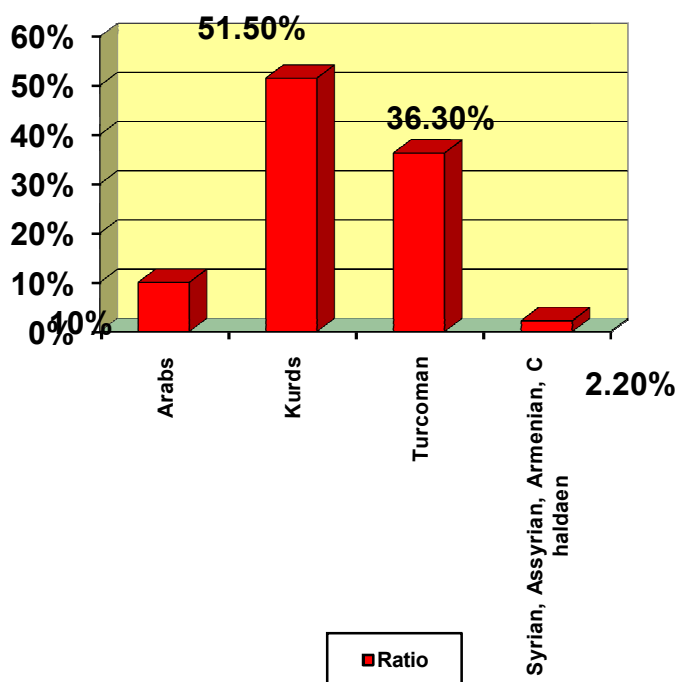
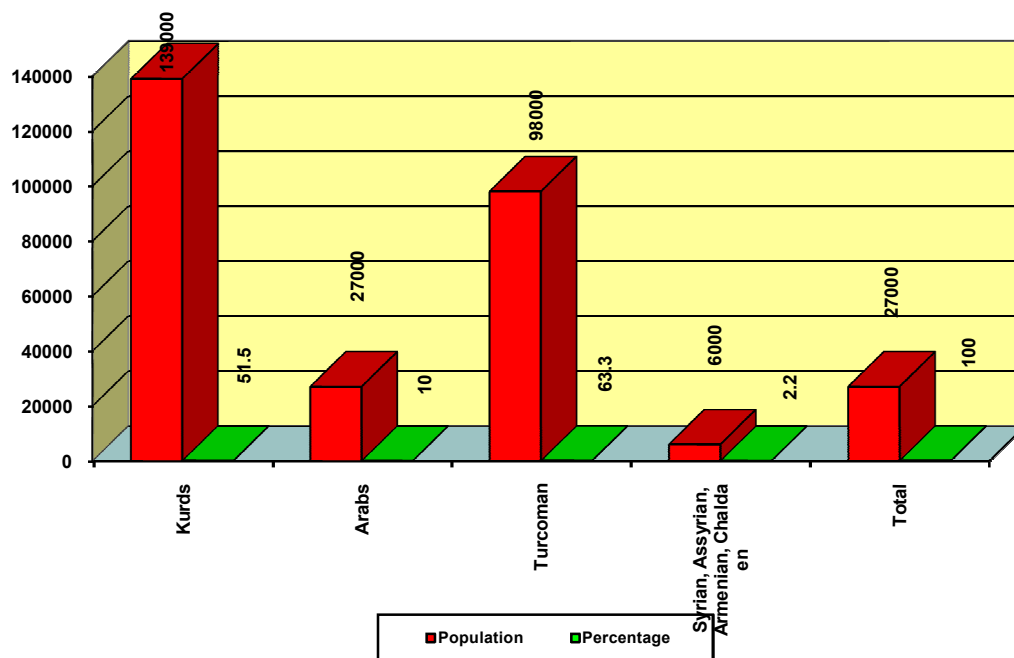


Table 4: Ethnic and religious group distribution of Kirkuk city 1974

Group	Kurds	Arab	Turcoman	Syrian, Assyrian, Armenian, Chaldean	Total
Population	139000	27000	98000	6000	270000
Percentage	51.5	10	36.3	2.2	100



**Table 5: Population of Kirkuk governorate by ethnic group
1977-1997**

	1977	1978	1997
Arabs	218755		544596
Kurds	184875		155861
Faili Kurds	388		1105
Turcoman	80347		50099
Armenians	581		116
Syrian, Chaldean	4050		758
Others	180		205
Unknown	3439		3
Total	492,615	601,219	752,743

**Table 6: Number of workers in the North oil company in Kirkuk
1958-2003**

Year	Arabs	Kurds	Turcoman	Christians	English	Total
1958	40	850	370	900	70	2230
1960	55	1350	500	1100	65	3070
1963	100	1150	700	1400	60	3410
1965	170	1000	800	1350	55	3375
1968	300	875	850	1000	50	3075
1972	900	700	900	1000		3500
1978	2700	500	1200	850		5250
1982	4500	400	1500	800		7200
1988	5200	300	1700	750		7950
1995	6600	260	1800	700		9360
2000	7200	119	1920	600		9839
2003	7300	610	2100	500		10,510

Chart (1) Number of Workers in the North Oil Company in Kirkuk (1958-2003)

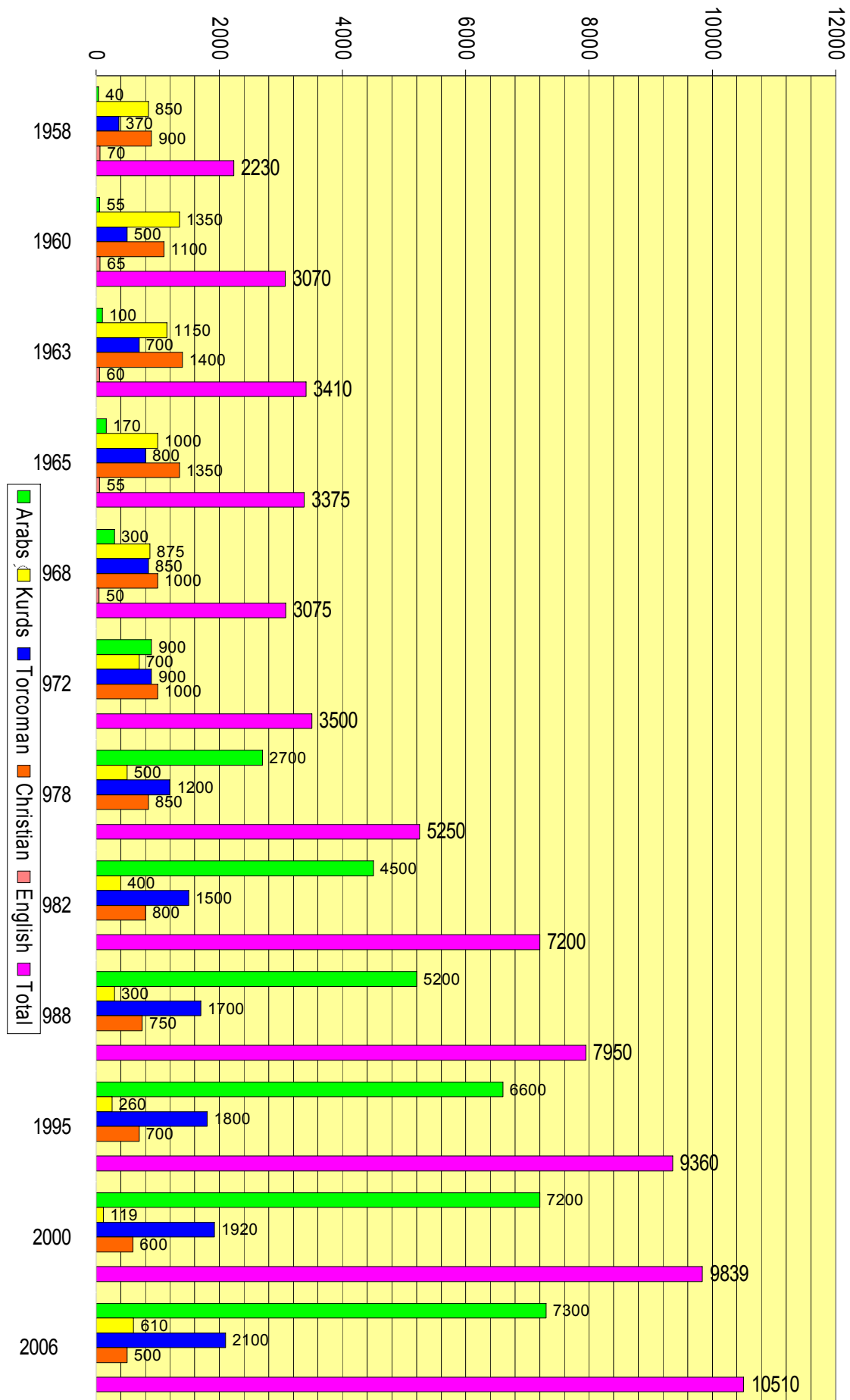


Table 7: Ethnic composition of the North Oil Company workforce 1958-2003

Year	Arabs	Kurds	Turcoman	Christians	English
1958	1	38	16	40	3
1960	1	43	16	35	2
1963	2	33	20	41	1
1965	5	29	23	40	1
1968	9	28	27	32	1
1972	25	20	25	28	
1978	51	9	22	16	
1982	62	5	20	11	
1988	69	3	21	19	
1995	70	2	19	7	
2000	73	1	19	6	
2003	69.45	5.8	19.98	4.75	

Graph(1) Number of workers in the North Oil Company in Kirkuk (1958-2003)

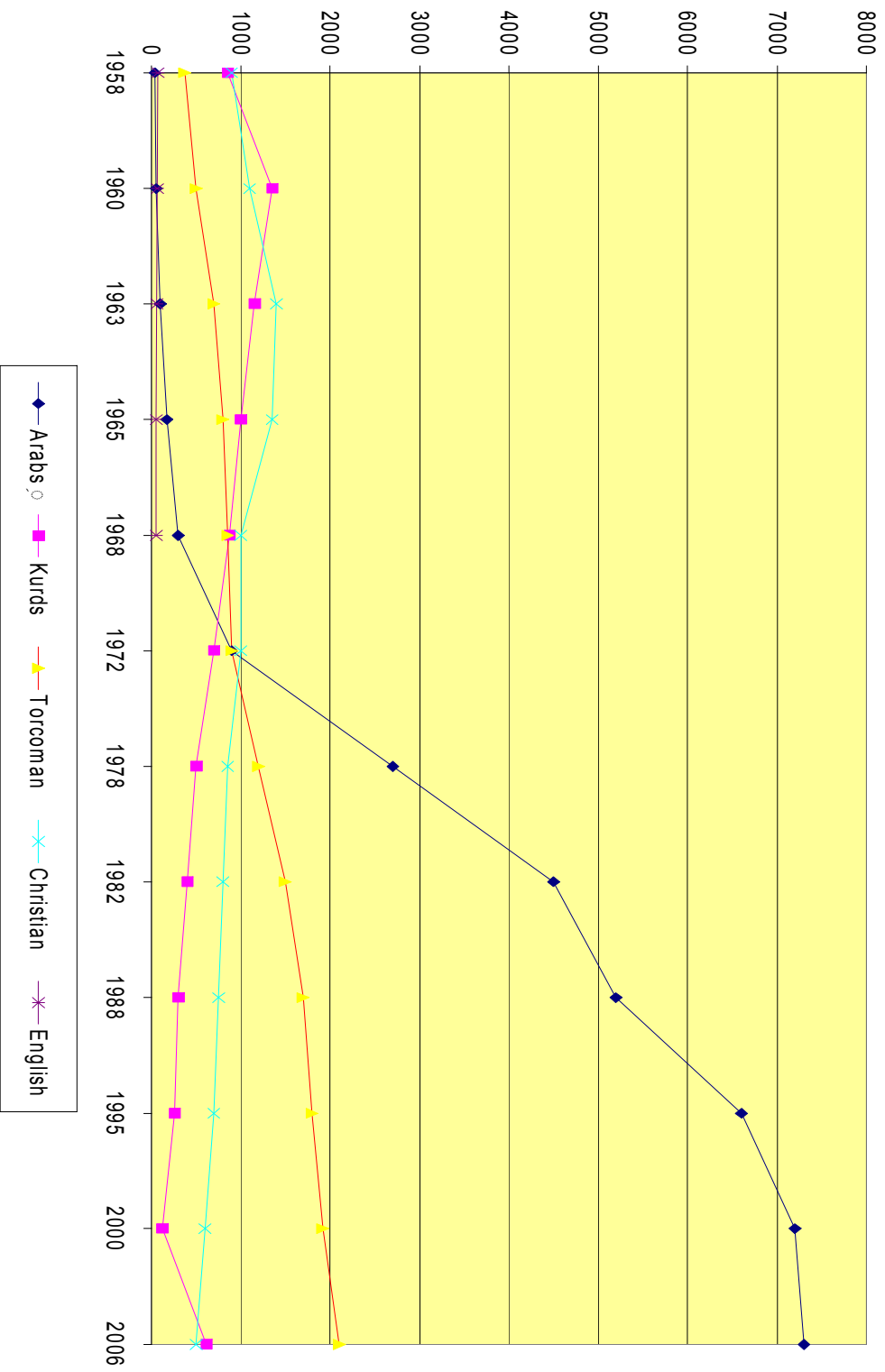


Chart 2 Ethnic composition of the population of Kirkuk governorate, 1957-1977

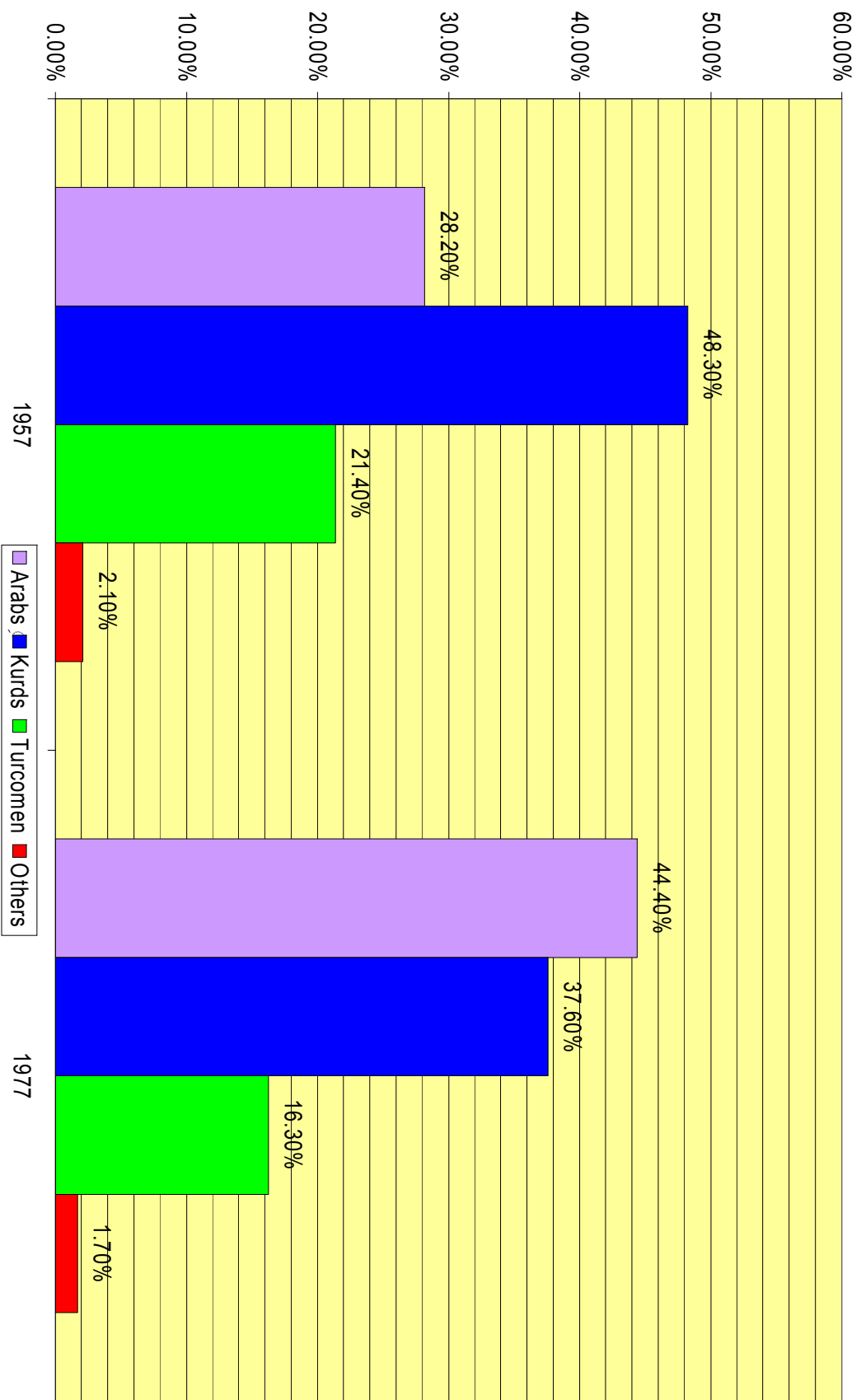


Chart 3 Ethnic composition of the population of Kirkuk governorate 1977

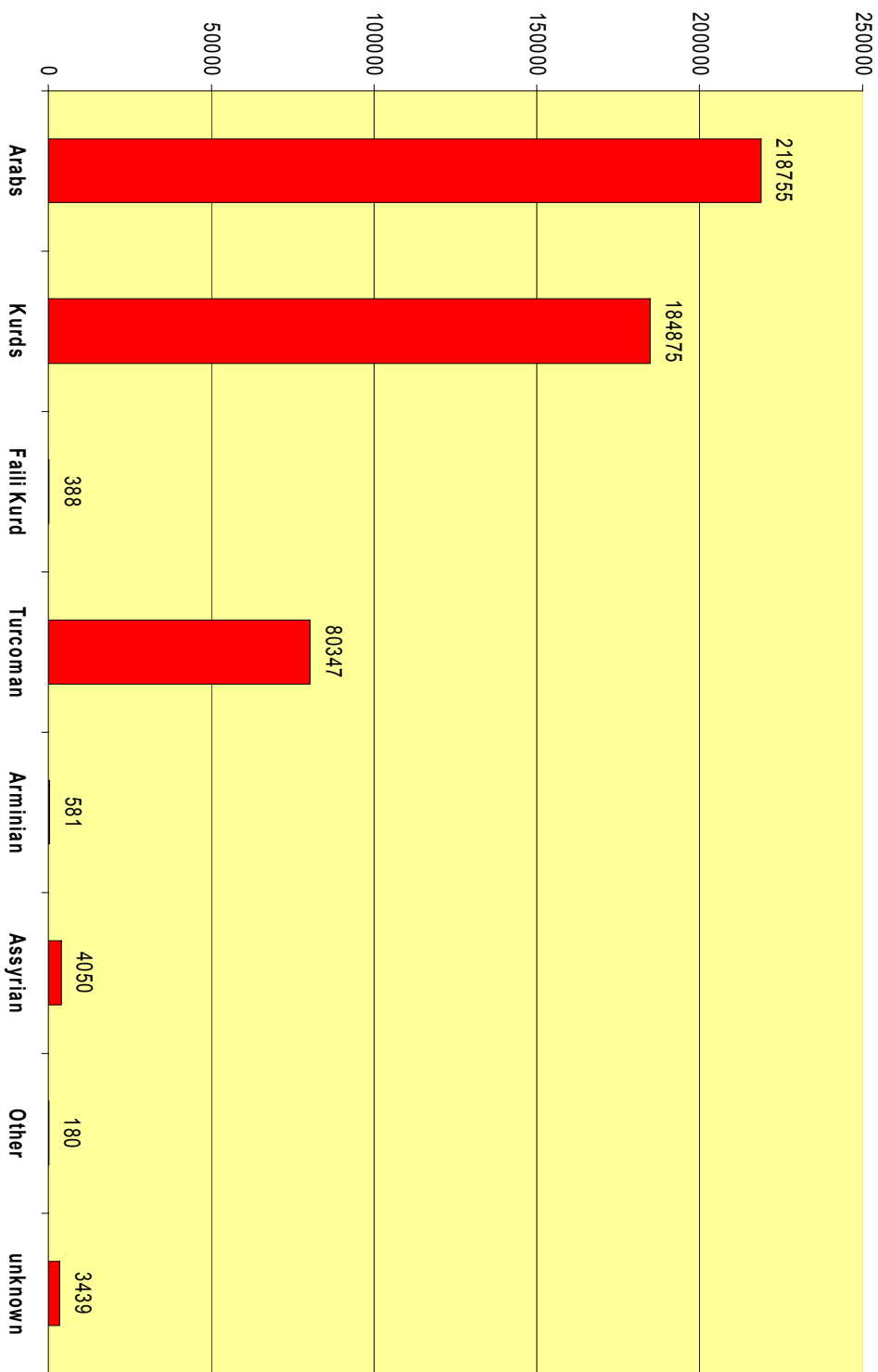


Chart 4 Ethnic composition of the population of Kirkuk Governorate 1997

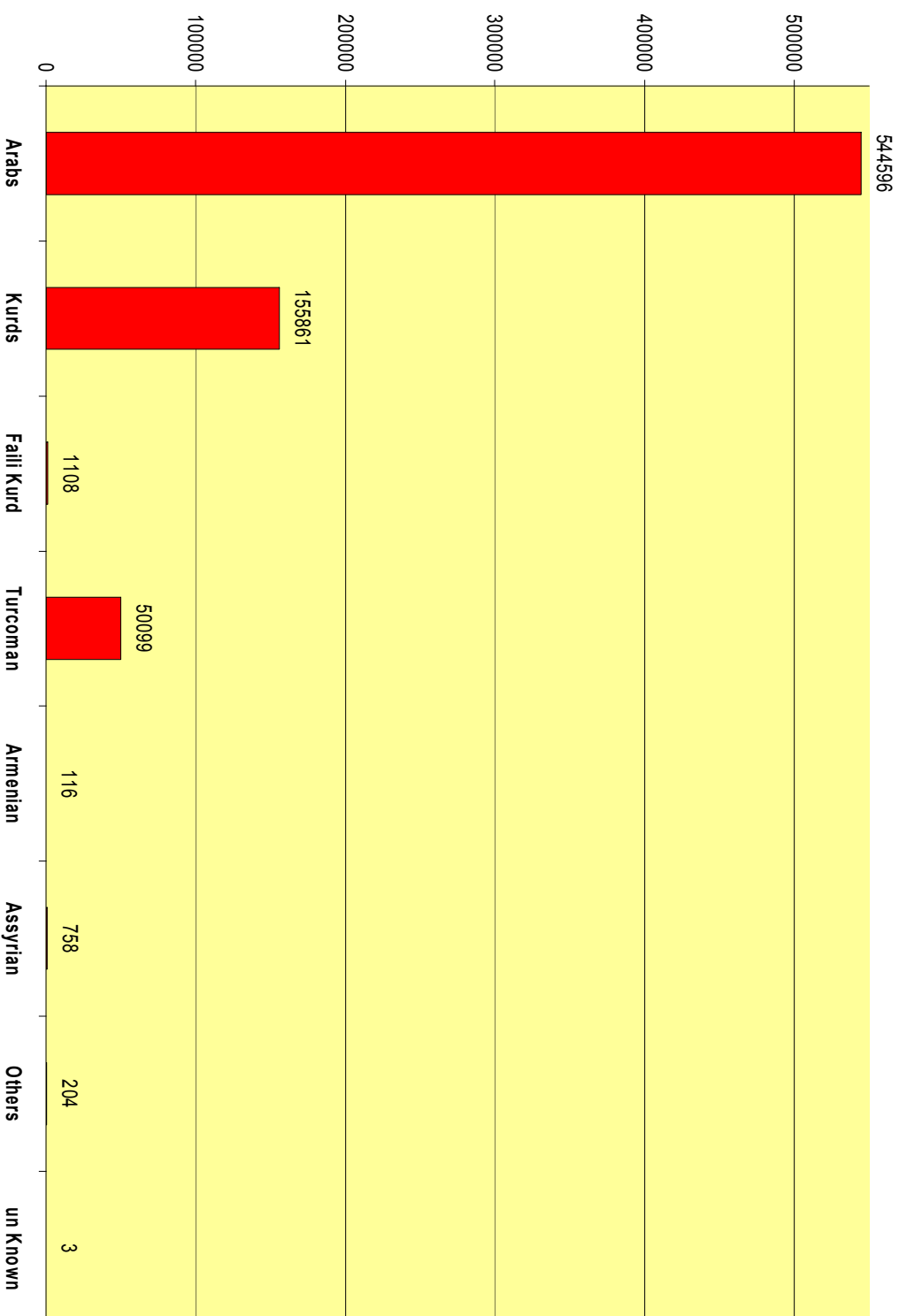


Chart 5 Ethnic Composition of the Population of Kirkuk City-2007

Source: Iraqi Ministry of Trade

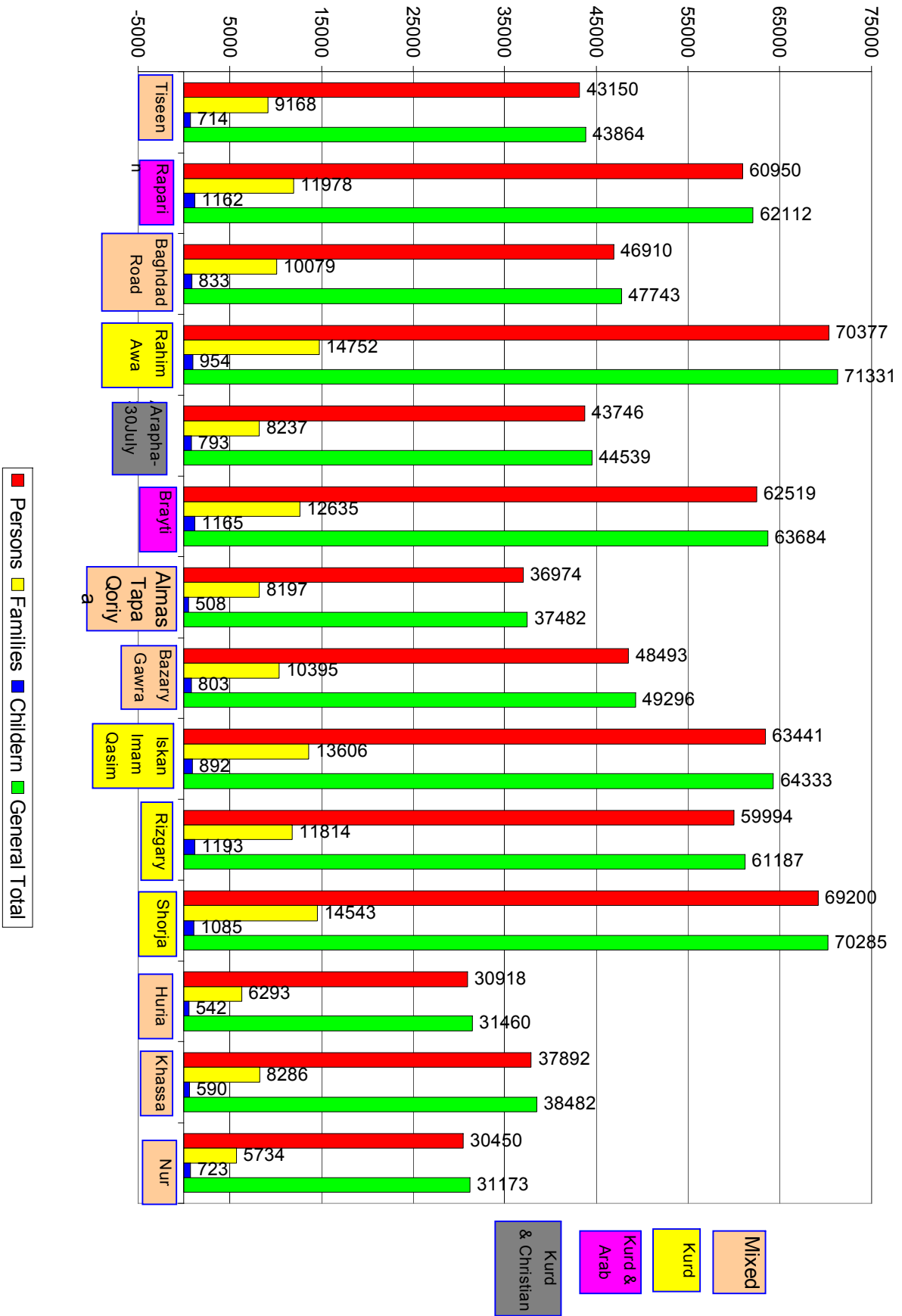


Table 8: Ratio of the Kurds in Alton Kopri 1947-1977

Year	Ratio
1947	70%
1957	50%
1965	25.7%
1977	75.6%

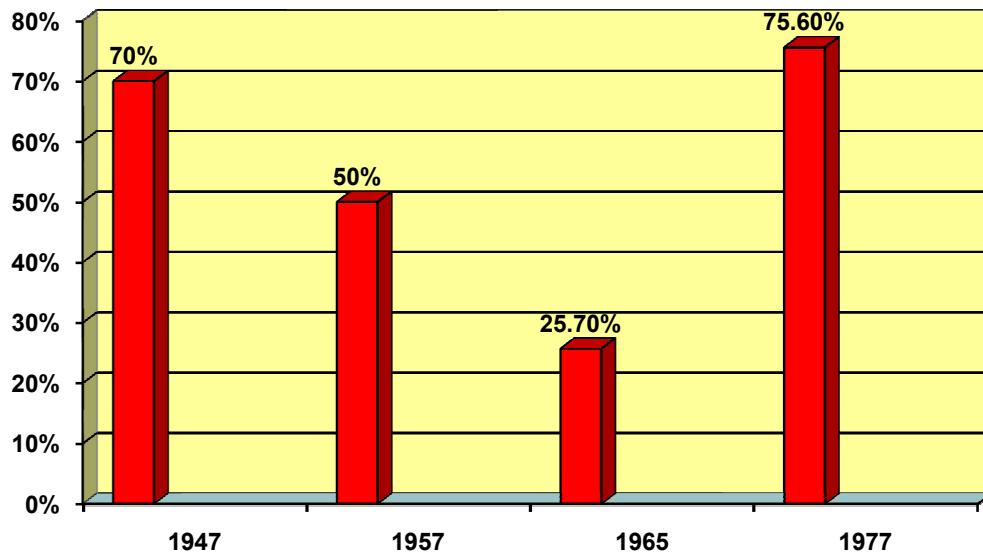
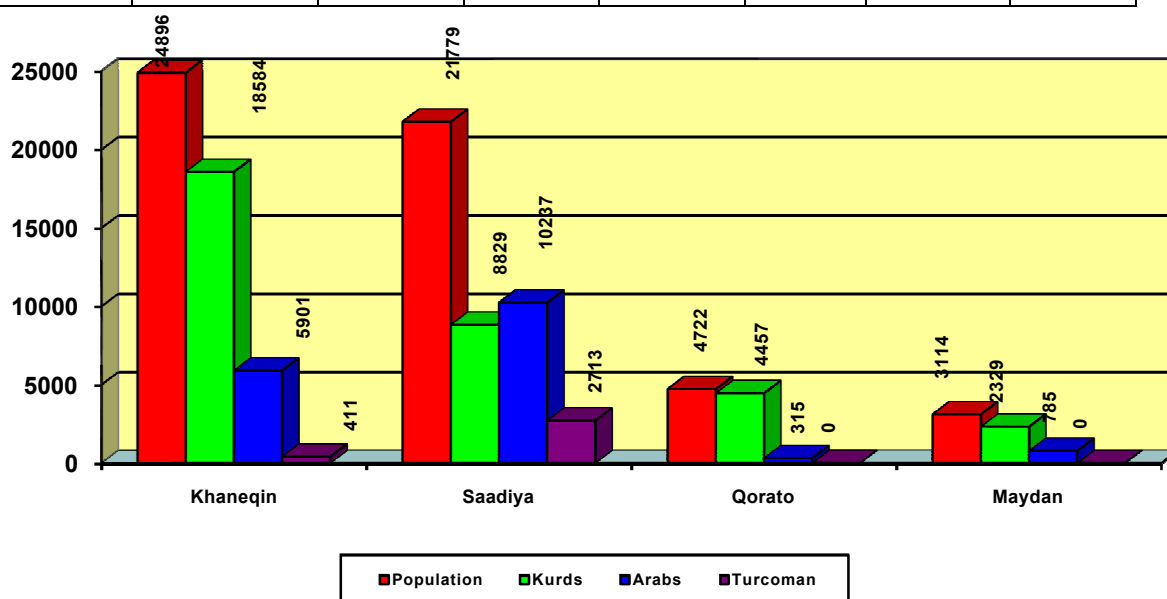


Table 9: Population of Khaneqin district 1957

City	Population	Kurds		Arab		Turcoman	
		number	%	number	%	number	%
Khaneqin	24896	18584	74.7%	5901	23.7%	411	1.65%
Saadiya	21779	8829	40.5%	10237	47.1%	2713	12.4%
Qorattoo	4722	4457	93.3%	315	6.7%	-	-
Maydan	3114	2329	74.8%	785	25.2%	-	-
Others	3988						
	6.8%						
Total	58499	34199	58.4%	17238	29.5%	3124	5.34%



After adding the new sub-district called Jalawla, which was created after attaching to it various sectors with Arab majorities from the district of Qara Tepe, the population of Khaneqin district in the census of 1965 was 85,088.

Number of districts plus the district centre	Total population	Kurds	Arabs	Turcoman	Others
5	85088	46725	30932	2918	4513
		54.9%	36.3%	3.43%	5.3%

Table 10: Population of Khaneqin district, with consideration of population growth three years after the 1965 census

City	Population	Kurds		Arabs		Turcoman	
		number	%	number	%	number	5
Khaneqin	35836	25836	72.1%	9388	26.2%	612	
Jalawla	22606	8534	37.8%	13212	58.4%	860	
Saadiya	13864	3422	24.7%	9114	65.7%	1328	
Qorato	6785	6280	92.6%	505	7.4%	0	
Maydan	4891	3475	71.1%	1416	28.9%	0	
Others	3104 3.6%						
Total	87086	47547	54.6%	33636		2800	3.2%

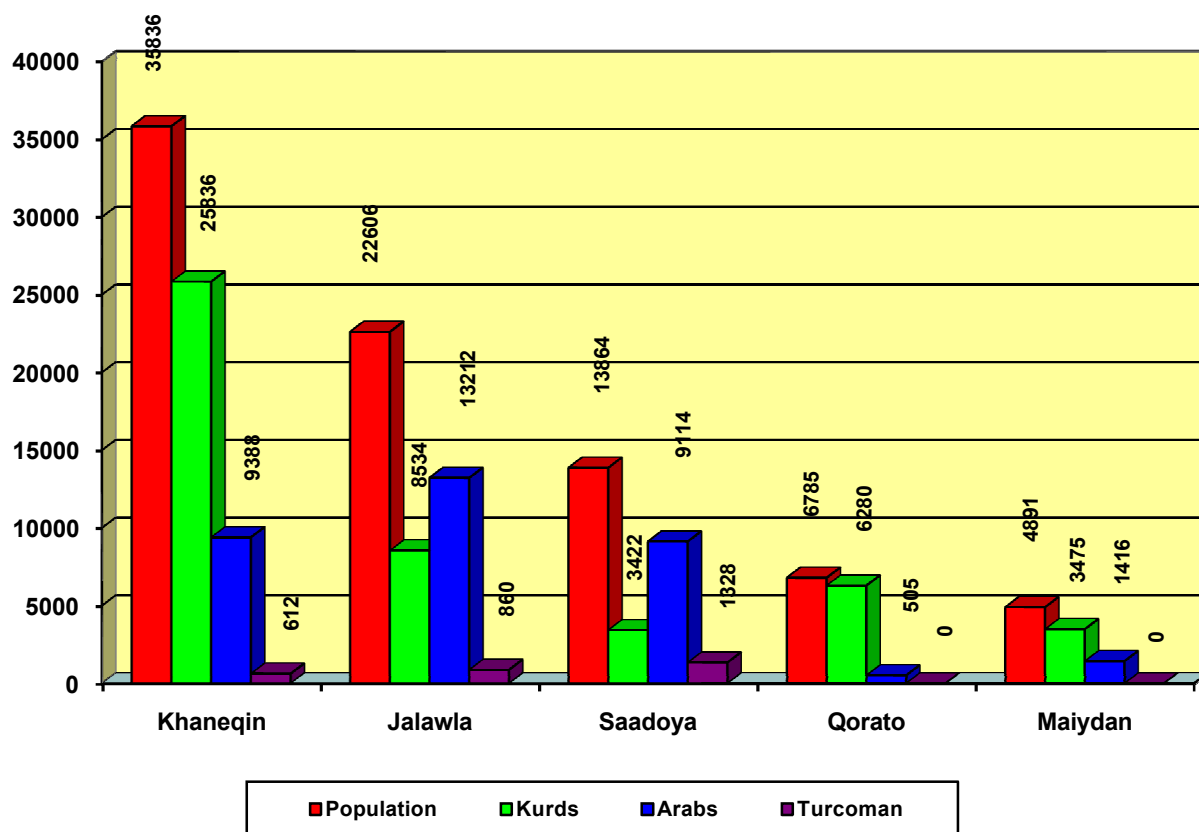


Table 11: Population of the city of Khaneqin and the suburbs and districts belonging to it 1977

City	Population	Kurds	Arabs	Turcoman	Other
Khaneqin	44675	20128	21213	2722	612
		45.6%	48.3%	5.85%	
Jalawla	28822	5714	22083	715	310
		19.8%	77%	2.5%	
Saadiya	16846	865	15206	675	100
		5.14%	90.2%	4%	
Maydan	2562	32	2518	5	7
		1.2%	98.2%		
Qorato	5950	303	5637		10
		5.1%	94.7%		
Total	98855	27042	66657	4177	1039
		27.35%	67.4%	4.16%	1.05%

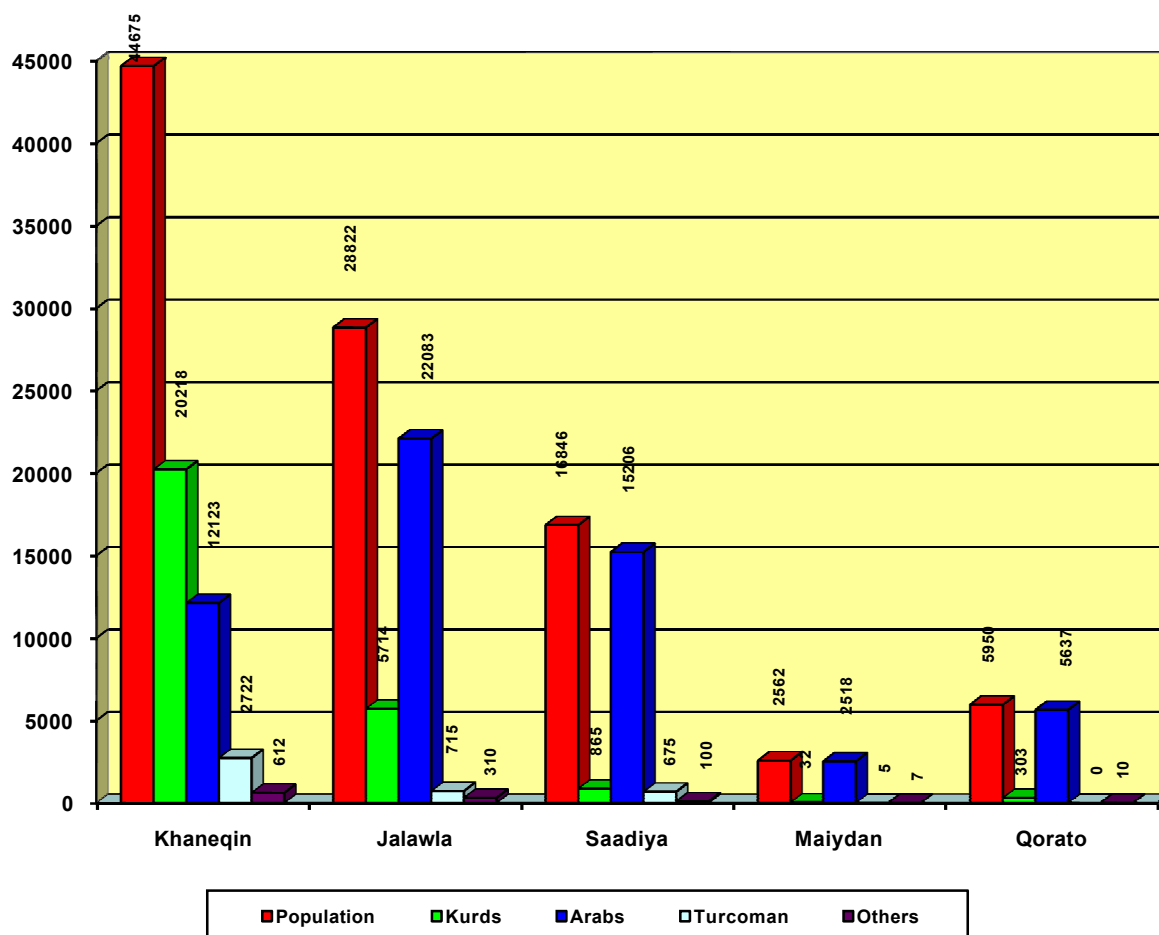


Table 12: Population of Khaneqin city, its suburbs and the districts attached to it 1987

Name of city	Population	Kurds		Arabs		Turcoman	
		number	%	number	%	number	%
Khaneqin	39246	17985	45.8%	19426	49.5%	1835	4.7%
Jalawla	37489	4839	12.9%	32032	85.2%	618	1.7%
Saadiya	24662	1681	16.8%	21658	87.8%	1324	5.4%
Total	101397	24505	24.2%	73116	72.1%	3777	3.7%

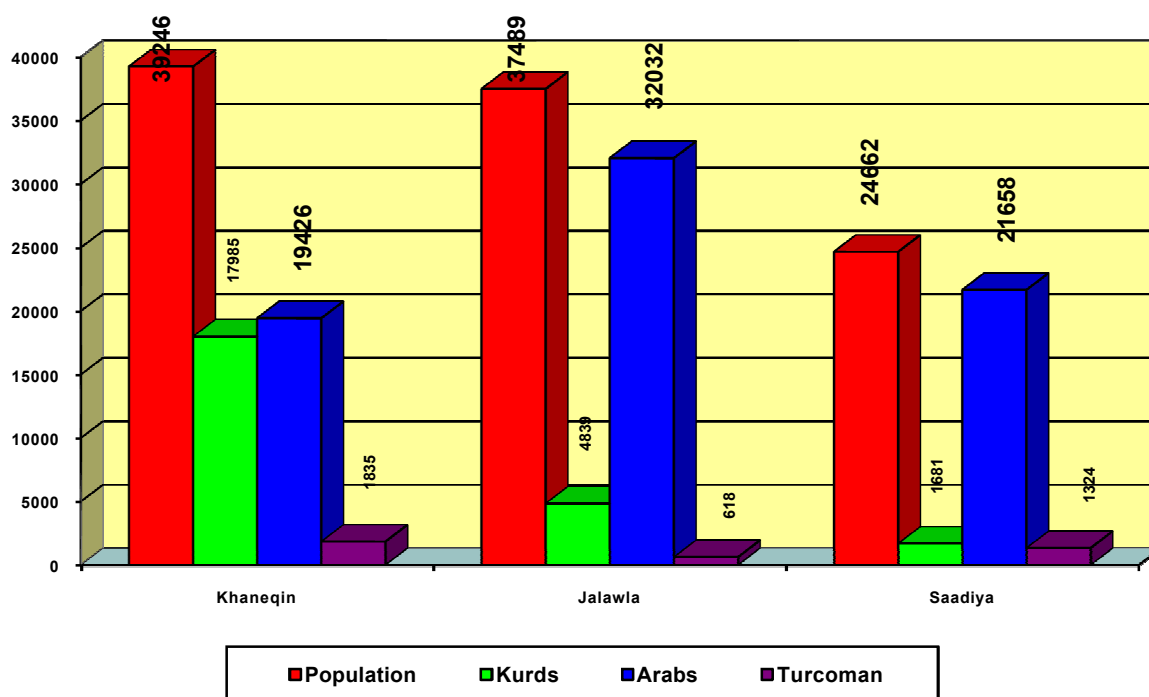


Table 13: Population of Khaneqin and districts belonging to it, except Maydan and Qorato 1997

Name of city	Population	Kurds		Arabs		Turcoman	
		number	%	number	%	Number	%
Khaneqin	49968	19699	39.4%	27237	54.7%	2942	5.8%
Jalwla	46147	6606	14.7%	38639	83.7%	902	1.95%
Saadiya	31874	3155	9.9%	26495	83.1%	2224	6.97%
Total	127989	29460	23%	92461	72.3%	6068	4.74%

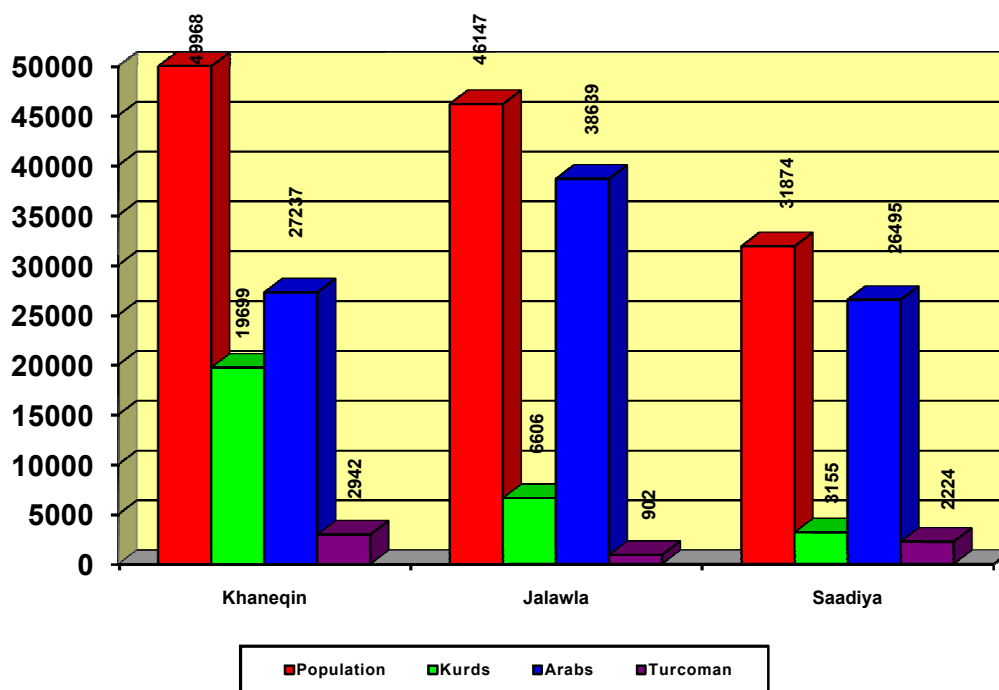
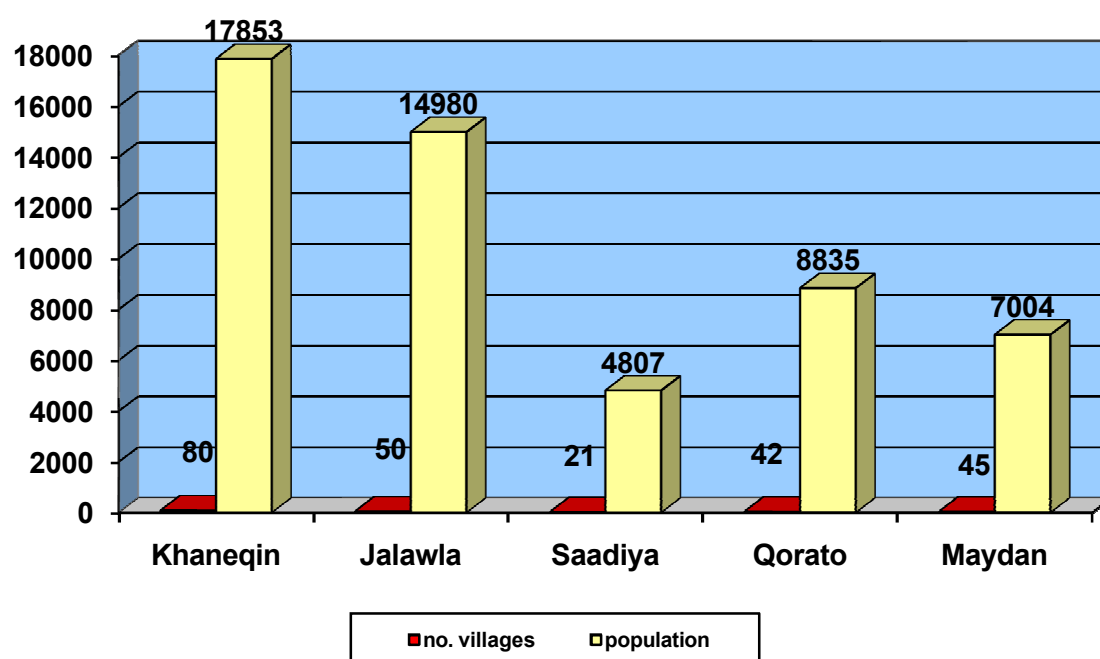


Table 14: Villages and districts that belonged to Khaneqin prior to demolition operations

Ser.	City	Number of Villages	Population
1	Khaneqin	80	17,853
2	Jalawla	50	14,980
3	Saadiya	21	4,807
4	Qorato	42	8,835
5	Maydan	45	7,004
6	Total	238	53,479



OFFICIAL DOCUMENTS

Supplement 1. Article (58) of the Transitional Administrative Law (TAL) of the Iraqi state for the transitional stage:

a- The Iraqi Transitional government, especially the High Commission for solving the disputes of estates ownership and others of the quarters concerned, shall take measures for the purpose of alleviating injustice caused by the practices of the former regime and represented by the demographic changes of certain regions including Kirkuk, through deporting and exiling individuals from their residences, and through forced immigration inside and outside the region and settling alien individuals in the region, depriving the people of work, and through correcting the nationality, and to remedy this injustice, the transitional Iraqi government must take the following steps:

Regarding the resident deportees and the emigrated and the immigrants, and in harmony with the law of the High Commission for solving the real estate ownership disputes, and other legal measures, the government must return, during a reasonable period the residents to their homes and properties, if that were not possible, then they must be justly compensated.

Regarding the individuals who were transferred to certain regions and lands, the government must decide on their position in accordance with article (10) of the law of the High Commission for solving the estates ownership disputes to ensure the possibility of resettling them, or to ensure the possibility of receiving compensation from the state, or the possibility of receiving new lands from the state near their places of residence in the governorate which they came from or the possibility of receiving a compensation for the cost of transferring to those regions.

Regarding the persons who were deprived of employment or other living means to force them to emigrate from their places of residence in the regions and lands the Government must encourage opportunities for new job in those regions and lands.

Regarding the correction of nationality the government must cancel all the related decisions, and permit the injured persons, to have the right of deciding their national identity and their ethnic belonging without forcing or pressure.

b- The former regime also manipulated with the administrative borders and other in order to achieve political aims, the presidency and the transitional Iraqi government must present recommendations to the National Assembly in order to remedy those unjust changes.

In case of un ability of the Presidency to agree unanimously on the package of recommendations, then the council of the Presidency must appoint a neutral arbitrator and unanimously for the purpose of studying the subject and presenting recommendations, and in the case of the Presidency Council being unable to agree on an arbitrator, the Presidency Council must ask the General Secretary of the United Nations to appoint a distinguished international personality to do the required arbitration.

c- The final solution of the disputed lands including Kirkuk is postponed until the above measures are completed and carrying out a census of population, just and transparent, until the approval of the permanent constitution. this solution must be completed in a way agreeing with the principles of justice, taking into consideration the will of the population of those lands.

Supplement 2. The four Decisions of the Committee for Implementing Article 140 of the Iraqi Constitution

Committee of Implementing article 140 of the constitution

No.6

Date: 16.1.2007

Decision No.1

Our Committee, formed according to the Diwan (council) order No.46 dated: 9.8.2006 held its tenth meeting on the date 10.1.2007 for the purpose of implementing article (140) of the constitution of the Republic of Iraq, and for the sake of normalizing the situation in the disputed areas, the committee decided as follows:

1. Re-instating all the officials of the original population of the disputed areas (Kurds, Turcoman, Assyrian, Chaplains and Arabs who were dismissed or sent away or transferred outside those regions for political, ethnic, sectarian or religious reasons for the period from 17th July 1968 until 9th April 2003, to their former Jobs or similar ones in their original regions, in accordance with the law.

This decision is subject to the approval of his Excellency the

Prime Minister.

Signed:

Hashim Abdulrahman Al-Shibly

Chairman of the committee

/1/2007

No.24

Date: 16.11.2007

Decision No.2

Our Committee, formed in accordance with the Diwan (Council) order No. (46) number MRN/48/1373 and dated: 9.8.2006 held its 11th meeting on the date: 16.1.2007 and for the purpose of implementing article (140) of the constitution of the Republic of Iraq and in order to normalize the situation in the disputed areas, the committee decided as follows:

First: Returning all the deported and emigrated families, who were deported and emigrated from the disputed areas. to their former regions and apply the following mechanism for implantation.

- a) The deported and emigrated shall be compensated with a piece of residential land which shall be allocated by the state in their original regions of which they were deported or emigrated provided that they were not beneficial of owning a piece of residential land from the state.
- b) All the deported and emigrated families shall be compensated financially a sum of only (5) five million dinars, and deported and emigrated families

within Kirkuk municipality with a financial compensation amounting to (10) ten million dinars.

Second: The Committee of Solving the Disputes of Estate Ownership shall solve all cases of estates and confiscated properties and possessed as a result of policies of the former regime in the disputed areas covered by article (140) of the constitution of the Republican of Iraq and as soon as possible but not later than 15.3.2007

This decision is subject to the approval of his Excellency the Prime Minister.

Signed:

Hashim Abdul Rahman Al-Shibly

Chairman of the Committee

/1/2007

No.37

Date: 4.2.2007

Decision No (3)

Our committee formed in accordance with the Diwan order No (46) – No MRN /48/1373 and dated 9.8.2006 held its 13th meeting on the date: 4.2.2007 and for the purpose of implementing article (140) of the constitution of the Republic of Iraq, and in order to normalize the situation in the disputed areas, the committee decided as follows:

First: Returning all the settler families in the disputed areas, covered by article (140) of the constitution of the Republic of Iraq and especially in the governorate of Kirkuk, to their former regions which they came from as a result of the policies of the previous regime for the period 17th July 1968 until 9th April 2003, applying the following mechanism:

a. Giving them a sum of (20) twenty million dinars together with a piece of land in their original regions.

b. Transferring the birth records of the settler's families from the disputed areas to the civil records offices in their previous original regions.

c. The transfer of food coupons of the settler's families from the disputed areas to their previous original regions.

d. The transfer of all the remaining official documents of the settler's families from the disputed areas to their previous original regions.

h. The sum of the donation should be paid after presentation, by the concerned, evidence of the transferring of records of civil situation and the coupon forms of people covered by this donation.

Second: The Ministry of Interior and Ministry of Trade, and the departments concerned, must ease the task of the settler's regarding the contents of (b,c,d) of the first paragraph, above.

Third: The ministries and departments concerned must ease the task of the settler if he was an official to transfer his job from the disputed areas to his original region.

Fourth: All the paragraphs of the above decisions must be implemented before day 15.3.2007.

Fifth: This decision is subject to the approval of his Excellency the Prime Minister.

Signed:
Hashim Abdul-Rahman Al-Shibly
Chairman of the committee

/2/2007

No.38
Date: 4.2.2007

Decision No.4

Our Committee formed in accordance with Diwan order No.46(No.MRN/48/1373) and dated 9.8.2006 held its 13th meeting on 4.2.2007 and for the purpose of implementing article (140) of the constitution of the Republic of Iraq and in order to normalize the situation in the disputed areas the Committee decided as follows:

First: Cancellation of all agricultural Contracts which were concluded within the policies of the demographic change regions and covered by article (140) of the constitution of the Republic of Iraq and particularly in the governorate of Kirkuk and returning the position to what it was before concluding those contracts.

Second: the departments concerned are our authorized to implement this decision.

Third: This decision is to be implemented before the day of 15.3.2007.
This decision is subject to the approval of his Excellency the Prime Minister.

Signed:
Hashim Abdul Rahman Al-Shibly
Chairman of the Committee/ /2/2007

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3. LIST OF INTERVIEWS

NAME	DATE	LOCATION	POSITION
Babakr Sediq Ahmad Famous (Kaka Rash)	22 April 2010	Kirkuk, Audio recording of the interview	member of the Higher Committee for the Implementation of Article 140, and head of the office of Kirkuk
Dr. Borhanedin A. Yassin	12 August 2009	Sweden, interview through Telephone and Email.	Lecturer in the Lund University, Sweden
Edalat Omer Saleh	15 April 2009	Erbil, Audio recording of the interview.	She was an Advisor on Anfal Issues for the KRG’s Ministry of Extra-Regional Affairs in the fifth cabinet
Falah Mustafa Bakir	1 st May 2009	Erbil, Audio recording of the interview.	Bakir was responsible for the KRG’s Department of Foreign Relations, overseeing affairs between the KRG and the international community in the fifth and sixth Cabinet
Frsat Ahmad	2 April 2009	Erbil, Audio recording of the interview.	Member of Iraqi Kurdistan Parliament (Secretary of Parliament)
Jabar Yawar	15 April 2010	Sulaimaniyah, Audio recording of	Deputy minister of the KRG peshmerga forces,

		the interview.	and also spokesman of the KRG's Ministry of Peshmerga
Dr Kamal Kerkuki	20 April 2009	Erbil, Audio recording of the interview.	The Speaker of the Iraqi Kurdistan Parliament (IKP)
Dr Kaiwan Siwaily	2 May 2009	Erbil, Audio recording of the interview.	an oil and geology expert who worked with the KRG's Ministry of Natural Resources,
Khalid Shwani	22 April 2010	Kirkuk, Audio recording of the interview.	Member of Iraqi Parliament
Nechiravan Barzani	6 May 2010	Erbil, interview through Email.	Previous Prim Minister of Kurdistan Region (March 2006- August 2009)
Nermeen Osman	26 April 2010	Sulaimaniyah, Audio recording of the interview.	Previous Iraqi Minister of Environment, and currently ahead of the Article 140 Committee
Dr. Nouri Talabani	12 April 2009	Erbil, Audio recording of the interview.	Previous member of Kurdistan Parliament
Professor Sherzad al-Najjar	28 March 2009	Erbil, Audio recording of the interview.	Lecturer in the Faculty of Law and Politics in Erbil and Sulaimaniyah,
Tariq Jambaz	4 April 2009	Erbil, Audio recording of the interview.	Previous Member of Iraqi Kurdistan Parliament

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