

The Kurds and Self Determination according to the new principles of international law

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The preamble to the Charter of the United Nations states that its aim is to foster good relations between nations according to the principle of equal rights for all. It makes clear that each nation has the right to self determination. On 14th February 1966, the General Assembly of the UN passed a resolution stating that all peoples have this inalienable right and that all have the right to freely determine their own political position and to work to improve the economic, social and cultural rights.

In considering all these various Charters and international documents, we do not concern ourselves with the meaning of the principle only, but we look for evidence to prove that, according to this principle, the Kurds have the right to self determination. To do this we must make clear what, exactly, is a “right” as defined by international documents and whether it is applicable to the Kurds who currently number more than 35 million who, for centuries have inhabited lands known, geographically, as Kurdistan and now divided between several Middle Eastern states, that is, Turkey, Iraq, Iran and Syria.

The Kurdish problem has its roots in the negotiations between the superpowers at the end of the First World War. Encouraged by the declaration of President Woodrow Wilson (in his 14 articles) that the principle of self determination applied to all nations, the Kurdish leaders, together with others then under the control of the Ottoman Empire, pressed for this right. During the 20th century, this principle waxed and waned according to the policies of the superpowers. These were, in effect, the domination of small nations. This situation continued, in one way or another, until the break-up of the Soviet Union and the Balkans when many of these countries, for so long under its domination, demanded the right to self determination so long denied them.

The Kurds share a common language and history and have lived on their ancestral land from earliest times. It is, surely, beyond doubt that they meet all the criteria for recognition as a nation. The Treaty of Sevres, signed on 10th December 1920, recognized the Kurds as a nation and the Kurdish problem as an international issue. It proposed a solution which was reasonable given the circumstances of that time. Although the Treaty was never ratified by the Ottoman Empire, it remains an important international document as it was the first such to mention the Kurds specifically. This is why we must examine the terms of this Treaty and its proposals for the future of the Kurds.

As a result of the failure to implement the terms of this Treaty, the Kurdish question became a matter of internal law and the Kurds, previously divided between the Ottoman Empire and Persia, found themselves divided between four

states. The principle of establishing international boundaries became a matter of inviolate sovereignty, however illegitimately these boundaries may have been created originally. Until the beginning of the nineteen thirties, the main objective of the many Kurdish revolts was the independence of Kurdistan and the founding of a Kurdish state. By the end of that decade, as a result of their division, their aim became to find a solution within each of these states.

Events following the Gulf War of 1991 pushed the Kurdish Question to the forefront of international law and politics once more. That is why I will address the question of whether the Kurdish problem, especially in Southern Kurdistan (Iraqi Kurdistan) can be spoken of again as a subject within international law.

1 - The Treaty of Sevres and the Kurdish Question:

The Treaty of Sevres was signed between the government of the Ottoman Sultan and those of Britain, France, Italy, Japan, Greece, Belgium, Poland, Portugal, Romania, Czechoslovakia, and Serbo-Croatia, Armenia of the Tashnak and the Hejaz.

Articles 62, 63 and 64 were specifically designed to find a solution to the Kurdish problem in the Ottoman Empire.

Article 62 speaks of the creation of a committee of three parties: Britain, France and Italy, whose task it would be to formulate an autonomous system for the Kurds in the regions between the Euphrates and the south of Armenia to the borders of Syria and Mesopotamia.

Article 63 obliges Turkey to put into operation the decisions of this committee.

Article 64 speaks of the creation of a Kurdish state under certain conditions.

The Treaty stated that, within one year of its implementation, the majority of the Kurds in these regions must ask for separation from Turkey. This condition accords with the principle of self-determination, as it is necessary to consult the people on their wishes. It further stated that the Assembly of the League of Nations must accept that the Kurds are able to govern themselves and that this same Assembly must propose the creation of this Kurdish State.

When all these conditions were met, Turkey would have been obliged to accept the proposal of the League of Nations. A new Treaty would then have been signed between Turkey and the main signatories to the Treaty of Sevres.

The last paragraph of Article 64 dealt specifically with the problem of the Kurds in the Wilayet of Mosul, which was under the control of the British army. According to this paragraph, the main signatories of Sevres will not oppose the desire of the Kurds in this former Ottoman Wilayet to be a part of the Kurdish State. The Kurds represent a majority of the population in this Wilayet which includes the present governorates of Mosul, Dohuk, Arbil, Kirkuk and Sulaymani and a part of Diyala.

From an objective interpretation of these Articles of the Treaty of Sevres, and considering the situation of that time, it is clear that the object of this Treaty was the creation of a state for the Kurds in Northern Kurdistan (now in Turkey).

This would have been joined later with the south of Kurdistan (now Iraqi Kurdistan). Had there been a genuine intention on the part of the great powers to put it into effect, it suggested the establishment of a Kurdish state in two stages. But the interests of these powers, and especially of Britain and France, lay in Southern Kurdistan where there is oil. The British authorities, which held a mandate on Iraq, joined the Wilayet of Mosul to the new Iraqi State so as to be able to send the oil from this Wilayet, by pipeline, through Iraq to the Mediterranean. Then, with the rise to power of General Mustafa Kemal in Turkey, the Treaty was rescinded and not just Britain and France, but even the newly created Soviet Union supported the new Turkish state and assisted it in its efforts to quell the Kurdish revolts against the Kemalist regime. A later Treaty signed in Lausanne in 1923, made no mention of the Kurds and the Kurdish problem became a part of the internal law of those countries between which they were divided.

Following the collapse of the invasion of Kuwait by the Iraqi regime in 1991, the Kurds of Southern Kurdistan rose against the regime and liberated most of their region, including Kirkuk, whereupon the regime launched a savage counter-attack on the civilian population. As a result, in April 1991, the Security Council passed Resolution No. 688 that aimed to end this tragic situation. For the first time since the Treaty of Sevres, an international decision was taken which, whilst speaking of all the Iraqi people, mentioned the Kurds in particular. This resolution concerns the internal affairs of a member state of the UN and it discriminates between the state and the people.

We have now to discover whether the Kurdish question in Southern Kurdistan, will be resolved by the new principles of the international law.

11 - The Kurdish question according to the new principles of international law:

The ending of the cold war and the collapse of the Soviet Union, together with the events following the Gulf War, were the main reasons for establishing several new principles of international law. Before these events, and especially since 11th September 2000, intervention in the internal affairs of states was considered to be illegal. However, in the changed circumstances, the principle of equality between nations and the respect for human rights will make intervention by the international community in the internal affairs of states just, acceptable and legal. This will apply particularly in cases where the policy of ethnic cleansing is tantamount to genocide. For example, the catastrophes in Bosnia, Kurdistan, Somalia, Rwanda, Kosovo and Southern Sudan, especially in (Darfor) presented the international community and its organizations with the opportunity to intervene to save endangered lives in these countries. Had the new principles of international law not been established, there would have been no such intervention.

The tragedy of Halabja in March 1988, which focused the attention of people everywhere, the killing of 182,000 civilian Kurds in 'Anfal' operations, the destruction of more than 4000 Kurdish and Christian villages by the Iraqi

regime and the deportation of tens of thousands of Kurdish Faily families to Iran, brought no positive response from the international community. The dictatorial regime in Baghdad took note of this silence and invaded Kuwait on 2nd August 1990, but because of the oil in Kuwait and other Gulf states, the Security Council took decisive action against it. Such a decision would not have been possible just a few years ago.

Security Council Resolution No. 688, of 1991, was taken after the mass exodus of Kurds from Southern Kurdistan. Its main consequence was the creation of Operation Provide Comfort which established a Safe Haven for the protection of Kurds in this area and without which many thousands of people would have died in a very short time. This was a clear, direct intervention in the internal affairs of the state of Iraq and was a decision of major significance to international law since it censures the state for its use of force internally and considers it a threat to international security. It represents an important shift in the position of the Security Council. It is concerned here not with the state, but with the people, in contradiction to its declared principles and its main objective of finding solutions to problems between member states.

In September 1991, the regime in Baghdad recalled all its administration from most of the Kurdish region. Later, it imposed an economic blockade on it, thus making the region subject to two embargoes: one Iraqi, the other international, which was imposed on the whole of Iraq by the Security Council. The consequence of this action was the creation of a de facto Kurdish administration. Shortly after, the people of this part of liberated Kurdistan elected a

Parliament, which formed a government to administer the internal, as well as the external, affairs of this region.

Unfortunately, the Kurdish leaders failed to take advantage of this sequence of events. The 1995 referendum held to accept Saddam Hussein as President of Iraq and, later, the elections of a so-called Parliament for Iraq, without the participation of the people of the liberated part of Kurdistan are just two examples. The Kurds failed to grasp their opportunity to demonstrate to the international community the fact that the regime in Baghdad does not consider them as a part of Iraq and that, therefore, their problem must be treated according to international law. Later, the acceptance by the Iraqi regime of Security Council Resolution No.986, by which it was allowed to sell oil for the purchase of humanitarian supplies, and which arranged for the provision of 13% of the resulting revenue to be given in aid to the Kurds in that region, proves that even the international community accords this part of Kurdistan a special status. Although the western countries continue to speak of the territorial integrity of Iraq and not of its divisions, they remain obliged to protect the Kurds according to the new international law which safeguards them against further attempts at genocide by the Iraqi regime. Several political parties and their parliamentary groups and organizations in Europe, have frequently asked the international community to protect the autonomous region of Kurdistan against intervention by the Iraqi regime and neighbouring states.

The prevention of crimes against humanity is now one of the principle obligations of the international community and

its organizations and they have the right to intervene wherever, and whenever, such crimes occur. The Security Council itself has taken action with regard to Somalia, Cambodia and Haiti. For example, in its Resolution No. 940 of July 1994, it authorizes member states to “form a multinational force to use all necessary means to facilitate the departure from Haiti of the military”. Events in Kosovo and East Timor illustrated this policy, as was emphasized by the statements of western political leaders and the international community that international intervention in these countries is legal. In an interview with the “Independent” on Sunday newspaper in May 1999, the British Foreign Secretary said “What this whole episode has thrown up is the unacceptability of governments using aggression against their own people and then claiming sovereignty as a blanket protection for whatever they are going to do”.

At NATO’s 50th Anniversary Summit in Washington, similar views were forcefully expressed. The British Prime Minister at that time, Tony Blair, declared that a new “doctrine of international community” was required and added “we are all internationalists now, whether we like it or not”. “We cannot turn our backs on conflicts and the violation of human rights within other countries if we still want to be secure”, he said.

An international conference was held in The Hague in mid- June 1999 to find a peaceful solution to the war in Southern Sudan. Sixteen states participated, among them most European countries as well as the USA, Kenya and Japan together with the European Union and other

organizations. Later, on January 2011, the people of Southern Sudan exercised their right of self determination and voted to have their own state, not to be a part of Sudan.

When speaking of the principle of self determination, we must clarify what we mean by “nation”. All international documents, (some of which we have previously mentioned), recognise it as the right of a group of people who consider themselves as a nation and, for this reason, we must decide whether or not the principle can be applied to the Kurds, especially in the current international situation.

The documents define a “nation” as a group of people, inhabiting a specific land and united by several factors, including those of culture, religion economy and social mores, without regard to their number. Possession of a land is a vital element in creating a consciousness of nationhood by the group. This consciousness is an excellent criterion by which to judge whether the group can or cannot be considered to be a nation. If such consciousness exists, then such a conclusion cannot be denied. The contrary is also true however, since it follows that a group lacking this awareness of a common history, language, economic union or the same homeland cannot be considered a nation.

According to this criterion, the Kurds, Palestinians, Kosovans and others struggling for the right of self determination are undeniably entitled to this right. This struggle is exemplified by the Palestinians. Although recognised as a nation by the international community, a decision by the Security Council in 1947 created the state of Israel and gave it approximately half the Palestinian land. In 1967, the Israeli army occupied the remainder. According

to the Oslo Agreement of 1995 between the leaders of Palestine and Israel, Israel recognised the Palestinians as a nation with the right to self determination in the lands which would be returned to them. In Kosovo, once part of the Republic of Serbia, the majority of the population is Albanian with a minority of Serbs. But all the power lies in the hands of this minority. The Kosovans were pressing for a referendum to determine their own future, but this was refused by the Serbian government which claimed that the region was and must remain a part of Serbia, regardless of the Albanian majority. In the end, the international community let the people of Kosovo to decide their own future in a referendum organized under its control. An international referendum was organised in East Timor, a country long dominated by Portugal and then annexed to Indonesia in the mid 1970s. The people voted overwhelmingly for independence.

The Kurds, in spite of great suffering, have remained on their land, resisting attempts by the Ba'athist regime to force them to leave and to be replaced by others, as in the Kirkuk region. Also, in 1981, the Ba'athist regime agreed to permit the Turkish and Iraqi armies to intervene in each others territories to crush the Kurdish uprising. In 1993, there were constant meetings between Turkey, Iran and Syria to 'look at the unusual situation in the north of Iraq'.

After the fall of the Ba'athist regime in April 2003, the Kurdish leaders went voluntarily to Baghdad, to show their willingness to remain as a part of Iraq and to participate in the rebuilding of the Second Republic of Iraq. At the end of 2005, a new Constitution was approved by the vast majority

of the Iraqi population, including the Kurds. This Constitution was based on the federal system, on democracy, pluralism and the respect of human rights. It also contains Article 140, which aims to resolve the problem of Kirkuk and the other Kurdish territories which are still under the control of the central government.

By voting for the new Constitution, the Kurds exercised their right of self determination by accepting to a part of Iraq with the condition that the Constitution would be respected and Article 140 would be implemented. The new government which took power after the General Election of March 2010 must honour its commitment to the Constitution and resolve all the problems remaining between the central government and the Kurdistan Regional Government, including the implementation of Article 140. Failure to do so would jeopardise the future of all Iraq as one state.

كورد و مافی دیاریکردنی ضارەنووسی خۆی بەئێی بنەما تازەکانی قانونی نیودەولەتی

دکتۆر نووری تالەبانی

ئەیماننامە (سیطر)ی نیودەولەتی کە لە 10ی دیستەمبەری سالی 1920دا مۆرکراوە، یەکەم ئەیماننامە نیودەولەتیە بە روونی باسی لە ئرسی کورد کردووە. لە ماددەکانی 62 و 63 و 64 کورد وەک نەتەوێکی دانی ئیدانراوە، ئیشتیازی دامەزراندنی حوکمیکی زاتی فراوانی لەو ناوستانە کە کورد زۆرینەن تێیدا کراوە، سنووری ناوستانەکان دەستینیشان کراوە. لە قوێاغی دووەمدا دامەزراندنی دەولەتیکی کوردی بە سەند مەرجیک ئیشتیاز کراوە. هەر لەو قوێاغدا کوردی ویلاستی موسلی عوسمانی دەتوانن داواکەن ببن بە بەشێک لەو دەولەتی کوردییە. دامەزراندنی دەولەتیکی سەر بەخۆی کوردی کاریکی ئاسان نەبوو، ئەو دەولەتەکان لەو دەمدا دروست کران سەرەتا خراوە نەماندنی سەند دەولەتیکی زلهیزی وەک بەریتانیا و فەرەنسا، وەک عێراق و سوریا و لوبنان و فەلەستین. دروستکردنی ئەو دەولەتی کوردییە بە دوو مەرجەو بەسترا بوو، یەکەمیان کورد لەو ماوەی حوکمرانی ناوستانەکانی خۆیان دەکەن دەبێ بەکرەو بیسەلمینن توانای بەریوەبردنی کاروباری خۆیانیان هەبێ. مەرجی دووەم ئەوەند بوو بە بریاری (کۆمەڵەیی طەلان – عصبە الامم)، دەبوو لەسەر راتۆرتی ئەنجومەنی ئەو دامەزراوە نیودەولەتیە بریار لەسەر دامەزراندنی ئەو دەولەتی بەریت. دەبێ ئەوەش لەبەر نەکریت کە بارودۆخی نیودەولەتی لەو دەمدا زۆر ئالۆز بوو، ئەیماننامە نەهینی (سایکس – بیکو) کە بوو دابەشکردنی دەولەتی عوسمانی مۆر کرابوو لە ئارادا بوو، دەولەتی بەریتانیاش بەهەموو توانایەو هەولی دەدا ناوستانە کە کۆک بەریتە سەر سنووری دەولەتی تازە دروستکراوی عێراق، تا بتوانی نەوتی کۆک لە ریطای عێراقەو

بنیری بۇ سقر دقریای سئی. ئقو هوکارانه لطقل بقردقوئندی ئابووری و ستراتیذی دقولققئق زلهیزقکان و بقشیک لة دقولققئانی ناوضقکة بوونق هقوی ئقو ق بقدانقئق (سئظر) کة ئقوئقوئدییان بق کوردقو هقبوو لةکار بخرین، بق هقوی مؤرکردنی ئقیماننامقئق (لقزان) لة تموزی 1923. مقسقلقئق کورد تا کقئای ققئطی قیهانق دووقم بوو بق مقسقلقئقئق ناوخقوی لقاوا ئقو دقولققئانی خاکی کوردستان دابقش کرابوو بقسقر یاندا.

دامقزرانندی نقققو ققکطرتوووقان لة سالی 1945 و ئقسقئدکردنی جارنامقکقئق کة ئقیدا دانی بق مافی طقلاندا ناوق بق دیاریکردنی ضارقنوو سی خقیان سوودی بۇ کورد نقبوو. دواتریش کقماقئق طشقی نقققو ققکطرتوووقان لة 14 دقسقمبقری 1960 بریاریکی ئقسقئد کرد، ئقیدا دانی بق مافی طقلاندا نابوو بق دیاریکردنی دوارقذی خقیان. ئقو ئرنسئقئق لة سالی 1966 لقاو جار نامانقئق ئایقئت بوون بق کاروباری ئابووری و کقماقئقئق و کولتووری UN دووبارة ضقسئقئد رانقو. ئقو بریارانق بوونق هقوی ئقو بقشیک زور لقاو طقلانقئق تا ئقو دقما لة ذقردقسقئق دقولققئق کولقنیالیبققکاندا بوون سقر بقخقوی ولاتقکقئیان وقربطرن. قیققجیکردنی ئقو بریارانق ئابقئدبوو بق دوو مققرجی سقرقکقبققو: ققکقماقئق ئقو کقماقئقئقئق داواق سقر بقخقوی دقکات دقبق وقو (طقل) ئقئاسق کرابقئق، دووقم ئقو ولاتق لة ذقردقسقئق ققکق لة دقولققئق کولقنیالیبققکاندا بووبقئق.

ئطقق بق وردی تقماشای ئرسی کورد لة باشووری کوردستان بکقئق، دقببئق لة سالی 1918 تا کقئای 1925 لقسقری بققئانیا راسقئقو خق حوکمرانی ئقو بقشقئق کوردستانق کردوو، بققئانیا وق ک دقولققئق کولقنیال و داطقرقق رققئاری لطقل طقلی کوردستان کردوو، ضقسئدقن جار هقزی زقمئق و ئاسمانق لقسقری بققئانیا دقئات و ضقسئد شاری کوردستانق وقران کردوو. لقاو ماوقدا بققئانیا دقسقئق بقسقر سامانق نققئق کوردستاندا طرتوووق، هقر ئقو سامانقئق

كوردستان هوكارى سقرهكى لكاندى باشورى كوردستان به دولتهى عىراقوه بووه. سقرهت به مخرجى يهكتم، ئايا كورد وهك (طهل) ئيناسه كراوه، ئيماننامهى (سىطر) لهسالى 1920دا ئهوهى يهكلابى كردوهتهوه. كهواته ئهوه دوو مخرجهى لهوه دوكيومينته نيودهولتهيانه دهسنيشان كراون، باشورى كوردستان دهطريتهوه، بويه دهيتوانى داواى دياريكردنى ضارتهنوسى خوى بكات.

له سقرهتاي نهوهدهكانى سقرهى رابوردوهوه ضهند ثرنسيهكى تازوله قانونى نيودهولتهى جىطاي خويان لهناو ئهوه قانونه كردوهتهوه، كورد دهيتوانى لهوه دمه سوود لهوه ثرنسيهه تازانه وهربطريهت و داواى ضارتهسقر كردنى كيشهكهى بكات وهك بهشى زورى لهوه ولاتانهى بهتر شالوى جينوسايد كهوتبون، به دامقراندى قهوارهى سياسى تايهت به خويان. دواتر بهشيكيان وهك نهندام له نهتهوه يهكطرتوهكانيش قبول كران.

بهلام ناش دهنطدانى خهلكى باشورى كوردستان به دهستورى تازهى عىراق له سالى 2005، ترسى كورد بووهوه به ترسيكى ناوخويى و لهضوارضيهوى قانونى نيودهولتهى ضوهوهوه دهروهوه، ضونكه دهنطدان بهوه دهستوره بهوه مانايه ديهت كه دهنطدهرانى كوردستان دهنطيان به مانهوه له ضوارضيهوى عىراقىكى فيدرالى و فرههيزبى و فره نهتهوهيى داوه، لهطهل جيهجيكردنى ماددهى 140، كه تائيسناكارى جيدى بو جيهجيكردنى نهكراوه.

الكورد ومبدأ حق تقرير مصيره بنفسه وفق المبادئ الجديدة للقانون الدولي

الدكتور نوري الطالباي

إن معاهدة (سيطر) الدولية التي وقعت في العاشر من شهر ديسمبر عام 1920، هي أولى معاهدة دولية تناولت القضية الكوردية بوضوح في موادها المرقمة 62 و 63 و 64 واعترفت بها كأمة، واقترحت تشكيل الحكم الذاتي في المناطق التي أكثرية سكانها من الكورد، وحددت حدود المنطقة أيضاً، واقترحت تشكيل دولة كوردية في المرحلة الثانية وفق شروط، وفي تلك المرحلة بالذات يتمكن الكورد في ولاية الموصل العثمانية المطالبة بأن يصبحوا جزءاً من تلك الدولة الكوردية. لم يكن تشكيل دولة كوردية مستقلة امراً سهلاً والدول التي تشكلت في تلك المدة وضعت في البداية تحت انتداب دول قوية كبريطانيا وفرنسا، مثل العراق وسورية ولبنان وفلسطين. إن تشكيل تلك الدولة الكوردية ارتبط بشرطين، أولهما يقتضي بأن الكورد الذين يحكمون مناطقهم خلال تلك المادة لا بد أن يثبتوا أن لهم القدرة على إدارة شؤونهم، والشرط الثاني كان مرتبطاً بقرار (عصبة الأمم) إذ كان من المفترض اتخاذ قرار بتشكيل تلك الدولة استناداً إلى تقرير تلك المؤسسة الدولية، ويجب أن لاننسى بان الظروف الدولية في تلك الفترة كانت معقدة جداً، وكانت معاهدة (سايكس - بيكو) السرية قد وقعت لتقسيم الدولة العثمانية، وكانت الدولة البريطانية تحاول كل ما في وسعها بضم منطقة كركوك إلى حدود الدولة العراقية المصطنعة الجديدة،

لكي تتمكن تصدير نطف كركوك عبر العراق إلى البحر الأبيض. أصبحت تلك العوامل مع المصالح الاقتصادية والإستراتيجية للدول القوية وقسم من دول المنطقة سبباً لإبطال بنود معاهدة (سيطر) المتعلقة بالكورد. وبسبب التوقيع على معاهدة (لوزان) في تموز 1923 غدت المسألة الكوردية إلى نهاية الحرب العالمية الثانية مسألة داخلية من بين الدول التي قسمت عليها ارض كوردستان.

إن تشكيل الأمم المتحدة عام 1945 وإقرار إعلانها الذي يعترف بحق الشعوب بتقرير مصيرها، لم يكن له نفع للكورد. وبعد ذلك فإن العصبية العامة للأمم المتحدة أقرت في 14 ديسمبر 1960 قراراً، اعترفت فيه بحق الشعوب في تقرير مصيرها. وقد ثبت هذا المبدأ عام 1966 مجدداً في الإعلانات التي كانت خاصة بالشؤون الاقتصادية والاجتماعية والثقافية لـ UN. وقد غدت تلك القرارات عاملاً بأن قسماً كبيراً من تلك الشعوب كانت حتى تلك المدة تحت انتداب الدول المستعمرة، أن يأخذوا استقلال بلدانهم. إن تنفيذ تلك القرارات كانت مرتبطة بشرطين رئيسيين: أولهما أن المجتمع الذي يطالب بالاستقلال يجب أن يعرف كـ(شعب)، ثانياً أن تكون هذه البلاد تحت انتداب إحدى الدول المستعمرة.

إذا ألقينا نظرة على المسألة الكوردية في جنوب كوردستان، نرى أن الجيش البريطاني كان يحكم هذا القسم من كوردستان بشكل مباشر بدءاً من عام 1918 إلى نهاية عام 1925. وتعاملت بريطانيا كدولة مستعمرة ومحنته مع شعب كوردستان، ودمرت القوة الجوية والبرية البريطانية القرى والمدن الكوردستانية مراراً، وخلال هذه المدة سيطرت بريطانيا على الثروة النفطية لكوردستان التي كانت سبباً رئيساً لإلحاق جنوب كوردستان بالدولة العراقية. وبالنسبة إلى الشرط الأول، هل أن الكورد قد عرف كـ(شعب)؟ فإن معاهدة (سيطر) حسمت ذلك عام 1920- إذن الشرطين اللذين شخصاً في الوثائق الدولية يشملان جنوب كوردستان، لذلك كان بالإمكان المطالبة بتقرير مصيره.

منذ بداية تسعينات القرن الماضي حلت مبادئ جديدة واردة من

القانون الدولي في ذلك القانون، وكان بمقدور الكورد في تلك المدة الاستفادة من المبادئ الجديدة بأن يطلب بحل قضيته أسوة بقسم كبير من البلدان التي تعرضت لحملة الجينوسايد بتشكيل الكيان السياسي الخاص بهم، وبعد ذلك فان قسماً منهم جرى قبولهم في الأمم المتحدة كأعضاء. ولكن بعد تصويت أهالي جنوب كردستان على الدستور الجديد للعراق عام 2005، أصبحت المسألة الكوردية مسألة داخلية وقد خرجت من إطار القانون الدولي. لأن التصويت على هذا الدستور يعني أن المقترعين في كردستان صوتوا على البقاء ضمن عراق فيدرالي متعدد الأحزاب ومتعدد القوميات، مع تنفيذ المادة 140 التي لم يجر لتفيذها لحد الآن العمل الجدي.

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