

Iraqi Kurdish Self-Determination: A Pathway to Secession? Settling the Questions of Application and Scope

MOHAMED ELERIAN*

ABSTRACT

From the rubble of the U.S. invasion of Iraq, Iraqi Kurds have carved out a degree of de facto political independence that has been largely sheltered from the external interference and ethnic infighting that has plagued Iraq since the fall of Saddam Hussein. This new-found expression of *self-determination* has seen widespread support amongst Iraqi Kurds for the secession of Iraqi Kurdistan and an attainment of a fully-fledged independent Kurdish state. Yet the existence of such a general right to secession does not exist under international law. This paper aims to assess the extent to which Iraqi Kurds are a people with a right to self-determination, and whether that right can express itself through *remedial secession*. It will be submitted that there is insufficient support for the existence of a positive right to remedial secession or for its progressive development under international law, but that even if such a right did exist or were to develop in the future, the situation in Iraqi Kurdistan would not meet the high threshold required for remedial session to be triggered. In light of this, a *political solution* based on a broader autonomy arrangement and increased forms of cooperation is required to resolve the continuing disputes between the Iraqi Federal Government and Iraqi Kurdistan, even if this might not fulfil Iraqi Kurdish demands for statehood. Until

* Intern, United Nations Security Council Practices and Charter Research Branch. LLB (QMUL), LLM (LSE). melerian97@gmail.com.

Iraqi Kurds can rely on regional and external political frameworks that provide the required support for statehood, a Kurdish state will not be viable.

Keywords: self-determination, remedial secession, Iraqi-Kurdistan, political solution, autonomy arrangement

I. INTRODUCTION

Despite the growing calamity in Iraq since the 2003 US invasion, the Kurdish region of Northern Iraq ('Iraqi Kurdistan') has enjoyed relative stability and unprecedented levels of self-rule following decades of persecution. Nonetheless, as the Economist describes it,¹ the recent 2017 independence referendum in Iraqi Kurdistan has, however, highlighted how this haven of peace dreams of separating from Iraq's sea of turmoil.

Although in the context of decolonisation, self-determination offered a right to statehood, this has now largely changed as decolonisation has substantially come to an end.

As self-determination has been reformulated into a human right, its form of expression has changed. Self-determination now entails a group of internal rights enjoyed by a people, with the State owing a corresponding duty to protect those rights. Nevertheless, many of those peoples seeking to express their right to self-determination, including Iraqi Kurds, continue to seek to express it through secession and the attainment of independence, even though the existence of such a general right to secession does not exist under international law.²

This paper aims to assess the extent to which Iraqi Kurds are a people with a right to self-determination, and whether that right can express itself through remedial secession. Part I of this paper will briefly highlight the reformulation of self-determination into a human right. Part II will then determine whether Iraqi Kurds constitute a people for the purposes of self-determination. After determining that Iraqi Kurds do constitute a people with a right to self-determination, Part III will carry out a brief assessment of the extent to which a right to remedial secession exists under current international law, as well as evaluate the assertion that, even if a right to remedial secession does not currently exist, there is a shift towards its development within international law. It will be submitted that there is insufficient support for the existence of a positive right to remedial secession or for its progressive development under international law, but that even if such

¹ 'Does Independence Beckon' (*The Economist*, 1 September 2007) <<http://www.economist.com/middle-east-and-africa/2007/09/06/does-independence-beckon>> accessed 1 May 2020.

² 'How Do You Start a Country?' (*Collectiv Emma*, 5 August 2017) <<http://www.collectivemma.cat/article/2724/how-do-you-start-a-country>> accessed 9 May 2020.

a right did exist or were to develop in the future, the situation in Iraqi Kurdistan would not meet the high threshold required for remedial session to be triggered. Through using Iraqi Kurdistan as an example, this paper also seeks to highlight the difficulties with the normative application of remedial secession. The final section (Part IV) will then present an alternative approach to settling the continuing disputes between the federal Iraqi government and Iraqi Kurdistan.

II. SELF-DETERMINATION AS A HUMAN RIGHT

As the legal framework of human rights gained more prominence in international law, self-determination developed as a right applicable to all peoples. In 1966, self-determination was inserted into common Article 1 of the two International Covenants and was to apply to “all peoples”. India’s reservation that self-determination was to be understood as a right solely of “peoples under foreign domination”³ was rejected by the Human Rights Committee for violating the treaty’s object and purpose.⁴ Although Article 1 did little to define the scope of self-determination, the reference to “all peoples” and the fact that the article is found in a human rights treaty intended to have universal applicability strongly suggests a scope beyond that of decolonisation.⁵ Regional documents like Article 8 of the Final Act of the Conference on Security and Co-Operation in Europe (‘Helsinki Final Act’) and Article 20 of the African Charter on Human and Peoples’ Rights further underlined the existence of self-determination as a human right applicable to “all peoples”. Therefore, in light of the adoption of numerous United Nations (‘UN’) resolutions, the many States and scholars who have accepted the right of peoples to self-determination,⁶ and the fact that most States, including Iraq, have accepted the right to self-determination through their adherence to one or both of the two International Covenants, self-determination exists as a human rights norm of international law applicable to all peoples.⁷

Importantly, international law continues to distinguish between people and minorities; minorities do not have a formal right to self-determination. Therefore,

³ UN Centre for Human Rights, Human Rights: Status of International Instruments (1987) UN Doc ST/HR/5.

⁴ Report of the Human Rights Committee, 39th Session Supplement No 40 (A/39/40) [142].

⁵ Hurst Hanum, ‘Rethinking Self-Determination’ (1993) 34 *Virginia Journal of International Law*.

⁶ See, for example James Crawford, *The Creation of States in International Law* (2nd ed., Oxford University Press 2007).

⁷ Hanum (n 5) 24.

in determining the extent to which Iraqi Kurds have a right to self-determination, it must first be ascertained whether they constitute a people.

III. DETERMINING THE ‘SELF’: IRAQI KURDS

Before determining whether Iraqi Kurds constitute a people for the purposes of self-determination, this section will examine the prevalent theories with regards to the identification of a people.

A. THE PREVAILING THEORIES AS REGARDS THE IDENTIFICATION OF A PEOPLE

Although the right to self-determination has continued to develop in international law and has continued to reference a ‘peoples’ right’, there remains no precise definition of the term ‘peoples’.⁸ Most definitions of the ‘self’ now include subjective and objective components which emphasise the cultural affinities among a group.⁹ At a “minimum”,¹⁰ it is necessary for members of the group to think of themselves as a distinct ‘people’. Therefore, it is the existence of a collective consciousness which is the subjective factor needed for the people to be identified as a distinct political unit.¹¹ It is also necessary for the group to have certain objectively-determinable common characteristics. The UNESCO International Meeting of Experts suggested that such characteristics should include a: common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, and common economic life.¹²

B. ARE IRAQI KURDS ‘A PEOPLE’?

The Kurds are a distinct ethnic group that span across the Middle East’s modern borders and who have inhabited the Kurdish mountains since 2000 BC — therefore possessing a clear “territorial connection”.¹³ The Kurds have manifested in various States, from the Medean Empire in 600BC, to the Ayyubid dynasty, and

⁸ United Nations Educational, Scientific and Cultural Organization, ‘Final Report and Recommendations, The International Meeting of Experts on Further Study of the Concept of the Rights of Peoples’ (22 February 1990) UN Doc SHS-89/Conf.602/7 (‘UNESCO Report’) (para. 21).

⁹ *ibid.*, para. 23.

¹⁰ Hanum (n 5) 57.

¹¹ Thomas D Musgrave, *Self-Determination and National Minorities* (Oxford University Press 2002) [166].

¹² UNESCO Report (n 8), para 22.

¹³ *ibid.*

the most recent — but short lived — Kurdish Republic of Mahabad in 1946.¹⁴ This distinct historical lineage provides clear and continuous evidence of the Kurdish people as a “distinct ethnicity”¹⁵ since 2000 BC.¹⁶ Even after the formation of the contemporary nation States within the Middle East and the subsequent separation of Kurds from the Ottoman Empire between Iraq, Iran, Syria, and Turkey in the 1920s, Kurds inhabiting Iraq continued to possess distinctive common characteristics. This shared history and continuous distinctive identity despite centuries of upheaval and turmoil represents evidence of an objectively determinable common Iraqi Kurdish ethnicity and history.

This objectively distinct identity of Iraqi Kurds is reflected in their internal and almost homogenous composition. Unlike the wider Iraqi population, “almost all of Iraqi Kurds are Sunni Muslim”.¹⁷ In Iraq, 62% of Muslims are Shia,¹⁸ whereas only 2% of Iraqi Kurds are Shia, with 98% being Sunni Muslims.¹⁹ This highlights the clearly distinct and homogenous religious identity of Iraqi Kurds. Additionally, Iraqi Kurds share the common language of Kurdish, which is widely used in the regional administration and education system within Iraqi Kurdistan.²⁰ Although as a wider language Kurdish does not have a unified script (Perso-Arabic Alphabet and Latinised Alphabet) or dialect (Sorani and Kirmanji), within Iraqi Kurdistan, Sorani is the dominant dialect and a modified Perso-Arabic alphabet is mostly used.²¹ Additionally, unlike the rest of Iraq, which predominantly speaks Arabic, within Iraqi Kurdistan, few under twenty-five even understand Arabic,²² and it has been three decades since Arabic was properly taught in Kurdish schools.²³ This demonstrates a clear unity of language amongst Iraqi Kurds, as well as a linguistic identity that is distinct from the wider Iraqi population.

Iraqi Kurds also satisfy the subjective element of self-determination because they perceive themselves collectively as Iraqi Kurds — a distinct ‘people’.²⁴ The preamble to the Iraqi Kurdish constitution includes terms such as “our people”

¹⁴ Akturk, Ahmet Serdar, “Imagining Kurdish Identity in Mandatory Syria: Finding a Nation in Exile” (2013) 866 University of Arkansas.

¹⁵ *ibid.*

¹⁶ Alexander Dawoody, ‘The Kurdish Quest for Autonomy and Iraq’s Statehood’ (2006) 41 *Journal of Asian and African Studies*.

¹⁷ Philip S Hadji, ‘The Case for Kurdish Statehood in Iraq’ (2009) 41 *Case W Res J Int’l*, 522.

¹⁸ Besheer Mohamed, ‘Who Are the Iraqi Kurds?’ (*Pew Research Center* 2014) <<https://www.pewresearch.org/fact-tank/2014/08/20/who-are-the-iraqi-kurds/>> accessed 3 May 2021.

¹⁹ *ibid.*

²⁰ Mahir A Aziz, *The Kurds of Iraq* (Bloomsbury Publishing 2011) [165].

²¹ *ibid.* 78.

²² *The Economist* (n 1).

²³ *ibid.*

²⁴ Hadji (n 20) 36.

and “nation”,²⁵ thus highlighting the existence of this subjective perception. Since the Gulf War and the enjoyment by Iraqi Kurds of their longest period of self-rule in a century, the common identity of the Kurds has been particularly evident. National symbols are prevalent throughout Iraqi Kurdistan, with Kurdish flags flying throughout the Kurdish region and the Iraqi flag being rarely displayed.²⁶ In addition, the Kurds have erected statues and portraits of Kurdish heroes throughout Iraqi Kurdistan.²⁷ Although these flags and statues are only symbols, they represent tangible indications of a Kurdish sense of common identity that underlines how Iraqi Kurds see themselves as distinct people.

Additionally, Kurds have consistently sought autonomy from the rest of Iraq. Immediately after the fall of Saddam Hussein, the Kurds submitted a proposed Constitution to the Iraqi Governing Council that would give the Kurds the constitutional right to secede from Iraq at any time.²⁸ Similarly, in the 2017 independence referendum in Iraqi Kurdistan, which had a 72.61% turnout, 92% voted in favour of independence from Iraq. Although the proposal to include a right to secession was rejected by the Iraqi Governing Council and the Iraqi Supreme Federal Court held that no region could secede²⁹ — thus nullifying the results of the referendum — a majoritarian Iraqi Kurdish desire for autonomy was evident. Iraqi Kurds also have a semi-autonomous region in Iraqi Kurdistan which is run by the Kurdistan Regional Government (‘KRG’) and recognised as an autonomous region in the Iraqi Constitution.³⁰ This autonomous political expression indicates that Iraqi Kurds perceive their identity as a people as being distinct, whether in struggling to gain autonomy or in actual autonomy.

Nevertheless, Iraqi Kurds are not entirely cohesive in nature. The strength of tribal and regional factions has often resulted in strong breaks between political parties, with tribal interests overshadowing national ones. The fault line of Kurdish politics runs between the Kurdistan Democratic Party (‘KDP’) and the Patriotic Union of Kurdistan (‘PUK’). Although fighting broke out between both factions in 1994, in the years since, Iraqi Kurdish society has become more united, with a restoration of peace between the two groups. Since 2002, both groups cooperate in the legislative council of Iraqi Kurdistan. While other differences persist, such

²⁵ Iraqi Kurdistan, The Kurdish Regional Constitution, Apr 19 2004, Preamble.

²⁶ The Economist (n 1).

²⁷ Ofira Bengio, *Saddam’s Word* (Oxford University Press 2002).

²⁸ Iraqi Kurdistan, The Kurdish Regional Constitution, Apr 19 2004, Preamble.

²⁹ Ahmed Rashed, ‘Iraq Court Rules No Region Can Secede After Kurdish Independence Bid’ (*Reuters*, 6 November 2017) <<https://www.reuters.com/article/us-mideast-crisis-iraq-kurds/iraqcourt-rules-no-region-can-secede-after-kurdish-independence-bid-idUSKBN1D617O>> accessed 1 April 2020.

³⁰ Iraq, The Constitution of Iraq, 15 October 2005, Article 117.

as diverging political ideologies,³¹ these differences would not be enough to deprive Iraqi Kurds from constituting a people with legal rights to self-determination. In fact, the rivalry between the KDP and the PUK “has enabled the development of a nascent democratic and pluralistic system”,³² and it is natural that all individuals within a collective do not share the same political preferences.

As a collective unit, Iraqi Kurds have consistently demonstrated a unified preference towards autonomy and a consistently unique and almost homogenous cultural, linguistic, and religious identity. Regardless of passionate divisions between political affiliations, Iraqi Kurds exist as a distinct ‘people’ within Iraq. Additionally, the collective Iraqi Kurdish desire for independence crosses internal political divisions, as evidenced by the 2017 referendum results. Given that Iraqi Kurds fulfil the objective criteria of a common historical, traditional, ethnic, religious, and linguistic unit, as well the subjective factor of perceiving themselves “collectively as a distinct people”,³³ they would constitute a people for the purposes of the legal right to self-determination. Since it has been determined that Iraqi Kurds constitute a people for the purposes of self-determination, the next section will assess whether that right can express itself through remedial secession.

IV. IRAQI KURDISTAN AND REMEDIAL SECESSION

As indicated by the 2017 independence referendum, a clear majority of people in Iraqi Kurdistan wish to express their self-determination by seceding from Iraq and forming an independent State. However, the Iraqi Supreme Federal Court has held that no right to secession exists within municipal law, and the federal government has been adamant in refusing to begin talks on a secession agreement with Iraqi Kurdistan. Since an agreement of secession between Iraq and Iraqi Kurdistan does not seem to be an option, the next question is whether Iraqi Kurds — who are a people with a right to self-determination — may express that right under international law by unilaterally seceding from Iraq.

Cassese explains that there are certain defined contexts within which the right to the self-determination of peoples does allow for unilateral secession — namely, it exists for those peoples under colonial rule or foreign occupation.³⁴ While the right of colonial peoples “to break away from the imperial power is

³¹ The KDP tends toward a conservative nationalism, whereas the PUK draws upon a social democratic system.

³² Ofra Bengio, ‘Iraqi Kurds: Hour of Power?’ (*Middle East Forum*, Summer 2003) <<https://www.meforum.org/554/iraqi-kurds-hour-of-power>> accessed 19 May 2020.

³³ Ved P Nanda, ‘Self-Determination under International Law: Validity of Claims to Secede’ (1981) 13 *Case W Res J Int’l L*.

³⁴ Antonio Cassese, *Self-Determination of Peoples* (Cambridge University Press 1998).

now undisputed”,³⁵ Iraqi Kurds are not a people under colonial rule or foreign occupation. Again, although another possible circumstance that might allow for external self-determination involves cases where a State is in dissolution, as in the break of the Former Yugoslavia,³⁶ Iraq is not in dissolution. The fact that secession may be sanctioned in specific circumstances demonstrates that there is no general prohibition on secession within international law. Nor, on the other hand, is there a general right under international law to unilateral secession. Therefore, the general view is that the law “neither prohibits nor permits unilateral secession outside the specific cases of colonial peoples”.³⁷

Alternatively, it has been suggested that the right to the self-determination of peoples does allow for unilateral secession in another specific circumstance: through remedial secession. This occurs where a people is “blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession”.³⁸ Yet, for Iraqi Kurds to possess such a right, there must exist in one of the sources of international law³⁹ specific provisions providing for a right to remedial secession.

The following section will ascertain whether such a right exists under current international law or whether there is a shift in international law that might suggest that it will progressively develop. This determination will remain brief as, even assuming that there is a right to remedial secession under international law, it will be submitted that the current situation within Iraqi Kurdistan cannot be said to meet the required threshold for remedial secession to apply.

A. ASCERTAINING THE EXISTENCE OF A RIGHT TO REMEDIAL SECESSION UNDER INTERNATIONAL LAW

(i) *Textual Basis*

The textual basis often invoked for a right to remedial secession is the ‘saving clause’ of the UN General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (‘Declaration’). The Declaration now “reflects customary international law”⁴⁰ and is therefore a source of binding international law. Under the Declaration a State has to conduct itself “in compliance with the principle of equal rights and self-

³⁵ Quebec Secession Reference (n 16) [132].

³⁶ Text of Opinions on Questions Arising from the Dissolution of Yugoslavia (1992) 31 ILM 1494.

³⁷ Cassese (n 35) 340.

³⁸ Quebec Secession Reference (n 16) [134].

³⁹ United Nations, Statute of the International Court of Justice, 18 April 1946, Article 38(1)(b).

⁴⁰ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403 [80].

determination of peoples”⁴¹ before it is entitled to protection from “any action which would dismember or impair [...] [its] territorial integrity or political unity”.⁴² It is argued that an *a contrario* reading of this clause would suggest that under special circumstances, the principle of self-determination is to be accorded priority over the opposing principle of territorial integrity, thus allowing for remedial secession.

However, even if one were to accept a generous reading of this Declaration which might downgrade a State’s right to territorial integrity, Tomuschat explains that any such limitation is far removed from extinguishing a State’s territorial integrity by allowing for remedial secession.⁴³ Therefore, the Declaration is too loosely worded to sanction a positive right to remedial secession.⁴⁴

Alternatively, the Helsinki Final Act does provide a right to “all peoples” to determine their “external political status”⁴⁵ within the definition of self-determination. The Act, however, was a non-legally binding regional document that was meant to apply only to the peoples of Europe and therefore cannot be interpreted as being a source of binding international law. In any case, there was no indication that sub-State groups could constitute ‘peoples’.⁴⁶ Therefore, there is no binding treaty law or non-binding declaration that has developed into a customary norm that establishes a positive right to remedial secession under international law.

(ii) *State Practice and Opinio Juris*

As regards State practice, Bangladesh’s secession is often noted as the classic case of remedial secession. The secessionist movement in Bangladesh was preceded by a brutal governmental policy of repression as well as economic, ethnic, and linguistic discrimination.⁴⁷ According to Crawford, the repression carried out by Pakistan’s government qualified East Pakistan to be a unit with a right to remedial secession.⁴⁸ Tomuschat, however, argues that the secession of Bangladesh was brought about by the principle of effectiveness rather than any legal right to remedial secession.⁴⁹ The surrender and withdrawal of the Pakistani Army from East Pakistani territory created a power vacuum that eventually allowed Bangladesh to emerge as a new State on the international stage, particularly with

⁴¹ Organization for Security and Co-operation in Europe ‘Conference on Security and Cooperation in Europe Final Act’ (Helsinki, 1 August 1975) (‘Helsinki Final Act’) Principle 8.

⁴² UNGA Res 2625 (XXV) (1970) UN Doc A/RES/2625(XXV) Principle (e) [7].

⁴³ Christian Tomuschat, *Secession and self-determination’ in Marcelo G Kohen, Secession: International Law Perspective* (Cambridge University Press 2006).

⁴⁴ *ibid* 38.

⁴⁵ Helsinki Final Act (n 42) Principle 8.

⁴⁶ Hanum (n 5) 57.

⁴⁷ Niall Macdermot, ‘Crimes Against Humanity in Bangladesh’ (1973) 2 *The International Lawyer*.

⁴⁸ Crawford (n 5) 142.

⁴⁹ Tomuschat (n 46) 30.

the political and military support received from India.⁵⁰ The argument that the secession of Bangladesh was more a product of the principle of effectiveness than the existence of a right to remedial secession is supported by the silence of the UN on the issue of self-determination,⁵¹ confining itself to demanding that the troops of India and Pakistan be withdrawn from each other's territory.⁵² Consequently, Bangladeshi secession cannot serve as an example of unequivocal State support for a positive right to remedial secession, because although Bangladesh remains the only successful case of unilateral secession, its success was more a result of a fait accompli that States (and importantly Pakistan) had to eventually accept.

Alternatively, Kosovo has been argued by some to be an example of remedial secession. Several States proclaimed that Kosovo had a right to remedial secession in their written submissions to the International Court of Justice ('ICJ'), following the UNGA request for an Advisory Opinion on whether Kosovo's declaration of independence was in accordance with international law.⁵³ Additionally, the Kosovo 'precedent' has been relied upon in the rhetoric of other independence-seeking groups, including South Ossetia and Abkhazia.⁵⁴

However, any State support for Kosovo's right to remedial secession has been limited. The few State submissions to the ICJ supporting Kosovo's right to remedial secession cannot be said to represent the "constant and uniform usage"⁵⁵ that is required for the development of customary international law, particularly since eleven States submitted written and oral statements that a right to remedial secession did *not* exist under international law.⁵⁶ Even those States that accepted the existence of a right to remedial secession made it clear that Kosovo's situation "was unique and does not set a precedent".⁵⁷ Additionally, relying on such submissions as evidence of *opinio juris* is precarious, as they are often based more upon "considerations of convenience or political expediency" than upon general views of the law — which is detrimental to the formation of a customary

⁵⁰ Lee C Buchheit, 'Secession. The Legitimacy of Self-Determination' (1981) 14 *Verfassung in Recht und Übersee*.

⁵¹ *ibid* 209.

⁵² UNSC Res 307 (1971) UN Doc S/RES/307.

⁵³ Christian Nielsen, 'The Kosovo Precedent And The Rhetorical Deployment Of Former Yugoslav Analogies In The Cases Of Abkhazia And South Ossetia' (2009) 9 *Southeast European and Black Sea Studies*.

⁵⁴ *ibid* 182.

⁵⁵ *Asylum Case (Colombia v Peru)* [1950] ICJ Rep 266.

⁵⁶ Nielsen (n 56) 65.

⁵⁷ Olli Rehn, 'European Commissioner for Enlargement Introductory remarks on Western Balkans European Parliament, Foreign Affairs Committee' (*European Commission* – 21 March 2007) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_07_170> accessed 4 May 2020.

norm.⁵⁸ The fact that 103 States⁵⁹ have recognized Kosovo's independence should also not be perceived as demonstrating a general recognition of a legal right to remedial secession. Although an analysis of the role of recognition in achieving statehood is outside the scope of this paper, political factors (more so than legal determinations) consistently influence the recognition of States. This is evident by the fact that in the past three years, thirteen countries which had previously recognised Kosovo revoked their recognition following Serbian pressure.⁶⁰ In conclusion, the inconsistent State practice and *opinio juris* surrounding Kosovo's unilateral secession, combined with the fact that Kosovo remains to this day an autonomous Republic of Serbia according to the United Nations, underlines the absence of clear-cut international and State practice recognising a positive right to remedial secession.

Other examples where attempts at secession have failed provide ample proof that a right to remedial secession does not exist under international law. For example, in Chechnya the international community universally stressed the need for the preservation of Russia's territorial integrity,⁶¹ even though there is "little doubt that the Chechens qualify as a people"⁶² and are alleged to have been the victims of war crimes committed by the Russian forces.⁶³ As Tomuschat argues, if international law granted a right to remedial secession, the silence of the international community would hardly be understandable in the case of Chechnya.⁶⁴

(iii) *Judicial Decisions*

Several courts have cited the possible existence of an operative doctrine of remedial secession. These instances date back to the Aaland Islands case, where it was held that the separation of a minority from a State is an "exceptional solution,

⁵⁸ Dakshinie Gunaratne, 'What Is Opinio Juris – Public International Law' (*Public International Law*, April 22 2011) <<https://ruwanthikagunaratne.wordpress.com/tag/what-is-opinio-juris/>> accessed 19 April 2020.

⁵⁹ As of April 2020.

⁶⁰ Craig Turp-Balaz, 'Serbia's Campaign to Reduce the Number Of Countries Which Recognise Kosovo Is Working' (*Emerging Europe*, January 19 2020) <<https://emerging-europe.com/news/serbias-campaign-to-reduce-the-number-of-countries-which-recognise-kosovo-is-working/>> accessed 19 May 2020.

⁶¹ Council of the European Commission 'Declaration on Chechnya' (Strasbourg, 7 October 1999) 0177/1999 [2].

⁶² David Raič, *Statehood and The Law of Self-Determination* (Kluwer Law International 2002).

⁶³ Amnesty International, 'Brief Summary of Concerns About Human Rights Violations in the Chechen Republic', 1 April 1996, EUR/46/20/96, available at <<https://www.refworld.org/docid/3ae6a9c52c.html>> accessed 09 May 2020.

⁶⁴ Tomuschat (n 46) 37.

a last resort” when the “State lacks either the will or the power to enact and apply just and effective guarantees”.⁶⁵ This seems to provide tacit judicial support for a right to remedial secession. Additionally, Meller argues that the ICJ in the Kosovo Advisory Opinion “unintentionally developed a new concept of the doctrine of remedial secession”⁶⁶ by finding that there is no explicit prohibition of universal declarations of independence under general international law.⁶⁷ However, it is far from clear how that corresponds to developing a right to remedial secession, particularly since the Court explicitly chose to only note that remedial secession was subject to “radically different views”⁶⁸ without pronouncing on the doctrine any further.

In regional and national cases, the Canadian Supreme Court identified subjugation in the non-colonial context as a possible third ground for secession.⁶⁹ However, the Court noted that it “remains unclear” whether the right to remedial secession “reflects an established international law standard”.⁷⁰ Meanwhile, The African Commission on Human and Peoples’ Rights (‘ACHPR’) seemed to suggest that remedial secession existed as a test under international law, and that had there been evidence of “violations of human rights to the point that the territorial integrity of Zaire should be called to question”, a peoples would be permitted exercise a variant of self-determination that is “not compatible with the sovereignty and territorial integrity of Zaire”.⁷¹ This ‘variant of self-determination’ could take the form of remedial secession. A similar conclusion was reached in *Kevin Mgwanga Gunme et al v Cameroon*.⁷² However, these cases relied upon the African Charter and

⁶⁵ The Aaland Island Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs, League Doc. B. 7. 21/68/106 (1921) 4.

⁶⁶ Samuel Ethan Meller, ‘The Kosovo Case: An Argument for a Remedial Declaration of Independence’ (2012) Ga J Int’l & Comp.

⁶⁷ *Advisory Opinion on Kosovo* (n 43) [438].

⁶⁸ *ibid* [83].

⁶⁹ Quebec Secession Reference (n 16) [133].

⁷⁰ *ibid* [135].

⁷¹ *Katangese Peoples’ Congress v Zaire* (1995) ACmHPR Comm 75/92.

⁷² *Kevin Mgwanga Gunme et al v Cameroon* (‘Mgwanga’) Communication 266/03 (2009) [170], [179].

the court gave no indication that its reasoning was influenced by international norms.

(iv) *The Progressional Development of a Right to Remedial Secession*

Although remedial secession is cited, particularly by courts, in light of the absence of its positive formulation in any of the sources of international law, it cannot be said to exist as a positive right under international law.

At the same time, however, there is no complete affirmation within the sources of international law specifically *prohibiting* a right to remedial secession. This has led some to suggest that although a positive right to remedial session does not currently exist under international law, the development of doctrines such as the responsibility to protect ('R2P') and humanitarian intervention have shifted international law towards basing a State's territorial integrity on its ability to comply with its obligation to protect its people's internal rights. This therefore speaks in favour of the ongoing development of a right to remedial secession under international law.⁷³

An in-depth analysis of R2P or humanitarian intervention is beyond the scope of this paper. Nevertheless, such a shift in international law is far from clear. While the enforcement and development of R2P, particularly in light of the 2011 UNSC-authorized military intervention in Libya (which referenced R2P for the first time),⁷⁴ might speak in favour of a shift in international law, the application of R2P should be differentiated from both humanitarian intervention and remedial secession. R2P can ground its application in the UNSC's Chapter VII powers, but humanitarian intervention and remedial secession lack a strict legal basis allowing for their application under international law. Therefore, even if R2P were to be applied more consistently, that development would not necessarily reflect a movement in international law that would allow for doctrines like humanitarian intervention or remedial secession to develop by analogy. This is because, unlike R2P, they are not applied through the UNSC's Chapter VII powers and at the current time lack the widespread support needed to develop as stand-alone rights under international law. Even if one did not make that differentiation between the doctrines, "R2P is a political doctrine and not a formal or even material source of international law"⁷⁵ and does not seem likely to apply more consistently following its application in Libya, where NATO allegedly overstepped its mandate to effect regime change.⁷⁶ This has resulted in a growing distrust of the R2P doctrine by

⁷³ See e.g., Summers James, 'Relativizing Sovereignty: Remedial Secession and Humanitarian Intervention in International Law' (2010) 6(1) *St Antony's International Review*.

⁷⁴ UNSC Resolution 1973 (2011) UN Doc S/RES/1973.

⁷⁵ Chris O'Meara, 'Should International Law Recognize a Right of Humanitarian Intervention?' (2017) 66 *International and Comparative Law Quarterly*.

⁷⁶ *ibid* 464.

the international community.⁷⁷ With regards to humanitarian intervention, its status is far from clear in current international law, as the Non-Aligned Movement (representing the majority of States), as well as China and Russia, have continuously registered strong opposition to its existence within international law.⁷⁸ Such opposition is only countered by limited regional and national support,⁷⁹ which is not enough to override the UN Charter's prohibition on the use of force in Article 2(4) or the principle of non-intervention enshrined in Article 2(7). Therefore, this does not suggest a shift in international law that may allow for a right to remedial secession to develop.

Other developments focused on the protection of human rights law, including in international humanitarian law and international criminal law, accord with the UN Charter's general emphasis on the peaceful settlement of disputes between nations. Therefore, their development does not signal towards a parallel development of a right to remedial secession or humanitarian intervention, which both call into question "cardinal principles of international law"⁸⁰ — namely, the obligation to respect the territorial integrity of States. This is particularly so when one considers the sensitivity of such doctrines to the manipulative influence of States, as was evident when NATO overstepped its mandate in Libya,⁸¹ or when Russia claimed a right to humanitarian intervention for its activities in Ukraine.⁸² Additionally, opposition by States containing populations with aspirations of secession (e.g., Spain, Iraq, Morocco) would prevent the right of remedial secession from developing in treaty law or crystallising into a customary norm.

Although the right to remedial secession therefore cannot be said to exist or be progressively developing under international law, the next section will assess whether Iraqi Kurds would be able to trigger a right to remedial secession if the doctrine were to develop under international law.

B. WOULD IRAQI KURDS HAVE A RIGHT TO REMEDIAL SECESSION?

Although international law remains unclear on the strict requirements needed for a people's to exercise a right to remedial secession, it is a right that

⁷⁷ *ibid* 464.

⁷⁸ *ibid* 470.

⁷⁹ For example, the recognition by some NATO states of the right to humanitarian intervention following the bombings in Kosovo.

⁸⁰ United Nations Press Office, Press Release (24 April 1991) SG/SM/4560.

⁸¹ O'Meara (n76) 464.

⁸² Transcript of President Putin's interview, Moscow (*Washington Post*, March 4 2014) <https://www.washingtonpost.com/world/transcript-putin-defends-russian-intervention-in-ukraine/2014/03/04/9cadcd1a-a3a9-11e3-a5fa-55f0c77bf39c_story.html/> accessed 19 May 2020.

seems to exist only as a “last resort”⁸³ when the parent State is unable or unwilling to “enact and apply just and effective guarantees”.⁸⁴ Furthermore, it only arises when a people are ‘blocked’ from the meaningful exercise of their right to self-determination internally⁸⁵ — including, for example, through the “large-scale and persistent violations of basic human rights”.⁸⁶

For a period of 30 years, between 1961–1991, Iraqi Kurds faced extreme persecution and were deprived of their right to “freely determine their political status and freely pursue their economic, social and cultural development”.⁸⁷ During the Anfal campaign, “Iraqi armed forces [...] systematically destroyed more than four thousand Kurdish villages”,⁸⁸ used chemical weapons and organized the execution of Kurdish civilians.⁸⁹ As many as 182,000 Iraqi Kurds were killed, with Human Rights Watch declaring that “Iraq’s crimes against the Kurds amount to genocide’ with an ‘intent to destroy, in whole or in part’”.⁹⁰ This was combined with the destruction of the rural Kurdish economy and infrastructure.⁹¹ Therefore, Iraqi Kurds were deprived of their internal rights to self-determination as Iraq failed in its corresponding obligation under international law to protect those rights.

However, the establishment of the KRG in 1991, as well as the fall of Saddam Hussain’s regime in 2003, has brought about a period of unprecedented Iraqi-Kurdish autonomy and socio-economic and political freedoms. Today, Iraqi Kurds have enjoyed their longest period of self-rule in a century, with clear assurances in the Iraqi constitution of a right to participation in the federal government and a right to internal autonomy within Iraqi Kurdistan.⁹² Additionally, the federal government is conducting itself in compliance with the principle “of equal rights and self-determination of peoples without distinction”.⁹³ When comparing Iraqi Kurdish autonomy with other agreements proposing special status of greater autonomy, such as the Act on the Autonomy of Åland and the Good Friday Agreement, it is evident that Iraqi Kurdistan enjoys much of the same functional

⁸³ Quebec Secession Reference (n 16) [134].

⁸⁴ Aaland Island, Rapporteurs (n 66) 4.

⁸⁵ Quebec Secession Reference (n 16) [134].

⁸⁶ Allen E Buchanan, *Justice, Legitimacy, And Self-Determination* (Oxford Political Theory 2003).

⁸⁷ International Covenant on Civil and Political Rights, 23 March 1976, 999 UNTS 171 (‘ICCPR’) Article 1.

⁸⁸ George Black, Human Rights Watch, ‘Genocide in Iraq: The Anfal Campaign Against The Kurds’ (Human Rights Watch 1993) <<https://www.hrw.org/reports/1993/iraqanfal/ANFAL-PRE.htm>> accessed 7 May 2020.

⁸⁹ *ibid* 3.

⁹⁰ *ibid* 87.

⁹¹ *ibid* 6.

⁹² Iraq, The Constitution of Iraq, 15 October 2005, Preamble, Article 4, Article 117, Article 141.

⁹³ Quebec Secession Reference (n 16) [136].

sovereignty.⁹⁴ Like Northern Ireland and the Åland Islands, Iraqi Kurdistan enjoys a democratic legislative assembly, as well as executive and independent control over internal administration. Iraqi Kurdistan also enjoys a proactive, if not independent, foreign policy, with 29 countries having a diplomatic presence in the Kurdistan region.⁹⁵

At the federal level, the PUK and the KDP — the two main Iraqi Kurdish political parties — currently hold 43 seats in the Iraqi Parliament and have consistently been elected to the Iraqi Council of Representatives since 2003. At present, the President of Iraq, the Finance Minister, the Housing & Reconstruction Minister, and a member of the Iraqi Federal Supreme Court are all Kurds. Therefore, Iraqi Kurds freely determine their political status as they occupy prominent positions within the federal government and are equitably represented in legislative, executive, and judicial institutions. This political autonomy is also coupled with socio-economic independence, which has led Iraqi Kurdistan to enjoy “more stability, economic development, and political pluralism than the rest of the country”.⁹⁶ Iraqi Kurds freely make political choices and pursue economic, social, and cultural development.

Continuing issues between Iraqi Kurdistan and the federal Iraqi government, such as limitations in the supply of armaments from the federal government to the Peshmerga forces (the military forces of Iraqi Kurdistan)⁹⁷ or Kurdish not being equally treated as an official language in Baghdad, are not enough to give rise to a right to remedial secession. These issues seem to be more of a critique of a federal government lacking resources following decades of turmoil, than of a federal government that is denying Iraqi Kurds their internal right to self-determination.⁹⁸

The right to remedial secession will only develop as a matter of last resort if Iraq “lacks either the will or the power to enact and apply just and effective guarantees”.⁹⁹ While Iraqi Kurds might have been able to rely on such a right of last resort during the Saddam regime, this threshold cannot be currently met in light of the guarantees of internal self-determination given to Iraqi Kurds. Just as the Canadian Supreme Court held that the ‘exceptional circumstances’ needed for a right to remedial secession “are manifestly inapplicable to Quebec under

⁹⁴ Hanum (n 5) 66.

⁹⁵ ‘Department of Foreign Relations, Kurdistan Regional Government’ (*Kurdistan Regional Government*, 2020) <<https://gov.krd/dfr-en/>> accessed 3 April 2020.

⁹⁶ Kawa Hassan, ‘Kurdistan’s Politicised Society Confronts A Sultanistic System’ (August 2015) Carnegie Endowment for International Peace.

⁹⁷ Maria Fantappie, ‘The Peshmerga Regression’ (Crisis Group, 14 June 2015) <<https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/peshmerga-regression>> accessed 10 May 2020.

⁹⁸ *The Economist* (n 1).

⁹⁹ Aaland Island, *Rapporteurs* (n 66) 4.

existing conditions”,¹⁰⁰ these same exceptional circumstances are also ‘manifestly inapplicable’ to Iraqi Kurdistan under existing conditions. Accordingly, even though Iraqi Kurds are a people, Iraqi Kurdistan and its representative institutions would not possess a right under international law to secede unilaterally from Iraq.

C. A CRITIQUE OF REMEDIAL SECESSION

As mentioned above, a right to remedial secession appears to be a right that exists as a last resort once a State’s behaviour has caused “an unbridgeable gap for finding realistic and effective alternatives to remedial secession”.¹⁰¹ Therefore, there is, inadvertently, a requirement of strict temporal proximity between the triggering of a right to remedial secession by a people on the one hand, and the appalling violations of a people’s right to self-determination on the other. This requirement of ‘last resort’, however, provides only a superficial solution because it seems to be disproportionately dependent on the short-term situation of a people without taking into account a holistic image containing past persecutions and long-term denial of a right to self-determination. Rather paradoxically, a people would probably only be able to effectuate a right to remedial secession once they are organised enough to speak with one voice. Without foreign military assistance (as in Bangladesh), this level of organisation cannot be formed during times of persecution and denial of a people’s political and social rights. Yet, by the time a group has gained those rights adequately enough to effectively demand remedial secession, a right to remedial secession would have ‘run out’, as the home State would be conducting itself in compliance with the principle of equal rights and self-determination of peoples. This also signals to States who have enacted long-term policies of socio-economic and political discrimination against a people that a short-term remedy of increased rights would prevent any right to remedial secession from arising.

Nevertheless, a right to remedial secession must be a strict right of last resort that only arises once a State has proved either unable or unwilling to enact effective guarantees of internal rights to a people. Now that decolonisation has substantially come to a conclusion, self-determination is rightly more frequently expressed through autonomy arrangements rather than secession as populations today are far more riddled with competing claims. A wide right to remedial secession would raise the prospect of endless carving-out as new minority groups emerge. For example, if Iraqi Kurdistan were to secede, this might give rise to similar demands of secession from the Yazidi population living predominantly within Iraqi Kurdistan. Therefore, there are legitimate concerns between making secession more broadly available on the one hand and increased fragmentation and instability on the other. What this demonstrates is that a clarification of the cogent rules and principles

¹⁰⁰ Quebec Secession Reference (n 16) [138].

¹⁰¹ Rai (n 63) 78.

of remedial secession or its crystallisation into an international law norm would not change the fact that remedial secession seems impossible to apply because there are multiple competing interests at stake (including, in this case, those of the Iraqi federal government, Iraqi Kurds, Yazidis, and regional powers) that cannot be reconciled through the absolute approach of remedial secession. Additionally, an attempt at clarifying the legal scope of the law on remedial secession on the international stage runs the risk of limiting or completely prohibiting unilateral secession in the name of international peace and security.

Instead of attempting to clarify the legal or normative scope of remedial secession, there should be a clarification of the current law on self-determination by first setting out a precise definition of a ‘people’ as well as advancing an approach towards settling claims of self-determination that is primarily focused on protecting internal rights, increasing minority rights and resolving claims of secession through autonomy arrangements and negotiated solutions. Additionally, the distinction between internal and external self-determination should be scrapped, as these two modes of achieving self-determination are inherently inter-connected (e.g., a violation of internal rights to self-determination would give rise to demands for external self-determination).¹⁰² By scrapping this distinction, there would be a greater emphasis on ensuring the protection of self-determination as a human right — which international law does provide for — instead of an excessive focus on external self-determination, which international law largely does not regulate. It is the approach of negotiated solution mentioned above that the next section will consider as the answer to settling the ongoing disputes between the Iraqi federal government and Iraqi Kurdistan.

V. THE FUTURE OF IRAQI KURDISTAN

The further realisation of the right of Iraqi Kurds to self-determination should take the form of increased cooperation with the Iraqi federal government and a broader autonomy arrangement. To understand the form that such a broader autonomy arrangement would take, it is important to first determine the problems that persist between Iraqi Kurdistan and the federal government — namely, those surrounding oil and disputed internal Kurdish-Iraqi boundaries. The Iraqi Constitution stipulates that Baghdad must give 17% of national oil revenues to Iraqi Kurdistan, but the KRG argues that this provision excludes newly-discovered oil fields, over which it claims full control. As for the territorial dispute, the KRG claims an area that exceeds its official boundaries, particularly surrounding the

¹⁰² Otto Kimminich, ‘A “Federal” Right of Self-Determination?’ in Christian Tomuschat (ed), *Modern Law of Self-Determination* (M. Nijhoff 1993).

oil-rich Kirkuk region. Importantly, even if Iraqi Kurds had a right to remedial secession, it is not clear how independence would solve the persisting problems with Iraq. For example, disputes persist between South Sudan and Sudan regarding the division of oil revenues and the disputed region of Abyei¹⁰³ even though South Sudan has seceded.

Instead, Iraqi Kurdish demands for further self-determination could be realised through institutional intergovernmental bodies between Iraqi Kurdistan and Iraq. These would take the form of regular and frequent meetings between the federal government and the KRG to promote cooperation at all levels of government, as well as to seek negotiated solutions to the current disputes. Additionally, on matters officially not devolved to Iraqi Kurdistan (such as foreign policy), intergovernmental bodies would allow Iraqi Kurdistan to put forward proposals. An Iraqi-Kurdish Council made up of ministerial representatives from the Iraqi federal government and the KRG could also be established to promote cooperation and the creation of common policies, much in the same way as the British-Irish Council. Such high-level cooperation would result in an interlocking and interdependence between Iraq and Iraqi-Kurdistan, ensuring that the success of each depends on that of the other. This would also protect Iraqi Kurdistan and Iraq from the further reification of ethnic differences. On 3 May 2020, following economic difficulties caused by COVID-19 and low oil prices, a delegation of Kurdish officials travelled to Baghdad with the aim of “strengthening Erbil-Baghdad” ties for the first time in over a year.¹⁰⁴ It is similar but more consistent and structured cooperation that will allow Iraqi Kurdish demands for further self-determination to be met.¹⁰⁵

It is doubtful, however, whether anything short of independence would fulfil the Iraqi Kurdish visceral inclinations towards statehood, as evidenced by the consistent polls showing significant support towards Iraqi Kurdish independence regardless of increased autonomous rule. An unconstitutional declaration of

¹⁰³ ‘South Sudan Profile’ (*BBC News*, 6 August 2018) <<https://www.bbc.com/news/world-africa-14069082>> accessed 2 May 2020.

¹⁰⁴ Viktor Katona, ‘Iraqi Kurdistan On The Brink Of Collapse As Oil Prices Crash’ (*OilPrice.com*, 3 May 2020) <https://oilprice.com/cdn.ampproject.org/v/s/oilprice.com/Energy/Energy-General/Iraqi-Kurdistan-On-The-Brink-Of-Collapse-As-Oil-Prices-Crash.amp.html?usqp=mq331AQFKAGwASA%3D&_js_v=0.1#referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Foilprice.com%2FEnergy%2FEnergy-General%2FIraqi-Kurdistan-On-The-Brink-Of-Collapse-As-Oil-Prices-Crash.html> accessed 10 May 2020.

¹⁰⁵ Milena Sterio, ‘Self-Determination and Secession Under International Law: The Cases Of Kurdistan And Catalonia’ (*Asil.org*, 5 January 2018) <<https://www.asil.org/insights/volume/22/issue/1/self-determination-and-secession-under-international-law-cases-kurdistan>> accessed 11 May 2020.

secession leading to *de facto* secession for Iraqi Kurdistan, while potentially fulfilling this inclination in the short-term, would not be tolerated by the international community even though “general international law contains no applicable prohibition on declarations of independence”.¹⁰⁶ This is clear from the response of the international community to the 2017 independence referendum. The States with the closest bilateral trade relations with Iraqi Kurdistan — Turkey and Iran — denounced the referendum, with Turkey calling it a “terrible mistake”¹⁰⁷ and Iran labelling it a “Zionist plot”.¹⁰⁸ The wider international community also made clear that the dispute between Baghdad and Erbil must be resolved by finding a formula of “coexistence within the Iraqi State”.¹⁰⁹ This international hostility is driven by a fear that Iraqi Kurdish statehood would result in Kurds in neighbouring States striving towards creating a greater Kurdistan which would “disturb international peace and security”.¹¹⁰ Therefore, as long as Iraq is unwilling to authorise a Kurdish independence referendum and to negotiate a separation agreement, secession for Iraqi Kurdistan will not become a reality. Increased cooperation with the federal government is the way forward.

VI. CONCLUSION

The extreme persecution faced by Iraqi Kurds, combined with a denial of internal rights of self-determination that has spanned several decades, has led some to mistakenly assert following the 2017 independence referendum that, by virtue of their right to self-determination, Iraqi Kurds would have a right to secede under international law.¹¹¹ However, this paper has demonstrated that a people with a right to self-determination (as the Iraqi Kurds are) do not, under current international law, have a positive right to remedial secession, and that it does not seem that international law is moving in a direction that would allow for such a right to develop. But even if such a right to remedial secession were to exist under

¹⁰⁶ *Advisory Opinion on Kosovo* (n 43) [84].

¹⁰⁷ ‘Ankara Ve Ba dat’tan IKBY Referandumuna Tepki’ (*DW/COM*, 9 June 2017) <[https://www.dw.com/tr/ankara-ve-ba-%C4%9Fdattan-ikby-referandumuna-tepki/a-39176559](https://www.dw.com/tr/ankara-ve-ba-dat-tan-ikby-referandumuna-tepki/a-39176559)> accessed 7 May 2020.

¹⁰⁸ ‘Barzani Middleman For Zionists To Partition Islamic Countries: Velayati’ (*Press TV*, 26 September 2017) <<https://www.presstv.com/Detail/2017/09/26/536571/Iran-Iraq-Kurdistan-Ali-Akbar-Velayati-Massoud-Barzani-Zionists-KRG-independence-referendum>> accessed 2 May 2020.

¹⁰⁹ Anna Borshchevskaya, ‘In Search Of A New Patron, The KRG Turns Back To Moscow’ (*The Washington Institute*, 1 June 2018) <<https://www.washingtoninstitute.org/policy-analysis/view/in-search-of-a-new-patron-the-krg-turns-back-to-moscow>> accessed 2 April 2020.

¹¹⁰ *ibid.*

¹¹¹ See e.g., Gregory J Ewald, ‘Kurd’s Right to Secede under International Law: Self-Determination Prevails over Political Manipulation’ (1994) 22 *Denv J Int’l Law & Pol’y*.

international law, Iraqi Kurds would not meet the threshold required to trigger remedial secession.

Additionally, by using Iraqi Kurdistan as an example, the fundamental issues with the normative and legal scope of the application of remedial secession have been demonstrated. It is submitted that remedial secession is not and should not develop as a right under international law. Instead, there should be an increased focus on viewing self-determination as a human right and resolving secession claims through autonomy arrangements. By virtue of that, it is a broader autonomy arrangement and increased forms of cooperation that will resolve the continuing conflict between Iraq and Iraqi Kurdistan, even if this might not fulfil Iraqi Kurdish demands for statehood.

Finally, just because secession is not viable at the moment, this does not mean that an Iraqi Kurdish State will not be viable in the future. Frames of reference regarding statehood have consistently changed over time. We have gone from 40 States at the founding of the UN to 193 now, with the existence of nation-states such as Belgium or Luxembourg seeming impossible in the 19th century. Therefore, the viability of an Iraqi-Kurdish State is not a question that can be answered absolutely. If Iraqi Kurdistan can rely on regional and external frameworks in the future, much in the same way that Luxembourg and Belgium rely on NATO and the EU, then Iraqi Kurdistan might possess the regional support required to effectuate statehood.¹¹²

¹¹² Collectiu Emma (n 2).