

PERSPECTIVES ABOUT  
THE KURDISH QUESTION  
BY DR S. TAWFIQ

*THE FORMATION OF THE KURDISH POLITICAL  
IDENTITY CAN BE REALIZED ONLY WITHIN THE  
FRAMEWORK OF JURIDICAL RECOGNITION OF THE  
RIGHT TO SELF- DETERMINATION*

with compliments to  
prof. J. Blua from

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## INTRODUCTION

The international policies are currently undergoing a radical revision with regard to the democratic values and the promotion of human rights. This concept became an international concern, after the collapse of the Soviet block and the emergence of new international relations. In showing commitment to this issue the international community has set out new criteria and demands in adhering to the international law and standards in dealing with the human rights issue and minorities problems. With respect to this matter, I have decided to make a revision, concerning the concept of the right to self-determination to the Kurds in order to give a new aspect accordingly. It will incorporate new ideas and information, concerning the implementation of the very fundamental rights of the people to self-determination, which will be in harmony with new tendencies of international development and a New World order. Basically this new version of my concept, is aiming at making a relevant improvement, as well as to promote a new perspective, which I consider very significant in the process of internationalisation of the Kurdish issue and eventually to find a fair settlement for this problem. The bottom line in this exposition is to concentrate on the juridical point of view and means, and to lay emphasis on the effectiveness of international instruments in the process of seeking a fair constitutional settlement for the Kurds problem. In connection with that purpose, I would like to make a disposition of the main points in this article in the context of historical and juridical development of the notion and putting recent international events in the spotlight.

The map of the world was changed after each of the great conflicts: The First World War, the Second World War and the Cold war. During the first war, the great powers allocated territories and permitted the creation of new states on the basis of Wilson's principles of self-determination, and the right of every

nation to have a state of its own. As far as the Kurds were concerned in this process, the Kurdish nation had become a victim, of so-called peace settlements. The Kurds national aspirations were recognised by the international treaty of Sevres, which addressed the deposition of Ottoman Empire. The treaty was never ratified and it was replaced by the treaty of Lusanne, which ignored the right of the Kurds to self-determination and to create a state of it's own.

In the present circumstances, the great powers are confronted once again with the national question and ethnic conflicts, which are threatening world peace and challenging international security in many parts of the world. Those new challenges may require to be considered within the framework of New World order and a new arrangement is needed, where the Wilson's principles failed to achieve. In a new international environment where a political climate is more favourable, a good case can be made for the Kurdish democratic movement and for the principle that every nation should have a state of its own; and to run its own political affairs in other words, to provide the right to the Kurds to uphold a territorial and political entity in the enclave to which it is entitled to by international conventions.

In today's international system, with a New World order, the peaceful dismemberment of repressive multinational states is desirable. When new entities and other forms of statehood, have become more liberal and democratic in character and their political organisation elevated to the value of territorial independence and national sovereignty.

In accordance with Dayton Agreement, the status of Bosnia/Herzegovina, for instance have become subject of international concern and a good example of this new system. In countries where democracy is not deeply rooted. The rights of minorities have been violated by the dominating majority and the policy of assimilation and ethnic cleansing has become a daily practice. Consequently nationalism is emerging as a new



organising principle for authoritarian rule with sombre implications for the international peace-plan. On the other hand statehood has become the ultimate prize for the oppressed minorities or ethnic groups, their banner has become self-determination and their demands are territorial.

With regard to this situation, I think that what is in doubt is the applying of the principle of territorial integrity of state in question. If a state violates the right of self-determination and discriminates it against the minorities living on its territory, which is inconsistent to all norms of international humanitarian Law. Under such circumstances, there are no halfway measures between subordination and equality, between independence and autonomy. Logically there should be some intermediate status between political subordination and territorial sovereignty that can ease the relationship between dominated majority and oppressed minority deprived of a state of it's own.

In this complicated situation there is a need for fresh thinking by the international community that the peace settlement from 1920 and injustice settlement for these issues have to be revised in accordance with the new international demands and New World order.

Extenuating the situation in East Timor is a positive indication in this direction, by granting independence to East Timor through negotiation and suggesting a referendum for purpose of achieving the right to self-determination for this territory, which will be held under UN supervision. In addition to this development, I presume the same diplomatic approach will be conduct in the Balkans in connection with Kosova problem. What we have seen right now is diplomacy backed by military force in case of violations of the international humanitarian Law.

With regard to the Kurdish problem I am suggesting the same approach to be applied in this case. We should use the international means to find the valid option in dealing with the difficult situation in which the Kurdish population finds itself. In

order to obtain such a political and international support, we should ask for an international participation and considering a plan for referendum in the process towards a settlement.

Basically the nature of this problem concerns intrinsic conflict existing between the concept of the right to self-determination of the people and the sovereignty of states involved. In such cases the reconsideration should be promoted and a new instrument should be provided

In my view, before it could be put into practice, such instrument would need a lot of refinement. The right of self-determination in a situation like that should have a transition period, for instance two or three years time is needed. Thereafter the referendum should lead to independence or some kind of self-rule within the territories of respective states. Consequently the result will be democratically determined by the verdict of the people.

Right now the intention of international community is to achieve negotiated settlements for all internal and international conflicts. According to the new International concept there will be created a self-rule institution for all ethnic minorities concerned, which would be enforced by international peacekeepers under United Nations mandate for the period of time. After that a referendum would be held under the supervision of the international body, that will look at political and juridical status for these minorities. As far as the Iraqi-Kurdistan is concerned, the Security Council of UN has indicated that when there is gross violations of human rights and violations of international humanitarian Law in this region. The international community has responsibility to act. The activation order, which was agreed by all members of the Security Council of U.N was to create the safe area for the Kurds minority, aimed at preventing atrocities from being committed again in Iraq. As well as the action had been taken in Bosnia Herzegovina is a good indication for international involvement in this regard.

Today's threats of aggression by Iraqi government against the local Kurdish administration requires the presence of U.N peace

keepers in the area and international involvement in achieving the peaceful settlement for this issue and eventually to provide opportunity to be held a referendum. Through which the Kurdish population can exercise the rights to self-determination and to establish it's own entity on the territory populated by Kurds. A similar approach could be promoted in other parts of Kurdistan.

As a matter of fact there are overwhelming numbers of ethnic groups living within the boundaries of multiethnic states who want independence from there own states, but this position has not been supported by the international community. But the level of conflicts have reached the point, where the international leadership gathering, speculating and issuing the new norms that are to be adhered by the regarding parties. There was a perception, in the international circle that when you once permit a territory like Kurdistan, to achieve a term of independence there is a risk of disintegrating states boundaries throughout the region. At the same time it is suggested that militant nationalism, such as the type we have seen in central Europe will increase in the region. Many international experts are suggesting that the following matter should be achieved and the international measures should be taken, for the virus to be contained. The way to do that is through the rule of Law and the creation of the democratic institutions. So the ethnic minorities within the boundary of respective states do not feel the need to seek independence when they can find the legitimate political and cultural expression within the existing state institutions. When the government commits gross violations and commits atrocities against the minority, that the great powers will not sit idly by, and permit those kind of actions to go without punishment. It is an important president in the end of the millennium that all instruments of international diplomacy are lined up to resolve these conflicts and to provide protection for minorities. For the first time we have seen the diplomacy backed by a credible threat of force and in consequence of the increasing organisation of international community, this step will ultimately

lead to a peaceful outcome of these world conflicts. Actually this position sends a message to the central governments, that the aggression will not be tolerated by the international community. The present stage of the development of the Kurdish question requires the fruition of the new potentials and opportunities that have been provided by new political thinking and a New World order. During the last 8 years the Kurdish question has been given a new dimension, in terms of internationalising the issue. Alongside with the massive uprising and resistance in all parts of Kurdistan a great deal of political and diplomatic efforts are needed. These efforts should be aimed at gaining the support of the international public opinion, through civilised and democratic means. In practice the self-declared Kurdistan in Iraq as a political entity, should be injected with democratic institutions in a way that promotes the establishment of this entity and to acquire a convincing case before the international community. By winning the international support and sympathy for this issue we should prove our ability to rule our land and run our own affairs. The elaboration of such a step is the first important point toward the implementation of the right to self-determination. By this way the search for a democratic and peaceful settlement of the issue of one part will have a favourable impact on the other parts of Kurdistan. According to very reliable sources and experts in the study of the field of international policy. The perception, that is desirable and reasonable at this stage to give priority to the political status and juridical establishment achieved in Iraqi-Kurdistan, and to increase the value of this achievement and evaluate the important element of the international involvement as well. In this process I presume the ultimate goal of all patriotic organisations of Kurdistan should be concentrated on that issue and all tendency of partisanship and party narrow minded should be eliminated in the interest of the Kurds cause. Naturally this does not mean that the right and the approach of every part of Kurdistan separately should be diminished, actually, is this the

only way we can accommodate with reality and to appreciate this historical opportunity in this part. Finally my attention will be focused on the role and the responsibility of the international community in aiding the establishment of a peaceful solution for this complicated problem, which is burdening the Kurds with violence and unrest for decades. My grave concern in connection with this issue is to address the problem from my perspective. In order to make a correction, concerning the misrepresentation of some of the facts about the legitimate right of the Kurds to self-determination and the question of individual party platform, as well as the political groups activities and their demands. In order to clear up this confusion concerning this matter, I'm asking kindly the international community to modify their views and policy towards the right to self-determination of the Kurds and to make differentiation between this fundamental right of the Kurds and certain group demands. Explaining this concept, I found myself obligated to bring to the light the misconception, which exists in some media circles and on the agenda of many international institutions. Presumably all these confusions could be cleared up and the problem will be solved, if the Kurds have an opportunity to live in a democratic environment and to have the possibility to express freely their will and to choose the framework within which they determine their future existence. In general the mode of exercising the right to self-determination is to create an independent entity or to incorporate into an independent state and forming a union with it on the equal basis. It means that the right of the ethnic group to establish its own political entity based on its ethnicity. These are the legitimate methods and means available to the Kurds to exercise their right through referendum to attain the right to self-determination.(#)

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## CHAPTER ONE

### FORMATION OF THE KURDISH NATION

The emergence and formation of a nation<sup>(1)</sup> does not always co-exist with nation forming factors, but also with their operation in different times. Thus, the emergence of one, or several of these factors may, and often do turn into a prerequisite which accelerates the emergence of another prerequisite which accelerates the emergence of other factors, and hence, the formation and further rise of the nation.

The emergence of the nation in developing countries is characterised by several specific features. National self-consciousness arises in an early period and its foundation is different from the general scheme of the nation. National liberation movements can be considered to be the revolutionary struggle of already forming national communities. There is no doubt whatsoever of the national form of this movement. National consolidation is one of the most up-to-date manifestations of this revolutionary movement. However there are many cases in which tribal organisation is still preserved in one form or another. Community form is neither a tribal union nor nationality; it is mainly a nation. National liberation struggles in the 1950s and 1960s gave a new impetus to national consolidation processes. It is interesting to note that at that time, the direction of socio-economic

development was not quite clear yet. The process of formation and growth of the nation is very specific and cannot be compared to any prior precedents.(2)

That is why it is not economic, but rather cultural factors which have guiding roles in the consolidation processes. An important characteristic of developing a country is, during the colonial period; economic factors had negative roles in the nation forming process.

As far as the Kurdish nation is concerned my aim is to analyse 1: the formation of the Kurdish nation, 2: processes concomitant of this phenomenon and 3: the major factor for the existence, formation and elevation of the nation.

Kurds are one of the most ancient peoples of the Middle East.

The formation and final development of the Kurdish ethnic community took place during the second and seventh century.

Many scholars claim that the Kurds have originated from the Medians. In Kurd and Kurdistan, Dr. Kasumlyo points out that the Kurds have been generally considered to be the descendants of the Medians. Kasumlyo continues by mentioning that the conquest of the town of Neinoa by the Median King Yaneiser in 612 BC marked the origin of Kurdish history. Dr. Kasumlyo demarcated the original geographic boundary of Kurdistan following a straight line from Mount Ararat from the Near-West down to the South Zargos liluiuh. Then a straight line from this point to Mossul in Iraq, a straight line from Mossul in the West to the Turkish part of Iskandarun, from this point a line to the NW, to Erzerum in Turkey and on the East to Mount Ararat. According to different sources, Kurdistan's territory is between 410 and 515 thousand square meters.(3)

Ksenophan (400 BC) mentioned in Anabso the words „Kardohs“ and „Kardoyan“ referring to tribal people who held up his advance towards the sea.(4)

During the seventh century, after a desperate resistance, the Kurds were enslaved by the Arabs and were turned into Muslims. It is interesting to note the following Arab invasion; additional

invasions of Kurdish lands took place by different tribes and people, causing a fragmentation of the Kurdish nationality. The ending result was negative: the Kurdish ethnic community was immersed into a dark period of history: enslaved by foreign invaders.(5)

Kurdish town lands were turned into new centers for the new rulers. This made it very difficult for the Kurdish people to organise any resistance calling for the overthrow of foreign domination. In order to preserve their national characteristics, the Kurds preferred to live in small feudal communities which, in part, led to their fragmentation and backwards community. The existence of these feudal communities and emirates, however, brought about the partition of the Kurdish-land thus becoming one of the main reasons, which prevented them from establishing their own independence and nation hood. All these events have created identity a negative influence on development of Kurdish cultural and political identification.

Until the middle of the seventh century, Kurdish lands were completely dominated by both the Byzantine and Sasanian (Iranian) Empires and became their battlefield. After the conquest of the Sasanian Empire, Arabs became the new rulers of Kurdistan.

The most unfortunate events in the Kurdish history are the partition of Kurdistan after the Chaldaran battle of 23 July 1514 between the Safavid and the Ottoman Empires. The act of partition was formally carried out with the Erzerum Treaty of 1639, which settled the border disputes between the two Empires and divided Kurdistan into two parts. Kurdistan's partition shattered all hopes for Kurdish unification and the establishment of a single Kurdish state.(6)

Historical facts and events show that the state is one of the most essential components for the consolidation of the nation. Unfortunately, the Kurdish people were unable to achieve this goal, in the past time, so far, we are trying to finalise disparately the causes of our failure in order to achieving this aim.



This has not, however, prevented the Kurds from forming their nation under active operation of another nation-forming factor, which in my personal opinion, is no less significant than the state Marx has pointed out the decisive role of the state (political power) as a factor, but he does not consider it absolute.(7) This element is national self-awareness. National self-awareness emerged as a result of the Kurdish national liberation struggle against the oppressor's invaders. It also became an important prerequisite for the existence, and growth, of the Kurdish national community. It united not only objective relations but relations, which were based on self-awareness in the general sense. This self-awareness can be manifested in his love and awareness of the nation, its language, territory and culture as well as specific attitudes to other nations.

Two major factors can be cited concerning the rise of functional Kurdish national community growth. These factors were also important elements, which helped to preserve the Kurdish national character and identity. One of them is a prerequisite for the development of the other. It should be noted, however, that the exploitation and suppression of the Kurdish population by the invaders played a decisive role in the rise of national self-awareness.

Here in I would like to analyse these two factors and their influence on the Kurdish national community and its growth into a nation.

Kurds national self-awareness has emerged in the process of continuous exploitation and enslavement. It is the reflection of the strenuous life through the ages, which contains the prerequisites for the struggle for independence and national self-preservation.

It can even be argued that national self-consciousness is objectively reflected in the nation's consciousness. As a whole, it is also a prerequisite for its formation and existence. This prerequisite is manifested in the Kurdish people's fight, which strives for liberation and consolidation. During the period between

the First and Second World Wars, the Kurds have aspired and fought to establish their national state and to prove it's identify. The leaders of the Kurdish national liberation movement considered it to be the only salvation of the nation, as well as being a decisive factor for the nation's rise and consolidation. This goal has not been achieved, but, nevertheless, the Kurdish people did not lose hope. On the contrary, it has raised their national self-awareness turning it into a major factor in the formation, growth and existence of the Kurdish nation.

The rise of nation can be considered as a process of national state formation as well. The rise of nation and national state formation, however, are two relatively independent terms. In many cases the nation is separated between different state structures: the Kurdish nation, for example, is divided between four states. This is a major factor as to why the process of Kurdish national consolidation has not yet taken place. In the long run, the state proves to be the decisive factor culminating with the consolidation and emergence of the nation. It should be pointed out, however, that the loss of political independence is not fatal for national existence if there is national self-awareness. This is one of the essential features of a nation. National self-awareness of the Kurdish nation, under certain circumstances, is the decisive factor for the preservation of the its identity.

Under these conditions of life, national self-awareness solidifies. To a great degree it internally concentrates the main characteristics of the nation. Hence there are no reasons to underestimate the role of self-consciousness under the pretext that it is a subjective reflection of the objective conditions of life. It is a subjective reflection which, by virtue of its existence and influence in social processes, can, and does, play the role of a material factor.(8)

Additional proof concerning the role of national self-consciousness is that, the Kurds who were exiles in Lebanon and ex-Soviet-Union after the Ottoman invasion, have been able to

preserve, to the present day, their distinct Kurdish national characteristics and self-consciousness despite their integration into the respective societies.

Another superb example is found in Asia with the striving of the Korean nation for unity into a single state despite their partition into two politically different states. It is quite clear that, under a specific feature of the nation, as a community of people, the decisive role can be played not only by the state but also by other ethnic characteristics and, in particular, by national self-awareness.

In conclusion, it should be noted that the idea of the national feature of self-awareness, as a major factor for the Kurdish nation, has an essential part in its formation and being.

It has been so well developed and manifested in a way, that it overcomes the weaker impact of political and economic and divided territorial factors.

1 Throughout this book, the term „nation“ refers to a people who have common denominator. For example: Ethnographic background, language, cultures, tradition and common history best describe nation. The Kurdish and Korean nations are such examples.

2 D. Filipov, *On the Nation*, 1967, pp 82-3.

3 Dr. Ghassemloo, *Kurd and Kurdistan*, 1968, p.6

4 Ibid

5 Ibid

6 Chalind. *G people without a country*, 1980 London p. 22

7 Marx and Engels, v. 19, p. 124

8 D. Filipov, p. 109

## CHAPTER TWO

### ORIGINS OF THE KURDISH QUESTION

World history is full of examples of how nations and peoples have been conquered, or how these nations fought and survived or how they fought themselves into extermination.

The history of the Kurdish people is unique because, even from the time of its very formation, the Kurdish ethnic community had been conquered, enslaved, exterminated and resettled. Throughout the ages, Kurdish land has been the field of historical clashes; it has been downtrodden by Persians, Turks and Arabs. Each of these groups claimed a historic mission either Persian or Ottoman.

That is why, before trying to answer the question why the Kurds have been unable to establish their national state and highly developed culture in the course of twelve centuries, one should attempt an answer to another question. How, for twelve centuries of conquest, extermination and resettlement, could the Kurds survive and preserve their language, customs, traditions and land?

Historical development is a process of incessant conflicts between peoples, states and civilisations. What interests us here is how they have solved these conflicts, whether any resistance has been offered, and at what price. Some people have taken up arms against the oppressors, confronting them in ceaseless battles. They have been defeated and turned into a docile minority or into hot ashes, which can flare up anew. This is the cause, that in most cases, the people had state and power as well as an ancient culture.

The Kurds, however, can be considered differently. Ever since their establishment as an ethnic community during the second and seventh centuries A.D(1). They have always been under the threat of an armed conflict or aggression. That is why their primary aim has been fighting for physical survival and self-preservation from

extermination. This, however, prevented the Kurdish people from turning their creative energy towards the foundation of a civilisation and cultural institution, which is possible only under a lasting peaceful existence. The distribution of forces in this particular region of the Middle East has never been in favour of the Kurds. They have always acted as the weak third party between two belligerent Empires and, unfortunately, had to take a side so as not to be faced with two enemies at once. However, the victor's goodwill has always proved to be weaker than the revenge of the vanquished. That is why, in all cases, at least part of the Kurdish tribes has suffered and eliminated.

This extreme, of almost incessant armed conflicts, has brought about, aside from different forms of active resistance (riots and uprisings), a unique form of passive resistance. The reason for this can be found in the special mountainous relief of the Kurd populated territories. During perilous times, the Kurdish tribes went up into the mountains in order to find a safe haven in my opinion. This way of life is the main reason why, for almost a thousand years, the Kurdish people left no traces in world history - neither a state, nor a highly developed culture. Feudalism and landowner capitalism are the only result of Kurdish development during the twentieth century.

Of course, this model can not be applied universally to all Kurdish people. A part of it comprised the rural and craftsman's population of the Kurdish vilayets and emirates. Direct contacts with the Arabs and the Turks were avoided thus reducing opportunities for economic and social progress. Kurdish history does have its instances of triumph, too. Throughout 959-1015 A.D. the Baghdad Chalifate recognised Barzakani as an independent Kurdish Emir(2).

During 909-1096, Maroani was the ruler of the independent Diarbekir vilayet(3). In 1169, the so-called Ayubian State was established under Chalifate Ayubi and survived up into the 13th century. The height the Kurds attained during that period was the

establishment of the so-called state of the Zandians (1750-1779) when Kerim Khan Zandi became the Shah of whole Iran(4). Emir Batlis wrote Sharaf Nama - a triumph of culture not only in Kurdish but Iranian history as well.

By examining these historical facts which is showing that there existed a Kurdish elite that was not a stranger to aspirations of unification of the Kurdish people and to establish certain forms of statehood. The idea was not to form a united Kurdish state, consisting only of Kurds, but a state uniting all professing the Muslim faith. That is why its core was not the Kurdish national issue, but a Muslim religious one. The best example is the Ayubian State in Egypt.

From a historical point of view, however, it was impossible to implement such an idea. The main reasons were the continuous conflicts between the different nationalities in that region and various religious trends, which emerged. They brought about contradictions between these nationalities, which in turn tore apart the Muslim religious community. That tendency made the Kurdish elite change their views. Their aspirations turned toward the establishment of an independent state, legal formations and a withdrawal from close contacts with neighbouring nationalities. Their idea was implemented in an inconsistent and sporadic form at the beginning of the sixteenth century. During This period, a superb example can be found during the 16th to the beginning of 17th century. During this period, the Kurds lived in independent emirates and vilayets, although, legally, the people were divided between the Iranian and Ottoman Empires(5). In fact, the Kurds had limited relations with these Empires and were not subjected to their supreme political power. This is proved by the fact that, at official openings, which were by tradition on behalf of the sultan, it was not in his name, but that of the Kurdish emir's name that was announced.

One of the most powerful and important emirates was established by Baban in Suleimania (1677-1850). It is considered

by many Kurdish and foreign historians to be the primary stage of emergence of Kurdish national self-awareness(6). This emergence was an example for the whole Kurdish people to follow, thus a concentration of their efforts was made to establish an independent Kurdish national state. This is also the crucial period; economic relations between the towns became very active and were under direct control of the emirates. Although not in its true form, this action was an attempt at setting up an independent national apparatus which is one of the key foundations of national self-awareness and nationality development as a whole.

The flourishing of economic life, gradual consolidation of united Kurdish tribes and the relatively peaceful development became the basis of a broader spread of cultural gains (especially in literature). These cultural gains were directly subjected to the Kurdish national idea. An interesting example can be found with the development of language. Gradually dialects merged into one language - the school of Nali(7).

This gave impetus to the development of literature, and consequently, to be awakening of national self-consciousness.

At that time, writers and poets like Ahmed khani, Baba Teheri, Hama Dani, Salum Naali and others were born, later having left a creative heritage which greatly contributed to the rise of a national self-consciousness of the Kurdish community.

This is the basis legacy of Kurdish culture on which contemporary Kurdish intelligentsia was formed and established. It brought the Kurdish struggle into a new active stage, which used all disposable means: agitation, propaganda to armed resistance.

An important fact in support of this view can be found with the publication of „Kurdistan“ Magazine (1898) which involved active participation of Kurdish intellectuals.

Cultural and economic development of the Kurdish people along with the rise of national self-awareness were also manifested into more active forms of struggle - armed riots and

uprisings. It is almost impossible to enumerate them all, but the most important ones provide more than sufficient examples of proof to the rise of national self-consciousness and aspirations for national liberation and establishing statehood institutions.

Many emirs have accepted his proposal for unification. In his book *The Kurds*, F.Minorski suggested that the Butan area was the primary cell for the creation of the Kurdish nation (p.28) and the crucial point for the rise of Kurdish national liberation movements. Kurdish national self-consciousness had already sprung up and soon became an important factor for the survival and further rise of the Kurdish nation.

Baderkhan set up a factory for arms and gunpowder in Djazira, as well as a dockyard. He sent Kurds to Europe to study warfare and provided funds for Kurdish students to study at European universities. Another interesting fact is that he provided free treasury and emitted Kurdish currency. In practice, Baderkhan established a state within a state with its characteristic features - territory, power, army, treasury, etc. Britain's and France are warning the Turkey to eliminate this problem immediately provides the significance of this entity. The sultan sent out a powerful army, which put an end to the emirate. Thus another attempt of the Kurds at self-determination was run down.

There followed, after a relatively short period of standstill, a series of uprisings. However without results. Such were the uprisings in Shah Abdula Nihry in 1881 (whose goal was Kurdistan's liberation within the boundaries of the Turkish Empire, thus achieving relative independence) and Yazdan Sher's uprising throughout the years 1853/1856 (which played an important role for the strengthening of Kurdish national self-consciousness) (8).

Towards the end of the 19th century and beginning of the 20th century, the Kurd's struggle entered a new phase. This was at a time of intensified colonial struggles, aggravated international situation as a result of imperial states' appetites for a redistribution



of the colonial worlds. The Middle East became one of the „hot points of the world“. The clash of ambitions and aggressive aspirations formed the background of the on-going national liberation struggle of the Kurdish people. The masses became more and more active: uprisings followed one after another. They were reactions to the injustice and exploitation, which the Kurdish people suffered at the oppressor's hand. National self-awareness consolidated and turned into a major subjective factor in the struggle, for independence and establishing the statehood.

It was during this period that other subjective factors emerged.

First, changes in Kurdistan's socio-economic life. Feudal relations at that time became contradictory to the development of the international and local capitalism. A Kurdish national bourgeoisie emerged in the towns. This brought about new ideas of a more developed and democratic society. Second, exploitative and chauvinistic movements strengthened and came into conflict with Kurdish and Armenian national Liberation movements, which became very active and organised riots and uprisings.

The liberation of the Greeks and Bulgarians was a historical factor of great impact: it raised the national spirit of other enslaved peoples under Ottoman Empire. The struggles entered a new stage. The most active part of the intellectuals gathered around „Kurdistan“(9). Magazine (published in Cairo); a more efficient and better-developed resistance forces came into being. They considered different political forms of struggle. In 1908, the first Kurdish political organisation was established, Taali Turaki Kurdistan (The Association for Rise and Development of the Kurds). Among the founders were E.Badarkhan, Sharif Pasha, Said Abdulyadir. The organisation's main activity was propagation among the Kurds, as well as dissemination of national-liberation ideas in Europe proper and the instigation of political activity among young Kurdish intellectuals. A union was set up in order to distribute Kurdish literature and culture among the people. A school of Kurdish language and literature was also opened(10).

This active work soon bore fruit and, consequently, threatened the Turkish political ruling crust's security. This Kurdish activity went underground and new methods of struggle had to be adopted.

Two years later, in 1910, the HIIVA (Association of Kurdish Students) was established in Istanbul, which began active work. It published a magazine, which propagated the Kurdish issue (the ROZHI KURD magazine). By the beginning of the First World War, the magazine became less active(11). At the same time, a group of Kurdish patriots were publishing ZHIN (Life) newspaper. Suraya Baderkhan, for example, set up an Association for Kurdish Liberation in Egypt(12).

At the same time another organisation - „Structure of the Kurdish Society“ established itself into a political party - „Party of the Kurdish Nation“(13). This being the first time in which an organisation developed itself into a party.

These organisations and associations co-ordinated and activated their work. They had their representatives in the different towns of Kurdistan. They operated up until the Kemalist army invasion. After that all these organisations were banned and dissolved. However, they were replaced by an entirely new organisation - HUI BUN (The Liberation Association) in which members of the former organisations joined. This association soon became the major active all-embracing organisation inside of Kurdistan(14).

The founding of legal organisations, propagating the Kurdish issue, was the result if a somewhat belated liberalisation of political life in the Turkish Empire. The politics of the then Turkish governments became more moderate. There was a certain democratisation, which resulted in the recognition of the nationalities in that country and giving them certain political lights.

This gave the Kurds an opportunity to become more active in propagating for the liberation and independence of Kurdish land.

The Sublime Porte was quick to realise that these activities

could threaten its security and decided to forestall the events. It was quit clear that sooner or later the issue had to be settled. This issue existing for a long time. All previous attempts to do so had failed. It was a historical necessity that the Kurds wanted freedom. What had to be clarified was what kind of freedom and how to attain that freedom. The choice was between total freedom - an independent Kurdistan against the Porte's will - or attain rights and freedoms within the framework of the Empire granted as a sign of goodwill by the Empire herself. The second option was more acceptable in all cases. For the political fulfilment of this idea, a governmental commission was established in order to study, and settle, the problems. After the situation had been examined, a joint commission, inclusive of Kurdish members of the Turkish Parliament and representatives of the „Rise of Kurdish Association“ Emir Baderkha and others), adopted the following two declarations(15).

1. To grant Kurdistan autonomy within the framework of the Empire.
2. To undertake immediate measures for proclaiming and carrying this into practice.

However, these declarations were not fulfilled because the Turkish government (Farid Pasha) sought certain pretexts in order to postpone implementation of the two declarations.

This action by Farid Pasha led to severing of relations between the Turkish government and the Kurdish patriotic organisations. The Kurdish patriots increased their propaganda inside the country and abroad. As a result of this development a delegation, under the leadership of Sharif Pasha, was to submit this issue to the Great Powers. He became the official representative of all Kurdish organisations. The first step was to improve the relations between the Kurds and the Armenians. This was achieved at the meeting with Nobar Pasha - the leader of the Armenians in Paris. Both sides expressed their desire to co-operate(16). In this way, at the beginning of the twentieth century, parallel to the activation of

internal political work, the Kurdish patriotic intellectuals brought their struggle to a new stage - The Kurdish issue emerged on the international level.

They were well aware that nothing else could be requested from Turkey, for nothing else could be gained. That is why the Kurdish issue had to become part of the international political life in order to find its solution.

During the First World War, the United Kingdom and France concluded a secret agreement to divide certain territories of the Ottoman Empire. In February 1916, This agreement was confirmed in London and came to be known as the Sykes-Pico Treaty(17).

According to this treaty, the Kurd populated Turkish lands were divided between two states which became the main obstacle to the establishment of an independent Kurdistan. The Russian Tsar agreed with the Treaty. The Revolution in Russia, however, changed everything. The agreement was uncovered for the entire world to know and the Soviet government fervently opposed the policy of secret diplomacy and denounced the coloniser's aspirations of the Great Powers.

After the conclusion of WWI, circumstances changed in favour of the colonised peoples and their national liberation movement strengthened. Major changes during this period were Wilson's proclamation of principle of self-determination of peoples and people uprising in many parts of the world for freedom.

These new developments in international life became the prerequisite for the emergence of new tendencies in the Kurdish national liberation movement. They promoted the very aspirations, which were to take the Kurdish issue onto the international field. To this end, the Kurdish intellectuals sent a delegation, under the leadership of General Sharif Pasha, to participate, together with the Armenian delegation, in the conclusion of the Versailles Peace Treaty. It was the first time that the Kurdish issue had been discussed at such a high international forum. The problem got its

explicit solution in the Sevres International Treaty. According to Article 62 of the Treaty, the Kurds in the Ottoman Empire received autonomy and could, in a year's time, establish an independent state, if so desired. The League of Nations endorsed this decision(18).

In actual fact, however, the treaty remained on paper. After 1922, when G. Kemal Ataturk came to power, the Lozan Treaty was signed which cancelled the decisions of the Sevres Treaty and deprived the Kurds of everything that they had gained. Thus Kurdistan was divided between Turkey, Syria, Iran and Iraq. According to this conspiratorial plan the Kurds shattered and unwillingly they became legally citizens of respective states.

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## CHAPTER THREE

### THE KURDISH QUESTION IN INTERNATIONAL RELATIONS AND TREATIES

international organisation for positive development of international relations.

All of these circumstances became prerequisites for the emergence of new international relations and open a new horizon for crucial issues in the area to be solved. This gave the Kurds good reason to believe that their issue would be tackled as well. It turned out, however, that the good intentions expressed were not followed up. During the First World War, Kurdish issues were subjected of unofficial secret agreements. The first of them was between Great Britain, France and Russia giving Britain the right to occupy Eastern (at present Iranian) Kurdistan. In 1916, there were secret negotiations in London between Britain and France for the distribution of territory of the Ottoman Empire: Kurdistan (and Armenia) had to be divided. The results of the conspiratorial plan were realised in the Lausanne Treaty. In history, this secret agreement was known as the Sykes-Pico Treaty(2).

The first diplomatic act, which officially posed the Kurdish question on the international stage, was the Sevre Treaty, which was a part of the Versailles system of regulating relations between states after the First World War. The goal of the treaty was to „punish“ Turkey for siding with Germany during the war by dividing it into spheres of influence and depriving Turkey of its rights over almost 4/5 Th of its territory. In my view, with this action, however, Western diplomacy made a serious miscalculation: it did not take into account Turkish internal developments. The consolidation of Kemal Ataturk's influence and power, for example, should have given them a hint of future possibilities of Turkey's gravitating closer to the Soviet Union. This was extremely objectionable on the part of the Western countries who had relied on Turkey as being the future springboard for



actions against Soviet Russia. The commander in chief of the occupation army in Istambule referred to the Turkish army as „the only army in the world that could oppose the Bolsheviks now“(3). That was the reason why the Sevre Treaty was doomed to failure even at the time it was concluded. As far as the Kurdish question was concerned, the treaty dedicated three articles to it - Articles 62, 63 and 64 (4).

Article 62 provided for the establishment of two commissions. The first one would prepare a draft programme giving autonomy to the Kurd-populated areas. The second one to discuss and propose a solution to the problems of the Mossul vilayet (which aroused great interest following the discovery of oil fields) in relation to the Kurdish, Assyrian and Kldan minorities there.

Article 63 binds Turkey, within three months after the draft programme's composition to do everything in its power to implement it.

Article 64 gave an expression to factual, although ad-hoc, recognition of the existence of a Kurdish nation with its right to self-determination. It also gave the Kurds, in autonomous regions, the right to demand of the League of Nations a grant of independence. In other words, this text envisages that an autonomous Kurdistan can demand independence eventually and self-determination in its relations to Turkey (and even to integrate the Mossul vilayet) Iraqi-Kurdistan, into the independent entity.

The treaty's importance to the practical solution of the Kurdish question, in the historical situation at that time was insignificant. Yet the raising of the issue in an international diplomatic aspect and the radical measures for solving it (autonomy and a state in perspective), show that the Kurdish national question does exist. Furthermore, it is a factor, which should be taken into account under the regional historical circumstances at the time.

One of the crucial points in Kurdish history is the international dispute over the Mossul vilayet. The attention of the interested parties was drawn to it because of the discovery of oil, in this

region.

On 12 March 1921, the Cairo Conference was opened in which the representatives of Turkey, Iraq and Britain participated. The aim was to decide the fate of the British presence in Iraq and to solve some conflicting points. Contradictions of the Kurdish question arose even among the British representatives themselves. Churchill's intention was to establish an independent Kurdish state, as a British mandated territory, but Iraq's governor was against it.

The major British proposal was a referendum to be held in the Kurd-populated areas, thus allowing the Kurdish people to express their own will in favour of, or against, its integration with Iraq. Unfortunately the result of the referendum was in favour of the integration. The reason was the unstable situation of the autonomy of Northern Kurdistan (as provided for by the Sevre Treaty) and the danger of the region's integration with Turkey instead of being independent. Of the two evils, the lesser was chosen: The Mossul vilayet was added to Iraq. As far as Kurdish rights were concerned, a rather general formulation was given of „...distinguishing between Arabs and Kurds when the solution of administrative matters was concerned“. In practice, item 16 of the mandate document was put into effect (although inconsistently) which gave Britain the right of establishing independent Kurdish administrations(5).

Britain's good will about solving the Kurdish issue proved to be, however, a series of cunning diplomatic moves aiming on the one hand at drawing the Kurds to her side, and on the other - at exerting pressure on Iraq and Turkey with a view to forcing them to make concession.

The problems of the Mossul vilayet was not eliminated, however, simply because Turkey have never dropped its claims over this region. The fact that the Sevre Treaty remained only on paper necessitated a new solution to the problem. It occurred at the Lausanne Conference in July 1923, when the Kurdish question

was practically divided into two parts: first, the status of those territories for which the Sevre Treaty had provided autonomy, and second, the so-called „question of the borders between Iraq and Turkey“ which in real fact was the question of the Kurd-populated Mossul vilayet (what is now Iraqi Kurdistan). As far as the first question was concerned, the Lausanne Treaty was explicit: it cancelled clauses found in the Sevre Treaty, which provide for Kurdish autonomy. It was assumed that the Kurds had never been separated from Turkey. Furthermore, the Treaty proclaimed (Articles 38 and 39) that all Kurds were Turkish citizens and, as such, enjoyed equal rights. As a minority, within the framework of the state, the Kurds had the right to their own language and religion, i.e. they were recognised as a separate race and nationality(6). The idea of independence was abolished; the national movement was proclaimed illegal and Kurdish national interests were completely ignored by the new treaty of Lausanne.

The treaty provided no solution to the second question the Mossul vilayet. It was decided that if, in a period of nine months, Britain and Turkey could reach no agreement, the question should be taken to the League of Nations. A special commission was established by the League of Nations which was to tackle the problem, and a provisional border between Turkey and Iraq was set up - the so-called „Brussels Line“.

After thorough analysis of the situation, the Commission prepared a report to the League of Nations containing the following conclusions and proposals:

1. The Kurds are neither Arabs, nor Persians or Turks. With regard to that, a twenty-five year mandate of Mossul was proposed under the auspices of the League of Nations.

2. When clerical staff was appointed, the opinion of the local Kurdish population had to be obligatorily taken into account. Kurds were entitled to their own administration, schools, courts of law; the Kurdish language had to be recognised as official.

The conclusion was that the resolution of the League of Nations

on the Mossul question should be compulsory for both countries and should conclusively determine the borderline between Turkey and Iraq. It should be unanimously accepted and the votes of the interested parties should not be taken into account.

The final decision of the Commission was that Mossul should be returned to Iraq with Britain having a twenty-five year mandate on it.

That decision was formally embedded in the treaty between Britain, Iraq and Turkey which was signed in August 1926. This is what Article 12 said on the Kurdish question: „The Turkish and Iraqi authorities renounce all relations of official or diplomatic character with chieftains, sheikhs and other members of the Kurdish tribes. They shall not allow, within the border region, any organisations, meetings or propaganda aimed against any of the two states“(7).

In October 1926, a treaty was included between Turkey and Iraq. The two countries assumed the obligation (Articles 6) of not allowing on their respective territories the activities of any organisations or groups which might threaten the security of the other country(8), it means that Kurdish political and guerrilla activities should be abolished.

As far as Syria's Kurdistan was concerned in 1929, in Ankara, a treaty was signed between Turkey and France (as Syria's mandatory) which aimed to resolve the dispute between Turkey and Syria over the regions of Djesire and Hasuk which were Kurd populated. According to this treaty, the two regions were added to Syria's territory(9).

In August 1930, the Zurich Congress of the Second International of European Social Democrats took place. The Kurdish „Hoybun“ and the Armenian „Tashnak“ organisations sent a memorandum to the Congress. The occasion was the genocide of Armenians and Kurds during 1927-1929. The Congress came out with a declaration recognising Kurdish and Armenian rights to self-determination but on the condition that it

was achieved with peaceful means and without an armed struggle(10).

In a practice that was quite impossible. The presence of a Turkish army in the Kurd-populated regions escalated tension thus leading to several uprisings, of which Dersim was the largest. G. K. Ataturk accused the Soviet Union of supporting revolutionary forces and interference in the internal affairs of that country. Facing so many internal and external problems, Turkey decided to resolve first of all the disputes with its neighbouring countries - Iraq, Iran and Afghanistan. A favourable occasion was Iran's idea of negotiations on matters of disagreement. The negotiations lasted for nearly two years and finally, on 8 July 1937, a Protocol was signed in Sadbad. On the face of it, the treaty tackled Turkey's foreign policy problems, but in actual fact, it was aimed at internal issues related with the Kurds. The objective was to limit Soviet interference in the internal struggles of the Kurds and Armenians, to abolish those struggles and the possibility of achieving even the most insignificant forms of independence(11).

In 1942, a treaty was concluded between the Soviet Union, Iran and Britain according to which the Soviet Army would go into Iran and defend its sovereignty. In September 1942, the Soviet Army stopped the fascist offensive from the Caucasus, which aimed at capturing Baku and Teheran(12).

The Soviet Army's presence in Iran had created the necessary political environment and new opportunity for the Kurdish political activities and other nationalities within the framework of Iran's territory to freely manifest their will for independence and self-determination, and to open the road to liberation.

Under these new conditions in the region, the possibilities had been provided for the Minorities in Iran to organise their political activities, in the following year with the Soviet army support the tow autonomous republics were founded on Iranian territory. Based on nationality the two republics had legally established and functioned on Iranian state territory what is interesting in the

situation like that, the two entities exist against the will of central government and its disapproval had been showing by hostility towards these two structures.

From the juridical point of view, I would like to put a spotlight on this development and outline a few points.

The term „republic“ means that its specific structural and organisational form is a state. Yet further analysis of the conditions of its organisation reveal several certain contradictions. We shall discuss here two aspects: struggle-organisational, (the presence of the distinguishing features of a state) and international-legal (its position among other states).

From the first point of view, the state organisation possessed all necessary elements needed of a state: a territory within certain borders, supreme and local public power, organs of state government, national flag and anthem. During the short period time of their existence (only one year), these institutions could not develop and strengthen enough in order to acquire the necessary foundations for their existence and function as a basic element of a social life. State formation and realisation should take at least several years in order to build the necessary state structures. If that had been the case, this form would have acquired the necessary meaning, and Kurdistan would have turned into an independent state in the true sense of the word.

A second point of view involves more concrete problems. For a state, in order to become a full member of the international community and a competent participant in international life should be recognised by other states. Except for the Soviet Union and Azerbaijan, no other state recognised the Mohabad Republic. Attempts of establishing official relations with the Mohabad Republic also were not made. It follows from this that the Republic had not become a subject of international law.

This is where the two points of view contradict each other. At the basis of the contradiction are the different criteria of evaluation. The first aspect is based on a real, factual criterion - the existence

of an independent state structure. The second aspect is based on a formal criterion - international recognition (either de facto or de jure). A compromise between the two aspects is impossible because they belong to different areas and hence there isn't an intermediate position.

In this case, the conflict is antagonistic, yet a solution is necessary. That is why the only possibility open for us is to choose one of the criteria as the decisive factor and disregard the other one. The question is which one?

The factual criterion is more convincing for it answers the practical requirements. The opposite would be illogical - to assume that a state is not a state because it has not been recognised by other states. Even despite the fact of its existence as a vital independent social organism. Dr. Gazumlyo favours a similar view in his book „Kurdistan and the Kurds“(13).

Other authors consider it was the case of an autonomous republic within the framework of Iran. However, autonomy involves certain dependence on the state on whose territory the autonomous structure exists which was not the case. What is more, The Mohabad Republic was not recognised by Iran and existed against its will .

The conclusion, therefore, is that for a period of one year there did exist an independent Kurdish entity. A Kurdish entity, which remained, isolated from international life. It was met with hostility, surrounded by enemies and devoid of friends. This was the reason of its overthrow after the withdrawal of the Soviet Army from Iran(14).

In mid April 1963, the Turkish and Iraqi governments held negotiations in Ankara and Baghdad for joined action against the Kurdish National Liberation Movement led by G. MUSTAFA BARZANI, the guerrilla movement led by the legendary fighter for the Kurdish rights in Iraqi Kurdistan had been treated by U.N as an internal problem of Iraq. Nevertheless, it became an important agenda of the states region of middle east and had been targeted

at the international level. The question was further discussed at a SENTO session in Krachi at the end of the same year. The participants dwelt on the problem of the Kurds in Iraq. In this context, the Turkish Foreign Minister declared that the session had expressed a desire for the problem not to become a threat to the regional and world peace(15).

In 1963, Mongolia submitted to the UN the question of the Kurdish situation in Iraq. This was occasioned by the people's uprising under G. Moustafa Barzani. Due to the lack of support by other states, however, no solution was found. This was the first time the Kurdish issue arose at an such high level after the passing of the Universal Declaration of Human Rights and the declarations of independence of colonial nations. The general feeling was that these were Iraq's internal problems and again the Kurdish question was ignored by international community and considered as internal affairs of sauvignon states.

On 6 March 1975(16), a new treaty was officially signed according to which Iraq agreed to territorial concessions to Iran along the border. In return, Iran agreed to stop its support for the Kurdish National Liberation Movement in Iraqi Kurdistan and to direct its efforts toward the movement's elimination. It also agreed that all guerrilla actions would be repulsed by both Iraq and Iran. The Turkish government was present when this „solution“ was found, and on its part, it declared it would do its best to suppress the revolt. As a result of this conspiratorial treaty, the guerrilla movement in Iraqi Kurdistan was almost totally eliminated.

A year later, however, guerrilla activities resumed. Alongside with activities, Kurdish parties and organisations were reactivated with a view to establishing contacts with organisations and state and political parties throughout the world. In order to make the Kurdish case be heard by international public opinion. The most significant outcome was the consideration of the Kurdish question at the 42nd session of the UN Human Rights Commission in Geneva, from 3 February to 14 March 1986. Many problems were



discussed, inclusive of the right to self-determination and human rights violations. The Kurdish issue was given great attention: many representatives spoke about Kurdish human rights and their violations. They all expressed their support for the Kurdish cause.

A sub-commission of the Third world countries issued a declaration, which said that Kurds have the same equal rights of established nations and therefore all UN members should respect them. A proposal was made culminating in a single solution to the problem; the non-aligned countries were called in to discuss the issue and to appeal to the UN and the Security Council to consider the problem and contribute to its solution(17).

No final official document was issued, however, which would explicitly state the problem.

In May 1989, at the Paris Conference, which was a follow up of the Helsinki and Vienna process, a question was posed concerning the violation of Kurdish rights and of the assimilation policy of the oppressor states affecting the more than 30 million strong Kurdish nation (18)

It becomes quite clear from the historical review of international relations and treaties in which the Kurdish issue was considered, that Kurds have always been a third party, and onlookers, of the process which would determine the destiny of their people and territory.

There are two main reasons. The first deals with the faulty strategy of the Kurdish elite and the Kurdish National Liberation Movement about the price of the struggle and ways to achieve their ultimate goal. The Kurdish National Movement's non-reliance on other countries support and their reservations about such means of struggle resulted in the fact that the main form had been guerrilla war and armed activities. What is more, this has been a struggle for the struggle's sake and not for achieving any national liberation or political goal. Such a limited view of goals and means of struggle has estranged the Kurdish National Liberation Movement from international relations and has placed it in a

position as an onlooker of events deemed crucial for the Kurdish people. The lack of a clear strategy and common program of action is yet an addition reason for the failure of the Kurdish National Liberation Movement, as a whole.

Another reason can be found in the isolation of the Kurdish issue and the Kurdish National Liberation Movement from international political life. In the Kurds, the developed states have seen an economically, politically and culturally backward people deserving no independence for it does not know how to use it. That is why the problem remains simply an internal problem of the respective state, while any attempt at interference would then turn into interference in its domestic affairs. On the other hand, however, to put the question on the agenda would imply seeking a political solution. Whatever it may be, it will involve major conflicts for the respective countries in the Middle East. A region which is still a hotbed of tension, besting in mind that Kurdish population is more than 30 million on a territory of 500,000 square meters and that some of its regions are of great economic significance (Kirkuk, Kirimansh, Mossul, Koia). The unwillingness to create new hotbeds of tension in this part of the world could account for the developed countries' abstention as far as the Kurdish national problem is concerned.

In addition to the above mentioned facts and circumstances which surrounded the Kurdish question during those times which have had in many way negative impact on the issue to go forward. After the Gulf war the reality has been changed in favour of the Kurdish issue and new elements have been injected into the question.

When the humanitarian situation deteriorated in Iraq, the Security council had taken the decision to establish safe area in North Iraq, consequently the resolution 688 has become a legal basis for establishing the new Kurdish administration in North Iraq and again the Kurdish question has got an international attention. Consequently new conditions have emerged for the Kurdish

democratic movement to make the case before the international community.

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## CHAPTER FOUR

### INTERNATIONAL LAW AND THE RIGHT TO SELF-DETERMINATION OF THE KURDS

#### 1. HISTORICAL REFERENCE TO THE NOTION OF SELF-DETERMINATION

The rights to self-determination proclaimed by the French Revolution of 1789, along with the great ideas of freedom, equality, fraternity, sovereignty of the people, is of intransigent significance for the emergence and affirmation of the principle of equality and self-determination of nations.

The Manifesto of Sylvan Marshall, also known as the Manifesto of Equality, reads: „The stimulus which awaken the people are always the same. There is no human being in the world who would agree to live as a slave. That is why injustice is a prime necessity and concern of man, and a prime convention for any legal organisation; that is why we herewith declare that we shall live and die equal, as we are born, we want a genuine equality or death. That is all we need - to form a republic with equality for all" (1).

The French Revolution, proclaiming these principles with the idea that government must be founded on the free will of the people determined the content of self-determination, the unified and indivisible nature of principle of equality and self-determination of the nations, the indissoluble connection between the two composite elements. To recognise and apply the one indirectly signifies recognition and application of the other as well.

The recognition of equality between nations requires respect for their sovereignty: recognition of their right to self-determination. At the same time realisation of the right of people to self-determination is a pre-condition for equality between them.

While one can infer from the principle of equality that the subjugation of one nation by another is unlawful. The right to self-determination actually means that every nation is equal in rights with all other nations, regardless of quantitative variations(2).

The notion of self-determination was more clearly defined during and after the First World War.

President Wilson contributed to the formulation of this notion. On 22 February, 1918, in a report to Congress, Wilson referred to the term „self-determination" by pointing out that nations striving for self-determination must be respected. He reaffirmed that nations can be governed Solely in accordance with their will and consent. Wilson declared that the notion of self-determination must become an imperative principle of action and therefore it would be dangerous for states not to take it into consideration.

In the context of the French Revolution, self-determination is expressed as a democratic ideal, President Wilson lent is greater depth, but still failed to define its content, inclusive of the right of separation(3).

It is a fact that the concept of self-determination is not clearly defined by Wilson. However, the idea of self-determination has become a great force in the international life, in as much as a President of such a country as the United States supported and upheld it.

Wilson's idea earned popularity in the world and especially in Europe; the social democratic parties proclaimed this idea in their program and concept. Social democratic parties held a congress in Zurich in August 1930(4). They stated, in one of their documents, their positions concerning the right to self-determination and expressed support for their national liberation movement. The text of the document, however, declared the concept of self-determination of nations by specifying that it must be exercised by peaceful means, without resorting to other means, inclusive of a revolutionary armed struggle, for armed struggles

would lead to many wars throughout the world<sup>19</sup>. Wilson's idea and the social democrats' program later became the doctrine of the League of Nations. They viewed the notion of self-determination in light of these documents, and, in particular, Wilson's statements. It is not only by chance that he assumed the chairmanship of the Commission for setting up the League of Nations, and did a great amount of work in the formulation of its Charter. The world associates the League of Nations with Woodrow Wilson. At sessions of the Versailles Peace Conference, Wilson insisted that the question of the German colonies and of the occupied Turkish lands be resolved within the framework of the League of Nations (5).

Here we should note the fact that he had made no specific proposals with regard to self-determination. Since it was not within the competence of the peace conference to make pronouncements on the rights of nations in general, with the exception of those on the territories of the vanquished empires (the territories under trusteeship). The concept of self-determination was placed in light of the bourgeois doctrine.

## 2. THE DECLARATION FOR GIVING INDEPENDENCE AS A SOURCE OF INTERNATIONAL LAW, WHICH HAS CONFIRMED THIS CONCEPT

The XXVI General Assembly session of the United Nations adopted the well known Resolution No. 2787 of 1971 endorsing the lawful struggles of nations working for liberation from colonial rule as well as their own self-determination. One of the texts pointed to the effectiveness of the application of the principle of self-determination in relation between states and nations. The implementation of this principle guarantees observance of basic human rights and, at the same time, guaranteeing world peace and security.

In practice the principle of self-determination is materialised through the Declaration granting independence to colonial countries and peoples (Resolution 1514 of 14 December, 1960 [XV UN session]). According to point four: proceeding from the belief that all nations have the unalienable right to freely determine their individual destiny as well as exercise their sovereign rights and will over their whole territory. A necessity is solemnly proclaimed concerning the elimination, at once, of colonialism. In all its forms and manifestations, it declares:

1. The submission of people to foreign rule and domination and their exploitation is a negation of human rights, is at variance with the principles of the UN and hinders the development of co-operation and the establishment of peace in the world;
2. All nations have the right to self-determination; by virtue of this right they freely establish their political status and pursue their economic, social and cultural development;
3. The inadequacy of political, economic and social training shall never be used as a pretext for delaying the attainment of independence;
4. Any military actions or repressive measures of any kind, aimed against dependant nations must be stopped so that they may be given an opportunity to achieve and materialise their right to complete independence, and the integrity of their territory must be honoured;
5. In territories under trusteeship, or without self-government, as well as in all other territories that have not yet attained their independence, measures must immediately be taken for handing over all power to peoples of these territories in accordance with their freely expressed will, without any preconditions or reserves, regardless of race, religion or colour of the skin, so that they can enjoy their full freedom and independence.

From page 3 of the Declaration, it becomes obvious that the distinction between people and nation, as drawn by some lawyers, philosophers, political scientists, historians or ethnographers, is



irrelevant in international law. When international law states: „all peoples and nations have the right to self-determination“, it does not explain the differences between „people“ and „nation“ or whether the independence granted to them should be different in volume or degree. If, logically deduced, this principle should be interpreted as follows:

- Whether 1: there indeed exists a people or a nation, is solely a matter of concrete appraisal; 2: whether independence should be granted in all cases. For this reason the notion of „nation“ will be interpreted in this expose to denote both „nation“ and „people“.

In its essential form, this problem is different when recognising both the nation and fighting people as the subject or rights. Since the nation is not a state, it cannot be a full subject of international law. For example, it cannot participate in international law-making processes. However, present day law recognises that the very nation is a subject of international law. Even though these nations, in reality, may not have, as of yet, attained its independence. In that case it is, to the highest extent, a subject of the right to self-determination. In this form of relations, the subjectively necessary element itself is the fighting nation that cannot be replaced by any other subject of international law.

In this context, an additional question may arise - the necessity of a nation to be a fighting one so that it could be recognised as a subject of such rights. Without overlooking idea that national liberation revolutions are indications of the highest degree, of an oppressed nation. There is every indication to believe, and accept, that the nation should be a subject of international law, ipso facto, (by the very fact of its existence). In addition, self-determination, national liberation and its separation, as an individual state, are all subjective rights and the action is under no obligation to continue after their realisation.

The problem is a concrete and practical one. The recognition of the nation as a subject of international law, outside the state on whose territory this nation still lives, usually occurs after the nation

has begun to fight for the formation of a national state of its own. Recognition is given to a representative organisation, which heads the struggle. This representative organisation can come in the form of committees, provisional governments, representations, fronts, political parties and the like. These organisational forms of the nation are bodies of its own personification.

Thus for instance, the recognition on the part of the Ottoman Empire, during the mid nineteenth century, before the liberation of the Bulgarian people, of an independent Bulgarian national Church produced the juridical effect of recognition of the Bulgarian nation.

During the World War One, the governments of the Entente recognised the Czech and Polish National Committees as being vested with the right of political representation. The emergence of a state as a subject of international law can be juridically recognised even before that country has acquired 1: defined territory and 2: a built state mechanism.

During the Second World War, national committees and other organs of resistance were formed on foreign territory by Yugoslavia, Czech, France, Denmark, Poland and others, which, during the war evolved into governments under whose leadership national armed forces were formed. During the seven year long armed struggle of the Algerian people under the leadership of the National Liberation Front, it found recognition through the establishment of diplomatic relations with more than twenty countries, inclusive of France herself!

At the request of the Arab states, the XXIX session of the U.N. General Assembly recognised the PLO as a representative political force. It also granted it permanent observer status in the UN General Assembly 5.

On the other hand de-jure, or de-facto, recognition by several states is of a declarative character. It also can be used as a strong argument in a legal international dispute. Recognition granted by the UN in its various forms contains practicalities. This

means that if a fighting nation is given access to the international rostrum it can declare before the whole world, what it wants and how it plans to achieve it.

### 3. THE DECLARATION OF PRINCIPLE OF INTERNATIONAL LAW 1970 ENDORSED THE PRINCIPLE OF EQUALITY AND SELF-DETERMINATION OF THE NATIONS

This declaration marks the highest stage in the process of universal recognition of this principle as one of the juridical rules of conduct valid for all states.

The principle has been confirmed and sanctioned in numbers international documents, inclusive of the final act of Helsinki conference in 1975, which has been promoted the political will of European nations in defence of the oppressed nations and people. It is also served as a juridical grounds for rendering aid to newly liberated peoples as juridical device of drawing attention of international for taking measures and providing legal protection of human rights and minority groups from belligerent states.

The attempt at summing up this principle has been successfully accomplished in the Declaration on the Principles of international law concerning friendly relations and co-operation among nations in accordance with the UN Charter of 24 October, 1970. In this charter, the principle of self-determination is formulated as a principle of equality and self-determination of nations. The formulation of the principle in Paragraph 1 coincides with that of Article 1, paragraph 1 of the Covenant of Human rights.

The second paragraph obliges other countries to co-operate in carrying out this principle in accordance with the UN Charter.

Paragraph four formulates, in general, the mode of exercising the right to self-determination: „The creation of a

sovereign and independent state, the free incorporation into an independent state, or forming a union with it, or establishing of every kind of a state, freely chosen by the people - these are methods and means available to this people to exercise its right to self-determination".

Paragraph five bans any acts of aggression and entitles the people who have become the target of such, to seek and receive assistance in line with the goals and principles of the UN Charter.

The Declaration, interestingly, says nothing about the methods in which to achieve national liberation or to exercise the right to self-determination. In the past time this kind of achievement has been carrying out by uprising and revolt means in most cases. In the current situation the circumstances have been changed, it is desirable even essential to achieved by democratic and peaceful means in order to gain the support of International Community.

In the light of systematic interpretation of Article 1, point 2 of the UN Charter, the Declaration of 1970, and the Pacts of 1966 on human rights, wars of national liberation can be lawful ones. In the case of a national liberation war, the movement must be 1: recognised by international Law, 2: by recognised as a subject of international law. If the two above-mentioned points are moot, the struggle will remain an internal political issue and not be recognised as a national liberation movement.

The reference to be drawn from the above reasoning is the right of the oppressed peoples to use lawful means, inclusive of an armed struggle in order to achieve their liberation. For example, Cassava liberation army, which was being supported by international community. A confirmation of this principle is the „Program of Action for Complete Realisation of the Declaration on Giving Independence to the Colonial Countries and Peoples" adopted at the XXV Jubilee session of the UN. They are granted „the unalienable right to struggle by all means at their command"(6).

Generally speaking, this question is brought up a resolved in the same manner in the Final Act of the Conference on Security and Co-operation in Europe of 1 August 1975 in Helsinki. Whoever this principle contains to support this kind of action within framework of UN mandate and NATO.

It is obvious, utilising the aforementioned points, that the right to self-determination is the unalienable right of every people, regardless of it: adage of development, and that all other countries must not only abstain from violating this right, but must assist in its realisation.

Examining the concept of self-determination from a juridical point of view, keeping in mind that self-determination is the subjective right of all nations. It must be agreed that this concept is a general and universal recognition of the juridical and political possibilities for the UN member countries to assist in the realisation of this right.

This form of recognition assumes wide proportions, as the principle of national self-determination becomes more firmly established in international Law. Professor Tunkin pointed out that the nation; in its struggle for the formation of an independent state becomes the subject of international Law(7). It is interesting to examine, how this principle is applied in the Third world and whether it is possible for the Kurdish people as a fighting nation, to be recognised as such and enter the course of international relations. This issue will be examined separately in the next point.

#### 4. ARE THESE PRINCIPLES APPLICABLE TO THE KURDISH PEOPLE?

The future prospects of the Kurdish question and the possibility for a just solution, in terms of active participation of international legal institutions, must be considered. The Kurdish Democratic Movement should strengthen it's diplomatic and political activities by perfecting its strategy in the struggle against ethnic cleansing

and denying the fundamental human rights of the Kurds, as well as to promote the means and methods of resistance towards this policy. In addition all peaceful forms of opposition should be considered. The aim of this strategy is to give priority to the verdict of the people on the issues and to live up to their expectations and demands. The internal political life should be improved and through these improvements new tendencies should be injected. On the international level there has to be a broadening of contacts with the international institutions and individuals of authority. All these activities should be concentrated on the ultimate goal, to find a constitutional recognition that no nation or ethnic group can dominate over others in political life. The major practical task, in the sphere of international relations for the Kurdish movement was the ultimate recognition of the colonial status for the Kurdish people. Since it had not been treated as such, the implementation of resolution 1415 (xv1) as legal means of attaining independence has been impossible. The Kurdish Democratic Movement is still facing difficulties in receiving recognition by the International Community. However this does not mean that the right to self-determination and free existence of millions of Kurds will be realised without the support of the International Community.

If we should compare the position of the Kurdish movement with the others national movements, it becomes clear that the Kurdish question has not been equally treated by UN and great powers. The reason behind this position was that the Kurdish movement has had no opportunity to utilise the resolution 1415 / 1960, as juridical means of achieving statehood and independence. Further move without the applicability of the UN resolution to the Kurds situation had created a juridical obstacle for the Kurdistan to obtain the status of a colonial country. The international perspective of the 'colony' only applies to the countries, which were subjected to traditional colonial rule or with the exception of Kurdistan, which the list of decolonization does not mention Kurdish territory as a colony.

The development of the juridical aspect of the Kurdish question is an element of great importance for its future resolution. This juridical aspect is defined by the position of the juridical status of the Kurdish National movement. UN Resolution 1514 /XVI/1969/ and other resolutions should be treated as a substantial support, easing the solving of the problems of human rights and self-determination for a number of national liberation movements, and they are important stages of their development and future victory.

Although there are common universal international principles concerning the right to self-determination, they may not be the same legal means employed by other national liberation movements. The Kurdish National Liberation Movement has its own Peculiarities and its own legal status. On the other hand, each national liberation movement has its own objective and subjective conditions under which it becomes a subject of these relations.

I would like to examine these objective and subjective factors from their juridical and political aspects in order to find out if these factors exist; if there is a Kurdish national movement, how could it be used in the interest of the Kurdish people when the Kurdish problem is placed on the international arena and conditions are created for the resolution.

The aforementioned facts give us ground to seek a solution and a way out of the situation in which the Kurdish National Liberation Movement now stands. One must bear in mind the fact that it is not yet regarded as a subject of international relations and has not received international recognition by virtue of Resolution 1514 for the movement has not attained the status of a colonial people. The list of decolonization does not mention the Kurdish territory as a colony.

Bearing in mind the difficult situation in which the Kurdish National Liberation Movement stands, we should strive for international recognition of the Kurdish problem, we should use some other juridical means in order to achieve the right of free existence and obtain the right to self-determination.

1. The Kurdish problem must be recognised as an international problem, and not as an internal problem of states occupying Kurdish territory. Steps must be taken toward recognition of the kurds problem not as an internal issue, but as the problem of a nation, which is equal with the other nations with which it co-exists.

2. The principle of self-determination of the Kurdish nation must be set as the slogan of all Kurdish democratic movement and institutions, and it must unanimously be pursued. It is not necessary for this aim to be set by all Kurdish parties. It would acquire the legal basis if the majority of Kurdish people accept this common goal and form a legal representative and to work for its achievement. This could take place in some part of Kurdistan, but it would be very vital for the cause to earn the international support and sympathy.

The Golf war has opened a new horizon and has created the possibility for the Kurdish issue to be settled through international involvement.

In the aftermath of the war the Kurdish issue has been taken a new dimension, in terms of internationalising the problem. Based on that new reality many questions have been raised on the international level, consequently the following elements have been injected into the Kurdish question:

A – Opportunity for creating a safety zone and the presence of international monitoring body in the Kurdish region became a reality, by the virtue of Security Council Resolution 688

B – New international contacts have developed for the Kurdish leaders, which have provided the opportunity to make the case before the international community.

C – Free elections, supervised by representatives of international community. For the first time in the Kurdish history the legal election had been held with international participation and it was resulting in establishing a legal body and legitimate government to run the Kurdish affairs. Actually the mandate is being maintained so far.



D – When the humanitarian situation deteriorated in Iraqi Kurdistan the Security Council has stepped in to prevent humanitarian disaster, Resolution 688 on Iraq as its first manifestation of the humanitarian intervention in the post-cold war. This international act has created conditions in the region for promotion of democracy and human rights, which was provided opportunity for local people to hold a free election in the Kurdish region, as result of this event the Kurdish self-declared Federal region had been announced by local parliament. After functioning as a legal body for a long time, actually it is acquired the organisation structure of representative body in the context of its legality, by de Facto the region was given independent status and enjoyed all the attributes of sovereign entity on the other hand it is not accountable to the central government in any way. Juridically there is no recognition by international community neither by Iraqi authority on whose territory the entity exists. Basically the juridical vacuum created the volatility environment for the territory to be subjected to intervention and incursion, which were being carried out by neighbouring states into the area in breaching the international law and borders, including the recent Iraqi military incursion into the safe area in 1996. All these actions diminish and dishonour the Security Council Resolution 688)

Taking into consideration all these negative factors, which are surrounded the Kurdish entity, I come to the point, that the only remedial action to free the entity from the despairing paralysis, is to fill the juridical vacuum, in which the federal entity is found itself. Therefore I am at this point, proposing serials steps to be taken by the federal institutions, aimed at reaching the ultimate solution for the issue of Iraqi Kurdistan. In order to carry out this task and to provide the legal means for the entity to attain the right to self-determination. The following juridical procedures should be considered.

1. stepping forward to maintain the legal institutions of the

Kurdish entity, by promoting the democratic achievements by utilising the verdict of the Kurdish people on the issue of manifestation of its sovereignty, that will be fulfilled through exercising the very fundamental right of the Kurdish population, in holding referendum on the issue of obtaining the right to self-determination and confirming the Kurdish Sovereignty within the framework of Iraq.

2. By the virtue of Security Council Resolution 688, under which the international community has taken obligation to provide protection for the Kurdish safe area in Iraqi Kurdistan, the S.C. should take into consideration any procedures for the settlement including the international participation, which is very important element in carrying out and promoting the democratic process and maintaining the international protection. It is also important as means of securing effective policing for the respecting rule of law and human rights.
3. The Kurdish democratic movement should demonstrate the ability to run the entity affairs in order to earn the constitutional recognition of central government and to set a clear strategy to bring about a democratic change in the new society. That is the only way to help bring peace and stability to that turbulent region.
4. Full demilitarisation of the safe area by all parties, military or paramilitary units other than those of the Iraqi government from the Kurdish region, which will help to create a safe and stable situation for the civilian population.

This operation can be achieved by deployment of the UN troops by the virtue of S.C. Resolution 688, which would provide peace and security in the safe area. In this way I presume that the peace building process can start as soon as an acceptable non-violent environment is established. In the current situation the area will remain very fragile and target to Iraq aggression and internal conflicts among parties controlling the region, as well as

the intervention and incursion by neighbouring states. With regard to this situation Chapter VII art 39 very clearly mentioned that the SC should determine the existence of any threat to world peace, breach of peace or act of aggression.

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- (1) Al. Ufok, Article Number 184, p. 31
- (2) Slavi, P., Revolution of Reason, Sofia 1989, p. 17
- (3) Morris, R.B., The American's Basic Documents in a History, 1918, p.3-7
- (4) Dr. Ghassemloo, A.B., The Kurds an Kurdistan, Baghdad 1968 (in Arabic), p. 76-77
- (5) History of Diplomacy, vol. 3, p. 27-28
- (6) Tunkin, G.I., International Law, Moscow, 1988, p. 77
- (7) Ibid, p. 77-78.

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## **LONG-TERM SOLUTION FOR THE KURDISH PROBLEM**

**THE FORMATION OF THE KURDISH POLITICAL IDENTITY CAN BE ONLY REALIZED**

**WITHIN THE FRAMWORK OF JURIDICAL RECOGNITION OF THE RIGHT TO SELF-DETERMINATION**

A practical resolution of the Kurdish question requires a stringent review of international legal concepts concerning the principle of equality and self-determination of nations and peoples.

The idea of self-determination has its beginning during the epoch of the bourgeois revolutions. Proclaiming the principle of nationality in the 19th century, the bourgeoisie, in its endeavours to establish its dominance, fought for the creation of independent national states in Europe. However, within the framework of European international law, this principle was not fully recognised. The existence of multi-national European empires, based on a colonial system were facts running counter to the principle of nationality and the right of self-determination in that time.

Professor Yankov pointed out that during the period of the bourgeois democratic revolutions (17th and 18th centuries), the idea of self-determination was confined towards recognition of the so-called „principle of nationality“. The principle proclaimed the right of the nations to form separate countries or states. Characteristic of the content and significance of this principle was its limitation, conventional and declarative character. In practice, it concerned only the European nations, and only those nations deemed civilised(1).

The emergence of UN as an international organisation has created a political climate for promoting this principle.

This principle was formulated (for the first time in an official international document of universal significance) in Article 1, page 2 of the UN Charter: „To develop Friendly Relations among Nation

on the Basis of Respect for the Principle of Equality and self-determination of Nations“.

In this case, however, reference was made toward tendencies in international relations (to develop friendly relations). Whereas the principle of equality and self-determination itself, was only indicated as means of achieving this end. In fact, if there is no equality among all nations on the principle of self-determination, it would be difficult to establish friendly relations. The right of people to self-determination proclaimed in the Covenants of 1966, is in full conformity with the U.N. charter, which calls for respect for the principle of self-determination as applied both to the peoples and nations having statehood, and to the people who are still fighting for their independence. On this occasion the commission on Human Rights also rejected the attempt to artificially separate the right of peoples to determine their political status from the right to determine their economic, social and cultural status. It was proposed, for instance, that the Covenant on Civil and Political Rights should contain the right of nations to their political status, whereas the right to their economic, social and cultural status should be included in the Covenant on Economic, Social and Cultural Rights. The commission noted that these specific rights of a people or nation were inalienably connected with its right to self-determination and were included in that right as its components(2).

The principle of self-determination of the peoples attained a new meaning and significance with the conformation of the new international policy and New World order. The international community comes out with a new strategy in dealing with international problems at such violation scale. After the Gulf war and the humanitarian tragedy in Bosnia-Herzegovina the international involvement has become more essential in providing protection against aggression and preventing atrocities towards minorities in many part of the world.

The effectiveness of the international involvement in these conflicts has become the only relevant option especially after the

escalation of humanitarian disasters in Kosovo. Furthermore the idea of creating the safe haven 'protectorate' for ethnic minorities, which has been subjected to atrocities, has voiced international concern as well as utilising the international mandate as a legal instrument for providing protection for the minorities concerned and to keep maintaining the world peace and security.

The growing concern among European nations and international community, concerning the idea of establishing the protectorate for Kosovo raises new hopes for oppressed minorities, that under no circumstances will the international community stay idly by when the central government is committing atrocities in such a scale. As far as the Kurdish people are concerned, I suppose that the international community will no longer tolerate aggression and ethnic cleansing against Kurdish minority that are living within the boundary of respective states. As a matter of fact the international reaction in dealing with Yugoslavian crisis sends a clear message to the dictatorship and nationalistic governments that any gross violation of international humanitarian law will be strongly condemn and a proper action will be taken accordingly. In relation to this new concept I hope that the application of such decision to the situation in Kurdistan is very much essential and valid in terms of preventing atrocities and providing protection for the Kurdish minority, which is systematically being subjected to.

It's realistic fact that the new political thinking and the New World Order Strategy has opened new possibilities within the International factor in solving important regional and international issues.

In connection with the new situation I will propose a democratic non-violent means of settling the Kurdish problem in correspondence to International terms of agreement in the Human Rights field. It is being mentioned in the report "XXI Strengthening the framework for Human Rights": "It is essential to secure the legal framework for rights. All States should include guarantees of

rights in their constitutions, which should be constitutionally protected against erosion by legislative amendments. They should also ratify international human rights instruments. They should review their legislation and administrative practices against national and international standards with the aim of repealing provisions, which contravene these standards, particularly legislation carried over from the colonial period(3). The applicability of such standards in the case of Kurdish people essential in reaching the peaceful and fair solution for the Kurdish issue.

According to the UN Charter the legal importance of the principle of self-determination could be internal and external:

1. Internal self-determination- the voluntary union with another nation in a common multi-national state.
2. External self-determination- the right to the people to separate into an independent state.

In connection with the new situation in the Iraqi Kurdistan, I am seeking the solution for the problem or in other words how to get out of the crisis in which the federal body is placed. Therefore I am at that point, suggesting several proposals for the solution, and how to be considered as a juridical procedures, aiming at stepping forward to maintain the democratic institutions and to promote its democratic achievements.

Actually, the concept at this point provides the juridical means for the fair and democratic settlement for the issue, through exercising the very fundamental rights of the Kurdish people, in holding a referendum on the issue. The referendum is one of the most appropriate forms of direct democracy and of a truly free expression of the peoples will.

As a matter of fact it is being implemented by many nations and minority groups, for obtaining their right to self-determination in compliance with international law. In this connection, the Kurds also should have the same opportunity to exercise its right through referendum for realisation of self-determination in the framework of Iraq. In addition to that I am not ruling out the possibility, that the



next step could be declaring an independent Kurdish entity or, asking UN for a status (a mandated territory) over the Kurdish area, or a new international term (protectorate) which has been suggested in dealing with the Kosovo problem. Certainly such a step should be taking place through a referendum and to be determined transitional period for this step.

In this way the search for democratic and non-violent means of settling the Kurdish problem in this part will have favourable impact on the other parts of Kurdistan. In order to reach a fair solution of the issue in corresponding to international terms of agreement in the human rights field and minority protection.

In the last 10 years the concept of holding referendum has become a very relevant mean for the people to determine their political status by exercising their Right to self-determination. As a matter of fact many ethnic minorities have taken opportunity to demonstrate this act. The applicability of this Democratic principle in the field of minority issue has widely gained a ground internationally. In terms of providing protection for minorities and preventing atrocities against them, the international community has voiced increasingly concern to find a peaceful settlement for This sensitive issue, because one of the main issues forward by the new world order is the applicability of the international humanitarian Law in the field of ethnic conflicts, which were resulting from national problem and the identification of ethnic. It is one of the most topical questions of our time.

The intensified national feelings of the oppressed peoples, the inconsistent measures have undertaken to settle the problems, and conflicts in certain regions of the world, are evidence of the significance and complexity of the national question.

These are the reasons why, whomsoever wants to solve the problem should approach it in a very cautious and delicate way because, „...even the finest mistake in solving the national question shall have fatal and incorrigible consequences.“ In my view the negotiated settlement for these conflicts is very much

successful if the international community has committed to facilitate the process of carrying out a referendum as a valid option before these people, to determine their future, and to provide assistance by creating a democratic environment within respective states, where the conflict brings the two communities in the state of war. In such a situation the body of international community should step in, and mediate the final solution for determining the future existence of the territory populated by minorities involved in the conflict. With regard to that fact the attention will be focused on two settlement options. 1. In the first case we shall examine the possible solutions to problems involving minorities in the multiethnic state, including the promotion of mutual understanding between and among minorities and governments. It shall be dwell on the reconciliation process of the parties involved in the conflict, and trying to ease imbalanced relationships between dominating majority and oppressed minority. It will be conducting negotiations between the two sides for the settlement of disputes over main issues and to promote some kind of political self-rule for the disputed region, that should be established in the area populated by minority in question. Recommendably the negotiations should be encouraged by international mediator, or direct participation of international institutions. It is being mentioned in UN Charter, Chapter VI, Article 33 that such an approach should be provided in order to maintain international peace and security, when it deems necessary to call on the parties to settle there dispute by such means. 2. In the second case the aspect of the problem shall include the intention of minority or the territory populated by ethnic group, actually to act as a sovereign entity and has some actual exercise of authority over the area. Indeed, because the entity has existed (de facto) for a long time and has an acquired mandate by a local population. On the other hand the respective state had withdrawn its authority from the area. In a giving situation we could utilise referendum for determining the future of that area. Many territories had practised it in the past. As far as Iraqi Kurdistan is

concerned a great number of international Law experts support and suggest, that this option could be used in determining the future of the Kurdish safe area in Iraq. By prescription this area titles as a legal or acceptable by continued existence over a long period. We exemplify in this case a maxim (e facto oritur, jus) which is at the root of prescription in all systems of Law. Under such a status we should guarantee the free development of national and religious minorities and ethnographic groups, residing in the territory of Kurdistan.

In this way we can come to the conclusion that the Kurds may also utilise these options, since the respective states would not recognise the Kurds right to self-determination and committing atrocities towards them by military or economical means.

1. Prof. Yankov, vol. 29, p. 354
2. M. Anatoly, Human Rights and International Relations. 1988 Moscow p. 114
3. International Quarterly of Human Rights, v. 16, No. 4, dec. 1998 p. 550 (Netherland)

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## CONCLUSION

Bearing in mind the conclusions reached in this expose, we can infer:

(1) National self-consciousness, as a social and psychological factor has been of primary importance in the formation of the Kurdish nation. It has been so well developed that it overcame the weaker influence of economic, political, territorial factors. Its objective form of being is the national liberation movement with its broad social basis.

(2) Since the emergence of the Kurdish question, up until the Second World War, the main goal of the Kurdish National Liberation Movement was a complete national liberation with the establishment of an independent Kurdish state. A Kurdish state which could determine its future developments in a sovereign and independent way. After the Second World War, however, the Kurdish National Liberation Movement, fell under the influence of Stalin's policy in the Soviet Union and the main aim of total self-determination of the Kurds was displaced by the idea of an autonomy within the boundaries of the Kurd populated territories in their respective states. An opportunity for creating the independent Kurdish entity and attaining the right to self-determination was missed.

(3) That the Kurdish question held an insignificant place in the international political life. The reason being the wrong strategy utilised by the Kurdish National Liberation Movement in terms of the needs and forms of struggle. The internal guerrilla movement as a single force proved insufficient. Moreover, it places the Kurdish National Liberation Movement into an international isolation. Another factor for isolation can be found in the backward, political, economic and cultural development of the Kurdish people and because of lacking statehood institutions, placing it in an unfavourable light thus accounting for the lack of interest by the great powers. Additionally, any outside interference could have

escalated the tension in the Middle East. These are reasons why, whenever the Kurdish question surfaced on the international stage, the Kurdish people found themselves as tacit observers of states actions determining Kurdish fate in actual fact or legally.

(4) Until the past realities had not been in favour of the Kurdish people, factually the Kurdish question has not been tackled in any United Nation resolution as well as the possibility of the implementation of resolution (1415 -1960) as a legal mean of receiving colonial status for Kurdish people had been missed . In respective states the constitutional recognition has not been achieved yet. At the present time, the situation has changed in favour of the Kurds and the new approaches have been conducted by international-community in dealing with the ethnic problems and the right to self-determination has become the valid option for many nationalities, on the other hand, democratisation imposing itself on political, social and international life demands that internationally recognised Human Rights Conventions should require a real guarantee through confirmation in individual state legislation so that every Minority shall enjoy equal rights within the framework of multinational states. Without these basic principles it will not be realistic to speak of a civil society and a constitutional state.

With regard to that new established policy, the constitutional settlement based on federal system should be formed as a legal framework for final solution, because only a democratic and constitutional system can completely guarantee the right of ethnic minority in the framework of multinational state. By recognising the legitimacy of national minority and ethnic groups to exercise freely their national right to self-determination and to identify themselves and be accepted as sovereign and independent culture, these rights shall be protected by basic law of the state.

Such a legalisation certainly can result in every practical way towards reconciliation and co-existing within the framework of respective states. If such provisions are not fulfilled in

correspondence to the generally recognised norms and principles of International law, there will be no safeguard to ensure the basic freedom and the legitimate right to self-determination. Basically that is a legal formula what the Kurds should have fought for in Kurdistan.

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