

The Role of International Law in Solving Issues Related to the Disputed Territories in Iraq

Sanh Shareef Qader

Soran University, Faculty of law, Political Science and Management, Iraq -Kurdistan Region

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Abstract

Disputed territories can be classified into three different types: disputed territories between sovereign states, the sovereign state government and local contenders, and sovereign state components. Although the principles of international law do not exactly mention the matter of "disputed territories", they emphasize that states must solve their conflicts without resorting to violence. The disputed territories discussed in this article are the Kurdistan Regional Government (KRG) and the Federal Government of Iraq. This paper aims to examine the role of international law and national law in resolving issues about the disputed territories in Iraq. This paper also seeks to discuss the failure of the Iraqi federal government to solve the issues related to the disputed territories and explore the role of international law mechanisms in this regard. This study found that international law does not play an effective role in resolving these issues, and at the same time, Iraq has not carried out its constitutional and international legal duty adequately. Thus, the study recommends that the United Nations proposed the establishment of an interim administration of joint jurisdiction over these disputed territories between the Federal Government of Iraq and KRG. There is also a need to determine the role of international mechanisms in binding both sides to the international legal solution to implement Article 140 of the Constitution of 2005 within a specific period.

Keyword: *International law, Disputed territories, Kurdistan Regional Government, Disputed territories of Iraq, Legal status of Iraq's disputed territories.*

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Asst. Prof. Dr. Sanh Shareef Qader

Soran University, Faculty of law, Political Science and Management, Iraq -Kurdistan Region

1. Introduction

Disputed territories are often the main problem and cause of conflict between states and governments. The ownership of a disputed territory cannot be given to any one party; however, they may be divided equally or appointed as 'owners' through a third party. Sometimes, a state's constitution determines the constitutional or legal framework for disputed territories when they are a problem between entities within the states. For instance, Article 140 of the Iraqi Constitution of 2005 gives disputed territories a legal and constitutional context, where disputed territories have to submit to constitutional solutions. Although the intervention role of the United Nations (UN) in the internal affairs of countries—not between countries—in case of conflict is consultative alongside the International Court of Justice (ICJ), the UN Security Council can make proposals to resolve the dispute if it poses a threat to international security. Territories are disputed due to political or economic reasons, resulting in governments' or states' attempts to control them and strengthen their power over them. The states or entities within a state will attempt to govern the disputed territories by justifying their existence through the idea of majority and minority of populaces according to a place of birth. However, the majority of disputed territories sometimes suffer from an enforceable and illegitimate rule and struggle against it for a better life under the government. Historically, there have been various disputed territories in the modern world which have remained unsolved between states and entities of a state, such as the internally disputed boundaries between China and Taiwan, which in addition to China's claim over the two islands of Matsu and Kinmen, also includes demands for full sovereignty over Taiwan (The World Factbook, 2023); the case of the Statute of the Brcko District of Bosnia and Herzegovina which was solved by the ICJ (Brcko Arbitration, 1999); and the issues involving the Kirkuk province and the associated conflict areas located on the border between Iraq and the Kurdistan Region. The disputed territories can be regarded as a basis for global insecurity. Therefore, the importance of this study is in resolving this issue to protect the national security in Iraq and global security in general through international legal and constitutional instruments. Hence, two questions arise: (1) Are the disputed areas in Iraq subject to international or national law? (2) If the actions by the Iraqi Federal Government in resolving the issues are not in line with national law, can international law play a role in this regard? To answer these questions, this study aims to identify the role of international law and national law in resolving the issues about the conflict areas in Iraq. The study also seeks to examine the failure of the Federal Government of Iraq in resolving these issues according to national law and explore the role of international law in the absence of a solution under national

law. Thus, this paper discusses the understanding of territories that are contended by sovereign states, the sovereign state government and local contenders, and sovereign state components. It also conducts the international instruments' role in solving disputed territories through the UN organs, particularly the disputed territories between entities of a state. Then, it defines the disputed territories of Iraq and applies international and constitutional commitment towards solving the disputed territories of Iraq.

2. Methodology

This research applied legal doctrinal and qualitative methodologies. Under this section of research methodology, the discussions and findings can be found from the types of data and methods of data collection. The types of data include primary data and secondary data. The former includes formal documents and status of the Iraqi government rules, for example, the UN charter, ICJ and the Iraqi Constitution. The secondary data comprises several texted sources, for example, articles in journals, textbooks, international instrument resolutions, and internet sources. Data for this research was gathered through library and interview methods. The interview forms for this research were "semi-structured and open-ended interviews". Five participants comprising experts in international law were selected based on their academic positions in each of the following institutions: Portsmouth University, School of Law in the UK, Salahaddin University-Erbil, College of Law, Soran University, Faculty of Law, Political Science and Management and Halabja University, the College of Law in the Kurdistan Region of Iraq, and one official of the government who was the former chairman of the Kirkuk Provincial Council and current advisor to the Prime Minister of the KRG.

The reason for choosing these academics is to provide unbiased and scientific information on the subject without any pressure to maintain the impartiality of the research and to present the authenticity of the subject while demonstrating the real reasons for non-solving this issue by the government officials. However, one of the limitations of this study is that the researcher was unable to interview government decision-making centre officials on this issue due to their unavailability.

3. Understanding the Territories at the Heart of the Issue

Scholars have given a great deal of attention to disputed territories. As Tanaka (2016) mentioned in his paper, issues about disputed territories have become the focus of scientific attention. Some scholars emphasize using peaceful mechanisms to settle the issues in disputed territories, but Tanaka (2016) believes that the conflicts dominate the solution to this type of problem; the main reason for this phenomenon is the escalation of the conflicts leading to the outbreak and spreading out of the war between rivals that cannot be controlled.

Similarly, Mancini (2023), who wrote the article titled *Uncertain borders: Territorial disputes in Asia* mentioned that many academics have studied the relationship between disputed areas and the start of warfare because disputed territories are typically thought to be

the greatest frequent causes of warfare. He provided an example of how researcher John Vasquez concluded that "when you demand to evade the war, master resolving territorial disputes peacefully and without the use of military force." However, it is crucial to stress that not every disputed territory results in warfare. He supported his quotation by stating that ninety-seven disputed territories have been settled from 1953 onwards by bilateral agreements, neutral third-party mediation, adjudication, or through the ICJ. Examples include the case of Aouzou, a disputed area between Chad and Libya, which was settled by the ICJ (Shukla, 1999); the case of the Chagos Archipelago that Britain considered part of her own, but the ICJ ruled this illegal and considered it part of Mauritius (ICJ Advisory opinion, 2019); and the case of Brcko between Bosnia and Herzegovina (Brcko Arbitration, 1999). He referred to the reasons for the conflicted areas, saying that the willingness of the state to make concessions on a disputed area seemed to rely largely on the importance that was attached to it, whether this importance was expressed in concrete terms including economic and political interests, or imperceptible terms including racial, national, or symbolic terms (Mancini, 2013).

Furthermore, Nakano mentioned, because of the intricacy and variety of facts, disputed territories frequently arise. For instance, it might be incredibly challenging to discover the information needed to determine whether an area was *terra nullius*¹ or property of another State, and which state has effectively gained authority over it when a colonial claim is made. He underlined that the reason or an actual foundation for the legitimate exercise of territorial sovereignty for a specific region of land is the existence of identity to the territory. The traditional methods of acquiring identification of territory have been determined as historical, authentic and cultural evidence, occupation of the territory and demographic changes of the territory, and other characteristics known as the territory (Nakano, n.d.).

Similarly, in his article, Connerty mentioned that conflicts concerning territory entail issues of sovereignty and the notion of identification. Evidence intended to demonstrate the identity of the disputed territory given by the claimant and not the opposition is submitted to an international court when faced with opposing claims on claims to territory. There are two main ways to prove that a disputant is entitled to a piece of land. The first way focuses on the source of identification and the other depends on cases in which a justly straightforward and unambiguous claim to sovereign territory may be shown (Connerty, n.d.).

Mitchel defined the disputed territories differently, saying that they arise when authorized delegates of one state declare overt claims of sovereignty over a particular area of land that is governed or demanded by a state. She added that disputed territories are more likely to stem from other sorts of diplomatic conflicts connecting cultural, economic, identity, river, maritime or other problems to escalate into armed conflict. Most of the wars between states have been over conflict zones. Compared to non-contiguous states, countries with contiguous boundaries are more prone to go to war with one another, particularly if there are disputed territories. Restless increases in areas of territory which are highly valued occur due to religious different sects, historic national demands or natural resources (Mitchell, 2018). The latest examples in

the modern world are the war between Armenia and Azerbaijan in 2020 and the war between Russia and Ukraine (Khurshudyan & Cunningham, 2022, "War in Ukraine," 2022).

Disputed territories can be categorised into three distinct types, which are between the sovereign states, the sovereign state government and the local contender, and the sovereign state components. The disputed territories between sovereign states usually threaten one of the opposers' territorial integrities; for instance, Nazi Germany's demands on the Sudetenland in interwar Czechoslovakia, Argentine's demands to the Falkland Islands, and Spanish demands to Gibraltar. During the last two instances, the state with a free and independent name to the disputed land firmly and effectively protected the power structure, containing their armed forces. However, in the earlier case, an international Treaty titled the Munich Treaty gave major authorities of the day such as Germany, the UK, Italy and France power to seize the disputed territory to the contender (Wolff, 2010).

Avis opined that conflict regarding disputed territories has been linked to a variety of economic and political objectives, subjective factors, and struggle over limited natural resources and possessions. The history of these conflicts, the extent of the disputed territories, and the significance of these conflicts for the multilateral or bilateral ties between the powers which influence them all vary substantially. He argued that there are many different methods to classify disputed territories; firstly, the disputed territories concern the homeland. They are the most complicated because they jeopardize state unity. Secondly, boundary demarcation disputes occur when disputants may principally agree on a territory but they still do not agree on where the boundary direction should be located. Lastly, functional conflicts are not related to territory or borders, but to the understanding of the parties to the conflict within a defined boundary. However, these types frequently entail disputes regarding natural resources (Avis,2020).

Similar to Avis, Yiallourides and Yihdego argued that there are several major reasons why disputed territories escalate such as the planned significance of the disputed territories, the significance of the territories economically, the significance of the territories for reasons of ethnicity, culture, or religion, and the unresolved boundary paths as a result of disputants over it. However, they emphasize that the spread of conflict areas is mainly due to geographical border factors, especially between adjacent states. This has been emphasized by relevant studies, especially in terms of security violations in the adjacent states, which create the conditions for the physical occupation of the territory. They continued to argue that economic, political and national reasons could be behind the rise of the conflict areas (Yiallourides & Yihdego, 2019). Fang and Li also added that disputed territories are not resolved in a short time, and can take many years, even more than a century. Such disputes may lead to long wars; even if one side loses the war, it still considers ownership of the disputed area as its own. They further argued that disputed territories include a continuous characteristic due to historic ownership. Both authors exemplified that, Jerusalem, the Falkland Islands, and Taiwan are examples of disputed territories that one party claims on historical grounds (Fang & Li, 2020).

An example of a disputed area between components within a single state is the case of Brcko. Brcko was a disputed area between Bosnia and Herzegovina, where both of these states considered Brcko a territory within their federated states. The dispute was later resolved through international arbitration which decided that the district must have independent autonomy and no party must have authority over it (Brcko Arbitration, 1999).

Although southern and northern Sudan are now two independent states, the oil-rich territory of Abyei was previously the subject of great dispute between both states. However, the states later reached an agreement to take the dispute to the ICJ. In 2009, the ICJ defined the area geographically. After that, public opinion through a referendum was sought regarding whether they wanted to remain with northern Sudan or return to southern Sudan to become an independent state (Gray, 2009). These types of solutions can be applied to the situation in the disputed territories in Iraq because, within the disputed territories, the problem is between the components themselves on the one hand and between the Iraqi federal government and KRG on the other. Further, it neither threatens Iraqi unity nor causes secession from Iraq. However, it should be noted that the issue includes a regional dimension that affects the decisions of the components within the disputed territories, which prevents solving the disputed territories (Shareef, 2022). Nonetheless, as in the cases of South Sudan and Brcko, if both KRG and the Iraqi Federal Government agreed to do so, they could take this issue to the ICJ (see section 6).

In light of the above, it is clear that disputed territories are disputed for several reasons, including ethnic, cultural, political, historical, and economic reasons. These conflicts continue until they are resolved, even if the conflicting parties are at war against each other. In other words, even if the parties to the conflict think they will resolve the conflict areas by war, they continue to disagree. On the other hand, it can be said that the issue of disputed areas has an international framework, whether between states themselves or between components within a state, which raises the issue of how international law should deal with such cases. For this purpose, it can be primarily relied on the UN Charter and the International Court of Justice, described in the following section.

4. Role of International law in Solving Disputed Territories

This section classifies the role of international law regarding disputed territories over that of the UN and the ICJ. International law instruments can offer the main theme for helping state rulers to resolve their territorial conflicts. This is based on two assumptions regarding international law features. Firstly, international law principles seem to be communal acquaintances between nations formed by official channels; for example, conventions, treaties, court decisions, customary international law, fundamental principles, and legal researchers' texts. As a result, they are a well-known source of third-party speech for representatives to denote once they disagree on conflicts. Secondly, international law offers a communal group of norms for evaluating the comparative legitimacy of competing allegations. This characteristic is especially crucial in solving allocation issues as it offers a way of defining

which of the several possible forms to split the disputed territory must be chosen by the state officials (Huth, Croco & Appel, 2011).

On the other hand, most constitutions, especially recent ones, comprise clauses defining how a state conducts its commitments to principles of international law, including Articles 8 and 44 of the Iraqi Constitution of 2005, which will be discussed in the next section. Some of these clauses merely define the processes whereby a state can bargain, confirm and ratify conventions, occasionally attributing separate responsibilities to distinct subdivisions of a state. Another type of tangible clause states that a state will fulfil its international commitments. In many other cases, the constitutions outline the interaction between international agreements and national law, and also the solutions for any internal conflicts (Deeks & Burton, 2007). Therefore, the states must provide space in their constitutions and domestic laws to respect international obligations such as treaties, resolutions, and conventions, which are sources of international law for guiding countries to deal with the issues which have influenced their countries' stability and the international community.

Disputed territories among countries or authorities as well as entities in the states (Wolff, 2010) have considerable significance in the international community, mostly because they pertain to the basic right of countries, self-determination, and because they are significant for international security. International law seems to have important relationships with disputed territories as they address the international law foundation. Thus, infringement of the boundaries or disputed territories of a state constitutes a risk to the actual safety of a country's territory and the entitlement of an international law individual. Furthermore, disputed territories are occasionally presented before the ICJ; for example, in Costa Rica and Nicaragua case in 2005 ("List of Cases referred to the Court since 1946, " n.d.).

The appearance of international law that could revert to the seventeenth century from its contemporary formula is followed neither by the establishment of a global government nor the repudiation of the usage of force by countries once there is a conflict between countries or between states (Merrills, 2005). Accordingly, the fundamental principles and processes for resolving international conflicts, in particular, interstate conflicts are considerably similar to those defined and enacted in the 1945 UN Charter (Marotti & Palchetti, 2018). It is, therefore, the responsibility of the parties to a conflict to resolve it peacefully under Article 2(3) of the UN Charter, which provides that "Each Member state shall use nonviolent measures to resolve any international conflicts so as not to jeopardize international peace, security, or justice" (UN Charter, 1945).

A 1970 resolution of the UN General Assembly, following Article 2(3), declares that "Member states shall try to resolve their international conflicts promptly and fairly through mediation, conciliation, negotiation, investigation, adjudication, jurisdictive action, recourse to regional companies or agreements or other nonviolent ways of their decision" (UNGA resolution 2625, 1970). This clause, which is also superimposed on Article 33(1) of the Charter,

provides “The states to any conflict must first attempt to resolve it through mediation, investigation, negotiation, conciliation, adjudication, jurisdictional resolution, recourse to regional agencies or procedures, or other nonviolent ways of their choosing before turning to other options.” Thus, the different methods of peaceful solutions are stated as the main way to deal with all international conflicts (Kremenjuk, 2002).

On internal disputes of the states, Article 2(7) of the UN charter states that “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”. So, the text of this Article makes it clear that the task of interpreting Article 2(7) normally involves issues such as what is meant by the phrase "to intervene"? For this question, in the framework of the UN Charter, Article 2(7) has been considered as containing the basis of non-interference because the word "intervene" may be intended to refer to any deed taken by any United Nations body in respect of an issue in the national jurisdiction of certain States. Therefore, the Article embodies the principle of non-intervention, which applies to all United Nations bodies to not interfere with any State's national jurisdiction regarding their tasks (Ahmed, 2006).

The aims of the UN, which are stated in Article 1 of the Charter, highlight "the settlement to the matters among member States by an opinion to keeping international peace and security, evolving friendly ties between states, attaining global collaboration in resolving economic, societal, cultural or human issues and promoting human rights, and to become a centre for matching states' behaviours in achieving those aims. Protecting international peace and security is one of those interconnected aims" (UN Charter, 1945). According to the Charter, the UN has two separate duties; firstly, to put an end to military conflict at whatever time it takes place and secondly, to help the sides to global conflicts to resolve their disagreements peacefully. Therefore, three UN organs have a key role to perform in nonviolent dispute resolution; the Secretariat, the Security Council and the General Assembly (Merrills, 2005, p.237 and 238).

The functions of the UN Security Council stem from Section VI of the Charter, which is entirely on the peaceful solution of conflicts. Article 38 provides, among others, that "If all involved parties in a conflict request it, the Security Council might offer advice to the parties to reach a solution." (UN Charter, 1945). However, it is evident that Article 2(3) enforces a public commitment on Member countries to resolve conflicts peacefully; only severe or significant conflicts are considered to be a matter for the Council.

The specific function of the Security Council is highlighted in Article 52(2): “Before submitting local issues to the Security Council, the Members of the United Nations engaging into such agreements or establish such agencies shall use all reasonable efforts to reach a peaceful resolution of such local conflicts through such regional arrangements or by such regional agencies.” However, it should be noted that, despite these considerations, the Council

is entitled at any moment to suggest suitable processes or improvement techniques under Article 36(1) (UN Charter, 1945).

The Security Council and the General Assembly have used their authorities extensively to suggest conflict solutions to countries. According to Article 33(2) of the UN Charter, "When required, the Security Council shall request that the parties use such a method to resolve their conflict". However, as mentioned earlier, Article 33(1) provides that any dispute that threatens international peacekeeping must be resolved through peaceful measures. In 1976, for instance, the Council mediated Greece and Turkey to continue straight dialogues on their distinctions to respect the conflict across the Aegean Sea and did their utmost to guarantee this would lead to commonly satisfactory settlements (Security Council Resolution 395, 1976).

However, there is another way to resolve disputed areas between states, which is through the ICJ as a body of the UN. According to Article 92 of the UN Charter, the ICJ is the main judicial body entrusted with the solution of conflicts that rise among countries, to achieve international peace and security. The statute of the court is automatically a contract to which each member state of the United Nations is a member under Article 93(1), which states "The International Court of Justice's Statute makes all United Nations members ipso facto parties" (UN Charter, 1945). The ICJ's jurisdiction to consider cases brought before it is, like a universal rule, optional. The sides to the conflict must agree to have recourse to ICJ (Soares, 2014). Thus, it can be said, no State can be compelled to resort to the court against its will and cannot approve the court's power to hear the conflict.

However, to be heard by the ICJ, disputes must be brought by states exclusively. Article 34(1) of the ICJ's statute provides that "only states have the right to take sides in disputes before the Court". In the circumstance of no members of the UN, they can join the court system on conditions determined through the General Assembly for each case by the suggestion of the Security Council under Article 93(2). However, under Article 35(2), countries that are not members of the Court if they accept the terms established by the Security Council may submit a case to show that they are a side of the Court (Shoukry, 2016 & UN Charter, 1945). Importantly, the ICJ is not only open to the UN members and the Court's Statute, as non-member countries and even non-state actors can complain about their disputes before the court.

It is imperative to mention the jurisdictions of the ICJ. According to the court's statute, it has the following three jurisdictions: First, judicial competence, which authorizes the ICJ to solve lawful cases referred to it through countries in different cases, such as acceptance of the sides to the case by a particular consent to refer the dispute between them to the court, a provision in a collective or bilateral agreement that any future disputes regarding the interpretation or implementation of this agreement must be mentioned to the ICJ, and the parties to the case have approved the mandatory authority of the Court by making declarations under Article 36(2).

Second, advisory competence, according to Article 65 of the ICJ's statute, at the demand of any authority that may be permitted by or in compliance with the United Nations Charter to issue such a demand, the court might offer an advisory opinion on any lawful matter. Lastly, the rule enforced by the court, which means if the dispute is brought before ICJ, whether it was through a claim or a particular agreement, the court must apply the law to settle the dispute. However, Article 38 of the ICJ's statute stipulates that international law is the law that is applied before the court in all cases before it (ICJ, 1945 & Mkhalfi, 2015). Hence, this article has identified the bases of international law.

As mentioned earlier, the Abyei dispute between southern and northern Sudan, which was an inter-communal conflict within a state, resulted in an international solution. After a peace agreement was reached between the parties, the issue was referred to the ICJ, which decided to hold a referendum in the area. Furthermore, the case of Brcko, which was an internal dispute between Bosnia and Herzegovina, was also referred to the ICJ after three and a half years of war. The court called for the Brcko case to be resolved through the Dayton Agreement² or the establishment of a temporary supervision system to return the indigenous people to their territory and create the conditions for the realization of human rights throughout the region. In addition, the court considered it necessary to prepare for the establishment of a democratic local government that represents the entire Brcko region. In 1999, the court's final decision was to create a joint administration between the two sides in the region. This decision was supported by the UN (Aceris Law, 2018).

In general, it can be argued that, at the international level, the settlement of disputes under the UN Charter and the ICJ ultimately leads to peace. At the national level, the UN charter emphasizes the principles of non-intervention through United Nations organs within the domestic authority of the states. It also authorizes the Security Council to make a recommendation to any dispute among UN member states which threatens international peacekeeping. Likewise, the UN charter does not determine the sort of dispute, whether at the international level or national level; it only refers to the word "dispute." It only focuses on peaceful ways to solve disputes ("The Rule of Law in Conflict- and Post Conflict Situations," 2011). However, the role of the ICJ can be considered as resolving issues about disputed areas between entities within a single state. The Abyei regions between southern and northern Sudan, and the Brcko region between Bosnia and Herzegovina, were among the cases that the ICJ found a solution to after the parties to the conflict agreed to settle the matter through the court. This means that the ICJ can play an effective role in resolving territorial disputes within a state and between states.

5. Disputed Territories of Iraq

The beginning of the emergence of Iraq's disputed territories tracks back to the discovery of oil for the first time in 1927 in these territories, especially in Kirkuk province. During that time, Iraq privatized its petroleum production, providing fresh, uncontrolled authority above the internal inhabitants of the country. The Ba'ath regime³ asserted that they could forcibly integrate Kurdish people within the container of an Arab nation and used military force. This was the start of the strategy of Kurdistan's blackened earth (Albert, 2018). Villages of Kurdish people have been destroyed and households have been compulsorily moved to other areas of the state, especially the desert areas of the south. Meanwhile, thousands of Arab households were transferred from the south to conflicted areas, particularly Kirkuk. The Kirkuk province's forced assimilation was ongoing. The racialization of Kurdish petroleum-rich areas, especially Kirkuk, happened to come with forced assimilation, altering the appearance of Kurdish characteristics. The oil discussion focused on the Kurdish view of Kirkuk and other contested territories' ethnic origins ("Article 140, 2008").

Initially, the disputed territories populate by Kurds, Arabs, supreme specifically Kurds, Assyrians, Yazidis, Turkomen, and Shabaks. They have become a major problem between the Iraqi government and the Kurdistan Regional Government (KRG), particularly after the 2003 U.S. occupation and political rearrangement. After the U.S. occupation in 2003, the Kurds established a region called the Kurdistan Region of Iraq (KRI) to recover territory, they archaeologically deemed theirs (Bartu, 2010 and "Learn about Iraq's disputed territories" 2017). The disputed territories cover an area of about 40,000 square kilometres and are home to more than 3 million people from different Iraqi communities (Salem, 2022). However, the disputed territories are partly under the control of the Baghdad government and the other parts are under the control of the KRG.

Currently, the Kurds hold portions of Nineveh Province, Kirkuk Province and Diyala Province (Morris, Wiryra & Ala'Aldeen, 2015) about the four present provinces in KRI such as Erbil, Dahuk, Halabja and Sulaymaniyah ("The Kurdistan Region in Brief, "2019).

These disputed territories include segments of four pre-1968 border provinces: firstly, Nineveh province, which comprises the northern portion of the county of Al-Shikhan that had been under Kurdish power. Next are the counties of the Nineveh lowlands of Assyria, Shabak and Yazidi, and the combined Arab and Yazidi inhabitants of Sinjar and Tel Afar. The Sinjar County and portions of Tel Afar County in the north and the Nineveh lowlands are presently in the hands of the power of the Iraq Federal Government, for instance, Al-Hamdaniya, Al-Shikhan, Tel Kaif counties (Hama, 2019 & Al-Shammari, 2017).

Secondly, the Kirkuk province's pre-1968 boundaries comprise the Chamchamal and Kalar counties of the Sulaymaniyah province and the Tooz counties of Salah ad Din and the Kifri counties of Diyala. Kirkuk province boundaries have been modified by the addition of Kurdish-controlled counties to the governors of Erbil and Sulaymaniyah. The counties of Arabs were

annexed to the Kirkuk province. The villages of Turkmens were annexed to Diyala Salahuddin provinces (Dagher, 2008). However, all the Kirkuk governors were taken over by Kurdish forces as the Iraqi troops escaped due to the entry of the ISIL terrorist group to Northern Iraq on 12 June 2014. The Kirkuk province is, at the time of writing of this paper, presently under the command of the Iraqi Federal Government (Chmaytelli & Jalabi, 2017).

Third are Diyala and other provinces which include the Khanaqin, Kifri and Baladrooz counties of the Diyala province, Tooz County is presently a portion of the Salah ad Din province, and Badra County is presently a portion of the Wasit province. Many, but not all, of these counties, are presently in the hands of the Kurdistan Regional Government (KRG) ("Committee of Article 140," n.d.). Lastly, in Erbil province, the conflicted areas contain the county of Makhmur which has been segregated from the remainder of the governorate since 1991. Following their 2017 war, the Iraqi Federal government and KRI have been at odds over the county ("Peshmerga repel Iraqi forces in Makhmour," 2017).

Apart from the above, it is imperative to refer to the legal position of Iraq's disputed territories, which can be defined in two different eras: firstly, the era of the Law of Administration for the State of Iraq for the Transitional Period⁴. Article 58 of the Law stipulates the steps that the government must take, stating that "By taking actions, to redress the unfairness brought on by former regime's methods, represented in changing the population status of specific areas, containing Kirkuk province, through the deportation and expulsion of people from their dwellings, and through forced migration and from within and outside the region, and the settlement of people from elsewhere to the region, and denying the people from work, and making nationality accurate." These steps include the following: 1) Restore the inhabitants to their homes and properties, and if this is not done, the government should compensate them with fair compensation; 2) Concerning persons who have been denied a job or another source of livelihood to force them to leave the areas and territories where they had been living, the government should encourage the provision of new job opportunities for them in those regions and lands; 3) Regarding national correction, the government should rescind all pertinent decisions, and give the impacted people the freedom to choose their nationality and ethnicity without compulsion or pressure; and 4) Appointment of a neutral arbitrator to come up with recommendations on border management modified by the previous regime (Law of Administration for the State of Iraq, 2004 & Human Rights Watch, 2009).

Secondly, the Iraqi permanent constitution of 2005, which is currently effective, states in Article 140 that " First; the executive authority must take the required actions to finish implementing all of Article 58 of the Transitional Administrative Law's subparagraph requirements. Second, the executive authority chosen by this Constitution shall be subject to the obligations imposed on the executive branch of the Iraqi Transitional Government under Article 58 of the Transitional Administrative Law, provided that it completes fully (normalization, census, and concludes with a referendum in Kirkuk and other disputed territories to ascertain their citizens' will) by a date not to exceed December 31st (Iraq

Constitution, 2005). The implementing committee referred to in Article 140 refers to the areas which are in conflict as Arabised, the boundaries of which were altered between 17 July 1968 and 9 April 2003 ("Committee of Article 140," n.d.).

6. Application of International and Constitutional Commitment in Solving the Disputed Territories of Iraq

This section will apply the situation of disputed territories of Iraq in terms of international and constitutional law. The type of disputed territories between sovereign state components is the one that best suits the situation in Iraq because there are internal border disputes that do not lead to their secession from Iraq, and thus do not violate Iraqi sovereignty. They have two characteristics such as; it is a conflict between multinational groups of disputed territories including Kurds, Turkmen and Arabs, and a conflict between Erbil and Bagdad, therefore the territorial legal standing and the inner management agreements in the disputed territories are at issue (Wolff, 2010).

Article 140 of the Iraqi constitution provides that "First, the government power shall follow the required actions to fulfil the execution of the specifications laid down throughout all sentences of Article 58 of the Transitional Administrative Law (TAL), Second, Accountability to the Executive Branch of the Iraqi Transitional Government as given for in Article 58 of the Transitional Administrative Law shall prolong and persist to the Executive Branch nominated according to this Constitution, given that the government branch fully performs (normalization and census and contain a referendum in Kirkuk and other disputed areas To specify will of their residents), from a deadline not exceeding 31 December 2007." This Article essentially addresses the solution to the wrongs of the Ba'ath regime's oppressive Arabization policies, which also comprised the reshaping of administrative boundaries to embrace further Arab cities in the area. Likewise, the Article relates to a referendum which declares whether the Kurdish parts of the four areas Diyala, Salahuddin, Kirkuk and Ninevah would become units of the Kurdistan region. The referendum on Kirkuk is part of the greater referendum process. It also says that, until the referendum is held, the Arabization policy should be reversed. Therefore, it provided that a complete "normalization, census and referendum" is held in Kirkuk and other disputed areas to ascertain the determination of their people by a deadline not to outstrip December 31, 2007 ("Article 140, 2008"). However, it can be seen that the Iraqi Federal Government has not executed its constitutional duty concerning the settlement of disputed areas as the deadline for carrying out article 140 is 31st of December 2007, whereas the Iraqi government is still present in 2022(Sulaivany, 2018).

In terms of international law, Article 33(1) of the UN Charter mentions that any dispute that threatens international peacekeeping must be resolved through peaceful measures. Similarly, the General Assembly resolution 2625 of 1970 emphasizes that states must attempt to resolve their international conflicts promptly and fairly by mediation, investigation, negotiation, conciliation, arbitration, judicial action, recourse to regional companies or

agreements or other peaceful means of their decision. Furthermore, the UN, according to Article 2(7), cannot intervene in the internal disputes of states unless there is a serious threat to international peace and security. Thus, the UN cannot intervene in the case of the dispute between Iraq and the Kurdistan Region because it is not a dispute between the two states. However, this Article has sparked much debate as to whether the UN can intervene. Therefore, it can be said, the UN can intervene when an internal conflict causes a serious threat to world peace and security, or when there is a great humanitarian disaster involving people's lives through violations of their rights. This means that the UN can intervene if a very serious situation arises, even if Article 2(7) prevents it from doing so (Andreevska, n.d). Aja Agwu (2014) highlighted that the UN has interfered in internal disputes within states, such as its involvement in overthrowing Muammar Gaddafi's regime and in the Ivory Coast elections. The author criticized the UN for interfering in the political affairs of states under the pretext of humanitarian intervention.

This can also be seen as a suggestion that the UN can play a similar role in Iraq's internal disputes, especially in the disputed territories. This is because successive Iraqi governments have not attempted to resolve the issue about the disputed areas, and military means have been used by both the Iraqi Federal Government and KRG. An example is the war between KRG's security forces known as Peshmarga and the Iraqi army in 2017 ("Iraq takes disputed areas," 2017). For that reason, it can be said that even though the UN Mission in Iraq was established in 2003 via Security Council Resolution 1500, it has not played a direct and effective role in resolving this major issue between the Iraqi Federal Government and KRG. This is because the war between the two sides has caused great humanitarian disasters in the areas, including the burning of houses, looting, and seizure of agricultural land by the Arabs. Other violations include the denial of freedom of expression and discrimination, along with many other fundamental rights violations that have a direct impact on the lives of citizens in these areas (Shareef, 2023).

The UN Security Council has the right to recommend an appropriate mechanism for solving the problems between states or entities of the state under Article 36(1) at any time. This Article may not apply to the Kurdistan Region or the conflicts between Iraq and the Kurdistan Region because the Kurdistan Region is not a state. Nonetheless, the UN Security Council could play a role, as it did in the conflict between Abkhazia and the Georgian government. The UN recognized the region as a legal part of Georgia but made a special and effective intervention by establishing its representation in 1993 under Resolution 858 to reinforce the peace agreement and prevent war. In another case, the UN Security Council Resolution 1076 of 1996 called for a ceasefire between the Afghan parties and the adoption of political dialogue to resolve their differences peacefully (Beardsley et al., 2015; UNSC, Resolution 1076, 1996).

However, the April 2009 UNAMI Report on Disputed Internal Borders classifies the areas into two groups. The first includes the Diyala, Salahaddin, and Ninewa provinces, and the other is comprised of only the Kirkuk province. The Kirkuk city and the counties of Daquq, Hawija,

and Daquq are regarded to be governed via the province of Kirkuk. This province is at the centre of the conflicted areas which attract the attention of not only the Iraqi Federal Government and KRG, but also Iran, Turkey, and the United States (USA). Therefore, a peaceful solution to the Kirkuk issue is of particular significance. Staffan de Mistura, ex-head of the UN Assistance Mission for Iraq (UNSC Resolution 1546, 2004; Charara, 2018), described the issue about Kirkuk as “the source of all conflicts” between the Iraqi Federal Government and KRG (Turcan, 2009).

He suggested that the date of 31 December 2007 should be extended by six months as set out in Article 140. The Iraqi and Kurdish rulers have consented to this proposition together with the Kurdistan Regional Parliament. However, no advancement has been produced in the preceding duration, so the date of 30 June 2008 has not only gone with no consequence but also without a fresh expansion or government declaration of any kind. The mechanism of Article 140 should have died in the senses of the majority of the performers, except for the Kurdish leaders who still maintain that this was just another postponement and not expiration (International Working Group to Prevent Conflict Worldwide, 2008). Moreover, the Iraqi Federal Supreme Court decreed that Article 140 of the 2005 Constitution can remain in effect till it is applied and that the deadline stated in Article 140 does not impact its core ("Article 140 on disputed areas 'remains in effect,' 2019). Therefore, it can be said that although the international community has intervened in the Iraqi state to play its role in solving the disputed territories, so far, its role seems ineffective. Meanwhile, this scenario has led to Iraq not paying much attention to resolving its disputes, especially in the disputed areas with the Kurdistan Region.

On the other hand, Article 25 of the UN Charter states that "The Members of the United Nations agree to accept and carry out the decisions of the Security Council following the present Charter." Article 52(2) also gives states precedence to resolve their internal disputes before the UN Security Council intervenes. Therefore, despite the role of the UN advisor in the disputed territories, Iraq has not respected it and has not implemented the recommendations of the UN Security Council to resolve the issue of Kirkuk as a conflict area.

Similar to the role of the UN Security Council, the role of the ICJ is more advisory than decisive; in other words, the role of the court depends on the agreement of the sides to the case under Article 93(1) of the UN charter. Article 34(1) of the ICJ's Statute refers that only states have the right to take their dispute to court. However, Articles 32(2) and 93(2) state that non-state actors cannot unless they fulfil the conditions of the UN General Assembly found on the suggestion of the Security Council under Article 93(2). Accordingly, it cannot compel Iraq to submit to the ICJ for solving its disputed territories as Iraq may not want to take the case to court. Conversely, the KRG as the second party in the case cannot take the case to court because the court hears it with the consent of both parties, like in the cases of the Abyei region between southern and northern Sudan and the Brcko region between Bosnia and Herzegovina. On the other hand, the ICJ can only consider the case unilaterally at the suggestion of the Security

Council in any circumstances. KRG, therefore, must endeavour to request the Security Council through the UN Mission in Iraq to play a decisive role in this regard.

In light of the above, it can be seen that international law, through the UN and the ICJ, has a very weak role in addressing Iraqi internal disputes. These two institutions also deal more with UN member states. Although the UN has encouraged the Iraqi Federal Government to resolve the issues about the disputed areas with KRG, the Iraqi Federal Government has neither undertaken an international consultative role nor been committed to constitutional solutions. At the same time, without intervention by the UN Security Council, KRG cannot resort to the ICJ to resolve the disputed territories' issues due to its statelessness. However, as mentioned in several previous cases, the UN Security Council can resolve the issues in disputed areas in Iraq.

7. Findings and Discussions Based on Interviews on the Issue of Iraqi Disputed Territories

This section summarizes the data obtained from the respondents to this study through interviews. The information obtained during the interviews for this study was collected by five (5) academic experts in international law from different academic institutions and one official of the government, who was the former chairman of the Kirkuk Provincial Council and current advisor to the Prime Minister of the KRG. Two of the participants were from Salahuddin University-Erbil, College of Law, two others from Portsmouth University, School of Law in the UK, and Soran University, Faculty of Law, Political Science and Management. An academician from Halabja University, College of Law wished to remain anonymous. The participants answered all the questions that were the aim of the study.

This study classified the interview questions in the context of international law and the Iraqi Constitution. The first question was, why is the role of international instruments, including the UN, ineffective in resolving disputes within states, and how would the role of the UN be assessed in this regard? Dr Khalid Al-Saleem (September 6, 2022), an assistant professor from Portsmouth University in the UK opined that the reason for the ineffectiveness of the UN is due to the majority of the interests of the superpowers, especially the five countries with veto rights, so the attempts of the UN often fail because they clash with the interests of those countries. He gave an example of Syria, where the Security Council failed, more than once, to issue a UN resolution regarding its ruthless regime because of the Russian Veto. He further posited that, in Iraq, due to the complexity of the regional situation and the interference of neighbouring countries, it is not expected that the UN will be able to play an active role, because the appropriate ground for the success of the efforts of the UN is the existence of a consensus of stakeholders and regional neighbouring countries, which is not available in the case of Iraq. However, another academician from Halabja University (September 11, 2022) argued that there are three reasons for the UN's ineffectiveness in solving the disputes of the states. Firstly, this role is only for characters or groups that do not have a state. In other words,

as a condition, a group that does not have a state is not subject to the UN. Similar to Dr Khalid Al-Saleem, the second reason is that for UN organs such as the ICJ, a party to a dispute must be a state before it can complain to the UN. Lastly, the UN itself does not want to solve inter-state disputes, but if it wants to, it can do so through the five Security Council members that are permanent members. Therefore, the role of the UN is ineffective in resolving disputed territories, especially for the KRG as the main party to the dispute in Iraq because the KRG is not a State character in the UN.

Meanwhile, Professor Rizgar M. Kadir (September 10, 2022) and Dr Hive Amjad (September 8, 2022) from Salahuddin University-Erbil agreed that the UN cannot intervene in the internal affairs of the states. Professor Rizgar took a different view in that the UN cannot intervene in the internal problems of the states on its own. To play such a role, it needs to have a mandate, either by the Security Council or by the country or countries concerned. The UN will therefore be a limited tool for this purpose. In contrast to the above, he also believed that the UN can work on this issue of disputed territories from one angle: to ask the Iraqi federal government and the KRG to work on this issue and encourage them to reach an agreement. In this case, the role of the UN will not be decisive, but it can be helpful. Dr Hive asserted that the UN is an international governmental organization limited by its Charter. According to Article 2(7), the UN cannot intervene in the jurisdiction of states. Therefore, the UN has limited borders and cannot directly resolve the border issue in Iraq because it depends on the Iraqi constitution. Arguably, she thought that the UN established its mission in 2003 at the request of Iraq under Resolution 1500. The first duty of this delegation is to advise and provide assistance on certain non-constitutional issues. It cannot play a decisive role in the issue of conflict areas. Hence, the UN's role is limited to urging the concerned parties to resolve this issue and reach an agreement on it. The second duty is the UN Investigation Team into crimes committed by the ISIS terrorist organization, which is authorized by the Security Council to support Iraq's necessary domestic efforts to hold ISIS accountable. Dr Soran Ali (October 27, 2022), who is an expert in constitutional law, posited that the role of the UN is related to the sovereignty of states as a respected international principle. Although the duties of UN envoys and representatives, whether in the form of individuals or staff or an organizational institution, are generally as assistants and mediators, all their work is framed within the framework of recommendations and is not binding. He suggested that the issue of disputed areas in Iraq and the role of the UN is different from the experience of other countries because, in addition to the international dimension, the international role in Iraq for the issue of these areas includes a constitutional dimension. According to Article 58 of the 2004 Constitution and Article 140 of the 2005 Constitution, the UN representative is therefore the arbitrator of the dispute.

Similarly, Rebwar Talabani (October 19, 2022), former chairman of the Kirkuk Provincial Council and current advisor to the Prime Minister of KRG viewed that the UN cannot intervene in the disputes of the states because it is considered as interference in the sovereignty of those states. The Kirkuk Provincial Council has always asked the (UN) to intervene in the issue of disputed territories, but they do not intervene, do not support any party, and only play the role

of cooperation for those who have these problems. When they met with the Kirkuk Provincial Council, they always gave them instructions to solve the problems of Kirkuk under the Iraqi Constitution; therefore, their role does not go beyond this, Talabani said.

The UN representative in Iraq has tried to bring the two governments closer together on this issue as the main side of the conflict, but its role has been a consultative rather than a decisive attempt. While Iraq is under the influence of multinational and religious, regional decisions, therefore, settlement of the disputed territories is difficult (Travers, 2022).

The second question was: why has the Iraqi Federal Government not implemented Article 140 of the Constitution? In response to this question, the academician from Halabja University thought that one of the reasons is the Kurds themselves. Although the Iraqi authorities have no intention of resolving the Kurdish issue, the Kurds did not come as the South Sudan Liberation Movement to write an agreement with Iraq on the implementation of this article, or this article could have been written under the superintendence of a third party such as the UN. However, it seems that the UN may not accept such an attempt as since 2003, the UN representative in Iraq could have raised the issue to the Security Council (UNAMI, 2003). Dr Hive added another idea that the reason for the non-implementation of Article 140 is more political rather than legal. She explained that the Kurds claimed the disputed territories through a referendum, while the Turkmen and Arabs are against this. Therefore, the KRG should file a complaint with the Iraqi Supreme Court and demand the implementation of the article. However, the Supreme Court ruled that Article 140, which deals with the disputed territories, remains constitutional and legal, although its implementation is delayed (Federal Supreme Court, No. 17, 2019).

Professor Rizgar mentioned that while there are many factors for the non-implementation of Article 140, the most important of these is the will of the powerful states such as the USA, the UK, and France that have a role in Iraq. They seem to want to keep the issue as it is. Another factor is that Iraqi parties are also showing a kind of retreat from the foundations on which the new Iraq was built. That is, they are not serious about adhering to the constitutional principles of resolving this issue, although they do not say so openly. Likewise, Dr Soran added another factor in that the Iraqi government is part of the dispute regarding territories, and at the same time, the mechanisms and procedures for the implementation of Article 140 are in its hands. Therefore, it will never create the conditions for a solution to the problem in the interest of the KRG. However, the former chairman of the Kirkuk Provincial Council and current advisor to the Prime Minister of the KRG believes that the current mentality of the Iraqi government is the same as the old mentality of the Ba'ath regime, which does not solve the issue of Article 140. To quote: "When I was in the Kurdish opposition, they used the Kurdish position to strengthen themselves and form the Iraqi state, when the state was formed and Article 140 was formed, those who fought with the Kurds and opposed the Ba'ath regime say they regret it because the Kurds and the US pressured them to include Article 140 in the constitution."

The last question of the study is whether the KRG can resort to the ICJ to resolve the issue of the disputed territories in Iraq. The five respondents shared their opinions that the KRG will not be able to resort to the ICJ because it is not a member state. While this is not an issue between two states, it is an internal issue; unless, Dr.Khalid noted, hypothetically, the region was able to influence one of the other main organs of the UN such as the General Assembly to ask the court for an advisory opinion regarding the region's dispute with the Federal Government regarding Article 140. He emphasized that this possibility is also weak but the existence of a previous UN Resolution 688 regarding the safe zone for the protection of the Kurds may help a lot in this regard, like pushing for an advisory opinion from the court, especially if the matter is linked to protecting global peace and security.

In light of the above, the role of international instruments including the UN's role is more advisory rather than decisive in settling disputes within states. The main reason for this is respect for the sovereignty of the state; hence, the role of the UN is limited. Likewise, if any party to the dispute is not a member of the ICJ, it cannot resort to the court to resolve its dispute. However, all respondents agreed that the role of the United Nations in resolving the issue of conflict areas between the Kurdistan Regional Government(KRG) and the Federal Republic of Iraq is ineffective because the issue is up to the Iraqi parties and they can only advise and assist the parties while the KRG cannot resort to the ICJ because it is not a member state. However, as mentioned earlier, the UN can play a decisive role through Security Council to settle the Iraqi disputed areas.

8. Conclusion

The paper concluded that the notion of disputed territories can be classified into three different types: disputed territories between the sovereign states, the sovereign state government and the local contender, and the sovereign state components. Each of these types has its different situation. The paper also illustrated the position of international law in settling disputed territories by exemplifying the provisions of UN organs as a source of international law. The UN, on the one hand, does not mention exactly the settlement of disputed territories in its charter but merely mentions the settlement of the "disputes," between states at the international level due to its threat to international peacekeeping and security. On the other hand, it mentioned the role of the United Nations by providing recommendations for any disputes among states and interstates, even though the UN cannot intervene in disputes within the jurisdiction of any states directly due to the principle of non-intervention. Equally, the UN emphasizes the resolution of conflicts through nonviolent ways and not using force. Thus, the role of the UN, including the Security Council, the General Assembly and the ICJ, is not very effective in resolving disputes at the international and domestic levels and is merely advisory to member states to resolve their disputes. However, it can play an effective role based on the

recommendation of the Security Council. Similarly, most of the respondents interviewed agreed regarding the ineffectiveness of the UN's role in settling the issue of disputed areas of Iraq.

The paper also identified the disputed territories in Iraq, which are mainly historical, political and administrative problems between both the Iraqi Federal Government and the KRG. It showed the legal status of the disputed territories under the Iraqi Constitution of 2005. As a result, it was analyzed that Iraq did not carry out its constitutional and international legal duty regarding the settlement of disputed territories, while the KRG is not a state that can bring the case to the ICJ. It was also noted that exterior and regional dimensions cannot be neglected in the settlement of disputed territories in Iraq, whereby they influence the multicultural and different nations within these territories.

In general, the role of international law through the UN institutions and the ICJ in resolving the issues about the disputed areas in Iraq is very weak. There is inadequate legal protection because the conflict is not between two states. This scenario has left the Iraqi government without strong international pressure to resolve the issue. Nonetheless, it is possible to recommend to the UN increase its role in addressing the issues about the disputed areas between the Iraqi Federal Government and KRG. For this purpose, until the constitution is implemented, the Kurdistan Region and the Iraqi Federal Government could agree on a proposal to establish an interim authority to administer the disputed areas under direct UN supervision or to jointly administer the areas for a specific period. After this period, the UN should present a geographical definition through the Security Council by Article 140 of the constitution of 2005 for this solution, similar to the cases of Abyei between North and South Sudan, as well as Brcko between Bosnia and Herzegovina.

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¹Terra nullius means "nobody's land". This doctrine has existed in the law of nations throughout the development of Western democracy. The fact that it is a Latin phrase gives us the clue that it is derived from Roman law – the concept that ownership by seizure of a thing no one owns is legitimate. For further, see Justice Jagot. (2017, October 20). *The Rule of Law and Reconciliation*.

² The Dayton Agreement is a peace agreement signed in Dayton, Ohio, USA, in 1995. It ended the ethnic war between the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska that lasted for more than three years. See further Clinton, Bill (1995) *Dayton Accords: international agreement*.

³ Ba'ath regime, which governed Iraq between 1968 and 2003, since 1979 under Saddam Hussein, has been characterized as an oppressive regime. To maintain control over the populace, the Baath regime resorted to numerous means of persecution, including murder, humiliation, and death. For further, see European Union Agency for Asylum. (2019). Former Baath party members.

⁴ After the 2003 Iraq Invasion, Iraq's temporary constitution became known as the Transitional Administrative Law or TAL. On March 8, 2004, the Iraqi Governing Council signed it. During the handover of power from the Coalition Provisional Authority (CPA) to the Iraqi Interim Government, the TAL became effective on June 28, 2004. (IIG). For further, see McConnell, M., & Bremer III, L. P. (2006). My Year in Iraq: The Struggle to Build a Future of Hope and Iraq: Law of 2004 of Administration for the State of Iraq for the Transitional Period [Iraq], 8 March 2004.

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رؤى ياسای نیودهولتهتی له چار سهسرکردنی کیشهکانی په یوهست به ناوچه جیناکۆکهکان له عیراق

پروفیسوری یاریدهدهر د.سانع شریف قادر

زانکۆی سوران، فاکهلتی یاسا، زانسته سیاسییهکان و کارگیری، عیراق - ههریمی کوردستان

پوخته

دهکرتیت خاکه ناکۆکهکان بۆ سێ جۆری جیاواز پۆلین بکرتین: خاکه ناکۆکهکانی نیوان دهولتهاتی خاوهن سهروهی، حکومهتهکانی دهولتهتی خاوهن سهروهی و رکابهه ناوخبیهکان، و بیکهاتهکانی ناو دهولتهاتی خاوهن سهروهی. ههرچهنده پرهنسیپهکانی یاسا نیودهولتهتییهکان به وردی باس له بابتهتی "خاکه جیناکۆکهکان" ناکهن، بهلام جهخت لهوه دهکهنوه که دهولتهکان بهی ئهوهی پهنا بۆ توندوتیژی بههن، دهبیت ناکۆکهکانیان چار سهسر بکهن. ئهوه خاکه جیناکۆکهکانه ی بواری ئهم توژی نهوهیه له خۆدهگرتیت؛ بریتین له حکومهتی ههریمی کوردستان و حکومهتی عیراقی فیدرالی. ئامانج لهم توژی نهوهیه لیکۆلینهوهیه له رؤی یاسای نیودهولتهتی و یاسای نیشتمانی له چار سهسرکردنی کیشهکانی په یوهست به ناوچه جیناکۆکهکان له عیراقدا. ههروهها ئهم توژی نهوهیه ههولدهات باس له شکستی حکومهتی فیدرالی عیراق له چار سهسرکردنی کیشهکانی په یوهست به ناوچه کیشه له سهرهکان بکات و لیکۆلینهوهیه له رؤی میکانیزمهکانی یاسای نیودهولتهتی له بارهوه بکات. لهم لیکۆلینهوهیهدا دههکوتوه که یاسای نیودهولتهتی رۆلکی کاریکر نییه له چار سهسرکردنی ئهوه کیشانهدا و له ههمان کاتدا، عیراق ئهکی یاسایی دهستووری و نیودهولتهتی خۆی به شیوهیهکی گونجاو جیهه جی نهکردوه. بهم شیوهیه توژی نهوهیه که پیشنیاری ئهوه دهکات که نهتهوه بهگرتوهکان پیشنیاری دامهزراندنی ئیدارهیهکی کاتی دهسهلاتی دادوهی هاوبهش به سهسر ئهم خاکه جیناکۆکهکانه له نیوان حکومهتی فیدرالی عیراق و حکومهتی ههریمی کوردستان، بکات. ههروهها پێویستی به دیاریکردنی رؤی میکانیزمه نیودهولتهتییهکان ههیه له پابهنگردنی ههردوو لایهن به چار سهسری یاسایی نیودهولتهتی بۆ جیهه جیکردنی مادهی ٤٠ ی دهستووری سالی ٢٠٠٥ له ماوهی دیاریکراودا.

و شه کلیلییهکان: یاسای نیودهولتهتی، خاکه جیناکۆکهکان، حکومهتی ههریمی کوردستان، خاکه جیناکۆکهکانی عیراق، دۆخی یاسایی خاکه جیناکۆکهکانی عیراق.

دور القانون الدولي في حل القضايا المتعلقة بالمناطق المتنازع عليها في العراق

أ.م.د. صانع شريف قادر

جامعة سوران، كلية الحقوق والعلوم السياسية والإدارة، العراق - إقليم كردستان

ملخص

يمكن تصنيف الأراضي المتنازع عليها إلى ثلاثة أنواع مختلفة: الأراضي المتنازع عليها بين الدول ذات السيادة، والأراضي المتنازع عليها بين الحكومة المركزية ذات السيادة والمتنافسين المحليين، وكذلك بين مكونات الدولة ذات السيادة. وعلى الرغم من أن مبادئ القانون الدولي لا تذكر بالضبط مسألة "الأراضي المتنازع عليها"، إلا أنها تؤكد على أنه يجب على الدول حل نزاعاتها دون اللجوء إلى العنف. المناطق المتنازع عليها التي تمت مناقشتها في هذا المقال هي حكومة إقليم كردستان (KRG) والحكومة الفيدرالية العراقية.

الهدف من هذه البحث هو البحث عن دور القانون الدولي والقانون الوطني في حل القضايا المتعلقة بالأراضي المتنازع عليها في العراق. كما يسعى هذه البحث إلى مناقشة فشل الحكومة الفيدرالية العراقية في حل القضايا المتعلقة بالأراضي المتنازع عليها واستكشاف دور آليات القانون الدولي في هذا الصدد. وجدت هذه الدراسة أن القانون الدولي لا تلعب دورا فعالا في حل هذه القضايا، وفي نفس الوقت لم يحم العراق بواجبه الدستوري والقانون الدولي بالشكل المناسب. وبالتالي، توصي الدراسة بأن تقترح الأمم المتحدة إنشاء إدارة مؤقتة للولاية القضائية المشتركة على هذه الأراضي المتنازع عليها بين الحكومة الاتحادية العراقية وحكومة إقليم كردستان. كما أن هناك حاجة لتحديد دور الآليات الدولية في إلزام كلا الجانبين بالحل القانوني الدولي لتطبيق المادة 140 من الدستور لعام 2005 خلال فترة محددة.

الكلمات المفتاحية: القانون الدولي، الأراضي المتنازع عليها، حكومة إقليم كردستان، الأراضي المتنازع عليها في العراق، الوضع القانوني للأراضي العراقية المتنازع عليها..