

The Urgent Reawakening of the Assyrian Question in an Emerging Iraqi Federalism: The Self-Determination of the Assyrian People

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*We are a people torn apart from era to era, from country to country, yet all of us have maintained hope in the midst of hopeless and senseless situations. In the midst of these circumstances we have tried to hold onto physical life amid psychological demise. In the face of ache, anguish, and anxiety of living in so many uncertain situations and in so many foreign lands where hopes unborn have died, we have firmly believed that justice buried will rise again*¹

I. INTRODUCTION

The Assyrian Question has now reemerged with a sense of gravity and urgency that have not been felt since the immediate aftermath of World War I. The status of the Assyrians—an ancient ethnic and religious minority of Iraq—has currently come into question regarding the effect of key provisions in the 2005 Iraqi Constitution. The gravity of the situation stems, foremost, from observing a rapid Assyrian exodus. Based on being deliberately targeted and attacked, Assyrians have fled Iraq *en masse*. The urgency of the situation recalls the historical neglect of Assyrians in the diplomatic arena. Many Assyrians fear that, as in the past, claims of Assyrian rights and recognitions will be either ignored, or simply drowned out by a more powerful political cacophony. History justifiably suggests that mere promises of protection are insufficient, and therefore, something greater and more tangible is required, before it is too late.

This comment argues that Assyrians are an indigenous people under international law and are therefore entitled to the full exercise of their internal political and cultural self-determination. In order to effectuate this right, some heightened form of federally-based self-administration would be appropriate because such solutions are consistent with both Iraqi and international law. Part I of this article introduces Assyrians and the grave impact that the current war in Iraq has had on them. Part II elaborates on the Assyrian Question as a broad theme in contemporary Assyrian history and principle backdrop of the current struggle for Assyrian rights and protections in Iraq. Part III surveys the law of the self-determination of peoples and corresponding remedies, in particular, forms of federally-based autonomy. Additionally, this section surveys the Iraqi Constitution with a focus on the provisions relevant to Assyrian rights. Part IV argues that Assyrians are a people who are entitled to self-determination on account of their distinct historical, linguistic, and ethnic features. Next, several autonomy-based pro-

1. PETER H. TALIA, BETWEEN HOPE AND HOPELESSNESS 23 (1985); *see also Isaiah* 19:23-25.

posals are briefly surveyed and then broadly defended as being consistent with international law and the Iraqi constitutional framework. A form of increased territorial-based self-governance will be further defended on the ground that it can promote democratic stability, provide critical protections to a vulnerable population, and enhance economic equity due to historical deprivations. Lastly, two criticisms of autonomy-based proposals will be summarized and then answered.

A. WHO ARE ASSYRIANS?

Since the fall of the ancient Assyrian Empire, Assyrians have remained in Iraq for the past two thousand five hundred years.² It has been a continuous and rich, yet often burdensome and suffering heritage. Descending from the ancient Assyrian Empire, modern Assyrians possess a distinct ethnicity.³ As such, Assyrians constitute the Aramaic-speaking Christians who live in Iraq, the Middle East, and throughout the world.⁴ Worldwide, the Assyrian ethnic population has been estimated at nearly 4.25 million.⁵ Today within Iraq, Assyrians constitute approximately three percent of the

2. *See generally* FREDERICK A. APRIM, *ASSYRIANS: FROM BEDR KHAN TO SADDAM HUSSEIN: DRIVING INTO EXTINCTION THE LAST ARAMAIC SPEAKERS* (2006); Simo Parpola, *National and Ethnic Identity in the Neo-Assyrian Empire and Assyrian Identity in Post-Empire Times*, 18 *J. OF ASSYRIAN ACAD. STUD.* 5 (2004) (discussing the continuity of the ancient and modern Assyrians); Vahram Petrosian, *Assyrians in Iraq*, 10 *IRAN & CAUCASUS* 113 (2006).

3. W.A. WIGRAM, *THE ASSYRIANS AND THEIR NEIGHBORS 178-79* (photo. reprint n.d.) (1929).

4. The use of the term "Assyrian" raises a broad array of issues in regard to ethnic identity. The first issue is that Assyrian, an ethnicity, is commonly confused with Syrian, nationals of the country Syria. *See, e.g.*, *Mansour v. I.N.S.*, 230 F.3d 902, 907-09 (7th Cir. 2000) (remanding a Board of Immigration Appeals decision because the board mistakenly classified the plaintiff as a *Syrian* Christian, rather than an *Assyrian* Christian). Another significant issue involved with the term Assyrian is that it has been used pejoratively to refer to Chaldeans and Arameans who, in some measure, consider themselves as distinct from Assyrians. *See generally Names of Syrian Christians, in* WIKIPEDIA, http://en.wikipedia.org/wiki/Names_of_Syriac_Christians (last visited Sept. 8, 2008). The debate between Assyrians and Chaldeans arguably originates from the split of the Uniat Church from the Nestorians, by which that group sought to distinguish themselves from the Nestorian Church and the heresy associated with Nestorius. *See* JOHN JOSEPH, *THE NESTORIANS AND THEIR MUSLIM NEIGHBORS* 10 (1961). Reflecting important unities, modern political terminology still retains the distinction by the use of the terms "Chaldo-Assyrian" or "Assyro-Chaldo." *See infra* note 39. Resolving longstanding demarcations over ethnic terminology is beyond the scope of this comment. For the purposes here, the inclusive classification of being both Aramaic speaking and historically Christian captures the essence of a right of self-determination as belonging to the Assyrian people because language, religion, and relative historical continuity constitute the centrally unifying features of all these groups.

5. *ETHNOLOGUE: LANGUAGES OF THE WORLD* 442-43 (Raymond G. Gordon et al. eds., 15th ed. 2005) [hereinafter *ETHNOLOGUE*].

population, concentrating mainly in the Nineveh Plains in northern Iraq.⁶ Outside Iraq, a vast number of other Assyrians are dispersed throughout the world in numerous countries.⁷

Several characteristics differentiate Assyrians from their surrounding culture. Whereas the predominant regional language is Arabic, Assyrians speak a native language commonly known as Assyrian, neo-Aramaic, or Syriac.⁸ It is a pre-Arabic language that derives directly from Aramaic, the ancient *lingua franca* of the Middle East, and further descends from ancient Akkadian.⁹ In addition, whereas the majority religion of Iraq is Islam, Assyrians have been overwhelmingly Christian and, in fact, possess a Christian heritage that traces to the Apostolic Era.¹⁰ Often, it has specifically been on account of their religion that Assyrians have been subjected to particular torments and persecutions.¹¹ Finally, Assyrians are distinct because, by inhabiting Iraq and surrounding regions continuously for thousands of years, it can be reasonably claimed that the Assyrians possess an indigenous heritage.¹²

B. THE PRESENT WARTIME IMPACT UPON ASSYRIANS

In light of the turmoil in Iraq, Assyrians, as Iraqi Christians, have experienced a unique set of personal threats that severely jeopardize their future survival in Iraq.¹³ Recently Michael Cromartie, the Chair of the U.S.

6. CIA, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html> (last visited Dec. 19, 2007) [hereinafter *CIA Factbook*]; see also KERIM YILDIZ, *THE KURDS IN IRAQ PAST, PRESENT, AND FUTURE* 51 (2007).

7. ETHNOLOGUE, *supra* note 5, at 442-43; *Languages of the World: Aramaic*, <http://www.nvtc.gov/lotw/months/august/Aramaic.html> (last visited Dec. 19, 2007).

8. *THE WORLD'S MAJOR LANGUAGES* 656 (Bernard Comrie ed., 1987) [hereinafter *LANGUAGES*].

9. *Id.*

10. J.F. COAKLEY, *THE CHURCH OF THE EAST AND THE CHURCH OF ENGLAND: A HISTORY OF THE ARCHBISHOP OF CANTERBURY'S ASSYRIAN MISSION* 5-6 (1992); SURMA D'BAIT MAR SHIMUN, *ASSYRIAN CHURCH CUSTOMS AND THE MURDER OF MAR SHIMUN* (photo. reprint 1983) (1920); *CIA Factbook*, *supra* note 6 (stating that Iraq is 97% Muslim).

11. See discussion *infra* Parts I.B, II.A-B.

12. See discussion *infra* Part IV.A. Assyrians need not claim the status of being the sole indigenous people of Iraq in order to claim their right to self-determination under the current indigenous peoples conventions.

13. U.N. SEC. COUNCIL, U.N. ASSISTANCE MISSION FOR IRAQ [UNAMI], *HUMAN RIGHTS REPORT 1 APRIL-30 JUNE 2007* ¶¶ 30-32 (n.d.); *The Plight of Religious Minorities: Can Religious Pluralism Survive?: Hearing Before the Subcomm. on Africa, Global Human Rights and International Operations of the H. Comm. on International Relations*, 109th Cong. 58-88 (2006) (statement of Ms. Rosie Malek-Yonan, Author, *The Crimson Field*) (discussing the gravity of the Assyrian predicament and providing extensive documentation of Assyrian victimization); *To Provide Special Immigrant Status for Certain Iraqis, to Assist Iraqi Refugees, and for Other Purposes*, H.R. 2265, 110th Cong. (2007); *Expressing Concern*

Commission on International Religious Freedom, summarized the urgency of the problems that Assyrians face in Iraq as a vulnerable Christian minority:

While all Iraqis are threatened by violence, the non-Muslim minorities face particularized forms of harassment and abuse; what is more, these groups appear to suffer a degree of violent attacks and other human rights abuses disproportionate to their numbers.

. . . .

Faced with these harsh realities, thousands of members of Iraqi religious minorities have fled the country, seeking refuge in neighboring states and among growing diaspora communities in the West. According to some reports, nearly half of Iraq's indigenous Christian population is now living outside the country. Although comprising only 4-5 percent of Iraq's pre-war population, the UN High Commissioner for Refugees (UNHCR) reports that almost 40 percent of registered refugees are Christians.¹⁴

Assyrian suffering has been disproportionate and has occurred on the basis of their minority ethnic and religious status.¹⁵ Alarming, Assyrians face threats from many actors and in various geographical regions of Iraq.¹⁶ In particular, Assyrian churches in Baghdad have been bombed, and clergy

for the Status of the Assyrian People in Post-War Iraq, H.R. Res. 272, 108th Cong. (2003); see also Expressing Concern for the Plight of Assyrians in the Near East, H.R. Res. 332, 105th Cong. (1997); Kevin Walsh, *Victims of a Growing Crisis: A Call for Reform of the United States Immigration Law and Policy Pertaining to Refugees of the Iraq War*, 53 VILL. L. REV. 421, 423-28 (2008).

14. Letter from Michael Cromartie, Chairman, U.S. Comm'n on Int'l Religious Freedom, to Condoleezza Rice, U.S. Sec'y of State (Sept. 5, 2007); see also Letter from Barack Obama, U.S. Senator-Illinois, to Condoleezza Rice, U.S. Sec'y of State (Sept. 29, 2008) (on file with author) (reiterating "concern about the safety and well-being of Iraq's Christian and other non-Muslim religious minorities . . . [such as] Catholic Chaldeans, Syriac Orthodox, [and] Assyrian[s]").

15. While Assyrians are amongst the suffering minorities in Iraq, they are not the only one. Others such as Yezidis, Turkomen, and Armenians are also susceptible. The Yezidis, for example, a syncretistic minority religious group, have also been subject to violent attack, one in which more than 200 were killed. James Glanz, *Iraq Toll Reaches 250 in the Deadliest Attack of the War*, N.Y. TIMES, Aug. 16, 2007, at A6.

16. DEP'T. OF STATE, 109TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2005, at 1866 (Comm. Print 2006).

and civilians viciously murdered.¹⁷ Furthermore, civilians have been kidnapped, held for ransom, and often killed.¹⁸ Many Assyrians have been driven from their villages after the institution of *jizya*, the Islamic tax often levied on non-Muslims, which has been instituted under the threat of conversion or death in places such as Dora.¹⁹ Often, also because Assyrians are Christians, they are seen as being aligned with the “Western enemy,” and this intensifies their targeting by insurgent groups.²⁰

Assyrians have suffered discrimination in employment as well, and many of their businesses have been targeted for violence.²¹ Though democratic voting has been instituted in Iraq, Assyrians attempting to vote have often been blocked or intimidated from effective participation.²² In addition, there have been longstanding issues of unresolved land possession cases.²³ Many Assyrian families have had their lands seized by squatters and lack adequate remedies.²⁴ Now that many more Assyrians have fled, if they return, the restoration of their properties remains a serious question.

Many of the funds from the United States that have been targeted for redevelopment have been inequitably distributed to Assyrians. Recently, in congressional hearings on the distribution of reconstruction funds, Representative Diane Watson characterized this problem as “apartheid-like de-development of an ethnic community,” that was, in effect, leading to the de-Christianization of certain areas, such as the Nineveh Plains.²⁵

17. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, 2007 ANNUAL REPORT 39 (2007); *Assyrian Boy Beheaded, Burned in North Iraq*, ASSYRIAN INT’L NEWS AGENCY, Oct. 6, 2004, <http://www.aina.org/news/20041006144824.htm>; *Iraq: Kidnapping of Archbishop Highlights Christians’ Plight*, ASSYRIAN INT’L NEWS AGENCY, Jan. 18, 2005, <http://www.aina.org/news/20050118123047.htm>; Colin McMahon, *Gunmen Abduct Mosul Archbishop; GIs, Iraqi Police Killed in Separate Attacks*, CHI. TRIB., Jan. 18, 2005, § 1, at 1; Alex Rodriguez, *Blasts Hit Iraq Christian Churches*, CHI. TRIB., Aug. 2, 2004, § 1, at 1.

18. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, 2005 ANNUAL REPORT 12 (2005) (“[T]he kidnapping epidemic in Iraq has disproportionately targeted Iraqi Christians.”).

19. Liz Sly, *Baghdad Christian District Besieged: Many Flee Dora as Militants Insist on Islam or Death*, CHI. TRIB., May 9, 2007, § 1, at 1.

20. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, 2003 ANNUAL REPORT 34 (2003).

21. DEP’T. OF STATE, 109TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2004, at 1829 (Comm. Print 2005).

22. DEP’T OF STATE, *supra* note 16, at 1861; *see also* DEP’T OF STATE, *supra* note 21, at 1826 (stating the Independent Electoral Commission of Iraq “faced intimidation by rejectionists[,] . . . [and] in [the] Ninewah Province received death threats”).

23. HUMAN RIGHTS WATCH, CLAIMS IN CONFLICT: REVERSING ETHNIC CLEANSING IN NORTHERN IRAQ 43 (2004), *available at* <http://hrw.org/reports/2004/iraq0804/iraq0804.pdf>.

24. DEP’T OF STATE, *supra* note 16, at 1857.

25. *Hearing on Iraq Reconstruction Before H. Comm. on Foreign Affairs*, 110th Cong. 76-79 (2007).

Targeting, abuse, and hostility have driven massive numbers of Assyrians and other Christians into exodus.²⁶ The situation remains in crisis proportions and without intervention, the future of Assyrians in Iraq remains in serious jeopardy. The present fear is based upon what is happening and what has happened to Assyrians historically.²⁷ A brief survey will show why Assyrian people have reason to take such threats with the utmost seriousness.

II. HISTORICAL CONTEXT

A. THE ASSYRIAN QUESTION AND THE AFTERMATH OF WORLD WAR I

The Assyrian Question was the phrase given to the inquiry of resolving the suspended and indeterminate status of the Assyrians during the nation-building period which followed World War I.²⁸ Similar questions were raised regarding other minorities, many of whom also suffered grave persecution under the Ottoman Empire.²⁹ Discussing the Assyrian Question entails the summary of a few principle points.

At the forefront of the discussion is the fact that Assyrians suffered genocide under the Ottoman Turks and lost nearly two-thirds of their total population over the course of the Great War.³⁰ Along with the Armenians, Assyrians, as a similarly vulnerable Christian minority, were targeted for utter annihilation.³¹ Renowned British historian Arnold Toynbee has extensively documented the evidence of the atrocities committed against Assyrians and Armenians and affirms the charge that the Turks “did their best to

26. Yochi J. Dreazen, *Iraq Sees Christian Exodus*, WALL ST. J., Sept. 27, 2004, at A17; Michael Luo, *Iraq's Christian Minority Flees as Extremist Threat Worsens*, N.Y. TIMES, Oct. 17, 2006, at A1; Katherine Zoepf, *The Reach of War: Exodus, Many Christians Flee Iraq, with Syria the Haven of Choice*, N.Y. TIMES, Aug. 5, 2004, at A11.

27. See discussion *infra* Part II.A-B.

28. See JOSEPH YACOB, *THE ASSYRIAN QUESTION* (1986).

29. There is also such a thing as the Armenian Question, and more generally, the Eastern Question. The Armenian case is dealt with most authoritatively in VAHAKN N. DADRAN, *THE ARMENIAN GENOCIDE: ETHNIC CONFLICT FROM THE BALKANS TO ANATOLIA TO THE CAUCASUS* 21 (2003); also see Vahakn N. Dadrian, *The Historical and Legal Interconnections Between the Armenian Genocide and the Jewish Holocaust: From Impunity to Retributive Justice*, 23 YALE J. INT'L L. 503 (1998).

30. THE ASSYRIAN TRAGEDY 7, 13 (photo. reprint 1988) (1934) [hereinafter TRAGEDY] (though the book is published anonymously, the author is believed to be Patriarch Mar Eshai Shimun XXIII).

31. Press Release, Int'l Ass'n of Genocide Scholars, Genocide Scholars Association Officially Recognizes Assyrian, Greek Genocides (Dec. 16, 2007) (on file with author); see also NINOS WARD, *SEYFO; THE ASSYRIAN GENOCIDE IN INTERNATIONAL LAW* (2005) (arguing that the Assyrian massacres of World War I constituted the crime of genocide under the genocide conventions).

wipe out the Syriac element in the population—the Nestorian Christians of Urmia.”³² Another scholar solemnly characterizes the memory and public perceptions of these genocides noting that while

the Armenian tragedy . . . became “the forgotten genocide[.]” [i]t should be remembered that at the same time the Turks destroyed the Armenians they wiped out other minority populations, albeit considerably smaller in size, like the Assyrians. They have become even more forgotten by the world, and their destruction has become “the obliterated genocide.”³³

This took on an even more tragic proportion since Assyrians believed they would be compensated by the Allies for their loyalty to them, and for the price that the small and suffering nation paid during the war. Assyrians fought for the Allies during World War I as well trained military regiments known as Levies.³⁴ These Assyrians fought against hostile Ottoman forces and Kurdish sympathizers in northern Iraq and southern Turkey, providing a small but effective military force.³⁵ In part, such fierce loyalty was based on representations made to them by the Allied powers, particularly the British, that when the Allies won the war, the Assyrian people would have their national interests guarded and represented.³⁶ After the war, however, Assyrian dignitaries pleaded for national rights at the Paris Peace Conference and beyond, but to no avail.³⁷ It became increasingly clear that the promises made to Assyrians had effectively been nullified.

Assyrians, along with other minorities whose hopes of nationhood were dashed, subsequently became privy to slack human rights protections

32. A.J. TOYNBEE, *TURKEY: A PAST AND A FUTURE* 32 (1917).

33. YAIR AURON, *THE BANALITY OF INDIFFERENCE* (2000); *see also* PETER BALKIAN, *THE BURNING TIGRIS: THE ARMENIAN GENOCIDE AND AMERICA’S RESPONSE* (2003) (affirming Assyrians were among the minority of small nationalities severely persecuted by the Ottomans).

34. WIGRAM, *supra* note 3, at 223.

35. TRAGEDY, *supra* note 30, at 13.

36. The author of *The Assyrian Tragedy* quotes Sir Percy Cox, a high official of the British Empire, as follows:

The Assyrians, who numbered about 35,000, were the more important element for they had been recognized [sic] as Allies by *Great Britain in the War*, and had been used by her in the campaign of 1919 in Kurdistan. A definite promise of settlement under a benevolent, if not a British government, had been made to them, and their land, if not within our administered area, was at least on the immediate frontier.

TRAGEDY, *supra* note 30, at 14.

37. Frederick A. Aprim, *Assyrians in World War I Treaties: Paris, Sèvres, and Lausanne*, *ASSYRIAN STAR*, Spring 2006, at 14-16.

enacted under Turkish and Arab sovereignty.³⁸ Initially, limited recognition during the reconstruction period was given to Assyrians in the Treaty of Sèvres, which stated, in pertinent part, that the new power structure should “contain full safeguards for the protection of the Assyro-Chaldeans and other racial or religious minorities within these areas.”³⁹ The Treaty of Sèvres, however, was superseded by the Treaty of Lausanne, which lacked such an express recognition of Assyrian human rights status.⁴⁰ Such an omission, combined with weak guarantees of protection, constituted the “backward stagger . . . which left the Christian populations of Asia Minor at the mercy of their old oppressors.”⁴¹

Assyrian delegations continued to unsuccessfully petition for Assyrian rights at the League of Nations.⁴² As the British Mandate ended, the sovereignty of Iraq shifted to the Arabs while the Turks maintained control of many of the northern areas skirting the north of Iraq. Some British officials still circulated the possibility of some independent self-governing Assyrian enclaves in Iraq.⁴³ A volatile relationship, however, existed between the Assyrians and the Iraqi government who opposed Assyrian self-governance. Not long after, General Bakr Sidqi ordered the invidious massacre of Assyrian civilians at Semele.⁴⁴ The subsequent accounts were horrific. For example, one account states:

The inoffensive population was indiscriminately massacred, men, women and children alike, with rifle, revolver, and machine gun fire. . . . Priests were tortured and their bodies mutilated. Those who showed their *Iraqi nationality* papers were the first to be shot. Girls were raped and women violated and made to march naked before the Arab army commander. Holy books were used as fuel for burning girls. Children were run over by military cars. Pregnant women were bayoneted. Children were flung in the air and

38. See THOMAS D. MUSGRAVE, SELF-DETERMINATION AND NATIONAL MINORITIES 32, 55-57 (1997) (discussing the “breakdown of the minorities treaties regime”).

39. Treaty of Peace Between the Allied Powers and Turkey art. 62, Aug. 10, 1920, T.S. No. 11.

40. Treaty of Lausanne, July 24, 1923, 49 Stat. 2692, 8 L.N.T.S. 1133.

41. 2 DAVID LLOYD GEORGE, THE TRUTH ABOUT THE PEACE TREATIES 1351 (1938).

42. Phillip C. Zane & Waleeta Canon, *The League of Nations and the Quest for an Assyrian Homeland*, ASSYRIAN STAR, Spring 2006, at 24.

43. John Joseph, *The Assyrian Affair: A Historical Perspective*, 6 INT’L J. MIDDLE EAST STUD. 115, 115-16 (1975); *contra* Khaldun S. Husry, *The Assyrian Affair of 1933 (I)*, 5 INT’L J. MIDDLE EAST STUD. 161, 161-76 (1974); Khaldun S. Husry, *The Assyrian Affair of 1933 (II)*, 5 INT’L J. MIDDLE EAST STUD. 344 (1974).

44. JOHN JOSEPH, THE NESTORIANS AND THEIR MUSLIM NEIGHBORS 203 (1961); *see also* R.S. Stafford, *Iraq and the Problem of the Assyrians*, INT’L AFFAIRS, Mar.-Apr. 1934, at 159, 178 (discussing the Semele massacre and the Assyrian predicament in Iraq generally).

pierced on to the points of bayonets. Those who survived in the other villages were now exposed day and night to constant raids and acts of violence Forced conversion to Islam Refusal was met with death.⁴⁵

B. SUFFERING UNDER SADDAM HUSSEIN

The genocidal human rights violations of the Saddam Hussein regime are well documented.⁴⁶ Even now, ghastly discoveries of mass graves—many filled with women and children—have been continually made throughout Iraq.⁴⁷ Most of the violations occurred as part of the multistage al-Anfal (meaning “the spoils”)—an ethnic-cleansing campaign of the Iraqi government, which included the targeting of Assyrians. In addition to violations against the Kurds, Marsh Arabs, and Turkomen, violations against Assyrian human rights have been documented as well.⁴⁸ According to the report of the Special Rapporteur, violations against the Assyrians included the razing of villages, murder of civilians, and destruction of churches.⁴⁹ “What happened to [the Assyrians and Yezidis] remains one of the great

45. TRAGEDY, *supra* note 30, at 53. At this time there also was an overlap with the issue of Jewish self-determination.

David Ben Gurion also related several times during the 1930s to the lessons of the Armenians and the massacre of the Assyrians, viewing their fate as a compelling and significant example of broken promises. Ben Gurion touched upon the massacre of the Assyrians, despite its limited scope (in August 1933, hundreds were murdered) He wrote in his journal, [in 1936], that he had prepared questions for friends in the British Parliament, in the event of an attack against us by the Arab lobby. One of the questions was, “What does the massacre of the Assyrians in Iraq teach us?”

AURON, *supra* note 33, at 25 (quoting 3 DAVID BEN GURION, MEMOIRS 275-76 (1976) (Hebrew)).

46. See HUMAN RIGHTS WATCH, IRAQ’S CRIME OF GENOCIDE: THE ANFAL CAMPAIGN AGAINST THE KURDS (1995).

47. See, e.g., John F. Burns, *In New Hussein Trial, a Grisly Portrait of Mass Killings*, N.Y. TIMES, Dec. 4, 2006, at A15 (stating that two hundred mass graves have been found in Iraq since 2003).

48. U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Special Rapporteur of the Comm. of Human Rights, *Report on the Situation of Human Rights in Iraq*, ¶¶ 109-13, U.N. Doc. E/CN.4/1992/31 (Feb. 18, 1992) (prepared by Max van der Stoep). But see U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities*, ¶¶ 5-7, U.N. Doc. E/CN.4/1995/134 (Feb. 7, 1995) (dismissing various Assyrian allegations of human rights violations).

49. U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, Special Rapporteur of the Comm. of Human Rights, *Report on the Situation of Human Rights in Iraq*, ¶¶ 109-13, U.N. Doc. E/CN.4/1992/31 (Feb. 18, 1992) (prepared by Max van der Stoep).

unexplained mysteries of Anfal: a brutal sideshow, as it were, to the Kurdish genocide.”⁵⁰

A substantial part of the genocidal campaign of al-Anfal was an effort to obliterate any non-Arab ethnicity through a process known as “Arabization.”⁵¹ Both historically and now, as a distinct ethnicity, Assyrians have been subject to the threat to assimilate with the prevailing cultures around them. There has been a consistent threat to relinquish the distinct culture and become “Arabized.”⁵² During al-Anfal, in particular, Kurds and Arabs were distinguished and polarized, each forced to select an ethnicity. Because Assyrians considered themselves neither Arab nor Kurd, they became the increased focus of targeting. Ironically, however, Assyrians often became categorized with the Kurds, a classification known alternatively as “Kurdification.”⁵³

III. LEGAL STANDARDS

A. POLITICAL HISTORY

Self-determination stands for the basic idea that, as a matter of right, groups of peoples are entitled to uninhibited choices regarding their own political, cultural, and social future.⁵⁴ The primary history of the principle begins with the structure of law and order that was used to reconfigure the geopolitical landscape of the fallen Austro-Hungarian and Ottoman empires.⁵⁵ In the wake of World War II, the principle was codified as a right and exemplified as a fundamental principle of international law.⁵⁶ By the middle of the twentieth century, self-determination evolved as a tool that was used to dismantle colonialism and restore power to the groups who traditionally occupied those territories.⁵⁷ In the present era, self-determination has proven to be an increasingly relevant tool for solving problems which face smaller ethnic, minority, and indigenous peoples groups.⁵⁸ The self-determination of peoples has thus become a vital, relevant, and evolving area of international law.

50. HUMAN RIGHTS WATCH, *supra* note 46, at 209.

51. HUMAN RIGHTS WATCH, CLAIMS IN CONFLICT: REVERSING ETHNIC CLEANSING IN NORTHERN IRAQ (2004), available at <http://hrw.org/reports/2004/iraq0804/iraq0804.pdf>.

52. See DEP'T OF STATE, *supra* note 16, at 1859; HUMAN RIGHTS WATCH, CLAIMS IN CONFLICT: REVERSING ETHNIC CLEANSING IN NORTHERN IRAQ 15, 42-43 (2004).

53. See, e.g., *Overcrowding and Kurdification Threaten Christians in Northern Iraq*, ASIANEWS.IT, Oct. 15, 2007, <http://www.asianews.it/index.php?l=en&art=10562>.

54. See *infra* Part III.C.1-2.

55. See MUSGRAVE, *supra* note 38, at 25-26.

56. U.N. Charter art. 1, para. 2.

57. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1372-74 (Can.).

58. See discussion *infra* Part III.D.

The broader history of self-determination connects with ideas underlying the French Revolution.⁵⁹ There, it stood as an ideological shift from a mentality of political subjugation to a posture of freedom and autonomy with respect to how people related to their governments.⁶⁰ A similar example of the effects of this mentality appeared in the thinking of the American Revolution's architects when they justified their own secession from British sovereignty.⁶¹

Much of the credit, however, for solidifying the principle of self-determination as it is understood today has been attributed to Woodrow Wilson.⁶² For instance, in his renowned *Fourteen Points* speech, Wilson set out many of the basic parameters of the principle, including national sovereignty and the uninhibited opportunity of national development and rule.⁶³ Regarding the emerging questions of self-determination in the regions geographically related to Assyrian habitation, Wilson stated that "[t]he Turkish portion of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development."⁶⁴ Alongside Wilson, further recognition of the principle was given by Vladimir Lenin, who defined that the "self-determination of nations means the political separation . . . from alien national bodies, [and] the formation of an independent national state."⁶⁵

At the end of World War I, like Assyrians, most minorities and nationalities did not have their demands for self-determination met. Instead, power was reorganized in ways that served the interests of the more dominant states, while the rights of minorities and smaller nationalities were subordinated to treaties.⁶⁶ "The whole trend of the policy of the Austro-Hungarian Succession States has been towards centralization, and the denationalization of racial minorities, a policy in violent conflict with the

59. See ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 11-13 (1995).

60. DOV RONEN, THE QUEST FOR SELF-DETERMINATION 7-8 (1979).

61. According to the Declaration of Independence, whenever any Form of Government becomes destructive . . . it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such Principles, and organizing its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

62. CASSESE, *supra* note 59, at 19-33.

63. President Woodrow Wilson, *Fourteen Points Speech Before the Joint Session* (Jan. 8, 1918).

64. *Id.*

65. VLADIMIR LENIN, THE RIGHT OF NATIONS TO SELF-DETERMINATION 11 (1951).

66. CASSESE, *supra* note 59, at 321-22.

pledges of various degrees of local autonomy given to those Minorities either under the Treaties, or outside [them].”⁶⁷

B. SELF-DETERMINATION IN INTERNATIONAL LAW

After World War II, self-determination became authoritatively recognized in the Charter of the United Nations.⁶⁸ Article 1(2) states that the purpose of the United Nations is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”⁶⁹ This inclusion was important because it signified the shift from self-determination being merely a political concept to an internationally defined legal right.⁷⁰

Many major international treaties and declarations that followed solidified the notion of self-determination in international law. For instance, the right to self-determination appeared prominently in the International Covenant of Civil and Political Rights of 1966 (ICCPR).⁷¹ The ICCPR affirms that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”⁷² Additionally, the International Covenant on Economic, Social, and Cultural Rights exhibited identical introductory language to the ICCPR on self-determination.⁷³

Additionally, the Declaration on the Granting of Independence to Colonial Countries and Peoples emphasized the right of self-determination in the context of eliminating colonialism.⁷⁴ Its language on self-determination rights mirrors the ICCPR.⁷⁵ This document is also important because, more broadly, it highlights the international debate that centered around two main positions regarding the scope of self-determination’s application to peo-

67. GEORGE, *supra* note 41, at 1393, *compare with supra* note 39 and accompanying text.

68. U.N. Charter art. 1, para. 2.

69. *Id.*

70. MUSGRAVE, *supra* note 38, at 62.

71. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter ICCPR].

72. *Id.*

73. International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), at 14, U.N. GAOR, 21st Sess., Supp No. 16, U.N. Doc. A/6313 (Dec. 16, 1966).

74. Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., 947th plen. mtg., U.N. Doc. A/4684 (Dec. 14, 1960).

75. *Id.*

ples.⁷⁶ One position argued that the right of self-determination belonged strictly to the liberation of peoples in the context of decolonization.⁷⁷ Thus, only peoples under colonialist regimes had the right to announce their self-governance and break away from the rule of the prevailing sovereignty. Others argued that the right of self-determination was not strictly limited to the context of decolonization.⁷⁸ Rather, because the language of the instruments stated “all peoples” were entitled to self-determination, the right could not be limited to colonized peoples alone.⁷⁹

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance With the Charter of the United Nations (“The Friendly Declaration”) signified the authoritative acceptance of the latter position.⁸⁰ It stated more expansively that

[b]y virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

....

... [The] subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle.⁸¹

Again, such express and nonlimiting language, along with additional reference to peoples under “alien subjugation, domination[,] and exploita-

76. See *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1372-73 (Can.); Gregory Fox, *Self-Determination in the Post Cold War Era: A New Internal Focus?*, 16 MICH. J. INT'L L. 733, 739 (1995).

77. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1372-73 (Can.).

78. *Id.*

79. Yoram Dinstein, *Self-Determination and the Middle East Conflict*, in SELF-DETERMINATION: NATIONAL REGIONAL, AND GLOBAL DIMENSIONS 243, 248 (Yonah Alexander & Robert A. Friedlander eds., 1980).

80. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations, G.A. Res. 2625(XXV), at 123, U.S. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/25/2625 (Oct. 24, 1970).

81. *Id.* at 123-24.

tion,” strongly suggested that self-determination was not limited to decolonization alone.⁸²

C. DEFINING THE SELF-DETERMINATION OF PEOPLES

1. Peoples

The existence, proclamation, and scope of the right of self-determination can be readily traced, but it is somewhat more difficult to define its component terms with authoritative precision.⁸³ A functional definition must at least address who constitutes “a people” and to what type of determination they are entitled. Some have argued that, based on U.N. Charter 1(2), “people” means “states.”⁸⁴ Such an argument, however, was rejected by the charter drafting committee who asserted that people and states were distinct concepts.⁸⁵ Additionally, the concept of people has been equated with the collective population of a state.⁸⁶ A weakness of that definition, however, was that it failed to account for distinct subgroups who could contribute to differences in the direction of the state as a whole.⁸⁷ At a minimum, a people need not be that of the state as a whole.⁸⁸ Consequently, a people can constitute a minority population within a state.⁸⁹

Conceptually, international legal scholars differentiate the objective versus subjective components of a people.⁹⁰ Antonio Cassese, for instance, offers a two-part definition of a people.⁹¹ First, it must be a national group who is a member of a state composed of different national groups of com-

82. CASSESE, *supra* note 59, at 90.

83. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1370 (Can.) (“[W]ith little formal elaboration of the definition of ‘peoples’, the result has been that the precise meaning of the term ‘people’ remains somewhat uncertain.”); *see also* MUSGRAVE, *supra* note 38, at 148 (“[People] has never been defined in any comprehensive or satisfactory manner.”).

84. MUSGRAVE, *supra* note 38, at 148-49.

85. MUSGRAVE, *supra* note 38, at 148-49.

86. MUSGRAVE, *supra* note 38, at 151-53.

87. MUSGRAVE, *supra* note 38, at 153.

88. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1370 (Can.).

89. Ian Brownlie, *Rights of Peoples in Modern International Law*, in THE RIGHTS OF PEOPLES 5 (James Crawford ed., 1988) (recognizing that the core definition of people is “the right of a community which has a distinct character to have this character reflected in the institutions of government under which it lives”).

90. MORTON H. HALPERIN, DAVID J. SCHEFFER & PATRICIA L. SMALL, SELF-DETERMINATION IN THE NEW WORLD ORDER 47 (1992); *see generally* Margaret Moore, *The Territorial Dimension of Self-Determination*, in NATIONAL SELF-DETERMINATION AND SECESSION 134 (1998).

91. Antonio Cassese, *The Self-Determination of Peoples*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 92, 95 (Louis Henkin ed., 1981).

parable dimensions.⁹² Second, that national or ethnic group must be recognized as having a distinct legal status within the constitutional framework.⁹³ Lee Buchheit augments this definition by looking at the “self” component of self-determination, which is similarly divided by its objective and subjective dimensions.⁹⁴ A group is a people when it “perceives itself as being reasonably distinct from its neighbors.”⁹⁵ Yet, because any group can potentially claim its existence as a people on some subjective basis, a further objective component is necessary.⁹⁶ At the most basic level, such foundational objective distinctions are present when there is some religious, historic, geographic, ethnologic, economic, linguistic, or racial distinction between the group in question and its surrounding population.⁹⁷

2. *Determination*

To define determination, one may logically begin with the texts of the resolutions themselves. The ICCPR states, by virtue of self-determination, peoples “freely determine their political status and freely pursue their economic, social, and cultural development.”⁹⁸ This language suggests that, at its most basic level, self-determination constitutes the right to a people’s uninhibited political, cultural, and social development.⁹⁹

92. *Id.* In addition, increasing recognition has been given to groups that may have smaller dimensions within their respective societies. Unlike Cassese’s definition, which emphasizes minority groups of comparable dimensions, some smaller ethnic groups may nevertheless be seen as peoples possessing the right to self-determination. See Geoff Gilbert, *Autonomy and Minority Groups: A Right in International Law?*, 35 CORNELL INT’L L.J. 307, 308 (2002) (“[A] particular group might form a minority within the state and, at the same time, qualify as a people.”).

93. See Cassese, *supra* note 91. Cassese’s discussion suggests a limitation on federally recognized constitutional entities, which excludes ethnic minorities. Cassese, *supra* note 91, at 101. But others have affirmed that not only are some minorities peoples, but many argue minorities themselves are entitled to self-determination. See MUSGRAVE, *supra* note 38, at 167-77. It is not, therefore, an unreasonable extension of Cassese’s principle to state that minorities recognized in a constitutional framework may be sufficient to satisfy the objective component of people and are therefore entitled to self-determination. See MUSGRAVE, *supra* note 38, at 167-77.

94. LEE C. BUCHHEIT, *SECESSION: THE LEGITIMACY OF SELF-DETERMINATION* 10 (1978).

95. *Id.*

96. *Id.*

97. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1371 (Can.); see also Lung-Chu Chen, *Self-Determination and World Public Order*, 66 NOTRE DAME L. REV. 1290 (1991), compare with discussion *infra* Part IV.C.

98. ICCPR, *supra* note 71.

99. See ICCPR, *supra* note 71.

Another important definitional distinction occurs between the internal and external dimensions of self-determination.¹⁰⁰ This distinction originates in prior debates over the limitation of the concept to decolonization.¹⁰¹ This is because external self-determination requires a people to govern themselves absent outside external interference.¹⁰² It means, essentially, secession—the process by which a people replaces an existing state or emerges to form its own.¹⁰³ By contrast, internal self-determination deals with the selection of government and the political, economic, social, and cultural aspects by which a people freely participate and exercise their rights within a sovereign territory.¹⁰⁴

External self-determination is seen as a measure of last resort and becomes plausible only when practically all internal remedies of self-determination have been blocked or exhausted.¹⁰⁵ It is viewed as radical because breaking away from an existing state tramples on traditional notions of state sovereignty, mainly, that state's right to govern itself without interference.¹⁰⁶ Thus, based on external self-determination's radical nature, discussions have shifted to identifying and implementing the principle's internal modes.¹⁰⁷ Hence, when qualified peoples and minorities living within states have legitimate claims of self-determination, the effectuation of their right, if recognized at all, must be accomplished in degrees short of secession.¹⁰⁸

In this context, autonomy- and quasi-autonomy-based solutions have appeared increasingly appropriate.¹⁰⁹ Autonomy-based solutions attempt to

100. Gregory Fox, *Self-Determination in the Post Cold War Era: A New Internal Focus?*, 16 MICH. J. INT'L L. 733, 734 (1995).

101. *Id.* at 733-34.

102. BUCHHEIT, *supra* note 94, at 13-14.

103. BUCHHEIT, *supra* note 94, at 15.

104. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1340, 1371 (Can.) (recognizing that internal self-determination is a "people's pursuit of its political, economic, social and cultural development within the framework of an existing state.").

105. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1372-73 (Can.) (citing massive human rights violations and a lack of participation within political processes).

106. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1373 (Can.).

107. *Id.* ("There is no necessary incompatibility between the maintenance of the territorial integrity of existing states . . . and the right of a 'people' to achieve a full measure of self-determination.").

108. *In re Secession of Que.*, [1998] 2 S.C.R. 217, 37 I.L.M. 1340, 1371 (Can.).

109. HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION* 333-69 (2d ed. 1992) (discussing the viability of federal or quasi-federal autonomy structures and providing examples); RUTH LAPIDOTH, *AUTONOMY: FLEXIBLE SOLUTIONS TO ETHNIC CONFLICTS* 23 (1997) ("One way to satisfy these demands [of self-determination] while preserving the existence of the state and its territorial integrity is by establishing regimes of autonomy."); Brownlie, *supra* note 89, at 1, 6 (stating that contrasted with secession, self-government and autonomy are plausible implementations of self-determination); Gregory

provide people with a greater degree of self-management and control in order to effectuate their right of self-determination. Such solutions are designed to be flexible and may be implemented in a variety of forms within states so long as they operate within the existing framework.¹¹⁰ Particularly, in federalized states, peoples may be granted some degree of territorial control.¹¹¹ Most importantly, however, such solutions need not reflect a particular form or arrangement, but rather, “evidence creative legal and constitutional thought.”¹¹²

Autonomy-based solutions are looked at favorably because they can enable the simultaneous preservation of a state’s territorial integrity with self-determination claims of peoples living within those sovereign states.¹¹³ Furthermore, deep ethnic, religious, and linguistic distinctions that drive claims of self-determination can find a satisfactory degree of fulfillment where a people begin to exercise their own control over their status, which includes their distinguishing factors.¹¹⁴ Thus, autonomy can fulfill self-determination claims by giving a people a greater degree of political, social, and economic control over their own destiny and still stop short of secession, thereby preserving both state sovereignty and a people’s legitimate claims.¹¹⁵

D. AN EXPANDING INDIGENOUS APPLICATION

Rapidly solidifying international principles regarding indigenous peoples bring added precision to the discussion of self-determination of peoples

Fox, *Self-Determination in the Post Cold War Era: A New Internal Focus?*, 16 MICH. J. INT’L L. 733, 734 (1995) (viewing internal self-determination to “include minority protection regimes, democratic political processes, safeguards for cultural rights, and various forms of federative autonomy”); Geoff Gilbert, *Autonomy and Minority Groups: A Right in International Law?*, 35 CORNELL INT’L L.J. 307, 309 (2002) (“[S]elf-determination is increasingly recognized as having an internal aspect that requires full and effective participation by all groups in society[,] . . . [and] autonomy [is] a method of affording internal self-determination to minorities.”); Otto Kimminich, *A “Federal” Right of Self-Determination?*, in MODERN LAW OF SELF-DETERMINATION 83, 98 (Christian Tomuschat ed., 1993); Steven Wheatley, *Deliberative Democracy and Minorities*, 14 EUR. J. INT’L L. 507, 509 (2003) (stating marginalized minority rights can be effectuated in adaptable autonomy regimes).

110. RUTH LAPIDOTH, *AUTONOMY: FLEXIBLE SOLUTIONS TO ETHNIC CONFLICTS* 49 (1997). Ruth Lapidoth traces five categories of autonomy: “federal systems, decentralization, self-government, associate statehood, and self-administration.” *Id.*

111. *Id.*

112. HANNUM, *supra* note 109, at 333.

113. LAPIDOTH, *supra* note 110, at 23.

114. LAPIDOTH, *supra* note 110.

115. Gilbert, *supra* note 109, at 308-09.

in regard to the Assyrian Question.¹¹⁶ This contributes to the discussion because a series of indigenous peoples declarations link indigenous peoples' rights to the right of self-determination.¹¹⁷ Importantly, not only is there the link to self-determination, but there is an added right to autonomous administration.¹¹⁸ The recently adopted United Nations Declaration on the Rights of Indigenous Peoples, for instance, provides a key illustration.¹¹⁹ It states that, "[i]ndigenous peoples have the right to self-determination."¹²⁰ It follows in article 4 with an expansive assertion that, "in exercising their right to self-determination, [indigenous peoples] have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."¹²¹

"Indigenous" is not defined within the convention itself, but important commentary sheds light on its definition. A key source is the study of the Special Rapporteur, José Martínez Cobo, in the report entitled "Study of the Problem of Discrimination Against Indigenous Populations."¹²² José Martínez Cobo defines indigenous communities as those

peoples and nations . . . which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them [They] are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples.¹²³

116. Brownlie, *supra* note 89, at 1, 16 (referring to the fundamental interdependency of the areas of self-determination, minority rights, and the status issues of indigenous peoples).

117. See, e.g., Int'l Labour Org. [ILO], *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, ILO Conv. No. 169, 72 ILO Official Bull. 59 (June 27, 1989) [hereinafter ILO Convention].

118. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. GAOR, 61st Sess., U.N. Doc. A/61/L.67 (Sept. 13, 2007) [hereinafter Indigenous Declaration].

119. *Id.*

120. *Id.* art. 3.

121. *Id.* art. 4.

122. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, Sub-Comm'n on Prevention of Discrimination & Prot. of Minorities, *Study of the Problem of Discrimination Against Indigenous Populations*, ¶¶ 375-82, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 (July 30, 1981) (prepared by José Martínez Cobo) [hereinafter Indigenous Report].

123. *Id.* ¶ 379; see also Sarah Pritchard, *Working Group on Indigenous Populations: Mandated, Standard-Setting Activities and Future Perspectives*, in INDIGENOUS PEOPLES,

The report goes on to elaborate on what constitutes historical continuity, including the occupation of lands, common ancestry with occupants, cultural transmission, a mother tongue, and regional habitation.¹²⁴ Furthermore, members of indigenous groups express belonging through self-identification,¹²⁵ and the group itself retains the ability to define who belongs to it.¹²⁶

E. IRAQI LAW

1. *Assyrians in Iraqi Law*

A new period of reconstruction began in Iraq as the United States entered Baghdad and the regime of Saddam Hussein fell.¹²⁷ The transition of power and remaking of Iraqi law began with several meetings between opposition groups where the structure of the new constitutional government began to emerge. The opposition conference held in London, for instance, “debated the injustice and national oppression exercised against the Assyrians and stresse[d] the importance of guaranteeing their equality with others and agree[d] to grant them their ethnic, cultural and administrative rights within a defined legal framework, and to protect these rights constitutionally.”¹²⁸

Transitional Administrative Law (TAL) followed, which solidified many of the provisions of the emerging democracy.¹²⁹ The scope of TAL dealt with day-to-day security issues, broader issues regarding the rights given to the people, and the nature and structure of the government.¹³⁰ Assyrians received explicit reference in several provisions.¹³¹ Article 30, for instance, guaranteed fair representation in electing a National Assembly to

THE UNITED NATIONS AND HUMAN RIGHTS 40, 43 (Sarah Pritchard ed., 1998) (stating that attempts to limit the definition of indigenous to colonized people have been unsuccessful).

124. Indigenous Report, *supra* note 122, ¶ 380.

125. Indigenous Report, *supra* note 122, ¶ 381.

126. *Id.* ¶ 382; *see also* ILO Convention, *supra* note 117, art. 1(2) (stating that self-identification is a fundamental criterion of determining who is indigenous), *compare with* HALPERIN, SCHEFFER & SMALL, *supra* note 90, at 47 (raising the objective and subjective components in defining peoples).

127. *See generally* Danny Hakim, *A Nation at War: Iraqis in the U.S. Celebrate Hussein’s Seeming Downfall*, N.Y. TIMES, Apr. 10, 2003, at B13.

128. Political Statement of the Iraqi Opposition Conference in London (Dec. 14-16, 2002), in KURDISTAN OBSERVER, Dec. 19, 2002, <http://home.cogeco.ca/~konews/20-12-02-political-statement-london-conference.html> [hereinafter Iraq Opposition Conference].

129. Law of Administration for the State of Iraq for the Transitional Period (2004) [hereinafter TAL], available at <http://www.cpa-iraq.org/government/TAL.html>.

130. *Id.* art. 7(A).

131. *Id.* arts. 30(C), 53(D).

Assyrians and other minorities.¹³² Article 53 assured that the “administrative, cultural, and political rights” of the Assyrians would be preserved.¹³³ Similarly, article 9 discussed the preservation of Syriac¹³⁴ and the right to educate in it.¹³⁵

The Iraqi Constitution followed TAL, heralding the transition from persecution and repression to a “republican, federal, democratic, [and] pluralistic” government.¹³⁶ It self-consciously attempts to preserve equal treatment of all of Iraq’s citizens and to promote the rule of law.¹³⁷ In regard to Assyrians, similarly to TAL, the right to speak and educate in Syriac is preserved.¹³⁸ Furthermore, article 4 also extends protection to the Assyrian language stating: “The Turkomen language and Syriac language are the two other official languages in the administrative units in which they constitute density of population.”¹³⁹ The preeminent provision of importance for Assyrians currently is article 125.¹⁴⁰ Recognizing other powers as belonging to local administrations, this article states the “[c]onstitution shall guarantee the administrative, political, cultural and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians and all other constituents, and this shall be regulated by law.”¹⁴¹

2. *International Incorporation and Iraqi Law*

The extent of control that international law should explicitly have within the domestic body of Iraqi law remains an open question.¹⁴² Its role

132. *Id.* art. 30(C).

133. *Id.* art. 53(D).

134. LANGUAGES, *supra* note 8.

135. TAL, *supra* note 129, art. 9.

136. IRAQ [Constitution] pmb.; *see generally* Ashley S. Deeks & Matthew D. Burton, *Iraq’s Constitution: A Drafting History*, 40 CORNELL INT’L L.J. 1 (2007); Noah Feldman & Roman Martinez, *Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy*, 75 FORDHAM L. REV. 883 (2006); Stephen Townley, *Mosque and State in Iraq’s New Constitution*, 34 DENV. J. INT’L L. & POL’Y (2006).

137. IRAQ [Constitution] pmb.

138. *Id.* art. 4.

139. *Id.*

140. *Id.* art. 125; *see infra* Part IV.B.1 (discussing article 125 in depth).

141. IRAQ [Constitution] art. 125.

142. Noah Feldman, *Imposed Constitutionalism*, 37 CONN. L. REV. 857, 870-72 (2004–2005). The United States, for instance, recognizes international law incorporated into our federal common law. *See* *The Paquete Habana*, 175 U.S. 677, 700 (1900) (“International law is part of our law.”). But in particular circumstances, international law may be trumped by a federal statute. *Comm. of U.S. Citizens Living in Nicar. v. Reagan*, 859 F.2d 929, 939 (D.C. Cir. 1988) (stating that a federal statute cannot be challenged on the ground that it violates international law); *see also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS OF THE UNITED STATES § 111(1) (1987) (discussing the application of international law in the United States).

has been openly recognized from the outset of the transition of power.¹⁴³ The law of the transitional period carried an open recognition of international law's binding effect on Iraq as well.¹⁴⁴ Article 23 stated that the rights of the Iraqi people were not limited to TAL, but were to include "the rights stipulated in international treaties and agreements, other instruments of international law that Iraq has signed and to which it has acceded, and others that are deemed binding upon it, and in the law of nations."¹⁴⁵

Similar provisions were contained in draft versions of the constitution.¹⁴⁶ The original article 44 read: "All individuals have the right to enjoy the rights stated in international treaties and agreements concerned with human rights that Iraq has ratified and that do not contradict with the principles of this constitution."¹⁴⁷ In drafting the permanent constitution, however, this article was eliminated.¹⁴⁸ The rationale was purportedly that, with the inclusion of the article, human rights treaties became subordinated to the constitution, hence, removing the article results in a stronger independent basis for asserting the rights contained in those treaties.¹⁴⁹ Alternatively, these constrictions of international obligations indicated a reticence among Shi'a clerics to commit to principles that could potentially result in contradictions with tenets of Islam.

Despite the fact that no such explicit statement presently binds Iraq to preexistent treaty obligations relevant to the law of self-determination, such an obligation may still be discerned. At least two alternative bases exist to demonstrate the incorporation of international law into Iraqi law. First, article 8 of the constitution provides an alternative reference from which Iraq's international obligations may be inferred.¹⁵⁰ The article affirms that Iraq will "respect its international obligations."¹⁵¹ Additionally, that article recognizes that Iraq will respect the principle of non-interference with the af-

143. Iraqi Opposition Conference, *supra* note 128, point 6.

144. TAL, *supra* note 129, art. 23.

145. TAL, *supra* note 129, art. 23.

146. IRAQ [Constitution] art. 44 (draft of Aug. 24, 2005), *available at* http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24_08_05_constit.pdf.

147. *Id.*

148. NATHAN J. BROWN, CARNEGIE ENDOWMENT FOR INT'L PEACE, THE FINAL DRAFT OF THE IRAQI CONSTITUTION: ANALYSIS AND COMMENTARY (2005), *available at* <http://www.carnegieendowment.org/files/FinalDraftSept16.pdf>.

149. *Id.*

150. IRAQ [Constitution] art. 8.

151. *Id.*; *see also* U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, Sub-Comm'n on Prevention of Discrimination & Prot. of Minorities, *The Right to Self-Determination: Implementation of United Nations Resolutions*, ¶ 75, U.N. Doc. E/CN.4/Sub.2/405/Rev.1 (1980) (*prepared by* Héctor Gros Espiell) (explaining that the Iraqi representative to the United Nations declared that the principle of self-determination as espoused in the Friendly Declaration constituted a true principle of *jus cogens*).

fairs of other states and the peaceful settlement of disputes.¹⁵² Because those are arguably references to the purposes of the United Nations, and because the promotion of self-determination is a fundamental purpose of the United Nations, Iraq implicitly binds itself, by constitution, to recognize the principle of self-determination. Furthermore, Iraq has still affirmed the Declaration on the Rights of Indigenous Peoples.¹⁵³ Consequently, international human rights, self-determination, and indigenous peoples conventions are binding on Iraq and must be applied to their full effect.¹⁵⁴

IV. THE ASSYRIANS: AN ARGUMENT FOR SELF-DETERMINATION

The Assyrian realization of the right of self-determination must begin within the existing Iraqi constitutional framework—any workable Assyrian claim of self-determination is not an argument for secession.¹⁵⁵ At the same time, arguments for the right of self-determination must anticipate its denial by that system, as well as the possible fragmentation of the Iraqi system itself.¹⁵⁶ This is the case because such a right has been frustrated, both presently and historically.¹⁵⁷ Furthermore, because Iraq's ability to survive as a single state has been brought into question, approaches to preserving a viable legal status for Assyrians must be linked with a preexistent body of international rights that will remain intact even if the constitutional structure fails to effectuate any legitimate claims or the system itself fails. It is virtually unquestionable that Assyrians have had, and will continue to have, an important place in Iraqi history.

A. ASSYRIANS ARE A DISTINCT PEOPLE

Foremost, it must be recognized that Assyrians are a distinct people under international law and are therefore entitled to the meaningful exercise of internal self-determination in its fullest political, economic, and social dimensions.¹⁵⁸ Assyrians meet the criterion of a people both objectively and subjectively.¹⁵⁹ In the objective sense, Assyrians are distinguishable from the society that surrounds them. The ancient language of Syriac rather than

152. IRAQ [Constitution] art. 8.

153. Indigenous Declaration, *supra* note 118.

154. See Indigenous Declaration, *supra* note 118.

155. See sources cited *supra* note 109.

156. Robert D. Sloane, *The Policies of State Secession: Harmonizing Self-Determination and Global Order in the Twenty-First Century*, 30 *FORDHAM INT'L L.J.* 1288, 1308-09 (2007) (discussing the plausibility of a multi-state in a post-Hussein Iraq based on external self-determination).

157. See discussion *supra* Parts I.B, II.

158. See discussion *supra* Part III.C-D.

159. See discussion *supra* Parts I.A, III.C.1.

Arabic is spoken.¹⁶⁰ Christianity is practiced rather than predominant Islamic religion.¹⁶¹ Moreover, their ethnic division is neither Arab nor Kurd.¹⁶² Recent scientific evidence in fact confirms such an objective distinction.¹⁶³ Genetic samples taken from a wide cross section of the Assyrian population in the Middle East demonstrated that those samples were clearly different from the surrounding national populations.¹⁶⁴ Thus, differences in language, religious practice, and ethnicity affirm that the Assyrians are objectively distinct from the culture and people that surround them.

The Iraqi Constitution itself affirms this objective distinction.¹⁶⁵ In particular, the Assyrian language has been both recognized and preserved as a vehicle to maintain educational and cultural rights.¹⁶⁶ In fact, the preservation of educational, linguistic, and political rights shadows the language of the ICCPR, which itself identifies the importance of those discrete categories as rights of peoples. It follows then that the Iraqi Constitution implicitly and explicitly recognizes Assyrians as a distinct people.¹⁶⁷ At the very least, Assyrians are a minority population recognized within a constitutional structure, as required under Cassese's adapted definition.¹⁶⁸

Assyrians are also an indigenous people.¹⁶⁹ Aside from the previously mentioned categories of ethnicity, language, and religion, perhaps the single most critical factor that bolsters Assyrian's indigenous status is their historical relationship with Iraq. Credible historical evidence and narrative attestation suggests that the Assyrians have had a continuous, longstanding, and ancient relationship with the land.¹⁷⁰ They are among its most primitive inhabitants. This continuity may be observed through church rites and liturgy which trace back thousands of years to the predominance of classical Aramaic—the ancient *lingua franca*.¹⁷¹ Similarly, the Syriac language provides the linkage to the ancient Aramaic language, as well as one of the most primitive languages in existence.¹⁷² Considered together, these factors

160. See discussion *supra* Part I.A.

161. See discussion *supra* Part I.A.

162. See discussion *supra* Parts I.A, II.B.

163. Joel J. Elias, *The Genetics of Modern Assyrians and Their Relationship to Other People of the Middle East*, NINEVEH MAG., First/Second Quarter 2000, <http://www.assyrianfoundation.org/genetics.htm> (“[T]he data provide [sic] unequivocal evidence that Assyrians as a people are distinguishable from all other population groups in their genetic characteristics and are not a part of any other population.”).

164. *Id.*

165. See discussion *supra* Part III.E.1.

166. IRAQ [Constitution] art. 4.

167. See ICCPR, *supra* note 71, art. 1.

168. See Cassese, *supra* note 91, at 95.

169. See ICCPR, *supra* note 71; TAL, *supra* note 129, art. 3.

170. See discussion *supra* Parts I.A, III.D.

171. See discussion *supra* Part I.A.

172. See LANGUAGES, *supra* note 8.

strongly suggest the ancient historical continuity between the Assyrians and Iraq, and, therefore, demonstrate that Assyrians are an indigenous people.¹⁷³ At the very least, they have preceded colonialism in the Middle East and the modern nation-state, which is a requirement under the operational definition of what it means to be indigenous.¹⁷⁴

Lastly, Assyrians subjectively consider themselves distinct from other ethnic groups.¹⁷⁵ This is evidenced by the fact that the term Assyrian, for instance, remains a common self-reference that is used to refer to an Aramaic-speaking Christian.¹⁷⁶ In a statement to the United Nations, an Aramean¹⁷⁷ organization openly distinguished itself from other ethnicities, stating that self-determination becomes suppressed when such groups are wrongfully identified as Arab or Kurdish Christians.¹⁷⁸ In addition to considering themselves ethnically distinct, Assyrians also consider themselves indigenous.¹⁷⁹ This is relevant because self-identification as indigenous is an important factor of being indigenous.¹⁸⁰ A brief survey, thus, reveals that Assyrians fulfill the subjective component for the definition of an indigenous people.¹⁸¹

B. HOW AN AUTONOMY-BASED SOLUTION PROVIDES A PLAUSIBLE GRANT OF DETERMINATION

Presently, several proposals in the Assyrian community employ notions of autonomy. While these proposals differ in regard to territorial and organizational aspects, they can be viewed as conceptually invoking autonomy in various degrees.¹⁸² For instance, the proposal for an Autonomous Assyrian Region would attempt to reinstitute a form of the Ottoman Millet

173. See discussion *supra* Part III.D.

174. See *supra* note 123 and accompanying text (stressing historical continuity with pre-colonial societies).

175. See BUCHHEIT, *supra* note 94, at 9.

176. See Parpola, *supra* note 2, at 18.

177. See discussion *supra* note 4.

178. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *The Right of Peoples to Self-Determination and its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation: Racism, Racial Discrimination, Xenophobia, and All Forms of Discrimination*, U.N. Doc. E/CN.4/2003/NGO/118 (Mar. 12, 2003) (submitted by Syriac Universal Alliance).

179. E.g., Suzy David, Assyrian Universal Alliance, Statement to the Sub-Commission on Prevention of Discrimination and Protection of Minorities Working Group on Indigenous Populations (Jul. 24-28, 2000), available at http://www.aua.net/international/un/eighteenth_session_item4.htm.

180. See Indigenous Report, *supra* note 122.

181. See discussion *supra* Part III.C-D.

182. See Michael Youash, *What Does an Administrative Area Mean? Understanding the 'Nineveh Plain Resolution'*, ASSYRIAN STAR, Spring 2007, at 11. Terminology in this area is admittedly confusing. *Id.*

system centered in Mosul and relocate Assyrians into the northern Nineveh region.¹⁸³ Additionally, proponents for an Assyrian province have suggested that multiple governorates in which Assyrians have a substantial presence be divided to create a new separate governorate.¹⁸⁴ Perhaps the most viable proposal at this stage is for an Assyrian administrative area, also known as the Nineveh Plain Resolution, which provides that Assyrians be grouped into an administrative area that intersects multiple governorates. It would have a local governing authority that would supervise health care, education, cultural programs, various legal matters (including its own police force), tourism, and archeology within that area.¹⁸⁵

Resolving the correctness of each of these positions is not necessary to argue that some form of an autonomy-based arrangement could provide the Assyrian people a key political and social place in the fledgling Iraqi democracy through enhanced territorial self-governance. These positions show, at least, that outstanding claims exist. The key is, however, because autonomy solutions are flexible implementations of self-determination rights, they should be viewed as highly appropriate for Assyrian people who have a viable self-determination claim.¹⁸⁶ In this particular case, autonomy solutions are additionally appropriate because they can be grounded both internally in the Iraqi Constitution and externally in international law.¹⁸⁷

1. *Article 125*

Basic textual interpretation supports the application of article 125 to enable Assyrian people to effectuate some form of politically-based autonomy within the Iraqi federalism.¹⁸⁸ As noted previously, that key article guarantees “administrative, political, cultural, and educational rights for the various nationalities, such as . . . Chaldeans [and] Assyrians.”¹⁸⁹ The prob-

183. Ivan Kakovitch, *In Pursuit of an Assyrian Autonomous Region*, ASSYRIAN STAR, Spring 2006, at 34.

184. See Youash, *supra* note 182, at 9 (explaining the enabling Iraqi constitutional provisions and citing proposed language of congressional resolution in the proposal’s favor). This proposal has been raised to the United Nations Working Group on the Prevention of Discrimination and Protection of Minorities as well. U.N. Econ. & Soc. Council [ECOSOC], Comm’n on Human Rights on the Promotion and Prot. of Human Rights, Working Group on Minorities, *Report of the Working Group on Minorities on its Eleventh Session*, ¶ 8, U.N. Doc. E/CN.4/Sub.2/2005/27 (July 8, 2005).

185. Youash, *supra* note 182, at 13.

186. See HANNUM, *supra* note 109, at 333.

187. *E.g.*, IRAQ [Constitution] art. 125.

188. *Id.* Not all proposals are equally constitutional however. See Youash, *supra* note 182, at 11.

189. IRAQ [Constitution] art. 125

lem, however, is that a plain reading of the article does not definitively establish what is meant by administrative rights. Some have suggested that such vagueness was intentional because it was among a package of articles that were fiercely debated.¹⁹⁰ In fact, the entire first stage of constitutional development in Iraq was a protracted debate, not over the role of religion, but rather over the shape of federalism in the newly reformed nation.¹⁹¹

Applying established canons of statutory construction helps shed meaningful light on the conclusion that administrative rights imply some measure of autonomy for minority populations in Iraq such as the Assyrians. In determining the meaning of an ambiguous statute, interpreters may justifiably look at the headings and titles of sections in order to ascertain the intent of the legislature.¹⁹² Because the article falls within the sections detailing the division of federal powers, arguably, administrative rights were intended by the constitutional drafters as sub-federal units.¹⁹³

The tenor of these provisions justifies the greater vesting of localized power to minority populations such as Assyrians.¹⁹⁴ The purpose of such a grant of autonomy is to ensure minority survival and enrich the democratic political system.¹⁹⁵ Often, in some cases, “only an autonomy regime could assure the group and its culture’s survival.”¹⁹⁶ Thus, these are deliberately intended as the key constitutional recognitions that will provide the backbone for protection of ethnic minorities in Iraqi society.¹⁹⁷

Expressly protecting the rights of the Assyrians, Chaldeans, Turko-men, and Yezidis appeared to reflect an adherence to the existing human rights conventions such as the ICCPR.¹⁹⁸ According to commentators on the Iraqi Constitution, article 125 “is concerned not with local governments but protection for minorities.”¹⁹⁹ Thus, “[w]hat is being identified are exceptional federal units that are meant to secure protective measures that guar-

190. Makau Mutua, *The Iraq Paradox: Minority and Group Rights in a Viable Constitution*, 54 BUFF. L. REV. 927, 946 (2006).

191. John McGarry & Brendan O’Leary, *Iraq’s Constitution of 2005: Liberal Association as Political Prescription*, 5 INT’L J. CONST. L. 670, 688-89 (2007).

192. 1A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 18.11 (6th ed. 2000).

193. Youash, *supra* note 182, at 4-5.

194. Mutua, *supra* note 190, at 945-46.

195. Mutua, *supra* note 190, at 948; *see* discussion *infra* Part IV.D.

196. Mutua, *supra* note 190, at 946; *see* discussion *supra* Part I.A-B.

197. McGarry & O’Leary, *supra* note 191, at 688-89.

198. *See* PUB. INT’L LAW & POLICY GROUP & THE CENTURY FOUND., ESTABLISHING A STABLE DEMOCRATIC CONSTITUTIONAL STRUCTURE IN IRAQ: SOME BASIC CONSIDERATIONS 52-53 (2003), *available* at <http://www.publicinternationallaw.org/publications/reports/IraqReport.pdf>.

199. Yash Ghai & Jill Cottrell, A Review of the Constitution of Iraq 28, <http://www.law.wisc.edu/gls/arotcoi.pdf> (last visited Sept. 11, 2008).

antee Iraq's minorities can make a constructive contribution to Iraq's stability and development through federal arrangements that are territorial.²⁰⁰

Furthermore, without some broader and tangible extension in the form of territorial self-governance, article 125 is an empty promise. In other words, some degree of localized control over social, cultural, and educational resources is necessary. Otherwise, there is no guarantee that such constitutional grants will be met and consequently, article 125 will be of no effect. A key example is the ineffectuality of Revolution Command Council Decree No. 251 of 26 April 1973.²⁰¹ It was a law created by the Ba'athist regime that similarly guaranteed cultural rights to Syriac-speaking people in Iraq.²⁰² At the same time, the human rights violations of that regime have been well noted.²⁰³ Thus, interpreting article 125 entails localized control among the article's named groups because without some extended measure of control, administrative rights will merely be an unsupported promise.²⁰⁴

In light of the latent ambiguity in article 125 and viable arguments that the article entails some form of autonomous self-administration of resources in order to protect Iraqi minorities, Assyrians could now consider petitioning the Iraqi Supreme Court for an authoritative advisory interpretation regarding the meaning of the article. It is clear that the Iraqi high court has jurisdiction over this question based on its broad authority to interpret provisions of the constitution.²⁰⁵ Based on persistent harms, Assyrians have standing, and because these issues are ongoing, the question is arguably ripe. Despite the traditional prerequisites of justiciability, the possibility remains that the court will decline to resolve a political question.²⁰⁶ However, if the court were to consider the question, there would be a cogent argument based on article 125. Additionally, as previously discussed, if international law were deemed incorporated into Iraqi law, the external body of international law could provide a constitutional issue for the court to resolve expressly as a question of self-determination.

200. Iraq Sustainable Democracy Project, Policy Briefing: Proposing the Operationalization of the Art. 125 Solution: Establishing the Nineveh Plain Administrative Unit 4 (2007), <http://www.iraqdemocracyproject.org/pdf/NPAU-policybrief.pdf> [hereinafter Democracy Project].

201. See U.N. Comm. on the Elimination of Racial Discrimination [CERD], *State Party Report: Republic of Iraq*, ¶ 32, U.N. Doc. CERD/C/240/Add.3 (Apr. 1, 1996), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.240.Add.3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.240.Add.3.En?OpenDocument) (highlighting portions of Revolution Command Council Decree No. 251 (Apr. 26, 1973)).

202. *Id.*

203. See discussion *supra* Part II.B.

204. See IRAQ [Constitution] art. 125.

205. *Id.* art. 93.

206. *Id.*

2. *International Law*

From the standpoint external to Iraq, it is arguable that administrative rights should take the shape of an autonomy regime because autonomy solutions have a firm basis in contemporary international practice.²⁰⁷ The clearest international grant to peoples has been expressed in the recently adopted Declaration on the Rights of Indigenous Peoples.²⁰⁸ Explicitly, it states that the exercise of indigenous self-determination entails a “right to autonomy or self-government in matters relating to . . . internal and local affairs.”²⁰⁹ This is applicable because Assyrians are arguably an indigenous people.²¹⁰ For the sake of argument, even if they are not, autonomy solutions have been applied in broader contexts of peoples and minorities movements.²¹¹ For instance, varying degrees of autonomy have been granted within states such as Yugoslavia, Ethiopia, and, a prime and relevant example, to the Kurdish population of Iraq itself.²¹²

C. THE KURDISH PARALLEL

The Kurdish self-determination question has inspired a host of scholarly studies that touch on the existence of the right and various degrees regarding its implementation.²¹³ It has been consistently argued that the Kurds are entitled to the exercise of self-determination.²¹⁴ Richard Falk, for in-

207. *See supra* note 109.

208. Indigenous Declaration, *supra* note 118.

209. Indigenous Declaration, *supra* note 118, art. 4.

210. *See discussion supra* Part IV.A.

211. HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION* 337-69 (rev. ed. 1996).

212. *Id.*

213. *See* MORTON H. HALPERIN, DAVID J. SCHEFFER & PATRICIA L. SMALL, *SELF-DETERMINATION IN THE NEW WORLD ORDER* 38-44 (1992) (discussing Kurdish self-determination as a post-Cold War case study); HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION* 178-202 (rev. ed. 1996) (discussing Kurdish ethnic, social, and political history); Gregory J. Ewald, *The Kurds' Right to Secede Under International Law: Self-Determination Prevails Over Political Manipulation*, 22 *DENV. J. INT'L. L. & POL'Y* 375, 402 (1994); Richard Falk, *Problems and Prospects for the Kurdish Struggle for Self-Determination After the End of the Gulf and Cold Wars*, 15 *MICH. J. INT'L L.* 591, 602 (1994); *see also* Carole A. O'Leary & Karna A.J. Eklund, Symposium, *Pluralism vs. Modern Iraqi Nationalism: Root Causes of State-Sponsored Violence Against Iraq's Kurdish Community and the Search for Post-Conflict Justice*, 13 *MICH. ST. J. INT'L L.* 91 (2005).

214. Gregory J. Ewald, *The Kurds' Right to Secede Under International Law: Self-Determination Prevails Over Political Manipulation*, 22 *DENV. J. INT'L. L. & POL'Y* 375, 402 (1994) (“The Kurds are certainly entitled to the right of self-determination and would have an extremely strong case for secession.”); Richard Falk, *Problems and Prospects for the Kurdish Struggle for Self-Determination After the End of the Gulf and Cold Wars*, 15 *MICH.*

stance, reasons that “[g]iven Kurdish numbers, self-identification, and association with specific territory over a period of at least 2000 years, and given the consistent Kurdish experience of abuse and discrimination within existing States in the region, a maximalist case for claiming rights of self-determination on behalf of the Kurdish people exists.”²¹⁵ Gregory Ewald likewise argues that the Kurds are entitled to self-determination because they are a group distinguishable from the population based on language, ethnicity, and physiognomy.²¹⁶ Such a right also exists because Kurds possess substantial human rights grievances and historically-rooted deprivations of territory.²¹⁷

As noted, some take the existence of the right of self-determination for the extended argument that secession claims are justified.²¹⁸ Expectedly, such Kurdish secession-based arguments have been countered by both practical and political considerations.²¹⁹ In contrast to idealizations about secession, the debate has focused on potential internal remedies that do not oppose Iraqi or Turkish sovereignty.²²⁰ Thus, in the Kurdish case, the limitation of secessionist claims finds better support in more tempered expressions of rights as a people in degrees of autonomy as well.²²¹

The parallel Kurdish Question illuminates the potency of the Assyrian Question because the reasons for which Kurds are seen as possessing the right to self-determination equally apply to the Assyrians. Historically, the Assyrian Question has been inextricably woven, and perhaps simultaneously subordinated, to parallel Kurdish claims.²²² Yet, there are strong correlations between the geographical, historical, and ethnic identities of the two peoples that permit the analogization of the two cases.²²³ The factors of

J. INT’L L. 591, 602 (1994) (“On the basis of the status of the right of self-determination and recent practice, the Kurdish legal position is strong . . .”).

215. Falk, *supra* note 214, at 603.

216. Ewald, *supra* note 214, at 394-97.

217. Ewald, *supra* note 214, at 394-97.

218. Ewald, *supra* note 214, at 402.

219. KERIM YILDIZ, *THE KURDS IN IRAQ PAST, PRESENT, AND FUTURE* 194-95 (2007).

220. Gilbert, *supra* note 109, at 347-48 (discussing the Kurdish case inside Turkey and key international legal decisions).

221. See discussion *supra* Part III.C.2.

222. Natasha Carver, *Is Iraq/Kurdistan a State That Can be Said to Operate State Systems and Thereby Offer Protection to Its ‘Citizens’?*, 14 INT’L J. REFUGEE L. 57, 69 (2002) (stating political rights of Assyrians and others have not been given effect by Kurdish authorities); Siobhan Roth, *Advocates Ponder Iraq After Hussein Opposition Groups Jockey for Influence*, LEGAL TIMES, Nov. 25, 2002; see generally Frances Raday, *Self-Determination and Minority Rights*, 26 FORDHAM INT’L L.J. 453 (2003) (comparing the parallel rights of self-determination between the Israelis and Palestinians).

223. YILDIZ, *supra* note 119, at 51 (“Kurds have not been the sole victims of the Iraqi state. The Shi’ites and Marsh Arabs have also suffered, as have Turcomans, Chaldeans [sic] and Assyrians inhabiting the predominantly Kurdish three northern governorates.”).

physiognomy,²²⁴ ethnic and linguistic distinction,²²⁵ history of persecution,²²⁶ deprivation of historically-occupied territories,²²⁷ human rights violations,²²⁸ and continuous regional habitation²²⁹ that make up the Kurdish right of self-determination, based on similar salient factors, lead to the conclusion that Assyrians possess the right of self-determination as well, implemented as a degree of autonomy.²³⁰ If the Kurds are entitled to self-determination then, *a fortiori*, so are Assyrians because they have been in Iraq, contributed culturally, and maintained a cohesive identity for as long as the Kurds, if not longer.

D. ARGUMENTS IN SUPPORT OF AUTONOMY

Other arguments exist to support some degree of autonomy as well. One is that granting autonomy to Assyrians would help to promote democratic stability.²³¹ In other words, by honoring a minority with a viable claim to partial self-governance, the democratic system becomes stronger as a whole. Specifically, by recognizing and protecting such a right, the democratic system distributes equality and enhances full political and social participation. This could potentially have the effect of mitigating the majoritarianism that stifles the exercise of self-determination and the flourishing of democracy.²³²

Advocates of autonomy-based proposals seemed to have had this effect in mind. Michael Youash of the Iraq Sustainable Democracy Project urges that an Assyrian administrative region is a “a tool to help keep ethnic and religious pluralism alive in Iraq—a key ingredient for democracy-building.”²³³ Similarly, Nadia Milanova of Human Rights Without Frontiers states that adopting a federalist scheme would “establish structures that

224. WIGRAM, *supra* note 3, at 179 (“Many a mountaineer from the Assyrian districts . . . looks, when viewed in profile, exactly as if he had stepped down from one of the slabs in the Assyrian galleries of the British Museum.”).

225. See discussion *supra* Part I.A.

226. See discussion *supra* Part II.A-B.

227. See HUMAN RIGHTS WATCH, *supra* note 23, at 43.

228. See discussion *supra* Part II.A-B.

229. See discussion *supra* Part I.A.

230. This is not to say that Assyrians are seeking a form of political autonomy identical to the Kurds. It shows simply that the same right to self-determination that underlies the Kurdish exercise of autonomy would similarly justify—at the very least—an Assyrian claim to heightened self-administration. The analogy also invokes an argument based on equality, which says, essentially, it is unfair to say Kurds possess the right to self-determination, but not Assyrians, when virtually identical objective self-determination features justify them both.

231. See Mutua, *supra* note 190, at 945-46.

232. See Mutua, *supra* note 190, at 945-46.

233. Youash, *supra* note 182, at 12.

would mitigate ethnic divisions and will institutionalize moderation in the state's governance."²³⁴

A second argument for autonomy-based exercises of self-determination is that they can provide a needed protective and safety-based measure.²³⁵ Such implementations can reverse the tide of flight due to persecution and insulate a vulnerable population from continuous attacks and credible fear of genocide in the future.²³⁶ Though such persecution can be linked to the enhancement of a self-determination claim, it need not be.²³⁷ Discussing the function of self-determination as a method of promoting peace by resolving ethnic tension, Paul Clark points to the fact that often, such a group's right "receives little or no support from the international community until a genocide or ethnic cleansing is well under way."²³⁸ In contrast, protective measures must be implemented prior to such a scenario.²³⁹ Clark sees the implementation of self-determination in such a context as highly compatible with autonomy regimes.²⁴⁰ Contrary to fragmenting states, federal autonomy may promote state sovereignty so long as "the level of autonomy ensures that minorities feel they can protect themselves (for example, by having their own local court system and law enforcement)."²⁴¹ Thus, Assyrians should be placed in a position of economic and social support so that they can provide for their own present and future security. This is extraordinarily important because the present indications of treatment suggest a harsh future reality in the absence of viable democratic governance.²⁴²

A third argument is that autonomy offers a practical solution to support economic equity. The economic viability of Assyrian enclaves in Iraq remains a strong consideration in the grant of some measure of autonomy because the exercise of self-determination is strongly linked to control over economic resources.²⁴³ For instance, the Declaration on the Rights of Indigenous Peoples states in article 26 that indigenous peoples have the right to the lands and resources that they have traditionally occupied and they can

234. HUMAN RIGHTS WITHOUT FRONTIERS INT., THE CHALDO ASSYRIAN COMMUNITY IN TODAY'S IRAQ: OPPORTUNITIES AND CHALLENGES 14 (2003), available at http://www.hrwf.net/reports/ext/Iraq_MissionReport_Nov03.pdf.

235. Paul A. Clark, Note, *Taking Self-Determination Seriously: When Can Cultural and Political Minorities Control Their Own Fate?*, 5 CHI. J. INT'L L. 737, 738-39 (2005).

236. See discussion *supra* Part I.B.

237. Clark, *supra* note 235, at 745.

238. Clark, *supra* note 235, at 739.

239. Clark, *supra* note 235, at 739.

240. Clark, *supra* note 235, at 750.

241. Clark, *supra* note 235, at 750.

242. See discussion *supra* Part I.B.

243. ICCPR, *supra* note 71, art. 1.

use or develop them. Moreover, indigenous peoples have access to the “ways and means for financing their autonomous functions.”²⁴⁴

E. CRITICISMS AND RESPONSES

Not all support autonomy-based proposals such as the Nineveh Plains Resolution. Many have criticized it as a ploy of Christian politicians and religious leaders who seek their own political and economic power.²⁴⁵ Far from bringing ethnic stability and tolerance to Iraq, dissenters assert that autonomy proposals will simply further divide the community in a nationalist-driven attempt to restore a lost empire.²⁴⁶ Critics claim that it is an endeavor founded on ethnocentrism.²⁴⁷ They suggest that those who advocate such solutions as paramount not only exaggerate the toll of the war on Assyrians, but actually exacerbate the problem, resulting in more persecution. Autonomy plans have been denounced and branded by the Archbishop of Kirkuk as creating an “Assyrian Ghetto” and a trap for Christians who should fulfill their religious mission through integration and interfaith dialogue, rather than through separation.²⁴⁸

Such criticisms have been responded to as mischaracterizations because they attempt to defeat the issue by narrowing it to a religious one and dismiss it by stating that it will only instigate further ethnic and religious tension.²⁴⁹ However, these criticisms ignore the fact that current efforts to advance Assyrian status are grounded in longstanding efforts to promote and advance ethnic awareness.²⁵⁰ Furthermore, such denouncements misconceive some form of self-governance as rigid and exclusive.²⁵¹ But, to the contrary, advocates highlight the fact that there is an integral part for Turkomen, Yezidis, and Armenians on the Nineveh Plain as well because they are also enumerated minorities in article 125.²⁵²

Similarly, counteradvocates conflate a proper conceptual understanding of autonomy. They argue that because the word autonomy is used, it

244. Indigenous Declaration, *supra* note 118, art. 4.

245. Saad Hanna Sirop, *Kidnapped Chaldean Priest: No to the Niniveh Plain Ethnic Project*, ASIANEWS.IT, June 8, 2007, <http://www.asianews.it/index.php?l=en&art=9498>.

246. *Id.*

247. Youash, *supra* note 182, at 9.

248. Louis Sako, *The Plains of Niniveh, a Trap for Iraqi Christians!*, ASIANEWS.IT, June 7, 2007, <http://www.asianews.it/index.php?l=en&art=9486&geo=23&theme=2&size=A>.

249. Waleeta Canon, Guest Editorial, *Nineveh Plains Administrative Unit Would Not Be an ‘Assyrian Ghetto’*, Jun. 7, 2007, ASSYRIAN INT’L NEWS AGENCY, <http://www.aina.org/guesteds/20070607121244.htm>.

250. *Id.*

251. See *supra* note 109 and accompanying text.

252. See Democracy Project, *supra* note 200, at 3.

necessarily must imply exclusive territoriality. While there is a territorial element at play, heightened self-administration at the same time can transcend physical territorial units. It is the group's distinction as a people that qualifies it.

Another severe shortcoming of such critiques stems from the fact that they virtually ignore the language of article 125 and the corresponding federally-based remedies that have been progressively recognized under international law.²⁵³ In this regard, the primary purpose of expanded self-administration is not to serve as a basis of differentiation and to isolate Assyrians from other Iraqis.²⁵⁴ Rather, because Assyrians are already different from their surrounding population and have a unique set of fears and concerns, now and historically, the purpose of expanded self-administration is that their claims are recognized and protected in the right of self-determination.²⁵⁵ Thus, while these criticisms may have some appeal, they are not legally grounded and cannot detract from the body of rights that support autonomy-based claims.

V. CONCLUSION

The smoke now begins to clear from Iraq. Still, the situation for Assyrians in Iraq remains a ripe and highly complex dilemma that continues to demand a response.²⁵⁶ The fate of "administrative rights" and any autonomy-based solutions that accompany them will work their way out through the Iraqi political process, continued advocacy at the international level, and also through the dialogue and efforts of the Assyrian community itself. The hope here is to argue that federally-based autonomy solutions are both legal, and may, in fact, be compelled under international and Iraqi law. The further purpose is to show how many of the present problems such as flight, persecution, and societal inequality potentially can be solved by appealing to the body of self-determination rights. Admittedly, many practical details of the proposals and their implementations have been left unaddressed. The broader goal, however, is to highlight the modern reemergence of the Assyrian Question, and to show how it relates to a longer story of Assyrian

253. See *supra* note 109.

254. See discussion *supra* Part I.A.

255. See discussion *supra* Part I.A.

256. In November 2008, nearly three thousand Christians, mostly Assyrian, fled the Nineveh Plains after a new round of death threats and senseless murders took place in Mosul. Gary Marx, *In Mosul, a Battle for Christians: Small Community has a Long History in Iraq, but Many Wonder What the Future Can Hold Here After Coming Under a Spate of Violence Recently*, CHI. TRIB., Nov. 24, 2008, at 6. The violent backlash apparently occurred in response to Christian protests of a new provincial election law that stripped them of critical seats on provincial councils. *Id.*

suffering and pleading for recognition—it is a plight generally unknown, yet one deeply ingrained into the hearts of the Assyrian people.

PAUL A. ISAAC*

VI. APPENDIX

A. MAP OF THE SUGGESTED ASSYRIAN ADMINISTRATIVE AREA IN THE NINEVEH GOVERNATE

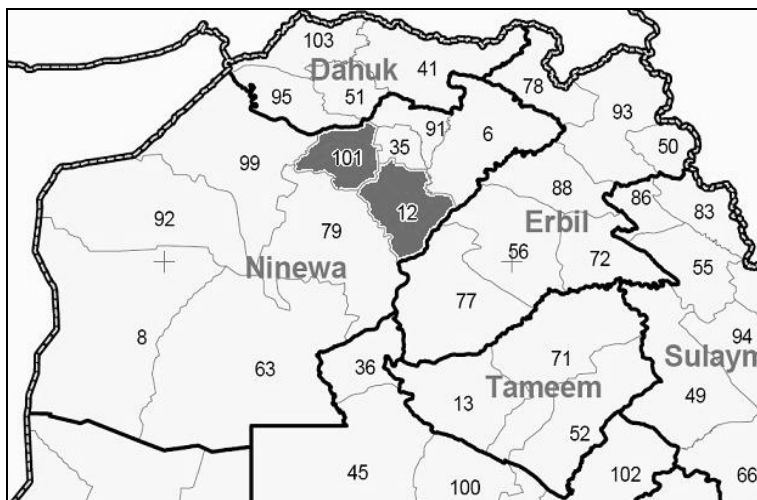


Figure 1: This map depicts the suggested location of the Assyrian Administrative Area in the Nineveh Governorate. Chaldean, *Map of the Assyrian Administrative Area Suggested in 2005*, in WIKIPEDIA, <http://en.wikipedia.org/wiki/Image:Assyrianadministratedareasuggestion2005.jpg#file> (last visited Nov. 1, 2008) (this map is reproduced in accordance with a license granted by the creator, <http://creativecommons.org/licenses/by/2.0/legalcode>).

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