

From Domestic Mandates to International Responsibilities: Legal Strategies for Iraq's Disputed Territories

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ABSTRACT

This paper elaborates on the disputed territories between the Iraqi federal government and the Kurdistan Regional Government (KRG) by teasing out the historical, legal, and international dimensions of the conflict. The historical dimension of this study is initiated through an in-depth investigation into how Ba'athist policies affected ethnic and sectarian identities and subsequently created difficulties in resolving territorial disputes. It deals with the constitutional duties of the federal government in relation to Article 140 of the Iraqi Constitution and analyzes its effectiveness and criticism. The paper further outlines legal and international strategies for the resolution of these disputes, analyzing the relevant provisions of the UN Charter, Security Council Resolutions (SCRs), and international legal frameworks relating to the said subject. It looks into the role international arbitration can play as a plausible mechanism of conflict resolution between the federal government and the KRG, drawing on various cases and legal precedents. This research uses a qualitative approach that is based on academic papers, reports, legal digests, and UN resolutions in order to give an in-depth understanding of the UN involvement and the use of legal instruments within these disputed territories, especially the use of international arbitration. The paper ultimately aims to make a detailed analysis of the disputed territories issue, assess the strategies available, which are of international legal nature, and propose recommendations that may turn out relevant in the solution of such disputes.

KEYWORDS: Disputed Territories, International Law, International Arbitration, Iraqi Federal Government, Kurdistan Regional Government.

1. INTRODUCTION

The territorial disputes between the Iraqi federal government and the KRG represent a complex and enduring issue with deep historical roots. Originating from the policies of the Ba'athist regime, these disputes have been exacerbated by historical grievances, ethnic tensions, and sectarian divisions. The intricate nature of these conflicts has made it difficult for both parties to reach a consensus, further complicating efforts to achieve lasting stability and effective governance. The disputes challenge the implementation of constitutional provisions intended to resolve such conflicts, highlighting the broader struggle between federal government and KRG. Despite various attempts at resolution, including constitutional mechanisms and

international interventions, the conflicts persist, underscoring the need for a deeper understanding of their underlying causes and potential solutions. This introduction sets the stage for understanding the complexities of these disputes by exploring the problem statement and questions, the research objectives, the significance of the study, research methodology, limitations of the study and the structure of the study.

1.1 Problem Statement and Questions

The issue area of focus in this study is the conflict of disputed territories between the Iraqi federal government and the KRG. These disputes stem from historical policies and from non-implementation of constitutional provisions which continue to face political and legal problems. The research is guided by several key questions:

1. How effective is Article 140 of the Iraqi Constitution in resolving these territorial conflicts, and what obstacles hinder its implementation?
2. What role can international mechanisms, such as arbitration and mediation, play in addressing and resolving these disputes?

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1.2 Research Objectives

The main objectives of this study are to:

1. Evaluate the effectiveness and challenges associated with Article 140 of the Iraqi Constitution in addressing these disputes.
2. Assess the role of international law and mechanisms, including arbitration and UN mediation, in resolving the conflicts.
3. Develop recommendations for improving the resolution process, drawing from both domestic and international perspectives.

1.3 Significance of the Study

This research is enormously important for many reasons. First, the resolution of such disputed territories would add to the betterment of stability and help promote peace within Iraq and the surrounding area. Results will become useful in creating an up-to-date understanding of how the strategy for conflict resolution can be made better under the constitutional framework of Iraq and international interventions. The results could be in a position to inform policy, legal experts, and international organizations in improving their strategies for the management of disputed territories for long-term stability.

1.4 Research Methodology

This study employs a qualitative methodology to analyze the relevant legal and international frameworks on the management of the contested areas between the federal government and the KRG. The data for the study were derived from a review of policies, academic papers, journals, reports, working papers, legal digests, and UN resolutions on territorial conflicts and fundamentals of international law. Subsequently, attempt in the framework of the study is made to shed light on the complex roles of the UN and its organs, on the treatment extended to Iraq's disputed territories as well as on the potential of legal tools such as international arbitration as the means of conflict solution. As such, this study also examines other means of conflict resolution, such as diplomacy, political will, and mediation by the United Nations. For this reason, the research will carry on an international comparative analysis about the conflict and arbitration, along with a legal analysis of several cases and legal systems pertinent to the issue at stake that were applied while handling the problem regarding disputed territories of Iraq and while enhancing regional stability.

1.5 Limitations of the Study

The study faced some limitations that could have constrained the scope and depth of analysis: First, there

was a lack of primary sources, such as input from key stakeholders or government officials directly involved in the subject, who could provide a detailed perspective on the ongoing disputes. Moreover, the researched topic is not widely explored, and therefore, there was a lack of secondary sources including legal academic papers and articles in order to construct a solid background of existing research. In this regard, the legal interpretation which was maintained throughout the study was very limited especially considering the aspects of international and national law in respect to the territories of the internal conflict of Iraq. For instance, the International Court of Justice (ICJ) cannot be resorted to as a strong international mechanism on this issue. This may have limited the establishment of definite conclusions, since varying interpretations may lead to other conclusions or recommendations. In spite of these limitations, the study sought to provide worthy findings and recommendations about how to resolve problem areas of conflict in Iraq under the available data and legal framework.

1.6 Structure of the Study

Following the introduction, the study is organized into two key sections. The second section discusses the understanding of disputed territories in Iraq, providing an overview of the origins and evolution of the territorial disputes, as well as analyzing Article 140, its implementation challenges, and its role in conflict resolution. The third section focuses on charting paths to resolution: legal and international strategies for Iraq's disputed territories. It analyzes the role of international law, UN resolutions, and arbitration mechanisms in addressing the disputes. Lastly, the paper summarizes the findings and offers recommendations for addressing the disputed territories.

2. UNDERSTANDING DISPUTED TERRITORIES IN IRAQ

This section will analyze the intricate dynamics of disputed territories in Iraq from a legal perspective. It begins by examining the historical background to establish a foundation for fully exploring how domestic legal regimes influence and interact in resolving these disputes. This approach will help readers grasp the complex ways in which these issues are deeply intertwined with history, legal obligations to the Iraqi state, and other related factors.

2.1 Historical Context

The conflict involving Iraq's Kurdish region and its boundaries has been an ever-burning issue since the establishment of the Iraqi state throughout the early decades of the twentieth century. The tension thus

increased following the emergence of oil in Kirkuk in the late 1920s. Thus, the Kirkuk issue can be traced to formation of the national Kurdish movement in the 1960s that claimed Baghdad's control over what the Kurds called "Kurdistan" in Iraq and included Kirkuk and its oil fields. The autonomy was agreed in 1970 which provided for a Kurdish region in Iraq but, without mapped boundary demarcation. This omission led to the ambiguity surrounding the status of what is now referred to as the "disputed territories." According to the report of the United Nations Assistance Mission for Iraq (UNAMI), the disputed territories consist of 14 districts and 2 sub-districts. In Nineveh province, these areas include Sinjar, Tala'afar, Talkif, Sheikhan, Aqra, Hamdaniyah, Makhmur, and Qahtaniyah districts. In Kirkuk province, the conflict areas encompass the central Kirkuk, Dubz, Hawija, and Daquq districts. In Salahaddin province, Tuz district is included. Lastly, in Diyala province, the conflict areas cover Kufri, Khanaqin, and Mandali districts. They existed before 1957 (United Nations Assistance Mission for Iraq, 2009). This vast stretch of varied districts, stretching from the Iranian border in the east to the Syrian border in the northwest, and situated between Arabs and Kurds in Iraq, remained unsettled (International Crisis Group, 2018). Therefore, these disputed territories between Arabs and Kurds have been central to several key historical events. They served as a major catalyst for Kurdish revolutions between 1960 and 1975, endured the devastation of the Iraqi military's Anfal campaign targeting Kurds in 1987-1988, became the epicenter of the 1991 Kurdish uprising after the First Gulf War, and held strategic significance during the 2003 U.S.-led invasion of Iraq. During the Ba'ath Party era, the regime systematically implemented policies of exclusion and discrimination, particularly against ethnic and sectarian groups. After the Kurdish nationalist movement's failure in 1975, the Ba'athist government intensified these efforts through Law No. 5 of 1975. Issued following the Eighth Regional Conference of the Arab Socialist Ba'ath Party in 1974, the law favored Arabs by granting them Iraqi nationality to strengthen ties with Arab populations in the region (Yassin, 2021). These policies represented part of a more comprehensive approach targeting the marginalization of non-Arab minorities, among them the Kurds and Turkomans, who underwent expulsion, land expropriation, and "nationality correction." These were supplemented by the physical destruction of Kurdish villages, gerrymandering of administrative boundaries in northern Iraq, and exclusion of non-Arabs from positions of importance in state enterprises to underline regime intent to further entrench Arab domination while weakening the position of non-Arab communities (Historica, n.d & Kane, 2011).

After enduring the final years of Ba'athist behind the "Green Line," which was internationally protected,"

(Palka, 2011) the Kurds expanded south following the 2003 US invasion. They established political and security systems in several disputed territories they deemed part of the historical Kurdistan region. Being a significant contributor to the federal initiative in the new Iraq, they devised a comprehensive constitutional plan through Article 140 of the permanent constitution of 2005 (Bartu, 2010). The constitution also recognized the KRG as a constitutional institution under Article 17(1) of the current Iraq Constitution. Although the historical roots of the contested territories problem dates back to the beginning of the formation of the Iraqi state, especially after the annexation of the areas then known as the "province of Mosul" to Iraq in 1925, the first official use of the term in Iraq dates back to 2004 (Rasul, 2020). The Iraqi constitution contained an explicit provision in this regard: Article 140, which emphasizes the responsibility of the executive branch to take the essential phases to complete the implementation of the requirements of Article 58 of the Iraqi State Administrative Law for the Transitional Period (Iraq: Law of Administration for the State of Iraq for the Transitional Period, 2004) including all its provisions. "The authority must fully complete the normalization and census tasks, and complete the referendum in Kirkuk and other conflict areas, no later than December 31, 2017" (Iraq Constitution, Art.140, 2005). The second paragraph of Article 58 also emphasizes the appointment of an international third party to resolve the disputed territories if the Interim Government Council is unable to appoint an impartial arbitrator to resolve the issue.

However, the existence of an international jurisdiction in this article is a major legal and international factor for the parties or one of them to resort to in order to resolve the contested territories. From the perspective of the KRG, the contested territories are areas that the KRG considers part of the Kurdistan Region but are located outside its current administrative boundaries. Since 2003, the KRG has consistently demanded to regain control over these territories. This persistent demand has shaped the issue into a conflict-like situation (Bartu, 2010).

During the normalization stage, Kurds, affected by 'Arabization' policies aiming at shifting the balance of demographics in Kirkuk and other contested territories from July 1968 to April 2003, were supposed to be repatriated and those Arabs relocated to the northern areas during the same period were to receive compensation and return to their original places, primarily to southern Iraq. The "Arabization" policies involved exile, forced relocation, expulsion, home demolition, property and land confiscations, and breaches of property rights. Any alterations to Kirkuk governorate's administrative boundaries for demographic or gerrymandering reasons were also slated for reversal. After reinstating the previous state, a census

and referendum would enable components in contested territories to choose whether they must be ruled by the KRG or Baghdad. However, the minorities in Kirkuk, especially the Arabs and Turkmens, believe that the solution of the disputed territories, including Kirkuk, is more than a legal basis, but this issue should be resolved through dialogue and political agreement outside the constitutional and legal framework (Bartu, 2010).

Meanwhile, according to a report by the Emirates Policy Center published in 2021, the problem between the federal government and the KRG over the ownership of these areas continues, as no population census has been conducted, and a referendum has not been held in these areas for various technical, political and geopolitical reasons. Until this moment, there is an insistence by the Kurdistan Regional authorities on confirming that these areas are Kurdish and that they must be completely subject to the power of the regional government because the Kurds do not hide their fears are concerned that the federal government will deprive them of these areas without complying with disregarding Article 140 of the constitution. In contrast, the federal government rejects such allegations, and largely defends the unconstitutionality of the attempt to forcibly annex them to the Kurdistan Region, and warns against the repercussions of this on the internal situation (Emirates Policy Center, 2021).

It is worth mentioning that, based on the constitutional framework for resolving the disputed areas, the Iraqi successive governments have established formal committees seven times since 2003 to resolve this issue. The last committee was established on August 28, 2022. Subsequently, the Interim Parliamentary Follow-Up Committee of Article 140 of the Constitution held its first meeting on July 20, 2023, headed by the current Deputy Speaker of the House of Representatives of Iraq. Supporting the government committee's work, the deputy Speaker, stated, in a press conference after the meeting, that the parliamentary committee's work included a legislative aspect, "such as canceling the unfair decisions of the Revolutionary Command Council that took away the rights of many governorate populations" (Rudaw, 2023).

Furthermore, in resolving the controversy surrounding the disputed areas in Iraq, the Federal Supreme Court ruled in August 2019 that Article 140 of the Iraqi Constitution, which pertained to these areas, remained in force. The Court indicated that: "The specific date, which was not to exceed December 31, 2007, for implementing the article was set for organizational matters and to encourage those concerned." It must be implemented without affecting its essence and achieving its intended goal (Al-Hafni, 2019 & Iraqi Federal Supreme Court, 2019).

The persistent dispute over Iraq's Kurdish region, stemming from historical tensions and oil discoveries, was endured throughout the 20th century. The term disputed territories gained prominence post-2003, with Article 140 of the constitution outlining measures for normalization, census, and referendums in the disputed territories. Despite attempts by successive Iraqi governments, resolution efforts faced challenges, including differing perspectives between KRG and the federal government. The latest committee, dating from 2022, intends to deal with the problems through legislation to provide for restructuring and garnering parliamentary support for government plans and programs to resolve the disputes. The Federal Supreme Court in its ruling issued in 2019 only confirmed the continued applicability of Article 140 while stressing its enforcement, which was addressed by the country's constitutional court, meaning that the understanding of its application is to continue without changing the substance of the provision. Hence, there is a rationale to suggest that there are intertwined pre-2003 historical relations between the KRG and the successive governments in the disputed territories on the one hand, and on the other hand, these territories were granted legal and constitutional statuses after the year 2003, which promises the future Iraqi governments in this respect only constitutional solutions.

Despite the fact that the domestic legal regimes offer a starting point to address all the above issues related to the disputed territories in Iraq, there seems to be no hope of a solution from this direction, and there is need to acknowledge the fact that there are many international interfaces associated with such conflicts. Since the conflict between the Iraqi federal government and the KRG over the contested territories has remained unabated, it is rather relevant to discuss the prospects of the international legal contexts to be applied as possible legal solutions. The interference of the UN and international arbitration elements might give adequate opportunity to start the process of the dialogue and seek for the peaceful solution of the dispute. The legal framework for international involvement is based on the provisions of the UN Charter, in particular the provisions assigning the parties' respective roles to resolve the conflict by peaceful means and expressing the principle of non-intervention in the states' domestic affairs.

2.2 Constitutional Responsibilities of the Iraqi State in Resolving Disputed Territories

The focus of this section is on the constitutional duties of the federal government and conform to Article 140 of the Constitution of Iraq in addressing the issues in the disputed territories with the KRG. It examines the requirements of normalization, conducting census, and

referendums as well as it touches on the difficulties and criticisms that have been encountered in the processes. It also looks into the challenges faced by the legislative and judicial branches in relation to this kind of work, while stressing the importance of proper 'mainstreaming' that will lead to the establishment of stability and resolve longstanding grievances.

As aforementioned, Article 140 of the constitution addresses the resolution of the outstanding issues between the federal government and KRG in relation to the disputed territories. This article determines the government's obligations related to the activities and normalization of the census and the organization of holding referendums in the territories. Normalization refers to the altered demography of Kirkuk and the disputed territories during and after the Ba'athist rule (Morris, Wirya, & Ala'Aldeen, 2015 & Al Jazeera, 2017). This therefore involves addressing historical injustices, reversing the effects of forced displacement, and restoring demographic balance in territories affected by conflict. The constitutional framework guides the state in implementing measures to return displaced populations and rectify demographic alterations, fostering a normalized social and political landscape.

The constitution mandates the census to occur, emphasizing its importance in resolving disputed territories. The state is tasked with gathering comprehensive demographic data, ensuring an accurate representation of the population in disputed territories. The constitutional guidance underscores the significance of an inclusive census, providing a factual basis for understanding the composition and preferences of communities in dispute. The constitution also guides the state in organizing these referendums, allowing the affected citizens to express their will regarding governance structures (Morris, Wirya, & Ala'Aldeen, 2015). However, according to Article 140, the referendum should have been held at the end of 2007.

It is evident that while Article 140 of the Constitution outlines defined responsibilities for the Iraqi federal government regarding the resolution of disputed territories with the KRG, there are several criticisms and areas for improvement such as, in terms of implementation, despite constitutional mandates, the federal government has faced challenges in effectively implementing measures stipulated in Article 140. The process of normalization, which involves rectifying historical injustices and restoring demographic balance, has been slow and marred by political tensions. For example, since 2003, the Kurds have been encountering similar discriminatory measures. From 2005 to the present day, the federal government has not made any meaningful efforts towards normalization in Kirkuk. Additionally, despite constitutional entitlements, the federal government has obstructed the province's right to

conduct local elections using various justifications. In addition, there have been other aspects that Kirkuk has been put through by the Iraqi federal government. For example, no changes have been made to put Kirkuk back to the way it was on the administrative map and no proper provision of funds as compared to the other regions (Fatah et al., 2018). Despite the fact that the oil income of the federal government has benefited significantly from Kirkuk, the province itself has hardly any feel of this fortunes which are derived from its natural resources.

However, on the one hand, the communal and political conflicts between Kurds, Arabs, and Turkmen have worsened the situation and complicated the process of normalization. The impatience of both sides of the conflict and their competing interests over land and resources, in an effort to gain exclusive control over the disputed territories, have remained significant obstacles to reaching a consensus on the implementation of Article 140. On the other hand, frequent acts of terrorism by insurgent groups and militias in these areas have also impeded progress towards the return of displaced individuals. Despite government efforts, the fear of violence and instability has either kept most families confined to their homes or forced them to relocate to other regions. This situation has exacerbated demographic rifts (Shareef, 2023).

Concerning the legislative efforts, activities have been conducted by the Iraqi parliament to address the execution of Article 140 of the constitution, but these efforts have proved to be slow and rather partial. Among such actions, it is worth naming the creation of committees that are devoted to covering the problems of Article 140 and the actions on their resolution, including the Committee for the Implementation of Article 140. Moreover, parliament has continuously participated in the monitoring and supervision of the government's activities under the Article 140, whereby they conduct sittings to check on the progress made or otherwise. However, regarding these endeavours, full compliance with Article 140, including the conducting of the referendum as provided for in the constitution, remains a challenge because of political, logistical, and security barriers.

As far as the judiciary power is concerned, the Federal Supreme Court of Iraq's function is to act as a supreme interpreter of the constitution and the articles that are related to the subject; In this regard, the court's decision in 2019 claiming that the matter of the contested areas including some in the Kurdistan Region, is still as a current issue (Iraqi Federal Supreme Court. Decision No. 71/2019). The court makes the last call in constitutional issues offering legal interpretation and settling on the disagreements which may occur between the federal government and the regional authorities (Iraq

Constitution, Art 93, Sct. 2, Art 94, 2005). As for Article 140 the court's decision confirms its relevance to questions concerning territories, the status of which is questioned, including those, for which both the federal government and the KRG act as subjects. A key criticism can be made when the Iraqi Federal Supreme Court offers decisions like decision 140 which holds positive guidance and instructions for the disputes' solutions but lacks implementation from the federal government. This lack of implementation weakens the court's authority as well as its decisions and may lead to continuous conflicts in regions with territorial disagreement. As far as the issue's legal component is concerned, while the issue of solving the dispute between the federal government and the KRG contains regional and international political factors, the non-implementation of court decisions by the federal government is a huge impediment to the rule of law coupled with a proper functioning of the Iraqi legal system. That way, it means that there should be improvement on how legal frameworks underpin accountability and enforce decisions by the judiciary as a hallmark towards the belief that stability will naturally be achieved to address the same age-old injustices within the country.

In light of the above, it can be seen that the obligations of the federal government concerning the determination of the status of the contested territories with the KRG are provided for in Article 140 of the Constitution of Iraq. These responsibilities include normalization processes, conducting population census and providing referendum in the territories, the fate of which remains uncertain. Nonetheless, although constitutional and legal provisions have been put in place, they remain a stark disappointment due to poor and unrealistic implementation which has elicited complaints as well. It has however been slowed down by political rivalry, territorial and resources disputes, insecurity from insurgent groups, and weak legal and judiciary frameworks. The Iraqi Parliament has taken partial measures to create the necessary committee and exercise supervision, but its efforts have not really solved the problem. In addition, the political position of the Iraqi Federal Supreme Court as an interpreter of the constitutional articles pertinent to this problem, for instance, the decision on Article 140, is unerring; but it always faces a problem of implementation at the level of the federal government. Failure to adhere to the above principles erodes the principles of rule of law and causes emerging and persistent conflicts in the disputed regions.

3. CHARTING PATHS TO RESOLUTION: LEGAL AND INTERNATIONAL STRATEGIES FOR IRAQ'S DISPUTED TERRITORIES

This section focuses on discussing the detailed role of the UN and its bodies in regulating the continuing conflicts between the federal government and the KRG. Applying cross-sectional research with similar international conflict cases, we consider to what extent UN interventions are likely to assist in solving the problematic areas. However, practical difficulties arise in the implementation of constitutional provisions within a country, for instance Article 140 of the constitution of Iraq, because of the interference of political authorities, resentment over historical injustices, and security threats. Thus, the search for the other solutions is of the paramount importance. This examination raises crucial questions: Concerning international legal principles, is it possible to adequately examine the disputed territories between the federal state and the KRG? What international obligations does Iraq have in reference to the above statement? What other solutions can be employed in handling the plight of Iraq's disputed territories and at the same time aim to promote regional stability?

3.1 UN Charter and Security Council Resolutions in Relation to Iraq's Disputed Territories

Today, it has become inadmissible for a single state to deeply interfere in the affairs of another, as international law has become fully established through the UN Charter since it contains important principles that states within the international systems should adhere to. Some of these principles are as follows: sovereign equality of states which is found in article 2(1) of the Charter outlines the equality of member states in their relationship. Also, Article 2(4,2) affirms that the use of force and force threats in international relations is unlawful and stresses peaceful settlement of disputes as well, the second part of the Article emphasizes that the member states should support and cooperate with the UN in all matters. The means through which the UN conducts the prevention and the resolution of conflicts, as well as through which the organization empowers the use of collective measures, inclusive of sanctions and force, for the sustenance or restoration of peace, has been identified in the last two chapters – Chapters VI and VII (UN charter, 1945).

More importantly, "Security Council Resolutions (SCRs)" as the legal measures being the exercising of the decision-making power of the highest organ of the UN carry much power in addressing threats to international peace and security. This authority emanates from Article 24(1) & 25 of the UN Charter, which entitles the Security Council to take enforcement measures on behalf of member states to restore or maintain international peace and security. According to the provision of the article 24(1), the Council has the main responsibility of the maintenance of international peace and security while the

provisions of the article 25 establishes that the member states by becoming members of the UN agree to approve and to perform the resolutions of the Security Council. The Council's right to make resolutions is backed up by Chapter VII of the UN Charter that establishes measures in case of threat to peace or presence of a breach or act of aggression. This comprises of endorsing of penalties, ban on the sale of weapons, and in really serious circumstances, the deployment of armed force to maintain order. SCRs are useful tools for addressing many of the world's challenges, such as wars, humanitarian crises, and threats to the peace (UN Charter, 1945).

For instance, regarding the Syrian issue, the UN imposed SCR 2254 that was passed in 2015. For this resolution, it went to Chapter VI of the UN Charter, which emphasized on means of peaceful settlement of disputes. It simply endorsed a roadmap for political transition in Syria, thus aligning with the objectives of Article 2(3) of the Charter, which encourages its members to resolve international conflicts through peaceful means across the world. In addition, under Article 2(4) of the Charter, Resolution 2254 emphasizes that the "threat or use of force" in international ties is not allowed; Governments and the United Nations have urged cease fire and the beginning of dialogs between the Government of Syria and the opposition forces (If quotation, use inverted commas) (UNSC, 2015). Likewise, the case of intervention by the UN in the Democratic Republic of Congo (DRC) is also based on the SCR including 2348, 2017. This resolution referred to Chapter VII of the UN Charter that vests the Council with power to employ such procedures as may strive for the restoration of the international peace and security.

This endorsed UN peacekeeping force, and any other peace keeping mission to use force under article 42 when protecting civilians or where it was in the process of promoting a political process (UNSC, 2017). Relatively to this, the UN also intervened with SCR 2304 (2016) to South Sudan as well. This resolution brought into play Chapter VII of the UN Charter, which gave the green light to UNMISS to be deployed. Their mission was to help implement the peace agreement and keep civilians safe. In doing so, the resolution also lined up with Article 2(7) of the Charter, which says the UN shouldn't interfere in a country's internal affairs, but also acknowledges that the Security Council has a duty to address threats to global peace and security (UNSC, 2016). The cases show how the UN applies Charter provisions and SCRs in handling conflicts and crises all over the world, mandated for the same intention of preserving international peace and security. In terms of international law, the UN maintains stability and resolves these conflicts by applying the tools available, which are diplomatic action, peacekeeping operations, and humanitarian efforts.

In the context of Iraq's state, after establishing the United Nations Assistance Mission for Iraq (UNAMI) under SCR 1500 in 2003 (UNAMI, 2003), the UN has played a significant role in facilitating dialogue, promoting reconciliation, and supporting efforts to establish stability in the various aspects of Iraq's post-conflict development and governance including the disputed territories. However, the Security Council in its latest resolution emphasized the extension of the mandate of its representation in Iraq (UNSC, 2023). A notable achievement in the UN's involvement with Iraq's disputed territories can be seen in its resolutions. These resolutions mark the first instance where the Council refers to "disputed internal boundaries" underscoring its support to help Iraqi parties address this issue in accordance with the Iraqi constitution. The resolutions 1770 of 2007, 1883 of 2009 and 1936 of 2010, based on Iraqi requests, emphasize the UNAMI's assistance to the Iraqi government to resolve the disputed territories with KRG (UNSC, 2007, 2009, 2010).

Besides, the Security Council in several other resolutions from 2011 to 2018 and 2022, emphasized the need to assist the Iraqi government to resolve its internal disputes, referring to the term disputed internal borders. More importantly, the Council, in resolutions 2299 of 2016 and 2631 of 2022, referred to the name of the KRG along with the Iraqi federal government to resolve the disputed territories in coordination. They specifically urge the federal government and KRG to cooperate in settling the disputed territories (UNSC, 2022).

In assessing the above situation, the UN' involvement in Iraq's disputed territories, as observed through SCRs and the establishment of the UNAMI, is aligned with the fundamental principles enshrined in the UN Charter. Article 2 of the Charter emphasizes the sovereign equality of states, which underpins the UN's engagement in facilitating dialogue and cooperation between the Iraqi federal government and the KRG to address disputed territories. Moreover, Article 2(4) reiterates the inadmissibility of threats or use of force against states in international relations and reaffirms, therefore, the prime importance given by the UN to peaceful means in resolving disputes. It showcases UN commitment to diplomacy for the sake of stability in troubled regions, thereby complying with its Charter mandate. Compared to UN involvement in Iraq, it shares similarities with the UN interventions in other states of conflict, in particular, Syria, the DRC, and South Sudan. In such a case, the UN has invoked SCRs and resorted to peacekeeping operations for the upkeep of international peace and security in satisfaction of Articles 24(1) and 25 of the Charter. Likewise, in Iraq itself, SCRs such as resolutions 1770 (2007), 1883 (2009), and 1936 (2010) explicitly articulate a serious commitment on the part of the UN to support the Iraqi authorities in resolving internal

disputes, achieving national stability, and building institutions to this effect, as mandated by the Charter.

On the other hand, Article 2(5) emphasizes that Member States shall cooperate fully with the UN in carrying out any task within the Charter's context. Article 24(1) also specifically emphasizes the conferral of accountability for the maintenance of international peace and security on the Security Council by the members of the UN and their consent to any decision of the Council. In this context, the SCRs on Iraq mean that any assistance requested by UNAMI takes on a binding character and must be complied with by the parties inside Iraq, in other words, the Iraqi federal government must comply with them.

However, it should be noted whether SCRs are binding or are submitted in the form of non-binding recommendations to Member States in the case of a conflict or threat to international peace and security. In his paper, Higgins explains that Article 25 of the Charter, which emphasizes the commitment of UN members to comply with SCRs, can be separated from the authorities granted to the Security Council under Chapters VI, VII as stated in Article 24(2). He believes that if Article 25 were applied only within the context of Chapter VII, it could be understood that UN members' compliance with SCRs is only within the context of Chapter VII. However, Articles 48 and 49 of the Charter completely dispel the doubts that UN members are bound by SCRs under chapter VII (Higgins, 1972 updated 2008).

Whether an SCR is binding or non-binding does not depend upon whether it is a "Chapter VI" or "Chapter VII" resolution. What is important is whether or not the Security Council has intended the resolution to be a "decision," which is binding, or a "recommendation," which is not. SCRs may also be a "curious hybrid" of the two, which further complicates their classification as one or the other (Higgins, 1972 updated 2008). For example, decisions under Chapter VI of the UN Charter, which deals with the "Settlement of Disputes," are normally recommendations, only becoming binding when the parties to the conflict so agree. A resolution which demands the member state Iraq to engage in negotiation of internal disputed borders with KRG peacefully under Chapter VI is normally deemed to be non-binding unless the parties in concern have agreed to be bound by that particular resolution. On the other hand, if a resolution is passed by the Security Council under Chapter VII of the UN Charter, which covers "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," then such a resolution will generally be held to be a "decision" and thus formally binding upon all UN member states. For instance, if the Council prescribes sanctions against a country for violating UN provisions, all UN member states are obligated to enforce such sanctions.

The curious hybrid nature of SCRs from both Chapter

VI and Chapter VII makes their legal status more complex. For instance, a resolution might call on parties to negotiate a peaceful settlement to a dispute under Chapter VI, while also imposing sanctions if they fail to do so under Chapter VII. In such cases, the legal status of the resolution would rely on the intents of the parties involved and the specific language of the resolution. In the context of the disputed territories between the Iraqi federal government and the KRG, based on the above-mentioned SCRs, it appears that these resolutions were recommendatory rather than binding, since the issues have not been resolved (GOV.KRD, 2024). This implies that both sides had different intentions regarding the issues. Therefore, the resolutions of the Security Council on the disputed areas of Iraq can have two implications: they can either have an impact on the parties involved or remain within the framework of the Iraqi constitution.

Nonetheless, it is important to note whether the SCRs can affect the Kurdistan Region as a non-state entity, and whether they violate Article 2(7) of the UN Charter, which prohibits any UN member state or body from interfering in the internal jurisdiction of countries. In fact, under Resolutions 2299 of 2016 and 2631 of 2022 mentioned above, the Security Council obliges both the KRG, as a non-international entity, and the Iraqi federal government, as an international entity, to resolve their issues, including the disputed territories, within the framework of the constitution. This shows that the Kurdistan Region has a legitimate status within the framework of international law according to the Iraqi constitution. Additionally, since UNAMI plays an assistance and advisory role to bring the two governments closer together on the issue of the disputed territories, which is consistent with Article 53 of the Charter, which empowers the Council to propose solutions to problems through regional organizations. The SCRs therefore emphasize resolving issues within the framework of the Iraqi constitution. All this has led the Council to refrain from violating Article 2(7) which prohibits the UN from interfering in the internal affairs of countries. Moreover, as stated in Article 58 of the Iraqi State Administrative Law for the Transitional Period, and further emphasized in Article 140 of the Constitution, the presence of a third party as an international entity is considered important if the constitutional mechanisms fail to be implemented by either the federal government or the KRG. This represents an international recognition of the Kurdistan Region as having an international character.

In summary, although the UN has been involved in urging the Iraqi federal government to begin a dialogue with the KRG over the disputed territories, resolving these lands remains far from becoming a reality. The fact that SCRs are not binding has made them ineffective, rather mere recommendations not mandatory.

Nonetheless, there is a glimmer of hope in other avenues of resolution that would go the way of restorative resolution, particularly recourse to International Court of Justice (ICJ). This shall be discussed in the next section.

3.2 The Role of International Arbitration in Resolving Disputes between the Iraqi Federal Government and the KRG

This section provides legal, political and practical analysis of the arbitral process relating to the disputed territories between the federal government and the KRG. The section also looks at other possibilities: direct bilateral negotiations and UN mediation and; the extent to which they could be effective in overcoming the diverse difficulties inherent in these matters.

Arbitration is the other form and a voluntary means of addressing territorial disputes being based on the principles of international conventions together with local statutes. It enables the parties to take their disagreement to a neutral third party without being forced and follow the decision made in a voluntary manner; peaceful so to say. Nevertheless, arbitration is not regulated with reference to the UN Charter; however, as it has been mentioned above, its principles are oriented to support the goals of the Charter – preserving the peace and security in the international level. Also, it is noteworthy to mention the “Permanent Court of Arbitration (PCA)” that was created under The Hague 1899 Convention and serves as a framework for arbitration proceedings; thus, the rule of law is strengthened in addressing territorial disputes (“Curtis, Mallet-Prevost, Colt & Mosle LLP, n.d”). The PCA resolve disputes between different groups, including states, government entities, international organizations, and private parties. It provides administrative support for arbitration, mediation, conciliation, fact-finding, and other dispute resolution measures. However, for the PCA to be involved in resolving disputed territories within a single state the following conditions would likely need to be met; Firstly, the dispute must involve at least one state party to the PCA's founding conventions. Iraq is a signatory to the convention but has not ratified it, meaning it is not legally bound by its provisions. However, the Convention was the first multilateral treaty that addressed the conduct of warfare and protection of cultural property (Gardam, 2004). Its principles laid the foundation for later treaties like the “1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict”, which Iraq has ratified (UNESCO, 1954).

Secondly, the parties to the dispute must agree to PCA involvement and agree on the specific dispute resolution mechanism, such as arbitration, conciliation, or mediation. Thirdly, there must be a legal basis for PCA involvement, either through the PCA's founding

conventions or a bilateral/multilateral treaty that provides for PCA dispute resolution. In another words, there needs to be a formal legal framework that allows PCA to be involved in resolving a dispute. Lastly, the disputed territories must be of an international nature for the PCA to be involved in a dispute, the dispute generally needs to involve elements that extend beyond domestic issues and have an international character (Permanent Court of Arbitration, n.d).

Examining the Abyei Arbitration (Sudan vs. South Sudan), it is evident that arbitration was utilized as a mechanism for dispute resolution, as outlined in the Comprehensive Peace Agreement (CPA) of 2005, to address the contentious issue of sovereignty over Abyei (CPA, 2008). Similarly, the South China Sea Arbitration (People’s Republic of China vs. Republic of the Philippines) employed the arbitration framework under Annex VII of UNCLOS. This process adhered to international law principles and aimed to resolve the maritime dispute between the two nations (PCA, 2016).

Therefore, the role of arbitration in resolving disputed territories is grounded in legal bases and statute provisions that emphasize consent, impartiality, expertise, enforceability, and enhanced cooperation. These principles ensure that arbitration serves as an effective and efficient means of resolving disputed territories according to international law and the parties' preferences.

Thus, it can be said that according to the second part of Article 58 of the Iraqi State Administrative Law for the Transitional Period there is a constitutional agreement between the Iraqi federal government and the KRG that the disputes concerning these territories will be solved through an international legal means. This article states that if the Iraqi government fails to handle the matter in accordance with the constitution, it should appoint a neutral arbitrator by unanimous vote to review the matter and make recommendations. If the parties cannot agree on an arbitrator, they are to request the UN Secretary-General to designate an international figure as the arbitrator. Article 140 of the Iraqi Constitution also puts forward this process, which was mentioned earlier. Having these provisions in its disposal makes the basis legally and internationally strong for the Permanent Court of Arbitration to undertake these territorial issues of international significance. Consequently, this could pave the way for an international resolution to the disputed territories in Iraq. Therefore, there is a possibility for either of the disputing parties to request a third party, especially the PCA, to intervene in this dispute.

However, under Article 93(4), the Iraqi Constitution grants the Federal Supreme Court the authority to interpret the constitution and resolve matters related to the federal government, regions, governorates, and local

administrations. This article grants full authority to the Federal Supreme Court to resolve contested territories if they are not resolved by the federal and regional governments, rather than through international mechanisms. Accepting binding arbitration could lead to decisions that contradict Article 93 of the Iraqi Constitution. The federal government may be reluctant to subject itself to such binding decisions made by external bodies, hence, the federal government will not be willing to submit to binding decisions made by external agencies.

Therefore, Iraq's decision not to accept the compulsory jurisdiction of the arbitration in the context of its disputed territories with the KRG reflects a combination of sovereignty concerns, political sensitivities, legal implications, the historical context of the conflict, and constitutional considerations. However, the international reference in Article 58 could provide a strong legal incentive for the UN to propose a court to resolve the disputed territories. More importantly, can the UN do so? Does it want to? The resolution of these territories has both regional and international dimensions.

Although we have provided an objective and legal analysis above, the essential question is what are the alternative options for resolving the disputed territories between the Iraqi federal government and KRG in the absence of the federal government following the domestic legal solutions? One of the alternatives is negotiation and political settlement. The two parties should engage in direct negotiations to find a political settlement to their disputes over internal boundaries and resource sharing (al-Zubaidi, 2024). This would involve compromise and concessions from both sides to reach an agreement that addresses the core concerns of each party.

However, Al-Zubaidi, in her current study published in 2024 says that, there is a possible solution to the complexities. Her proposal ends to be the division of the contested areas into eight different areas, each of them has an exclusive right to conduct a statistical analysis of the people's views as well as they will get their own chance to have only a referendum to confirm the results. The partition of the people ascertains that the residents in each region decide their courses of action and their placement of the borders through the vote that holds the majority. The political issue of such an approach that was selected would need the supervision of the bigger international community; that is, the UN and the other international organizations would be involved in supervisory actions (Al-Zubaidi, 2024).

Nevertheless, the idea disclosed by Al-Zubaidi has to encounter obstacles. Besides the statistical accuracy and the legitimacy of the voting process, the logistics of data collection and the allocation of funds present additional challenges. Moreover, from the political point of view, this strategy will not satisfy all the groups and may in fact trigger more serious conflicts if some of the groups

negotiate against the partition or disagree with the results. Subsequently, the international guidance necessary for being sure of the impartiality would be difficult to get and would probably meet the complicated and various how the region is politically organized. In addition, the proposed solution by having the majority rule makes the minorities vulnerable and goes around creating new grievances. The scheme also anticipates challenges from other countries and international partners who also have a stake in this matter. Finally, the approach might overlook the historical and cultural nuances of the region, undermining long-term stability and satisfaction. Furthermore, as mentioned earlier, Article 140 of the Iraqi constitution provides for the solution of these areas through, census, normalization and referendum, throughout the disputed territories, so the rediscovery of such a mechanism will cause great concern by the government, which makes the solution more difficult.

Mediation by a neutral third party is another alternative emphasized in Article 140. If direct negotiations fail, the parties could agree to mediation by a neutral third party, such as the UN. As mentioned earlier, the UN has previously played its role in Iraq's disputed territories, but there is a fair point; despite the UN's having a presence in Iraq since 2005 through the UNAMI, its mediation efforts between the two parties over the disputed internal boundaries have had limited effectiveness so far. For instance, while the UN Security Council has passed numerous resolutions, calling on the parties to resolve the disputes based on the Iraqi Constitution, the resolutions lack strong enforcement mechanisms. In other words, they were consultative and non-binding resolutions. This allows the parties to continue their disagreements without facing consequences. Most importantly, the current role of the UN has reached a point where the Iraqi federal government demands it to end its work in Iraq (Iraqi News Agency, 2024), while the federal government has not yet resolved the issue of disputed territories with the KRG. Therefore, this new request is a concerning development that highlights the weakness of UNAMI's role, which is dangerous for Iraq's future, given that the UN mission has not been able to effectively mediate the disputes so far.

while UN mediation remains a viable option in theory, its effectiveness has been limited in practice due to the lack of enforcement tools, ongoing political obstacles, shifting priorities, and the constraints of UNAMI's broad mandate. More targeted and continued pressure from the international community may be needed to compel the parties to make meaningful progress on this issue through UN facilitation. However, it is arguable that the UN could play a more active mediating role and act as a neutral third party to facilitate negotiations and dialogue

between conflicting parties, compared to the consultative role which has no direct control over the outcomes.

The analysis in this section has shown that there are overwhelming difficulties standing in the way of resolution over internally disputed territories between the Iraqi federal government and KRG. There is always the option for the legal means that include the arbitration but the deeper issues that involve sovereignty and the historical origin, as well as the preferences of domestic resolution do not make it easy going. However, peaceful negotiations and UN mediation are able to provide a long-term solution through Security Council, as it highlights the need for collective international will to overcome the political, logistic and historical realities.

4. CONCLUSION AND RECOMMENDATIONS

4.1 CONCLUSION

This paper has endeavored to deliver a clear prologue of the complicated subject of disputed territories in Iraq, concerning history and constitutional and legal liabilities, as well as international approaches. The key objectives were: to bring clarity as to the nature of the conflict; to determine Iraq's constitutional method of dealing with such conflict; and to examine legal and international methods of addressing the problem that is efficient. The disputed territories in Iraq have historical antecedents mainly anchored on policies of the Ba'athist regime, which sought to consolidate power and undermine ethnic and sectarian differences, significantly complicating the conflicts. It is argued that demographic engineering and other actions of the past that have discriminated against certain groups still dictate relations in the disputed territories in the present. These disputes are taken care of by the constitutional framework, notably Article 140 of the Iraqi Constitution, which foresees a comprehensive process of normalization, a census, and a referendum. However, Article 140 has been tortured by countless troubles in its execution, entailing political disagreements, non-compliance by the federal government, administrative hurdles, and shortages of resources. On the international legal level, several resolutions and diplomatic actions on the part of the UN have certainly provided a middle ground in containing these conflicts. Except for providing the framework for international engagement, The UN efforts have not been successful in bringing full resolution to Iraq's territorial conflicts because they fail to provide for the underlying or root causes of such issues. The international arbitration process has also been considered for the resolution of disputes between the federal government and the KRG. Indeed, arbitration means to create a neutral structured procedure, which, based on clear terms of reference and impartial arbitration bodies, would

provide an avenue to a fair and effective resolution if both parties agree to the same. Comparative cases demonstrate that arbitration can succeed in resolving the disputed territories of Iraq when parties are genuinely committed to the process. However, the federal government's failure to implement constitutional provisions, including Article 140, and the lack of legal force behind international resolutions, such as those of the Security Council in Iraq, present significant challenges to resolving these disputed territories. Moreover, these attempts are made more difficult by logistical issues in Iraq and a lack of confidence amongst parties.

Finally, settling the disputed areas of Iraq is quite a challenging process that requires a varied strategy involving input from history, constitutional basis, legal enactments, and international support. Thorough engagement with these factors will surely be able to devise a route for an ultimate and just solution to the ongoing disputes to better both the federal government and the KRG. The recommendations of the following section can be made for this purpose.

4.2 Recommendations

1. Iraq's government has to think through its approach toward Article 140 of the Constitution, rectify historical grievances, assure transparency and inclusiveness, and engender trust between the federal government and the regional government.
2. The international community should play a more proactive role in facilitating the process of dialogue and facilitate resolution efforts, especially by reinforcing the mandates of relevant UN Security Council Resolutions for such processes and provide technical and financial support to the constitutional mechanisms in Iraq tasked with the resolution of disputed territories.
3. Article 25 holds that all members of the UN are obligated to perform the decisions of the Security Council. Iraq, being a UN member state, must obligate to the Resolutions of the Security Council calling upon the Federal Government to open up the issue of the disputed territories with the KRG through constitutional mechanisms and dialogue.
4. In the event that constitutional solutions are not effective, the Government of Iraq and the KRG should be prepared to bring their disputes before international arbitration. The process would have to have terms of reference agreed in advance and a neutral arbiter chosen so that it is fair and efficient. The UN must, through UNAMI, also be ready to do its part here.

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