

Iraqi Kurdish Referendum and International Law

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ABSTRACT: *The Iraqi Kurds have decided to become independent by separate from the Iraqi central government. This situation clearly contradicts the Declaration of Independence, which is adopted by the United Nations in 1932 and binding about Iraq in terms of international law. This Declaration of Independence does not enfranchise any ethnic group. It accepted Arabic as the official language, and ensured that two large ethnic groups outside of Arabia, Kurds and Turkmens, could use their own language in education and justice institutions.*

Keywords: *Iraq, Kurdish, Referendum, Ottoman, Federalism, Turkomans.*

Irak Kürt Referandumu ve Uluslararası Hukuk

Öz: *Irak Kürtleri, merkezi Irak hükümetinden ayrılarak Bağımsız olma kararı aldılar. Bu durum, Uluslararası Hukuk açısından bağlayıcılığı bulunan ve 1932 yılında Milletler Cemiyeti tarafından kabul edilen Bağımsızlık Deklarasyonu'na açıkça aykırı düşmektedir. Bağımsızlık Deklarasyonu, herhangi bir etnik gruba ayrıcalık tanımamıştır. Deklarasyonu Arapça'yı resmi dil olarak kabul etmiş ve Araplar dışında Türkleri ve Kürtleri, eğitim ve hukuk alanında kendi dillerini kullanabilecekleri iki büyük etnik grup olarak tanımlamıştır.*

Anahtar Kelimeler: *Irak, Kürt, Referandum, Osmanlı, Federalizm, Türkmenler.*

1. INTRODUCTION

The Iraqi State, which was formed by societies that passed from the Ottoman citizenship to the Iraqi citizenship without ethnical and religious distinctions in the framework of the International Covenants, declared its independence in 1932 and this was accepted as United Nations.

After 1958, the Iraqi Military Authorities, which came to power through revolutions, ignored many of the democratic rights to the contrary the Declaration rules, and gave some privileges to the Kurdish ethnic group. In 1958, 1963, 1964 and 1968 Constitutional texts, the Kurds were regarded as state partners with the Arabs. As a result of the conflicts between the Kurdish tribes and the Iraqi governments, new concessions were made to the Kurds with autonomous agreements of 1970 and 1974. Following that it is accepted Kurdistan as a separate autonomous region. These agreements were partly suspended, as the Kurds continued their rebellions without considering the concessions made.

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In 1991, only Kurdish areas are announced as the Safe Zone by the United States with unilateral on the grounds that the United Nations decision numbered 688. Other areas outside it were confronted with the massacres of the military administration of Saddam. Gulf Operations in the US administration aimed primarily at protecting the Kurdish Region. Following the invasion of Iraq in 2003, the Provisional Government Law, determined by the Coalition, brought political concessions given to the Kurds and the Kurdistan borders to a step further. Finally the rights specified in the Provisional Government Law determined by the Coalition in 2004, are clearly contrary to the Declaration of Independence. These privileges, obtained only through armed revolts over the years, have created privilege to an ethnic group within the territorial integrity of Iraq and the Iraqi State have brought to the point of disintegration.

2. THE ESTABLISHMENT OF THE IRAQI STATE

The decision of the Iraqi Kurdistan region to leave the central government means the disintegration and re-establishment of Iraq. Such a new situation should be considered within the framework of the initial conditions and laws of the Iraqi State.

Apart from the basic position, we should briefly mention the following points. Iraq was a Turkish land for hundreds of years. During the First World War, it was occupied by the British. The last Ottoman Deputies gathered on January 28, 1920, confirmed that the region was Turkish land. After the military and diplomatic struggle between Turkey and Britain, Iraq officially left the Ottoman Empire in accordance with the Treaty of Lausanne on 24 July 1923. Ankara Agreement signed on June 5, 1926 and today's Turkey-Iraq borders were determined. Since then, the Republic of Turkey has respected the sovereignty and borders of Iraq and defended its territorial integrity.

Iraq which had remained in the British occupation for some time, won independence in the League of Nations by vote of 52 members on 3 October 1932. The Establishment Law is the most fundamental element of the national and international legal situation of Iraq that day and today. (League of Nations, Official Journal, 1932, p. 49.)

Article 1 of the Establishment Law on the Protection of Minorities sets out a basic provision that will be valid for as long as the Iraqi State exists. According to this:

“The stipulations in the present chapter are recognized as fundamental laws of Iraq, and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future prevail over them.” (Declaration of the Kingdom of Iraq, 1932)

Article 3 of the Establishment Law defines Iraqi Citizenship. According to this;

“Ottoman subjects habitually resident in the territory of Iraq on August 6th, 1924, shall be deemed to have acquired on that date Iraqi nationality to the exclusion of Ottoman nationality in accordance with Article 30 of the Lausanne Peace Treaty and under the conditions laid down in the Iraqi Nationality Law of October 9th, 1924.” (Declaration of the Kingdom of Iraq, 1932)

Article 30 of the mentioned Lausanne Peace Treaty is as follows:

“Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become ipso facto, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.” (Lausanne Peace Treaty, 1923)

Article 3 of the Iraqi Citizenship Act of 9 October 1924 referred to in Article 3 of the Declaration has similar expressions:

“All persons who on the 6th day of August, 1924, were Ottoman subjects and were habitually resident in 'Iraq are hereby declared to have ceased to be Ottoman subjects and to have acquired 'Iraq nationality on that date.” (The Iraq Nationality Law, 1926)

In all these basic Laws, the principal citizens of the Ottoman State who lived in Iraq at that time became the main citizens of Iraq. Especially in terms of Ethnicity, the Turks, the main elements of the Ottoman Empire, were left to Iraq as a Principal, not a Minority. As a matter of fact, Article 4 of the

Establishment Law explicitly stipulates that a distinction based on ethnicity cannot be strictly made. The provisions of this Article are as follows:

“Article 4

1. All Iraqi nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

2. The electoral system shall guarantee equitable representation to racial, religious and linguistic minorities in Iraq.

3. Differences of race, language or religion shall not prejudice any Iraqi national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employment, functions and honours, or the exercise of professions or industries.

4. No restriction will be imposed on the free use by any Iraqi national of any language, in private intercourse, in commerce, in religion, in the Press or in publications of any kind, or at public meetings.

5. Notwithstanding the establishment by the Iraqi Government of Arabic as the official language, and notwithstanding the special arrangements to be made by the Iraqi Government, under Article 9 of the present Declaration, regarding the use of the Kurdish and Turkish languages, adequate facilities will be given to all Iraqi nationals whose mother tongue is not the official language, for the use of their language, either orally or in writing, before the courts.” (Declaration of the Kingdom of Iraq, 1932, p. 4)

In the declaration, the expression of Kurdish and Turkish besides Arabic as the official language is the most important indicator that the Kurds and Turks together with the Arabs are the essential elements of the Iraqi state. Provisions contained in Article 9 about the use of mother tongue are as follows:

“Article 9

1. Iraq undertakes that in the liwas of Mosul, Arbil, Kirkuk and Sulaimaniya, the official language, side by side with Arabic, shall be

Kurdish in the qadhas in which the population is predominantly of Kurdish race.

In the qadhas of Kifri and Kirkuk, however, in the liwa of Kirkuk, where a considerable part of the population is of Turcoman race, the official language, side by side with Arabic, shall be either Kurdish or Turkish.

2. Iraq undertakes that in the said qadhas the officials shall, subject to justifiable exceptions, have a competent knowledge of Kurdish or Turkish as the case may be.

3. Although in these qadhas the criterion for the choice of officials will be, as in the rest of Iraq, efficiency and knowledge of the language, rather than race, Iraq undertakes that the officials shall, as hitherto, be selected, so far as possible, from among Iraqis from one or other of these qadhas.” (Declaration of the Kingdom of Iraq, 1932, p.4)

We want to draw attention to the Turkish expressions which are expressed in the above materials at this point. Because - as we will be saying shortly – these Turkish expressions were derived from the Constitutions prepared by military governments in the following years.

The withdrawal request from the main constituent by any ethnic or religious geography of any of the peoples which are forming Iraq is contrary to the basic laws above. Such a demand means that the current state will be politically destroyed and a new state established. While a new State is being established, all Ethnic and Religious groups may decide to withdraw according to their political wishes.

The only binding law in terms of international law is the Declaration of the Establishment of Independent Iraq, adopted by the League of Nations on 3 October 1932. After this date, the conditions that arise in the wake of the military revolutions and occupations and the text of the Constitution are not International Binding. Furthermore, the subsequent Constitutions, which were adopted, were determined according to the political views of those who took over the administration, which was not offered to the People's Game in a free electoral environment.

The Ottoman State has transferred its citizens living in Iraq to Iraq under the basic laws above. The Treaty of Lausanne, also referred to in the Iraq Declaration of Establishment, was signed by the Government of the Republic of Turkey. Therefore, the Republic of Turkey is a party to the violations that will occur in the framework of the International Treaties and has the right to speak.

3. MILITARY REVOLUTIONS PERIOD

If the events that take place after Iraq's independence, create permanent inequalities and injustices through internal conflicts, revolutions, external occupations, political and constitutional regulations, are open to intervention by both the International Community and the countries which are party to Iraq's establishment. As a matter of fact, military interventions made for the removal of Saddam Hussein who was persecuting his own people, from power, within the framework of United Nations resolutions have been deemed to comply with the International Law.

Nevertheless, the laws and political regulations issued by governments, which are illegally powering, especially in the wake of military tribunals, are invalid in terms of International Law. The support of an Ethnic or Religious group and the provision of unjust political and economic interests by virtue of these regimes being regarded as political gained rights is completely unfounded.

Indeed, despite the fact that it was under the British Mandate Administration, no ethnic group was cited in the 1925 Iraq Constitution. In contrast, the Constitutions which are constituted after the 1932 Foundation Declaration democratic principles completely disrupted the equality of peoples and independent judiciary. We can summarize these examples as follows:

- **1958:** In the 3rd article of the Constitution which was accepted following the Bloody Military Coup that took place on July 14th, a social inequality was initiated by accepting "Arabs and Kurds as partners". (الدستور الموقت لعام 1958)
- **1963:** With the rules enacted on February 8th, the Revolutionary Command Council has been fully dominated to the Legislative, the Executive and the Judiciary and has been carried out many antidemocratic practices even in the period of the Kingdom. (قانون المجلس الوطني لقيادة الثورة)

• **1964:** In the 19th article of the Provisional Constitution of April 29, "political rights of the Kurds" were re-emphasized and other peoples were not mentioned. (الدستور المؤقت لعام 1964)

• **1968:** In the 20th article of the Constitution written by the Military Administration on September 20, "Arabs and Kurds" is mentioned, but other societies and cultural rights are not mentioned. (الدستور المؤقت لعام 1968)

• **1970:** An agreement was reached between the two sides on March 11th to end the continuing conflicts between the Military Administration and the Kurdish tribes. The Treaty of 15 Articles known as the Autonomy Agreement is exactly the following:

“1. The Kurdish language shall be, alongside the Arabic language, the official language in areas with a Kurdish majority; and will be the language of instruction in those areas and taught throughout Iraq as a second language.

2. Kurds will participate fully in government, including senior and sensitive posts in the cabinet and the army.

3. Kurdish education and culture will be reinforced.

4. All officials in Kurdish majority areas shall be Kurds or at least Kurdish-speaking.

5. Kurds shall be free to establish student, youth, woman's' and teachers' organizations of their own.

6. Funds will be set aside for the development of Kurdistan.

7. Pensions and assistance will be provided for the families of martyrs and others stricken by poverty, unemployment or homelessness.

8. Kurds and Arabs will be restored to their former place of habitation.

9. The Agrarian Reform will be implemented.

10. The Constitution will be amended to read 'the Iraqi people is made up of two nationalities, the Arab nationality and the Kurdish nationality.'

11. The broadcasting station and heavy weapons will be returned to the Government.

12. A Kurd shall be one of the vice-presidents.

13. The Governorates (provincial) Law shall be amended in a manner conforming with the substance of this declaration.

14. Unification of areas with a Kurdish majority as a self-governing unit.

15. The Kurdish people shall share in the legislative power in a manner proportionate to its population in Iraq.” (McDowall, 2004, p. 327)

One month later, Vice President Saddam Hussein set up a commission consisting of 4 Kurds and 4 Arabs to implement this agreement. President ElBekir took the leading 5 Kurds to the cabin. The judges of Dohuk, Erbil and Suleimania were elected members of the KDP. Until the end of April, Kurdish language began to be used in the Kurdish regions. Kurdish magazines were published, The Writers' Union, a Cultural Association, Students and Youth and Teachers' Unions were established. The implementation of agricultural reform has begun. It was decided to pay 6,000 pesos to serve as border guards. About 2700 houses and about 100 villages which were destroyed before in Erbil, were rebuilt. Meanwhile, the Baath administration rejected Habib Karim of the candidate of the KDP to be Vice President, because of his Iranian origin. The problems related to the demographic structure could not be solved and the planned population censuses could not be done. The Kurds claimed that the Arabs had been deployed to Kirkuk, Khanakin and Sinjar by the administration. The administration proposed that the 1957 Population Census be taken as the basis. Both according to the 1957 Population Census and the current situation, the majority of Kirkuk were composed of Turkmen, so the Kurds did not accept it. Mullah Mustafa Barzani said that: **"We have been fighting for autonomy for 10 years, and if necessary we will fight for another 5 years for Kirkuk."** (McDowall, 2004, p.330)

According to Article 10 of the Agreement, in the New Interim Constitution, adopted by the Revolutionary Command Council under Hasan ElBekir's leadership on July 16, clearly emphasized that the Iraqi nation consists of

only two nationalities. In this respect, Article 5 of the Provisional Constitution is following:

“Article 5

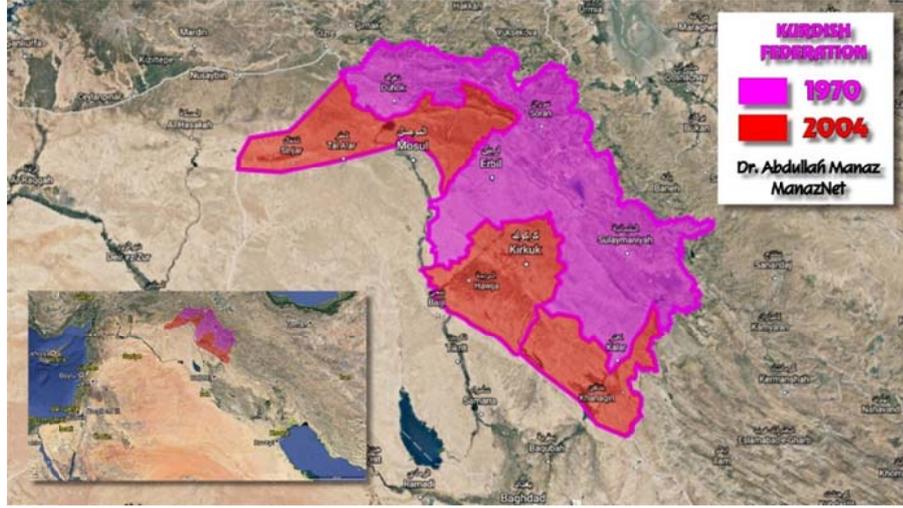
- a) **Iraq is a part of the Arab nation.**
- b) **The nation of Iraq is formed of two principal nationalities, these are the Arab nationality and Kurdish Nationality. This Constitution shall recognize the national rights of the Kurdish nation and the legitimate rights of all minorities within the Unity of Iraq.”** (The New Interim Constitution, 1971)

In Article 7 of the same Provisional Constitution, the language issue was decided as follows:

“Article 7

- a) **Arabic is the official language.**
- b) **Kurdish language shall be the official language beside the Arabic language in the Kurdish district.”** (The New Interim Constitution, 1971)

Mullah Mustafa was not satisfied with the concessions and found new demands. While he was desiring to withdraw all Iraqi troops from Kurdish regions, he developed relations with the Shah of Iran and refused to close the Iranian border. In the June 1973 Washington Post, there was the following expressions: **“We are ready to act according to US policy if the US will protect us from the wolves. In the event of sufficient support we should be able to control the Kirkuk oil fields and confer exploitation rights on an American company”** (McDowall, 2004, p.333) Mullah Mustafa explicitly expressed the demand for an Independent Kurdistan, which will be Kirkuk as the capital.



On the occasion of mutual accusations and negotiation negotiations, a new Autonomy Agreement was prepared on March 11, 1974. No consensus was reached on the following items of this agreement:

“1. Kurdistan, defined by the existence of a Kurdish majority according to the 1917 census, will enjoy autonomy as an integral unit within the framework of Iraq, according to the 11 March Accord, with Arbil designated as its metropolitan centre.

5/6. The area will be an autonomous financial unit within the financial integrity of the state. Its budget will be within the consolidated budget of the state.

13. The President of the Republic shall appoint a member of the (elected) Legislative Council to form an Executive Council. The President of the Republic may dismiss the chairman of the Executive Council at any time, in which case the Executive Council will be dissolved.

17. Police, security and nationality formations in the area shall be attached to their directorates general at the Ministry of the Interior, and their staff subject to the laws and instructions applied in the Republic of Iraq.

18. The offices of the central authority for the area shall fall under the ministries to which they are attached, and are subject to their general guidance.

19. Supervision of the legality of the decisions of the autonomous bodies shall be exercised by the Supreme Court of Appeal of Iraq.” (McDowall, 2004, p. 336)

Finally, the disagreement between the parties has turned into civil war. Mullah Mustafa repeated the request of aid from the US, Israel and Iran in exchange of Kirkuk Petroleum. While conflicts between Kurds and the administration, Iraq and Iran were negotiated at the OPEC meeting held in Algeria on 6 March 1975. The aid to Mullah Mustafa via Iran was cut off and the Kurds remained in the middle. In addition to 100 thousand Kurdish refugees in Iran, a hundred thousand Kurdish soldiers and their families passed on to Iran. The autonomy negotiation ended in this way.

4. GULF WARS AND IRAQ'S OCCUPATION PROCESS

Especially since 1946, the struggle for independence under the leadership of Mullah Mustafa Barzani has been the scene of bloody wars and massacres between the Kurds and the Iraqi authorities. Essentially in this issue, which is essentially outside the basic position, the process that started with the Halabja Massacre and the Gulf Wars are important. Although the policies and attacks that were imposed against the Kurds, showed reason, the bases of which the strategic policies and practices of the United States about Iraq, Iran and the Middle East are different. The aid request of Mullah Mustafa Barzani from the United States in exchange for Kirkuk Oil is the most important issue that summarize the foundation of the relationship between the Kurds and the United States. As a matter of fact, the aid made to Mullah Mustafa Barzani over both Israel and Iran during the Shah period from 1940's is the most important evidence of mutual cooperation.

It is no coincidence that Saddam Hussein was came to power with US support after the Iranian Islamic Revolution of 1979 and that is started a war against Iran six months after. Saddam Hussein's attack on the Kurdistan following the end of the war, the implementation of the Halabja massacre in 1988 and the support about his attack on Kuwait are still being discussed. As a result of these attacks, the defeat of the Iraqi Army in the Second Gulf

War, which took place in March 1991, led the Kurds to revolt again and then it was suppressed by Saddam Hussein. Upon the accumulation of hundreds of thousands of asylum seekers on the borders of Turkey and Iran, the United Nations Security Council adopted Resolution 688 on the application of these countries. (Resolution 688, 1991)

Three days later, the United Kingdom proposed that the United Nations establish a Safe Zone in Northern Iraq. Two days later, the United States declared that the northern of the 36th Parallel is the No Fly Zone. Although this decision seemed to be a very humanitarian decision, in practice it was entirely directed at protecting the boundaries of the Kurdish Federation. In the United Nations resolution 688 on which the US based its Safe Zone practice, neither the Safe Zone nor the Flyway Zone was mentioned. Dohuk, Erbil and Suleimania regions where the Kurds live intensively were defined as the Safe Zone. Talafer District, although located in the north of Parallel 36, was not taken to the Safe Zone and left to the mercy of Saddam Hussein. Likewise, the Suleimania region was counted as a Kurdish region within the Safe Zone despite being under Parallel.

The reason for our explanation here is that the United States and its Middle East Policy are mainly focused on protecting Kurdistan. Today, the strategy carried out by the USA in the region serves to protect and nationalize Kurdistan.

As we said at the beginning of our article, the Iraqi Declaration of Independence, adopted by the United Nations in 1932, did not grant autonomy to Kurds or any other ethnic group. Most importantly, after the Declaration of Independence, no regulation could be contrary to this declaration was judged. If we remember once more, the following statements were in place in the First Article of the Declaration:

“The stipulations in the present chapter are recognized as fundamental laws of Iraq, and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future prevail over them.” (Declaration of the Kingdom of Iraq, 1932)

The Kurds' autonomy request which is whether in Iraq or apart from Iraq was a request for independence which was tried to be achieved in the context

of conflict and civil war. As a result, the war between the Iraqi administrations and the Kurds is still going on today.

The provisions granting privileges to Kurds, which were put into the Constitution contrary to the Iraqi Establishment Declaration by the Military Administration in 1958, were repeated in the Temporary Constitutional Texts of 1990 and 1991.

Finally, the same mistakes not only repeated in the text of the "Provisional Coalition Administration" dated March 8, 2004, which was prepared following the invasion of the USA but also many new concessions about Kurds, Kurdish and Kurdistan Region have been recognized. The basic provisions in this regard are as follows:

“Article 9

The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turcoman, Syriac, or Armenian, in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions, shall be guaranteed. The scope of the term “official language” and the means of applying the provisions of this Article shall be defined by law and shall include:

- (1) Publication of the official gazette, in the two languages;**
- (2) Speech and expression in official settings, such as the National Assembly, the Council of Ministers, courts, and official conferences, in either of the two languages;**
- (3) Recognition and publication of official documents and correspondence in the two languages;**
- (4) Opening schools that teach in the two languages, in accordance with educational guidelines;**
- (5) Use of both languages in any other settings enjoined by the principle of equality (such as bank notes, passports, and stamps);**

(6) Use of both languages in the federal institutions and agencies in the Kurdistan region.

Article 53.

(A) The Kurdistan Regional Government is recognized as the official government of the territories that were administered by the government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh. The term “Kurdistan Regional Government” shall refer to the Kurdistan National Assembly, the Kurdistan Council of Ministers, and the regional judicial authority in the Kurdistan region.

(B) The boundaries of the eighteen governorates shall remain without change during the transitional period.

(C) Any group of no more than three governorates outside the Kurdistan region, with the exception of Baghdad and Kirkuk, shall have the right to form regions from amongst themselves. The mechanisms for forming such regions may be proposed by the Iraqi Interim Government, and shall be presented and considered by the elected National Assembly for enactment into law. In addition to being approved by the National Assembly, any legislation proposing the formation of a particular region must be approved in a referendum of the people of the relevant governorates.

(D) This Law shall guarantee the administrative, cultural, and political rights of the Turcomans, ChaldoAssyrians, and all other citizens.

Article 54.

(A) The Kurdistan Regional Government shall continue to perform its current functions throughout the transitional period, except with regard to those issues which fall within the exclusive competence of the federal government as specified in this Law. Financing for these functions shall come from the federal government, consistent with current practice and in accordance with Article 25(E) of this Law. The Kurdistan Regional Government shall retain regional control over police forces and internal security, and it will have the right to impose taxes and fees within the Kurdistan region.

(B) With regard to the application of federal laws in the Kurdistan region, the Kurdistan National Assembly shall be permitted to amend the application of any such law within the Kurdistan region, but only to the extent that this relates to matters that are not within the provisions of Articles 25 and 43(D) of this Law and that fall within the exclusive competence of the federal government.” (Coalition Provisional Authority, 2004)

5. CONCLUSION

As a result, it is clear that Iraqi Kurds are definitely aiming to establish an independent state, and all Kurdish leaders, from Mullah Mustafa to Mesut Barzani, have always expressed this.

The real shame we have tried to explain from the beginning is that Kurds' demands for independence are contrary to the Establishment Declaration of Iraq, and its evidences are presented above.

The independence of the Kurds means the destruction of the Iraqi state, which had gained its independence in 1932.

If the Kurds declare Independence within the framework of the right to self-determination or as a result of armed struggle and rebellion, this right will also apply to all nations living in Iraq.

In short, if the Kurds become independent, the Turkomans who became Iraqi citizens as Ottoman teas, also have a same right for a decision of independence. This right has both historical and legal grounds.

I would like to emphasize that Turkomans in both Iraq and Syria are slanted towards the territorial integrity of the country they live in under the Contemporary Law, regardless of Ethnic or Religious distinction. Turkey, which is a party to the rights of Turkmens in both Syria and Iraq, has the same view on the historical agreements.

