Right to Self-determination of Kurds and Its Relation with Right to Self-defence

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Summary

The subject of this thesis is “Right to self-determination of Kurds and its relation with right to self-defence”. Kurds are ethnic minority within countries of Iran, Turkey, Syria and Iraq, then in this thesis I discussed the right to self-determination of ethnic minorities in international law. On the one hand I argued, one of the main requirements for self-determination of ethnic minorities is grievances of ethnic minorities, thus, the situation of human rights of Kurds was studied in separate section to examine their grievances. On the other hand, I discussed right to rebel or self-defence as one of the important aims for asserting right to self-determination.

Therefore, I discussed this thesis in four sections. ‘Section I’ focused on Kurds.

Section II focused on the right to self-determination of ethnic minorities in international law. In this section, also I briefly studied right to self-determination in non-ethnic contexts such as right to self-determination of colonial people, entire population of an independent state and self-determination of racial and religious groups.

In Section III, the definition of right to self-defence (right to rebel) was discussed. I reached to this conclusion that right to rebel is the exercise of right to self-defence of oppressed people and one of the important aims of right to self-determination.

Section III focused on the situation of human rights of Kurds in Iran, Turkey, Iraq and Syria to examine whether Kurds historically have suffered from grave violation of their rights at the hands of the governments to be qualified for right to self-determination or not?
PREFACE

I would like to express my gratitude to my family for their support.

Also, I would like to thank my supervisor, Karol Nowak, for his advices and recommendations.

Furthermore, I would like to express my gratitude to the staff of Juridicum, Raoul Wallenberg Institute of Human Rights and Humanitarian Law and to all my classmates and friends.
ABBREVIATIONS

CSCE  Conference on Security and Co-operation in Europe
KRG   Kurdistan Regional Government
HRFT  Human Rights Foundation of Turkey
PKK   Kurdistan Workers Party
PJAK  Party for Free Life in Kurdistan
UDHR  Universal Declaration of Human Rights
UN    United Nations
ICCPR International Covenant on Civil and Political Rights
Introduction

1. Background

Both concepts of self-determination and people are vague enough to arouse controversy in international community and among scholars. As we will see practice of international community has clarified that colonial people or entire population of an independent state have right to self-determination.

But right to self-determination of ethnic minorities has been a great challenge and controversial not only among scholars but also in international practice. Today one of the grave difficulties that many countries around the world are facing is the claims of ethnic minorities for self-determination. Many countries have responded to these claims by violent means, use of force and repression. Therefore, in this thesis, I will study right to self-determination of ethnic groups to determine their international status with the focus on Kurds the ethnic minority within Iran, Turkey, Iraq and Syria.

While numerous articles and books were written about right to self-defence of states and individuals, but there are few articles and books were examined right to self-defence (right to rebel) of ethnic minorities against their brutal and repressive governments. Studying roots of conflicts and civil wars can help international community to have a rational view about internal conflicts and many rebel groups.

Kurds as the largest ethnic groups in the world have been subjected to the systematic and widespread violation of human rights, war crimes, crimes against humanity and genocides in all four parts. Armed Kurdish political parties have justified their armed struggle based on the right to self-determination and right to self-defence of Kurdish people against these oppressions and dangers to their existence and separate identity. In this thesis these subjects will be examined.

2. Delimitations

Although colonial peoples, the majority of population of State and religious and racial groups have right to self-determination I will briefly study this issues due to limited space and their
relation in arguments with the main topic of the thesis. Thus, the subject of the study is limited to
the right to self-determination of ethnic minorities in international law. In addition, I will only
examine right to self-defence (right to rebel) of ethnic minorities and its relation with self-
determination, thus right to self-defence of individuals and States will be excluded in the thesis.
Finally, Right to self-determination and self-defence of Kurds, the ethnic minority in Iran,
Turkey, Iraq and Syria will be studied in the last chapter.

As the result, this thesis will focus on three main topics, right to self-determination of ethnic
minorities in international law, right to self-defence (right to rebel) of ethnic minorities as one of
the aims for asserting their right to self-determination and finally examining right to self-
determination and self-defence of Kurds.

3. Research questions

a. What is the right to self-determination and whether Kurds have this right?
b. What are the international rules related to Right to self-defence and right to rebel?
c. What is the current situation of Kurds in the area of self-defence (rebel) and self-
determination?
d. To what extend the current struggle of Kurds is compatible with the international rules
related to right to self-defence and right to rebel?

4. Method, disposition and material

4.1. Methodology and disposition

The thesis begins with section I. This section defines Kurds to determine whether they are ethnic
group, an encompassing group with distinct linguistic and cultural identity from Arabs, Turks
and Persians? A brief history of opportunities of Kurds for self-governing and self-determination
be considered. This chapter is aimed to say that Kurds are an ethnic group can be defined as
‘people’. Thus their situation in international law deserves to be studied.

In section II after defining the meaning of right to self-determination I briefly explain the right to
self-determination in non-ethnic group context such as Self-determination of colonial people,
majority of population of state and racial and religious groups. The theory in this section is that
all these groups clearly have right to self-determination in international law. But only the right of ethnic minorities to self-determination is vague and controversial and need to be discussed more comprehensively.

Thus, in part 2 of this section, I study in more detail right to self-determination of ethnic minority in international law. By using a legal dogmatic method, I examine human rights conventions regarding rights of ethnic minorities, resolutions of UN General Assembly and scholarly publications such as books and articles related to the subject and successful secessions of ethnic minorities in Pakistan (Bengalis), Yugoslavia, etc. to extract right to self-determination of ethnic minorities. In my studying I reach to this result that while there are three different opinions regarding these secessions among scholars, in current international law there is an increasing tendency among international lawyers and international community to recognize right to self-determination of ethnic minorities in some circumstances.

In section III right to self-defence and right to rebel of ethnic minorities are discussed. In This section also by using a legal dogmatic method, treaties and UN resolutions and with great emphasize to opinions of scholars as one of the sources of international law is studied. Right to self-defence (rebel) is regarded as a fundamental right that every section of population has in some circumstances. Also, in this section, in a possible conflict between right to self-defence of state and right to self defence of ethnic minority, the theory is that right to self-defence of ethnic minority has priority over right to self-defence of state.

By considering to the results of my studies in previous sections, in section III I will establish whether Kurds have right self-determination? In Section III I am using the desk-based research by investigating and studying reliable reports of human rights organizations about the situation of human rights in four sections of Kurdistan (Iran, Turkey, Iraq and Syria). Thus, the reports of Human Rights Watch, Human Rights Council, Amnesty International and some publications about the history of human rights violation is studied in this section.

In part 5 of this section by analyzing these human rights reports and other documents about Kurds and the outcomes, I will make clear whether violation of rights of Kurds is grave enough to trigger their right to self-determination and thereby right to self-defence and rebel. I conclude
that while the level of gravity is different in every part of Kurdistan, but all are sufficient enough to qualify Kurds to be recognized as people and have right to self-determination and right to self-defence.

4.2. Materials

The study is desk-based research in order to examine right to self-determination and self-defence of ethnic minorities in international law. This research will involve studying international legal instruments, treaties, United Nations Charter, UN General Assembly Resolutions, laws, books and articles related to the subject. Also, opinion of scholars about the successful secessions of ethnic minorities in Soviet Unions, Pakistan (Bengalis), and Yugoslavia will be studied in this thesis. So, in this research I will study the opinions of experts about these secessions, as one of the sources of international law. In addition, reliable reports of human rights organizations such as, Human Rights Council, Human Rights Watch, Amnesty International, K urdwatch and Refugees International regarding situation of human rights of Kurds will be investigated.

Therefore, the sources included in the study are the general international legal law sources according to article 38(1) of the International Court of Justice Statute including treaties, international custom and opinions of scholars.1

Conceptual and operational definition of terms

a. Right to self-determination
b. Right to self-defence
c. Right to rebel
d. Kurds
e. Human rights
f. Oppression and grievances
g. Use of force

Section I Kurds

Kurdistan, the territory inhabited by Kurds, now has divided between Iran, Turkey, Iraq and Syria after World War I by the western powers. The Kurdish region extends across the northern part of Mesopotamia; a mountainous area covers southern Turkey, northwestern Iran, northern Iraq and northeastern Syria— an area the size of France.

Kurds are the largest ethnic group in the world without their own state, determining the exact numbers of Kurds has been difficult due to unwillingness of various governments in keeping and providing accurate population statistics. Estimates vary widely, from around 20-25 million to 40 million Kurds.

Even so there has been controversy about the origins of the Kurds, but it is clear that for thousands years this land is in the possession of Kurds, who consider themselves indigenous to the region.

Kurdish language is different from Persian, Turkish and Arabic languages. The Kurdish culture, tradition and costume are also distinct. Kurds have two main accents of Kurmanji in the southeastern Turkey and northwest of Syria and Sorani in northeast of Iran and northern Iraq. Kurds because of lack of political unity do not have a common literature. Even so, Kurdish population is more than 30 million people, they constitute minority in Iran, Turkey, Iraq and

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7 C. J. Edmonds, op. cit., p. 87
8 Michael J. Kelly, op. cit., p. 710
9 C. J. Edmonds, op. cit., p. 87
10 Michael J. Kelly, op. cit., p. 710
11 C. J. Edmonds, op. cit., p. 88
Syria. “But in spite of the wide divergences amongst Kurds in four different countries, in very different geographical regions, speaking different dialects, a Kurdish nationalist movement has long been active in the whole region.”

National epic Mem u Zin (the Kurdish Romeo and Juliet) of Ahmad-e Khani in seventeenth century indicates that Kurdish nationalism has deep roots in the past. Howard Adelman argues that Kurdish nationalist movement is one of the oldest in the modern world.

During 10th Century the Kurds enjoyed a high great degree of autonomy, as Kurdistan was shared among the five Kurdish principalities. The defeat of Ottoman Empire by the Allied powers in the First World War gave new chance of independence to the Kurds. Western powers with the lobby of Kurdish representatives for an independent state forced Ottoman Empire to sign the Treaty of Sevres in 1920. This Treaty provided the Kurds a complete unchallenged opportunity to independence in the words of Point 12 of Woodrow Wilson's fourteen points.

According to Article 62 of Treaty of Sevres:

"A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia…"

And the most important Article of this treaty is Article 64, this Article provides:

“If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that

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12 Michael J. Kelly, op. cit., p. 710
14 Ibid.
15 Howard Adelman, op. cit., p. 6
16 Michael J. Kelly, op. cit., p. 711
17 Ibid.
18 Howard Adelman, op. cit., p. 16
these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas\textsuperscript{20}.

However after signing this treaty, Ataturk waged three years’ war against Western Powers to abolish the treaty and to repel the Allies.\textsuperscript{21} Finally, in 1923, Turkey signed Treaty of Lausanne with the Allied powers, who were not ready to fight another war. The Treaty of Lausanne, not only revoked the promise of an independent Kurdistan,\textsuperscript{22} but also this treaty even denied the existence of any other Muslim ethnic minority such as Kurds in Turkey.\textsuperscript{23} Finally, this part of Kurdistan was divided among Syria, Iraq and Turkey, which as I will study all sought to suppress Kurds.

\textsuperscript{20} Ibid.
\textsuperscript{21} Howard Adelman, op. cit., p. 9
\textsuperscript{22} Ibid, p. 10
Map: Kurdistan

Kurds form the second largest ethnic group in Iraq (after the Shiites) and the third largest in Iran (after the Persians and the Azerbaijanis). They are also an important minority in Syria and Turkey. Kurd is also the name of their language.

Kurds form the third largest ethnic group in the Middle East, with over 26 million people. They form the fourth largest ethnic group in the entire Middle East. After the Arab, Persian and Turkish, they might surpass the Turks in their numbers.

Kurds in Rojava in northeast Syria by the Kurdish Democratic Union in 1991 are the result of the historic diaspora of Kurds in Iraq. The Kurdish regions have their own rights, which Turkey only admits having "out of Kurdish background." These areas are among the largest areas of the Kurdish diaspora.

Kurds lived in the region of the Kurdish diaspora for over 1,000 years. They were part of the region's history and culture, and their language was widely spoken.

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Section II Self-determination in International Law

In international law self-determination is provided to several groups, in this section I will study this issue in two parts. In parts (1) right to self-determination in non-ethnic context including definition of right to self-determination and right to self-determination of colonial people, representative government, racial and religious groups. In part (2) right to self-determination of ethnic groups will be discussed.

1. Right to self-determination in non-ethnic group context

1.1. Definition of Right to self-determination

Self-determination is provided in Article 1(2) United Nations (UN) Charter and Article 1 of Human Rights Covenants. According to Article 1(2) of UN Charter:

“The Purposes of the United Nations are: To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”\(^{24}\)

There have been some controversies about the nature of self-determination as whether it is a right or principle. Dr. Higgins argues the cumulative effect of General Assembly Resolutions such as Resolution 1514(XV) and 1614 (XVI) lead to the emergence of right to self-determination as a rule of customary international law.\(^ {25}\)

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But Leo Gross argues that nowhere in the Charter has the self-determination recognized in the legal sense and the practice of General Assembly in decolonization has been inconsistent and politically motivated.\textsuperscript{26}

After adoption of International Covenant on Civil and Political Rights (ICCPR) in 1966 there should be no doubt that self-determination is a ‘right’ not a ‘principle’.\textsuperscript{27} Article 1(1) of the Covenant explicitly provides:

“All 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.”\textsuperscript{28}

Helen Quane defines right to self-determination as “the right of peoples to freely and without interference of other people choose and determine their own political status in internal and external destiny and to determine their international status”.\textsuperscript{29}

The term "peoples" also is unclear but it is wide enough to apply to various groups including groups of individuals linked by a common language, religion or ethnicity\textsuperscript{30} or to refer to the population of a State or the population of a colony. If they are all "peoples “with the right to self-determination, conflicts between competing self-determination claims are unavoidable. These conflicts usually occur when the majority of the population of a State claims the right to maintain the territorial integrity of the State while an ethnic, linguistic or religious group within the State claims the right to secede and establish an independent State.\textsuperscript{31}

\begin{center}
\textbf{1.2. Self-determination of Colonial People}
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Lenin was the first to claim in the international community that colonial and oppressed people have right to self-determination or liberation from oppression.\textsuperscript{32}

\textsuperscript{26} Ibid, p. 461
\textsuperscript{28} International Covenant on Civil and Political Rights, 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S. 171
\textsuperscript{30} Ibid, p. 539
\textsuperscript{31} Ibid, p. 537
Now in international law, there is no doubt regarding right to self-determination of colonial people. Because, United Nations General Assembly Resolutions 1514 (XV) and 1541 (XV) explicitly provides that territorial colonies were no longer part of metropolitan state and they have right to self-determination by attaining independence.33

These resolutions were adopted by huge majorities in General Assembly.34 Although, Resolution 1514(XV) is not legally binding because colonial powers abstained from voting,35 but as the General Assembly Resolution 2625 (XXV) about this issue, received unanimous vote in UN, the International Court of Justice recognized decolonization as a part of international law.36

Resolution 1514(XV) provides entire inhabitants of colonial territories should exercise their right to self-determination irrespective of differences in ethnic origin, religion, etc. It indicates the territorial integrity of state should be respected and territorial criterion instead of personal criteria such as ethnic or religious criteria should be used to define people.37

It is worth to mention that the transition from colonial status to independence was not regarded as secession, ‘but rather as the restoration of a rightful sovereignty of which the people have been illegitimately deprived by the colonial Power concerned’.38

1.3. Self-determination and Representative Government

Self-determination in this definition means the rights of people within independent state to freely choose their government.39 This western and political concept of self-determination was interpreted as the legal right of self-determination of popular sovereignty and representative government.40 On the other words, self-determination in this concept means ‘the ongoing right of

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34 Ibid.
35 Helen Quane, op. cit. p. 551
37 Helen Quane, op. cit. p. 550
38 Rupert Emerson, op. cit. p. 465
39 Antonio Cassese, op. cit. p. 19
40 Ibid, p. 97
all citizens within the state to participate in periodic elections which result in a representative government.\textsuperscript{41}

Rosalyn Higgins argues right of self-determination should be defined as "the right of a majority within a generally accepted political unit to the exercise of power".\textsuperscript{42}

This definition was reflected in Resolution 2625 (XXV) when provides all people have right to self-determination by enjoying a representative government without distinction as to race, creed or color.\textsuperscript{43}

In addition, this understanding of self-determination is provided in Principle VIII Final Act of the Conference on Security and Co-operation in Europe (CSCE), the Helsinki Declaration. According to this Declaration right to self-determination is universal and applies to all peoples of independent, colonial states and non-self-governing territories and it is a continuing right required the periodic consent of those governed.\textsuperscript{44}

But West and Third World States are divided about the interpretation of representative government in Resolution 2625 (XXV). While Western states interpret the representative government in this Resolution as a democratic government or the power of majority, in the view of Third World states decolonization is the essential element of self-determination and this phrase simply means the government must be non-racist and no element of the population can specifically be excluded from government, as in the apartheid regime.\textsuperscript{45}

1.4. Racial or Religious groups

Paragraph 7 of Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations: Resolution 2625(XXV)provides territorial integrity of "States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ... and thus

\textsuperscript{41} Ibid, p. 100
\textsuperscript{42} Vernon Van Dyke, op. cit. p 228
\textsuperscript{43} Thomas D. Musgrave, op. cit. p. 98
\textsuperscript{44} Ibid, p. 100
\textsuperscript{45} Ibid, p. 101
possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour” should be respected. According to this paragraph racial or religious groups within independent states clearly have right to self-determination if they would not possess of a representative government. Consequently, the racial and religious groups are entitled to claim right to self-determination, only where the government of a sovereign state denies access to the government and power on the grounds of race or religious. In these situations, the principle of territorial integrity no longer would valid.

The practice of international community regarding the situation of Southern Rhodesia and South Africa, where the majority of the population were excluded from government on the ground of their race, support this argument.

Antonio Cassese argues that in paragraph 7 of this resolution, only racial and religious (creed) groups have right to self-determination, linguistic or national groups do not have such right. This author by examining the draft Resolution 2625 (XXV) states: “In the opinion of most states, affording a right to self-determination to ethnic, linguistic or cultural groups would be the ‘kiss of death’ as far as territorial integrity was concerned.”

According to Quane self-determination of racial and religious group in this Declaration means:

"Establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right to self-determination.”

2. Self-determination of Ethnic Minorities

One of the main subjects of this thesis is right to self-determination of ethnic groups or ethnic minorities such as Kurds.

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46 Helen Quane, op. cit. p. 562
47 Antonio Cassese, op. cit. p. 112
48 Helen Quane, op. cit. p. 563
49 Antonio Cassese, op. cit p. 114
50 Ibid.
51 Helen Quane, op. cit. p. 563
It is worth to mention here that there have been two different definitions of people entitled to exercise the right of self-determination marked the two periods: in the first period, at the close of World War I, according to Woodrow Wilson, ethnic communities were authorized to disrupt the existing states for the reason of freedom from alien subjugation, domination, and exploitation. In second period, following the World War II, the inhabitants of colonial territory, however randomly assembled by the colonial Power have right to self-determination by taking over pre-existing political units as independent states, with no right for ethnic groups.52

Thus, in the second period it seemed ethnic groups just have minority rights according to Article 27 of ICCPR that provides:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

Despite this, many ethnic minorities identify them-selves as nation and claim right to self-determination and as James J. Summers argues that the right of peoples to self-determination is closely related with the doctrine of nationalism;53 or to a group of people with common language and culture.54 This definition is reflected in Article 1 of the UN Charter, which makes self-determination the basis for friendly relations among ‘nations’, and in Human Rights Covenants.55 Thornberry points out minorities are qualified for self-determination. Moreover, if people can be defined as nation, ethnic groups can be able to claim to be a people, because the various definitions of minorities do not differ significantly from those of a nation or nationality.56 In the same approach Capotori defines minority as:

“A group numerically inferior to the rest of population of a state, in a non-dominant position, whose members-being nationals of the state-possess ethnic, religious or linguistic characteristics differing from those of the rest of the rest of population.”

52 Rupert Emerson, op. cit. p. 463
54 Ibid, p. 326
55 James J. Summers, op. cit. p. 327
56 Thomas D. Musgrave, op. cit. p. 168
population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, religious, tradition or language.”

Then, both minority and nation possess the same objective and subjective criteria. Furthermore, in many resolutions of UN General Assembly referred to the ethnic groups of Tibet, Palestine and Bengalis as people.

Despite this fact that the nature of people and minority are the same and the UN Charter and International Covenant have a national or ethnic approach to people, but it seems the position of non-dominant and non-representative nations in UN was downgraded to minorities by States after the World War II. Now as a Secretary-General of UN regarding right to external self-determination of ethnic minorities mentioned:

"The United Nations would be in an extremely difficult position if it were to interpret the right of self-determination in such a way as to invite or justify attacks on the territorial integrity of its own members."\(^{59}\)

Notwithstanding, some ethnic minorities have gained independence after the World War II and UN Charter; then it is important to study right to self-determination of ethnic minorities in international law.

Some scholars believe that under current international law ethnic minorities do not have right to self-determination, while some others believe that ethnic minorities have right to self-determination under certain circumstances (constrictive approach) in international law and third category of scholars believe that ethnic groups have right to self-determination without any restriction (permissive approach). In this section I will discuss these opinions respectively and in separate parts.

2.1. **Secessions of Some Ethnic minorities have occurred beyond right to self-determination in international law**

As the subject of this thesis is examining right to self-determination of ethnic minorities and as ethnic minorities in Yugoslavia and Bangladesh have gained independence, few scholars have

\(^{57}\) Ibid, p. 169

\(^{58}\) Ibid.

interpreted these secessions as an issue beyond right to self-determination in international law and these scholars themselves bring right to self-determination into their argument. But, many other have interpreted these secessions as asserting right to self-determination of ethnic minorities in international law. Then, it is important in this part to bring various views of scholars about this issue.

Quane argues that in the cases of self-determination claims by groups within independent states in international law, by relying to Resolution 2625 (XXV) the territorial concept of self-determination is the only criteria for self-determination and the success of these claims does not indicate that ethnic minorities had a legal right to self-determination. She argues that in the break-up of Soviet Union, Ethiopia and Czechoslovakia the consent of the whole population of the states was decisive. Regarding the cases of Bangladesh and Yugoslavia she believes that the legal ground for these independences is unclear and would mainly be attributed to the political and humanitarian considerations rather than to international law. In her view ‘it was an ad hoc approach to a conflict rather than any development of the legal right to self-determination’.

Also, Cassese argues that there is no right to self-determination for ethnic, linguistic or cultural groups in international law.

Cassese regarding break-up of Soviet Union believes that the Soviet Republics had no right of external self-determination under current international law but such a right was laid down in the constitution of Soviet Union. The process of independence by the twelve republics occurred outside the realm of international law. The referendums were a form of legitimation for their break away in the general principle of self-determination.

In the case of Yugoslavia, Cassese argues that the achievement of independence by these ethnic minorities can be seen as a revolutionary process that has taken place beyond the existing laws.

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60 Helen Quane, op. cit. p. 566  
61 Ibid.  
62 Ibid. also look at: David B. Knight, op. cit. p. 262  
63 Helen Quane, op. cit. p. 566  
64 Antonio Cassese, op. cit. p. 114  
65 Ibid, p. 264  
66 Ibid, p. 266  
67 Ibid.  
68 Ibid, p. 270
Consequently, according to Cassese the role of self-determination in the break-up of these countries had been just a set of political principles legitimizing the secession of national States from central, tyrannical State structures and “self-determination has provided the legal tools for establishing the demands of the seceding peoples to achieve independent statehood.”69

2.2. Ethnic minorities under certain circumstances have right to self-determination in international law

According to this view ethnic minorities under certain circumstances have right to external self-determination. B. C. Nirmal, believe that Resolution 2625 (XXV) is not just about groups with distinct color and creed (racial or religious groups) this resolution should be interpreted for every ethnic groups that are not represented in government, in the base of a ‘prolonged, sustained and gross discrimination’ against them.70 The successful independence of Bangladesh apparently made the international community realize the dangers inherent in blind obedience to territorial integrity principle. It is now being increasingly accepted that the principle of territorial integrity must not serve as a shield for tyrants and dictators, it must not become a wall behind which human deprivations are justified and perpetuated.71 In some situations secession may be the only remedy and a last resort available to the oppressed groups.72

Furthermore, Nirmal argue that ‘in Bangladesh the degree and extend of deprivation of basic human rights was so compelling that there was a little hope that any action short of separation would satisfy the sub-group’s demand for effective participation in the value processes.’73 Where the denial of the right to balanced development, the right to physical existence and the right to preservation of separate identity is obvious and the strategy of non-violence for the redressal of these grievance has failed, and secession is the only remedy, claim to secede is not illegitimate. When the legitimate demand of group for their own way of life and for freedom from dominance, exploitation are met with grave forms of suppression and faced with threatened

69 Ibid, p. 273
71 Ibid.
72 Ibid.
annihilation of their ethnic identity at the hands of the government, and they are left with no alternative but to seek their independence or union with another state, their right to self-determination to be respected. Therefore, it is not unreasonable for them to expect that secessionist self-determination alone can rescue them from state oppression, terrorism and violence, their claim to secede might not seem unjustified by the victims.\(^{74}\)

Furthermore, Onyeonoro S. Kamanu argues that Biafrans and Bengalis could no longer live in peace or fulfill their legitimate individual aspiration within the larger political community because of gross violation of rights of these minorities by majorities. The factor used by the United Nations for Palestinians was the fact that the inhabitants could no longer co-exist in peace. According to this author secession is a last resort and all other political arrangements capable of ensuring the aggrieved group a measure of self-determination short of independence had been exhausted or repudiated by the dominant majority.\(^{75}\)

In addition, according to Jashua Castellino a national minority can claim secession whenever they are always the unwilling subject of majorities whom they regard majority as an occupying force. In this situation, as there is no real political community between minority and majority, it is hard to see majority having a legitimate claim to the territory inhabited by the minority.\(^{76}\) It is important to point out that this author regarding the grievance of Kurds in Turkey and their right to self-determination writes:

“Per capita income in the Kurdish region of Turkey is less than half the national average, Kurdish language and cultures are vigorously repressed by the Turkish state; there is a long history of armed conflicts and massacres between the two communities. Furthermore, the Turkish leadership has for many years been committed to the ideal of a unified, homogeneous Turkish nation which leaves no space for cultural pluralism... Short of a dramatic reversal in mainstream Turkish attitude, there is no chance of the Kurds achieving cultural recognition neither in a Turkish state, nor of Turks and Kurds working together to achieve political democracy and social justice\(^{77}\).”

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\(^{74}\) B. C. Nirmal, op. cit. p. 253
\(^{76}\) Jashua Castellino, International Law and Self-determination (Kluwer Law International 2000) p. 66
\(^{77}\) Ibid, p. 66
Then if an ethnic group live in a compact area and there would be deep-seated hostilities between majority and minority with no historical understanding because of grievances and oppressions, this group can claim right to self-determination.\textsuperscript{78}

As well, Buchheit argues that ethnic minorities do not have right to self-determination but they possess a right of reversion to people and constitute potential peoples. The right of reversion would apply whenever minority suffers oppression, in which case the minority attain the status of a people and may exercise right of self-determination. The right of reversion appears in Resolution 2625(XXV). The right of reversion in this resolution arises whenever any part of a state’s population is not represented in its government, in which case that part of the population, may be recognized as a separate people with right to self-determination, the Bengalis attained the status of people after widespread and gross violation of their rights by Pakistani government.\textsuperscript{79}

Furthermore, Buchanan argues that a group obtains right to secession, when it had suffered certain kinds of threats or grievances, including historical grievances, such as threats to its cultural preservation, threats of genocide, and finally, discriminatory redistribution.\textsuperscript{80}

Finally, the \textit{Commission of Jurists} in the Aaland Island case mentioned that there is a common goal between self-determination and minority rights: “to assure to some national group the maintenance and free development of its social, ethnical or religious characteristics.”\textsuperscript{81} And to grant to minorities, the right of withdrawing from the community to which they belong, because of their wish would destroy stability within States and it would be incompatible with the principle of territorial integrity of states.\textsuperscript{82} Against the factor of stability was the question of a state consistently oppressing a group. The separation of a minority from the State can only be considered an as a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees.\textsuperscript{83}

In the case of Quebec the Supreme Court of Canada judged if minority in an independent state would be under subjugation and suppression and would not enjoy representative government as

\begin{footnotesize}
\textsuperscript{78} Ibid, p. 69
\textsuperscript{79} Thomas D. Masgrave, \textit{op. cit.} p. 171.
\textsuperscript{80} Daniel Philpott, \textquote{Self-determination in Practice} in Margaret Moore (ed), \textit{National Self-Determination and Secession} (Oxford University Press 1998), p. 80
\textsuperscript{81} James J. Summers, \textit{op. cit.} 339
\textsuperscript{82} Ibid, p. 345
\textsuperscript{83} Daniel Philpott, \textit{op. cit.} p. 80
\end{footnotesize}
the resolution 2625 (XXV) provides, this section of population can obtain right to external self-
determination.84

2.3. Ethnic groups have permissive right to self-
determination

According to this view self-determination is a fundamental right available to any group whose
members desire it. Threats and grievances are unnecessary to establish a claim.85 The intrinsic
good of self-governing is alone sufficient to justify self-determination. Although the members
may harbor grievances which add to their desire to govern themselves, but the claim to self-
government alone is adequate to establish their claim to self-determination. In the opinion of
Daniel Philpot even the main motivation behind most of independent movements in colonial
countries was the inherent value of self-governing rather than oppression.86

It is worth to mention that this author despite this argues that secession is most justifiable when
claims to self-determination are enhanced by grievances that are not to be remedied short of full
independence—‘such as the treatment of Iraqi Kurds at the hands of Saddam Hussein.’87

Similarly, Antony Lamb argues that rights violations or injustice isn’t necessary for an
encompassing group to obtain right to self-determination. Appeal to the wellbeing of members of
minority is enough.88

Finally, Tony Honoré believes that an ethnic minority group which is geographically coherent,
sufficiently numerous, economically viable and has the capacity to assume the responsibilities of
a member of the international community,89 has right to self-determination. He argues that a

84 James J. Summers, op. cit. 350
85 Ibid.
86 Daniel Philpott, op. cit. p. 83
87 Ibid.
89 Tony Honoré, ‘the right to rebel’, (1988) 34, p. 45,
51533> accessed 12 April 2012
minority would not have to show that their existing form of government was oppressive, save in that it denied them autonomy. 

_In conclusion_, I believe that despite that international law has a nationalist approach to the people and the definition and nature of nation, minority and people is similar, and international law that has developed by nation-states, after the World War II has granted right to self-determination to the dominant nations that usually constitute the majority, and minority rights to ethnic minorities.

Therefore, in the first resort it seems that it would not be possible for ethnic minorities to claim right to self-determination. In spite of this, international community has experienced the exercise of self-determination by several ethnic minorities around the world, such as Bangladesh, ethnic minorities of former Yugoslavia, Soviet Union, and recently southern Sudan. In these cases grievances of ethnic minorities was essential part of their struggle for right to self-determination. Yet, various ethnic minorities around the world within states are struggling to assert their right to self-determination for this reason.

As Kamanu rightly argues the main motivation of colonial people for independence had not only been because they were governed by a people from different race. It was mainly because they faced oppression by a people with different language and culture, now the Africans are more eager to fight with another ethnic group than they fought with colonial powers because of oppression and subjugation. While decolonization is a part of international customary law, the same should be applied for minorities. As we have seen in the practice of international community, opinions of many Scholars and judges, the right to self-determination should not be restricted to racial and religious groups or colonial peoples; Resolution 2625 (XXV), can be applied to the ethnic minorities that are denied to be represented in government and consistently have been under subjugation and oppression. The practice of international community supports such approach.

The logic and roots of this interpretation can be found long before this resolution, in the important case of Aaland Island and more recently in the Supreme Court of Canada regarding claim of Quebec for external self-determination. In the Aaland Island the commission judged that right to self-determination and minority rights both serves the justice and well-being. Justice

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90 Ibid.
91 Onyeonoro S. Kamanu, _op. cit._ p. 358
would prevail the principle of territorial integrity whenever the minority would be oppressed by the majority.

In practice, the gross violation of rights of minorities in Pakistan (Bengalis), Yugoslavia and Soviet Union has been the main reason for their struggle and independence and an integral part of their right to self-determination and the main reason for justifying their secessions. While of course as some commentators rightly argued the mere inherent value of self-governing and the dignity, can be powerful enough for an ethnic minority to struggle for self-determination. Thus, in the situation of long-standing grievances, the status of ethnic minority would be revised from the ‘minority’ to the ‘people’ with right to external self-determination.

Whether the secession of Bangladesh or break-up of Yugoslavia can be interpreted as a matter of beyond self-determination in international law or under the right to self-determination, the consequence has been the same; ethnic minorities, inhibited in compact regions in independent states seceded from their states because of their long-standing grievances. Thus, for this purpose in Section III I will discuss the grievances of Kurds as the main reason for their claim to self-determination.

In the next section, I will discuss right to self-defence or right to rebel in international law because as we will argue this right is closely related to right to self-determination of ethnic minorities.
Section III  Right to self-defence and right to rebel

This section discusses the right to self-defence (right to rebel) of ethnic minorities against their government.

Here it is important to explain that in fact, right to rebel is the exercise of collective right to self-defense by population of state or ethnic minority against their oppressive government; in other words, ethnic minority would have to resort to rebellion for defending their rights and asserting their right to self-determination against oppressive government. Then right to rebel and right to self-defense here should be regarded as synonym. That is why many authors have discussed right to rebel under the subject of right to self-defense.

In this section I study the right to self-defence in two parts; part (1) Sources of right to self-defence (right to rebel); and part (2) Conditions of Right to Self-defence (right to Rebel)

1. Sources of right to self-defence (right to rebel)

In this regard, two sources for right to self-defence in international law; opinions of scholars and contemporary legal system will be studied in different parts.

1.1.  Opinions of Scholars

The opinion of leading scholars is one of the sources of international law. The purpose of this part is to study the opinions of some of the most important scholars from classical period of international law until now regarding right to self-defence (rebel) of ethnic minority as one of the

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sources of international law. Especially because, in the past centuries the problem of the right to rebel was broadly debated, but in recent years it has been a little neglected.\footnote{Tony Honoré, op. cit. p. 40}

Giovanni da Legnano that may be regarded as the scholar, who systematically analyzed international law which has continued to the present, believed that self-defense is a natural law, while positive law allows self-defense.\footnote{David B. Kopel,Paul Gallant& Joanne D. Eisen, op. Cit. P. 60} Legnano allowed self-defense against superior, or against a judge, if it were clear that the defender was the victim of an unprovoked violent attack.\footnote{Ibid, p. 61}

Honoré de Bonet that promoted Legnano’s ideas in a simpler form showed the primacy of right of self-defence argues that subordinates could rightfully defend themselves against their superiors.\footnote{Ibid}

During the sixteenth century, the higher education of Spain was the greatest in the world and Francisco de Victoria was selected as the primary chair in Theology at the University of Salamanca the most prestigious professorship, and his classroom became the cradle of international law.\footnote{Ibid, p. 64} In his writings, he directly connected the right of self-defense to a right of defense against tyranny—either in a personal or in a political context. Thus, in his opinion people may defend themselves against a brutal king.\footnote{Ibid, p. 68}

Francisco Suárez was prominent scholar and one of the founders of international law during sixteenth century. According to this scholar; as a last resort, an individual may kill a tyrant, because of the ‘subject’s inherent right of self-defense.’\footnote{Ibid, p. 71}

The Swedish scholar Samuel Pufendorf that his outstanding books (in 1674) became the equivalent of an encyclopedia of moral and political thought for Enlightenment Europe, argued the right of resisting a tyrant as another application of the right of self-defense.\footnote{Ibid, p. 86}

Another founder of international law is Jean-Jacques Burlamaqui (1694–1748). His view of constitutionalism had a main influence on the American founders. He argued that national self-
defense is simply an extension, of the right and duty of personal self-defense. According to Burlamaqui the right to collective self-defense against tyranny is an application of the individual right of self-defense against a lone criminal. ‘People have a right to rise in arms against extreme abuse of sovereignty, such as tyranny.’

Though right to self-defence (rebel) was a familiar topic in earlier centuries, it has not been much discussed by recent scholars. However, Ignatieff a recent scholar argues that the human rights principles which we raise against terrorists can be invoked to justify more carefully targeted uses of force against tyrants. Human rights are not an ethic of resignation but a call to struggle. ‘The European liberal political tradition which nurtured the idea of natural – that is, human– rights explicitly reserved a right for the weak to rise in revolt against intolerable oppression by the strong.’

Albert Camus admitted crimes of logic, deliberated killings in the cause of revolt or revolution. Camus argues that revolt as a demonstration that human existence is not irrational. He appeals to a moral rule, rooted in human nature, which requires those who are aware that their situation is intolerable, and so have already escaped from despair, to act according to that perception.

Furthermore, according to David Rodin national defense is simply the application, of right of individuals to protect themselves and others from unjust lethal attack.

Finally, David B. Kopel, Paul Gallant and Joanne D. Eisen, in their article by examining the opinions of the most important scholars in international law have argued that there is unanimity of opinion among the founders of international law (the positivist tradition and the natural law position) that self-defense is a fundamental human right.

101 Ibid, 95
102 Tony Honoré, op. cit. p. 35
104 Tony Honoré, op. cit. p. 40
106 David B. Kopel, Paul Gallant & Joanne D. Eisen op. cit. P. 101
1.2. Contemporary Legal System

Honore rightly argues that it is hard to expect that sovereign states to grant their subjects a right to secede or rebel. Still, they sometimes do so.107

Some nations have constitutionalised the right of self-defense against tyrants. In several countries, a constitutional allowed to assist the liberation of other nations from tyranny such as: Algeria, Angola, Cuba, Portugal and Suriname.108 The Declaration of American Independence asserts that, whenever a government is destructive of the ends for which government is instituted, ‘it is the right of the people to alter or abolish it’.109 The constitution of the German Federal Republic explicitly grants to citizens, including officials, a right to resist any attempt to overthrow the democratic foundations of the state. The means by which the private citizens exercise right to resist can involve the use of force.110

The international law, though based on state sovereignty, is less limited. It accepts, ‘by implication, the right of a colony, dependent territory or subdivision of a state to rebel in the cause of self-determination’.111

The right of collective self-defense against tyranny is part of the African Charter on Human and People’s Rights. It is implicitly part of the International Covenant on Civil and Political Rights.112

The Universal Declaration of Human Rights confirms the existence of a universal right to revolution against tyranny113 with force.114 According to this Declaration, there is a link between the denial of human rights and rebellion.115 The Universal Declaration’s Preamble provides:

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law …”116

107 Tony Honoré, op. cit. p. 42
109 Tony Honoré, op. cit. p. 40
110 Ibid, p. 42
111 Ibid.
113 Ibid, p. 1277
114 Ibid.
115 Tony Honoré, op. cit. p. 42.
The principle of a right of resistance (rebel) is emphasized in Article 8 of the Universal Declaration: 117 “Everyone has the right to an effective remedy.”

This clause in Universal Declaration’s Preamble means to warn states that by respecting rights of people can avoid rebellion. It declares that people have certain rights against their governments. In situation of violation of human rights, when peaceful campaigns are ineffective, the implication is that the citizens may be compelled as a last resort to rebel. The moral justification for doing so consists in the fact that rebellion is the only means by which they can in the last resort ‘assert their humanity, defend their way of life or vindicate their independence.’ 118

The principle of the Preamble is consistent with Vattel’s statement that provides when the public depressions are such high that the people may say that it is better to expose themselves to a civil war than to endure them. 119

The Universal Declaration’s principle about the lawfulness of self-defense against tyranny also is strengthened by the UN General Assembly’s Resolution 2625 XXV: 120

“This definition… could in any way prejudice the right to self-determination, freedom and independence… particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support.” 121

This resolution is especially concerned with “peoples under colonial and racist regimes or other forms of alien domination.” Yet significantly, the resolution is not limited to these situations; to the contrary, the language of the resolution applies whenever a government violates the right of self-determination or freedom or independence. Any dictatorship violates the right to self-determination or the right of freedom. 122

116 The Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948
117 David B. Kopel, Paul Gallant & Joanne D. Eisen, op. cit. p. 1277
118 Tony Honoré, op. cit. p. 42
119 Ibid
120 David B. Kopel, Paul Gallant & Joanne D. Eisen, op. cit. p. 135
121 UN General Assembly Resolution 2625 (XXV). Declaration on Principles of International Law Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, 1883rd plenary meeting, 24 October 1970
122 David B. Kopel, Paul Gallant & Joanne D. Eisen, op. cit. p. 135

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The Resolution 2625 (XXV) implies that the group which forms a unit of self-determination can resort to force to assert their right if the government would not respect their right to self-determination.\textsuperscript{123} It is based, both on human dignity and on an interpretation of the political norms of the international documents, which members of that community have endorsed.\textsuperscript{124}

In this regard, Ignatieff reaffirmed that; “the right to rebel and to instigate revolution in the face of political oppression is embedded, within our canonical texts and value commitments\textsuperscript{125}”.

In addition, the U.N. Protocol against the Illicit Manufacturing of and Trafficking in Firearms (2005) has recognized the inherent right to collective self-defence and self-determination of all peoples and use of violence and arms for asserting these rights.\textsuperscript{126}

Finally, Article 51 of United Nations Charter affirms “the inherent right” of self-defense of people. Even so Article 51 is directly concerned with the defense of states, and not of individuals, but as the UN Charter’s choice of language which clearly used natural right, International Court of Justice wrote: “The Court therefore finds that Article 51 of the Charter is only meaningful on the basis that there is a ‘natural’ or ‘inherent’ right of self-defense…Self-defense against tyranny.”\textsuperscript{127}

Therefore, according to international law, population of state or ethnic minority, who are the subject of oppression by their regime have right to self-defense and rebel to defend their rights and to assert their right to self-determination. In the next section, I will discuss the conditions of right to rebel (self-defence).

2. Conditions of Right to Rebel

Some scholars have elaborated the conditions of right to rebel. Honoré argues that a right should be weighty enough ‘to provide a sufficient reason for holding some other person to have a duty

\begin{footnotes}
\textsuperscript{123} Tony Honoré, \textit{op. cit.} p. 44
\textsuperscript{124} Ibid.
\textsuperscript{125} Christopher J. Finlay, \textit{op. cit.} p. 86
\textsuperscript{126} David B. Kopel, Paul Gallant, Joanne D. Eisen, \textit{op. cit.} p. 1278
\textsuperscript{127} Ibid.
\end{footnotes}
towards him.' First, the right must be recognized, at least by member states of the UN and by international community such as the rights provided in UDHR. Secondly, there must be a remedy. Rights without remedies would in the last resort be a mere critic. ‘Indeed, a right with no effective means of enforcement would merely be a nominal right, not an actual one.’

In addition, according to Honoré to justify rebellion, the state's breach of duty (rights of its subject) must be weighty (important), crucial (central) and severe (grave) enough so that in sum the condition becomes intolerable. The existence of such oppression or exploitation can be examined in part by asking whether the violation of those rights, are sufficiently weighty, crucial and severe; if so, the rebellion is justified in these circumstances.

But, some scholars argue that rebellion and killing for liberty is justifiable only in an actual enslavement or total loss of liberty or in an extraordinarily violent regime possible. Christopher J. Finlay rightfully criticizes this opinion by arguing that it would be completely excessive to name this a right of rebellion since it would have no different from a simple self-defence: ‘No longer a question of defending liberties or fighting for political rights, rebellion, on this account, would lose its distinctively political aspect in that it would have nothing to do with liberty per se’. 

While the exercise of right to rebel does not need mass action, it may need mass support. The right to rebel, however, is a secondary right and it is available only when a wrong has been committed to provide a remedy ‘in the event of the violation on a large scale of primary rights like the right to freedom from arbitrary arrest. The sustained denial of those rights may amount to such oppression or exploitation as justifies rebellion.’

Honoré by examining sources of international law argues that there are three aims of rebellion or right to rebel can be determined:

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128 Tony Honoré, op. cit. p. 35
129 Ibid, p. 38
130 Ibid, p. 35
131 David B. Kopel, Paul Gallant, Joanne D. Eisen, op. cit. p. 1276
132 Tony Honoré, op. cit. p. 50; also look at: Christopher J. Finlay, op. cit. p. 99.
133 Tony Honoré, op. cit. p. 50.
134 Christopher J. Finlay, op. cit. p. 91
135 Ibid, p. 92
136 Tony Honoré, op. cit. p. 37
137 Ibid, p. 38
The first aim of rebellion is to assert right to self-determination of ethnic minority, its right to determine its own form of government and destiny.\textsuperscript{138}

In section II, I discussed that according to many scholars, UN General Assembly Resolutions and practice of international community, ethnic minorities obtain right to self-determination when the government be oppressive and ethnic minorities bear a long-standing and historical grievances, in these situations then their government culpability could render it legitimate targets for proportionate force in order to satisfy their claim for self-determination.\textsuperscript{139}

The second aim of rebellion (self-defence) is for changing oppressive, tyrannical or exploitive regimes. The exploitation or oppression must be such as to make life under the existing government or policy intolerable. Rebellion is acceptable in order to secure a change in the government and/or its policy.\textsuperscript{140}

The third aim of rebellion that is the aim of a group which possesses a distinct and non-exploitative way of life to preserve that way of life\textsuperscript{141} by resisting ‘change in the government, structure or policies of their society which the rulers of the society intend to bring about.’\textsuperscript{142}

\textbf{2.1. Use of Force as a Last Resort}

According to the Universal Declaration’s Preamble use of force in rebellion should be regarded as a last resort. First all peaceful and legal means including, passive resistance, non-cooperation, strikes, disobedience etc. should be exhausted.\textsuperscript{143}

After exhausting all peaceful means, rebellion can be regarded as the only legal and moral way for ethnic minority to assert their right to self-determination. In this situation, Honoré argues that ‘to them [rebels] all state force is now unlawful force. They may therefore treat it as hostile force, and meet it as they see fit, whether by way of defence, pre-emptive strike or counter-
attack, while respecting the same restraints as they would be bound to observe if the rebellion were a war between states."\(^{144}\)

Finlay argues that it is proportionate to use force and kill the attacker for defending our liberty in rebellion. He argues that in this situation the attacker is responsible for escalation of violence, the victim is responsible only for acts of resistance based on rights that pre-exist the conflict and for the use of defensive violence, if forced to choose it by the aggressor.\(^{145}\)

Thus, in the moral dilemma of proportionality – between prioritizing the right to life of a conditional aggressor and prioritizing the lesser rights of a victim – ‘in diachronic terms permits a more permissive view on how subjects could respond to political oppression. For example; if the suppression of civil and political liberties were achieved by the conditional threat of violence by government forces. If citizens in that situation would take risk exercising these rights in the face of a hostile and violent regime, as many did, for instance, in Burma in September 2007. The fact of the Burmese government’s threat of force does not affect their rights in this respect. ‘If, upon exercising these rights, the Burmese protesters found themselves confronted by violence from government forces, attempting to kill some or all of the protesters (or, indeed, to inflict a range of other penalties on them arguably commensurate with killing), then they could defend themselves using force. As long as it was subject to conditions of necessity and reasonable prospect of success, it would be covered by the right of self-defence’.\(^{146}\)

However, Honoré rightfully argues that “in the end the only guarantee of human dignity is that we would, if pressed too far, be prepared to rebel, and, if we did so, would have right on our side. It would then be the duty of other members of our community to support us.”\(^{147}\)

### 2.2. Conflict between right to self-defence of state and right to self-defence of ethnic minority

Still another problem could be solved here, a possible conflict between right to self-defence of state and right to self-defence of ethnic minority as a non-state actor against its government.

\(^{144}\) Ibid, p. 54  
\(^{145}\) Christopher J. Finlay, op. cit. p. 96  
\(^{146}\) Ibid, p. 97  
\(^{147}\) Tony Honoré, *op. cit.* p. 54
According to Article 51 of the UN Charter:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

All states have right to self-defense if armed attack carried out by other states\textsuperscript{148} or even non-state actors.\textsuperscript{149} Meanwhile, as I argued ethnic minorities within states also have right to self-defence (right to rebel) against their oppressive governments by using force that can be included armed attack in order to change their government or to secede from the state for asserting their right to self-determination.

Rebel groups may launch their armed attacks and use of force within territory of the targeted state or may carry out their attacks from a territory of other states, usually neighboring countries; such as Kurdish rebels (PKK) that has engaged in rebellion from Iraq’s territory or Bengali’s rebels that engaged in rebellion from the territory of India\textsuperscript{150}

Then in these situations it appears that both sides (the government and rebels) can claim right to self-defence against each other, as Turkey used this argument against PKK and PKK is using it against Turkish regime in its declarations\textsuperscript{151}; In addition, if in a territory of another State armed attack would be carried out, consequently, it is reasonable to expect that victim state can defend itself in the same territory, in accordance with the principles of necessity, proportionality and lack of alternative at the time of attacks\textsuperscript{152}. On the one side, the government has right to self-defence according to the Article 51 UN Charter and on the other side, the rebels for asserting their right to self-determination or changing their tyrannical government as I argued in previous sections. In such circumstances the right of which sides has priority?


\textsuperscript{149} Ibid, p. 194

\textsuperscript{150} Thomas D. Musgrave, op. cit.


This is a controversial issue; in personal self-defence it was argued that in exercising right to self-defense against attacker, he/she have a duty not to oppose defender’s use of force. Similarly, a third party observing the conflict has a duty to refrain from assisting the attacker or from placing obstacles in defending.\textsuperscript{153}

Regarding conflicting right to self-defense (rebel) of people on the one side and oppressive rulers on the other side, Honoré by giving an example argues:

“In defence of the oppressive society it can be argued that even the worst of men has a right to defend himself. When I argued that anyone who had the opportunity would have been justified in killing Hitler, I was not denying that Hitler would have been entitled to defend himself against assassination. Some elements of the right to defend one’s life and basic interests are exempt from forfeiture, however evil one may be. Even the Hitlers and the Eichmanns are human beings, not things… Those guilty of even serious crimes like murders are not bound to give themselves up… They are entitled, for example, to conceal their whereabouts, to hide from the police… On the contrary they retain the right to defend themselves as they see fit even though in doing so they violate the immediate interests of the society to which they belong.”\textsuperscript{154}

‘Though this limited right of self-defence continues in those who know themselves to be guilty, it is now limited in scope. It becomes a passive rather than an active right.’\textsuperscript{155}

‘In like manner, though Hitler had a right to defend himself he did not have a right to exploit anyone else. He and his cronies were not entitled to continue their destructive rule… We must distinguish, if possible, between those societies which it is legitimate to defend and those of which this is not true, since one of their central features is the exploitation of others. In the end it is a destructive, tyrannical, oppressive, or exploitative regime that disqualifies conservative and qualifies radical rebellion.’\textsuperscript{156}

In my opinion and as some scholars have argued, it is clear that if a government oppresses its own people or its ethnic minority would lose its legitimacy among people or the ethnic minority, and would become an occupying force.

Meanwhile, Article 51 of the UN Charter should be interpreted in consistent with human rights treaties that have recognized right to self-determination and freedom from oppression. Then,


\textsuperscript{154} Tony Honoré, op. cit. p. 48
\textsuperscript{155} Ibid.
\textsuperscript{156} Ibid.
according to the human rights conventions such as UDHR, only right to self-defence of the non-oppressive governments, which do not violate fundamental rights of their own people or a section of the population should be recognized against rebels.

The clear examples of these situations are humanitarian intervention by NATO to aid the rebels against Muammar Qaddafi in Libya, and aiding the Syrian rebels (Free Syrian Army) against Bashar Al-Assad’s regime by Western powers.

The Syrian conflict that has started in March 2011 as peaceful protests for reform against Assad’s tyranny but has descended into civil war after violent crackdown by Bashar Al-Assad’s security forces that killed more than 20,000 people until now\textsuperscript{157} is a perfect example of right to self-defence and right to rebel of Syrian people and its priority over right to self-defence of Syria’s government. After thousands people are killed in peaceful demonstrations many Western powers such as United States\textsuperscript{158} and Arab countries such as Saudi Arabia and Qatar\textsuperscript{159} and even Turkey\textsuperscript{160} frankly expressed that people of Syria has right to self-defence against the brutal response of Assad’s government to the peaceful demonstrations and they have supported the Free Syria’s Army (FSA) and the Syria’s opposition groups with arms and money. FSA is the main rebel group that fights against Syria’s government and organize itself from Turkey. This practice of international community regarding right to self-defence and right to rebel of Syrian people, has rejected by implication any possible Syria’s government’s claims regarding its right to self-defence against FSA (rebels). But the reaction of international community concerning FSA and Syria is clearly contradicted with its response regarding PKK and Turkey despite all the similarities that exist between the FSA and PKK in their struggle for self-determination. Then the legal definition of right to rebel is obscured by political interests.

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\textsuperscript{157}CNN Wire Staff, Opposition: Syrian forces deploy heavy weapons as battle for Aleppo intensifies’, (CNN, 5 August 2012),  \\
\textsuperscript{158}Foxnews, Report: US and allies 'considering plans' for military aid to Syrian rebels, Foxnews, 8 February 2012),  \\
\textsuperscript{159}Ben Hubbard and Aya Batrawy, ‘Saudis: Syrians have right to defend selves’, (the Adovocate, 05 March 2012),  \\
\end{flushleft}
Thus, the practice of international community regarding Bangladesh, Yugoslavia, Iraq, Libya and Syria in assisting rebels and humanitarian interventions implies that right to self-defence of people or ethnic minorities has priority over right to self-defence of oppressive states. And it shows the moral and legal duty of international community to consider assisting rebels in overthrowing their brutal governments or even to consider humanitarian intervention whenever it is possible.

Therefore, governments that breach their international obligation in respecting or protecting substantial rights of its own people can no longer claim right to self-defence according to the Article 51 of UN Charter against rebels who seek to change the government or assert right to self-determination, even so due to the numerous interests of states it is hard to imagine this interpretation always can be applicable.

In addition, as I mentioned above, U.N. Protocol against the Illicit Manufacturing of and Trafficking in Firearms that recognizes the inherent right to collective self-defence and self-determination of all peoples, should be interpreted as such that self-defence and self-determination has priority over self-defence of governments in Article 51 of the UN Charter. Because, this Protocol, implicitly, by allowing trafficking firearms, allows use of force and armed attack against tyrannical governments for self-determination or self-defense, in spite of Article 51 of UN Charter.

In these circumstances the governments not only cannot claim their right to self-defence according to Article 51 of the UN Charter, but also other countries should not assist the oppressive regimes in fighting against rebels. The support of other states to such regimes would mean that they directly or indirectly would breach their universal obligation on respecting and promoting human rights and self-determination of peoples.
Section IIII  Situation of human rights in Kurdistan

As I studied in previous sections, according to the view of scholars and the practice of international community in cases of Bangladesh, Yugoslavia one of the main conditions of right to self-determination of ethnic minorities is their grievances; where the physical existence or separate identity of these minorities such as their culture, language or religion would be in danger, or in other words, where there would be exploitation, deep discriminations and oppression at the hands of government and the minority has exhausted all available and peaceful means to secure their rights within the territorial integrity of the state, but the government have responded to their legitimate demands by violence and repression. In such circumstances the ethnic minorities procure right to self-determination.

Thus, regarding Kurds, in this section, I will focus very briefly on the situation of human rights of Kurds in Turkey, Iran, Iraq and Syria, where the Kurdish regions are divided among them, to indicate whether situation of Kurds is grave enough to claim right to self-determination and right to rebel (self-defence) or not?

1. Turkey

About 20 million, or around half of all Kurds, live in south eastern of Turkey.¹⁶¹

Kurds in Turkey were overwhelmingly suppressed even before establishment of Turkish Republic in 1923. Turkish constitution denied the existence of any other ethnicity and language other than Turkish.¹⁶² This led to the policies of assimilation, which have taken oppressive forms.¹⁶³ Those who claim such ethnic and linguistics differences have been punished by

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¹⁶¹ Kevin McKiernan, op. cit.
¹⁶² Mary Lou O’Neil, op. cit. p. 75
¹⁶³ Baskin Oran, op. cit. p. 45
The use of Kurdish language even in private domain was forbidden for many years. For pursuing the policy of assimilation successive governments have employed strategies of forced migration and resettlement. In line with the state policy, many Turks started to deny the existence of Kurds, claiming that Kurds are actually ‘mountain Turks’ and therefore not a distinct group, and that Kurdish is a dialect of Turkish.

Kurdish children in schools were compelled to learn and speak Turkish. Economically, the Kurdish area suffers from deep discrimination by Turkish government. Per capita income in Kurdish area is less than half of Turks.

In response to the Turkish government’s oppressive rules against Kurds, there have been numerous Kurdish uprisings and rebellions during 20th century. In Shaykh Said of Palu rebellion in 1925, the leaders were hanged and other tribes involved were deported to Turkish-speaking provinces farther west.

The Dersim rebellion was provoked by the continued policy of confiscations and deportations of Kurds by Turkish government. In 1937 the tribal chiefs from the Kurdish area of Dersim sent a letter to secretary-general of the League of Nations. This letter which catalogued what the Kurdish leaders described as the ‘tyrannies of the Turkish government against human rights and the Kurdish nation’, is important for its use of the term “human rights”. It seems to be the first time that Kurdish leaders characterized their struggle against the Turkish government as one concerning human rights. The chief’s appeal to the League of Nations for assistance brought no relief, and the Kurds were left to fend for themselves, which resulted in major upheavals in the Dersim area.

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164 Ibid.
165 Ibid, p. 47
166 Ibid.
167 Mary Lou O’Neil, op. cit. p. 76
168 B. C. Nirmal, op. cit. p. 66
169 C. J. Edmonds, op. cit. p. 91
170 Ibid.
171 Mary Lou O’Neil, op. cit. p. 76
For repressing the Dersim uprising tens of thousands of innocent Kurds were annihilated by Turkish forces in the ethnic cleansing and tens of thousands innocent people were deported. The army used poison gas to kill people who hid in caves.\textsuperscript{172}

The current Kurdish rebellion against Turkish oppressive rule is Kurdistan Workers Party (PKK). The PKK, led by Abdullah Ocalan, in its attempt to win an independence Kurdish state, pursued guerrilla war against Turkish state, attacking military installations and troops in the southeast of Turkey, where the population of Kurds is concentrated. The Turkish responded in kind, and through much of the 1980 and 1990s Turkey found itself embroiled in a civil war.\textsuperscript{173}

Therefore, Kurds in Turkey, historically have faced to grave violation of human rights, ethnic cleansings, massacres, dangers to their culture and language, deep discrimination and exploitation, in a degree that living under this situation have become intolerable for many Kurds that has led to widespread and popular rebellion.

2. Syria

The population of Kurds in Syria is more than 2 millions. The Kurds constitute 10\% of the population and live mostly in the northeast corner of Syria.\textsuperscript{174}

Kurds in this part also are suffering from a history of denial of their fundamental rights by Syrian government. A Syrian official report of Syria’s government in 1963 describes the Kurds as a violent mountain people without history, civilization, language or ethnic origin.\textsuperscript{175} This report suggests implementing policies of deportation, denial of education and employment, Arab settlement of Kurdish areas, denial of Syrian citizenship, etc. against Kurds.\textsuperscript{176}

\textsuperscript{173} Mary Lou O’Neil, op. cit. p. 77
\textsuperscript{176} Ibid.
A decree in 1952 was regulated by Syria’s government to dispossess Kurds in Kurdish regions\textsuperscript{177} in order to stop the economic development of Kurds, to expel them from their region,\textsuperscript{178} and to sustain the oppression of Kurds.\textsuperscript{179} This Decree resulted in significant economic losses for Kurdish society.

Another decree has led to denaturalization of more than 300,000 Kurds.\textsuperscript{180} These stateless Kurds; lack Syrian citizenship, are forbidden to vote, do not possess neither identity cards nor passports, they have many restrictions in travelling,\textsuperscript{181} they are not permitted to possess property or business.\textsuperscript{182} In other words, they are buried alive!\textsuperscript{183} In addition, from 1973 more than 140,000 Kurds were to be deported, and replaced by Arab settlers.\textsuperscript{184}

Under Hafiz al-Assad, all things in Kurdish were excluded from official state doctrine.\textsuperscript{185} The Kurdish language was criminalized.\textsuperscript{186} Repression was a method of handling the Kurdish problem.\textsuperscript{187} These policies all have continued under Bashar Al-Assad’s regime.

Therefore, in Syria, Kurds have suffered a history of suppression, grave violation of human rights, discrimination, and danger to their existence and their language and culture.

It is worth to mention that after Syrian uprising Bashar al-Assad issued a decree that has granted citizenship to many stateless Kurds,\textsuperscript{188} to prevent them from participating in the revolution against his rule.

But transferring peaceful demonstration to the all-out civil war in Syria, and subsequently withdrawal of government’s military in many Kurdish cities to concentrate its crackdown against

\textsuperscript{178} Ibid.
\textsuperscript{179} Ibid.
\textsuperscript{181} Ibid, p. 18
\textsuperscript{182} Ibid, p. 19
\textsuperscript{184} KURDWATCH●Report 1, ‘The Kurdish policy of the Syrian government and the development of the Kurdish movement since 1920 An overview’, op. cit, p. 13
\textsuperscript{185} Ibid, p. 15
\textsuperscript{186} Ibid, p. 16
\textsuperscript{187} Ibid.
rebel groups in strategic cities of Damascus, Aleppo and other Arab regions, has given Kurds a historical opportunity to take control of Kurdish regions and declare autonomy from the mid-July 2012, to exercise their right to internal self-determination.\textsuperscript{189}

3. Iran

An estimated 12 million Kurds live in Iran, around 20 per cent of the Iranian population. They inhabit mainly in the north-west of Iran. There is also a Kurdish community in northeastern Iran.\textsuperscript{190}

Kurds in Iran are subjected to intense socio-economic discrimination, including confiscation and restrictions on social, cultural and linguistic rights.\textsuperscript{191} Kurdish identity, language and culture have been suppressed and the policy of assimilation and marginalization of Kurds was vigorously continued by Iranian government. Kurdish religious groups such as Al-haq are not recognized under Iranian law and their rituals are prohibited.\textsuperscript{192} Kurdish activists are systematically persecuted by the Iranian government.\textsuperscript{193}

Kurds have faced decades of challenges of destruction of Kurdish villages, to the state neglect and forced eviction.\textsuperscript{194}

Kurds in this part also has engaged in several major uprising and rebellion for autonomy, greater rights and independence during 20\textsuperscript{th}.\textsuperscript{195} Kurds in Iran experienced first and the only Kurdish

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\textsuperscript{189} The Economist, ‘The Kurds Hedging their Syrian bets’, (The Economist, 4 August 2012) <http://www.economist.com/node/21559959>


\textsuperscript{192} Amnesty International, op. cit. p. 8

\textsuperscript{193} Ibid, 36

\textsuperscript{194} Ibid.

\textsuperscript{195} C. J. Edmonds, op. cit. p. 95
independent in 1945. Qazi Mohammed declared the first Kurdish Republic of Mahabad. This Republic was lasted only twelve months.

The most recent and serious revolt and rebellion of Kurds in Iran, was in 1979. After the collapse of Shah, the power in Kurdish towns passed to Kurdish parties. But as Islamic Republic of Iran did not agree with granting autonomy to the Kurds, armed conflict broke out between the Islamic Republic of Iran and armed Kurdish political parties. This rebellion however was defeated. As the result hundreds of Kurdish villages and many towns were destroyed and more than 10,000 Kurds were killed.

Today the Party for a Free Life in Kurdistan (PJAK) emerged in 2004 is the only active armed Kurdish opposition party in Iran. PJAK’s armed activities against Iranian regime have made it the main Kurdish opposition party among Iranian Kurds. PJAK is attracting international attention and support from Kurdish youth through its armed actions in Iran.

4. Iraq

During 1933 and 1958, despite grievances of Kurds including injustice in sharing social services or development projects there was no major armed manifestation of Kurdish nationalism.

After this period, Iraqi governments especially Ba'ath regime rulers that desired to create a harmonious, conflict-free society, engaged in Arabization of the Kurdish areas, destruction of thousands of villages and a dozen of towns and Chemical attacks against Kurdish civilians.

Therefore in 1975 and after the collapse of a Kurdish revolt by Mulla Mustafa Barzani, quarter of a million Kurds from the Barzani tribes forcibly removed from their homes and relocated to

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197 C.J. Edmonds, op. cit. p. 97
198 Amnesty International, op. cit. p. 5
199 Ibid, p. 6
201 C. J. Edmonds, op. cit. p. 96
camps in the desert by the Iraqi government. In an operation against the camps where the Barzanis Kurds were relocated, Iraqi troops abducted about eight thousand males aged twelve or over. None of them have ever been seen again.\(^{203}\)

In Anfal campaign or genocide of Kurds\(^ {204}\) in 1987 more than 187,000 Kurds were annihilated by Iraqi government.\(^ {205}\) In March 1988, the Kurdish city of Halabja was bombed by chemicals weapons, killing five thousands Kurds.\(^ {206}\)

Despite this, Kurdish nationalist movement in Iraq due to favorable circumstances has been more persistent and successful in compare to other part of Kurdistan.\(^ {207}\) After the US invasion into Iraq in 2003 Iraqi Kurdistan became a federal region – the Kurdistan Regional Government (KRG) – with significant autonomy from Baghdad.\(^ {208}\)

### 4.1. Kurdistan Regional Government

After Iraqi occupation of Kuwait and subsequent international intervention to repel Iraqi forces from Kuwait, in March 1990 Kurds engaged in a massive rebellion against the government of Saddam Hussein and could free most of Kurdish region. Iraqi government responded with brutal retaliation that led to the escape of millions Kurds towards the borders of Turkey and Iran. This created a humanitarian disaster that public pressure in West after broadcasting the images of this massive exodus and sufferings\(^ {209}\) prompted United States, Britain and France to launch a humanitarian intervention after adoption of the UN Security Council Resolution number 687 at 3 April 1991 that authorized military intervention for protecting Kurds, repelling Iraqi troops from Kurdish areas and setting up a no fly zone in those areas.\(^ {210}\)

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\(^{203}\) Ibid.

\(^{204}\) Human Rights Watch, Genocide in Iraq: The Anfal Campaign Against the Kurds, July 1993, [http://www.unhcr.org/refworld/docid/47fdfb1d0.html](http://www.unhcr.org/refworld/docid/47fdfb1d0.html) accessed 9 March 2012


\(^{207}\) C. J. Edmonds, op. cit. page 92


\(^{209}\) Susan Meiselas, op. cit. p. 30.

\(^{210}\) Howard Adelman, op. cit. page 2.
It is worth to mention that the same countries that had fought a war to protect the principles of sovereignty and territorial integrity of States now challenged the sovereignty of Iraq by intervention, in a way that could probably lead to the break-up of the territorial integrity of Iraq.\textsuperscript{211} This intervention has provided for Kurds an effective autonomy and self-governing in northern Iraq from 1991.\textsuperscript{212}

After 2003 U.S invasion into Iraq, Kurdish support of U.S., political situation and creating a unifying front by Kurdish political parties put Kurds in a strong position in Iraq that helped them to write a favorable constitution.\textsuperscript{213}

New Iraqi Constitution put to referendum in October 2005.\textsuperscript{214} According to this constitution Iraq is a federal country and Kurdish and Arabic language are the official languages of Iraq. Article 113 of the Iraqi Constitution provides regional government to the Kurds and this regional government is responsible to write its own regional constitution.\textsuperscript{215} Article 117 of Iraqi Constitution provides that Kurdish region is completely responsible for internal security of its region.\textsuperscript{216}

In addition, Article 141 provides:

“A Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.”\textsuperscript{217}

The Constitution of Kurdistan that adopted according to Article 116 of Iraqi Constitution provides that the constitution and the laws of Kurdistan Region have priority over laws of federal government of Iraq. Article 110 of this constitution maintains the power to sign deals with foreign entities such as for oil exploration and development contracts. The more important is

\textsuperscript{211} Ibid \\
\textsuperscript{212} Michael J. Kelly, op. cit. p. 719 \\
\textsuperscript{213} Ibid, p. 723 \\
\textsuperscript{215} Michael J. Kelly, op. cit. p. 762 \\
\textsuperscript{217} Iraqi Constitution 2005
Article 8 of Kurdish Constitution that provides right of the Kurdish people to self-determination in the full Wilsonian ideal.\textsuperscript{218} Thus, according to this Article the Kurdish region freely joins with the other regions in the Iraqi federation, but maintain ‘the right to leave the federation if the central government either departs from the federal model or abandons the constitutional principles of democracy and human rights, or the central government fails to effectuate Article 140 in the federal constitution.’\textsuperscript{219}

Therefore, the present form of Kurdistan Regional Government is almost amount to independence; Kurds fly only their own flag, the peshmerga are the only armed force in the Kurdish region, tourists can travel with a Kurdish region visa.\textsuperscript{220}

Interestingly, while Islam in Iraqi Constitution is a foundation source of legislation, Kurdish Constitution is not heavy-handed about it, saying instead that —the principles of Islamic Shari‘a is one of the sources of legislation.\textsuperscript{221}

As the result, the new government of Iraq was established according to the definition of representative government in resolution 2625 (XXV), representing the whole sections of population and ethnic groups in Iraq, with granting internal self-determination and considerable autonomy to the Kurds.

In spite of this Kurds in Iraq after all these sufferings, have already obtained right to external self-determination and the current situation of Iraq does not have any effect on their right. This issue is emphasized in Article 8 of Kurdish Constitution, by mentioning that the Kurdish region freely joins with the other regions in the Iraqi federation, but maintains the right to leave the federation.\textsuperscript{222}

The case of Kurds in Iraq is one of the best examples of a relation between dangers to the existence and identity of ethnic minority at the hands of a central and tyrannical government and applying right to self-determination for saving such ethnic minority from these dangers.

\textsuperscript{218} Michael J. Kelly, op.cit, p. 735
\textsuperscript{219} Ibid, p. 735
\textsuperscript{220} Susan Meiselas, op. cit. p. 386
\textsuperscript{221} Michael J. Kelly, op. cit. p. 735
\textsuperscript{222} Ibid.
5. Analysis

In this thesis we reached to this conclusion that for obtaining right to self-determination, ethnic minorities need to suffer grievances and oppressions at the hands of government. In this aspect I explained:

Kurds in Iraq have experienced genocide, massacres and forceful displacements, assimilation, etc. These grievances were such high and intolerable that finally triggered military intervention by international community to defend Kurds against brutality of Iraqi government, to protect them and to provide them save heaven and internal self-determination. All of these grievances certainly are more than enough to obtain right to external self-determination. In addition, like other parts of Kurdistan, Kurds in Iraq live in a compact area and have great amount of oil resources that provide them a viable economy in international community.

In Turkey, Turkish government aggressively repressed and banned Kurdish language and culture in private and public domain and has systematically displaced millions Kurds into Turkish areas to assimilate them in Turkish society. All Kurdish uprisings in response to these injustices were brutally suppressed by Turkish government, in such a manner that some of them especially Dersim in 1937 may be regarded as genocide of Kurds at the hands of Turkish government. In this regard Martin van Bruinessen argues ‘the killing in Dersim was undoubtedly massive, indiscriminate, and excessively Brutal’ and there was, a deliberate intent to destroy rebels and potential rebels, and this was part of a general policy directed toward the Kurds. This policy is more appropriately termed ethnocide, the destruction of Kurdish ethnic identity.²²³ Therefore, the deep rooted oppressions and grievances of Kurds in this part also are intolerable and obvious enough that can qualify them for right to self-determination. Due to the unwillingness of Turkish government and its society for granting justice and equality to Kurds, separate identity, language and culture of Kurd remain in real danger, if Kurds continue to live within the territorial integrity of Turkey.

Kurds in Iran also, historically have suffered various oppressions such as assimilation, banning Kurdish language, deep discriminations, enforced displacements, massacres and persecutions. In fact, the policies of assimilation and marginalization in this part after many years have put the Kurdish identity in risk. Also the exploitation of Kurdish resources in favor of Persians in Iran is another aspect of exploitation of Kurds in Iran. Then, I believe that Kurds are qualified for right to self-determination.

The situation of Kurds in Syria is harder than Kurds in Iran; while more than 50 years ago hundreds of thousands of Kurds denaturalized, many more enforcedly displaced to Arab areas for the policy of assimilation and dividing Kurds. Kurdish language and culture were banned by Syrian governments and even they have faced restriction in possessing lands in Kurdish region. In this part also separate identity or even the existence of Kurds has remained in real threat. Historical subjugation of Kurds in Syria clearly is a sufficient reason for them to claim right to external self-determination.

In general, oppressions have become an integral part of Kurdish history. Despite this Kurds are described as being unreasonably stubborn. The Economist argues that: “Perhaps such hardheadedness explains how the Kurds, buffeted for centuries between Persian, Arab, Turkish and Russian empires, have sustained a proud sense of nationhood.”

Therefore, Kurds in all four parts of Iran, Syria, Turkey and Iraq have suffered all forms of oppressions and grave violations of human rights, domination and subjugation. In all four parts Kurds experienced massacres, war crimes and crimes against humanity, deep rooted discriminations, identity, language and culture by prohibition of their language and culture. These grievances have been so intolerable that Kurds many times from 19th century until now have resorted to rebellion and armed struggle to defend themselves against the injustices and gross violation of their rights at the hands of Turk, Persians, Iraqis and Syrians.

Despite all these uprisings and struggles of Kurds to assert their fundamental rights, and self-determination, the regimes in Iran, Turkey, Iraq and Syria not only have been unwilling to provide them justice and equality, but also they have responded to their legitimate demands with

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large-scale repressions and violence. The right to self-determination of Kurds in these situations is provided in the opinion of scholars, Aaland Island case and practice of international community regarding Bangladesh, Palestine, Yugoslavia, etc. and Resolution 2625 (XXV). For that reason, the governments of Iran, Turkey, Iraq and Iraq had lost their legitimacy among Kurds and in Kurdish regions. In fact, describing these governments as occupiers or occupying force is very common among Kurds. Now Kurds have revised from minority to people and can determine their own international status.

In addition, for self-determination Kurds are politically cohesive, economically viable, sufficiently numerous and live in a distinguished area. As I explained in the ‘Section I ‘Kurds live in a large and encompassing area, their population is about 40 million and have a strong sense of nationalism; Kurdish area is mountainous with considerable agriculture and resources. One of the most important oil resources in the world is in Kirkuk, a Kurdish city.\footnote{International Crisis Group, ‘Iraq and the Kurds: Resolving the Kirkuk Crisis’, (rcusa 19 April 2007), p. 1, \texttt{<http://www.rcusa.org/uploads/pdfs/ICG\_20Iraq\_20and\_20the\_20Kurds\_20of\_20Iraq\_20200704\_18\_07.pdf>}} accessed 15 May 2012

On the other hand, not only Kurds because of their historical grievances have obtained right to self-determination but also they have right to rebel for defending themselves and asserting their rights. One of the aims of right to rebel (self-defence) is right to self-determination of ethnic minorities. This right not only provided in the opinions of scholars but also in international treaties such as Universal Declaration, UN General Assembly’s Resolution on the Definition of Aggression (Resolution 2625 XXV), UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms and the practice of international community.

Therefore, Kurds have right to rebel to assert their right to self-determination. It is important to mention here that nowadays PKK and Party for Free Life in Kurdistan or PJAK, respectively in Turkey and Iran have engaged in rebellion and armed struggle against Turkey and Iran for the goal of autonomy and self-governing of Kurdish region and they are widely supported by the Kurdish people.\footnote{About PKK look at; Clive Myrie, ‘Kurds show coded support for PKK’, (BBC 26 October 2007) \texttt{<http://news.bbc.co.uk/2hi/middle_east/7062971.stm>}} accessed at 16 May 2012; also about PJAK, Wladimir van Wilgenburg, ‘Kurdish PKK Using PJAK to Isolate Turkey’, ( Jamestown 19 August 2010), \texttt{<http://www.jamestown.org/single/?no_cache=1&tx_ttnews[swords]=86d5893941d69d0be3f378576261ae3e&tx_ttnews[any_of_the_words]=PJAK&tx_ttnews[tt_news]=36765&tx_ttnews[backPid]=7&cHash=03a2a6155606ee3314bfddd00f95557c>}} accessed 16 May 2012
As PKK and PJAK parties are banned by Turkish and Iranian governments, it is almost impossible to hold election in these countries to determine whether they enjoy the support of majority of Kurds or not. Despite this, many journalists and authors especially regarding PKK confirmed that this party is popular among Kurds in Turkey and Syria. In this regard Susan Meiselas in his book argues that: “The sharpening of repression in the 1990s was a response to the PKK’s success in winning the hearts and minds of the Kurdish population… By the beginning of the decade, the PKK had come to enjoy such widespread popular support in certain regions, especially those near the Iraqi border, that It could believe it could change its strategy from guerrilla warfare to intifadah-type popular insurrection.”

According to a credible research by RAND Corporation denial of Kurdish identity, Turkish government repressive policies in Kurdish areas and flexible ideology of PKK have been the main reasons for public support of PKK among Kurds.

Consequently, the armed struggles of Kurds are according to international law. And as the right to rebel and self-defence of Kurds has priority over right to self-defence of Turkey and Iran, other countries should not interfere in right to self-rebel (defence) of Kurds by supporting Turkey and Iran against Kurds. In this situation, in fact such countries would violate their international obligations in respecting human rights and self-determination of Kurdish people.

A question that may arise is that whether the right to self-defense can be reduced or can be available if the Turkish or Iraqi governments i.e. take steps to remedy the situation? I have argued that Kurds because of injustices and violations of their rights have procured right to self-determination and self-governing. Even so some scholars argue that encompassing ethnic groups have right to self-determination without violations of their right by appeal to the wellbeing of individual members.

Consequently, Kurds now have right to self-defence and to use lethal force in defending and asserting their right to self-determination and self-governing. In fact, use of lethal force and waging war is proportionate defence of right to self-determination. Because, not only the use of lethal defensive force for asserting right to self-determination is provided in resolution 2625 (XXV) and Universal Declaration’s Preamble, but also there is moral

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227 Susan Meiselas, op. cit. p. 346
229 Antony Lamb, op. cit. p. 155.
justification for this argument; the threat to the self-determination is a threat to the wellbeing of the individual members of the community. “It is a threat to control of the political environment, the capability for justice, the social bases of self-respect and non-humiliation, of sufficient gravity to warrant lethal force as a proportionate response.”  

However, if encompassing group agrees to remain within state, there would be no threat to the well-being, dignity and prosperity of the individual member of the encompassing group and lethal self-defence is not proportionate. Thus, whenever, Kurds in Turkey and Iraq would agree to remain within political communities of Turkey and Iraq, because these countries have taken steps to remedy the situation such as granting a regional government to them, then use of lethal force is not proportionate and legitimate, because there is no threat to the well-being of Kurds. Then, right to self-defence will be reduced to non-lethal defensive force. For example, in the case of Kurds in Iraq, despite better position and having effective autonomy they have decided to remain within Iraq, but they kept this right to leave the Iraqi federation according to Article 8 of Kurdish Constitution. In this circumstances while right to use lethal self-defence of Kurds ceased but still Kurds in Iraq have right to non-lethal self-defence by using the legal and constitutional tools, civil disobedience, passive resistance and non-cooperation. Because Iraqi government has provided legal remedies for Kurds and use of force according to the Universal Declaration’s Preamble must be used as a ‘last resort’, when all peaceful tools were exhausted by this encompassing group.

But when and if Kurds in Turkey or Iraq decide to assert their full right to self-determination to get independence, despite the better situation (i.e. regional government), they can use lethal defensive force as a last resort if Turkish or Iraqi government would not allow them to freely exercise their right to self-determination and to define their international political status. In fact, right to self-determination have extra weight in international law because of the foreseeable harm that would result from not doing so. 

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230 Ibid, p. 150  
231 Ibid, p. 151  
232 Ibid.  
233 Michael J. Kelly, op. cit. p. 735  
234 Tony Honore, op. cit. p. 53  
235 Antony Lamb, op. cit. p. 151.
Antony Lamb argues that while states and individuals have a legal right to defence, encompassing groups can be the subject of moral rights of defence, that can legitimately (morally) engage in acts of collective self-defence\textsuperscript{236}. Therefore, this right is always available to the group and there is no reason that this substantial and natural right to be ceased, but it is a duty of group to first refer to the state institutions for compensations and exhaust all non-violent means in State and use force as a last resort.

The experiences of Kurds in Iraq, Bengalis in Pakistan and Bosnian, Croatians, etc. in Yugoslavia have made clear that granting right to self-determination to ethnic minorities in those countries substantially stopped gross violations of human rights and peace have established in the region. In those countries self-determination were used as a protection and as a shield to protect national minorities against dominant nations. Regarding the Kurds, not only all the conflicts, repressions and dangers to their identity would stop if they would be grated right to self-determination and be able to assert this right, but also they would be able to develop their identity and culture and stable peace and security would be established in the region.

\textsuperscript{236} Ibid, p. 156
Conclusion

The concepts of ‘right to self-determination’ and ‘people’ are vague and controversial. United Nations Resolutions have clarified these concepts about colonial people, entire population of a state and racial or religious groups.

But the most controversial issue is the right to self-determination of ethnic minorities living in a compact area in independent states. By examining the opinions of scholars as one of the sources of international law and practice of international community regarding right to self-determination of ethnic minorities in Yugoslavia, Bangladesh, Soviet Union, etc. we reached to this conclusion that ethnic minorities have right to self-determination as a last resort when they have suffered oppressions, grave violations of human rights, threats to their separate identity and existence in a degree that life would be intolerable for them and the government would be unable or unwilling to provide justice to ethnic minorities.

When ethnic minorities because of their grievances obtain right to self-determination, they have right to self-defence (right to rebel), as a last resort to assert their right to self-determination according to UN Resolution 2625 (XXV), Universal Declaration and opinions of scholars.

Kurds as a largest ethnic minority without state living in a distinguished region, are divided between countries of Iran, Turkey, Iraq and Syria all have experienced a history of grave violation of their rights, genocides, ethnic cleansing, massacres, crimes against humanity, war crimes and danger to their language and culture, that created a deep-seated hostility between many Kurds on the one side and Turks, Arabs and Persians on the other side. These historical grievances are sufficient according to international law to obtain right to self-determination. In fact, independence and secession of Kurds has become the only way for freedom from suppression and for saving themselves from the dangers to their existence and separate identity at the hands of the governments.

In addition, Kurds according to international law have right to rebel to resort to force for asserting their right to self-determination; because they exhausted all peaceful means for asserting their fundamental rights. In this regard, the armed struggle of Kurdistan Workers Party and Party for Free Life in Kurdistan that enjoy popular support among Kurds and other Kurdish
Parties that took up arms and engaged in rebellion, is in accordance with international law. Thus, other countries should not interfere against these rebellions in supporting Turkey, Iran or Iraq; otherwise they would breach their international obligations to respect, protect and promote human rights and self-determination of Kurdish people.

Finally, despite rights of Kurdish people for self-determination and determining their international status, because of lack of sufficient military might Kurdish uprisings and rebellions have not been successful. In this respect, Honore rightfully argues that “the realistic issue is still not whether a people is qualified for and deserves the right to determine its own destiny but whether it has the political strength, which may well mean the military force, to validate its claim.” To avoid conflicts and bloodshed for asserting right to self-determination, he suggests: “it is desirable that the United Nations be empowered to play a larger role in relation to the always hazardous issue of self-determination, granted—which is not necessarily self-evident—that to do so would be ease rather than to intensify international tensions and to promote human well-being.”

237 Rupert Emerson, op. cit. p. 475
238 Ibid.
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