



The Kurdish case, genocide or victims of politics? Legalmemories from Al-Anfal

Diego Pasquale Morone¹

Abstract

Kurdish identity has been shaped mainly through violence, denial and traumas. The collective memory of Kurdish people cannot find an affirmation though the main international institutional channels, since the thesis for which they suffered a genocide has not reached a common consensus. Another perspective may be the one for which they have been victims of wrong politics in the international scenario. This research aims at analyzing this dual perspective, to answer one of the most under discussed matters of international society. Starting from an historical overview, the focus is then shifted on the societal component and the memories built by Iraqi Kurdish. These memories are not free from biases: this will be analyzed, as well as the role those Western countries took in the Kurdish cause.

Keywords: Kurdistan, Genocide, Duty to prevent genocide, Collective Memory

Introduction

"If you cannot point to Kurdistan on a map, you are not alone" (Blakemore, 2019), we can read on the website of National Geographic when introducing an ethnic group impossible to define through precise numbers: we have no reliable statistics on how many the Kurds actually are, nor - along the years - has been possible to define how many of them were killed¹. "The largest people without a state", amounting to an estimated 40-millions, even though a complete census is impossible - due to their consistent presence in many Middle Eastern states, as per Turkey, Iran, Iraq and Syria (Rubin, 2016). It is enough to consider that their potential coming together would result in a larger population than Poland, Canada or Australia, and larger in area than Bangladesh, Bulgaria, or Austria (Rubin, 2016).

Diversities among these people are many, as per the religious, linguistic and even tribal diversity: most Kurds are Sunni Muslims (an estimated 15% are Shiites), but thousands adhere to Islamic heterodox and pre-Islamic religions (Gezik, 2021). The language used is the main difference across them. "Kurdish" is an Indo-Iranian language, similar to Persian, that assumes different declinations depending on the dialect spoken. It has features of the Baluch, proper of southern zones of Pakistan, but it does not grant an intelligibility between one dialect and the others - a strong role in this aspect is due to the influence of the national states that shaped their language (Gezik, 2021).

The past, the present: an historical overview of Kurds

Kurds are tied together, as all the nationalist factions that seek a recognition, by a common ancestry: many are claiming their descentance from

¹ Diego Pasquale Morone, University of Trento, Italy. Email: diegopasquale.morone@studenti.unitn.it

the Medians, nomadic people that established an empire in Iran, in the eighth century before Christ. But this is not the only element: without assuming a too fatalist tone, we could say that Kurdish people are bound - as a group of people - by what has been defined as a genocide (Ali, 2023). Although they never had a proper state, the geopolitical scenario influenced their condition, and an explanation of such context, following a virtual timeline of what they went through, may help to propose an answer to the question central in this research².

They have been subject to Turkish and Persian Empires, with an initial not-so-unitary will of recognition – the relevance of the tribes, and the protection of local communities, has been deemed to be more important by many, in different times, even when taking a unitary stance could have made the difference (Rasheed, 2016). Despite a lack of uniformity in thought, their self-determination was almost reached after the first World War: the Sèvres Treaty³, part of an Allies' agenda to dismantle the Ottoman Empire, was supposed to be central in Kurdish autonomy, but history took a different turn.

The legal assumption, also favored by President Wilson's 14 points⁴, that such a Treaty could constitute a basis on which the Allies, and a Kurdish representation, would have acted to define the borders⁵ failed. After a long attempt to strike a deal with Turkish politics, in which Winston Churchill has been a central actor⁶ (Kareem, 2022) - the collapse of the plan arrived as Ankara's government denied the possibility of an autonomous government, even during the negotiations for the Lausanne Treaty. The submission to a state, to which they are still not feeling as citizens (Johnsons, 2021), has been accompanied by a strong turn in the perspective on self-determination⁷: the focus was not anymore about people, states had formed by the lines traced by the Allies after the First World War.

From that moment, the neglect originated in the newly generated Iraq and Turkey, found a strong answer from the minority: a conflict arose along the years, until the 1970s arrived, with nationalist-based terrorism rising⁸ and watershed days for Kurdish history, bringing us back to the goal of this work: whether it is possible to define Kurds as victims of a genocide or puppets of third countries' political interests⁹, but without a deeper historical analysis, and of Kurdish perspectives, a potential solution is not possible.

In those years, the Kurdistan Democratic Party, the KDP, of which the leader was Mustafa Barzani¹⁰, had thought to have befriended a good ally: the vice-president of the Revolutionary Bureau of Iraq (in the late '60s, the Baath Party came to power through a coup), Saddam Hussein, who offered "Kurdish brothers of Kurdistan autonomy" (Dillies, 2021). After an agreement was drafted and sealed, the biggest plot-twist of Kurdish history took place: the new charters enacted by the Baath party imposed "political and social unity to the Arab homeland", but also an "Arab identity of the Kurdish land" (Dillies, 2021). This has not been the only attempt to bring them down, or to assimilate them, since the first World War ended, while the Ottoman Empire was falling. The attacks have been multiple, but among the harshest battles for survival the Kurdish people had to experience, there was the Iraqi-Kurdish conflict in which Saddam Hussein himself was the instigator. In the meanwhile, Hussein had become president and had attacked the minority in the northern region of "his" states, due to doubts about their position in support towards Iran, mainly during the

conflict among these two states.

More in detail, the “doubts” were about Kurdish guerilla fighters, called *peshmerga*¹¹, officially siding with the Iranian army, at the end of the war between Iraq and Iran in the ‘80s. The punishment did not arrive towards them, but for the whole country. Some would define them as “resistance”, but some may argue that it be a biased term, since it is tendentially implied that they are fighting against an oppressive power, which still, means taking a kind of stance. It is no mystery that this term, often a synonym of “partisan”, is used with a certain kind of empathy. It is enough to read W.J. Ford’s position on the Resistance Movement and International Law (1967). In this essay, it is not much about the author’s perspective, but rather on the position taken during conflicts such as the Second World War, where concepts such as “defense of one’s own land”, and “patriotism” are called into play - as per the words of I.P. Trainin (1944). Nonetheless, defining them as a general group would mean that the retaliation that all people suffered would consist in a first, and huge, violation to International Law.

Genocide or Wrong Policies?

Under International Humanitarian Law, collective punishment, in retaliation for an act of an individual or a group, is listed as a war crime. A similar instance has been pointed out by Amnesty International in a way more actual case, the Israeli Palestinian conflict (Amnesty International, 2024). In this case, after the 7 October 2023 attacks, led by Hamas¹² had Israel answering, and this would have been rightful, but Amnesty found that not all the actions were led in respecting the Geneva Conventions. The “destruction of hundreds of terrorist infrastructures, rocket launch positions and observation posts”, plus the “elimination of dozens of terrorists and the destruction of 40 tunnel shafts”,¹³ comprised the demolition of residential buildings, a cemetery and a primary school: Article 33 of the Fourth Geneva Convention (1949) tells us that the collective punishment is a war crime (ICRC, 2009), as well as Article 54 of the Additional Protocol I to the Geneva Convention (for which essential elements in the daily life of civilians shall not be tackled). What went on in Iraq was similar, and although war crimes are not synonym of genocide, they can overlap in many cases.

The Al-Anfal campaign is the *casus belli*. The Human Rights Watch published a report in 1993 on the “battle”, for which more than 350 survivors were interviewed, and thanks to the document presented, alongside the words of the victims, we could try to define what went on in northern Iraq. The exact number of deaths is not clear, “since 1975, some 4,000 Kurdish villages had been destroyed: at least 50,000 rural Kurds had died in Anfal alone”, the report reads. Some sources say even more¹⁴. HRW stated that war crimes have been widespread and ranged from looting of civilian property, arbitrary jailing and warehousing (in extreme deprivation), to using chemical weapons on civilians, but also destruction of economy and infrastructure. The comparison is with Nazi Germany: where in the ‘40s terms such as “special actions” were used, in Iraq the Baathist ruling class spoke of “collective measures”, to describe the violent actions.

The parallelism does not end here: propaganda played a strong role, since Kurds have been dehumanized, labeled as “rebels” or “traitors”. Furthermore, the

actions themselves - and, once again, we find ourselves listing war crimes - are ascribable to key elements of a genocide: the "intent to destroy in whole or in part, a national, ethnic, racial or religious group. This includes acts as killing members, causing bodily or mental harm, inflicting conditions meant to bring about the group's destruction, imposing measures to prevent births, and forcibly transferring children"¹⁵. Mass execution, systematic violence, chemical weapons and targeting of civilians have been enough for HRW to use the term "genocide". Furthermore, a point in favor of this recognition is opened by the term itself that presents the campaign: "Al-Anfal". It means "Spoils of War" and is contained in the eighth chapter of the Quran, dealing with "a war against unfaithful people, to be exterminated". The Arabization process started in the previous decades by the Muslim component of Iraqis, Sunnis, and it seems to have a concretization in the process of elimination of Kurds, pertaining to Kurdish Islamism, a different religious faith, always linked to Islam (McDowall, 1996)¹⁶.

This recognition has found the support of many international actors, especially in the 2010s: the European Parliament, in 2008, recognized through a Resolution the Al-Anfal campaign as genocide. A formal recognition of genocide is lacking in the UN's headquarters. In the following years, the relation with the UN has been difficult, as the states in which we find Kurds, avoided to bring up the Kurdish case along the years. A Resolution (UNSCR 620, 1988, after the Halabja attacks) confirmed the general position of condemnation towards Iraq, the "repression of the Iraqi civilian population in Kurdish populated areas" (Gunter, 2015).

A haven has been created too, by the U.S., based on a Security Council Resolution (UNSCR 688, 1991, following the Gulf War), until an autonomous region was confirmed in the 2005's Iraqi constitution, after the American invasion (not endorsed by the Security Council). Iraqi conflict with the UN, which does not clarify why the organization did not push towards Kurdish autonomy, led to a discouragement for UN members to get involved in the area: in 2003, Sergio Vieira de Mello (highly respected UN High Commissioner for Human Rights and the Secretary-General's Special representative in Iraq) and 20 members of his staff were killed by a bombing in Baghdad. Further confusion on the topic was brought up by the obstructionism toward a referendum - underlined by a 2009 study, signed by the UN (Gunter, 2015). A genocide was recognized, but another: the ISIL's one, perpetrated against Yezidis. At national level, as it could be now clear, no national Remembrance Day for the victims exists, although at regional level it was established after reaching a peaceful condition (after the 2005 Constitution).

Or Wrong Policies?

European's recognition was reached through nudges from UNPO, the Unrepresented Nations and People Organization - in the document titled "Justice through EU Recognition" (2013). Beyond that, the facts have been reported also by the United Kingdom, thanks to the Kurd-native MP Nadim Zahawi (furthermore, Sweden and Norway recognized it too, UNPO 2013). National authorities, composing the Union, have not been aligned on the topic: the main example is the Dutch decision, brought by The Hague's District Court, for which genocide was "denied". To be more specific, the case involved a Dutch

businessman (Frans van Anraat), who supplied chemicals to the regime. These products were subsequently operated to produce chemical weapons, used during the infamous campaign.

Van Anraat was charged with war crimes, but not for genocide: the evidence has been declared insufficient to prove it. The convicted spent 15 years in prison, and, after an appeal, his permanence was even extended to 17 years. The Dutch court did not consider enough the evidence proposed to declare an “intent” to destroy the group as such. The motivation could have been “politically or militarily motivated” (Heller, 2023). Here a strong distinction must be pointed out: the legal value of genocide recognition, through a binding judgement, and a political one. To define a genocide, courts require a specific intent (*dolus specialis*), whereas the political perspective can be voluble to a specific state interest, even though could be essential in shaping a subsequent law (for instance establishing a Remembrance Day). Dealing with courts, the International Criminal Court never reached this instance, as Iraq refused its jurisdiction.

Other relevant sentences were proposed by the Iraqi High Criminal Court (IHT), formerly known as Iraqi Special Tribunal (IST), an *ad hoc* court, internalized into the Iraqi judicial system after the fall of Saddam Hussein. Hussein was prosecuted, as well as other Baathist officials: the charge of genocide, as well as war crimes, and crimes against humanities were recognized. The Court has been created during the U.S. occupation, differing from others (as the International Criminal Tribunal for Rwanda, or the International Criminal Tribunal for Yugoslavia), as it was not “externally imposed”. Officially, it is recognized as a domestic court, with local judges, but it has not been free of bias in its operations.

The starting point of a potential bias lies in the funding of the court itself (Newton, 2006): it came from the U.S., which were “advisors” in selecting the judges, rendering the final decisions (Newton, 2006). Immunities for high-ranking officials were revoked, ensuring that individuals could be processed, but the outcome of such trials was a long sequence of death penalties (OCHR, 2007). Furthermore, many lawyers were assassinated during the course of the trials. The official sentencing of state members may have helped for sure to strengthen the Kurdish idea of being victim of a genocide (Kebranian, 2020)¹⁷. This is one of the elements shaping a collective memory - from a certain perspective, it is a trauma binding them all as a group.

Memories from Kurdistan

But what is a collective memory, and how can it affect the law? It was firstly defined by Maurice Halbwachs (1925) as “the shared pool of knowledge and information in the memory of two or more members of a social group”. Thus, it is not an individual process, but rather a collective one. Undeniably, it is not a comprehensive memory and differs from the role that the researchers by historians take part in recalling past events.

The difference here is in the “selective” process, proper of the collective memory. It has been associated with the law, since both are influential on each

other: the result of a trial, as well as the availability of the information about the past, and even the possibility to discuss such a topic, are elements that can move lawmakers and law enforcement (Merguerian, 2023)¹⁸.

Kurdish collective memory brings up a huge amount of pain, the scars have not only been physical: mass graves (Dilshad, Rikar 2019), mines under the soil (Monir, 2022), still representing a danger, and, most importantly, moral wounds of those who survived. To explain in practical terms the situation we can use an example brought by Hawraman Karim¹⁸, about the education proposed in Kurdish zones: the Al-Anfal campaign is discussed with young pupils, but only in a limited way - from a territorial perspective too.

People seem to be the greatest source of memory, even more than official documentation (Thompson, 2000; Vansina, 1985), but - as previously stated - this does not come without a bias. The experience of taking part in a conflict cannot be explained in the same way by every participant to the conflict. In his "Hell is Over"¹⁹, the war correspondent and former

U.S. marine Mike Tucker reported his travels around Iraqi Kurdistan during July 2003, a few months before the capture of Saddam Hussein: the collection of interviews of *peshmerga* is essential to explain how the dictatorship was felt, and what the memories of survivors were.

The memory delineates clearly by reading: Mustafa Barzani, revolution's leader and chief of the Kurdish Democratic Party, is seen as a "poet of freedom", the weapons - used by Kurds - are described as old and weak, especially if compared to the Iraqis' ones, and the atrocities are often compared to the Nazis persecutions and so on²¹. We even have the glorification of some figures appearing in many people's discourses. The most peculiar example is the "*Joan of Arc of Peshmerga*"²², Margaret, an Assyrian woman symbol of the riots against the Iraqis.

The characters who came into play are not just "positive" ones, as per Ali Hassan al-Majid, "Chemical" Ali, Hussein's cousin and director of the Halabja attacks. Halabja is still an open wound: the nickname "chemical" comes from the use of chemical weapons on Kurdish guerilla fighters and civilians. Memories have been shaped by contaminated water, toxic soil and a heavy "legacy": DNA assets modifications, due to the chemicals, have been suspected¹⁹. The exact number of deaths after Halabja are floating between 3,500 and 5,000 - including young kids, women and the elderly.

Other elements not to be underestimated are collective memories of specific communities, such as the Gizi Massacre survivors. On this occasion, where all males, aged 10 or more disappeared from the village, originated horrible images of the aftermath of the kidnappings. Another case is formed by the memory of the survivors detained in a same prison, the one of Abu Ghraib: they all talked about the inhumane conditions to which they were exposed.

Biases

The prejudice, in looking at these figures, especially the mythical ones, is brought by the selective, thus subjective, character of the collective memory. It is impossible to reconcile history and memories: many elements, as well as the context in which the deeds of these heroes took place, are missing (Rubin, 2005). A huge absence, at least in Tucker's interviews, is a critical perspective about Jalal Talabani - since there is a main presence of Barzani's supporters, which have

been averse to Talabani's position (Anderson, 2007). Furthermore, a huge number of deaths - the estimated number is 2000 - were to be counted after this conflict, that is not mentioned by any of the interviewees.

More in general, memories have a strong influence on the American's perspective: they are seen as saviors in Tucker's pages, even though their position shall be discussed further. Beyond the Treaty of Sèvres, the "betrayals" to Kurdish have been many, and help us to define them not anymore as victims of a genocide, but rather as puppets, or victims, for a political scenario that never cared about their matters. The listing, after Sevres, keeps going on: after World War II, the U.S. assumed Great Britain's role in leading foreign relations with the Middle East, and supported a coup - in 1963, through which Abdal-Karim Qasim was overthrown (Scahill, 2023). The aid was cut off, and the new Iraqi government was provided with napalm. Kurds were strengthened later only to "bleed the Iraqi government". Furthermore, the U.S. were aware about the chemical attacks (Pear, 1988), and did not care - or better, caring was not as useful as letting Hussein weaken Iran (Schwarz, 2019).

The pattern kept going on: the U.S. armed Turkey in uprising rebellion movements by the Kurdish in Anatolia (Schwarz, 2019), culminating in public recognition of these "betrayals". More in detail, in its analysis, Schwarz proposed a conversation in which the neoconservative William Kristol (former Chief of Staff to the Vice President of the U.S. Dan Quayle, in the George H. W. Bush era) "admits" that these instances were a proper betrayal (Schwarz, via TomDispatch, 2008; Cook, 2019). It is not weird to compare what Kurds meant for the U.S. in the Iraqis' matters, to what the Kurds represented for the Allies in demolishing Turkey.

Furthermore, even Hussein's position has been voluble to American political interests: if in the '80s the Reagan administration supported him for his war in Iran, after the Kuwait's invasion, in the '90s, he became a public enemy.

A deeper analysis would be possible, including - once again - the United Kingdom. As of 2017, the Foreign Secretary Boris Johnsons had argued against a Kurdish referendum, leading to a potential independence, "The long-term security and prosperity for Iraq and Iraqis can only be met through dialogue and cooperation". Other solutions were, as to Johnson's words (2017), proposed: "It is regrettable that part of the Kurdish leadership rejected the proposal".

Again, in the United Kingdom the issues have not yet been extinguished in dealing with Kurds. As reported by journalist Matt Broomfield, on the digital pages of Un Heard (Broomfield, 2024) people have been arrested under the Terror Act for holding a Kurdish flag. Other activists, such as the photojournalist Mark Campbell (Tisdall, 2017), described it as a "freedom of expression issue". This would not be different to the concerning situation in Israel, as reported by Amnesty International: flag restriction has been deemed as an attack to the rights to personality, freedom of expression and freedom of peaceful assembly (Amnesty International, 2018).

Not even the European Union, who recognized the genocide during the Al-Anfal campaign, seems to be far from this throwaway approach. As the Democratization and Transnational Human Rights Regimes research found, the

European Court of Human Rights has been proved as rather ineffective. “Turkey has been engaging in violence against a minority, and claiming legitimacy by citing counterterrorism”, stated Dilek Kurban, coordinator of the project. As of 2016, there were 8,300 new applications from Turkey for human rights violations (four times the previous year), to which the approach has been defined, by Kurban, “more open and bolder” (2018), due to the deeper relations with the Turkish state. The research found that the Court, even though it did a great job in documenting the violences, could have done more: Kurban defined it as “a political choice” (Kurban, 2018).

A Kurdish Identity

The Kurds had their responsibilities towards their own people²⁰, since they contributed to the collective trauma. The proof is given by the UN-Funded Trauma, Rehabilitation and Training Center, the WCHAN, led by Dr. Ahmed Amin, who deals with years of mass right violation. Dr. Amin (2015) states that the damages, perpetuated toward the population, are attributable to Iraqis, Americans and Kurds themselves. If Hussein allowed bombing and violences, the Kurdistan Regional Government, the authority in the regime’s period, was responsible for many harsh interrogations.

It is through these wounds that a unitary Kurdish identity was built. The bottom-up perspective allows us to define “who are the Kurds” and shifts the Iraqis’ narrative on the topic. The national élite perspective has been well summarized by Saddam Hussein himself, during his trial: “Iraqi people should not suffer from the guilt that they killed Kurds” (Karim, Baser, 2022). The dictator stated that they had the same rights under his regime, and that he managed to create a whole battalion of Iraq-loyal Kurds in his army. Then, if there was no will to exterminate the population, why to target them through the means deployed? The confusion originated after posing the research question – whether Kurds have been puppeted, or if they were victims of a genocide – has not a clear-cut answer.

The genocide-thesis gets stronger when analyzing the steps that “gets us to the Genocide, at least under the analysis of Gregory Stanton. (1996) The infamous expert of genocides developed a ten-steps procedure after which we can define a mass-murder as “genocide”. Starting from the “classification” and passing through “dehumanization” and “persecution”, the procedure seems to have been followed²¹. On the other side, history tells us that there is “no good guys”: terrorism has been consistent along the Kurdish lines²², but it did not rise for no reason. The violence has been consistent, even though it could be traceable to repressive politics (Dalla Porta, 2020), to which Kurds have been subject even before the Ottoman Empire.

As this violence is confirmed, the stance that the international community took (way more utilitarian than one can reasonably expect), cannot be denied. After all, a political recognition does not matter that much, since it is floating in its weight: the U.S. recognized a genocide, but specifically for the Yazidi, and committed by the Islamic State. The discourse, here, could extend to what the Kurds have represented to the public’s eyes: what Noah Chomsky would have defined as “unworthy victims” (2002).

Chomsky even quoted the topic, when stating that American media

sympathized more with Iraqi-Kurds, rather than Turkish ones. "The choice of which story to tell has a real effect on people's lives", reads an analysis of this subject by Matthew Petti (2023), for the Kurdish Peace Institute.

Public opinion is influenced by the media themselves, and the stance taken toward Kurds has been way different than other endangered minorities.

Although there were many difficulties in narrating the story of Kurdish people (geographical connections, the absence of a state to access itself), the focus was never completely shifted "on them".

The example brought by Petti, in parallel to Chomsky's ones, is the case of Selahattin Demirtas, Kurdish leader, and Alexei Navalny, the main opposition to Russian politics. The similarities may be defined as many; doubt trials, unfair charges (HRW, 2020) and long prison terms, but a completely different narrative, starting from the quantity. Navalny was mentioned 1,285 times per billion words since his January 2021 arrest by the English-speaking media, whereas Demirtas was mentioned only 39 times per billion words of newsprint since 2016, when he was arrested. Even the perspective of "who" shaped the public's eye gets controversial: in analyzing Kurdish authors dealing with the discussed matters, we can find that they are small too (Kurdish Peace Institute, 2023).

Conclusions – 30 Years later

An answer is not easily accessible: an in-depth analysis of Iraqis' policy would be needed, and even when it has been done, no consensus was reached²³. Although a lot seems to point out that a genocide was carried out, there are many other elements that indicate otherwise, in particular the position that Kurdish populations assumed along the years. Firstly, the Western countries approach, lenient with Iraq, Iran and Turkey (when the circumstances were favorable), leads to the realization that Kurds have been used as long as they were needed, even in more recent times. Another example may be the retreat of American units from the Turkish Syrian border: Turkey attacked, and thousands of Kurds have been killed (Martindale, 2021).

This situation happened, in a concerning similar manner in 1995, when the U.S.-enhanced haven in Northern Iraq was attacked, once again, by Turkish forces: the United States stepped aside. The only definition that we can attributed to the Kurds, when trying to explain who they are, is "history losers", as James Ciment brilliantly depicted them (Ciment, 1996, via Martindale, 2021). No matter what the attempts are to rebuild, after a century of massacres: they lost their war, and no one prevented these atrocities from happening.

This duty to prevent genocide, has been made crystal clear by the case brought in front of the International Court of Justice by South Africa, on 29 December 2023 - concerning the alleged violations by Israel of the Genocide Convention in the Gaza Strip²⁴. South Africa emphasized the obligation of third countries, in this case themselves, to prevent genocide - "South Africa is also acutely aware of its own obligation, as a State party to the Convention, to prevent Genocide". Clearly, the standing is granted by the *erga omnes*²⁵ character of such obligations, that lead to a request for provisional measures.

The point here is not much about the outcome of such proceedings, nor on the acts themselves, but rather on the obligation to prevent genocide in front

of the Genocide Convention. The latter lists Iran, among the ratifying states, Iraq and Turkey, among the ones who accessed it. Clearly, the International Court of Justice counts the three as “States entitled to appear before the Court” too. The Court found a duty to intervene, but not only to prevent it: to suppress and to punish genocide too. Nothing in the text specifies “what” should be done to fulfil one country’s duty to prevent genocide, but a scope was given in a 2007 (*Bosnia and Herzegovina v.*

Serbia and Montenegro) judgment (Bastaki, 2024). “All means reasonably available to them, so as to prevent genocide so far as possible”, the decision reads. In particular, a call arrives for “states with the capacity to influence effectively the action of persons likely to commit, or already committing genocide” (Bastaki, 2024). Here, the capacity to influence enters into play. It has been defined, in the same judgment, as the capacity “assessed by legal criteria, since it is clear that every state may only act within the limits permitted by international law; seen thus, a State’s capacity to influence may vary depending on its particular legal position vis-à-vis the situation and persons facing the danger, or the reality, of genocide”.

This duty, imposed by the Convention itself, includes - as the Court stated - the obligation to use every available means as deterrent, as long as the circumstances permit. A failure to prevent may be found in selling weapons, once a risk has been identified, as well as financial linkings (YRIS, 2018). In conclusion, there would be multiple states - among the so-called Western Countries - that would risk being considered as relevant in this discourse, due to the role they played in the Kurdish case (Frantz, Murray, 1992).

Notes

¹ See “Anfal Campaign and Kurdish Genocide” – available at Department of Information Technology, KRG, gov.krd.

² “Kurdish nationalists consider the first year in their calendar in 612 BC”, as per Kendal Nezan, President of the Kurdish Institute of Paris.

³ Radpey L. (2020), in *The Sèvres Centennial Self-Determination and the Kurds*, American Society of International Law, 24, tells us that the previous treaty dealing with a Kurdish independent state could be traced back to the Treaty of Zuhab (*Qasr-e-Shirin*), of 1639.

⁴ The 12th point reads that “nationalities now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development”.

⁵ We could list Article 62 - in which the powers are conferred to “British, French, Italian, Persian and Kurdish representatives” - but also Article 63, in which Turkey agreed to “accept and execute the decision within three months”, and Article 64, for which within one year Kurds would obtain “independence from Turkey”.

⁶ The Kurdish state has been deemed as favorable for a while, since it “protected British colonial interests”.

⁷ In this context, both Iraq and Turkey are Members of the United Nations (Article 1.2 states that the organization is based on self-determination, furthermore this principle is underlined in the Declaration on the Granting of Independence to Colonial Countries and People of 1960), and they both ratified the International Covenant on Civil and Political Rights (Article 1 recognizes such right) and the International Covenant on Economic Social and Cultural Rights (Similarly to the former Covenant, its 1st article recognizes it).

⁸ An example is the PKK, the Kurdish Working Party. Online resources are not coherent about its history (The Turkish Coalition in American dates them back to 1977,

the Turkish government states they originated in 1984, for instance), they are an armed terrorist movement, moved by nationalist aspirations of having a Kurdish state.

⁹ The aforementioned interest of Western countries, as the United Kingdom and the U.S., as well as Allies' members, Italy and France. The successive loss of interest has been clear even among Arab countries - again, Turkey and Iraq.

¹⁰ Father of actual Kurdistan (intended as an autonomous region) leader, Massoud Barzani.

¹¹ That translates as "those who faced death".

¹² The group has been labeled by many international actors as a terrorist group, mainly Western countries, whereas - for instance - Iran, Turkey and the Arab world does not. ¹³ Israel Defence Forces, (2024) Fighters of 5th Defence Force destroyed hundreds of terrorist infrastructure during the operation "Oz and Nir". Amnesty's report clarifies which buildings have been targeted, supporting maps showing the zones that were attacked.

¹⁴ The Kurdish regional government itself states that as many as 182,000 or even more people were killed in that operation. Data available at us.gov.krd

¹⁵ Article 2 of the so-called Genocide Convention.

¹⁶ Also, in its dedicated report, HRW opened a parenthesis about the "Arabization process" that saw the Kurds losing their identity. The ethnic replacement saw thousands of Kurds displaced and their homes assigned to Arabs, "loyal to the government". This is at the basis of the quarrel, escalated into a conflict: the will to have one's own land "back" is clear. It is no mystery that a similar instance has been central in our daily lives since the media's attention shifted on the Gaza strip.

¹⁷ Even though it refers to the Armenian Genocide, Kebranian's work depicts how memory laws and the shaping of a collective memory, through "the law" can impact society's acknowledgment of such historical events.

¹⁸ In France an attempt has been made to avoid politicization of such massacres as the Armenian one.

¹⁹ "Researchers believe the contamination passed not only into the soil and water, but also into the gene pool, with abnormal numbers of children since being born with genetic malformations", from "Iraqi Kurds mark 25 years since Halabja gas attack", available at bbc.com

²⁰ Jenna Krajeski interviewed Doctor Ahmed Amin (cited in the following lines) in 2014. Dr. Amin dealt, in his answers, with the role that the Kurdish government(s) had in the Civil War fought between the two main factions (KDP, leadered by Massoud Barzani, and PUK, leadered by Jalal Talabani). Repercussions of protracted tortures was found in the majority of society: "Torture by the previous regime, by the current regime. Torture by our Kurdish government, by Syrians, by the U.S.", stated Amin. Furthermore, the Doctor (Responsible for the WCHAN, funded by the UN, told OCHR (2015) that "If you take a person, torture him or her, and then send them back into society, it is like you tortured the whole community". Signs of PTSD were found on whole villages in 2007 (Krajeski, 2014).

²¹ The ten steps are: classification, symbolization, discrimination, dehumanization, organization, polarization, preparation, persecution, extermination and denial.

²² A strong parallelism, here, may be done with the Palestinian's terrorist groups.

²³ The different position between HRW and the Dutch Tribunal, in the van Anraat case.

²⁴ South Africa and Israel are party to the Genocide Convention, but Israel is not subject to the jurisdiction of the Rome Statute. Thus, a case cannot be brought, theoretically, in front of the International Criminal Court. The case was brought since the alleged crimes took place in one of the Member States to the Convention, Palestine.

²⁵ This tells us that "everybody" could have virtually acted on this basis.

References

- Ali, H. (2023). Britain, Iraq, and the Politics of Genocide: The 1963 Ba'ath Government Campaign Against the Kurds. *Journal of Genocide Research*, 1-23.
- Amnesty International. (2023). Flag Restrictions are the latest attempt to silence Palestinians and reduce their visibility. <https://www.amnesty.org/en/latest/news/2023/01/israel-opt-flag-restriction-s-are-the-latest-attempt-to-silence-palestinians-and-reduce-their-visibility/>
- Amnesty International. (2024). Israel/OPT: Israeli military must be investigated for war crime of wanton destruction in Gaza – new investigation. <https://www.amnesty.org/en/latest/news/2024/09/israel-opt-israeli-military-must-be-investigated-for-war-crime-of-wanton-destruction-in-gaza-new-investigation/>
- Anderson, J. L. (2007). Mr. Big. *The New Yorker*. <https://www.newyorker.com/magazine/2007/02/05/mr-big>
- Bastaki, J. (2024). The Capacity to Influence, State Responsibility and the Obligation to Prevent Genocide. *Opinio Juris*. <http://opiniojuris.org/2024/03/30/the-capacity-to-influence-state-responsibility-and-the-obligation-to-prevent-genocide/#:~:text=The%20State's%20capacity%20to%20influence,situations%20and%20persons%20facing%20the>
- Blakemore, E. Who are the Kurds? *National Geographic*. <https://www.nationalgeographic.com/>
- Broomfield, M. (2024). The betrayal of British Kurds. *Unherd*. <https://unherd.com/2024/01/the-betrayal-of-british-kurds/>
- Cook, S. A. (2019). There's Always a Next Time to Betray the Kurds. *Foreign Policy*. <https://foreignpolicy.com/2019/10/11/kurds-betrayal-syria-erdogan-turkey-trump/>
- Della Porta, D. (2014). On Violence and Repression: A Relational Approach. *Government and Opposition*, 49(2), 159-187. <https://doi.org/10.1017/gov.2013.47>
- Dilshad, A., & Hussein, R. Iraq Unearths Mass Graves Believed to Contain Kurds Slain in 1987-88. *Voice of America*. <https://www.voanews.com/>
- Dillies, B. (2023). A forgotten genocide: 100 years of solitude for the Kurds. *CFRI-Irak*. <https://cfri-irak.com>
- European Commission. (2018). The ECHR and human rights violations against Kurds in Turkey. <https://projectsresearch-and-innovation.ec.europa.eu/en/projects/success-stories/all/echr-and-human-rights-violations-against-kurds-turkey>
- Ford, W. J. (1967). Position on the Resistance Movement and International Law. *International Red Cross Review*.
- Frantz, D., & Murray, W. (1992). U.S. Loans Indirectly Financed Iraq Military: Foreign aid: Baker pushed through agriculture credits that helped Hussein free up money for arms. *LA Times*. <https://www.latimes.com/archives/la-xpm-1992-02-25-mn-2628-story.html>
- Frischlich, L., Hahn, L., & Rieger, D. (2021). The promises and pitfalls of inspirational media: What do we know, and where do we go from here? *Media and Communication*, 9(2), 162-166. <https://doi.org/10.17645/macv9i24271>
- Ghaedi, M. Landmines prevent Iraq's displaced from returning home. *DW*. <https://www.dw.com/>
- Gezik, E. (2021). The Kurdish Alevis, The Followers of the Path of the Truth (Raa Haq/Riya Heqi). In *The Cambridge History of the Kurds, Part IV - Religion and Society*.
- Gunter, M. (2017). The United Nations and the Kurds. *UKH Journal of Social Science*, 1(1).
- Heller, K. J. (2023). Dutch Court Concludes Anfal Campaign Wasn't Genocide. *Opinio Juris*.

- <https://opinioius.com/2023/11/29/dutch-court-concludes-anfal-campaign-wasnt-genocide/>
- HRW. (2021). Turkey: Free Politician after European Court Ruling. <https://www.hrw.org/news/2021/03/04/turkey-free-politician-after-europea-n-court-ruling>
- ICRC. Collective punishments: How does law protect in war? <https://icrc.org/>
- ICRC. Casebook: Glossary. <https://casebookicrc.org/a-to-z/glossary/collective-punishments>
- Israel Defence Forces. (2024). Fighters of 5th Defence Force destroyed hundreds of terrorist infrastructure during the operation “Oz and Nir”.
- Johnson, T. (2021). They already stole our country, and now they’ve claimed our words: The Life of a Kurd in Turkey. *The Gryphon*. <https://thegryphon.co.uk>
- Kareem, M. S. (2022). Winston Churchill’s Middle Eastern Strategy and the Idea of a Kurdish Buffer State, 1921-1922. *The International History Review*, 44(6), 1211-1229.
- Karim, H., & Baser, B. (2022). Collective Memory in Post-Genocide Societies: Rethinking Enduring Trauma and Resilience in Halabja. *Review of Middle East Studies*.
- Kebranian Nanor, Genocide, History and the Law: Legal Performativity and Recognition of the Armenian Genocide in France and Germany, *Holocaust and Genocide Studies*, Volume 34, Issue 2, Fall 2020, Pages 253-273,
- Kendal, N. A brief survey of The History of the Kurds. *Institut Kurde*. <https://www.institutkurde.org/>
- Martindale, D. (2019). This Isn’t the First Time the United States Has Abandoned the Kurds. *In These Times*. <https://inthesetimes.com/article/united-states-trump-administration-abandoned-the-kurds>
- McDowall, D. (1996). A Modern History of the Kurds. Cambridge University Press.
- Minority Rights Group. UK Parliamentary Recognition of Kurdish Genocide in Iraq: What This Means for Minority Groups Today. <https://minorityrights.org/uk-parliamentary-recognition-of-kurdish-genocide-in-iraq-what-this-means-for-minority-groups-today/>
- Newtown, M. A. (2006). The Iraqi High Criminal Court: Controversy and Contributions. *International Review of the Red Cross*, 88(862).
- OCHR. (2009). Human rights experts reiterate concern over death sentences imposed by Iraqi High Tribunal. <https://www.ohchr.org/en/statements/2009/10/human-rights-experts-reiterate-concern-over-death-sentences-imposed-iraqi-high>
- OCHR. (2024). Ten years after the Yazidi genocide: UN Syria Commission of Inquiry calls for justice, including accountability and effective remedies for ISIL crimes. <https://www.ohchr.org/en/press-releases/2024/08/ten-years-after-yazidi-genocide-un-syria-commission-inquiry-calls-justice>
- Petti Matthew (2023). Are Kurds Worthy Victims?. Kurdish Peace Institute. <https://www.kurdishpeace.org/research/history/are-kurds-worthy-victims-in-the-eyes-of-the-media/>
- Radpey, L. (2020). The Sèvres Centennial Self-Determination and the Kurds. *American Society of International Law*, 24.
- Rubin, M. (2016). Who are the Kurds? Kurdistan Rising? Considerations for Kurds, Their Neighbors, and the Region. *American Enterprise Institute*.
- Scahill, J. The Bloody U.S. Legacy in Iraq. *The Intercept*. <https://theintercept.com/2023/03/24/intercepted-podcast-united-states-iraq-imperialism/>
- Schwarz, J. (2019). THE U.S. IS NOW BETRAYING THE KURDS FOR THE EIGHTH TIME. *The Intercept*. <https://theintercept.com/2019/10/07/kurds-syria-turkey-trump-betrayal/>
- Tisdall, S. (2017). The Kurds of Iraq have been loyal allies. The west must repay its

debt. *The Guardian*.
<https://www.theguardian.com/commentisfree/2017/sep/27/kurds-iraq-loyal-allies-independence>

UNPO. The Kurdish Genocide: Achieving justice through EU recognition.
https://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-ig/dv/03_kurdishgenocidesofanfalandhalabia_/03_kurdishgenocidesofanfalandhalabia_en.pdf

“Woodrow Wilson's Fourteen Points”, (1918). *The Atlantic Charter*. January 8, 1918.