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THE ASSYRIANS' CASE FOR AUTONOMY

In 1982 I was asked by an association of Assyrian-Americans in the United States (the Bet-Nahrain Democratic Party) to investigate and report on the historical basis, if any, for the claim of self-determination on the part of Assyrians living in Iraq. At the same time, the Kurds in Iraq—also an oppressed minority but having a much larger membership than the Assyrians—were pressing their claims for self-determination. After preliminary research, I advised my clients that a more precise term for the claim being made was "autonomy" and not "self-determination," since the Assyrians in Iraq were not asking for their own state but only for certain fundamental rights within the state of Iraq. My clients agreed, and I proceeded to write the requested report.

What appears to be a relatively straightforward historical account in my report conceals a hotly contested issue. Under the usual Assyrian interpretation of these historical events, the Assyrians had been promised fair consideration and guaranteed rights by the British, only to find that the British reneged on their promises to the enormous detriment of the Assyrians. Indeed, one of the main reference works cited by Assyrians today is the book by Assyrian historian Yusef Malek, entitled *The British Betrayal of the Assyrians* (1935). Although this was one of the reference works I consulted, the historical facts, as I was able to determine them, refute Malek's position. I was extremely gratified that my clients accepted my report as it stood, and published it within the Assyrian community in the United States. Although we discussed on several occasions the fact that I was taking a position on the history of the relevant events that was at odds with the position popularized within the Assyrian community, I was simply told that I should call the shots as I saw them.

I. INTRODUCTION

A cultural minority with a proud and ancient heritage is fighting today for its survival, but few seem to notice or care. The purpose of this report is to call to the attention of all persons who care about cultural, ethnic, and religious diversity in the modern world the position, rights, and claims of the Assyrians in Iraq. This minority group of perhaps a million persons living in and around Mosul and other

parts of Iraq is keeping alive a special Christian tradition using the very language today that was spoken by Jesus Christ two thousand years ago, the Syriac language of the early Christians of the first century. But the Assyrian heritage goes back much farther than that, to the dawn of civilization of the year 3000 B.C. Assyria and Babylonia were the two ancient fabled kingdoms of Mesopotamia, Assyria being centered in what is now the city of Mosul in north Iraq.

The cultural contributions to civilization by the ancient Assyrians and Babylonians are so vast that many scholars today devote their lives to the study of facets of that culture. In art, language, myths and epic tales, religion, political organization, law and astronomy, the accomplishments of these ancient peoples have profoundly shaped our present-day culture. Their astronomical charts were so precise and detailed that only in the nineteenth century, with the aid of telescopes, were the ancient figures revised. And the impact upon law of the Code of Hammurabi is so acknowledged as to need but mere mention. Assyrian cultural remains adorn the major museums of the world, and Assyrian art and literature are studied today as representatives, along with Egyptian culture, of the two most sophisticated and important civilizations of the pre-Greek ancient world.

The Assyrian minority in Iraq today wants to preserve its distinctive culture and religion. Their right to do so under international law is clear and absolute. Article 27 of the International Covenant on Civil and Political Rights, which has been ratified by the leading nations of the world, including Iraq, reads as follows:

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.

Moreover, Article 1 of the same convention as well as Article 1 of the International Covenant on Economic, Social and Cultural Rights, which also has been ratified by leading nations, including Iraq, contain an identical provision which reads as follows:

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.

By referring to "all peoples" instead of "all States," this article underscores the legal right of minority groups to transmit their culture to their children and thereby to enrich the common heritage of mankind.

To be sure, the Article just quoted cannot practicably ensure to minority groups the right to secede from the nations in which they reside. For that would be a formula for political chaos and continuing revolution. Yet the language of Article 1 is clear. Therefore, it must be interpreted as providing for minority-group development to the extent compatible with the overriding political structure of the nations in which such minority groups are located.

In light of this interpretation of Article 1, and consistent with the rights of the Assyrian minority in Iraq under Article 27 of the International Covenant on Civil and Political Rights, the Assyrians request a status of "autonomy" in the Mosul area in which they may best realize their own legal rights consistent with the legitimate political rights of the state of Iraq. Indeed, this limited autonomy status will result in far greater commitment on the part of the Assyrians to the nation of Iraq and its national interests. The Assyrians request a limited degree of autonomous status within the plenary authority of the state of Iraq. A limited degree of autonomy should well serve the shared objectives of Iraq and its distinguished cultural minority.

The reasonableness and modesty of the Assyrian plan for autonomy should neither mask the earnestness and seriousness with which it is put forth, nor its critical importance to the Assyrian people and to a world order that seeks cultural diversity and religious toleration. The adoption of this plan would enhance Iraq's image in the international community. The cost of rejecting this plan, however, is incalculable.

The Assyrian minority should not have to petition the state of Iraq for the preservation of its language, its culture, and its religion. For it is entitled to this preservation as a matter of international law. Its right in this regard has been consented to by Iraq when Iraq ratified the two major human rights covenants previously quoted. Tragically, in suppressing and subjugating the Assyrian people in their own homeland, the Iraqi government has violated generally accepted international norms guaranteeing as a matter of international law the human, national and political rights of minorities. Hence, the Assyrians in Iraq, their Assyrian compatriots and friends throughout the world recognize the necessity of appealing to all freedom-loving peoples and governments of the world to rectify their situation. It is to these ends that this report has been commissioned and is being made available to the interested reader.

In addition to the absolute protection to minority groups given under present-day international law and embodied in the International Covenants above quoted, to which Iraq is a party, the particular minority rights of the Assyrians in Iraq were a legal condition precedent to the emergence of the Iraqi nation following the

termination of the Iraqi Mandate in 1932. The next section of this Chapter examines the relevant historical data.

Even more important than this legal condition precedent to the founding of the state of Iraq is historical evidence demonstrating that the present boundary of Iraq would not have included its northern area (including the major city of Mosul) were it not for the presence there of substantial numbers of Assyrians. The fact that Assyrians lived in that area resulted in the decision by the League of Nations to allocate that territory to Iraq and not to Turkey. This thesis will be discussed in the third section of this Chapter.

II. AN INTERNATIONALLY PROTECTED MINORITY

International law first recognized that minority groups needed legal protection in various treaties entered into during the nineteenth century. For example, the Treaty of Berlin of July 13, 1878, included provisions for the protection of minorities.¹ The prototype for the twentieth century was the Treaty Between the Allied and Associated Powers and Poland (Protection of Minorities),² which was drafted as a result of a study conducted by the Commission on New States of the Paris Peace Conference in 1919.³ Article 2 of the Polish Treaty provided that Poland "assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race, or religion," and also provided freedom of public and private exercise of religion. The right to use and be educated in one's own language was also protected.⁴ According to Manley O. Hudson, this treaty "became the model for other treaties for the protection of minorities" in Czechoslovakia,⁵ Yugoslavia,⁶ Rumania,⁷ and Greece,⁸ "as well as for the minority provisions included in various treaties of peace, and in the declarations made by certain states at the time of their admission to membership in the

¹M. Hudson, 1 *International Legislation* 283 (1931).

²June 28, 1919, 225 Consolidated Treaty Series 412 (registered Jan. 10, 1920) [hereinafter cited as Polish Minorities Treaty].

³1 *International Legislation*, *supra* note 1, at 283.

⁴Polish Minorities Treaty, *supra* note 2, at Art. 2-9.

⁵Treaty Between the Allied and Associated Powers and Czechoslovakia (Protection of Minorities), Sept. 10, 1919, entered into force July 16, 1919.

⁶Treaty Between the Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes (Protection of Minorities), Sept. 10, 1919, entered into force July 4, 1920.

⁷Treaty Between the Allied and Associated Powers and Rumania (Protection of Minorities), Dec. 9, 1919, entered into force Sept. 4, 1920.

⁸Treaty on the Protection of Minorities in Greece, August 10, 1920, entered into force August 30, 1924.

League of Nations.⁹ Also following the same pattern were the minority protection declarations of Albania¹⁰ and Lithuania.¹¹

In 1925 the League of Nations Frontier Commission recommended that Iraq receive the Mosul vilayet subject to the condition that the territory "remain under the effective mandate of the League of Nations for a period which may be put at twenty-five years . . ." ¹² Nevertheless, the Anglo-Iraq Treaty was signed on June 30, 1930.¹³ This treaty was designed to terminate the mandatory regime in Iraq, and its preamble acknowledged that "the mandatory responsibilities accepted by His Britannic Majesty in respect of Iraq will automatically terminate upon the admission of Iraq to the League of Nations." It contained no assurance of protection for the minorities living in Iraq.

The proposal to terminate the mandatory regime was brought before the League of Nations Council on March 9, 1929.¹⁴ On September 24, 1930, the Council voted to refer the issue to the Permanent Mandates Commission.¹⁵ The issue of protection for minorities living Iraq was raised several times by Commission members in subsequent meetings.

At the meeting of November 10, 1930, Marquis Theodoli (the Chairman), M. Ortis, and M. Rappard all raised the issue of the protection of racial and religious minorities in Iraq.¹⁶ Marquis Theodoli reminded the British representative of a report submitted by the Mandates Commission to the Council in 1928, which states as follows:

It (the Commission) would welcome the entry of Iraq into the League of Nations if and when certain conditions were fulfilled, in particular that it becomes apparent that Iraq is able to stand alone, and that effective guarantees be secured for the observance of all treaty obligations in Iraq for the benefit of racial and religious minorities . . . ¹⁷

⁹International Legislation, *supra* note 1, at 283-84.

¹⁰Declaration Concerning the Protection of Minorities in Albania, Oct. 2, 1921, entered into force March 22, 1922.

¹¹Declaration On the Protection of Minorities Lithuania, May 12, 1922, entered into force Dec. 11, 1923.

¹²LN Doc. C.400, M.147 (1925) [hereinafter cited as LN Comm'n Doc.].

¹³Treaty of Alliance Between in Respect of the United Kingdom and His Majesty the King of Iraq, June 30, 1930, 132 LNTS 364, registered Oct. 3, 1932. -

¹⁴10 LNOJ 561 (1924).

¹⁵11 LNOJ 1512 (1930).

¹⁶Permanent Mandates Commission (19th sess.), LN Doc. C.643, M.262, 1930, VI, at 81-82 [hereinafter cited as PMC].

¹⁷*Id.* at 85.

In response to M. Rappard's enquiry about guarantees of minority protection, the British representative stated: "With regard to the general position of the minorities after 1932, the British Government had warned the Iraqi Government that the League of Nations would probably require certain guarantees." He added that he believed that "the Iraqi Government was prepared to give the necessary guarantees."¹⁸

M. Ortis quoted from a statement made by the British Under-Secretary of State for the Colonies on July 31 in response to a question asked in the House of Commons:

We are satisfied that the Iraqi Government fully intend to give liberal treatment to their minority peoples and that full opportunity will be afforded them to preserve their own language and culture. We are also confident that the Iraqi Government will be in a position fully to satisfy the League of Nations on this point when the time comes.¹⁹

On November 11, M. Palacios brought up the Council resolution of March 11, 1926, which had requested the Mandates Commission to review annually the part of the Council's resolution of December 16, 1925 (which determined the Turkey-Iraq frontier) inviting the British Government as "Mandatory Power . . . to act, as far as possible, in accordance with the other suggestions of the Commission of Enquiry (Frontier Commission) as regards measures likely to ensure pacification and to afford equal protection to all the elements of the population . . ." ²⁰ M. Palacios then reminded the British representative that among the Frontier Commission's recommendations was that "the Assyrians should be guaranteed the re-establishment of the ancient privileges which they had possessed under the Turkish regime before the war; for example, a certain local autonomy, the right to appoint their own officials, the state contenting itself with a tribute paid from them paid through their Patriarch."²¹ The Commission's report had stated that "it is essential, in order to satisfy the aspirations of the minorities—notably the Christians, but also the Jews and the Yezidi—that measures should be taken for their protection."²² It had also stated that "all Christian and Yezidi should be assured of

¹⁸*Id.* at 86.

¹⁹*Id.* at 88.

²⁰*Id.* at 94. See 7 LNOJ 192, 502 (1926).

²¹*Id.* at 94. See LN Comm'n Doc., *supra* note 12, at 90.

²²LN Comm'n Doc., *supra* note 12, at 90.

religious freedom and the right of opening schools."²³ The reference to "Christians" was understood primarily to refer to Assyrians.

The British representative responded that as the mandatory power Britain had attempted "to follow the spirit of the Commission of Enquiry's report . . . in every respect . . . The minorities were assured, for example, of full religious protection."²⁴ He was unable to give details as to the treatment of the Assyrians, though, because he had "only been in the territory of Iraq for a few months" and had had no time to visit the Assyrians.²⁵

The annual report of the Permanent Mandates Commission was submitted to the League Council on January 22, 1931.²⁶ In discussing the status of Iraq, the report said:

The Mandates Commission considers it to be essential that, under all circumstances, respect for the rights of racial, linguistic and religious minorities should be ensured in Iraq; such respect, moreover, constitutes one of the main guarantees of security, public order and prosperity of the country.²⁷

After citing with approval the recommendations made by the League Frontier Commission in 1925, the report concluded:

The Commission echoed the apprehensions felt not only by the parties concerned, but by a considerable section of the public in several countries regarding the lot of the minorities in Iraq since the movement when the country began to prepare for complete independence, and the supervision of the Iraq administration by the Mandatory Power was gradually relaxed. The Commission has noted a statement by the accredited representative of the Mandatory Power to the effect that Iraq, when she gains her full freedom, would undoubtedly be prepared to accept international obligations safeguarding the rights of minorities in her territory. The Commission feels bound to refer to this statement now, before there is any question of the various conditions which may be laid down when the Mandate comes to an end, because it thinks that such a statement may dispel the anxiety of the persons in question and of those who, outside Iraq, are anxious about their future.²⁸

²³*Id.*

²⁴PMC, *supra* note 16, at 95.

²⁵*Id.*

²⁶12 LNOJ 453 (1931).

²⁷*Id.* at 456.

²⁸*Id.* at 456-57.

At the Committee's next session in June of 1931, Count de Penha Garcia observed that "the Mandatory Power had had to show great tact in dealing with the minorities," and wondered "whether, when the Mandatory Power was no longer there, the same tact would always be shown."²⁹ After other Commission members voiced similar concerns, Sir Francis Humphrys, the High Commissioner of Iraq, responded that "the absence in the (Anglo-Iraqi) Treaty of safeguards for minorities" did not mean that no safeguards were contemplated, since "the necessary safeguards would be furnished by the guarantees which Iraq would be required to give before being admitted to membership in the League."³⁰

At the June 19 meeting, M. Ortis emphasized that the Mandates Commission was "anxious" about the future of the minorities in Iraq, and he inquired as to the political maturity of the nation:

Twelve years ago Iraq had been included among the countries whose existence as an independent nation had only been provisionally recognized on condition that they were guided by a Mandatory. One of the reasons why Iraq was refused complete independence was that it was not yet considered to possess that spirit of tolerance which made it possible to place in its charge, without any apprehension, the fate of the racial and religious minorities established in the territories accorded to the country.³¹

Sir Humphrys replied that in his thirty years' experience with Islamic states, he had "never found such tolerance of other races and religions as in Iraq," and if Iraq were to "prove herself unworthy of the confidence which has been placed in her, the moral responsibility must rest with His Majesty's Government, which would not attempt to transfer it to the Mandates Commission."³² He also spoke against the suggestion which had "been made in certain quarters that a representative of the League of Nations should reside in Iraq who would be charged with the duty of supervising the guarantees afforded to the minorities . . . There is little doubt that such action would be regarded by the Iraq Government as a derogation of sovereignty, and as an indication that it was not to be trusted to implement whatever guarantees it might have given."³³

²⁹PMC (20th sess.), LN Doc. C.422, M.176, 1931, VI, at 125.

³⁰*Id.* at 126.

³¹*Id.* at 134.

³²*Id.*

³³*Id.* at 140.

On September 4, 1931, the annual report of the Mandates Commission was submitted to the League Council.³⁴ With respect to Iraq, the Commission reported that it would soon "be ready to submit to the Council its opinion on the British proposal regarding Iraq."³⁵ The importance placed on protection of Iraqi minorities was again stressed by the Commission's representative M. Marinkovitch:

The Commission suggests that the Council should request the Mandatory Power to continue to give its attention to the position of minorities in Iraq. It emphasizes the necessity of recommending the Iraqi Government to be guided by a spirit of toleration towards minorities, whose loyalty will grow in proportion as they are freed from all fear of danger to their rights as explicitly recognized by the Mandatory Power and the League of Nations. I am sure that the Council will wish to associate itself with the Commission's suggestions, which are prompted by the desire to ensure—now that the country is about to apply for complete independence—that the highly varied ethnical, religious and linguistic elements of the population of Iraq should live on terms of whole-hearted collaboration.³⁶

The guarantee of the protection of minority rights was rapidly becoming a legal condition precedent to the termination of a mandatory regime. On January 13, 1930, the League Council passed a resolution requesting that the Mandate Commission determine the "general conditions" which were to be fulfilled before a mandatory regime could be brought to an end.³⁷ At the September 4, 1931 meeting of the Council, the Mandatory Commission submitted its draft resolution in accordance with this request.³⁸ The section dealing with protection of minorities read as follows:

The Commission suggests that, without prejudice to any supplementary guarantees which might be justified by the special circumstances of certain territories or their recent history, the undertakings of the new state should ensure and guarantee the effective protection of racial, linguistic and religious minorities.³⁹

³⁴12 LNOJ 2044 (1931).

³⁵*Id.* at 2047.

³⁶*Id.* at 2048.

³⁷11 LNOJ 77 (1930).

³⁸2 LNOJ 2055 (1931).

³⁹*Id.* at 2057.

The minutes of the Commission meeting show the importance placed on this guarantee by the Commission members. They voted to omit from the original proposal the qualifying words "in accordance with existing treaties or declarations on that subject" (which had appeared at the end after the word "minorities") "in order not to restrict in any way the action of the Council."⁴⁰ They also added the word "effective" to the original wording.⁴¹ The resolution was adopted by the League Council on the day it was submitted.⁴²

Four months later, at the Commission's 21st session, the Commission members were still concerned about the protection of minorities. On October 29, M. Ortis was reported as saying:

If the population of the country to be emancipated (Iraq) had been homogenous, composed of individuals belonging to the same race and religion—in other words, if there had been no minorities—the Commission's task would have been far simpler . . . The population of the country, however, was heterogenous and belonged to different religions. Moreover, whatever might be said to the contrary, tolerance had not always been a dominant virtue of these Levantine peoples. Formerly, a relative degree of tolerance had been maintained between the various elements of the population, owing to the presence of a common master who allowed no occasion for the manifestation of intolerance. It could hardly be denied, however, that since this domination had come to an end, and since one of the elements of the population had begun to feel its strength (due to the fact that it was a majority), differences of race and religion had become more acute and minorities had begun to grow anxious. In these Near-Eastern countries, there always occurred a time at which it became necessary to take steps to protect racial and religious minorities.

M. Ortis concluded that it was "the duty of the Commission to maintain its resolution to obtain effective guarantees for minorities."⁴³ Supporting him, Count de Penha Garcia observed that he considered "that the most important of the guarantees mentioned in Part II of the Commission's report to the Council was the one relating to the protection of racial, linguistic and religious minorities."⁴⁴

At the November 3rd meeting, the Commission members asked Sir Humphrys questions regarding the operation of the judicial and educational systems with

⁴⁰PMC (20th sess.), *supra* note 29, at 181.

⁴¹*Id.*

⁴²12 LNOJ 2058 (1931).

⁴³PMC (21st sess.), LN Doc. C.830, M.411, 1931, VI, at 58.

⁴⁴*Id.* at 62.

respect to the Iraqi minorities.⁴⁵ The Chairman asked Sir Humphrys whether "Iraq would be prepared to accept obligations for the protection of minorities like those which had been accepted by certain European countries."⁴⁶ Sir Humphrys replied that Iraq was willing to do so and that "the Albanian Declaration would be best for Iraq, except the nationality clause (Art.3), which was no longer necessary, as the principle had already been incorporated in the nationality law of Iraq."⁴⁷

Mlle. Dannerig stated that it was "most desirable to give special attention to the Assyrian and Chaldean communities, which represented the remnants of a civilization three thousand years old."⁴⁸ When M. Rappard suggested that a League representative be appointed to go to Iraq and make certain that the minority guarantees were observed, Sir Humphrys reiterated his objections to such a plan, and related that when he had toured northern Iraq he had been "asked by the minority communities why no guarantees for the minorities had been included in the Treaty." He had "assured the minorities that the League of Nations would, before admitting Iraq, demand adequate guarantees for minorities, like those which had been granted by other countries."⁴⁹

The Mandate Commission issued a special report on the proposed termination of the Iraqi mandate to the Council on December 31, 1931.⁵⁰ Under 4(a) of the report, the Commission outlined the plan for minority protection:

In the case of Iraq, the Commission is of the opinion that the protection of racial, linguistic and religious minorities should be ensured by means of a series of provisions inserted in a declaration to be made by the Iraqi Government before the Council of the League of Nations and by the acceptance of the rules of procedure laid down by the Council in regard to the petitions concerning minorities, according to which, in particular minorities themselves, as well as any person, association, or interested State, shall have no right to submit petitions to the League of Nations.

(i) This declaration, the text of which would be settled in agreement with the Council, would contain the general provisions relating to the protection of the said minorities accepted by several European states. In addition, Iraq would accept any special provisions which the Council of the League of Nations, in agreement with the Iraqi Government, might think it necessary to lay down as a temporary or

⁴⁵*Id.* at 110-12.

⁴⁶*Id.* at 112.

⁴⁷*Id.*

⁴⁸*Id.* at 114.

⁴⁹*Id.* at 115.

⁵⁰13 LNOJ 606 (1932).

permanent measure to ensure the effective protection of racial, linguistic and religious minorities in Iraq . . .

(ii) Iraq would agree that insofar as they affected persons belonging to the racial, linguistic and religious minorities, these provisions would constitute obligations of international concern and would be placed under the guarantee of the League of Nations. No modification could be made in them without the assent of a majority of the Council of the League of Nations.

(Subsection ii further provided that any member state could bring before the Council "any infraction or danger of infraction" of these provisions, that the Council could take action it deemed proper, and that disputes "as to questions of law or fact" between Iraq and a member state were to be referred to the permanent Court of International Justice—if demanded by the other state—whose opinion would be final.)⁵¹

The Commission's representative to the Council reviewed the report at the Council meeting of January 22, 1932, and proposed the following resolution:

The Council:

Having to consider the special case of the termination of the mandate for Iraq;

1) Notes the opinion formulated, at its request, by the Permanent Mandates Commission on the Proposal of the British Government;

2) Considers that the information available is sufficient to show that Iraq satisfies, generally speaking, the *de facto* conditions enumerated in the annex to the Council resolution of September 4th, 1931;⁵²

3) Declares itself prepared, in principle, to pronounce the termination of the mandatory regime in Iraq, when that state shall have entered into the undertakings before the Council in conformity with the suggestions contained in the report of the Permanent Mandates Commission . . .

4) Accordingly requests (two committee Rapporteurs and the British representative) to prepare, in consultation with the representatives of the Iraqi Government and, if necessary, with a representative of the Permanent Mandates Commission, a draft declaration covering the various guarantees recommended by the report of the draft to the Council at its next session;

5) Decides that, should the Council, after examining the undertakings which would be entered into by the Iraqi Government, pronounce the termination of the

⁵¹*Id.* at 609.

⁵²See text accompany footnotes 39-42, *supra*.

mandatory regime over that territory, such a decision shall become effective only as from the date on which Iraq has been admitted to the League of Nations.⁵³

The League Council adopted this resolution,⁵⁴ and thus a declaration by Iraq guaranteeing minority protection became a condition precedent to the termination of the mandate.

On May 19, 1932, the committee created by the January 22 resolution reported to the League Council.⁵⁵ The committee submitted its draft declaration calling for protection of the Iraqi minorities.⁵⁶ The declaration asserted that its stipulations were both "fundamental Law of Iraq," which could not be abrogated (Art. 1); guaranteed the rights of "life and liberty" without regard to race, language or religion (Art. 2(1)), the right to free exercise of religion (Art. 2(2)); equal rights before the law (Art. 4); the right to use one's own language (Art. 4); the right of minorities to maintain and control their own schools and religious and social institutions (Art. 5); obliged Iraq to permit non-Moslem minorities to settle issues of family law and personal status according to their own custom and usage (Art. 6); granted full protection to the "churches, synagogues, cemeteries and other religious establishments, charitable works and other pious foundations of minority religious communities" (Art. 7); the right to educate children living in districts where Arabic is not the mother tongue in their own language (Art. 8); and to provide minorities with an "equitable share in the enjoyment and application of sums which may be provided out of public funds . . . for educational, religious or charitable purposes" (Art. 8).

The committee representative reminded the Council that, according to the January 22 resolution, the termination of the Iraq mandate was "subject to two conditions—namely: (1) the formal acceptance by Iraq, in conformity with its Constitution, of the proposed declaration, and (2) the admission of Iraq to the League of Nations."⁵⁷ During the discussion of the declaration, several Council members stressed the importance of the minority protection provisions, and the Council adopted the declaration.⁵⁸ The declaration was signed at Baghdad on May 30, 1932, and entered into force on June 29, 1932.⁵⁹

⁵³13 LNOJ 474 (1932).

⁵⁴*Id.* at 479.

⁵⁵*Id.* at 1212.

⁵⁶*Id.* at 1347.

⁵⁷*Id.* at 1212.

⁵⁸*Id.* at 1213-1216.

⁵⁹M. Hudson, 6 *International Legislation* 39 (1937).

II. THE TERRITORIAL ARRANGEMENT

Autonomy and self-determination claims are strongest under international law when they are coupled to the claimant's historic rights over defined territory. In this section, I will argue that the historic rights of the Assyrians to the territory in which they have lived for thousands of years strengthens their autonomy claims against Iraq, because Iraq received that particular territory from the League of Nations on the very basis that the Assyrians were living there and that Iraq would guarantee minority protections to them.

Prior to World War I, the Assyrians were divided geographically into three main groups: those living in the Hakkiari mountains of Turkey; those residing in the plains west of Lake Urmiyah, in Persia; and those living in the lowlands south of the Hakkiari region, in the Mosul vilayet (state) in what was then Mesopotamia (Bet-Nahrain) and is now Iraq.⁶⁰

The Turkish government had traditionally "allowed a considerable degree of autonomy" to the Assyrians of Hakkiari region, who were governed by the Patriarch of the Church of the East.⁶¹ Upon entering World War I, Turkey sought the support of the Assyrians living in the Hakkiari region, which was considered to be a strategic area for war purposes. The Turks demanded that Assyrians enter the war against the Allies and join the battle against Russia. The Assyrians hesitated and wished to remain neutral. Turkey then declared war on the Assyrians and moved against the Assyrians with their military might, killing thousands of Assyrians and destroying their villages.

In the meantime, the first fighting in this part of the world was taking place in the Urmiyah region. Urmiyah was in the northern half of Persia and thus fell within the Russian sphere of influence. In 1914 the Turks attacked the Russians at Urmiyah and forced them to retreat until January, 1915. The Assyrians living in the area assisted the Russians in their military campaign and in return sought Russian help to protect themselves against the onslaught of the Turks; but they were left defenseless when the Russians retreated. According to a prominent Assyrian historian, about 100,000 of these Assyrians fled north to Russia, where thousands still live today.⁶²

The League of Nations Frontier Commission reported that after reaching Persia the Assyrians "continued to assist the Russians, who formed several bodies

⁶⁰See A. Hourani, *Minorities in the Arab World*, at 99-100 (1947).

⁶¹LN Comm'n Doc., *supra* note 12, at 52.

⁶²Reverend Joel E. Warda, *The Flickering Light of Asia*, at 200 (1924).

of Assyrian troops. These troops fought under Russian command until the breakup of the Tsarist army, though one battalion was under the direct control of the Assyrian Patriarch.⁶³ Early in 1917 the Russian front collapsed, and the Assyrians were again deserted, although during the early part of 1918 the Assyrian formations joined the irregular force which, under the command of Russian officers who had remained in Persia, was defending the plains of Urmiah and Salmas against the Turks.⁶⁴

In February 1918 the Persian authorities ordered the Assyrians to surrender their arms. The Assyrians refused and for a time successfully defended themselves. The British had visited the Assyrians and had asked them to hold their position, but when the Turks launched their attack, the Assyrians soon ran out of ammunition and retreated to Hamadan, a city in the British-controlled area of Persia. The League Commission reported that "during this retreat the Assyrians were exposed to the greatest sufferings; many were killed in battle, others died of hunger and exposure." More than twenty-five thousand Assyrians lost their lives.

By August 1918 most of the Assyrian refugees (both from Hakkari and from Urmiah) had been sent to a camp in Baquba, a Mesopotamian town thirty miles northeast of Baghdad. Many of the men stayed behind and formed four battalions (commanded by British officers) to counter the Turkish threat to Teheran. After the Armistice was declared these men went to Baquba.

The third group of Assyrians were those whose homes were in the Mosul vilayet. Before the war they had served as "rayahs" under the Kurdish Aghas. These Assyrians were also displaced during the war and lived in the Baquba refugee camp. After the Armistice they returned to their homes in Barwari Bala and Nerwa Raikan.

The Armistice between Turkey and the Allies was signed on October 30, 1918, and it came into effect on October 31. However, British forces were still advancing north through Mesopotamia, and historian Arnold Toynbee reports that "at the moment when hostilities were to cease, something less than a quarter of the Mosul vilayet was under British military occupation."⁶⁵ The terms of the Armistice gave the Allies the "right to occupy any strategic points in the event of a situation arising which threatens the security of the Allies" (Art. VII), and it provided that the Turks surrender all garrisons in Mesopotamia (Art. XVI).⁶⁶ The

⁶³Yusuf Malek, *The British Betrayal of the Assyrians*, at 17 (1935).

⁶⁴LN Comm'n Doc., *supra* note 12, at 82.

⁶⁵A. Toynbee, *1 Survey of International Affairs* 481 (1927) [hereinafter cited as Toynbee].

⁶⁶Armistice Convention Between Great Britain and the Allied Powers, and Turkey, 224 *The Consolidated Treaty Series* 169 (C. Parry ed. 1981).

British took the position that the Mosul vilayet was part of "Mesopotamia," and on November 7 the Turk leader Ali Ihsan Pasha agreed to General Marshall's demand that all Turk troops leave the Mosul vilayet within ten days.

Sir Arnold Wilson, the Acting Civil Commissioner of Iraq, approved of this action, stating, "Thanks to General Marshall we had established, *de facto*, the principle that the Mosul vilayet is part of Iraq . . . We had done so in accordance with what we had every reason to believe were the wishes of H.M.'s Government and of the Allies, but in spite of rather than by reason of the terms of the Armistice, which were not only ambiguous but inconsistent with the interpretation placed on them by the War Office."⁶⁷

Philip Ireland lists three reasons why Wilson "had long considered the inclusion of Mosul in Iraq as essential."⁶⁸ The occupation of the vilayet "pushed the Turks to a more natural frontier" and "put the vilayet's economic resources, including its revenue, at the disposal of the rest of Iraq."⁶⁹ Moreover, Ireland emphasizes, the occupation "brought under British protection the Christian population, including the Assyrians who, encouraged by the Allies, had taken up arms against the Turks."⁷⁰ Although most of the Assyrians were refugees at Baquba, a town thirty miles northeast of Baghdad, the occupation of the Mosul vilayet by British forces was needed to guarantee that those Assyrians who had lived in the Barwari Bala and Nerwa Raikan districts in the Mosul vilayet before the war would be able to return safely to their homes.⁷¹

Furthermore, the British realized that a portion of the Mosul vilayet might have to be made available for the rest of the Assyrian refugees, most of whom were the Hakkiari mountaineers whose homes were in Turkish territory. With this in mind, Acting Commissioner Wilson submitted a draft Constitution before the Interdepartmental Committee on Eastern Affairs on February 20, 1919. In the draft, Wilson stated that his proposals were based on four assumptions. The assumption regarding the Iraq frontier was that

Mosul vilayet and Dair-ez-zor will be included in Iraq as also those portions of Kurdistan which are now part of Mosul vilayet and which are not included in the

⁶⁷A. Wilson, *Mesopotamia 1917-1920: A Clash of Loyalties*, 22 (1931) [hereinafter cited as Wilson].

⁶⁸P. Ireland, *Iraq: A Study in Political Development*, 187 (1938).

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹R. Stafford, *The Tragedy of the Assyrians* 44-45 (1935).

future Armenian state, *i.e.*, the whole of the basin of the Greater Zab. This is necessary in order to admit of inclusion of Assyrians.⁷²

Wilson then proposed that Iraq be divided into four provinces, one of which was to be

Mosul, including the whole Mosul vilayet and such areas North of Mosul vilayet as are not included in the new Armenian state. Roughly speaking, the boundary of the latter North of Mosul should be the watershed between Lake Van and the Greater Zab. This will place the Assyrians in Iraq as they wish.⁷³

Thus, the sole reason that Wilson gave for seeking the inclusion of Mosul into the new Iraqi state was in order to provide land for the Assyrians. Wilson's scheme was accepted by the Committee, and on June 6 the British government sent a letter to Wilson stating that

the measures recommended by you were necessarily of a provisional character; but they mark an important stage towards the provision of a definite form of administration for the occupied territories, the ultimate constitution for the occupied territories, the ultimate constitution of which must wait the conclusion of peace with Turkey and the final decision of the Peace Conference at Paris.⁷⁴

Because of the need to settle the Assyrian refugees, the British government effectively occupied some parts of the Mosul vilayet. Toynbee reports that

the task of resettling them [the Assyrians] was thus as difficult as it was pressing. The first plan was to plant them in new homes in the district of Amadiyah, within the boundary of the Mosul vilayet, where it would be easier to protect them than in their almost inaccessible native mountains further north; and, with this in view, the Amadiyah district was brought under effective British occupation during the first three months of 1919.⁷⁵

Subsequent anti-Christian uprisings in the Amadiyah district forced the British to abandon this plan. In the spring of 1920, the Assyrian general, Agha Petros, proposed to establish an Assyrian buffer state along the Turco-Persian frontier.

⁷²Wilson, *supra* note 67, at 117.

⁷³*Id.*

⁷⁴*Id.* at 119-20.

⁷⁵Toynbee, *supra* note 65, at 484.

His plan was accepted by the British authorities and by a majority of the Assyrians, but the plan eventually fell apart.⁷⁶

Rev. Warda, in his book *The Claims of the Assyrians Before the Preliminaries of Peace at Paris*, ably pleaded the legitimate right of the Assyrian people for autonomy:

The independence which they now seek, they do not ask as a charity, they demand it by appealing to the sense of justice and equity. They have fought for it; they have purchased it with the streams of their own blood shed on the field of battle. In Kurdistan, in Turkey, in Persia, in Russia, in Poland and in France, lay the graves of the Assyrians, which stand not only as splendid monuments to their valor, but also as a tremendous price paid for the restoration of their lands, and for the independence of their people.

A nation that has lost nearly one third of its numerical strength because of the part it played in the world war (I), must surely be entitled to recognition and independence, especially in the presence of those political declarations which have repeatedly proclaimed the inauguration of a new era, wherein the principle of self determination was to be recognized as a sacred and inherent right of mankind.⁷⁷

The British needed to resettle the Assyrians of Baquba, and the British looked to the Mosul vilayet as the place of settlement. As Toynbee reports:

In 1921 a new scheme was worked out for settling the Assyrians under British supervision, and in agreement with the local Kurds, either in their original homes or as near to these as suitable locations could be found for them—starting with those whose homes lay nearest to Amadiyah and sending them out from the base camp tribe by tribe in succession. This scheme encountered an obstacle in the uncertainty of the future frontier. All the Assyrians were unanimous in their determination to remain within the British sphere; but . . . the homes of the majority of them lay to the north of the northern boundary of the Mosul vilayet, and the Treaty of Servres, signed on the 10th August, 1920, had drawn the frontier still further south by leaving the Amadiyah district under Turkish sovereignty.⁷⁸

In fact, the Turkish nationalist movement was now strong, and in January 1920 the Turkish assembly had issued a national pact which "demanded, either explicitly or

⁷⁶*Id.* at 484-85.

⁷⁷At 204-205.

⁷⁸*Id.* at 485.

implicitly, that Turkey should retain the Mosul vilayet."⁷⁹ Nevertheless, the British went ahead with their resettlement scheme. Toynbee continues:

Rightly or wrongly the assumption was made that the frontier would be revised, and that at any rate the actual Mosul vilayet would eventually pass to Iraq. On this assumption the process of dispersal was carried out, in the hope that in due course it would be supported and the Assyrian Christians not handed over once again to the tender mercies of the Turks. In the course of this summer almost all the Assyrians were settled successfully under British auspices—some in the Mosul plain, others in the Dohuk foothills, others in the Amadiyah mountains, and others in their old homes just inside or just beyond the vilayet boundary.⁸⁰

Since the beginning, the Assyrians acted militarily to defend the new nation of Iraq. Wilson states that in 1919 approximately two thousand Assyrians enlisted as members of the Levies, the elite fighting squad put together by the British. These Assyrians were "organized into two battalions for the defense of the Mosul frontier, they were as good fighting material as could be wished . . . [and] during 1919 and in subsequent years they performed invaluable service as an integral part of the Defense Forces of Iraq, under the direct control of the High Commissioner."⁸¹ The Assyrian troops were tricked by the British to suppress the Kurdish rebellions in northern Mosul since the Assyrians were familiar with the mountainous regions. In August 1919, the British forces attempted to suppress a Kurdish rebellion in the Amadiyah district, an area which was "closely wooded in places, and as mountainous as the most difficult part of the North-West Frontier of India."⁸² The type of fighting required was "wholly novel to the vast majority" of the British troops being used, and an "Assyrian battalion, composed exclusively of Assyrian Christian mountaineers under British and Assyrian officers, was sent up from Baghdad. 'They proved,' writes General MacMunn, 'a most valuable addition to our force, quite equal to the Kurds at their own tactics.'⁸³

In September 1920, the Kurds of the Aqra district rebelled against the British administration. Wilson reports that the rebels were

ineffectively dealt with by a column from Mosul, and were not finally defeated until some 600 of them had the misfortune to attack an Assyrian repatriation camp

⁷⁹Wilson, *supra* note 67, at 213-14.

⁸⁰Toynbee, *supra* note 69, at 485.

⁸¹Wilson, *supra* note 67, at 37.

⁸²*Id.* at 150.

⁸³*Ibid.*

thirty miles north-east of Mosul. The Assyrians, though heavily out-numbered, made short work of their assailants, . . . In this engagement the Kurds suffered losses greater than were inflicted by all the punitive expeditions undertaken against the Northern Kurds by regular troops in 1919-20. "But for this entirely fortuitous support," says General Haldane, "it is possible that a large portion of the Mosul Division might have been swamped in the wave of anarchy." . . . This successful stroke on the part of the Assyrians, coming at a critical moment, was of the greatest value, and General Haldane was able to concentrate his attention on the Middle Euphrates and the Diyala regions . . .⁸⁴

In 1923, Turkey still occupied the Rowanduz district in the northeast section of the Mosul vilayet. When Britain's attempt to establish a Kurdish government in the adjoining district of Sulaymaniyah failed, an Anglo-Iraqi force occupied the district. This force also captured Rowanduz from the Turks on April 22, 1923, and Toynbee reports that "in this operation, the Assyrian Levies again distinguished themselves."⁸⁵

The Lausanne Conference had opened on November 20, 1922, and on its agenda was the determination of the frontier between Turkey and Iraq. The Lausanne Treaty was signed on July 24, 1923. The area occupied by Britain and Turkey on this date became the provisional boundary known as the "Brussels line," which eventually became the permanent frontier between Iraq and Turkey. It was clear that the Assyrian military actions caused Iraq to receive a greater amount of land than it would otherwise have received, since (1) the Assyrians helped maintain British control of the northern portions of the Mosul vilayet, (2) the Assyrians helped drive the Turks from Rowanduz and its environs, which area subsequently became part of Iraq; and (3) the ouster of the Turkish forces from Rowanduz separated the portion of the Sulaymaniyah district, which was under the control of a Kurdish ruler, from the territory administered by the Turkish government, thus allowing the British to occupy the area after the Lausanne Treaty was signed.

Article 3 of the Lausanne Treaty provided:

The frontier between Turkey and Iraq shall be laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months. In the event of no agreement being reached between the two Governments within the time mentioned, the dispute shall be referred to the Council of the League of Nations. The Turkish and British Governments reciprocally undertake that,

⁸⁴*Id.* at 291.

⁸⁵Toynbee, *supra* note 65, at 489.

pending the decision to be reached on the subject of the frontier, no military or other movement shall take place which might modify in any way the present state of the territories of which the final fate will depend on that decision.⁸⁶

At one of the conferences preceding the signing of the Lausanne Treaty, Lord Curzon had remarked in a memorandum addressed to Turkey's Ismet Pasha on December 11, 1922, that "the Assyrians who were driven from the region of Julamerk and the Persian border by Turkish troops during the war, who died in thousands in their flight to Iraq, and who had settled there, would fight to the death rather than permit the return of their new homes to a people who to them were the symbol of oppression."⁸⁷ Thus a representative of the British government had gone on record that the presence of the Assyrians in their new homes in the Mosul vilayet was an important factor in favor of placing the Mosul area within Iraq rather than Turkey.

In May, 1924, in accordance with the Lausanne Treaty, the parties met at Constantinople. At this Conference the plight of the Assyrians who had settled north of the vilayet border was raised. According to the League of Nations Frontier Commission Report,

At the beginning of April, 1924, the British Government had notified the Iraq Government of its intention to demand the cession to Iraq of a portion of the Assyrian territory . . . and asked whether the Baghdad Government would be prepared to guarantee that Assyrians who had not yet settled should be able to acquire, on favorable conditions, some of the abandoned land in the northern districts. The British Government further asked whether the Iraq Government would be prepared to grant all the Assyrians the same local autonomy as they enjoyed before the war under Turkish rule. The reply of the Iraq government, which was given on April 30th, was in the affirmative.⁸⁸

Hence the British government argued for an extension of the frontiers of Iraq to include a portion of the Hakkari vilayet. Sir Percy Cox, the British representative to the Conference, explained that the proposed frontier would "admit of the establishment of the Assyrians in a compact community . . . if not in every case in their ancestral habitations, at all events in suitable adjacent districts."⁸⁹

⁸⁶28 LNTS 17 (1924).

⁸⁷LN Comm'n Doc., *supra* note 12, at 79.

⁸⁸*Id.*

⁸⁹*Id.*

Although the proposed British line did not include all of the pre-war home of the Assyrians, it did include the portions of the Hakkari vilayet which the Assyrians had reoccupied in 1921 with British approval and assistance. Sir Percy Cox argued that "in this additional territory claimed for Iraq north of the Mosul vilayet boundary, scarcely a vestige of Turkish authority" existed.⁹⁰

The Conference broke up on June 5, 1924, with no agreement being reached between the two parties. On August 6, the British government referred the frontier question to the League of Nations. Again, the British brought up the Assyrian issue. In a memorandum dated August 14, 1924, and submitted to the Secretary-General on September 20, the British government stated:

His Britannic Majesty's Government have given their careful and sympathetic consideration to the undoubted desirability of including within the Iraq frontier as much as possible of the old Assyrian country. They have had to hold the scale between racial and political considerations on the one side, and economic, strategic and geographical considerations on the other. They have reluctantly come to the conclusion that weight must be given entirely to the latter considerations in the case of the Assyrian country which lies to the north of the proposed frontier. . . . (But) to draw the line further to the south in this region would, apart from economic and strategic disabilities, produce such a panic among the Assyrians that they would find no alternative but a resort either to mass emigration or to a fight to the death in defense of their ideals. Peace and prosperity upon this section of the frontier would be impossible.⁹¹

In August, 1924, a Turkish Vali passing through the Hakkari region was detained by members of an Assyrian tribe which had resettled there. Turkish troops retaliated by attacking the reconstructed Assyrian villages, and about eight thousand Assyrians fled south to the territory under British-Iraqi occupation and arrived as refugees in Amadiyah.⁹²

In a letter submitted to the League of Nations on September 20, 1924, the Turkish government protested the British government's use of airplanes to attack Turkish troops who had been used to drive out the Assyrians.⁹³ On September 30, the British government responded that the planes were used because it was "clear

⁹⁰Toynbee, *supra* note 65, at 497.

⁹¹12 LNOJ 1569-70 (1924). We may infer that Britain's "giving up" of the area north of the *proposed frontier* was an astute bargaining tactic to assure that the main objective—the Mosul vilayet—would go to Iraq and hence safeguard the Assyrian population from the Turks.

⁹²Toynbee, *supra* note 65, at 501.

⁹³12 LNOJ 1584 (1924).

that Turkish regular forces were definitely invading the area administered by His Majesty's Government at the date of the signature of the Lausanne Treaty and were wilfully disregarding the *status quo*. On September 22, the High Commissioner reported that detachments of the Iraq police and of local levies . . . had been forced back to Amadia. Their retirement was accompanied by the flight of a mass of Assyrian Christians and Iraq tribesmen, who are pouring into Amadia in large numbers.⁹⁴ Thus, although the Lausanne Treaty had provided that "no military or other action shall take place which might modify in any way the present state of the territories," Britain and Turkey did not agree on what line constituted the *status quo*. To remedy this dispute, the League Council, meeting at Brussels on October 29, determined a provisional frontier line to be observed until a final settlement was reached.⁹⁵ The line drawn was the "territorial position in the area under consideration at the time of the signature of the Treaty of Lausanne."⁹⁶ As Toynbee observed:

The so-called "Brussels line" did not depart very widely from that trace of the northern boundary of the Mosul vilayet which had been described by the British Government as defining the northern limit of Anglo-Iraqi occupation and administration under the *status quo* of the 24th July, 1923 (the Lausanne Treaty). The effect was to leave under Anglo-Iraqi occupation the whole of the Sulaymaniyah sanjag and to bring under it a fraction of the so-called "no-man's-land" in Hakkari north of the former vilayet boundary, while bringing under Turkish occupation all the rest of the Hakkari "no-man's-land," together with some fragments of territory on the Mosul side of the former vilayet boundary.⁹⁷

On September 30, 1924, The Council created a Commission to present information and suggestions regarding the frontier.⁹⁸ After visiting the area, the Commission reported to the Council on July 16, 1925.⁹⁹

The Commission report suggested that the "Brussels line" serve as the permanent boundary between Iraq and Turkey. Thus the 87,890 square kilometers south of the Brussels line which was claimed by Turkey would become part of Iraq, and

⁹⁴*Id.* at 1586.

⁹⁵*Id.* at 1659.

⁹⁶*Id.*

⁹⁷Toynbee, *supra* note 67, at 503.

⁹⁸5 LNOJ 1360 (1924).

⁹⁹LN Comm'n Doc., *supra* note 12.

the 3,500 square kilometers north of the line which was claimed by Britain would become part of Turkey.¹⁰⁰

The presence of Assyrians in the Mosul vilayet was an important factor in the Commission's decision that all of the vilayet should go to Iraq. After stating that the "Turkish Government has laid great stress upon the importance of the wishes of the population of the disputed territory" and that the "British Government also bases its political arguments very largely on the views of the people, as it conceives them," the Commission summarized the views of the various ethnic groups inhabiting the Mosul vilayet.¹⁰¹

The Commission did not, however, conduct a plebiscite. The Commission report states that "as early as the Lausanne Conference the Turkish government advocated a plebiscite among the population concerned as the only equitable means of settling the dispute, whereas the British Government seemed in favor of the appointment of a commission to collect all such information as may be thought necessary."¹⁰² After the League of Nations Council appointed the Commission, the Turkish delegate again expressed his preference for a plebiscite and requested that the Commission begin its investigation by deciding whether or not a plebiscite would be a suitable procedure.¹⁰³

The Turkish government argued that the population of the Mosul vilayet should be "given an opportunity of freely deciding its own future," as had the populations of several disputed territories in Europe. The British government responded that: (1) the inhabitants were too poorly educated to place proper emphasis on strategic, geographic, economic, and administrative factors; (2) it would be too difficult to obtain sufficient neutral forces to maintain order; (3) the voters might be inhibited by fear of Turkish reprisals (if Turkey were to be granted the areas); (4) the question involved the laying down of a border, which question could not be settled practically by a poll; (5) the wishes of the people were generally known to be sympathetic with Iraq; and (6) the British government did not claim a frontier north of that claimed because of the impracticability of conducting a plebiscite, but if

the plebiscite were accepted as the most suitable method of reaching a solution, the British Government would feel bound to put aside the reasons which induced it to exclude from the state of Iraq a considerable area to the north of the Vilayet

¹⁰⁰H. Foster, *The Making of Modern Iraq*, 160 (1935).

¹⁰¹LN Comm'n Doc., *supra* note 12, at 75.

¹⁰²*Id.* at 14.

¹⁰³*Ibid.*

of Mosul; it would then ask for a plebiscite to be held in this area also. The territory referred to comprises the greater part of the original home of the Assyrians; it would also include the country inhabited by certain Kurdish tribes, which have made overtures to the Iraq Government, and by certain Arab tribes. Of the Assyrians who formerly lived in this region, some have now settled in Iraq, but many are at present scattered about Russia, in the Caucasus and elsewhere. It would, of course, be necessary to try to ascertain their views. In any case it would be unfair to adopt the Turkish suggestion that the plebiscite be confined to the Vilayet of Mosul.¹⁰⁴

The Commission rejected the Turkish request for a plebiscite, on the grounds that an effective, neutral administration and police force could not be secured, and that the voting would "scarcely afford a true reflection of the wishes of the people," since they would probably vote as instructed by their tribal chiefs or vote out of "fear of Government reprisals."¹⁰⁵

During its tour of the Mosul vilayet, the Commission members interviewed numerous inhabitants of the area. Regarding the Assyrians, its report stated:

The Assyrians are anxious to be independent, as they were in practice before the war. They asked to be placed under European—preferably British—protection or mandate. If their wishes cannot be wholly realized, they would be prepared to pay tribute to a sovereign state provided that they could have a wide measure of local autonomy. They are opposed, however, to being again subjected to Turkish rule.¹⁰⁶

On the other hand, the Christians interviewed by the Commission considered it "essential that a European mandate should be maintained; if this form of control should come to an end they think that a Turkish government would be preferable . . . to an entirely independent Arab government."¹⁰⁷ The Commission also noted that although some witnesses hesitated to give an opinion in favor of Iraq "due to fear of reprisals on the part of the Turks should they return to the country, this fear did not prevent any Christian witness from expressing his views."¹⁰⁸

The opinions of the other groups were divided. Among the Kurds, some expressed a desire for a separate Kurdish state under European protection, some

¹⁰⁴*Id.* at 16.

¹⁰⁵*Id.* at 19.

¹⁰⁶*Id.* at 79.

¹⁰⁷*Id.* at 16.

¹⁰⁸*Id.* at 75.

preferred a Turkish government, while still others preferred Arab government, with or without the British mandate. Although some of the Arabs wanted the Iraq government, many were pro-Turkish, while a third group was in favor of an Iraq government yet "vehemently urged that the mandate and the Anglo-Iraq Treaty must come to an end as soon as possible. Some of them added that they preferred Turkey to an Arab State placed under mandate or assisted by foreign administrative advisors."¹⁰⁹

In its conclusion, the Commission stated:

subject to the reservations made in the report in regard to the opinions given, the fact seems to be established that, taking the territory as a whole, the desires expressed by the population were more in favour of Iraq than of Turkey. It must, however, be realized that the attitude of most of the people was influenced by the desire for effective support under the mandate, and by economic considerations, rather than by any feeling of solidarity with the Arab Kingdom; if these two factors had carried no weight with the persons consulted, it is probable that the majority of them would have preferred to return to Turkey rather than to be attached to Iraq.¹¹⁰

The final conclusion was that

important arguments, particularly of an economic and geographical nature, and the sentiments (which all the reservations stated) of the majority of the inhabitants of the territory taken as a whole, operate in favour of the union with Iraq of the whole territory south of the "Brussels line," subject to the following conditions:

- (1) The territory must remain under the effective mandate of the League of Nations for a period which may be put at twenty-five years;
- (2) Regard must be paid to the desires expressed by the Kurds that officials of Kurdish race be appointed for the administration of their country¹¹¹

Since the disputed area was "inhabited by Christians, Kurds, Arabs, Turks, Yezidi and Jews, in that order of numerical importance,"¹¹² and since the viewpoint of the inhabitants was an important factor in determining the fate of the Mosul vilayet, the presence of the Assyrians (who comprised most of the Christian element) and their unanimous desire to become a part of Iraq under a League

¹⁰⁹*Id.* at 77.

¹¹⁰*Id.* at 88.

¹¹¹*Id.* at 88-89.

¹¹²*Id.* at 86.

mandate was an overwhelmingly significant factor in securing the Mosul vilayet for Iraq. Indeed, the Commission's recommendation that Iraq receive the Mosul vilayet, contingent upon the continuance of the League mandate, was identical to the view endorsed by the Assyrians living in the territory.¹¹³

The Commission's concern for the Assyrians and their freedom was shown at the end of the report:

We feel it our duty, however, to point out that the Assyrians should be guaranteed the re-establishment of the ancient privileges which they possessed in practice, if not officially, before the war. Whichever may be the sovereign State, it ought to grant these Assyrians a certain local autonomy, recognizing their right to appoint their own officials and contenting itself with a tribute from them, paid through the agent of their Patriarch.¹¹⁴

When the League Council met to discuss the Commission report on September 3, 1925, the British representative argued that the presence of the Christians in the area north of Mosul city was an important reason for not adopting a frontier south of that proposed by the Commission:

I refer to the suggestions of a partition of the territory south of the Brussels line between Turkey and Iraq, a suggestion to which the Commissioners have given greater precision by indicating the line of the lesser Zab as a possible frontier. From the economic and strategic point of view, any line south of the Brussels line is, on the Commissioner's own showing, inferior to that line. More than that, from the racial point of view and the wishes of the inhabitants, any such participation would involve the very maximum of hardship and injustice to all parties concerned. It would exclude from Iraq the great Arab centre of Mosul as well as the bulk of the Assyrian population which wishes to remain in Iraq, and still leave excluded from Turkey the greater part of the Turkish element in the Mosul vilayet¹¹⁵

Later in his presentation the British representative stressed that were the Council to partition the disputed territory south of the Brussels line, "there would be an immediate panic and flight into Iraq of the Assyrian population" living north of such a boundary.¹¹⁶ The representative concluded by asking the Council to

¹¹³*Id.* at 78.

¹¹⁴*Id.* at 90.

¹¹⁵6 LNOJ 1314 (1925).

¹¹⁶*Id.* at 1315.

reconsider the additional territory requested by Britain at the Conference of Constantinople:

I refer to the claim which we have put forward on behalf of Iraq to such a moderate extension northward of the present provisional frontier as will both give the greatest measure of strategical security to Iraq without any economic or strategical loss to Turkey and at the same time enable the remnants of the Assyrian nation to live once again in, at any rate, a substantial portion of their ancestral home.¹¹⁷

On September 4, the Council appointed a sub-committee composed of three League members, including M. Uden, the Rapporteur, to examine the border issue more closely.¹¹⁸

A new controversy arose during the 1925 session. In a series of letters sent to the Secretary-General of the League, the first of which was submitted on September 3rd, the British government alleged that Turkey was deporting to Iraq the Chaldean Christians living in the area between the Brussels line and the northern frontier claimed by Great Britain, thus violating the Lausanne Treaty.¹¹⁹ Turkey also alleged that Great Britain was violating the Brussels line.¹²⁰ In a letter dated September 21, Britain requested that the Council "despatch such representative or representatives to the locality of the Brussels line as may be required for the purpose of investigating so far as possible the charges which have already been made by the two Governments . . ." ¹²¹ On September 24, the Council adopted a resolution that a representative be sent to the area,¹²² and on September 28, the Council appointed General Laidoner of Estonia.¹²³

General Laidoner read his report to the Council on December 10, 1925. Although the Turkish government refused to allow Laidoner and his assistant to investigate the area north of the Brussels line, they were able to obtain evidence by speaking with the refugees who had crossed south of the line. According to Laidoner:

¹¹⁷*Id.* at 1316.

¹¹⁸*Id.* at 1337.

¹¹⁹*Id.* at 1436-41.

¹²⁰*Id.* at 1435-39.

¹²¹*Id.* at 1432.

¹²²*Id.* at 1383.

¹²³*Id.* 1405.

In the district of Zakho there are at present some 3,000 deported Christians, and every day isolated groups continue to arrive in Iraq. These refugees come from the villages situated in the zone between the Brussels line and the line claimed by the British Government; there are also some who come from the villages situated north of the latter line All the refugees' statements are in absolute agreement and may be summarized as follows: (1) Turkish soldiers, under the command of officers, occupied the villages, and in the first place obtained delivery of all the arms; they then imposed very heavy fines and demanded women; they then pillaged the houses and subjected the inhabitants to atrocious acts of violence, going as far as massacre; (2) the deportations were deportations *en masse* During the deportations several persons fell ill on the way and were abandoned; others died of starvation and cold, for, when leaving their homes, they had to abandon everything and were unable to carry with them either food or clothing We have moreover seen ourselves that all those who have arrived are in an absolutely pitiable state.¹²⁴

Laidoner concluded: "Among all the incidents which have taken place in the zone of the Brussels line, it is beyond question that the deportations of Christians constitute the most important fact, especially if we consider that a fairly large population has been deported from the villages and that these deportations are still going on."¹²⁵ Moreover, Laidoner considered the deportations "infinitely more important" than the other allegations because "these deportations are causing fairly serious and easily comprehensible agitation and nervousness among the Christian population living south of the Brussels line and in the vilayet of Mosul, and also among the Moslem population of Mosul which favours the claims of Iraq."¹²⁶

This meting of the League Council, according to Toynbee, "was believed to have had a decisive effect upon the mind of M. Uden, the Council's rapporteur, who was credited with having been in favor, up to this moment, of a compromised decision."¹²⁷ If the Chaldeans, who are Assyrians and religiously united with Rome, were being persecuted by the Turks, it was conceivable that the Assyrians living in the northern portions of the Mosul vilayet would share a similar fate if the Council were to adopt a compromise by granting part of Mosul to Turkey.

¹²⁴ LNOJ 304 (1926).

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ Toynbee, *supra* note 65, at 520.

On December 16, M. Uden reported to the Council on behalf of the Special Committee which had been created to examine the border issue.¹²⁸ M. Uden stated that

the members of the Committee arrived at the conclusion that two solutions were possible:

(1) The allocation to Iraq of all the territory south of the so-called "Brussels line";

(2) The partition of the disputed territory by a line for the most part following the course of the Lesser Zab.

In view of the great complexity of the problem and the special responsibilities of the Council of the League of Nations, which was called upon to take a decision in so important a matter, the members of the Committee thought that they would benefit by consulting the opinion of their colleagues. In the end, after all the arguments and factors mentioned above had been taken in consideration, the first of the solutions, in fact, appeared the better adopted to solve the problem submitted to the Council under Article 3 of the Treaty of Lausanne.¹²⁹

The Council voted unanimously to adopt the recommendation of the Committee, and thus the Brussels line became the permanent border between Turkey and Iraq.¹³⁰ The British representative thanked those involved in the decision-making process and promised that Britain would conform to the final decision, although he expressed "regret that the council has not been able to accept [the] proposals for a rectification of the present frontier, which would have been preferable on strategic and administrative grounds, and which would have given security in their homes to the refugee Assyrians as well as to the Goyan Chaldeans whose unhappy fate has been set forth in the reports of General Laidoner's Commission."¹³¹

It may be concluded that the presence of Assyrians in northern Iraq was a significant factor in the determination of Iraq's boundary with Turkey. If not for the Assyrians, it is extremely doubtful that Iraq would have received the entire Mosul vilayet.

The presence of the Assyrians affected the Iraq frontier settlement in the following ways:

¹²⁸ LNOJ 188 (1926).

¹²⁹ *Id.* at 188.

¹³⁰ *Id.* at 192.

¹³¹ *Id.* at 193.

(1) The initial British occupation of the Mosul vilayet in 1918 was prompted at least in large part by the need to secure land in which the Assyrian refugees could be resettled and protected.

(2) The British brought some portions of the vilayet, such as the Amadiyah district, under occupation in an attempt to resettle the Assyrians.

(3) In 1921 the British resettled the Assyrian refugees throughout northern Mosul.

(4) The Assyrians were persuaded by the British to suppress Kurdish uprisings in northern Mosul and to drive the Turks from the Rowanduz area of the vilayet.

(5) Because of the disputes surrounding the 1924 Turkish ouster of the Assyrians who had resettled in the Hakkari vilayet, the League of Nations drew a provisional boundary, the "Brussels line," which reflected the territorial position of Turkey and Iraq at the time of the signing of the Lausanne Treaty. Thus, the acts of occupation allowed Iraq to receive the vast Mosul vilayet under the provisional settlement, which settlement was eventually adopted as the permanent boundary.

(6) An important factor in the League's decision to cede the Mosul vilayet to Iraq was the viewpoint of the area's inhabitants. The Assyrians spoke out in favor of Iraq so long as the League's mandate would be continued. The Assyrians were the first largest group in the Mosul area, and their recommendation was accepted by the Frontier Commission and adopted by the League.

(7) One of the arguments for adopting the Brussels line by the British representative was that any line south of the Brussels line would separate the Assyrians population of northern Mosul from Iraq, and would result in an "immediate panic and flight" of these Assyrians.

(8) Just before the League made its final decision regarding the frontier, General Laidoner delivered his report of the Turkish massacre and deportation of the Chaldean Christians from the territory north of the Mosul vilayet boundary. The other Assyrians south of the Brussels line were apprehensive of their own plight, and this report had a "decisive effect" upon the Council's rapporteur, M. Uden, who had previously favored a compromise settlement but who now supported the granting of the entire Mosul vilayet to Iraq.