

THE KURDISH CONFLICT

INTERNATIONAL HUMANITARIAN LAW AND
POST-CONFLICT MECHANISMS



KERIM YILDIZ AND SUSAN BREAU

The Kurdish Conflict

This book is highly topical considering the recent resurgence of violence by the PKK, the incursions into Northern Iraq by the Turkish army and security forces and Turkey's EU accession negotiations. Turkey has become an increasingly important player in Middle Eastern geopolitics. More than two decades of serious conflict in Turkey are proving to be a barrier to improved relations between Turkey and the EU. This book is the first study to address fully the legal and political dimensions of the conflict, and their impact on mechanisms for conflict resolution in the region, offering a scholarly exploration of a debate that is often politically and emotionally highly charged.

Kerim Yildiz and Susan Breau look at the practical application of the law of armed conflicts to the ongoing situation in Turkey and Northern Iraq. The application of the law in this region also means addressing larger questions in international law, global politics and conflict resolution. Examples include belligerency in international law, whether the 'war on terror' has resulted in changes to the law of armed conflict and terrorism and conflict resolution.

The Kurdish Conflict explores the practical possibilities of conflict resolution in the region, examining the political dynamics of the region, and suggesting where lessons can be drawn from other peace processes, such as in Northern Ireland.

This book will be of great value to policy-makers, regional experts, and others interested in international humanitarian law and conflict resolution.

Kerim Yildiz is the founder and Executive Director of the Kurdish Human Rights Project (KHRP) and is a recognised expert on the Kurdish regions.

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The Kurdish Conflict

International Humanitarian Law and
Post-Conflict Mechanisms

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and Susan Breau

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To Bridget and Dara

To my dear friends and inspirational colleagues Indira Carr, Agnieszka Jachec-Neale and Amrita Mukherjee

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Foreword

Professor Kader Asmal

Conflict in today's world can no longer genuinely be solely a domestic affair as hostilities and confrontations often have both anticipated and unforeseeable consequences for regional and the international affairs as well as for individual states. While not all conflicts garner the media's or public's attention, for people living in areas affected by unrest and conflict, life can be extraordinarily difficult with their livelihood, security and fundamental of human needs at risk daily.

As threats to security increase, the resulting transgressions of humanitarian protection and human rights weaken the international norms that protect us all.

The Kurdish Conflict aims to provide a thorough and thoughtful account of the ongoing conflict in southeast Turkey and northern Iraq. As history, politics, law and culture have all played a part in fomenting the conflict; the authors contend they must be central to the Turkish state's and the international community's approach in seeking a peaceful and sustainable resolution to the conflict. Combining Kurdish Human Rights Project Chief Executive Kerim Yildiz's deep understanding of local history, politics and culture and his experience in international human rights law with humanitarian law expert Dr. Susan Breau's expertise in the international legal framework, *The Kurdish Conflict* is distinctive in its comprehensive understanding of the conflict in Turkey, its effects on northern Iraq and conflict-resolution. The arguments put forward in this book will, I hope, encourage further studies along these lines.

I have been privileged to work with a great number of people, in South Africa and around the world, who have dedicated themselves to ending conflict and fostering the conditions for peace and justice to prevail. It is my sincere hope that this book will enhance interest in this area and by contributing to the resolution of the dreadful situation in southeast Turkey and northern Iraq and by providing the parties and negotiators with the international legal and political framework in which to work towards a lasting peace.

In a world where an individual state's security is increasingly related to events occurring outside its borders and a greater emphasis on humanitarian law will be essential, *The Kurdish Conflict* contains important insights for us all.

I strongly commend this book to everyone interested or involved in the protection of national rights and international peace.

*Professor Kader Asmal
Hon. Professor of Law, University of the Western Cape and
University of Cape Town, former Minister of Education in South Africa*

Foreword

Helena Kennedy and Mark Muller

In today's world, conflict in any part of the world is the responsibility of the international community as a whole. As threats to security increasingly permeate national borders, and each transgression of humanitarian protection, human rights, and international cooperation weakens the system that protects us all, this responsibility grows even more pressing.

There are a number of conflicts across the world today that remain largely unreported, as the gaze of media headlines and key political actors is focused elsewhere. Yet for people living in regions of conflict, life is a daily struggle for their and their families' security and welfare, the most fundamental of human needs. This book affords their plight with the seriousness it deserves, by giving a thorough and thoughtful account of the situation of the Kurdish people living amongst ongoing conflict in southeast Turkey and northern Iraq. Combining a deep understanding of local history, politics and culture with expertise in international legal frameworks, this book is distinctive in its holistic understanding of conflict and conflict-resolution. Law, politics, culture and history can all play roles in fomenting conflict; they must therefore be central to approaches seeking peaceful resolution of conflict. The collaboration between Kurdish Human Rights Project Executive Director Kerim Yildiz and humanitarian law expert Dr Susan Breau in writing this book will, we hope, encourage further studies along these lines.

It is our sincere hope that this book will contribute to the resolution of the conflict in southeast Turkey and northern Iraq, by providing the parties and negotiators with the international legal and political framework in which to work towards a lasting peace.

In a world of inter-dependent security, ongoing conflict, and developing humanitarian law, this book contains important insights for us all. The pursuit of peace and the rule of law can be a difficult path, but the authors' accomplishment here is to illuminate our way along it.

Helena Kennedy QC

Chair of Justice and Former Chair of the British Council

Mark Muller QC

*Chair of the Bar Human Rights Committee of England & Wales and
Founding Trustee of the Delfina Foundation*

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Introduction

Although southeast Turkey has seen serious conflict for over 20 years, no exhaustive study has been conducted on the international law and international relations ramifications of the conflict. It is crucial to carry out a comprehensive analysis of this ongoing armed conflict at a time when Turkey not only continues to engage in European Union accession negotiations and cross-border military operations in Kurdistan, Iraq, but is also taking tentative steps towards a political solution to the situation of the Kurdish people in Turkey. This book provides a legal analysis of, and suggests a possible 'roadmap' for resolution of, the conflict, thus filling the crucial gap in academic literature on the topic.

The two authors of this book bring a unique multi-disciplinary perspective to this conflict. Kerim Yildiz, the Director of the Kurdish Human Rights Project (KHRP), has extensive experience in international law and armed conflict and offers unique insight into the political causes of, and ultimate solutions to, this conflict. Since the founding of KHRP, he has been involved in the preparation of many books and reports on the situation of the Kurdish people of the region and has been instrumental in the bringing of cases to the European Court of Human Rights. Dr Susan Breau is an academic international lawyer with particular expertise in examining the laws governing armed conflict, both *jus ad bellum* and *jus in bello* and has also engaged in extensive research on the human rights consequences of movements for self-determination. This book is structured in such a way as to give the reader a comprehensive view – both legal and political – of the conflict in southeast Turkey.

The study commences in Chapter 1 with a brief history of the Kurdish people across Turkey, Iraq, Iran and Syria as well as a brief background to the conflict in the predominantly Kurdish southeast region of Turkey, and the area in the north of Iraq over which the Kurdistan Regional Government has authority (forthwith referred to as southeast Turkey and Kurdistan, Iraq respectively). This background chapter helps to provide readers with sufficient knowledge of the topic and prepares the ground for the analysis in the following chapters.

Part 1 of the book concentrates on the law of armed conflict as directly applied to the situation in southeast Turkey and Kurdistan, Iraq. Chapter 2 deals generally with the international legal regime concerning armed conflict and is also designed to serve an introductory purpose. The first task is to review the

definition of 'armed conflict' within international humanitarian law and to apply that definition to discuss whether the situation in southeast Turkey rises to the level of an armed conflict. After examination of the relevant treaties and academic literature, it is determined that this conflict does indeed rise to the level of an armed conflict. Following this determination, the chapter reviews the various types of armed conflict that could exist and, on balance, concludes that a non-international armed conflict exists in southeast Turkey and spills over into Kurdistan, Iraq. It also, importantly, introduces the law within armed conflict, the *jus in bello*, which includes the Hague Regulations and the Geneva Conventions of 1949 with the provision applicable in non-international armed conflict, Geneva Convention, Common Article 3. The chapter concludes with a discussion of the relationship between the protections afforded by international human rights law and the legal obligation under international humanitarian law.

Chapter 3 is crucial to the study of the armed conflict in southeast Turkey and looks in detail at the international humanitarian law standards applicable to a non-international armed conflict including Common Article 3 to the Geneva Conventions of 1949, Customary Humanitarian Law and Minimum Humanitarian Standards. The chapter reviews the legal obligations within non-international armed conflict for both the Turkish military and the fighters of the insurgency within southeast Turkey. It also engages in a specific analysis of the jurisprudence of the European Court of Human Rights and the applicability of those cases in clarifying not only the obligations under the *jus in bello* but also those under international human rights law. The analysis gives particular focus to the civilians in the area who have been caught up in this long-standing war and who have seen their lives and property destroyed.

Chapter 4 moves into a review of the legal regime concerning the distinction between combatants and civilians and the classification of belligerents with reference to the Kurdistan Workers Party (PKK). It discusses the Geneva Conventions' criteria of belligerents and the relevance of customary humanitarian law to this debate. It also reviews the various protections afforded to belligerents within international and non-international armed conflict, describing the extensive protections available to prisoners of war under Geneva Convention III and contrasting that with the limited protections available to detainees in internal armed conflict. The chapter introduces some of the extensive jurisprudence of the European Court of Human Rights which has reviewed conditions of detention within the conflict in southeast Turkey as well as the treatment of the fighters within this conflict.

An issue that is crucial in this examination is the lawfulness of the continued incursions into Kurdistan, Iraq by the Turkish armed and security forces. Chapter 5 introduces and reviews the *jus ad bellum* concerning the lawfulness of both the rebel groups and the Turkish use of force within the context of the United Nations Charter and customary international law. This chapter discusses the various justifications that have been or could be advanced for the Turkish intervention into another sovereign state and assesses the legality of these reasons. Due to the fact that there has been a violation of the prohibition on the use of

force, the issue of state responsibility as well as the responsibility of international actors to respond to the threat to international peace and security that results from this intervention is engaged.

Chapter 6 discusses the international legal framework of terrorism. Members of the PKK have been categorised as terrorists and the armed clashes as a series of terrorist attacks. It reviews the legal consequences of defining the insurgency as terrorist attacks and the participants as terrorists. The main area of analysis is whether or not the ‘war on terror’ has resulted in changes to the law of armed conflict. It also reviews international developments and the recent case law in both the Supreme Court of the United States and the House of Lords in the United Kingdom, discussing the human rights and humanitarian law protections afforded to alleged terrorists and applying these rules to the situation in southeast Turkey.

Part 2 of the book reviews the possible legal and political solutions to the conflict and in two pivotal chapters examines in depth the international relations consequences of the two competing concepts of terrorism and self-determination. These chapters examine the feasibility of conducting constructive dialogue both backchannel and public on the basis of resolving the ongoing armed conflict. The prospects of creating a new common ground for a political solution are explored. Chapter 7 reviews the role of international actors in contributing to, or undermining prospects for, a political solution, and looks at the impact the ‘global war on terror’ has had on the international community’s actions in regards to the conflict. By making some comparative analysis of international engagement in different situations regarding ‘terrorists’, the chapter suggests some modes of best practise for contributing to peace building. Chapter 8 introduces the legal debate surrounding the principle of self-determination and the consequences to claims of self-determination which are the key political models of federalism and secession, both which involve separate legal structures. Finally, Chapter 9 reviews the current political platform in Turkey with recommendations for the development of a long-term post-conflict environment, with particular reference to the Northern Ireland peace negotiations introducing possible political solutions to the crisis in southeast Turkey, as well as a cessation of cross-border military operations into Kurdistan, Iraq.

In conclusion, the study emphasises the importance and relevance of having the situation in the southeast covered, as comprehensively as possible, by compliance with international law. This is of enormous significance, not only from the human rights perspective regarding the Kurdish civilian populations in Turkey and Iraq, but also from the perspective of finding a long-term solution to the prevailing dispute. It further highlights that analysis of the law regarding armed conflict is highly appropriate in relation to the conflict and should not be undermined. Definition of the situation in Turkey and Iraq according to the law of armed conflict would radically transform the nature and scope of the debate concerning the Kurdish conflict and open up new avenues in the wider discussion about conflict resolution, global politics and international law.

1 Historical background

Introduction

The Kurdish regions of Turkey and Iraq have seen more than 20 years of serious conflict, with severe human cost for its people. So that the reader may tackle the legislative and humanitarian dimension of the conflict in the following chapters, this first chapter provides a brief history of the people living in the region and the circumstances of the conflict. Key demographic, historical and political contexts will be introduced, and the main actors in the conflict analysed. It then examines some of the features of the last two decades of violence in the region, providing the factual resources to engage with the legal and political issues that follow.

1.1 The Kurds

The Kurdish people are believed to number between 30 and 40 million¹ and are widely considered to be the largest group of stateless people in the world. Despite this, they have maintained a strong ethnic identity for over 2,000 years. As an ethnic group, Kurds are the product of years of expansion stemming from tribes such as the Guti, Kurti, Mede, Mard, Carduchi, Gordyene, Adianbene, Zila and Khaldi,² and the migration of Indo-European tribes to the Zagros Mountains some 4,000 years ago.³ The Kurds have a clan history, with over 800 tribes in the Kurdish regions.⁴ The Kurds have traditionally inhabited rural districts herding shepherds or goats, with some keeping a nomadic or semi-nomadic lifestyle.

There are a number of dialects in the Kurdish language, but the most widely spoken are Kurmanji and Sorani. Kurmanji is spoken predominantly in Turkey, Syria and Europe, as well as by some Iranian Kurds.⁵ Sorani is spoken by Iraqi Kurds south of the Greater Zab, and by Iranian Kurds in the province of Kordestan. The Kurdish language belongs to the Indo-European language family. Its dialects have been influenced by contact with surrounding modern languages and at times have evolved accordingly.⁶ For example, most Kurds in Turkey speak Kurmanji, but in the northwest of the Kurdish-dominated area (for example the provinces of Tunceli and Elazig) Zaza is also spoken.⁷

The majority of Kurds are Sunni Muslims who converted between the twelfth and sixteenth centuries and adhere to the Shafi'i school of Islam. However, many

Kurds living in the Iranian province of Kermanshah are Shi'ite. Other Kurds follow Alevism, an unorthodox form of Shi'ite Islam, as well as the indigenous Kurdish faith of Yezidism. There are smaller communities of Kurdish Jews, Christians and Baha'is.

The use of the name 'Kurd' dates back to the seventh century AD, and 'Kurdistan', or the land of the Kurds, was a term that first appeared in the 12th century when the Turkish Seljuk prince Saandjar created a province of that name in what is today modern-day Iran.⁸ In the 16th century the term came to refer to a system of fiefs generally.⁹ The borders of Kurdistan have fluctuated over time, and the Kurds are now spread through Turkey and the Middle East with smaller populations to be found in the former Soviet Caucasus. The heart of the Kurdish-dominated regions is the Zagros mountain chain which lies in the border area between Iraq, Iran, Syria and Turkey, as well as the eastern extension of the Taurus Mountains. It extends in the south across the Mesopotamian plain and includes the upper reaches of the Tigris and Euphrates rivers. In recent decades, many Kurds have fled the brutality of regimes governing the Kurdish regions to seek refuge in Western Europe, where they form a sizeable and influential diaspora, particularly in Germany, France, Sweden, Belgium and the United Kingdom.

The term 'Kurdistan', however, refers to more than merely a geographical area. It also denotes the culture of the people who inhabit the lands. As successive regimes in Turkey, Iran and Iraq have been extremely reluctant to acknowledge the presence of the Kurds within their borders, and Syria has denied that Kurdistan stretches across its boundaries at all, drawing a map of Kurdistan is always contentious. However, there is no doubt that there exists a large, contiguous area of predominantly Kurdish-inhabited lands, or that the idea of Kurdistan has real meaning to the people who live there, as well as to Kurds living in the diaspora community in Europe and across the world.

Despite the lack of precise figures, largely due to state denial or undercounting for political reasons by countries with Kurdish minorities, the regional spread of Kurdish populations can only be estimated.¹⁰ Kurds in Turkey form the largest population, both numerically and as a percentage of the national population. They currently number approximately 15 to 20 million, making up around 23 per cent of Turkey's population of 69 million. The Kurdish population in Iraq is estimated to be over 5 million, making up 20 per cent of the population; in Syria 1 million and 9 per cent, and in Iran between 7 and 9 million and 15 per cent.

The Kurds in Turkey are concentrated into the south and east of the country, and form a majority of the population in a number of provinces including Mardin, Siirt, Hakkari, Diyarbakir, Bitlis, Mus, Van and Agri.¹¹ The provinces of Urfa, Adiyaman, Malatya, Elazig, Tunceli, Erzincan, Bingol and Kars have also been traditionally dominated by Kurdish populations. In Iraq today, Kurds predominantly live in the northern governates of Erbil, Dohuk and Sulaimaniya, over which the Kurdistan Regional Government (KRG) has federal jurisdiction.¹²

1.2 History of the Republic of Turkey

Modern Turkey emerged in 1923 from the break-up of the Ottoman Empire in the wake of the First World War. Beginning in 1920, nationalists had begun to defy the authority of the Ottoman Sultan. When Turkey was declared a new republic in 1923, it was fronted by nationalist leader, Mustafa Kemal Atatürk. As modern Turkey's first president, Atatürk formed a government from the members of his Ankara-based revolutionary group, and secured the passage of the new Turkish Constitution in 1924. He remained President until his death in 1939.

The 1924 Constitution set out the new ideological premises from which Turkey would be governed. Spurred by the perceived humiliation of the 1920 Treaty of Sèvres, which divided Ottoman territory, Atatürk and his followers asserted a new, 'Europeanised' Turkish nationalism based on a vision of the unified, centralised and ethnically homogeneous nation state. They sought to enforce a single Turkish identity, introducing dramatic reforms aimed at displacing the importance of Islam in society, placing the military at the core of the state and looking to the secular, industrial West for inspiration.¹³ Accordingly, the Caliphate was abolished in 1924, the wearing of the traditional fez was forbidden and the Turkish language was Westernised. Atatürk effectively ruled as a dictator, with his Republican People's Party being the only legal political party.¹⁴

As the largest and most prominent non-Turkish people in Turkey, the Kurds had much to lose from Atatürk's vision. A necessary tenet of the ambition to achieve an all-Turkish national identity was the destruction of alternative identities through assimilation. This was demonstrated in the failure to recognise the Kurds as a minority in need of protection or to acknowledge their language and culture under the Treaty of Lausanne.¹⁵ Frustration among the Kurds with Turkey's repressive policies towards them spilled over into a number of revolts, and Turkey's army became increasingly active in the Kurdish regions. The very existence of the Kurds within Turkey's borders soon came to be seen in the eyes of the state as synonymous with national disunity, and ultimately, with separatism. The concentration of Turkey's sizeable Kurdish community along the sensitive frontier with Syria, Iran and Iraq, and the presence of frustrated Kurdish communities in these countries, further fuelled Turkey's desire to subjugate the Kurds and neutralise their regional dominance. Throughout the 1920s and 1930s, during which time Atatürk's government ruled Turkey along autocratic lines, a programme of 'Turkification' was introduced aimed at eradicating non-Turkish allegiances and suppressing non-Turkish culture and expression. The Kurds were to become its primary target, as the organs of the state sought to break up the Kurdish community in the southeast through restrictive legislation and state-sponsored violence.

Following the advent of multi-party democracy in 1945, the presiding government was voted out of office and a more liberal government, formed by the Democratic Party, was elected in 1950. This period saw the re-emergence of Islamic influence in Turkey's governing regime. This new political era ended in a

military coup in 1960, which infamously resulted in several state executions, including that of the Prime Minister Adnan Menderes and a number of other high-ranking officials. Political instability following the coup combined with economic recession in the late 1960s sparked a wave of unrest and social chaos.¹⁶ The military responded with the 1971 ‘coup by memorandum’, threatening to ‘exercise its constitutional duty’ and seize power if its demand of the ‘restoration of law and order’ was not met.¹⁷ The military-backed regime imposed martial law and initiated a widespread crackdown on groups regarded as ‘leftist’ or ‘separatist’. Then, in 1980, the military carried out the third coup in the history of the Republic. Martial law was extended throughout the country, Parliament was abolished and the country ruled through the National Security Council (NSC). A committee appointed by the military drafted a new Constitution, which came into force in 1982.¹⁸ Thus followed a decade of one-party rule under Turgut Ozal’s Motherland Party. Ozal’s death in 1993 led to the second democratic Presidential elections in Turkey’s history.

In 1997 the military again asserted their position within Turkish politics, and forced Prime Minister Necmettin Erbakan’s Islamist-led coalition government to resign. The secular military alleged that Erbakan was trying to change the basic nature of Turkish politics and government and turn Turkey into an Islamic-led theocracy like neighbouring Iran. After forcing Erbakan from power, the army turned the government over to more secular politicians in what is called Turkey’s ‘post-modern coup’. However, in 2002 the Justice and Development Party (AKP), regarded as a successor to Erbakan’s party, won parliamentary elections, and in 2007 AKP politician Abdullah Gül was elected President of the Republic.

1.2.1 Political structure

Turkey’s Parliament, known as the Grand National Assembly (GNA), is composed of 550 members elected for a 5-year term. The Prime Minister, who is appointed from amongst the members of the GNA by the President, nominates the Cabinet and together they form the Council of Ministers. All laws are introduced into the GNA by the Council of Ministers and the deputies. Once legislative bills are passed, they require the ratification of the President, who may refer the proposed laws (except the budget) back to the GNA for further consideration. The GNA may also empower the Council of Ministers to issue decrees, except during a state of emergency and martial law.

The President is the Head of State and is elected for a 5-year term (renewable once) by the GNA, requiring a two-thirds majority (or an absolute majority in a third round of voting). Turkey’s President is not simply a titular or symbolic head of the state. The President has substantial powers mandated by Turkey’s Constitution, including the appointment of top military and judicial figures.

Turkey’s history of *coups d’état* sheds light on the role that the military, led by stringent Kemalists, has played in modern Turkey. The military is considered by many, and not least its own members, as the guardian of Kemalism, and plays a prominent role in the Republic, exercising both formal and informal power.

One key institution is the NSC, which was set up following the 1960 military coup to oversee security issues in Turkey. The NSC comprises political and military leaders who meet every 2 months to discuss national security. Since the 1960s, and particularly in the aftermath of the 1980 military coup, the role of the NSC has been further strengthened and militarised. While the 1982 Constitution formally states the role of the NSC as advising the government with 'regard to the formulation, establishment and implementation of the national security policy of the State',¹⁹ in reality due to the political weight of the members of NSC, and the institutionalisation of the armed forces within the civilian administration, it appears to have a significant effect on all government decision-making. Although there have been continuous calls, domestically and internationally, for Turkey to reduce the power of, or completely abolish, the NSC, the institution is deeply embedded in the state. While the government of Turkey may wish to alter the role of the NSC, such changes are difficult without comprehensive constitutional reform. As of yet, no meaningful reform regarding the role of the NSC has been forthcoming.

Further complicating the political system, and its reform, in Turkey is the existence of the 'deep state', which is known to be a top-secret network of criminal elements, political figures and members of the military. Due to the work of both domestic and international human rights organisations, much has been learned in recent years regarding the actions of the 'deep state' and the network's relationship to Turkish politics.²⁰ The discovery of mass graves and evidence of top military personnel's involvement have done much to verify the claims that regional and international non-governmental organisations (NGOs) have been making for years. While all the activities and inner workings of the 'deep state' have not yet been made clear, more information is regularly coming to light. Turkey's government, to its credit, has done much to acknowledge and, where possible, prosecute the activities of the 'deep state'.

Turkey has been, throughout modern history, constantly pulled between the secularist and ethnically homogenous founding vision of Atatürk, and the reality of having a population of which the majority is Muslim and nearly a quarter Kurdish. This legacy has lived on through a string of fractured and unstable governments during over the proceeding three decades, many of whom have sought to preserve Turkey's secular vision by imposing repressive measures such as the 1950 Press Law and the 2006 Anti Terror Law.²¹

The parliamentary and presidential elections in 2007 highlighted these persistent tensions in Turkey's political structure. In April 2007 the ruling AKP nominated former Foreign Minister Abdullah Gül, as a presidential candidate. Gül's previous association with the Islamist movement and the fact that his wife chose to wear a headscarf provoked intense debate regarding his candidacy bid. The military published a memorandum blaming the government for stimulating religious sentiment in society, and the first round of the presidential elections was later cancelled after a decision by the Constitutional Court.²² The AKP government therefore decided to hold early parliamentary elections on 22 July 2007, resulting in a landslide victory. With this large majority in Parliament, and

a clear mandate from the electorate, Gül was again nominated, and on 28 August was elected by the Parliament as President. The July elections also saw 24 deputies stand as independent candidates, most from the Kurdish region, only to later form the pro-Kurdish Democratic Society Party (DTP) in Parliament, thereby circumventing the required 10 per cent threshold for political parties.²³ In November 2007 the Chief Public Prosecutor of Turkey's Constitutional Court filed a case of party closure against the DTP, followed in March 2008 by a case to close the ruling AKP.²⁴

These cases follow a long legacy of restrictions on political parties in Turkey, particularly targeting parties with a platform that is politically left-wing or addresses Kurdish issues. Such parties have faced closure proceedings, the removal of parliamentary immunity, and other forms of harassment.²⁵ National parties that advocated for the cultural and linguistic rights of minorities have been repeatedly closed down.²⁶ For instance, HEP (*Halkın Emek Partisi*, People's Labour Party),²⁷ widely regarded as the first political party with an openly Kurdish platform, was closed and its parliamentarians imprisoned in 1994. In the case of *Sadak and Others v Turkey*,²⁸ which was brought to the European Court of Human Rights by the London-based NGO Kurdish Human Rights Project, the Court found that Turkey had violated Article 3 to Protocol No 1 (right to free elections) when it moved to dissolve the Democracy Party (DEP or *Demokrasi partisi*) only months after its formation in 1993. The 13 applicants were charged by the Turkish state with making statements undermined the integrity of the state and the unity of the nation. Some were charged under anti-terrorism legislation with charges ranging from aiding and abetting an armed gang to distribution of separatist propaganda. While the Court eventually found in favour of the applicants, successive pro-Kurdish parties have accordingly been forced to form and re-form. The exclusion of such parties from democratic processes in Turkey has impeded opportunities to establish a democratic outlet for Kurdish demands.²⁹

1.3 Historical background to the conflict

There is a long history of conflict and persecution in the Kurdish regions. Continual repression from external authorities has been met with resistance by the Kurdish people. While a full account of this history is beyond the scope of the book, an overview of some key events will demonstrate the historical influence on the recent conflict.

From the Seljuk Turks in the 11th century, to the Mongols from the 13th to the 15th centuries, and later the Safavid and Ottoman Empires, the Kurdish region has been governed by a succession of rulers, and its population vulnerable to their dispositions. Under the Safavids, hundreds of thousands of Kurds were forcibly removed from the Kurdish regions, and old Kurdish cities and countryside were systematically destroyed. Then, in the 16th century the Ottomans divided Kurdish territory into districts and installed local Kurdish chiefs as governors, allowing Kurdish society considerable freedom to manage

their own affairs.³⁰ But by the beginning of the 19th century the Ottomans sought to again subjugate the Kurdish principalities in order to centralise the decaying Empire.³¹ These encroachments were met with a series of revolts led by Kurdish chiefs in 1826, 1834, between 1853 and 1855, and 1880.³²

When the Ottoman Empire was carved up in the aftermath of the First World War, the Kurds were divided between modern-day Iraq, Iran, Syria and Turkey. At first, Kurdish autonomy had been a strategic concern of the Great Powers. US President Woodrow Wilson's Fourteen Point Programme for World Peace (1918) asserted that the non-Turkish minorities of the Ottoman Empire should be 'assured of an absolute unmolested opportunity of autonomous development'.³³ Under Article 64 of the 1920 Treaty of Sèvres, signed by the Allied Powers and the Constantinople government, the Kurds would be granted independence within a year.³⁴ However, European fears over the possibility of Soviet influence over newly formed states, and concerns regarding Kurdish representation, combined with historical events to preclude Kurdish independence.³⁵ As the mandate power over Mesopotamia from 1920, Britain at first seemed committed to the principle of keeping the Kurdish areas separate, but subsequently submitted to mounting pressure to incorporate the area of Mosul into a new Iraqi state. The aftermath of the Turkish War of Independence saw Sèvres superseded by a new accord in 1923, the Treaty of Lausanne, which restored Turkish sovereignty over the Kurdish-dominated area accorded independence at Sèvres. The remaining Kurdish-dominated lands were divided between Iran, Syria and Iraq, with the Allied powers drawing up new national boundaries giving more heed to the allocation of oil resources and rewarding friendly Arab leaders than to the ethnic distribution of the Kurds and their right to self-rule. The Kurds were not given real voice in the discussions over the future of their lands.

The end of empire and the establishment of nation states ended any relative autonomy which the Kurds had enjoyed and Kurdish communities were widely treated with distrust. As a large, non-Arab population inhabiting an area of significant strategic importance, the regimes governing the Kurdish regions founded their policies towards the Kurds on suspicion and hostility. At the same time, these newly emerging and vulnerable nation states were keen to preserve their new found independence by fostering strong national unity and overcoming perceived threats to their territorial integrity.

In Turkey, the post-independence programme of 'Turkification' in the southeast began by filling senior administrative appointments in the Kurdish region with ethnic Turks, and all references to Kurdistan were excised from official materials.³⁶ In 1924, the use of the Kurdish language in official domains, including in schools, and traditional Kurdish clothing and music were banned. Two major Kurdish rebellions in 1925 and 1930, directed at the 'Turkification' programme, were brutally suppressed. Martial law was imposed in the Kurdish region, and 52,000 Turkish forces were deployed in the region,³⁷ Kurds were subjected to systematic destruction of their villages, forced displacement and mass killings. In 1934 a new Turkish law divided Turkey into three zones, and the state was vested with the power to compulsorily transfer those from the third

'zone' deemed to 'require assimilation'.³⁸ The aim of the law was to disperse the Kurdish population and thus break down the Kurdish identity. The advent of multi-party democracy in 1945 saw a challenge to the Kemalist vision with the re-emergence of Islamic influence in Turkey's governing regime, but this failed to herald an end to repressive measures towards Kurds, as evidenced by the restrictive 1950 Press Law.³⁹

The succession of *coups d'état* in 1960, 1971 and 1980 renewed the power of military Kemalism to suppress 'other' identities. On the day of the 1971 coup, the public prosecutor opened a case against the Workers' Party of Turkey for carrying out communist propaganda and supporting Kurdish separatism.⁴⁰ Soon, youth organisations were banned, union meetings prohibited, leftist publications proscribed and strikes declared illegal. Hundreds of students, young academics, writers, trade unionists and Workers' Party activists were detained and tortured.⁴¹ Martial law was declared in 11 provinces, including major urban areas and Kurdish regions, and renewed every 2 months.⁴² Constitutional reforms repealed some of the essential liberal fragments of 1961. Special courts set up to deal with all forms of dissent quickly and ruthlessly, tried over 3,000 people before their abolition in 1976. In an atmosphere conducive to extremism and violence, over 100 people were killed in a massacre incited by the Grey Wolves, the unofficial militant arm of the National Movement Party (MHP), in the southeast Anatolian town of Kahramanmaraş in 1978.⁴³ Following the 1980 *coup d'état*, martial law was extended throughout the country. Parliament was abolished and the government suspended the Constitution and banned all political parties, trade unions, and most other forms of organisation. For the next 3 years, the Turkish armed forces ruled the country through the NSC, appealing to the unity of the nation and the Kemalist tradition of state secularism as justification. It is estimated that over 500,000 people were detained in the wake of the 1980 coup,⁴⁴ only half of which were formally arrested, and almost all were tortured.⁴⁵

The Kurdish population of Turkey were a particular target of state oppression throughout this period, as they were portrayed as a collective threat to state unity. The use of the term 'Kurdish' was totally banned in 1983, as were the use of the Kurdish language, Kurdish folk songs and giving children Kurdish names.⁴⁶ Villages were renamed with non-Kurdish words. Exemplary sentences designed to enforce these provisions were periodically meted out.⁴⁷ As the Kurdistan Workers Party (PKK) began armed struggle in 1984, the presence of the Turkish army increased in the southeast.⁴⁸ Few escaped the trauma of frequent village security sweeps in which villagers were arbitrarily arrested and beaten until confessing involvement with the PKK.

It is difficult to overstate the importance of the influence of these events on the course of Kurdish history over the following decades. From the start, expressions of Kurdish identity were discouraged and the Kurds were compelled to conform to the norms of the countries in which they now found themselves. In time, military incursions into Kurdish regions became common occurrences, with comprehensive attempts made to forcibly dissipate Kurdish communities in border areas and stamp out the notion of a Kurdish identity.⁴⁹

1.4 The conflict in southeast Turkey

This section of the chapter looks at the conflict in the Kurdish regions of Turkey beginning from 1984 and examines the structure of the two main bodies engaged in the conflict: the Turkish state security forces and the PKK, before chronicling the main developments of the conflict up to the present day.

1.4.1 The Turkish armed forces in the conflict

Turkish state policy has been based on the denial of the existence of the Kurds; therefore the state has narrowly viewed the Kurdish problem as a security problem disregarding its broader social and legal foundations. Throughout the last 25 years, the military-dominated NSC has continued to advocate for a solely military solution to the Kurdish issue and ignored other dimensions to the conflict, such as the state's historical repression of Kurdish cultural expression and forced relocation.⁵⁰ Claiming that Turkey is faced with the threat of division, the state has targeted the region with emergency laws⁵¹ and established a penetrating military presence throughout the Kurdish region, comprising the Army, Air Force, gendarmerie, national police and paramilitary village guards. At the height of the conflict in 1995, approximately 300,000 Turkish forces were serving in the southeast.⁵² According to press reports, 240,000 additional troops were dispatched to southeast Turkey in April 2006 by the government.⁵³ Today it is estimated that current troop levels number between 125,000 and 130,000.⁵⁴

The Turkish Constitution mandates that the head of the armed forces is the Chief of General Staff, who is appointed by the President of the Republic upon nomination by the Council of Ministers.⁵⁵ Three branches of the armed forces – land, sea and air – report directly to the Chief of the Turkish General Staff and not to the Ministry of Defence authority. Although the General Staff and the Ministry of National Defence work in close coordination and cooperation, it is the General Staff who is responsible to the prime minister and is charged with overall command and control of the Turkish armed forces. The Turkish armed forces consists of five branches, the land, naval and air forces working under the General Staff and the gendarmerie forces and the coast guard working under land and naval forces. The General Command of the Gendarmerie is subordinate to the General Staff of the Armed Forces in matters relating to training and education in connection with the armed forces. However, in matters relating to the safety and public order duties, the General Commander of Gendarmerie is subordinate to the Ministry of Internal Affairs.⁵⁶ The Chief of General Staff and the General Commander of the Gendarmerie, as well as, the Commanders of the army, navy and air forces, sit on the NSC, which advises the President and the Council of the Ministers on the formulation, establishment, and implementation of the national security policy of the nation.⁵⁷

The Republic of Turkey has a compulsory military service system under article 72 of the 1982 Turkish constitution.⁵⁸ Under the Law on Military Service (No 1111), all males of Turkish nationality are eligible for military service from

January of the year they turn 20 and until January of the year they reach turn 41⁵⁹ with a provision to recruit from the age of 19 during mobilisation or states of emergency.⁶⁰ The standard duration of military service is 18 months although the Council of Ministers can reduce this period to 15 or 12 months according to the needs of the forces.⁶¹ University graduates also have an option to serve a shorter period.

The Military Penal Code⁶² does not recognise the right to conscientious objection for conscripts.⁶³ Although the United Nations has affirmed that the right to conscientious objection is a legitimate exercise of the freedom of thought, conscience and religion,⁶⁴ the European Court of Human Rights has been more muted on the subject. The Turkish Constitutional Court has explicitly ruled that the freedom of conscience stated in article 24 of the 1982 constitution does not include the right to conscientious objection to military service.⁶⁵ Article 45 of the Military Penal Code states that individuals may not avoid military service for religious or moral reasons⁶⁶ and evasion and desertion are punishable by up to 3 years' imprisonment under article 63.⁶⁷ Completing a prison sentence does not remove the obligation to perform military service and 'persistent disobedience'⁶⁸ leads to recurring prosecutions with jail terms of up to 2 years.⁶⁹ Military registration numbers are included on identity documents prohibiting those avoiding military service from leaving the country, and they are pursued by the police and gendarmerie who are able to conduct house searches and routine checks in order to arrest them.⁷⁰ The exact number of conscientious objectors is not known, but the military courts are believed to deal with around 60,000 cases per year that are connected to draft evasion, although about half of these cases reportedly deal with cases of conscripts who have not reported themselves back in time after a period of leave and have been absent for less than a week.⁷¹ Further, article 318 of the Penal code⁷² criminalises 'alienating the public from military service' and stipulates up to 3 years' imprisonment as a penalty.⁷³ Thus, any person who speaks out against military service is liable to the same treatment as a person who himself refuses to undertake it.

In addition to the armed forces, the state tasks other agencies with security operations in Turkey. The principal agencies charged with internal security and law enforcement are the national police and the gendarmerie. Both fall under the Ministry of the Interior, however the gendarmerie is under the command of the army. The gendarmerie maintains law and order in rural areas, guards against illegal smuggling and illegal border crossing and provides security on the outer perimeters of prisons. In each province the gendarmerie commander advises the governor on matters of security. In areas where a state of emergency is declared, gendarmes play a more significant role than the police or any other civil authority.

The paramilitary village guard system, in which the state funds and equips local civilians to protect their towns and villages, was implemented as a temporary measure in 1985.⁷⁴ The rationale behind the system was to take advantage of local knowledge in security operations. Yet the scope and regulation of their activities has not been clearly set out by the state, and in the 1980s and 1990s the

guards became notorious as a result of accusations of theft, beatings and rape.⁷⁵ Despite an official halt on recruitment in 2000, the total number of village guards stands at 70,000 according to a 2008 report published by the Turkish Economic and Social Studies Foundation (TESEV), of which 57,174 are temporary and 12,279 are volunteers.⁷⁶

The Interior Minister in 2003 stated that 4,804 village guards were involved in criminal activities and they were the target of over 5,200 criminal investigations.⁷⁷ Though the government pledged to abolish the village guard system in the short term it has made no effort to phase out the system and in May 2007 amended the Village Law to employ up to 60,000 additional village guards according to the TESEV report.⁷⁸ Although calls to abolish the village guard have been ongoing, the attack on 5 May 2009 in Bilge Köyü, in Mardin province, in which masked gunmen attacked a wedding party killing 45, including six children and 16 women further increased demands that the Turkish government disband the system.⁷⁹

1.4.2 The PKK in the conflict

The PKK (*Partiya Karkerên Kurdistan*) was founded in 1978 by Abdullah Öcalan. The first PKK members came from radical political student circles in urban centres. Initially the organisation held a Marxist-Leninist political ideology, emphasising the need for a radical transformation of the social and political organisation of Kurdish society. It sought the establishment of an independent Kurdistan, uniting Kurds across several borders. Amongst the number of Kurdish political movements that appeared in the 1970s, the PKK established its position as foremost in appeal and notoriety. On the eve of the 1980 coup, some PKK leaders fled to Syria and Lebanon. The rise in the awareness of Kurdish identity in Turkey, coupled with the narrow political space that resulted from the 1980 military coup, substantially increased the number of people who became actively involved with the PKK in the 1980s.⁸⁰ Open conflict between the PKK and the security forces in Turkey started in 1984. Since then the PKK has combined attention-grabbing attacks in urban centres, and guerrilla-style operations against the Turkish state in the southeast.⁸¹

By the early 1990s, the PKK had abandoned the references to independent Kurdistan in its manifesto, and was concentrating on the idea of a 'democratic republic'. The organisation has always classified itself as a political party that uses military means to achieve political goals. By the mid-1990s, the PKK had virtual control over large parts of southeast Turkey and at its peak, the group had nearly 15,000 operatives.⁸² The main target of PKK military activity has always been the Turkish military presence in southeast of Turkey. However, from 1985 the PKK also targeted the village guards⁸³ and in the 1990s began to target economic and social assets in Turkey such as railroads, bridges and tourist sites.⁸⁴ Between 1996 and 1999, PKK members (mainly female) conducted 16 suicide attacks.⁸⁵ In tandem with its military operations, the PKK pressed forward on the political front and in 1994 called for a dialogue. The organisation

encouraged supporters to take part in civil disobedience campaigns, such as sit-ins and protest marches. In January 1995, the PKK communicated to the Swiss government their commitment to observe the Geneva Conventions and Protocol 1 of 1977 in its conduct of hostilities, listing its understanding of legitimate targets under the conventions as being restricted to the Turkish armed forces, contra-guerrilla forces, intelligence services, gendarmerie, and village guards, and stating that captured forces would be treated as prisoners of war. Accepting the principle of command responsibility, the PKK stated its adoption of a system of discipline to ensure respect for these rules and punish their violation.

In February 1999, while in Kenya Abdullah Öcalan was handed over to Turkish security personnel. Convicted of treason, he received a death sentence that was later commuted to a life sentence.⁸⁶ Öcalan now remains the sole inmate in a specially configured jail on İmralı Island. In August 1999 Öcalan issued a public statement calling on the PKK to issue a unilateral ceasefire and pursue a democratic solution to the conflict, which was accepted by the PKK's decision-making and armed sections shortly after, but reserving the right to self-defence in the event of military attack.⁸⁷ In 2000 the word 'Kurdistan' was dropped from PKK's name in recognition of its abandoning of its former demands for Kurdish independence.⁸⁸ In 2002 the PKK announced its dissolution and formation as a new group, the Kurdistan Freedom and Democracy Congress (KADEK) to pursue the political aims of the Kurdish people through democratic means.⁸⁹ However, in June 2004 the PKK ended the ceasefire, citing ongoing Turkish military operations, though it was reported that there were splits within the organisation over the use of armed violence.⁹⁰ Since 2004 PKK military activity has predominantly consisted of small ambushes, including use of mines, snipers and long-range strafing of military outposts, rather than direct combat with the Turkish military.⁹¹

1.4.2.1 Structure of the PKK

The PKK has a central committee for organisational decision-making and regional preparations committees across the region of Turkey to oversee local actions.⁹² After Öcalan fled to Syria, the Presidential Council was established to coordinate the implementation of Öcalan's decisions.⁹³ The combatants, who wear uniforms, are organised into guerrilla units under the command of a hierarchy of commanders.⁹⁴ All these bodies have varied in size over the years, depending on strategic objectives and operating context. Women have traditionally played a significant role in the PKK, and comprised approximately a third of PKK armed forces in the early 1990s.⁹⁵ The PKK has a strict system of internal discipline, and transgressors have been executed⁹⁶ or imprisoned in the camps.⁹⁷ It holds an Annual Congress which, as far as possible, gathers together members from across the regions to share information and decide future strategy. New recruits conduct a programme of military training and graduate in a formal ceremony.⁹⁸