



www.rsc.ox.ac.uk

Refugee Studies Centre,  
Queen Elizabeth House,  
21 St Giles, Oxford OX1 3LA, UK.  
Tel: +44 (0)1865 270722.  
Fax: +44 (0)1865 270721.  
Email: rsc@qeh.ox.ac.uk

# International rule of law: comment on Iraq

by Dr Agnes Hurwitz,

Ford Foundation Research Fellow at the Refugee Studies Centre

The decision to go to war in Iraq has challenged the most fundamental principles of the current international system. Since the end of WWII, states have agreed to prohibit the use of force in their international relations. Two exceptions are granted under the UN Charter: the exercise of the right to self-defence or the authorisation of the Security Council under Chapter VII. The US and the UK failed to receive the explicit endorsement of the Security Council before sending troops into Iraq. With regard to the former exception, the doctrine of pre-emptive strike advocated by the US administration broadens the concept of self-defence in a manner which is inconsistent with the Charter.

While the conflict seems to be reaching its conclusion, many of the post-war discussions will be tainted by the controversy surrounding the lawfulness of intervention. One of these issues concerns the involvement of the UN in the reconstruction of Iraq. The UN has had extensive experience in peace building and in the establishment of transitional civil administrations, such as in Kosovo and East Timor. Although the UN has faced difficulties in exercising wide administrative responsibilities,<sup>1</sup> it is currently the only organisation able to lead this type of operation without raising concerns of so-called 'imperialistic colonialism'.

International legality is of fundamental importance for the legitimacy of post-war operations. The major powers represented in the Security Council will have to find an acceptable compromise regarding the role of the UN. For France, Germany and Russia, which opposed the war, the objective is to entrust to the greatest extent possible the reconstruction of Iraq to

the UN. The US-led coalition is, on the other hand, faced with a dilemma. The US administration wants to be in charge of the post-war reconstruction. It plans to create an 'Office of reconstruction and humanitarian assistance' and will appoint the members of an Iraqi interim authority. It has reluctantly accepted a limited role for the UN, consisting for the most part in the provision of humanitarian aid. However, it would in any case need the adoption of a UN Security Council Resolution if it wants to secure both political and financial support from the rest of the international community. The President of the World Bank has declared that, since the Bank only deals with recognised governments, it would need a UN mandate before implementing its programmes.<sup>2</sup>

As long as the US and the UK occupy Iraq – that is, exercise actual authority over the territory – they remain bound by the relevant provisions of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land and the 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War. Shashi Tharoor, UN Under-Secretary General, noted that "occupying powers have no rights under the Geneva Convention to transform the society or the polity or to exploit its economic resources or anything of that sort."<sup>3</sup> In addition, it is debatable whether the repatriation of more than half a million Iraqi refugees can take place if the occupation continues. According to UNHCR standards, return should be conditional upon guarantees of physical, material and legal safety for the returnees: in other words, the restoration of full national protection. Since occupation cannot be regarded as conferring state authority upon the occupying power, it might be argued

that the recognition by the international community of an independent Iraqi government capable of exercising full control over its territory should be a minimum prerequisite to the repatriation of refugees.

The latest developments of the Iraqi crisis show the essential role that the law must play in the conduct of international relations. The US and the UK have been able to win a war that clearly violated the law of nations; they might not win the peace unless they comply with fundamental rules of international law. It is to be hoped that in light of the post-war situation the US-led coalition will come to rediscover the eminence of the international rule of law.

1. See the Comprehensive Review of the Whole Question of Peacekeeping Operations, UN Doc. A/5/305, 21 August 2000.

2. 'US to press World Bank to play role in Iraq' *Financial Times*, 9 April 2003, p5.

3. 'US and UK focus on legitimacy of interim rule' *Financial Times*, 9 April 2003, p4; see also ICRC Report, 'General Problems in implementing the Fourth Geneva Convention', 27 October 1998, p8.

See also 'Iraq: resources' listed on p55.

For details of RSC courses/  
events, please visit  
[www.rsc.ox.ac.uk](http://www.rsc.ox.ac.uk)

**International Summer School  
in Forced Migration 2003**  
7-25 July: Oxford, UK

**Southeast Asia Regional  
School in Forced Migration**  
8-18 December 2003: Bangkok,  
Thailand

**Forced Migration Online**  
[www.forcedmigration.org](http://www.forcedmigration.org)