

# International Law, Invasion, and Occupation

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At a debate I attended recently, there were some interesting international legal arguments made. Since international law is raised so rarely within “mainstream” discussion — and even less by defenders of the war — I thought they were worth some mention and comment.

Here was the assertion: There is no longer an occupation of Iraq. The evidence: various UN Security Council resolutions end the occupation.

Well: what is an occupation? From the point of view of international law, “occupation” is defined in Article 42 of the Annex to the Hague Convention IV of 1907: “Territory is considered occupied when it is actually placed under the authority of the hostile army.” That is, the fact of occupation defines it as such; a request by a tenuous installed government is of no import. This position is also the US Army’s official position, I believe. Nothing further really needs to be said on this point. But it is worth noting that the resolution which I believe was claimed to “end the occupation”, Resolution 1546, adopted 8 June 2004, in its own words, is “looking forward to the end of the occupation and the assumption of full responsibility and authority by a fully sovereign and independent Interim Government of Iraq by 30 June 2004” (preamble).

That is, the resolution claimed to “end” the occupation, in fact states its hope for the swift end to the ongoing occupation.

This resolution also reaffirms “the independence, sovereignty, unity, and territorial integrity of Iraq”, and the “right of the Iraqi people freely to determine their own political future and control their own natural resources” (preamble). Continuing, it affirms that “the United Nations should play a leading role in assisting the Iraqi people and government in the formation of institutions for representative government” — again, delegitimizing any unilateral presence.

In effect, the resolution is looking forward to the end of the occupation and the potential emergence of a democratic Iraqi government, and emphasises a multilateral approach to the situation. It takes no stand on the legality of the invasion — which would have surely earned it a US veto. It is, in this sense, a minimal statement. It does not legitimize the invasion, which is a clear and flagrant breach of international law, in fact the worst possible breach of international law, aggressive war, the same crime for which the Nazis were hanged at Nuremberg. Certainly it does not end any occupation.

The point the war defender was getting at, I think, is rather that it confers some legal legitimacy on the \*occupation\*. This is very different from justifying the invasion. It is possible for an invasion to be illegal, but the subsequent occupation to receive UN support. The UN Security Council is often hampered by the veto of major powers, and often intervenes in situations of ongoing humanitarian crisis, where vast crimes have occurred. The relevant text of the resolution, article 9, states that “the presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore reaffirms the authorization for the multinational force under unified command”.

And that’s the point. Once the US had established a regime entirely dependent on US forces for its survival, of course that government would request that US troops stay. It is a tactic that has been used before; it was also the tactic used by the USSR in Afghanistan, I believe (although I don’t think the USSR went to the UN). This is a government that has virtually no support among the Iraqi population, that was “elected” in an “election” where candidates were too afraid to announce their candidacy publicly since this entailed likely assassination, has little control in much of the territory, and police and army forces that regularly desert.

Nevertheless, all the resolutions reiterate the basics of international law: the right of Iraqis, along with all peoples, to self-determination; the right to sovereignty within their own borders and to control their own resources, free from external interference. All of this is being violated by the United States in its foreign policy and occupation. Massive military bases are under construction; US control over oil resources will not be given up voluntarily.

So, under these resolutions, the US is given a mandate, with the fig leaf of the Iraqi “government” to cover it, to occupy. This legalises the occupation. It is also against the wishes of the Iraqi population: my understanding is that every poll of the Iraqi people has majorities opposing the occupation. And it does not relieve the US of its obligations as an occupying power; which includes observing such fundamentals as the right of the Iraqi people to self-determination.

However, that mandate is only given for a limited time. In December 2007 the mandate was extended by the Security Council (Resolution 1790) until June 15, 2008, again ostensibly at the request of the Iraqi government.

Except that, the Iraqi government didn’t request it.

If the Iraqi government is to be seen as legitimate, then its constitution should be taken into account. Under article 58 of the Iraqi constitution (<http://www.washingtonpost.com/dyn/content/article/2005/10/12/AR2005101201450.html>), “international treaties and agreements” must be ratified “by a two-thirds majority of the members of the Council of Representatives”. This surely includes agreements for the presence of foreign military forces.

But the December 2007 request was not ratified by the Parliament — instead it was made unilaterally by the Prime Minister.

So, the continuing occupation is illegal and unconstitutional, at least under Iraqi law. (Imagine if Bush requested foreign troops to stabilise the US without congressional approval!)

So that is the situation, and I think that is the position at international law.

It does not change the legal status of invasion, as aggressive war, as a crime against humanity.

And, from the legal (not to mention moral) point of view — occupiers have no right to “victory”, no right to “achieving goals” or “protecting American interests”. Occupiers only have obligations to the population they are occupying. But they have no rights. But one does not expect such fundamentals of international law to bother those who led an invasion that was itself the grossest violation of international law possible.