

Iraq and the Laws of War

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On 19 March 2003 President Bush Jr. commenced his criminal war against Iraq by ordering a so-called decapitation strike against the President of Iraq in violation of a 48-hour ultimatum he had given publicly to the Iraqi President and his sons to leave the country. This duplicitous behavior violated the customary international laws of war set forth in the 1907 Hague Convention on the Opening of Hostilities to which the United States is still a contracting party, as evidenced by paragraphs 20, 21, 22, and 23 of U.S. Army Field Manual 27-10 (1956). Furthermore, President Bush Jr.'s attempt to assassinate the President of Iraq was an international crime in its own right. Of course the Bush Jr. administration's war of aggression against Iraq constituted a Crime against Peace as defined by the Nuremberg Charter (1945), the Nuremberg Judgment (1946), and the Nuremberg Principles (1950) as well as by paragraph 498 of U.S. Army Field Manual 27-10 (1956).

Next came the Pentagon's military strategy of inflicting "shock and awe" upon the city of Baghdad. To the contrary, article 6(b) of the 1945 Nuremberg Charter defined the term "War crimes" to include: ". . . wanton destruction of cities, towns or villages, or devastation not justified by military necessity. . ."

The Bush Jr. administration's infliction of "shock and awe" upon Baghdad and its inhabitants constituted the wanton destruction of that city, and it was certainly not justified by "military necessity," which is always defined by and includes the laws of war. Such terror bombings of cities have been criminal behavior under international law since before the Second World War: Nagasaki, Hiroshima, Tokyo, Dresden, London, Guernica-Fallujah.

On 1 May 2003 President Bush Jr. theatrically landed on a U.S. aircraft carrier off the coast of San Diego to declare: "Major combat operations in Iraq have ended." He spoke before a large banner proclaiming: "MISSION ACCOMPLISHED." As of that date, the United States government became the belligerent occupant of Iraq under international law and practice.

This legal status was formally recognized by U.N. Security Council Resolution 1483 of 22 May 2003. For the purpose of this analysis here, the relevant portions of that Security Council Resolution 1483 (2003) are as follows:

... Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council (S/2003/538) and recognizing

the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the "Authority"),

... 5. Calls upon all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907; ...

In that aforementioned 8 May 2003 letter from the United States and the United Kingdom to the President of the Security Council, both countries pledged to the Security Council that: "The States participating in the Coalition will strictly abide by their obligations under international law, including those relating to the essential humanitarian needs of the people of Iraq." No point would be served here by attempting to document the gross and repeated violations of that solemn and legally binding pledge by the United States and the United Kingdom from that date until today since it would require a separate book to catalog all of the war crimes, crimes against humanity, and grave human rights violations inflicted by the United States and the United Kingdom in Iraq and against its people.

Suffice it to say here that no earlier than President Bush's 1 May 2003 Declaration of the end of hostilities in Iraq, and certainly no later than U.N. Security Resolution 1483 of 22 May 2003, both the United States and the United Kingdom have been the belligerent occupants of Iraq subject to the Four Geneva Conventions of 1949, the 1907 Hague Regulations on land warfare, U.S. Army Field Manual 27-10 (1956) or respectively its British equivalent, the humanitarian provisions of Additional Protocol I of 1977 to the Four Geneva Conventions of 1949, and the customary international laws of war. I do not take the position that the United States is the belligerent occupant of the entire state of Afghanistan. But certainly the laws of war and international humanitarian law apply to the United States in its conduct of hostilities in Afghanistan as well as to its presence there.

It is not generally believed that the United States is the belligerent occupant of Guantanamo, Cuba. But those detainees held there by United States armed forces who were apprehended in or near the theaters of hostilities in Afghanistan and Iraq are protected by either the Third Geneva Convention protecting prisoners of war or the Fourth Geneva Convention protecting civilians. In any event every detainee held by the United States government in Guantanamo is protected by the International Covenant on a Civil and Political Rights, to which the United States is a contracting party. A similar analysis likewise applies *pari passu* to those numerous but unknown victims of torture and detention facilities operated around the world by the Central Intelligence Agency. America's own Gulag Archipelago. No wonder the Bush Jr. administration has done everything humanly possible to sabotage the International Criminal Court!

The United States government's installation of the so-called Interim Government of Iraq during the summer of 2004 did not materially alter this legal situation. Under the laws of war, this so-called Interim Government of Iraq is nothing more than a "puppet government." As the belligerent occupant of Iraq the United States government is free to establish a puppet government if it so desires. But under the laws of war, the United States government remains fully accountable for the behavior of its puppet government.

These conclusions are made quite clear by paragraph 366 of U.S. Army Field Manual 27-10 (1956):

366. Local Governments Under Duress and Puppet Governments

The restrictions placed upon the authority of a belligerent government cannot be avoided by a system of using a puppet government, central or local, to carry out acts which would be unlawful if performed directly by the occupant. Acts induced or compelled by the occupant are nonetheless its acts.

As the belligerent occupant of Iraq, the United States government is obligated to ensure that its puppet Interim Government of Iraq obeys the Four Geneva Conventions of 1949, the 1907 Hague Regulations on land warfare, U.S. Army Field Manual 27-10 (1956), the humanitarian provisions of Additional Protocol I of 1977 to the Four Geneva Conventions of 1949, and the customary international laws of war. Any violation of the laws of war, international humanitarian law, and human rights committed by its puppet Interim Government of Iraq are legally imputable to the United States government. As the belligerent occupant of Iraq, both the United States government itself as well as its concerned civilian officials and military officers are fully and personally responsible under international criminal law for all violations of the laws of war, international humanitarian law, and human rights committed by its puppet Interim Government of Iraq such as, for example, reported death squads operating under the latter's auspices.

Furthermore, it was a total myth, fraud, lie, and outright propaganda for the Bush Jr. administration to maintain that it was somehow magically transferring "sovereignty" to its puppet Interim Government of Iraq during the summer of 2004. Under the laws of war, sovereignty is never transferred from the defeated sovereign such as Iraq to a belligerent occupant such as the United States. This is made quite clear by paragraph 353 of U.S. Army Field Manual 27-10 (1956): "Belligerent occupation in a foreign war, being based upon the possession of enemy territory, necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. Occupation is essentially provisional."

If there were any doubt about this matter, paragraph 358 of U.S. Army Field Manual 27-10 (1956) makes this legal fact crystal clear:

358. Occupation Does Not Transfer Sovereignty

Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and the occupying force. . . .

Therefore, the United States government never had any "sovereignty" in the first place to transfer to its puppet Interim Government of Iraq. In Iraq the sovereignty still resides in the hands of the people of Iraq and in the state known as the Republic of Iraq, where it has always been. The legal regime described above will continue so long as the United States remains the belligerent occupant of Iraq. Only when that U.S. belligerent occupation of Iraq is factually terminated can the people of Iraq have the opportunity to exercise their international legal right of sovereignty by means of free, fair, democratic, and uncoerced elections. So as of this writing, the United States and the United Kingdom remain the belligerent occupants of Iraq despite their bogus "transfer" of their non-existent

“sovereignty” to their puppet Interim Government of Iraq.

Even U.N. Security Council Resolution 1546 of 8 June 2004 “Welcoming” the installation of the puppet Interim Government of Iraq recognized this undeniable fact of international law. Preambular language in this Resolution referred to “the letter of 5 June 2004 from the United States Secretary of State to the President of the Council, which is annexed to this resolution.” In other words, that annexed letter is a legally binding part of Resolution 1546 (2004). Therein U.S. Secretary of State Colin Powell pledged to the U.N. Security Council with respect to the so-called Multinational Force (MNF) in Iraq: “In addition, the forces that make up the MNF are and will remain committed at all times to act consistently with their obligations under the law of armed conflict, including the Geneva Conventions.” Pursuant thereto, the United States and the United Kingdom still remain the belligerent occupants of Iraq subject to the Four Geneva Conventions of 1949, the Hague Regulations of 1907, U.S. Army Field Manual 27-10 (1956) or respectively its British equivalent, the humanitarian provisions of Additional Protocol I of 1977 to the Four Geneva Conventions of 1949, and the customary international laws of war.

This brings the analysis to the so-called Constitution of Iraq that was allegedly drafted by the puppet Interim Government of Iraq under the impetus of the United States government. Article 43 of the 1907 Hague Regulations on land warfare flatly prohibits the change in a basic law such as a state’s Constitution during the course of a belligerent occupation: “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” This exact same prohibition has been expressly incorporated in haec verba into paragraph 363 of U.S. Army Field Manual 27-10 (1956). To the contrary, the United States has demonstrated gross disrespect toward every law in Iraq that has stood in the way of its imperial designs and petroleum ambitions, including and especially the pre-invasion 1990 Interim Constitution for the Republic of Iraq. Most recently, to the same effect is U.N. Security Council Resolution 1637 of 9 November 2005, which extends the foreign military occupation of Iraq until 31 December 2006 but expressly subject to Annex II thereof setting forth a 29 October 2005 letter by U.S. Secretary of State Condoleezza Rice to the President of the Security Council guaranteeing that: “The forces that make up the MNF will remain committed to acting consistently with their obligations under international law, including the law of armed conflict.” Thereunder, the new Iraqi government that will be installed after the self-styled elections of 15 December 2005 will still remain a puppet government according to the laws of war.

As for any subsequent Security Council Resolutions, the United Nations Security Council has no power or authority to alter one iota of the laws of war since they are peremptory norms of international law. For the Security Council even to purport to authorize U.S. violations of the laws of war in Iraq would render its so-voting Member States aiders and abettors to U.S. war crimes and thus guilty of committing war crimes in their own right. Any Security Council attempt to condone, authorize, or approve violations of the Four Geneva Conventions of 1949, the 1907 Hague Regulations, the humanitarian provisions of Additional Protocol I of 1977 to the Four Geneva Conventions of 1949, and the customary international laws of war by the United States and the United Kingdom in Iraq would be ultra vires, a legal nullity, and void ab initio.

In fact, the United Nations Organization itself has become complicit in U.S. and U.K. international crimes in Iraq in violation of the customary international laws of war set forth

in paragraph 500 of U.S. Army Field Manual 27-10 (1956): “. . . complicity in the commission of, crimes against peace, crimes against humanity, and war crimes are punishable.” The United Nations Organization is walking down the path of the League of Nations toward Trotsky’s “ashcan” of history. And George Bush Jr. and Tony Blair are heading towards their own Judgment at Nuremberg, whose sixtieth anniversary the rest of the world gratefully but wistfully commemorates this year. Never again!

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