



# International Humanitarian Law and International Organizations in Iraq

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**A Presentation by:**

**The Program on Humanitarian Policy  
and Conflict Research (HPCR)  
Harvard University**

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# Purpose of this presentation

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- Provide the basics of IHL for humanitarian practitioners preparing to work in Iraq;
- Review opportunities and constraints for UN agencies and NGOs;
- Identify practical strategies for dealing with US and UK occupying forces (referred to as the Occupying Power (OP)).



## About HPCR

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- A policy and training center at Harvard serving the UN agencies and NGOs working in conflict areas.
- Established in partnership with UN and Swiss MFA.
- Close cooperation on IHL with ICRC.
- Funding from Switzerland, UK, Norway, Sweden and Canada.
- Launched web portal on IHL in Iraq in March 2003 ([www.ihlresearch.org/iraq](http://www.ihlresearch.org/iraq)).



# Why is IHL relevant?

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- Legal framework applicable to international armed conflict and occupation;
- Basis of US and UK rules of engagement;
- Regulates conduct of hostilities and relationship between civilians and Coalition Forces;
- Provides rights and duties for all parties involved, including relief organizations.



# Basic instruments of IHL

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## The four Geneva Conventions and Additional Protocol I

- Operational, easy to implement
- Results of long tradition
- Universal, moral authority



# Distinction between IHL and Human Rights Law

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## Human rights:

- Regulate relationship between citizens and the State;
- Derogable in times of conflict, except for core rights;
- Provide rights to the individual;
- Legal framework of various aspects of social, political and economic life;
- Provide mapping of objectives for governments and international agencies;

## IHL:

- Regulates relationship between parties at conflict;
- Non-derogable;
- Provides obligations regarding enemy civilians, prisoners, cultural assets, etc;
- Does not provide rights to individuals, only to parties of origin or other parties to the GC;
- Focuses on limiting impact of conflict on civilians and prisoners of war;
- Insufficient over time.



# Current legal framework in Iraq

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## International armed conflict

- Issue of legality of the conflict
- Applicable even if collapse of Iraqi government

## Transitional regime

- Ad-hoc and interim legal structures
- Constitutional and legal reforms



# What is an occupation?

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- practical approach;
- factual control by a foreign military entity over a territory or a population;
- does not require any form of declaration or intent by the invading forces;
- motives of invading forces (liberation, self-defence, or pre-emptive doctrine) are irrelevant.



# When does the law of occupation apply?

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## Beginning:

1. There is an international armed conflict;
2. A foreign military force has made an incursion on enemy territory;
3. This force is exerting any form of control over the population of that territory.

## End:

- When one of the conditions is no longer fulfilled.
- At least one year after the end of hostilities.



## Key aspects of IHL occupation law

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- OP takes over the main responsibilities of national authorities, as a care-taker and administrator (law and order, public services).
- Civilians prohibited from undertaking violent actions against the occupying forces.
- OP can implement exceptional measures to ensure its security (e.g. administrative detention). In general, the security of the OP will prevail over the rights of individuals and communities.



# Maintenance of law and order

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- OP responsible to take all measures in its power to restore and ensure, as much as possible, public order and safety.
- In this context, the OP is not responsible for every looting occurring in the territory it controls. It must exercise due diligence to avoid such looting.



# Maintenance of public welfare

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The OP has the obligation to ensure sufficient supplies in terms of:

- Food, water and medical care for the civilian population (Article 55 - 56 of the Fourth Geneva Convention);
- Clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population of the occupied territory (Article 69 of Protocol I).



# Administration of Justice

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- Except concerning the protection of the OP's security, local laws remain in force and local courts remain competent (Article 66 of the Fourth Geneva Convention;)
- Civilians may only be detained in view of a trial or for imperative security reasons, which must be individually determined, allowing for a right of appeal (Article 78 - 135 of the Fourth Geneva Convention).;
- If civilians commit hostile acts, they may be punished under legislation introduced by the occupying power, but do not lose their civilian status. In no case may a civilian be deported outside the occupied territory (Article 49 (1) of Fourth Geneva Convention.)



# Property and Resources

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- Except when rendered absolutely necessary by military operations, private property may not be destroyed (Article 53) and it may only be confiscated under local legislation.
- Public property (other than that of the municipalities) is administered by the OP, but only under the rules of usufruct. If Iraqi oil wells were government owned, the US may administer them and sell the oil. According to some opinions, it may use the proceeds not only for the benefits of the local population, but also, similar to levies, to cover the cost of the occupation (but not of the whole war).

How does this affect international assistance?



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## Law of occupation regulates humanitarian relief as well.

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### Key aspects:

- The obligations to provide for the needs of the population are imposed on the OP. They cover food and medical supplies, the public health and hygiene and other supplies essential to the survival of the civilian population of the occupied territory.
- If the population is inadequately supplied, the OP **is obliged** to accept relief operations. However, under no conditions should relief operations be seen as alleviating the responsibility of the OP.



# International Assistance and Responsibilities

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IHL provides for clear responsibilities in terms of public services and welfare in occupied territories. To help us to understand these responsibilities, and implications for international organizations, we may define three areas of assistance under occupation.

- Rehabilitation and Reconstruction.
- Public services.
- Emergency humanitarian relief.



# I. Rehabilitation and Reconstruction

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- Type of Assistance

Rehabilitation and reconstruction assistance address long-term needs of the state infrastructure.

- Responsibility for Rehabilitation and Reconstruction

The responsibility of the OP is to rehabilitate and maintain infrastructure as it existed prior to the conflict, and not to significantly alter the state structure and planning.

- Role of International Organizations

Minimal under occupation. Reconstruction efforts must primarily engage Iraqi authorities, whenever and wherever available.



## II. Public Services

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- Type of Assistance

Public services include all types of state services to the population which were in place prior to the conflict. In the case of Iraq, this includes the provision of food supplies and medicine to a large portion of the population. This category also includes power, water, sewage, education, health, etc.

- Responsibility for Public Services

The responsibility for restoring and maintaining public services rests with the OP. The OP may delegate part of this responsibility to existing Iraqi administrative bodies (e.g., ministries and municipalities) as well as implementing partners. In all cases, the ultimate responsibility remains with the OP.



## II. Public Services

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- Role of International Organizations
  - OP may call on international assistance in the implementation of its obligations.
  - Technical or material assistance. Delivered in line with the OP's objectives, and under its supervision.
  - No special privilege under IHL.

In exceptional circumstances, international organizations may provide emergency assistance to rehabilitate public services where the OP is unable to do so. This short-term assistance needs to be closely coordinated with the OP.



## III. Emergency Humanitarian Relief

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- Type of Assistance

Humanitarian relief includes items defined by IHL as essential for the survival of civilians under occupation. This assistance can be provided only when provisions supplied by the OP are deemed inadequate.

- Responsibility for Emergency Humanitarian Relief

In the case of a failure of the OP to provide adequate supplies to the population, impartial humanitarian organizations have a right to provide humanitarian assistance to this population. By extension, this implies a right of access to regularly assess the adequacy of supplies.



## III. Emergency Humanitarian Relief

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- Role of UN and other impartial humanitarian organizations

The role of the UN and other humanitarian organizations is to closely monitor the humanitarian situation in the country through regular independent assessments. Once supplies have been found inadequate, these organizations have a right to provide relief to the population.



# What is humanitarian relief under IHL?

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- Relief schemes should be of humanitarian character;
- Undertaken either by neutral States or by an impartial humanitarian organization;
- Cannot be used for political propaganda;
- Relief consignment not to be diverted by the OP;
- The distribution of the relief consignments shall be carried out with the cooperation and under the supervision of the ICRC or any other impartial humanitarian body;
- Personnel participating in relief schemes should under no circumstances exceed the terms of their mission.



# IHL conditions for international relief operations

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- Evidence of inadequate supply (but right of access)
- humanitarian in character
- discretion
- OP must provide secure access, but may monitor the deployment of humanitarian personnel.



# Opportunities and constraints

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## Opportunities:

- Detailed legal framework;
- Clear norms and mandate;
- Universal acceptance;
- US military interest in maintenance of IHL.

## Difficulties and challenges:

- Politicization of the application of IHL;
- Lack of IHL knowledge among commanders and civil-military officers;
- Transfer of responsibilities to humanitarian organizations;
- Neutrality of humanitarian aid;
- Relationship with new interim structure.



# Further information on IHL

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Visit:

<http://www.ihlresearch.org/iraq>

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## International Assistance in Occupied Iraq

Events in recent days ([see related news](#)) have shown the importance of restoring essential public services and allowing emergency relief operations to reach the Iraqi population. In the present circumstances of insecurity and confusion, these daunting tasks require a clear set of guidelines and proper strategies to address critical needs of the population in terms of food, water, sanitation, and health services. The Fourth Geneva Convention provides a comprehensive legal framework for such operations under occupation. Who is responsible for providing such assistance? Who should organize and control this assistance? What is the role of humanitarian organizations in these circumstances? This featured analysis reviews the existing rules of IHL pertaining to the responsibility of the Occupying Powers to restore and maintain public services and addresses the unique role of UN humanitarian agencies and NGOs in occupied territory.

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The situation of general chaos ([See related news](#)) resulting from the fall of Baghdad and other major cities in Iraq has demonstrated the importance of having a clear set of obligations for the maintenance of



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- [IHL in Current Conflicts: Training Course and Seminar](#) (July 2003)
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- [Legitimate Target of Attacks Under International Humanitarian Law](#) (January 2003)
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# Training opportunities

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- Field Manual
- Use of the web portal where available
- IHL seminars organized by HPCR and ICRC at Harvard, July 2003.