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Military Occupation of Iraq: II. International Assistance in Occupied Territory

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Events in Iraq ([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 in Iraq, 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. It is important to note that IHL grants a special role to the ICRC in occupied territory, particularly in terms of access to civilian internees. The details of that role are not addressed herein.

The combined results of the recent military campaign, the collapse of the central government and over a decade of economic sanctions have had a dramatic impact on the Iraqi civilian population, generating a high level of vulnerability, particularly among the poor. Over 60% of the Iraqi population relies entirely on external assistance for their daily survival, following years of dependence on a distribution system organized by the Iraqi government for Central and Southern Iraq, as well as on local authorities and NGOs in Northern Iraq. The collapse of this ration system is endangering the life of millions. Efforts to respond to this situation in the present conditions of insecurity require the strict implementation of the rules of IHL applicable to occupation. These rules, drafted precisely for situations such as the one in Iraq, offer useful guidance in responding to the current crisis. The key principles are:

The Occupying Power (OP) is responsible for ensuring supplies adequate for the needs of the civilian population.

The Fourth Geneva Convention states that the OP has the obligation to ensure sufficient supplies in terms of food, water and medical care for the civilian population (see [Article 55](#) and [Article 56](#) of the Fourth Geneva Convention.)

[Article 69](#) of Additional Protocol I further elaborates this list by including clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population of the occupied territory. Ensuring the provision of these goods and services essential to the survival of the population is the responsibility of the OP.

If the population is inadequately supplied, the OP is obliged to accept relief operations.

The OP is obliged to ensure the subsistence of the population in the occupied territory to the full extent of the means available to it at the time of occupation. In this sense, IHL recognizes the potential difficulties the OP may face in taking over these responsibilities in times of conflict. When the OP fails or is unable to

fulfill its obligation, then it shall agree to relief schemes organized by impartial humanitarian organizations, as defined by Fourth Geneva Convention. ([Article 59](#))

The obligation to accept such relief is unconditional. However, under no condition should relief operations be seen as alleviating the responsibility of the OP to ensure the survival of the population. ([Article 60](#))

Guidelines for international assistance in occupied territory

The Commentary to the Fourth Geneva Convention is of particular relevance in the present circumstances, as it draws attention to the potential risks inherent in a situation of occupation. The [Commentary](#) to [Article 47](#) merits quoting:

“During the Second World War Occupying Powers intervened in the occupied countries on numerous occasions and in a great variety of ways, depending on the political aim pursued; examples are changes in constitutional forms or in the form of government, the establishment of new military or political organizations, the dissolution of the State, or the formation of new political entities.

International law prohibits such actions, which are based solely on the military strength of the Occupying Power and not on a sovereign decision by the occupied State. Of course the Occupying Power usually tried to give some colour of legality and independence to the new organizations, which were formed in the majority of cases with the co-operation of certain elements among the population of the occupied country, but it was obvious that they were in fact always subservient to the will of the Occupying Power. Such practices were incompatible with the traditional concept of occupation (as defined in [Article 43](#) of the Hague Regulations of 1907) according to which the occupying authority was to be considered as merely being a de facto administrator.

This provision of the Hague Regulations is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions and its laws....”

In this context, it is critical that regardless of the motives or declared intent of the OP, international organizations active in the occupied territory remain particularly cautious in planning their efforts. IHL provides a legal framework for international assistance in the occupied territory that can help in designing adequate safeguards to ensure the protection of the population and the integrity of Iraqi state institutions. To aid in understanding this framework and its implications for the UN and other international agencies, we may define three areas of assistance under occupation:

- Rehabilitation and reconstruction efforts;
- Maintenance of essential public services; and
- Provision of emergency humanitarian relief.

1. Rehabilitation and reconstruction efforts

Rehabilitation and reconstruction efforts address long-term needs of the state infrastructure. In principle, the planning and undertaking of these efforts falls under the prerogative of the national authorities. Considering the absence of legitimate national authorities in Iraq to supervise and guide these efforts, projects in this domain should be limited to urgent rehabilitation and reconstruction initiatives.

The responsibility of the OP under IHL is to rehabilitate and maintain infrastructure essential to the survival of the civilian population (e.g., water supply, sewage) as it existed prior to the conflict, and not to

significantly alter the state structure and planning. It cannot undertake major public works unless deemed essential for the survival and security of the population or for public order (e.g., repair of a dam, rehabilitation of health infrastructure, etc.). The construction of a new hospital or the expansion of the road system would likely fall outside the OP's mandate as administrator. Municipalities, to the extent that they have remained in charge of their districts and can function in a representative manner, can engage in rehabilitation and reconstruction efforts independently of the OP.

- The role of international assistance in reconstruction under occupation

Similar limitations, therefore, apply to international assistance. In principle, such assistance should be limited to urgently needed projects for the security and welfare of the people. It should not contribute to projects that alter permanently and in a significant manner the social and physical infrastructure of Iraq before the re-establishment of legitimate competent authorities to act on these issues according to Iraqi laws. International assistance can certainly provide useful support to small-scale efforts at the local and municipal levels where the requirements for representation can be fulfilled even under occupation. Until the re-establishment of competent national authorities, international organizations cannot carry out programs of a national scale or engage in activities that would require specific authorization from national authorities under Iraqi laws. The OP is responsible for the proper implementation of these rules regarding all rehabilitation and reconstruction activities in the territory they control.

2. Maintenance of essential public services under occupation

Essential public services under IHL are composed of various types of state services to the population, including the supply of food, medicine, water, sewage, health services, power, and education. ([Article 50](#))

The list of services may expand over time to include other services essential for the survival of the population.

IHL requires that the OP maintain these essential public services under occupation. This is of particular significance in Iraq, where the state was the main supplier of essential goods and services to over 60% of the population.

The OP may delegate aspects of implementation 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. Organizations, including international agencies, participating in the maintenance of these services are acting on behalf and under the supervision of the OP.

- The role of international assistance in the maintenance of public services

The OP may call on international assistance in the implementation of its obligations. Assistance, of a technical or material nature, is delivered in line with the OP's objectives, and under its supervision. Organizations participating in this effort do not enjoy special privileges or rights to humanitarian access under the Fourth Geneva Convention. In principle, international humanitarian organizations who wish to maintain their independence and impartial character should refrain from directly assisting the OP in the implementation of its obligations to maintain essential public services. Humanitarian assistance under IHL applies only to situations where the OP has failed to adequately supply the population.

3. Emergency humanitarian relief

Humanitarian relief includes the same items as above, defined as essential for the survival of civilians under occupation. However, humanitarian relief covers only situations where the OP has failed to adequately supply the population. ([Article 59](#)) This assistance must be delivered with the necessary guarantees of independence and impartiality offered by humanitarian organizations.

These organizations have a right of access to independently assess the adequacy of supplies and plan relief operations. Once inadequacies have been identified, they may undertake the delivery of relief consignments to the population. The duties of the Occupying Power are to guarantee secure access to the civilian population throughout the occupied territories. This includes free passage of humanitarian personnel and consignments, a prohibition on taxation of relief consignments, and no diversion of relief consignments unless dictated by the interests of the civilian population. ([Article 61](#)) Without limiting access to the population, because the OP is responsible for the maintenance of public order, it may promulgate specific rules pertaining to the deployment and activities of humanitarian organizations and their personnel. In this regard, humanitarian personnel are expected to refrain from overstepping their humanitarian mandate, and organizations cannot use their assistance for political propaganda.

Conclusions

This featured analysis provides key legal concepts applicable to the delivery of international assistance in occupied territory. It is hoped that this analysis will help UN humanitarian agencies and NGOs to identify opportunities for assistance that will answer the acute needs of the civilian population in Iraq while both emphasizing the responsibilities of the OP and preserving the capacity of the Iraqi people to determine their own future. The implementation of such assistance will certainly raise numerous challenges and dilemmas. IHL provides useful guidance to address these challenges and thus, can help organizations in fulfilling their humanitarian mission.

This briefing note is presented by the International Humanitarian Law Research Initiative at the Harvard Program on Humanitarian Policy and Conflict Research. This initiative provides information on legal aspects of the current conflict in Iraq. It has been developed by a team of Harvard-based experts on IHL to meet the needs of policy makers, practitioners and the media concerning current challenges in the application of international humanitarian law in Iraq.

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