

Will International Law Shape the Occupation, or the Occupation Shape International Law?

By Ian Williams | May 14, 2003

The problem with trying to be reasonable with the neoconservative hawks in the Bush administration is that all too often they take it as surrender. The announcement by key antiwar members of the UN Security Council that they would consider lifting sanctions on Iraq has been taken as total agreement with the U.S. agenda. It is clearly not.

The draft resolution put forward by the U.S. administration, drafted by the Pentagon with some cosmetic input from the State Department and the British, makes few if any concessions to legality or respect for the UN Charter and the Security Council. At its core is the entirely expedient wish to get the occupation authorities' hands on the oil revenues. It could be argued that the only reason the Pentagon is bothering with the United Nations at all is its own surprising discovery that no one will buy Iraqi oil on the world market without a UN resolution authorizing sales.

Once the decision was taken to go for a UN resolution, the British input, was, at least in the British view, highly significant in making it more acceptable to other members of the Security Council and to the United Nations Secretariat. Perhaps the most telling comment on the resolution was the immediate resignation of British overseas development minister Clare Short because of the lack of the vital role for the UN that had been promised by Bush to Blair, and by Blair to her.

What the British and the State Department did get were some small cosmetic concessions. The Allies accepted that they were indeed occupying powers in international law, even though American diplomats had chastised Kofi Annan

for prematurely suggesting so only last month. The contracts with major suppliers under the Oil For Food program would be honored, which it was hoped would buy off the French and Russians on the assumption that their interests were totally venal. And the Secretary General would be asked to nominate a Special Coordinator, whose job would be to coordinate with "the Authority," as the occupation regime is known.

Oil and Power

The key part for the White House, apart from an end to all sanctions except those on weapons, is undoubtedly paragraph 21, which shows the depth of Pentagon shock at the UN's power. The full authority of the Security Council, under Chapter VII, would make Iraqi oil sold by the new regime "immune from judicial, administrative, arbitration or any other proceedings, (including any prejudgment or postjudgment attachment, garnishment, or execution or other action to satisfy a judgment) arising in relation to claims, of whatever kind and whenever accrued, against Iraq or any instrumentality or agents thereof, (or the Authority, or its participating states or their instrumentalities or agents). This awesome American legalese may be cynically translated, as the Senator once said about Panama, "We stole it fair and square," It's ours!



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The resolution then “notes” the establishment of an “Iraqi Assistance Fund,” into which all future the oil revenues would go. This would have an international advisory board, which would “include” representatives of the Secretary General, the Iraqi Central Bank, the IMF, World Bank, and so on. The Council is in fact being asked to “note” the existence of a body that does not yet exist, and which no one has yet agreed to establish.

In any case, the Fund, whatever the advice of its board, would “disburse” the funds “at the direction of the Authority,” albeit “in consultation with the Iraqi interim authority.” In other words, if the Pentagon decides that the best use of this money is to hand it over to Halliburton and Bechtel to spend appropriately, then that is authorized. Indeed, the Fund has the right to get its hands on any Iraqi cash, whether governmental or from regime family funds, anywhere in the world.

The resolution “supports the formation, by the people of Iraq, with the help of the Authority, and working with the Special Coordinator of an Iraqi Interim authority as a transitional authority run by Iraqis until a permanent government is established by the people of Iraq.” This completely avoids any issues of who will decide which Iraqis will run the Interim authority, and for how long, and what conditions need to be met. The only sure thing is that it can only do what the Authority tells it to since it is clear that the UN Coordinator has no authority to assess just how democratic or popular any such administration is.

In addition to these objections, Council members should—and almost certainly will—raise many other issues. Firstly, the existing corpus of UN resolutions makes lifting sanctions condi-

tional on a declaration by the UN weapons inspectors that Iraq is free from weapons of mass destruction. The resolution does not mention them, nor indeed the declaration. And while it leaves the arms embargo in place, it sets up no international or UN body to enforce it.

The Russians in particular are raising this point, but others will echo them. Even the British are embarrassed at this crude display of anti-UN prejudice from the Pentagon, since they are well aware that UN weapons inspector Hans Blix’s global credibility will be needed to guard against the immediate accusations of “plant” that would follow any coalition discovery of weapons of mass destruction.

Currently, the Oil for Food Program is entirely responsible for feeding 60% of Iraqis, and another 30% benefit from it in some measure. The resolution would terminate the program by October. Looking at the occupation’s failures so far, it does not take a curmudgeon to doubt the “Authority’s” ability to fill the gap.

There is also a provision for 5% of oil revenues to be devoted to reparations for the last Gulf War, most of which will go to Kuwait. The reparations have all the markings of a slow fuse for future conflict between Iraq and Kuwait, not least since Iranians are also beginning to wonder where their reparations are for the war that Iraq waged on them earlier—and which we know was aggression because not only the UN said so, but so did George W. Bush when he spoke to the UN General Assembly last year.

Occupation is Shaping International Law

Overall, the resolution does not try to bring the Iraqi occupation into line with international law: It attempts to reshape international law to fit the

occupation. The draft resolution is predicated on its acceptance by the beginning of June, when the Oil for Food mandate needs renewal. That gives a fairly short time for the long and intricate negotiations that will be necessary—between the Pentagon and the State Department, let alone between the rest of the Security Council and the U.S./UK.

The “opposition” on the Security Council, not to mention the UN secretariat, has to walk through a minefield. No one wants the Iraqi people to suffer, and they will want to encourage Colin Powell in the internecine battles in the White House. So they have to concede more than they would like, while not abandoning their main lever of power—access to the oil revenues, and while trying to patch the tear in the global order and the UN Charter that the invasion represented.

So far, they seem to be approaching it with some tact and delicacy: but one hopes that they do not overdo it, for the sake of the global order and the Charter, that they are indeed tough enough to get a significant UN role in legitimating a new Iraqi regime—as indeed many Iraqis want. No Iraqi leader wants to go to the first polls as an American Quisling.

(Ian Williams <uswarreport@igc.org> contributes frequently to Foreign Policy in Focus (online at www.fpif.org) on UN and international affairs.)

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Writer: Ian Williams

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