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Iraq: legal issues at the handover

This Paper discusses the international legal framework for Iraq at the end of the occupation. It gives a brief overview of the occupation period and then describes the legal sources for the new arrangements. These include transitional political structures and a multinational military force. The Paper also looks at ways in which legal responsibility might arise for the UK in respect of abuse of detainees in Iraq.

A companion paper, *Iraq: political and security issues at the handover*, RP 04/58, discusses the internal situation in Iraq in more detail.

Questions concerning the use of force against Iraq are discussed in *Iraq: bibliography on the use of force*, SN/IA/2943, 5 March 2004.

On 1 July 2004 Saddam Hussein was arraigned before the Iraqi Special Tribunal for Crimes Against Humanity. The trial has not started. The Special Tribunal is discussed in *Iraq: trial of Saddam Hussein*, SN/IA/2826, 15 December 2003.

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Summary of main points

The legal framework in Iraq includes substantial international elements.

- During the occupation, the USA and the UK were governed by the Hague and Geneva Conventions and by Security Council Resolutions 1483 and 1511, as well as by their other treaty obligations, for instance on human rights.
- Their administrators in Iraq, the Coalition Provisional Authority (CPA), worked with the United Nations and Iraqi representatives to create new arrangements for the next phase of the transition to full self-government. These were embodied in a Transitional Administrative Law (TAL), and they were endorsed in Security Council Resolution 1546.
- Iraq did not lose its sovereignty during the occupation, but it did lose the exercise of sovereign powers.
- The new Interim Government of Iraq has resumed the exercise of sovereign powers, but it operates within a framework of internationally derived instruments, as will its successor, the Transitional Government. These include international treaties and other international law, UN Security Council Resolutions, the TAL, and a body of Iraqi law which was modified extensively by the CPA.

Iraq's security is largely in the hands of the Multinational Force (MNF), a UN-authorized force under US command. Iraqi forces operate alongside the MNF, but they are not part of it.

The MNF is immune from Iraqi legal process. Contractors working on its behalf are immune from Iraqi legal process for actions carried out pursuant to their contracts.

Responsibility for abuses of Iraqi detainees would be shared by the occupying powers were it the result of CPA policies. It could also be shared in the event that one power transferred persons to another in the knowledge that they were at serious risk of abuse.

A companion paper, *Iraq: political and security issues at the handover*, RP 04/58, discusses the internal situation in Iraq in more detail. It gives a detailed account of the remainder of the period of transition to full self-government, including the timetable, structures and political priorities. It also looks at the state of the insurgency in Iraq and describes the composition of the MNF.

This Paper focuses on the international legal framework for Iraq.

CONTENTS

I	Iraq under occupation	7
	A. Overview	7
	B. Developing framework	7
	C. Sovereignty	9
	1. Persisting sovereignty	9
	2. Exercised by the CPA	9
	3. Conditioned by the Security Council	10
II	Current framework	11
	A. Civil	11
	1. Overview	11
	2. Treaties	12
	3. Security Council resolutions	13
	4. Transitional Administrative Law	15
	5. Iraqi law	16
	B. Military	17
	1. Multinational force	17
	2. Iraqi forces	22
III	Responsibility for actions before handover	23
	A. General UK role	23
	B. Abuse of detainees	23
	1. Transfer to US custody	24
	2. Reports into abuse	24
	3. British Government's awareness of allegations	26
	4. Applicable law	28
	Appendix UN Security Council Resolutions 1483, 1511 and 1546	32

I Iraq under occupation

A. Overview

As the USA and the UK took control of territory in Iraq between March and April 2003 they became occupying powers. As a result they had rights and obligations under international law.

These are set out principally in the Regulations annexed to Hague Convention IV 1907 and in Geneva Convention IV 1949.

United Nations Security Council Resolution 1483, adopted on 22 May 2003, set out additional specific tasks for the occupying powers, and it created scope for a wide-ranging role for them. It established relationships between the occupying powers, the UN and the emergent Iraqi authorities.

In accordance with these instruments, Iraq's existing legal and institutional framework remained in place except insofar as the occupying powers varied it. Traces of pre-existing arrangements remain in place, but the occupying powers introduced a considerable body of new law.

Security Council Resolution 1511, adopted on 16 October 2003, made important additions to the legal framework, since it introduced elements of a timetable for the transition to Iraqi rule, boosted the role of the UN, and authorised a multinational military force in Iraq.

These aspects are discussed in detail in Research Paper 03/51, *Iraq: law of occupation*, 2 June 2003, and in SN/IA/2712, *Iraq: Security Council Resolution 1511*, 21 October 2003.¹

Towards the end of the occupation the Security Council adopted Resolution 1546, which set out the arrangements for the remaining stages of the transition to self-government. It is discussed in more detail below.

B. Developing framework

At the start of the occupation the USA used a body known as the Office of Reconstruction and Humanitarian Assistance to initiate reconstruction efforts. Much immediate work was carried out by military forces. The USA, the UK and their allies then established the Coalition Provisional Authority (CPA) in early May 2003 to take responsibility for the administration and security of Iraq. Its role was recognised in Security Council

¹ <http://hcl1.hclibrary.parliament.uk/rp2003/rp03-051.pdf> and <http://hcl1.hclibrary.parliament.uk/notes/iads/sn-02712.pdf>.

Resolution 1483. That Resolution also supported the formation of an Iraqi interim administration, a process in which the occupying powers were already engaged and which culminated in the creation of the Governing Council of Iraq on 30 July 2003.

Later, under Security Council Resolution 1511, the security aspects of the occupation were passed to the Multinational Force (MNF). In practice, this was the coalition's military forces, but in legal terms there was an important change. The coalition forces were given a mandate by the Security Council and no longer had to rely on the arguments put forward before the onset of military action as a basis for their role in Iraq. Those arguments were contested by many other states and observers.²

After Security Council Resolution 1511 it was common to speak of the CPA as the civil administration of Iraq, including the Governing Council to which it progressively transferred responsibilities, and to speak of the MNF as the military force. However, the CPA was not divested of its responsibility for "working towards the restoration of conditions of security," as set out in Resolution 1483.

Resolution 1511 also endorsed arrangements for the transition to full self-government in Iraq. These were amplified by an "Agreement on Political Process," signed by the CPA and the Governing Council in November 2003.³ One of the major steps set out in the Agreement on Political Process was the adoption of a basic law. This was achieved in the form of the "Transitional Administrative Law" (TAL), adopted by the Governing Council in March 2004.⁴ An Annex to the TAL was adopted on 1 June 2004, which gave more detail on the structure and powers of government during the next phase.

On 8 June 2004 the Security Council adopted its Resolution 1546, in which it set out the arrangements for the handover to Iraqi self-government after the end of the occupation, including the civil and military aspects. Broadly speaking, this represented an endorsement of the TAL, with some additional features. Some conditions were placed on the activities of the newly formed Interim Government of Iraq, and a limited lifespan was imposed on its successor, the Transitional Government.

² The question of the lawfulness of the military campaign itself is discussed in SN/IA/2943, *Iraq: bibliography on the use of force*, 5 March 2004, <http://hcl1.hclibrary.parliament.uk/notes/iads/sn-02943.pdf>.

³ http://www.cpa-iraq.org/audio/20031115_Nov-15-GC-CPAFinal_Agreement-post.htm. More detail on the Agreement is in SN/IA/2909, *Iraq: political and security issues*, 20 February 2004, <http://hcl1.hclibrary.parliament.uk/notes/iads/sn-02909.pdf>.

⁴ <http://www.cpa-iraq.org/government/TAL.html>. The TAL is discussed in detail in SN/IA/3004, *Iraq: political and security issues and the adoption of the Transitional Administrative Law*, 8 April 2004, <http://hcl1.hclibrary.parliament.uk/notes/iads/sn-03004.pdf>.

On 28 June 2004, acting under Resolution 1546, the CPA handed over civilian administration to the Interim Government of Iraq, which had replaced the Governing Council on 1 June 2004. The CPA ceased to exist, but the MNF continued to operate.

C. Sovereignty

When the CPA handed over power on 28 June 2004 it was widely remarked that Iraq had regained its sovereignty. However, there is no legal basis for suggesting that Iraq ever lost its sovereignty, and the Security Council made clear that the CPA had not assumed sovereignty. Rather, it assumed the exercise of powers deriving from sovereignty, and it was these that were restored to the Interim Government of Iraq, subject to continuing conditions.

These points are not without significance. Much of the thrust behind the law on occupation comes from the principle that territory cannot be acquired by force and that, therefore, occupying powers may not assume sovereignty over territory they have occupied.

Nevertheless, Iraqis were able to exercise sovereign powers only to a very limited degree during the occupation, and the Security Council conditioned Iraqi sovereignty thereafter in a relatively strong way.

1. Persisting sovereignty

In the preamble to Resolution 1483 the Security Council reaffirmed the sovereignty and territorial integrity of Iraq, and it stressed the right of the Iraqi people freely to determine their own political future and to control their natural resources.

In the preamble to Resolution 1511 the Security Council underscored “that the sovereignty of Iraq resides in the State of Iraq,” and it reaffirmed the rights to determine the political future and to control natural resources.

2. Exercised by the CPA

The Security Council made the limits of the CPA’s role clear in Resolution 1511. In paragraph 1 it

reaffirm[ed] the sovereignty and territorial integrity of Iraq, and underscore[d], in that context, the temporary nature of the exercise by the Coalition Provisional Authority (Authority) of the specific responsibilities, authorities, and obligations under applicable international law recognized and set forth in resolution 1483 (2003), which will cease when an internationally recognized, representative government established by the people of Iraq is sworn in and assumes the responsibilities of the Authority [...].

In paragraph 4 the Security Council determined that the Governing Council of Iraq and its ministers were

the principal bodies of the Iraqi interim administration, which, without prejudice to its further evolution, embodies the sovereignty of the State of Iraq during the transitional period.

Thus the CPA undertook the exercise of responsibilities, authorities and obligations for the administration of Iraq, while the Governing Council was the embodiment of an Iraqi sovereignty that persisted throughout.

In the preamble to Resolution 1546, the Security Council reaffirmed “the independence, sovereignty, unity, and territorial integrity of Iraq” and it once more reaffirmed the freedoms to determine the political future and to control resources. In paragraph 2 it welcomed the fact that the occupation was about to end and that Iraq would then “reassert its full sovereignty.” Again, this implies that it was the assertion or exercise of sovereignty that had been abated. As discussed below, this distinction should not obscure the fact that across Iraqi society many traces of CPA authority remain.

3. Conditioned by the Security Council

The persisting sovereignty of Iraq was, however, conditioned by the Security Council in important ways.

For instance, it was the Security Council, rather than a functioning Iraqi government, which endorsed the exercise of responsibilities by the CPA in Resolutions 1483 and 1511. Likewise, the Security Council provided in the same two Resolutions that the Governing Council would be a transitional body, that a new constitution would be drafted and that the transitional period would end once a government was elected under that constitution. Also, in Resolution 1511 the Security Council authorised the presence in Iraq of the MNF.

The Security Council endorsed detailed provisions for the remainder of the transitional period in its Resolution 1546, albeit these reflected what had already been agreed in the TAL. They included the end of the occupation, and the dissolution of the CPA and the Governing Council, by the end of June 2004. Thereafter, a two-phase process would begin, still with international involvement. In the first, “interim,” phase, an Interim Government of Iraq would be set up. This body was placed under an obligation to refrain “from taking any actions affecting Iraq’s destiny beyond the limited interim period.” The UN mission in Iraq, UNAMI, would play a leading role in assisting the Interim Government. The second, “transitional,” phase would begin with elections for a Transitional National Assembly by 31 January 2005. This Assembly would form a Transitional Government and it would draft the new constitution of Iraq. The Security Council endorsed the TAL’s one year limit on the lifespan of the Transitional Government. Elections would be held under the new constitution and a new government would be formed by 31 December 2005.

So, the Security Council first endorsed the Governing Council as the embodiment of Iraqi sovereignty, while giving many of the powers of a sovereign government to the CPA. Then it endorsed the Interim Government, which has broad powers within the seven month interim phase, but which may not affect the country's destiny beyond that time. Thereafter the Security Council endorses a Transitional Government with virtually full powers, but it limits its lifespan to one year and requires that the constitution be redrafted during this period.

This conditioning of Iraqi sovereignty has been possible because the Security Council determined in its relevant resolutions that the situation in Iraq constituted a threat to international peace and security, and because it declared itself to be acting under Chapter VII of the UN Charter. This exempts the Security Council from the usual prohibition on intervening in a state's domestic affairs. The principle of non-intervention, and the Chapter VII exception, are given in Article 2 (7) of the Charter.⁵

II Current framework

A. Civil

1. Overview

Iraq is bound by the normal rules of international law, including treaties to which it is party.

Law deriving from the international sphere also affects Iraq in other ways.

For instance, Security Council Resolution 1546 provides a legal basis for the current arrangements in Iraq, and for developments over the next period until the end of the transition process. This represents a detailed role in the internal affairs of a state. Resolution 1546 was adopted under Chapter VII of the UN Charter, so it is binding on the Interim Government of Iraq.

Other Security Council resolutions remain relevant, even if many of their provisions have been superseded or fulfilled.

The Transitional Administrative Law (TAL), adopted by the Governing Council during the CPA period, provides a constitutional framework for the remainder of the transition.

The internal laws and institutions of Iraq come from two sources. Under the law of occupation the existing arrangements in occupied territory may be varied only to a limited

⁵ On a strict reading there is room for discussion as to whether the Security Council's measures in Iraq do fit the Article 2(7) exception, since the article refers to "enforcement measures" only, but in practice the Council has often interpreted its responsibility for international peace and security in broad terms.

extent, although the Security Council endorsed a wide-ranging role for the CPA in its Resolution 1483. This means that the laws of Iraq before the occupation are still in force except insofar as they were amended or repealed by the CPA. Likewise, the new instruments introduced during the CPA period remain in force, except as varied by the Interim Government, which may itself introduce new laws, subject to certain conditions.

2. Treaties

Iraq's treaty obligations remain binding. Iraq is a party to various multilateral treaties, including the Genocide Convention 1948,⁶ the Geneva Conventions 1949 (though not their Additional Protocols 1977), the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights 1966, the Convention on the elimination of discrimination against women 1979, and the Convention on the rights of the child 1989.

Iraq is not a party to the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity 1968, the Biological Weapons Convention 1972, the Additional Protocols to the Geneva Conventions 1977, the Excessively injurious weapons Convention 1980 and its various protocols, the Torture Convention 1984, the Chemical Weapons Convention 1992, the Convention for suppression of terrorist bombings 1997, the Landmines Convention 1997, the Statute of the International Criminal Court 1998, and the Convention for the suppression of terrorist financing 1999.

As mentioned, the Interim Government of Iraq is not allowed to take actions affecting Iraq's destiny beyond the end of January 2005. This limits its capacity to enter into treaties. Its powers are set out in the TAL and its Annex, which are discussed below. Under Section Two of the Annex,

the Interim Government will represent Iraq in its external relations, but its powers in concluding international agreements will not extend beyond Iraq's diplomatic relations, international loans and assistance, and Iraq's sovereign debt.

Thus Iraq may not become party to treaties, other than for diplomatic relations, loans, assistance and sovereign debt, before the formation of an elected government by the end of January 2005.

⁶ This list uses the short form of the names of these treaties.

3. Security Council resolutions

a. Older resolutions

The Security Council has adopted many resolutions on Iraq since the invasion of Kuwait in August 1990. These form a coherent body of law, and the Security Council still discusses Iraq under the agenda item “the situation between Iraq and Kuwait.” In Resolution 1546, its most recent on the subject, the Security Council recalls all the previous resolutions, and it makes clear that aspects of them are still applicable.

For instance, the arms embargo originating in Resolution 661 remains in place, except for arms supplied to the Government of Iraq and to the MNF. Provisions on weapons of mass destruction in Resolutions 687 and 707 also remain in place. Resolution 1546 builds on the previous “occupation resolutions,” 1483, 1500, and 1511. For instance, it refers to the MNF and to the UN Assistance Mission for Iraq (UNAMI), which were authorised in those resolutions, and it provides detail on the transition called for in paragraph 7 of Resolution 1511. Other arrangements set out in Resolution 1483 continue, as modified by Resolution 1546. These include provisions in respect of the Development Fund for Iraq and the “oil-for-food” programme, and protections for Iraqi oil and gas exports to prevent creditors from taking legal action against them by way of settlement.

b. Security Council Resolution 1546

Security Council Resolution 1546 is the most relevant at the moment. In this the Security Council endorsed the details for the remainder of the transition to full self-government. These had been developed by Lakhdar Brahimi, the Special Adviser to the UN Secretary-General, in discussions with the CPA, the Governing Council and other Iraqi representatives.⁷

The Security Council endorsed the replacement of the Governing Council by the Interim Government, which had taken place on 1 June 2004. It provided that the occupation would end by 30 June 2004 and that the CPA would cease to exist at that point (in fact the handover took place two days early, on 28 June 2004). It gave the Interim Government a range of tasks, including the holding of elections by 31 January 2005. These elections would lead to the formation of a Transitional National Assembly, which would create a Transitional National Government, to replace the Interim Government, and draft a new constitution. A new government would be elected under this constitution by 31 December 2005.

In paragraph 1 of Resolution 1546 the Security Council endorsed the formation of

⁷ An account of Mr Brahimi’s efforts is given in a letter of the Secretary-General to the President of the Security Council, S/2004/461, 7 June 2004. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N04/378/75/PDF/N0437875.pdf?OpenElement>.

a sovereign Interim Government of Iraq, as presented on 1 June 2004, which will assume full responsibility and authority by 30 June 2004 for governing Iraq while refraining from taking any actions affecting Iraq's destiny beyond the limited interim period until an elected Transitional Government of Iraq assumes office as envisaged in paragraph four below.

In paragraph 4 it set out the details of the interim and transitional periods:

[The Security Council] *endorses* the proposed timetable for Iraq's political transition to democratic government including:

- (a) formation of the sovereign Interim Government of Iraq that will assume governing responsibility and authority by 30 June 2004;
- (b) convening of a national conference reflecting the diversity of Iraqi society; and
- (c) holding of direct democratic elections by 31 December 2004 if possible, and in no case later than 31 January 2005, to a Transitional National Assembly, which will, inter alia, have responsibility for forming a Transitional Government of Iraq and drafting a permanent constitution for Iraq leading to a constitutionally elected government by 31 December 2005;

In paragraph 2 the Security Council

welcome[d] that, also by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and that Iraq will reassert its full sovereignty.

However, this did not end the international involvement in Iraq.

In paragraph 7 the Security Council described the role of UN personnel. It decided that

in implementing, as circumstances permit, their mandate to assist the Iraqi people and government, the Special Representative of the Secretary-General and the United Nations Assistance Mission for Iraq (UNAMI), as requested by the Government of Iraq, shall:

- (a) play a leading role to:
 - (i) assist in the convening, during the month of July 2004, of a national conference to select a Consultative Council;
 - (ii) advise and support the Independent Electoral Commission of Iraq, as well as the Interim Government of Iraq and the Transitional National Assembly, on the process for holding elections;
 - (iii) promote national dialogue and consensus-building on the drafting of a national constitution by the people of Iraq;
- (b) and also:

- (i) advise the Government of Iraq in the development of effective civil and social services;
- (ii) contribute to the coordination and delivery of reconstruction, development, and humanitarian assistance;
- (iii) promote the protection of human rights, national reconciliation, and judicial and legal reform in order to strengthen the rule of law in Iraq; and
- (iv) advise and assist the Government of Iraq on initial planning for the eventual conduct of a comprehensive census.

It is notable that the Security Council drew attention here to the capacity of the Interim Government to “request” this involvement. The detailed tasks (sub-paragraphs [a] and [b]) were decisions of the Security Council, but the overarching involvement was at the request of the Iraqi authorities. This is to some extent a diplomatic nicety, but it also promotes the sense of a resumption of the exercise of sovereignty. The Interim Government is not only the recipient of conferred benefits, but it is also able to influence matters through its own requests.

4. Transitional Administrative Law

The details of the Transitional Administrative Law (TAL) and its Annex are discussed in SN/IA/3004, *Iraq: political and security issues and the adoption of the Transitional Administrative Law*, and in RP 04/58, *Iraq: political and security issues at the handover*. The texts of the TAL and its Annex are available on the CPA website.⁸

The TAL is described as a “supreme law” and it is effectively a substitute for a constitution. It will be effective throughout the remainder of the interim and transitional phases, and it will end once a constitutionally elected government is in place by the end of 2005. It includes the timetable, provisions on the structure and powers of government during the interim and transitional phases, and, in Chapter Two, guaranteed rights (the CPA referred to these provisions as a “bill of rights”).

The TAL resulted from a process of discussion with the CPA, the UN and Iraqi groups, but it was signed by the Governing Council. This meant that the new constitutional document was introduced by an Iraqi body. The TAL itself was signed on 8 March 2004. An Annex was signed on 1 June 2004, the last act of the Governing Council before it dissolved itself and handed over to the Interim Government. The Annex gives further details on the structure and powers of the Interim Government.

The Interim Government may not change the TAL nor its Annex. During the transitional phase, amendments may be made to the TAL by a three-fourths majority of the National Assembly and the unanimous approval of the Presidency Council. There are some

⁸ <http://www.iraqcoalition.org/> .

limitations on this, including that the rights in Chapter Two may not be abridged and that the transitional period as a whole may not be extended.

5. Iraqi law

Under the general law on occupation the existing laws and institutions of a state remain in place, subject to limited powers to amend them for reasons of security. Under Security Council Resolution 1483 the CPA gained authority to move beyond these limits.⁹

Under Article 26 (c) of the TAL,

the laws, regulations, orders and directives issued by the Coalition Provisional Authority pursuant to its authority under international law shall remain in force until rescinded or amended by legislation duly enacted and having the force of law.

The CPA website lists 12 Regulations, 100 Orders, 17 Memoranda and 12 Public Notices issued by it. The CPA describes them as follows:

Regulations – are instruments that define the institutions and authorities of the Coalition Provisional Authority (CPA).

Orders – are binding instructions or directives to the Iraqi people that create penal consequences or have a direct bearing on the way Iraqis are regulated, including changes to Iraqi law.

Memoranda – expand on Orders or Regulations by creating or adjusting procedures applicable to an Order or Regulation.

Public Notices – communicate the intentions of the Administrator to the public and may require adherence to security measures that have no penal consequence or reinforces aspects of existing law that the CPA intends to enforce.

The body of Iraqi law as at 30 June 2004 likewise remains in place until rescinded or amended, under Article 26 (a) of the TAL.

Thus the Interim Government inherited a legacy of Iraqi law and of CPA changes to that law. Its capacity to create new laws is set out in the Annex to the TAL.

Under Section Two of the Annex to the TAL,

the Council of Ministers with the unanimous approval of the Presidency, may issue orders with the force of law that will remain in effect until rescinded or amended by future Iraqi governments.

⁹ In paragraph 1 the Security Council appealed to states “to assist the people of Iraq in their efforts to reform their institutions and rebuild their country.” In paragraph 4 it called on the CPA “to promote the welfare of the Iraqi people through the effective administration of the territory.”

Under Section Three of the Annex to the TAL, the Interim National Council, which is due to be chosen by a national conference in July 2004, may veto executive orders by a two-thirds majority vote within 10 days of being notified of an order after it has been approved by the Presidency.

According to the CPA website,

in the drafting process, it was clear that the Iraqis intended to give the Iraqi Interim Government the power to modify Iraqi law, including CPA regulations, orders and memoranda.

Its successor, the Transitional Government, will inherit the body of law as amended by the Interim Government, which it has the power itself to amend or rescind. The legislative process during the transitional phase is set out in Chapters Four and Five of the TAL.

B. Military

1. Multinational force

The MNF was established under Security Council Resolution 1511.¹⁰ The provisions on its role in the remainder of the transitional period are set out in paragraphs 9 to 15 of Security Council Resolution 1546, in letters annexed to that Resolution and in CPA regulations.

a. Mandate

In Resolution 1511 the Security Council authorised

a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme as well as to contribute to the security of the United Nations Assistance Mission for Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure.¹¹

Under Resolution 1511 the MNF had a limited mandate. This would be reviewed within a year (ie by 16 October 2004), and it would expire in any case at the end of the transition to constitutionally elected government. At that point the Security Council would consider whether the mandate for the MNF should be extended. It would take the views of an Iraqi government into account.

¹⁰ Detail on the composition and activities of the MNF is given in RP 04/58, *Iraq: political and security issues at the handover*.

In Resolution 1546 the Security Council gave the Iraqi government a stronger hand. In particular, the Council undertook to terminate the mandate of the MNF if requested by the government of Iraq. It decided that

the mandate for the multinational force shall be reviewed at the request of the Government of Iraq or twelve months from the date of this resolution, and that this mandate shall expire upon the completion of the political process set out in paragraph four above, and *declares* that it will terminate this mandate earlier if requested by the Government of Iraq.¹²

In Resolution 1511 the Security Council had authorised the MNF on the basis of a threat to international peace and security, and in order to safeguard the reconstruction process. In paragraph 9 of Resolution 1546 it noted that the presence of the MNF was at the request of the incoming Interim Government and it “therefore reaffirm[ed] the authorisation” of the MNF contained in Resolution 1511. This indicated that the authorisation was conditional on the consent of the Interim Government.

Nevertheless, the Security Council retains primary responsibility for international peace and security, and it has determined repeatedly that the situation in Iraq constitutes a threat thereto. Should Iraqi consent for the MNF be withdrawn, it would be open to the Security Council to consider other options.

b. Responsibilities

The responsibilities of the MNF remained broadly the same under Resolution 1546, except that its role in combating terrorism was made explicit:

the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of the multinational force and setting out its tasks, including by preventing and deterring terrorism, so that, inter alia, the United Nations can fulfil its role in assisting the Iraqi people as outlined in paragraph seven above and the Iraqi people can implement freely and without intimidation the timetable and programme for the political process and benefit from reconstruction and rehabilitation activities.¹³

The Security Council called on states to contribute to a separate force to be established under the MNF, which would have responsibility for the security and safety of UN personnel in Iraq.¹⁴

¹¹ Paragraph 13.

¹² Paragraph 12.

¹³ Paragraph 10.

¹⁴ Paragraph 13.

Further details on the mandate of the MNF were set out in letters from the Iraqi Prime Minister Ayad Allawi and US Secretary of State Colin Powell to the President of the Security Council, which were annexed to Resolution 1546. The Security Council endorsed these letters, as seen in the paragraph quoted above.

In his letter Dr Allawi requested a new Security Council resolution on the MNF “to contribute to maintaining security in Iraq, including through the tasks and arrangements set out in the letter from ... Colin Powell.”

Mr Powell stated that

the MNF under unified command is prepared to continue to contribute to the maintenance of security in Iraq, including by preventing and deterring terrorism and protecting the territory of Iraq. The goal of the MNF will be to help the Iraqi people to complete the political transition and will permit the United Nations and the international community to work to facilitate Iraq’s reconstruction.

He gave detail on the tasks of the MNF:

the MNF stands ready to continue to undertake a broad range of tasks to contribute to the maintenance of security and to ensure force protection. These include activities necessary to counter ongoing security threats posed by forces seeking to influence Iraq’s political future through violence. This will include combat operations against members of these groups, internment where this is necessary for imperative reasons of security, and the continued search for and securing of weapons that threaten Iraq’s security. A further objective will be to train and equip Iraqi security forces that will increasingly take responsibility for maintaining Iraq’s security. The MNF also stands ready as needed to participate in the provision of humanitarian assistance, civil affairs support, and relief and reconstruction assistance requested by the Iraqi Interim Government and in line with previous Security Council Resolutions.

In addition, the MNF is prepared to establish or support a force within the MNF to provide for the security of personnel and facilities of the United Nations.

Dr Allawi requested support from the Security Council “until we are able to provide security for ourselves, including the defence of Iraq’s land, sea and air space.”

c. Cooperation with Iraqi forces

In the two letters Dr Allawi and Mr Powell set out arrangements for coordination and cooperation between the MNF (ie US commanders) and the Interim Government and Iraqi armed forces. They described this in part as a means to assist the development of Iraqi structures, and in part as a means of involving the Interim Government in the activities of the MNF, particularly the more sensitive offensive operations. The accent was on reaching agreement, rather than on a hierarchy of powers.

Dr Allawi said that he intended to establish a Ministerial Committee for National Security, chaired by himself and involving other senior ministers and officials, and that he would invite the MNF commander to attend its meetings. Iraqi forces would not come under MNF command, but would remain under Iraqi command. There would be coordination bodies at national, regional and local levels, including Iraqi military and civilian leaders,

to ensure that Iraqi security forces will coordinate with the MNF on all security policy and operations issues in order to achieve unity of command of military operations in which Iraqi forces are engaged with MNF.

Dr Allawi concluded that

the structures I have described in this letter will serve as the fora for the MNF and the Iraqi government to reach agreement on the full range of fundamental security and policy issues, including policy on sensitive offensive operations, and will ensure full partnership between Iraqi forces and the MNF, through close coordination and consultation. Since these are sensitive issues for a number of sovereign governments, including Iraq and the United States, they need to be resolved in the framework of a mutual understanding on our strategic partnership. We will be working closely with the MNF leadership in the coming weeks to ensure that we have such an agreed strategic framework.

Mr Powell endorsed these arrangements, and he said that

development of an effective and cooperative security partnership between the MNF and the sovereign Government of Iraq is critical to the stability of Iraq. The commander of the MNF will work in partnership with the sovereign Government of Iraq in helping to provide security while recognizing and respecting its sovereignty.

d. Legal status

Mr Powell also referred to the status of the MNF, arguing that it must work

under a framework that affords the force and its personnel the status that they need to accomplish their mission, and in which the contributing states have responsibility for exercising jurisdiction over their personnel and which will ensure arrangements for, and use of assets by, the MNF.

Normally this would be set out in a Status of Forces Agreement (SOFA), but for political and legal reasons it was not possible to conclude a SOFA with the Iraqi authorities prior to the handover on 28 June 2004. Instead, the CPA issued a revised version of its Order

17.¹⁵ This sets out the legal status, and in particular the immunities, of the MNF, including its military and civilian personnel, and of civilian contractors and national diplomatic missions. It does not cover the UN, which has its own arrangements.

Broadly, MNF personnel are immune from Iraqi legal process.¹⁶ They must respect relevant Iraqi laws, including those created by the CPA,¹⁷ but they are subject to the exclusive jurisdiction of their sending state.¹⁸ They may be arrested or detained only by their sending state, except that other MNF personnel may intervene to prevent serious misconduct or injury.

Contractors have a lower level of immunity. They are immune from Iraqi legal process “with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto.”¹⁹ They may be detained by MNF personnel in order to prevent acts of serious misconduct or injury. Contractors must respect Iraqi laws, including those created by the CPA.²⁰

Contractors are not immune from Iraqi legal process in respect of acts which are not part of their contract. A contractor’s sending state may certify that s/he acted pursuant to a contract, and this will be regarded as conclusive evidence in the Iraqi courts.²¹ However, it is worth noting the impact of the Pinochet case on international legal thinking. In that case the Law Lords held that the immunity of a former Head of State for official acts could not apply to acts of torture committed after the relevant state (Chile) had become party to the Torture Convention 1984. The state had committed itself to prevent torture, through the Convention, and hence its public officials could not have torture among their official functions. If the same thinking were applied in respect of contractors in Iraq, a state party to the Torture Convention might face difficulties in seeking to protect a contractor by claiming that s/he acted pursuant to a contract if s/he carried out acts of torture.

CPA Order 17 allows for the waiver of immunities in Section 5.

A claims procedure is set up under Section 18. This applies in cases where immunity has not been waived, and that “do not arise in connection with military operations.” Claims arising from acts or omissions by the CPA, MNF, foreign liaison missions (proto-

¹⁵ CPA/ORD/27 June 2004/17.
http://www.iraqcoalition.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf.

¹⁶ CPA Order 17, Section 2 (1).

¹⁷ Section 2 (2).

¹⁸ Section 2 (3).

¹⁹ Section 4 (3). This covers only certain types of contractor (for instance, only non-Iraqis). It includes private security companies working for the MNF.

²⁰ Section 4 (4).

²¹ Section 4 (5).

embassies set up before the handover), foreign consultants or contractors, are submitted to the sending state under the terms of its laws.

e. Other obligations

The MNF is subject to international law. In the preamble to Resolution 1546 the Security Council noted the commitment of forces in Iraq to act in accordance with international law, and Mr Powell stated in his letter that the MNF was committed “at all times to act consistently with their obligations under the law of armed conflict, including the Geneva Conventions.” It is not immediately clear which parts of the Geneva Conventions Mr Powell had in mind.

The contributors to the MNF remain subject to their other treaty obligations. For instance, the Torture Convention applies in time of peace or war, and human rights treaties such as the International Covenant on Civil and Political Rights, or the European Convention on Human Rights (ECHR), might also apply.²² The British Government argues that the ECHR does not apply in Iraq, and this matter is currently before the courts.

2. Iraqi forces

Security Council Resolution 1546 made reference to the need for Iraq to develop its own security forces. These will operate under the authority of the Interim Government, separately from the MNF, and they will “progressively play a greater role and ultimately assume full responsibility for the maintenance of security and stability in Iraq.”²³

The MNF will assist in recruitment, training, equipping and in other ways developing capability of the Iraqi security forces.²⁴

In their letters to the President of the Security Council, annexed to Resolution 1546, Dr Allawi and Mr Powell stressed these points. Dr Allawi expressed determination to develop forces “capable of providing adequate security for the Iraqi people” and he also spoke of the relevant structures to give political direction to these forces. Mr Powell spoke of training and equipping Iraqi forces that would “increasingly take responsibility for maintaining Iraq’s security.” Both men made the point that the Iraqi forces would be answerable to the Iraqi authorities, although they would act in coordination with the MNF.

²² A view on this is given in *Iraq: memorandum on concerns relating to law and order*, Amnesty International, MDE 14/157/2003, 23 July 2003.
<http://web.amnesty.org/library/index/engmde141572003>.

²³ Paragraph 8.

²⁴ Paragraph 14.

III Responsibility for actions before handover

A. General UK role

The UK was a partner in the Coalition Provisional Authority (CPA), the civilian administration which closed at the end of June 2004. If the CPA committed unlawful acts as a matter of policy, then the British Government would share responsibility for these. If individual unlawful acts occurred, then British officials might be liable if they were involved.

The MNF, which was the military side of the occupation and which still operates, is under national command. This means that the USA takes overarching responsibility, while national contingents take responsibility within their own areas. British forces are unlikely to be held responsible for actions carried out by their US counterparts under separate US command.

B. Abuse of detainees

Investigations are ongoing into allegations of individual acts of abuse against Iraqis by MNF personnel.

The US authorities have acknowledged that abuse took place at Abu Ghraib prison. A investigation was carried out by General Antonio Taguba in February 2004. He presented his report to his superiors in early March 2004.

However, an additional allegation is that the US military, and possibly the political leadership, pursued a *policy* of strengthened interrogation techniques which either constituted a breach of international law or was likely to give rise to individual abuses.²⁵

The main basis for this concern is a review of interrogation practices in Iraq, which was carried out in early September 2003 by Major-General Geoffrey Miller, the commander at Camp Delta, Guantanamo Bay. The USA does not apply the Geneva Conventions to detainees in Guantanamo Bay, although it claims that it applies the provisions of those Conventions in the main. In his review Major-General Miller recommended that interrogators work more closely with military police guards to apply additional pressure to detainees and to break down their resistance. Major-General Miller later took command of detainee procedures in Iraq. The majority of the abuses of Iraqi detainees occurred after his review, in the period October 2003 to January 2004.²⁶

²⁵ See, eg, M Danner, "The Logic of Torture," *New York Review of Books*, 24 June 2004.

²⁶ A chronology of events in this affair is given at http://www.msnbc.com/modules/interactive.asp?id=/d/ip/iraq_prisoner_abuse_tl/data.js&navid=3032506&fmt=full&cp1=1.

1. Transfer to US custody

It is possible that the transfer of detainees from British to US custody might give rise to liability. Did the UK transfer prisoners to US custody in the knowledge that they might suffer treatment contrary to the UK's treaty obligations? In particular, did British officials know that the USA had adopted interrogation methods that might give rise to breaches of international law?

According to the British Government,

The UK transferred about 340 prisoners of war to the US in April 2003. All but two have subsequently been released. We are satisfied that both remaining prisoners are being treated humanely in accordance with the Geneva Conventions, to which the US is a signatory.

Between May and December 2003—when the UK divisional temporary detention facility was opened—almost all of those interned by UK forces for security reasons were held at the US facility in Umm Qasr. There was a continuous UK presence at the camp and we are not aware of any reports of deliberate mistreatment of UK internees there or elsewhere. The majority were released prior to December and the remaining few were transferred back into UK custody when the UK DTDF was opened.

Since December 2003 those UK internees transferred to the US have been held at the US facility of Abu Ghraib. All but four have been released. Two of those will be released shortly and we are continuing to have regular discussions with the US regarding the final two. We are not aware of any reports of deliberate mistreatment of UK internees.²⁷

2. Reports into abuse

There have been a number of reports on the treatment of prisoners-of-war and security detainees.

a. *International Committee of the Red Cross*

The ICRC submitted a report to the CPA in February 2004. The ICRC's Director of Operations, Pierre Krahenbuhl, said in a press conference on 7 May 2004 that the report summarised concerns that arose from visits between March and November 2003.²⁸ It was completed in January 2004.

An ICRC Press Release stated:

²⁷ HL Deb 24 June 2004, c150W.

²⁸ <http://www.icrc.org/Web/eng/siteeng0.nsf/html/5YRMYC?OpenDocument>.

This report summarizes a series of working papers handed over to coalition forces. ICRC delegates' findings were based on their observations and on private interviews with prisoners of war and civilian internees during the 29 visits the ICRC conducted in 14 places of detention throughout Iraq between 31 March and 24 October 2003.

In addition, ICRC delegates and officials met representatives of the coalition authorities to present them with serious concerns regarding the treatment of persons protected by the Third and Fourth Geneva Conventions whom the coalition forces were holding in Iraq.²⁹

The Press Release talks of “oral and written approaches.”

b. Amnesty International

Amnesty International said in a Press Release on 7 May 2004:

Last July, the organization [Amnesty International] raised allegations of torture and ill-treatment of Iraqi detainees by US and Coalition forces in a memorandum to the US Government and Coalition Provisional Authority (CPA) in Iraq. The allegations included beatings, electric shocks, sleep deprivation, hooding, and prolonged forced standing and kneeling. It received no response nor any indication from the administration or the CPA that an investigation took place.³⁰

c. Human Rights Watch

Human Rights Watch compiled a chronology of abuse allegations.³¹ It said that on 24 June 2003 the directors of various human rights groups wrote to US National Security Advisor Condoleezza Rice, asking for access to detainees. On 12 January 2004 Human Rights Watch wrote to US Secretary of Defense Donald Rumsfeld

to express concern about incidents in which U.S. forces stationed in Iraq detained innocent, close relatives of wanted suspects in order to compel the suspects to surrender, which amounts to hostage-taking, classified as a war crime under the Geneva Conventions.

Human Rights Watch wrote to Mr Rumsfeld again on 10 February 2004

expressing concern about the treatment of detainees in Iraq and urges the administration to publicly clarify the status of the detainees and to make public the numbers of detainees being held.

²⁹ <http://www.icrc.org/Web/eng/siteeng0.nsf/html/5YRL67>.

³⁰ <http://web.amnesty.org/library/index/ENGAMR510772004>.

³¹ <http://hrw.org/english/docs/2004/05/07/usint8556.htm>.

On 3 May 2004 the group wrote to Ms Rice, saying

that the ill treatment and torture of prisoners by the U.S. military in Iraq were not limited to isolated incidents, but reflected, in the words of the U.S. army's own inquiry, "systemic and illegal abuse of detainees." Human Rights Watch urges immediate action to reverse the harm these actions have caused in U.S. detention centers around the world.

3. British Government's awareness of allegations

As to the ICRC report, Lord Bach gave the following account:

The International Committee Red Cross's (ICRC) report on the treatment by the coalition forces of prisoners of war and other protected persons by the Geneva Conventions in Iraq during arrest, internment and interrogation, dated 10 February 2004, was formally passed to Ambassador Bremer and Lieutenant General Sanchez on 26 February. An advance copy was passed to the senior British military representative in Iraq and to the Office of the United Kingdom Special Representative [on 12 February 2004, see HC Deb 27 May 2004, c1845]. The senior British military representative passed a copy of the report to HQ MND(SE) on 13 February and to PJHQ on 16 February, and posted a copy to the Ministry of Defence that arrived on 27 February. The Office of the UK Special Representative was assured that allegations involving misconduct by UK forces were already under investigation as were investigations into allegations involving US forces.

The report covered visits that had taken place between three and 11 months earlier. Arrangements had changed significantly since then and the report did not raise any specific cases for the UK which had not already been addressed. A separate report, specifically for the UK, was anticipated and MoD officials took the view that it would be prudent to wait for this report and then provide Ministers with an up-to-date picture and advice on how the UK should respond. Senior officials were not party to this decision.

Defence Ministers were already aware of those issues in the ICRC interim report concerning UK Armed Forces some five months previously, and steps had already been taken to address the specific concerns raised. A copy of the report was sent to defence Ministers' offices on 7 May 2004 and the Foreign Secretary and FCO senior officials were made aware of the report on the weekend of 8–9 May 2004.³²

The Foreign Secretary, Jack Straw, indicated that the Government had some awareness of the report in March 2004, following a visit to the ICRC by Bill Rammell, Under-Secretary of State:

³² HL Deb 7 July 2004, cc89-90W.

The President of the ICRC, Dr. Kellenberger did mention briefly to my hon. Friend the Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office (Mr. Rammell) in their meeting on 18 March that the February ICRC report contained allegations concerning treatment of detainees by forces other than UK forces, though naturally the part of their discussion which covered detainees in Iraq focused on specific allegations against UK forces. The Minister discussed the concerns raised by Dr. Kellenberger with officials on his return to London. Officials had already received assurances that US investigations were under way into allegations of abuse of detainees at Abu Ghraib prison.³³

Mr Straw said that meetings took place with the ICRC throughout 2003, but that “our records do not indicate that any specific oral or written concerns about coalition forces were passed to the FCO in 2003.”³⁴

In this connection, the Prime Minister has recently acknowledged that the intelligence services had limited concerns over the interrogation procedures used by the USA. He wrote to the Intelligence and Security Committee on this matter shortly before it published its *Annual Report 2003-2004*, and the letter is quoted in the Annual Report.³⁵

The Prime Minister added, in response to other questions, that the Agencies had interviewed detainees in Guantanamo Bay and elsewhere to gather information that might prove valuable in the protection of the UK and its citizens from terrorism. He told us in May this year:

*“...that information gleaned from interviews in Guantanamo Bay and Bagram has made an important contribution to identifying and countering threats from Islamic extremist terrorist activity in the UK and elsewhere. It has enabled the identification of key terrorist organisations ****

****. Interviews in Iraq have produced intelligence leads that have facilitated followon operations and arrests leading to the disruption of planned attacks against British and other coalition forces and against civilian targets.”*

78. We also wrote to the Prime Minister to ask if any of the Agencies’ staff or military intelligence personnel had been involved in or witnessed any abuse of detainees in Afghanistan, Iraq or Guantanamo Bay. He replied just as we were completing this Report. In his letter, the Prime Minister gave us as full an answer as he could because it had not yet been possible to speak to all the officers involved. He undertook to inform us if any further information of relevance emerged, stating that:

“On this basis:

³³ HC Deb 16 June 2004, c992W.

³⁴ HC Deb 26 May 2004, c1635W.

³⁵ Cm 6240. See paras 77-8, pp22-3.

- a. Interviews of detainees conducted or observed by UK intelligence personnel have, with the following exception, been conducted in a manner consistent with the principles laid down in the Geneva Convention. In June 2003, two *** interviewed an Iraqi detainee *** at ***. The detainee was brought in hooded and shackled by the US military, and remained so during the one-hour interview. The *** understood these measures to be for security purposes, and did not report it at the time since they were not then aware that hooding was unacceptable. The detainee showed no signs of distress and made no complaint of being hooded or otherwise during the interview.*
- b. Some of the detainees questioned by UK intelligence personnel have complained – either during their detention or subsequently – about their treatment in detention.*
- c. UK intelligence personnel interviewing or witnessing the interview of detainees are instructed to report if they believe detainees are being treated in an inhumane or degrading way. None of those involved witnessed any evidence of detainee abuse of the type that the US authorities have acknowledged has occurred in Iraq. But on a few occasions SIS and Security Service staff did become aware, either through their own observations or comments from detainees, that some detainees were being held in austere conditions or treated inappropriately. The concerns of these staff were passed on to the US authorities, either locally or via intelligence or diplomatic channels.”*

4. Applicable law

There are various instruments under which liability could arise. For instance, under the Torture Convention 1984 states undertake to

take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under [their] jurisdiction.³⁶

The Torture Convention was implemented in UK law by section 134 of the *Criminal Justice Act 1988*. This provides universal jurisdiction, so that any person, regardless of nationality, may be tried under the Act regardless of where the alleged offence took place. This implies that a case could be brought in the British courts against anyone committing torture in Iraq.

Equally, the UK might be prohibited by its obligations under the Torture Convention from transferring detainees to US custody if it had substantial grounds for believing that they would be in danger of being tortured:

no State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.³⁷

³⁶ Article 2 (1).

³⁷ Article 3 (1).

The Torture Convention applies to territory under the jurisdiction of a state, not to the territory of the state itself,³⁸ so it could be argued that the *refoulement* provision covers transfer to US jurisdiction in territory under its control in Iraq.

The Geneva Conventions are also relevant. Geneva Convention III concerns the treatment of prisoners-of-war. Any prisoners-of-war held in Iraq were by definition covered by its terms. Geneva Convention IV, on the protection of civilians and the responsibilities of an occupying power, allows for internment on security grounds. The CPA promulgated a Memorandum on criminal procedures in which it determined that “the relevant and appropriate provisions” of Geneva Convention IV constituted “an appropriate framework,” and that persons detained not as prisoners-of-war but for reasons of security should be held in accordance with Geneva Convention IV.³⁹ This Memorandum has continuing force after the handover.

The UK held some Iraqis as security detainees under Geneva Convention IV and others as prisoners-of-war under Geneva Convention III.⁴⁰

Under Geneva Convention IV persons who find themselves in the hands of an occupying power of which they are not nationals⁴¹ are entitled in all circumstances to “respect for their persons” and to protection “especially against all acts of violence or threats thereof and against insults.”⁴²

Under Article 31,

no physical or moral coercion shall be exercised against protected persons [ie those covered by the Convention], in particular to obtain information from them.

States are prohibited from committing murder, torture, corporal punishment and “any other measures of brutality.”⁴³

Under Article 45,

protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention.

³⁸ Article 2.

³⁹ CPA Memorandum 3 (revised), CPA/MEM/27 June 2004/03.
http://www.iraqcoalition.org/regulations/20040627_CPAMEMO_3_Criminal_Procedures_Rev_.pdf.

⁴⁰ HL Deb 1 July 2004, cc38-9W.

⁴¹ Article 4.

⁴² Article 27.

⁴³ Article 32.

Under the same article, if a transferring state knows that the state to which it has transferred the detainees is not upholding the Convention, it is obliged to “take effective measures to correct the situation” or to “request the return of the protected persons.”

Geneva Convention III provides similar protections to prisoners-of-war. For instance, under Article 17 of the Convention,

no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Again, prisoners-of-war may be transferred to another power only if that power is a party to the Convention, and if it is willing and able to apply the Convention. If the power to which they have been transferred does not respect their rights, then the original detaining power must correct the situation or request their return.

As with the Torture Convention, the UK has universal jurisdiction over some breaches of the Geneva Conventions. Under the *Geneva Convention Act 1957* any person, regardless of nationality, commits an offence, no matter where it takes place, if s/he commits, or aids, abets or procures the commission of, a grave breach of the Conventions. Grave breaches of Geneva Convention IV, which covers security detainees who are not prisoners-of-war, are set out in Article 147 of that Convention. They include torture, inhuman treatment and wilfully causing great suffering or serious injury. Grave breaches of Geneva Convention III, on prisoners-of-war, are set out in Article 130 of that Convention. They include the same offences as in Geneva Convention IV.

Another possibility might be the European Convention on Human Rights (ECHR), and thus the *Human Rights Act 1998*. At the moment the British Government argues that the ECHR does not apply in Iraq, but the matter is currently before the courts. If it were held to apply, then it would be possible to bring actions against the Government at the European Court of Human Rights for alleged breaches of the rights set out in the ECHR. It might be possible to bring actions in the British courts, although again this is being tested at the moment.

Neither the USA nor Iraq is a party to the Statute of the International Criminal Court (ICC). The UK is a party to the Statute, and as a result, liability might arise under its terms. A complaint has been made to the ICC over British military operations in Iraq, although this does not relate specifically to prisoner abuse:

The prosecutor of the International Criminal Court (ICC) wrote to Her Majesty's Ambassador in The Hague on 15 December 2003 forwarding a complaint made by the Athens Bar Association concerning British military operations in Iraq. We have not been notified by the prosecutor of any other petitions received by the ICC.

In accordance with the provisions of the Rome Statute (Article 15(2)) the prosecutor asked the Government to provide information on the allegations. The Government have provided a formal reply to the prosecutor which, inter alia, gives the Government's response to the allegations and sets out the UK national procedures for the investigations of such allegations. The Government believe this reply is a convincing refutation of the allegations.⁴⁴

According to the BBC, the complaint concerns

the killing of Iraqi civilians, depriving the population of drinking water in cities such as Basra, the destruction of food supplies and the bombardment of residential areas.⁴⁵

⁴⁴ HL Deb 24 June 2004, c137w.

⁴⁵ <http://news.bbc.co.uk/2/hi/europe/3101697.stm>.

Appendix UN Security Council Resolutions 1483, 1511 and 1546

Resolution 1483 (2003)

Adopted by the Security Council at its 4761st meeting, on 22 May 2003

The Security Council,

Recalling all its previous relevant resolutions,

Reaffirming the sovereignty and territorial integrity of Iraq,

Reaffirming also the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq,

Stressing the right of the Iraqi people freely to determine their own political future and control their own natural resources, *welcoming* the commitment of all parties concerned to support the creation of an environment in which they may do so as soon as possible, and *expressing* resolve that the day when Iraqis govern themselves must come quickly,

Encouraging efforts by the people of Iraq to form a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender, and, in this connection, *recalls* resolution 1325 (2000) of 31 October 2000, *Welcoming* the first steps of the Iraqi people in this regard, and *noting* in this connection the 15 April 2003 Nasiriyah statement and the 28 April 2003 Baghdad statement,

Resolved that the United Nations should play a vital role in humanitarian relief, the reconstruction of Iraq, and the restoration and establishment of national and local institutions for representative governance,

Noting the statement of 12 April 2003 by the Ministers of Finance and Central Bank Governors of the Group of Seven Industrialized Nations in which the members recognized the need for a multilateral effort to help rebuild and develop Iraq and for the need for assistance from the International Monetary Fund and the World Bank in these efforts,

Welcoming also the resumption of humanitarian assistance and the continuing efforts of the Secretary-General and the specialized agencies to provide food and medicine to the people of Iraq,

Welcoming the appointment by the Secretary-General of his Special Adviser on Iraq,

Affirming the need for accountability for crimes and atrocities committed by the previous Iraqi regime,

Stressing the need for respect for the archaeological, historical, cultural, and religious heritage of Iraq, and for the continued protection of archaeological, historical, cultural, and religious sites, museums, libraries, and monuments,

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"),

Noting further that other States that are not occupying powers are working now or in the future may work under the Authority,

Welcoming further the willingness of Member States to contribute to stability and security in Iraq by contributing personnel, equipment, and other resources under the Authority,

Concerned that many Kuwaitis and Third-State Nationals still are not accounted for since 2 August 1990,

Determining that the situation in Iraq, although improved, continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Appeals* to Member States and concerned organizations to assist the people of Iraq in their efforts to reform their institutions and rebuild their country, and to contribute to conditions of stability and security in Iraq in accordance with this resolution;

2. *Calls upon* all Member States in a position to do so to respond immediately to the humanitarian appeals of the United Nations and other international organizations for Iraq and to help meet the humanitarian and other needs of the Iraqi people by providing food, medical supplies, and resources necessary for reconstruction and rehabilitation of Iraq's economic infrastructure;

3. *Appeals* to Member States to deny safe haven to those members of the previous Iraqi regime who are alleged to be responsible for crimes and atrocities and to support actions to bring them to justice;

4. *Calls upon* the Authority, consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future;

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;

6. *Calls upon* the Authority and relevant organizations and individuals to continue efforts to locate, identify, and repatriate all Kuwaiti and Third-State Nationals or the remains of those present in Iraq on or after 2 August 1990, as well as the Kuwaiti archives, that the previous Iraqi regime failed to undertake, and, in this regard, *directs* the High-Level Coordinator, in consultation with the International Committee of the Red Cross and the Tripartite Commission and with the appropriate support of the people of Iraq and in coordination with the Authority, to take steps to fulfil his mandate with respect to the fate of Kuwaiti and Third-State National missing persons and property;

7. *Decides* that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and *calls upon* the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph;

8. *Requests* the Secretary-General to appoint a Special Representative for Iraq whose independent responsibilities shall involve reporting regularly to the Council on his activities under this resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through:

(a) coordinating humanitarian and reconstruction assistance by United Nations agencies and between United Nations agencies and non-governmental organizations;

(b) promoting the safe, orderly, and voluntary return of refugees and displaced persons;

(c) working intensively with the Authority, the people of Iraq, and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by working together to facilitate a process leading to an internationally recognized, representative government of Iraq;

(d) facilitating the reconstruction of key infrastructure, in cooperation with other international organizations;

(e) promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions;

(f) encouraging international efforts to contribute to basic civilian administration functions;

(g) promoting the protection of human rights;

(h) encouraging international efforts to rebuild the capacity of the Iraqi civilian police force; and

(i) encouraging international efforts to promote legal and judicial reform;

9. *Supports* the formation, by the people of Iraq with the help of the Authority and working with the Special Representative, of an Iraqi interim administration as a transitional administration run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq and assumes the responsibilities of the Authority;

10. *Decides* that, with the exception of prohibitions related to the sale or supply to Iraq of arms and related materiel other than those arms and related materiel required by the Authority to serve the purposes of this and other related resolutions, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq established by resolution 661 (1990) and subsequent relevant resolutions, including resolution 778 (1992) of 2 October 1992, shall no longer apply;

11. *Reaffirms* that Iraq must meet its disarmament obligations, *encourages* the United Kingdom of Great Britain and Northern Ireland and the United States of America to keep the Council informed of their activities in this regard, and *underlines* the intention of the Council to revisit the mandates of the United Nations Monitoring, Verification, and Inspection Commission and the International Atomic Energy Agency as set forth in resolutions 687 (1991) of 3 April 1991, 1284 (1999) of 17 December 1999, and 1441 (2002) of 8 November 2002;

12. *Notes* the establishment of a Development Fund for Iraq to be held by the Central Bank of Iraq and to be audited by independent public accountants approved by the International Advisory and Monitoring Board of the Development Fund for Iraq and looks forward to the early meeting of that International Advisory and Monitoring Board, whose members shall include duly qualified representatives of the Secretary-General, of the Managing Director of the International Monetary Fund, of the Director-General of the Arab Fund for Social and Economic Development, and of the President of the World Bank;

13. *Notes further* that the funds in the Development Fund for Iraq shall be disbursed at the direction of the Authority, in consultation with the Iraqi interim administration, for the purposes set out in paragraph 14 below;

14. *Underlines* that the Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq;

15. *Calls upon* the international financial institutions to assist the people of Iraq in the reconstruction and development of their economy and to facilitate assistance by the broader donor community, and *welcomes* the readiness of creditors, including those of the Paris Club, to seek a solution to Iraq's sovereign debt problems;

16. *Requests* also that the Secretary-General, in coordination with the Authority, continue the exercise of his responsibilities under Security Council resolution 1472 (2003) of 28 March 2003 and 1476 (2003) of 24 April 2003, for a period of six months following the adoption of this resolution, and terminate within this time period, in the most cost effective manner, the ongoing operations of the "Oil-for-Food" Programme (the "Programme"), both at headquarters level and in the field, transferring responsibility for

the administration of any remaining activity under the Programme to the Authority, including by taking the following necessary measures:

(a) to facilitate as soon as possible the shipment and authenticated delivery of priority civilian goods as identified by the Secretary-General and representatives designated by him, in coordination with the Authority and the Iraqi interim administration, under approved and funded contracts previously concluded by the previous Government of Iraq, for the humanitarian relief of the people of Iraq, including, as necessary, negotiating adjustments in the terms or conditions of these contracts and respective letters of credit as set forth in paragraph 4 (d) of resolution 1472 (2003);

(b) to review, in light of changed circumstances, in coordination with the Authority and the Iraqi interim administration, the relative utility of each approved and funded contract with a view to determining whether such contracts contain items required to meet the needs of the people of Iraq both now and during reconstruction, and to postpone action on those contracts determined to be of questionable utility and the respective letters of credit until an internationally recognized, representative government of Iraq is in a position to make its own determination as to whether such contracts shall be fulfilled;

(c) to provide the Security Council within 21 days following the adoption of this resolution, for the Security Council's review and consideration, an estimated operating budget based on funds already set aside in the account established pursuant to paragraph 8 (d) of resolution 986 (1995) of 14 April 1995, identifying:

(i) all known and projected costs to the United Nations required to ensure the continued functioning of the activities associated with implementation of the present resolution, including operating and administrative expenses associated with the relevant United Nations agencies and programmes responsible for the implementation of the Programme both at Headquarters and in the field;

(ii) all known and projected costs associated with termination of the Programme;

(iii) all known and projected costs associated with restoring Government of Iraq funds that were provided by Member States to the Secretary-General as requested in paragraph 1 of resolution 778 (1992); and

(iv) all known and projected costs associated with the Special Representative and the qualified representative of the Secretary-General identified to serve on the International Advisory and Monitoring Board, for the six month time period defined above, following which these costs shall be borne by the United Nations;

(d) to consolidate into a single fund the accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995);

(e) to fulfil all remaining obligations related to the termination of the Programme, including negotiating, in the most cost effective manner, any necessary settlement payments, which shall be made from the escrow accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995), with those parties that previously have entered into contractual obligations with the Secretary-General under the Programme, and to determine, in coordination with the Authority and the Iraqi interim administration, the future status of contracts undertaken by the United Nations and related United Nations agencies under the accounts established pursuant to paragraphs 8 (b) and 8 (d) of resolution 986 (1995);

(f) to provide the Security Council, 30 days prior to the termination of the Programme, with a comprehensive strategy developed in close coordination with the Authority and the Iraqi interim administration that would lead to the delivery of all relevant documentation and the transfer of all operational responsibility of the Programme to the Authority;

17. *Requests further* that the Secretary-General transfer as soon as possible to the Development Fund for Iraq 1 billion United States dollars from unencumbered funds in the accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995), restore Government of Iraq funds that were provided by Member States to the Secretary-General as requested in paragraph 1 of resolution 778 (1992), and *decides* that, after deducting all relevant United Nations expenses associated with the shipment of authorized contracts and costs to the Programme outlined in paragraph 16 (c) above, including residual obligations, all surplus funds in the escrow accounts established pursuant to paragraphs 8 (a), 8 (b), 8 (d),

and 8 (f) of resolution 986 (1995) shall be transferred at the earliest possible time to the Development Fund for Iraq;

18. *Decides* to terminate effective on the adoption of this resolution the functions related to the observation and monitoring activities undertaken by the Secretary-General under the Programme, including the monitoring of the export of petroleum and petroleum products from Iraq;

19. *Decides* to terminate the Committee established pursuant to paragraph 6 of resolution 661 (1990) at the conclusion of the six month period called for in paragraph 16 above and *further decides* that the Committee shall identify individuals and entities referred to in paragraph 23 below;

20. *Decides* that all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution shall be made consistent with prevailing international market best practices, to be audited by independent public accountants reporting to the International Advisory and Monitoring Board referred to in paragraph 12 above in order to ensure transparency, and *decides further* that, except as provided in paragraph 21 below, all proceeds from such sales shall be deposited into the Development Fund for Iraq until such time as an internationally recognized, representative government of Iraq is properly constituted;

21. *Decides further* that 5 per cent of the proceeds referred to in paragraph 20 above shall be deposited into the Compensation Fund established in accordance with resolution 687 (1991) and subsequent relevant resolutions and that, unless an internationally recognized, representative government of Iraq and the Governing Council of the United Nations Compensation Commission, in the exercise of its authority over methods of ensuring that payments are made into the Compensation Fund, decide otherwise, this requirement shall be binding on a properly constituted, internationally recognized, representative government of Iraq and any successor thereto;

22. *Noting* the relevance of the establishment of an internationally recognized, representative government of Iraq and the desirability of prompt completion of the restructuring of Iraq's debt as referred to in paragraph 15 above, *further decides* that, until December 31, 2007, unless the Council decides otherwise, petroleum, petroleum products, and natural gas originating in Iraq shall be immune, until title passes to the initial purchaser from legal proceedings against them and not be subject to any form of attachment, garnishment, or execution, and that all States shall take any steps that may be necessary under their respective domestic legal systems to assure this protection, and that proceeds and obligations arising from sales thereof, as well as the Development Fund for Iraq, shall enjoy privileges and immunities equivalent to those enjoyed by the United Nations except that the abovementioned privileges and immunities will not apply with respect to any legal proceeding in which recourse to such proceeds or obligations is necessary to satisfy liability for damages assessed in connection with an ecological accident, including an oil spill, that occurs after the date of adoption of this resolution;

23. *Decides* that all Member States in which there are:

(a) funds or other financial assets or economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq as of the date of this resolution, or

(b) funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, shall freeze without delay those funds or other financial assets or economic resources and, unless these funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative, or arbitral lien or judgement, immediately shall cause their transfer to the Development Fund for Iraq, it being understood that, unless otherwise addressed, claims made by private individuals or non-government entities on those transferred funds or other financial assets may be presented to the internationally recognized, representative government of Iraq; and *decides further* that all such funds or other financial assets or economic resources shall enjoy the same privileges, immunities, and protections as provided under paragraph 22;

24. Requests the Secretary-General to report to the Council at regular intervals on the work of the Special Representative with respect to the implementation of this resolution and on the work of the International Advisory and Monitoring Board and encourages the United Kingdom of Great Britain and

Northern Ireland and the United States of America to inform the Council at regular intervals of their efforts under this resolution;

25. Decides to review the implementation of this resolution within twelve months of adoption and to consider further steps that might be necessary;

26. Calls upon Member States and international and regional organizations to contribute to the implementation of this resolution;

27. Decides to remain seized of this matter.⁴⁶

Resolution 1511 (2003)

Adopted by the Security Council at its 4844th meeting, on 16 October 2003

The Security Council,

Reaffirming its previous resolutions on Iraq, including resolution 1483 (2003) of 22 May 2003 and 1500 (2003) of 14 August 2003, and on threats to peace and security caused by terrorist acts, including resolution 1373 (2001) of 28 September 2001, and other relevant resolutions,

Underscoring that the sovereignty of Iraq resides in the State of Iraq, *reaffirming* the right of the Iraqi people freely to determine their own political future and control their own natural resources, *reiterating* its resolve that the day when Iraqis govern themselves must come quickly, and *recognizing* the importance of international support, particularly that of countries in the region, Iraq's neighbours, and regional organizations, in taking forward this process expeditiously,

Recognizing that international support for restoration of conditions of stability and security is essential to the well-being of the people of Iraq as well as to the ability of all concerned to carry out their work on behalf of the people of Iraq, and *welcoming* Member State contributions in this regard under resolution 1483 (2003),

Welcoming the decision of the Governing Council of Iraq to form a preparatory constitutional committee to prepare for a constitutional conference that will draft a constitution to embody the aspirations of the Iraqi people, and *urging* it to complete this process quickly,

Affirming that the terrorist bombings of the Embassy of Jordan on 7 August 2003, of the United Nations headquarters in Baghdad on 19 August 2003, of the Imam Ali Mosque in Najaf on 29 August 2003, and of the Embassy of Turkey on 14 October 2003, and the murder of a Spanish diplomat on 9 October 2003 are attacks on the people of Iraq, the United Nations, and the international community, and *deploring* the assassination of Dr. Akila al-Hashimi, who died on 25 September 2003, as an attack directed against the future of Iraq,

In that context, *recalling* and *reaffirming* the statement of its President of 20 August 2003 (S/PRST/2003/13) and resolution 1502 (2003) of 26 August 2003,

Determining that the situation in Iraq, although improved, continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reaffirms* the sovereignty and territorial integrity of Iraq, and *underscores*, in that context, the temporary nature of the exercise by the Coalition Provisional Authority (Authority) of the specific

⁴⁶ <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/368/53/PDF/N0336853.pdf?OpenElement>

responsibilities, authorities, and obligations under applicable international law recognized and set forth in resolution 1483 (2003), which will cease when an internationally recognized, representative government established by the people of Iraq is sworn in and assumes the responsibilities of the Authority, inter alia through steps envisaged in paragraphs 4 through 7 and 10 below;

2. *Welcomes* the positive response of the international community, in for a such as the Arab League, the Organization of the Islamic Conference, the United Nations General Assembly, and the United Nations Educational, Scientific and Cultural Organization, to the establishment of the broadly representative Governing Council as an important step towards an internationally recognized, representative government;

3. *Supports* the Governing Council's efforts to mobilize the people of Iraq, including by the appointment of a cabinet of ministers and a preparatory constitutional committee to lead a process in which the Iraqi people will progressively take control of their own affairs;

4. *Determines* that the Governing Council and its ministers are the principal bodies of the Iraqi interim administration, which, without prejudice to its further evolution, embodies the sovereignty of the State of Iraq during the transitional period until an internationally recognized, representative government is established and assumes the responsibilities of the Authority;

5. *Affirms* that the administration of Iraq will be progressively undertaken by the evolving structures of the Iraqi interim administration;

6. *Calls upon* the Authority, in this context, to return governing responsibilities and authorities to the people of Iraq as soon as practicable and *requests* the Authority, in cooperation as appropriate with the Governing Council and the Secretary-General, to report to the Council on the progress being made;

7. *Invites* the Governing Council to provide to the Security Council, for its review, no later than 15 December 2003, in cooperation with the Authority and, as circumstances permit, the Special Representative of the Secretary-General, a timetable and a programme for the drafting of a new constitution for Iraq and for the holding of democratic elections under that constitution;

8. *Resolves* that the United Nations, acting through the Secretary-General, his Special Representative, and the United Nations Assistance Mission in Iraq, should strengthen its vital role in Iraq, including by providing humanitarian relief, promoting the economic reconstruction of and conditions for sustainable development in Iraq, and advancing efforts to restore and establish national and local institutions for representative government;

9. *Requests* that, as circumstances permit, the Secretary-General pursue the course of action outlined in paragraphs 98 and 99 of the report of the Secretary-General of 17 July 2003 (S/2003/715);

10. *Takes note* of the intention of the Governing Council to hold a constitutional conference and, recognizing that the convening of the conference will be a milestone in the movement to the full exercise of sovereignty, *calls for* its preparation through national dialogue and consensus-building as soon as practicable and *requests* the Special Representative of the Secretary-General, at the time of the convening of the conference or, as circumstances permit, to lend the unique expertise of the United Nations to the Iraqi people in this process of political transition, including the establishment of electoral processes;

11. *Requests* the Secretary-General to ensure that the resources of the United Nations and associated organizations are available, if requested by the Iraqi Governing Council and, as circumstances permit, to assist in furtherance of the programme provided by the Governing Council in paragraph 7 above, and encourages other organizations with expertise in this area to support the Iraqi Governing Council, if requested;

12. *Requests* the Secretary-General to report to the Security Council on his responsibilities under this resolution and the development and implementation of a timetable and programme under paragraph 7 above;

13. *Determines* that the provision of security and stability is essential to the successful completion of the political process as outlined in paragraph 7 above and to the ability of the United Nations to

contribute effectively to that process and the implementation of resolution 1483 (2003), and *authorizes* a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and programme as well as to contribute to the security of the United Nations Assistance Mission for Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure;

14. *Urges* Member States to contribute assistance under this United Nations mandate, including military forces, to the multinational force referred to in paragraph 13 above;

15. *Decides* that the Council shall review the requirements and mission of the multinational force referred to in paragraph 13 above not later than one year from the date of this resolution, and that in any case the mandate of the force shall expire upon the completion of the political process as described in paragraphs 4 through 7 and 10 above, and *expresses* readiness to consider on that occasion any future need for the continuation of the multinational force, taking into account the views of an internationally recognized, representative government of Iraq;

16. *Emphasizes* the importance of establishing effective Iraqi police and security forces in maintaining law, order, and security and combating terrorism consistent with paragraph 4 of resolution 1483 (2003), and *calls upon* Member States and international and regional organizations to contribute to the training and equipping of Iraqi police and security forces;

17. *Expresses* deep sympathy and condolences for the personal losses suffered by the Iraqi people and by the United Nations and the families of those United Nations personnel and other innocent victims who were killed or injured in these tragic attacks;

18. *Unequivocally condemns* the terrorist bombings of the Embassy of Jordan on 7 August 2003, of the United Nations headquarters in Baghdad on 19 August 2003, and of the Imam Ali Mosque in Najaf on 29 August 2003, and of the Embassy of Turkey on 14 October 2003, the murder of a Spanish diplomat on 9 October 2003, and the assassination of Dr. Akila al-Hashimi, who died on 25 September 2003, and *emphasizes* that those responsible must be brought to justice;

19. *Calls upon* Member States to prevent the transit of terrorists to Iraq, arms for terrorists, and financing that would support terrorists, and *emphasizes* the importance of strengthening the cooperation of the countries of the region, particularly neighbours of Iraq, in this regard;

20. *Appeals* to Member States and the international financial institutions to strengthen their efforts to assist the people of Iraq in the reconstruction and development of their economy, and *urges* those institutions to take immediate steps to provide their full range of loans and other financial assistance to Iraq, working with the Governing Council and appropriate Iraqi ministries;

21. *Urges* Member States and international and regional organizations to support the Iraq reconstruction effort initiated at the 24 June 2003 United Nations Technical Consultations, including through substantial pledges at the 23-24 October 2003 International Donors Conference in Madrid;

22. *Calls upon* Member States and concerned organizations to help meet the needs of the Iraqi people by providing resources necessary for the rehabilitation and reconstruction of Iraq's economic infrastructure;

23. *Emphasizes* that the International Advisory and Monitoring Board (IAMB) referred to in paragraph 12 of resolution 1483 (2003) should be established as a priority, and *reiterates* that the Development Fund for Iraq shall be used in a transparent manner as set out in paragraph 14 of resolution 1483 (2003);

24. *Reminds* all Member States of their obligations under paragraphs 19 and 23 of resolution 1483 (2003) in particular the obligation to immediately cause the transfer of funds, other financial assets and economic resources to the Development Fund for Iraq for the benefit of the Iraqi people;

25. *Requests* that the United States, on behalf of the multinational force as outlined in paragraph 13 above, report to the Security Council on the efforts and progress of this force as appropriate and not less than every six months;

26. *Decides* to remain seized of the matter.⁴⁷

Resolution 1546 (2004)

Adopted by the Security Council at its 4987th meeting, on 8 June 2004

The Security Council,

Welcoming the beginning of a new phase in Iraq's transition to a democratically elected government, and *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, *Recalling* all of its previous relevant resolutions on Iraq,

Reaffirming the independence, sovereignty, unity, and territorial integrity of Iraq,

Reaffirming also the right of the Iraqi people freely to determine their own political future and control their own natural resources,

Recognizing the importance of international support, particularly that of countries in the region, Iraq's neighbours, and regional organizations, for the people of Iraq in their efforts to achieve security and prosperity, and *noting* that the successful implementation of this resolution will contribute to regional stability,

Welcoming the efforts of the Special Adviser to the Secretary-General to assist the people of Iraq in achieving the formation of the Interim Government of Iraq, as set out in the letter of the Secretary-General of 7 June 2004 (S/2004/461),

Taking note of the dissolution of the Governing Council of Iraq, and *welcoming* the progress made in implementing the arrangements for Iraq's political transition referred to in resolution 1511 (2003) of 16 October 2003,

Welcoming the commitment of the Interim Government of Iraq to work towards a federal, democratic, pluralist, and unified Iraq, in which there is full respect for political and human rights,

Stressing the need for all parties to respect and protect Iraq's archaeological, historical, cultural, and religious heritage,

Affirming the importance of the rule of law, national reconciliation, respect for human rights including the rights of women, fundamental freedoms, and democracy including free and fair elections,

Recalling the establishment of the United Nations Assistance Mission for Iraq (UNAMI) on 14 August 2003, and *affirming* that the United Nations should play a leading role in assisting the Iraqi people and government in the formation of institutions for representative government,

Recognizing that international support for restoration of stability and security is essential to the well-being of the people of Iraq as well as to the ability of all concerned to carry out their work on behalf of the people of Iraq, and *welcoming* Member State contributions in this regard under resolution 1483 (2003) of 22 May 2003 and resolution 1511 (2003),

⁴⁷ <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/563/91/PDF/N0356391.pdf?OpenElement>

Recalling the report provided by the United States to the Security Council on 16 April 2004 on the efforts and progress made by the multinational force,

Recognizing the request conveyed in the letter of 5 June 2004 from the Prime Minister of the Interim Government of Iraq to the President of the Council, which is annexed to this resolution, to retain the presence of the multinational force,

Recognizing also the importance of the consent of the sovereign Government of Iraq for the presence of the multinational force and of close coordination between the multinational force and that government,

Welcoming the willingness of the multinational force to continue efforts to contribute to the maintenance of security and stability in Iraq in support of the political transition, especially for upcoming elections, and to provide security for the United Nations presence in Iraq, as described in 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,

Noting the commitment of all forces promoting the maintenance of security and stability in Iraq to act in accordance with international law, including obligations under international humanitarian law, and to cooperate with relevant international organizations,

Affirming the importance of international assistance in reconstruction and development of the Iraqi economy,

Recognizing the benefits to Iraq of the immunities and privileges enjoyed by Iraqi oil revenues and by the Development Fund for Iraq, and *noting* the importance of providing for continued disbursements of this fund by the Interim Government of Iraq and its successors upon dissolution of the Coalition Provisional Authority,

Determining that the situation in Iraq continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations, 1. *Endorses* the formation of a sovereign Interim Government of Iraq, as presented on 1 June 2004, which will assume full responsibility and authority by 30 June 2004 for governing Iraq while refraining from taking any actions affecting Iraq's destiny beyond the limited interim period until an elected Transitional Government of Iraq assumes office as envisaged in paragraph four below;

2. *Welcomes* that, also by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and that Iraq will reassert its full sovereignty;

3. *Reaffirms* the right of the Iraqi people freely to determine their own political future and to exercise full authority and control over their financial and natural resources;

4. *Endorses* the proposed timetable for Iraq's political transition to democratic government including:

(a) formation of the sovereign Interim Government of Iraq that will assume governing responsibility and authority by 30 June 2004;

(b) convening of a national conference reflecting the diversity of Iraqi society; and

(c) holding of direct democratic elections by 31 December 2004 if possible, and in no case later than 31 January 2005, to a Transitional National Assembly, which will, inter alia, have responsibility for forming a Transitional Government of Iraq and drafting a permanent constitution for Iraq leading to a constitutionally elected government by 31 December 2005;

5. *Invites* the Government of Iraq to consider how the convening of an international meeting could support the above process, and *notes* that it would welcome such a meeting to support the Iraqi political transition and Iraqi recovery, to the benefit of the Iraqi people and in the interest of stability in the region;

6. *Calls on* all Iraqis to implement these arrangements peaceably and in full, and on all States and relevant organizations to support such implementation;

7. *Decides* that in implementing, as circumstances permit, their mandate to assist the Iraqi people and government, the Special Representative of the Secretary- General and the United Nations Assistance Mission for Iraq (UNAMI), as requested by the Government of Iraq, shall:

(a) play a leading role to:

(i) assist in the convening, during the month of July 2004, of a national conference to select a Consultative Council;

(ii) advise and support the Independent Electoral Commission of Iraq, as well as the Interim Government of Iraq and the Transitional National Assembly, on the process for holding elections;

(iii) promote national dialogue and consensus-building on the drafting of a national constitution by the people of Iraq;

(b) and also:

(i) advise the Government of Iraq in the development of effective civil and social services;

(ii) contribute to the coordination and delivery of reconstruction, development, and humanitarian assistance;

(iii) promote the protection of human rights, national reconciliation, and judicial and legal reform in order to strengthen the rule of law in Iraq; and

(iv) advise and assist the Government of Iraq on initial planning for the eventual conduct of a comprehensive census;

8. *Welcomes* ongoing efforts by the incoming Interim Government of Iraq to develop Iraqi security forces including the Iraqi armed forces (hereinafter referred to as “Iraqi security forces”), operating under the authority of the Interim Government of Iraq and its successors, which will progressively play a greater role and ultimately assume full responsibility for the maintenance of security and stability in Iraq;

9. *Notes* 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 established under resolution 1511 (2003), having regard to the letters annexed to this resolution;

10. *Decides* that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of the multinational force and setting out its tasks, including by preventing and deterring terrorism, so that, inter alia, the United Nations can fulfil its role in assisting the Iraqi people as outlined in paragraph seven above and the Iraqi people can implement freely and without intimidation the timetable and programme for the political process and benefit from reconstruction and rehabilitation activities;

11. *Welcomes*, in this regard, the letters annexed to this resolution stating, inter alia, that arrangements are being put in place to establish a security partnership between the sovereign Government of Iraq and the multinational force and to ensure coordination between the two, and *notes also* in this regard that Iraqi security forces are responsible to appropriate Iraqi ministers, that the Government of Iraq has authority to commit Iraqi security forces to the multinational force to engage in operations with it, and that the security structures described in the letters will serve as the fora for the Government of Iraq and the multinational force to reach agreement on the full range of fundamental security and policy issues,

including policy on sensitive offensive operations, and will ensure full partnership between Iraqi security forces and the multinational force, through close coordination and consultation;

12. *Decides further* that the mandate for the multinational force shall be reviewed at the request of the Government of Iraq or twelve months from the date of this resolution, and that this mandate shall expire upon the completion of the political process set out in paragraph four above, and *declares* that it will terminate this mandate earlier if requested by the Government of Iraq;

13. *Notes* the intention, set out in the annexed letter from the United States Secretary of State, to create a distinct entity under unified command of the multinational force with a dedicated mission to provide security for the United Nations presence in Iraq, *recognizes* that the implementation of measures to provide security for staff members of the United Nations system working in Iraq would require significant resources, and *calls upon* Member States and relevant organizations to provide such resources, including contributions to that entity;

14. *Recognizes* that the multinational force will also assist in building the capability of the Iraqi security forces and institutions, through a programme of recruitment, training, equipping, mentoring, and monitoring;

15. *Requests* Member States and international and regional organizations to contribute assistance to the multinational force, including military forces, as agreed with the Government of Iraq, to help meet the needs of the Iraqi people for security and stability, humanitarian and reconstruction assistance, and to support the efforts of UNAMI;

16. *Emphasizes* the importance of developing effective Iraqi police, border enforcement, and the Facilities Protection Service, under the control of the Interior Ministry of Iraq, and, in the case of the Facilities Protection Service, other Iraqi ministries, for the maintenance of law, order, and security, including combating terrorism, and *requests* Member States and international organizations to assist the Government of Iraq in building the capability of these Iraqi institutions;

17. *Condemns* all acts of terrorism in Iraq, *reaffirms* the obligations of Member States under resolutions 1373 (2001) of 28 September 2001, 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000, 1390 (2002) of 16 January 2002, 1455 (2003) of 17 January 2003, and 1526 (2004) of 30 January 2004, and other relevant international obligations with respect, inter alia, to terrorist activities in and from Iraq or against its citizens, and specifically *reiterates* its call upon Member States to prevent the transit of terrorists to and from Iraq, arms for terrorists, and financing that would support terrorists, and *re-emphasizes* the importance of strengthening the cooperation of the countries of the region, particularly neighbours of Iraq, in this regard;

18. *Recognizes* that the Interim Government of Iraq will assume the primary role in coordinating international assistance to Iraq;

19. *Welcomes* efforts by Member States and international organizations to respond in support of requests by the Interim Government of Iraq to provide technical and expert assistance while Iraq is rebuilding administrative capacity;

20. *Reiterates* its request that Member States, international financial institutions and other organizations strengthen their efforts to assist the people of Iraq in the reconstruction and development of the Iraqi economy, including by providing international experts and necessary resources through a coordinated programme of donor assistance;

21. *Decides* that the prohibitions related to the sale or supply to Iraq of arms and related materiel under previous resolutions shall not apply to arms or related materiel required by the Government of Iraq or the multinational force to serve the purposes of this resolution, *stresses* the importance for all States to abide strictly by them, and *notes* the significance of Iraq's neighbours in this regard, and *calls upon* the Government of Iraq and the multinational force each to ensure that appropriate implementation procedures are in place;

22. *Notes* that nothing in the preceding paragraph affects the prohibitions on or obligations of States related to items specified in paragraphs 8 and 12 of resolution 687 (1991) of 3 April 1991 or

activities described in paragraph 3 (f) of resolution 707 (1991) of 15 August 1991, and *reaffirms* its intention to revisit the mandates of the United Nations Monitoring, Verification, and Inspection Commission and the International Atomic Energy Agency;

23. *Calls on* Member States and international organizations to respond to Iraqi requests to assist Iraqi efforts to integrate Iraqi veterans and former militia members into Iraqi society;

24. *Notes* that, upon dissolution of the Coalition Provisional Authority, the funds in the Development Fund for Iraq shall be disbursed solely at the direction of the Government of Iraq, and *decides* that the Development Fund for Iraq shall be utilized in a transparent and equitable manner and through the Iraqi budget including to satisfy outstanding obligations against the Development Fund for Iraq, that the arrangements for the depositing of proceeds from export sales of petroleum, petroleum products, and natural gas established in paragraph 20 of resolution 1483 (2003) shall continue to apply, that the International Advisory and Monitoring Board shall continue its activities in monitoring the Development Fund for Iraq and shall include as an additional full voting member a duly qualified individual designated by the Government of Iraq and that appropriate arrangements shall be made for the continuation of deposits of the proceeds referred to in paragraph 21 of resolution 1483 (2003);

25. *Decides further* that the provisions in the above paragraph for the deposit of proceeds into the Development Fund for Iraq and for the role of the IAMB shall be reviewed at the request of the Transitional Government of Iraq or twelve months from the date of this resolution, and shall expire upon the completion of the political process set out in paragraph four above;

26. *Decides* that, in connection with the dissolution of the Coalition Provisional Authority, the Interim Government of Iraq and its successors shall assume the rights, responsibilities and obligations relating to the Oil-for-Food Programme that were transferred to the Authority, including all operational responsibility for the Programme and any obligations undertaken by the Authority in connection with such responsibility, and responsibility for ensuring independently authenticated confirmation that goods have been delivered, and *further decides* that, following a 120-day transition period from the date of adoption of this resolution, the Interim Government of Iraq and its successors shall assume responsibility for certifying delivery of goods under previously prioritized contracts, and that such certification shall be deemed to constitute the independent authentication required for the release of funds associated with such contracts, consulting as appropriate to ensure the smooth implementation of these arrangements;

27. *Further decides* that the provisions of paragraph 22 of resolution 1483 (2003) shall continue to apply, except that the privileges and immunities provided in that paragraph shall not apply with respect to any final judgement arising out of a contractual obligation entered into by Iraq after 30 June 2004;

28. *Welcomes* the commitments of many creditors, including those of the Paris Club, to identify ways to reduce substantially Iraq's sovereign debt, *calls on* Member States, as well as international and regional organizations, to support the Iraq reconstruction effort, *urges* the international financial institutions and bilateral donors to take the immediate steps necessary to provide their full range of loans and other financial assistance and arrangements to Iraq, *recognizes* that the Interim Government of Iraq will have the authority to conclude and implement such agreements and other arrangements as may be necessary in this regard, and *requests* creditors, institutions and donors to work as a priority on these matters with the Interim Government of Iraq and its successors;

29. *Recalls* the continuing obligations of Member States to freeze and transfer certain funds, assets, and economic resources to the Development Fund for Iraq in accordance with paragraphs 19 and 23 of resolution 1483 (2003) and with resolution 1518 (2003) of 24 November 2003;

30. *Requests* the Secretary-General to report to the Council within three months from the date of this resolution on UNAMI operations in Iraq, and on a quarterly basis thereafter on the progress made towards national elections and fulfilment of all UNAMI's responsibilities;

31. *Requests* that the United States, on behalf of the multinational force, report to the Council within three months from the date of this resolution on the efforts and progress of this force, and on a quarterly basis thereafter;

32. *Decides* to remain actively seized of the matter.

Annex**Text of letters from the Prime Minister of the Interim Government of Iraq Dr. Ayad Allawi and United States Secretary of State Colin L. Powell to the President of the Council**

5 June 2004

Republic of Iraq
Prime Minister Office

Excellency:

On my appointment as Prime Minister of the Interim Government of Iraq, I am writing to express the commitment of the people of Iraq to complete the political transition process to establish a free, and democratic Iraq and to be a partner in preventing and combating terrorism. As we enter a critical new stage, regain full sovereignty and move towards elections, we will need the assistance of the international community.

The Interim Government of Iraq will make every effort to ensure that these elections are fully democratic, free and fair. Security and stability continue to be essential to our political transition. There continue, however, to be forces in Iraq, including foreign elements, that are opposed to our transition to peace, democracy, and security. The Government is determined to overcome these forces, and to develop security forces capable of providing adequate security for the Iraqi people.

Until we are able to provide security for ourselves, including the defence of Iraq's land, sea and air space, we ask for the support of the Security Council and the international community in this endeavour. We seek a new resolution on the Multinational Force (MNF) mandate to contribute to maintaining security in Iraq, including through the tasks and arrangements set out in the letter from Secretary of State Colin Powell to the President of the United Nations Security Council. The Government requests that the Security Council review the mandate of the MNF at the request of the Transitional Government of Iraq, or twelve months from the date on which such a resolution is adopted.

In order to discharge the Iraqi Government's responsibility for security, I intend to establish appropriate security structures that will allow my Government and Iraqi security forces to progressively take on that responsibility. One such structure is the Ministerial Committee for National Security, consisting of myself as the Chair, the Deputy Prime Minister, and the Minister of Defense, Interior, Foreign Affairs, Justice, and Finance. The National Security Advisor, and Director of the Iraqi National Intelligence Service will serve as permanent advisory members of the committee. This forum will set the broad framework for Iraqi security policy. I intend to invite, as appropriate, the MNF commander, his Deputy, or the MNF His Excellency Mr. Lauro L. Baja, Jr.

President of the Security Council
United Nations
New York, New York

Commander's designative representative, and other appropriate individuals, to attend and participate as well, and will stand ready to discuss mechanisms of coordination and cooperation with the MNF. Iraqi armed forces will be responsible to the Chief of Staff and Minister of Defense. Other security forces (the Iraqi police, border guards and Facilities Protection Service) will be responsible to the Minister of the Interior or other government ministers.

In addition, the relevant ministers and I will develop further mechanisms for coordination with the MNF. Intend to create with the MNF coordination bodies at national, regional, and local levels, that will include Iraqi security forces commanders and civilian leadership, to ensure that Iraqi security forces will coordinate with the MNF on all security policy and operations issues in order to achieve unity of command of military operations in which Iraqi forces are engaged with MNF. In addition, the MNF and Iraqi government leaders will keep each other informed of their activities, consult regularly to ensure effective allocation and use of personnel, resources and facilities, will share intelligence, and will refer issues up the respective chains of command where necessary, Iraqi security forces will take on progressively greater responsibility as Iraqi capabilities improve.

The structures I have described in this letter will serve as the fora for the MNF and the Iraqi government to reach agreement on the full range of fundamental security and policy issues, including policy on sensitive offensive operations, and will ensure full partnership between Iraqi forces and the MNF, through close coordination and consultation. Since these are sensitive issues for a number of sovereign governments, including Iraq and the United States, they need to be resolved in the framework of a mutual understanding on our strategic partnership.

We will be working closely with the MNF leadership in the coming weeks to ensure that we have such an agreed strategic framework.

We are ready to take sovereign responsibility for governing Iraq by June 30. We are well aware of the difficulties facing us, and of our responsibilities to the Iraqi people. The stakes are great, and we need the support of the international community to succeed. We ask the Security Council to help us by acting now to adopt a Security Council resolution giving us necessary support.

I understand that the Co-sponsors intend to annex this letter to the resolution on Iraq under consideration. In the meantime, I request that you provide copies of this letter to members of the Council as quickly as possible.

(Signed) Dr. Ayad **Allawi**

The Secretary of State

Washington

5 June 2004

Excellency:

Recognizing the request of the government of Iraq for the continued presence of the Multi-National Force (MNF) in Iraq, and following consultations with Prime Minister Ayad Allawi of the Iraqi Interim Government, I am writing to confirm that the MNF under unified command is prepared to continue to contribute to the maintenance of security in Iraq, including by preventing and deterring terrorism and protecting the territory of Iraq. The goal of the MNF will be to help the Iraqi people to complete the political transition and will permit the United Nations and the international community to work to facilitate Iraq's reconstruction.

The ability of the Iraqi people to achieve their goals will be heavily influenced by the security situation in Iraq. As recent events have demonstrated, continuing attacks by insurgents, including former regime elements, foreign fighters, and illegal militias challenge all those who are working for a better Iraq.

Development of an effective and cooperative security partnership between the MNF and the sovereign Government of Iraq is critical to the stability of Iraq. The commander of the MNF will work in partnership with the sovereign Government of Iraq in helping to provide security while recognizing and respecting its sovereignty.

To that end, the MNF stands ready to participate in discussions of the Ministerial Committee for National Security on the broad framework of security policy, as referred to in the letter from Prime Minister of the Interim Government of Iraq Allawi dated June 5, 2004. On the implementation of this policy, recognizing that Iraqi security forces are responsible to the appropriate Iraqi ministers, the MNF will coordinate with Iraqi security forces at all levels — national, regional, and local — in order to achieve unity of command of military operations in which Iraqi forces are engaged with the MNF. In addition, the MNF and the Iraqi government leaders will keep each other informed of their activities, consult regularly to ensure effective allocation and use of personnel, resources, and facilities, will share intelligence, and will refer issues up the respective chains of command where necessary. We will work in the fora described by Prime Minister Allawi in his June 5 letter to reach agreement on the full range of fundamental security and policy issues, including policy on sensitive offensive operations, and will ensure full partnership between MNF and Iraqi forces, through close coordination and consultation.

His Excellency

Mr. Lauro L. Baja, Jr.

President of the Security Council

United Nations

New York, New York

Under the agreed arrangement, the MNF stands ready to continue to undertake a broad range of tasks to contribute to the maintenance of security and to ensure force protection. These include activities necessary to counter ongoing security threats posed by forces seeking to influence Iraq's political future through violence.

This will include combat operations against members of these groups, internment where this is necessary for imperative reasons of security, and the continued search for and securing of weapons that threaten Iraq's security. A further objective will be to train and equip Iraqi security forces that will increasingly take responsibility for maintaining Iraq's security. The MNF also stands ready as needed to participate in the provision of humanitarian assistance, civil affairs support, and relief and reconstruction assistance requested by the Iraqi Interim Government and in line with previous Security Council Resolutions.

In addition, the MNF is prepared to establish or support a force within the MNF to provide for the security of personnel and facilities of the United Nations.

We have consulted closely with UN officials regarding the United Nations' security requirements and believe that a brigade-size force will be needed to support the United Nations' security effort. This force

will be under the command and control of the MNF commander, and its missions will include static and perimeter security at UN facilities, and convoy escort duties for the UN mission's travel requirements. In order to continue to contribute to security, the MNF must continue to function under a framework that affords the force and its personnel the status that they need to accomplish their mission, and in which the contributing states have responsibility for exercising jurisdiction over their personnel and which will ensure arrangements for, and use of assets by, the MNF. The existing framework governing these matters is sufficient for these purposes. 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.

The MNF is prepared to continue to pursue its current efforts to assist in providing a secure environment in which the broader international community is able to fulfil its important role in facilitating Iraq's reconstruction. In meeting these responsibilities in the period ahead, we will act in full recognition of and respect for Iraqi sovereignty. We look to other member states and international and regional organizations to assist the people of Iraq and the sovereign Iraqi government in overcoming the challenges that lie ahead to build a democratic, secure and prosperous country.

The co-sponsors intend to annex this letter to the resolution on Iraq under consideration. In the meantime, I request that you provide copies of this letter to members of the Council as quickly as possible.

Sincerely,

(Signed) Colin L. Powell⁴⁸

⁴⁸ <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N04/381/16/PDF/N0438116.pdf?OpenElement>