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Whether the United States is under an obligation to protect members of the People's Mojahedin Organisation of Iran (PMOI) in Iraq?

Legal Opinion
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I, Eric DAVID, Professor and President of the Centre of International Law at the Free University of Brussels, have been requested by the National Council of Resistance of Iran, to provide advice on whether, as of 2008, the United States is under a specific obligation to protect the People's Mojahedin Organisation of Iran (PMOI) in Iraq.

The present opinion has been drafted with the assistance of Mr. Vaios Koutroulis, researcher at the Centre of International Law.


By way of background, in March 2003 the U.S. and Iraq entered into war. The U.S. occupied Iraq at the beginning of the armed conflict, and since that time, it has sustained a physical and military presence in Iraq. Many members of the PMOI reside at Camp Ashraf, Iraq, having fled from Iran as refugees. Complying with the message of the leader of the Iranian Resistance, Massoud Rajavi, when the conflict started, the PMOI have asserted and retained their neutrality, voluntarily surrendering their weapons to American forces and not participating in hostilities. Each and every one of them has since 2004 signed an agreement with the U.S. forces, in which they renounced violence and terrorism. For their part, the U.S. forces undertook the responsibility for the protection of the residents of Ashraf, and committed to continue that protection until Ashraf residents' final disposition. Therefore, in the context of this conflict, PMOI members in Iraq had the status of foreign civilians in a country occupied by an Occupying Power. Given that their current situation relates to the conflict, and given that American forces have maintained a continuing presence in Iraq, the question arises whether the U.S. has a specific protection obligation in relation to members of the PMOI either:

- on the basis of international humanitarian law (IHL), given that PMOI members are under the control of the U.S., as the Occupying Power within the territory, (I); or



- on the basis of general principles of international law (IL), in light of the presence of American forces in Iraq (II).

The United States is currently negotiating an agreement with the Government of Iraq on the status of its forces (Status of Forces Agreement or SOFA). The author is unaware of the political nature of these negotiations, and this opinion will not address whether, and how, the issues mentioned herein must be included in the SOFA. Nevertheless, it must be reiterated that regardless of the status of the U.S. forces in Iraq (whether in the framework of United Nations Security Council resolutions, SOFA, or any other framework), these forces are mandated to protect the members of the PMOI at Camp Ashraf for as long as U.S. forces are present in Iraq.



I. IHL gives rise to obligations on the U.S. to protect PMOI members in Ashraf, Iraq.

1. Since 2 August 1955, and 14 February 1956, respectively, both the U.S. and Iraq have been parties to all four 1949 Geneva Conventions (GCs). Neither state has, however, adopted the Second Additional Protocol of 1977.

As noted in Common Article 2:

“The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”

The commencement of armed conflict between the U.S. and Iraq in 2003 meant that the GCs would apply to both Iraq and the U.S.

2. As an Occupying Power, the U.S. is also bound by Article 43 of the 1907 Hague Convention¹, which is regarded as customary law.²

3. Members of the PMOI residing at Camp Ashraf in 2003 come within the definition of ‘protected persons’ under the Fourth Geneva Convention, because since the start of the conflict between the U.S. and Iraq in 2003 all refugees at Ashraf Camp, as well as the Iraqi population in general, have come under the control of American forces. For this reason, they were ‘protected persons’ pursuant to Article 4, which considers:

“Persons protected by the Convention are those who, at a given moment and in any way whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”

On 2 July 2004, the Government of the United States formally announced that the members of the PMOI in Iraq are ‘protected persons’ under the Fourth Geneva Convention. Since then, nothing has changed with respect to the applicability of the Fourth Geneva Convention to the PMOI in Iraq.

4. The scope of the protection thus afforded is detailed in the Fourth Geneva Convention, which specifies *inter alia*, that:

“Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs [...]” (Art. 27).

Furthermore, the Hague Convention requires an Occupying Power to take:

“All the measures in its power to restore, and ensure, as far as possible, public order and safety [...]” (Art. 43).

¹ The U.S. is a party to the Convention since 27 November 1909.

² International Military Tribunal, Judgement, October 1, 1946, *AJIL* 1947, pp. 248-249; *Legality of the Threat or Use of Nuclear Weapons*, Adv. Op., *ICJ Rep.* 1996, p. 256, para 75; *Advisory Opinion on the Wall*, *ICJ Rep.*, 2004, para 89.

5. In the particular case of Ashraf residents, one must also stress the prohibition against surrendering a protected person to a country where he or she runs the risk of being persecuted for political or religious motives. According to Article 45 of the Fourth Geneva Convention:

“In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.”

In casu, it is well-known that the risk that the prohibition could be violated by Iraq is far from being theoretical. The Iraqi Government threatened to expel to Iran Ashraf residents on various occasions (*infra* para 14).

In a letter dated 16 February 2006, General John D. Gardner, then MNF-I's Deputy Commanding General, stated:

*“Multi-National Force-Iraq appreciates our responsibilities with regard to the Geneva Convention Relative to the Treatment of Civilian Persons (GCIV), 1949. In particular, we are sensitive to the requirements established in Article 45 which prohibit the transfer of a protected person to a country in which he or she may have reason to fear persecution for his or her opinions or religious beliefs.”*³

In the past few years, particularly in recent months, Iraqi officials and media outlets affiliated with the Government have repeatedly called for the expulsion, arrest and execution of the residents of Ashraf. These remarks prompted the European Parliament to state in its unanimous resolution of 12 July 2007, that it

*“strongly rejects the threats of expulsion and cutting off supplies of fuel and drinking water made by some senior officials in the Iraqi Government against 4000 members of the Iranian opposition who have been political refugees in Iraq for the past 20 years and have the legal status of 'Protected persons under the Fourth Geneva Convention' and calls on the Iraqi Government to respect their rights under international law.”*⁴

6. The cumulative legal affect of The Hague Convention and the Fourth Geneva Convention requires the U.S. to take every step necessary to ensure that its actions would not harm the refugees at Camp Ashraf, who are protected persons, and in particular, that such actions do not infringe upon their fundamental rights and freedoms, as stipulated in these instruments.

7. One may assume that the conflict in Iraq ended with Security Council Resolution 1546, dated 8 June 2004, which:

“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.”

Still, the current circumstances of the refugees at Camp Ashraf are the direct result of the armed conflict between the U.S. and Iraq in 2003. Moreover, the continuing presence of American forces in Iraqi territory is also a direct consequence of that conflict. IHL continues

³ MG John D. Gardner, Deputy Commanding General, MNF-I, letter to PMOI Secretary General Ms. Sedigheh Hosseini, 16 February 2006.

⁴European Parliament Resolution, adopted 12 July 2007, <http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0357&language=EN>

to apply to forces of any Occupying Power for the entire period during which they remain in the occupied territory, which in this case extends the application of IHL to American forces as long as they remain in Iraq. As stated in the *Wall case*, the Court observed:

*“Since the military operations leading to the occupation of the West Bank in 1967 ended a long time ago, only those Articles of the Fourth Geneva Convention referred to in Article 6, paragraph 3, remain applicable in that occupied territory.”*⁵

In other words, even if one considers that the United States is no longer an Occupying Power, the provisions mentioned in Article 6 of the Fourth Geneva Conventions would still apply in Iraq.

8. This conclusion is supported by the continuation of armed conflict in Iraq, first among various armed groups, and second, among various armed groups on the one hand, and the combined American and Coalition forces in Iraq on the other. Indeed, when Security Council Resolution 1546 was being adopted, Secretary of State Colin Powell wrote to the President of the Security Council that:

“The MNF [Multi-National Force] stands ready to continue to undertake a broad range of tasks to contribute to the maintenance of security [...]” (emphasis added).⁶

And that:

“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” (emphasis added).⁷

In the preamble to Resolution 1546, the Security Council further pledged:

“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” (emphasis added).

These references to the IHL confirm both that a situation of armed conflict, to which IHL remains applicable, persists in Iraq, and that the U.S. in Iraq remains bound to IHL regulations. Indeed, the U.S. has formally committed itself to comply with the IHL regulations.

9. It is true that, in principle, Article 6 of the Fourth Geneva Convention ceases to apply a year after the end of military operations. However, the continuation of military operations in Iraq renders the Fourth Geneva Convention applicable even to this date.

Moreover, Article 3(B) of the First Additional Protocol extends protection under the GCs beyond occupation *“for those persons whose final release, repatriation or re-establishment takes place thereafter.”* This provision confirms that any obligations which arose during the occupation would be prolonged in light of ongoing hostilities. Although the First Additional

⁵ *Advisory Opinion on the Wall, ICJ Rep.*, 2004, para. 125.

⁶ Letter annexed to Resolution 1546, 8 June 2003.

⁷ *Ibid.*

Protocol is not binding on the U.S., Article 3(B) offers a formal expression of customary rules of common sense.

The circumstances justifying the application of Article 45 of the Fourth Geneva Convention to Ashraf residents, as mentioned above, have not changed. Therefore, the U.S. cannot transfer the protection of the members of the PMOI in Ashraf to another authority, because such an action would seriously threaten the safety of these people. General Gardner's 16 February 2006 letter, mentioned above, confirms that IHL still applies in this case and binds the US with respect to Ashraf residents (*supra* para 5).

10. In view of IHL's ongoing application to the situation in Iraq, the refugees of Camp Ashraf would retain the status of 'protected persons' under IHL. American forces - as the armed forces of a former Occupying Power, which maintains a presence on the soil of a foreign country - Iraq - after the armed conflict of 2003, and which still faces ongoing hostilities - remain under an obligation to ensure the protection of civilians. This is due to the fact that such civilians remain under the effective control of U.S. armed forces.

11. The obligation of the United States to comply with the principles of IHL with respect to Iraq additionally flows from its obligation under Common Article One in the GCs "to ensure respect" for the GCs. In its recent *Advisory Opinion on the Construction of a Wall in Occupied Palestine*, the International Court of Justice (ICJ) affirmed that this is not a merely moral obligation, but one which is enshrined in the GCs and IHL generally.⁸

12. Finally, Article 26 of the Vienna Convention on the Law of Treaties confirms the obligation on all states to perform their international treaty obligations in 'good faith.'⁹ This entails that the U.S. must fulfil its obligations under the IHL by ensuring the protection of all parties in Iraqi territory under its control, including the refugees at Camp Ashraf. In its recent response to *Certain Questions of Mutual Assistance in Criminal Matters*, the ICJ insisted that even when a provision confers broad discretion to a state regarding the latter's relations with other parties, "this exercise of discretion is still subject to the obligation of good faith."¹⁰ This rings even more true when it comes to fulfilling international obligations regarding the protection of fundamental human rights. Employing the 'good faith' principle in the context of the application of IHL in Iraq today leads to the conclusion that the U.S. is under an obligation, pursuant to IHL, to ensure the safety of refugees at Camp Ashraf.

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Rep., 2004, para 159.

⁹ *Draft Declaration on Rights and Duties of States*, Art. 13, 31 May 1949; *Declaration on Friendly Relations*, 7th Principle, UN Doc. A/RES. 2625 (XXV), Oct. 24, 1970; *Advisory Opinion on the Wall*, ICJ Rep., 2004, par. 94.

¹⁰ *Djibouti v France*, Judgment 3 June 2008 para 145.

II. General international law gives rise to obligations on the U.S. to protect PMOI members in Iraq

13. In addition to the application of IHL to the situation of the refugees at Camp Ashraf, general international law gives rise to obligations on States to protect people from the likelihood of a serious violation of their fundamental rights and freedoms. These rights include, among others, **A)** The principle of *non refoulement*, **B)** The right to life, freedom, and safety, and the prohibition of torture and persecution. Furthermore, **C)** States are obliged to ensure the protection of these rights, and **D)** the United States must exercise this protection.

A. Principle of *non-refoulement*

14. Absent the protection of the U.S. forces, the residents of Camp Ashraf have serious grounds to believe that the Iranian regime is exerting pressure on the Iraqi Government to forcibly expel PMOI members from Iraq. The regime is also seriously endangering the lives of PMOI members in Iraq with kidnappings, explosions, and terrorist and missile attacks. Such an unprovoked expulsion would violate the prohibition on refoulement under Article 33 of the Geneva Convention of 28 July 1951 on the Status of Refugees, also considered to be a rule of customary international law.¹¹

Moreover, the Iranian regime's officials have frequently demanded the extradition, expulsion, or prosecution of the PMOI members residing in Iraq. For example, on 26 June 2008, the Iranian Ambassador to Iraq, Hassan Kazemi Qomi said, "We had asked the Iraqi Governing Council in 2003 to expel the terrorist Mojahedin group from that country. We are insisting on that demand."¹²

The principle of *non-refoulement* binds not only Iraq but also the U.S. On 20 June 2001, United Nations High Commission for Refugees published a document containing the legal opinion of Sir Elihu Lauterpacht CBE QC and Daniel Bethlehem, entitled, "The Scope and Content of the Principle of Non-Refoulement." The authors wrote in paragraph 114 of that document,

*"... the principle of non-refoulement will apply also in circumstances in which the refugee or asylum-seeker is within their country of origin but is nevertheless under the protection of another Contracting State. This may arise, for example, in circumstances in which a refugee or asylum-seeker takes refuge in the diplomatic mission of another State or comes under the protection of the armed forces of another State engaged in a peace-keeping or other role in the country of origin. In principle, in such circumstances, the protecting State will be subject to the prohibition on refoulement to territory where the person concerned would be at risk."*¹³

¹¹ See sources quoted in our advice dated February 27, 2007 on the question of whether members of the PMOI in Camp Ashraf Iraq would be regarded refugees under international law, and whether they are could be expelled from Iraq, para 40.

¹² Mehr News Agency, Hassan Kazemi Qomi, "SOFA not favoring the Iraqi nation, Mojahedin must be expelled," 26 June 2008.

¹³ United Nations High Commission for Refugees, "The Scope and Content of the Principle of Non-Refoulement, Opinion by Sir Elihu Lauerpacht CBE QC and Daniel Bethlehem, Barrister, 20 June 1981.

Although the residents of Ashraf do not live in their country of origin, they have been protected by the U.S. forces for the past five years, following the hand-over of their weapons. As such, they fall within the purview of the non-refoulement principle as discussed above, and the U.S. must ensure that the principle is respected.

B. Right to life, freedom and safety – Prohibition of torture and persecution

15. Expulsion of the Camp Ashraf refugees would further breach the following principles of general international law:

- It would constitute a threat to the right to life, as well as the rights of freedom and safety of Camp Ashraf refugees, as envisaged under Article 3 of the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948, which applies to the present situation as customary international law;
- It would expose Camp Ashraf refugees to various forms of persecution in Iran amounting to crimes against humanity as defined in customary international law, and as reflected in various international instruments (e.g. Article 5, Statute of the ICTY; Article 3, Statute of the ICTR; Article 7, Statute of ICC; Article 18, Draft Code of Crimes Against the Peace and Security of Mankind);
- Refugees at Camp Ashraf would be exposed to the risk of torture, thus violating the prohibition against refoulement under Article 3 of the 1984 Convention against Torture, which determines:

“No State Party shall expel, return (‘refoule’) 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.”

The United States has been a party to the Convention against Torture since 21 October 1994.

16. Historical relations between the PMOI and Iranian authorities, as well as the current human rights record in Iran,¹⁴ underscore the high probability of such risks occurring in reality.

C. Obligation of States to react

17. States cannot remain indifferent to threats of this kind. General principles of international law oblige States to react. Thus, the UN Charter states that among the organisation’s aims are:

“To achieve international co-operation in solving international problems of [...] humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Art. 1, para. 3).

The Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States establishes:

¹⁴ [Voy. Amnesty International, Rapport 2008, French Edition, pp. 227-230.](#)

*“States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all [...]”*¹⁵

The pronouncement that States must ‘encourage’ respect for human rights, and that they must ‘co-operate’ to ensure that such rights are respected, places States under an obligation beyond merely the prohibition of a breach of those rights. Pursuant to this interpretation, States are under a positive obligation to ensure these rights are respected.

18. This conclusion has been completely confirmed by the Human Rights Committee, established by the 1966 International Covenant on Civil and Political Rights, which has been binding for the U.S. and Iraq since 8 June 1992 and 25 January 1971, respectively. The Human Rights Committee’s General Comment No. 31 stipulates, among other things, that:

*“The legal obligation under article 2, paragraph 1, is both negative and positive in nature. [...] the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities”*¹⁶ (emphasis added).

The “entities” referred to in the General Comment could certainly include Iraqi authorities.

The “positive” aspect of the obligation to respect human rights also appears in the General Comment No. 2 of the Committee against Torture, which stresses that States party to the 1984 Convention against Torture, must “*take positive effective measures to ensure [...] the eradication of torture and ill-treatment.*”¹⁷

More precisely, and more specifically with regards to the present case, the General Comments No. 31 and No. 2 mentioned above add that the due diligence obligation also binds a State *vis-à-vis* persons who are under its effective control and are outside its territorial borders, as it is the case for the U.S. with respect to the residents of Camp Ashraf:

*“A State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”*¹⁸

The General Comment No. 31 of the H.R. Committee specifies that the due diligence obligation also applies to extradition or expulsion:

“Moreover, the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails

¹⁵ UN General Assembly Resolution 2625 (XXV), 24 October 1970, Principle 5(2)(b).

¹⁶ General Comment n° 31, para. 6 and 8, www1.umn.edu/humanrts/gencomm/hrcom31.html

¹⁷ General Comment n° 2, 24 Jan. 2008, para 4, www2.ohchr.org/english/bodies/cat/comments.htm

¹⁸ General Comment n° 31, *op. cit.*, para. 10 ; in the same way, General Comment n° 2, *op. cit.*, para. 7.

an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters."¹⁹

Similarly, General Comment No. 2 of the Committee against Torture reads:

*"If a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the State's obligation to take effective measures to prevent torture in accordance with article 2, paragraph 1"*²⁰ (emphasis added).

This means that the United States could be held responsible if Camp Ashraf refugees were to be expelled to Iran by Iraq without any attempt from the U.S. to prevent such an action.

In other words, the U.S., due to its presence in Iraq, has in accordance with the above instruments and texts, an obligation of due diligence to take all legal measures necessary and possible to ensure that fundamental rights and freedoms of Camp Ashraf refugees are respected.

19. The existence of a solemn, specific and binding obligation was confirmed during the World Summit in 2005 where States proclaimed the well known "*responsibility to protect*" obligation compelling them to ensure the protection of fundamental rights and freedoms. The Summit declared:

*"Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it."*²¹

20. With regard to refugees specifically, the States affirmed:

*"We, Heads of State and Government, [...] gathered at United Nations Headquarters in New York from 14 to 16 September 2005 [...] commit ourselves to safeguarding the principle of refugee protection."*²²

21. The return of refugees from Ashraf Camp to Iran would violate those rights considered peremptory under international law (*jus cogens*). The U.S., in conjunction with all foreign States whose forces are present in Iraq, must employ every available legal means

¹⁹ General Comment n° 31, *op. cit.*, para. 12.

²⁰ General Comment n° 2, *op. cit.*, para. 19.

²¹ UN General Assembly Resolution 60/1 16 September 2005, para 138; Also see, more recently, the Nuremberg Declaration on Peace and Justice, adopted by Finland, Germany and Jordan, June 27, 2008, III, 2, par. 3, in www.auswaertiges-amt.de/diplo/fr/Aussenpolitik/FriedenSicherheit/080620-NuernbergerErklaerung-EN.pdf

²² *Ibid.*, para 133.

to prevent the violation by Iraq of the fundamental rights of refugees protected under international law. The co-operation of States for this purpose would be in accordance with Article 41 of the ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, which notes:

“States shall cooperate to bring to an end through lawful means any serious breach within the meaning of Article 40.”

Article 40 (of these Articles) relates to *“an obligation arising under a peremptory norm of general international law.”*

D. Only U.S. forces are capable and qualified to protect the PMOI in Ashraf

22. Expulsion from Camp Ashraf to Iran would expose the refugees to the risks of facing illegal trials, arbitrary arrests, ill treatment, torture, mass executions and other crimes against humanity,²³ and is therefore a serious violation of peremptory norms *jus cogens*. It is therefore reasonable to conclude that any State with access to the means required to prevent this from occurring must act accordingly. This obligation arises from the applicability of both the obligation of *‘responsibility to protect’* and also the *‘good faith’* principle quoted above to the interpretation of regulations regarding the protection of fundamental human rights (*supra* paras 14-20).

Under the present circumstances, the U.S. is the only party capable of ensuring that the refugees of Camp Ashraf would not be the victims of serious violations of fundamental rights and freedoms. Absent the protection of the U.S. forces, there exists the risk that PMOI members in Iraq be extradited to Iran through forced expulsion or in some other way, or otherwise have their fundamental rights and freedoms infringed upon.

Conclusion

23. If it is accepted that armed conflict is still continuing in Iraq, and I am of the view that it is indeed continuing, the U.S., as a Belligerent Power present in Iraq, must ensure the protection of refugees at Camp Ashraf against any action which seeks to seriously violate their fundamental rights and freedoms. This obligation arises from the status of the U.S. as a Belligerent Power, or even an Occupying Power, as well as the application of IHL (Article 43 of the Hague Convention and Article 27 of the Fourth Geneva Convention), which requires a Belligerent Power to safeguard law and order and respect for fundamental rights and freedoms in the territory under its control (*supra* paras 1-11).

24. Even if it is assumed that IHL does not apply to the U.S. because it is not a direct party to the ongoing armed conflict in Iraq, the U.S. nonetheless remains obliged, pursuant to general principles and rules of international law, to protect the refugees of Camp Ashraf against any serious violation of their fundamental rights and freedoms (Article 1 of the United Nations Charter; Principle 5 of the Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States; Paras 133 and 138 Final Document of the World Summit 2005; and see above paras 13-21). It goes without saying that there is no other authority, except the U.S., in Iraq, which under the circumstances, has

²³ See the definition in Article 7 of the Statute of the ICC.

the qualifications and the capability to afford the residents of Camp Ashraf the protection they require (*supra* para. 22).

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