THE APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS LAW TO THE COALITION PROVISIONAL AUTHORITY (CPA) AND FOREIGN MILITARY PRESENCE IN IRAQ

Ralph Wilde[*]

I. INTRODUCTION—AVOIDING HUMAN RIGHTS STANDARDS

When the prisoner abuse scandal in Abu Ghraib prison in Baghdad, Iraq, broke in the Spring of 2004, Lord Lester, a British Parliamentarian, submitted a written parliamentary question to the U.K. government asking the following:

> [W]hether the Coalition Provisional Authority or the Coalition Forces are required by law to respect the fundamental human rights of Iraqi people, as defined in the bill of rights contained in the transitional administrative law for Iraq or otherwise; and if not, what recourse is available to the people of Iraq for breaches of those rights by the Authority or the forces.[1]

Baroness Symonds, a U.K. Foreign Office Minister, responded, stating that:

> [t]he Coalition Provisional Authority (CPA) and the coalition forces as occupying powers in Iraq are required to conduct themselves in accordance with the rules of international law, which includes

---

* Lecturer, University College London, University of London; ralph.wilde@ucl.ac.uk. My warm thanks to Axelle Lemaire and Virginia Mantouvalou for research assistance. This article is a revised reproduction of oral remarks presented at the International Law Weekend 2004, held at the House of the Association of the Bar of the City of New York, from October 20-22, 2004.

1. Baroness Symons of Vernham Dean, *Iraq: Transitional Administrative Law and Human Rights*, House of Lords, Written Answer to Lord Lester, Hansard Vol. 661, Part No. 80, Columns WA9 – 10, question HL2545 (May 10, 2004).

> respecting the human rights of the Iraqi people. The CPA and the coalition are also responsible for upholding the law of the land, which until a new constitution has been agreed by the Iraqis is the Transitional Administrative Law (TAL). We take very seriously any allegations alleging breaches of human rights. Iraqis will have recourse to the Iraqi justice system for any infringements of their rights in the TAL. For incidents relating to U.K. personnel, it is standard practice for an independent investigation to be undertaken if there is any doubt as to whether the appropriate rules of engagement have been adhered to. If an investigation concludes that there was wrongdoing on the part of U.K. personnel, appropriate disciplinary measures will be taken, including criminal proceedings where necessary.[2]

Baroness Symonds invokes the "law of the land" somewhat ambiguously as far as its applicability to the CPA and coalition forces is concerned, but even if this law is applicable, judicial remedies in Iraq involving the application of this law to particular cases are barred because of the jurisdictional immunities granted to the coalition in Iraq under CPA Order No. 17,[3] which like other CPA Orders continues in force in the post-CPA period under the Transitional Law.[4] As then acting U.N. High Commissioner for Human Rights Bertrand Ramcharan described this regime of immunity during the CPA period: "[i]n effect, there is immunity for Coalition Forces personnel for any wrongful acts, including human rights abuses, committed in Iraq as far as Iraqi jurisdiction is concerned."[5]

Baroness Symonds also mentions "the rules of international law, which includes respecting the rights of the Iraqi people." But which areas of international are being invoked here? In particular, does Baroness Symonds mean only international humanitarian law (the law of armed conflict), or also international human rights law?

Although both the United Kingdom and the United States are parties to the International Covenant on Civil and Political Rights (ICCPR),[6] neither state

---

2. *Id.*

3. Coalition Provisional Authority, Order No. 17, Section 2, CPA Doc. CPA/ORD/27 (June 17, 2004), *available at* http://www.iraqcoalition.org/regulations/ (last visited April 9, 2005).

4. *Law of Administration for the State of Iraq for the Transitional Period*, Arts. 2, 3, 26 (March 2004), *at* http://www.cpa-iraq.org/government/TAL.html (last visited April 9, 2005).

5. Bertrand Ramcharan, United Nations High Commissioner for Human Rights Report, *The Present Situation of Human Rights in Iraq*, E/CN.4/2005/4 (2004), available at http://www.unhchr.ch/html/hchr/docs/iraq1.pdf (last visited April 9, 2005).

6. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. The United States ratified the ICCPR on June 8, 1992; the United Kingdom ratified the ICCPR on May 20, 1976 [hereinafter ICCPR ratifications], *at* http://www.ohchr.org/english/law/ccpr-ratify.htm (last visited April 12, 2005).

appears to have entered a derogation to the Covenant and the United Kingdom has not entered a derogation to the European Convention of Human Rights (ECHR) with respect to its presence in Iraq from 2003.[7] The derogation provisions of the two instruments enable states parties to temporarily suspend the operation of certain rights obligations in times of war or other public emergency.[8] If the ICCPR and the ECHR were applicable to these states in Iraq, one would imagine that the United States and the United Kingdom would regard the entering of some kind of derogation as required in order for them to carry out some of the activities considered necessary in a situation of military occupation and ongoing hostilities, for example prolonged detention of enemy combatants without trial.

In fact the states concerned do not appear to consider their obligations in these treaties to be applicable to their presence in Iraq at all. According to a secret memo prepared for the Department of Defense in March 2003 and leaked in June 2004, "[t]he U.S. has maintained consistently that the Covenant does not apply outside the U.S. or its special maritime and territorial jurisdiction, and that it does not apply to operations of the military during an international armed conflict."[9] Here, then, applicability is rejected on two alternative bases; in reverse order, these are: (1) *subject matter*—the ICCPR does not apply to operations of the military during international armed conflict; and (2) *territorial*—the ICCPR does not apply to the United States outside its territory.

The United Kingdom rejects applicability of the ECHR on different grounds. Adam Ingram MP, the U.K. Armed Forces minister (equivalent to a senior government official in the U.S. Department of Defense), wrote to British Parliamentarian Adam Price MP on April 7, 2004 in the following terms:

> The ECHR is intended to apply in a regional context in the legal space of the Contracting States. It was not designed to be applied throughout the world and was not intended to cover the activities of a signatory in a country which is not signatory to the Convention. The ECHR can have no application to the activities of the U.K. in Iraq because the citizens of Iraq had no rights under the ECHR prior to the military action by the Coalition Forces. Further, although the U.K. Armed Forces are an occupying power for the purposes of the

---

7. *Supra*, note 6, at art. 4; *see also* European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, 213 U.N.T.S. 221, as amended by Protocol No. 11, May 11, 1994 [hereinafter ECHR].

8. *See, e.g.*, Brogan v U.K. (1988) 11 E.H.R.R. 117 ECHR (discussing this area of law).

9. U.S. DEP'T OF DEFENSE, WORKING GROUP REPORT ON DETAINEE INTERROGATIONS IN THE GLOBAL WAR ON TERRORISM: ASSESSMENT OF LEGAL, HISTORICAL, POLICY, AND OPERATIONAL CONSIDERATION (2003), *available at* http://www.ccr-ny.org/v2/reports/docs/PentagonReportMarch.pdf (last visited April 9, 2005).

> Geneva Convention, it does not follow that the U.K. exercises the degree of control that is necessary to bring those parts of Iraq within the United Kingdom's jurisdiction for the purposes of article 1 of the Convention.[10]

A similar position seems also to have been taken by the United Kingdom Foreign Secretary (equivalent to the U.S. Secretary of State), Jack Straw MP.[11] Here, then, we again have two alternative arguments for non-applicability, but of a different character. The first argument is a variant on the territorial argument put forward by the United States: that the ECHR only applies in the territory of contracting states. This does not necessarily rule out applicability to a contracting state acting outside *its* territory (as the U.S. argument does), so long as that state is acting in the territory of another contracting state. The second argument focuses on the degree of control exercised: Ingram seems to assume that a certain degree of control, aparrently over territory ("those parts of Iraq"), is required for the Convention to apply to the U.K. extraterritorially, and asserts that such a situation does not prevail in Iraq.

This article considers whether these views on inapplicability are sustainable. It is divided into two parts based on the two U.S. reasons for rejecting the application of the Covenant: (1) the "wartime" situation in Iraq; and (2) the extraterritorial nature of Iraq as far as the United States and the United Kingdom are concerned.[12] The analysis in the second part will require an analysis of the two U.K. arguments.

---

10. The Rt. Hon. Adam Ingram MP, Ministry of Defence, Letter to Adam Price MP (on file with author).

11. The U.K. Foreign Secretary made the following statements in a Parliamentary Written Answer to parliamentarian Sir Menzies Campbell MP on 17 May 2004: "[t]he government's position is that ECHR rights have no application in Iraq." Jack Straw, Written Answer, House of Commons, 'European Convention on Human Rights,' 17 May 2004, Hansard Vol. 421, Part No. 87, Columns 674W-675W. In a later written answer to Sir Menzies, the Foreign Secretary made the following statement in relation to the applicability of the ECHR to the United Kingdom in Iraq, invoking by contrast the situation in Turkish-occupied northern Cyprus, which the European Court of Human Rights had found engaged Turkey's responsibility under the ECHR: "[T]he citizens of Iraq had no rights at all under the ECHR prior to military action by the coalition forces; furthermore, the United Kingdom does not exercise the same degree of control over Iraq as existed in relation to the Turkish occupation of northern Cyprus."

. *Id.* at Part No. 89, Column 1083W. For an example of a case concerning northern Cyprus before the ECHR, *see* Loizidou v. Turkey (1996) 11 IIHRL 112 ECHR.

12. There are other potential reasons why states might consider international human rights law not to apply extraterritorially. These include situations where the acts in question are not imputable to them but to a separate juridical entity, for example on the grounds that the entity performing the acts has been "placed at the disposal of" a third state for the purposes of the acts in question. *See, e.g.*, Articles on Responsibility of States for Internationally Wrongful Acts, *in* Report of the International Law Commission on the work of the Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at art. 6, UN Doc. A/56/10 (2001).

II. APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS LAW IN WARTIME

We begin our consideration of the applicability of human rights law with the question of the relevance of the "wartime" situation in Iraq which renders international humanitarian law applicable.[13] It might be thought that humanitarian law, on the one hand, and human rights law, on the other, are mutually exclusive in terms of the situations in which they apply. When one area of law is in play, the other is not, and vice versa. Humanitarian law applies only in times of "war"; human rights law applies only in times of "peace." Whereas indeed the first contention is correct, the second runs counter to a basic understanding of human rights law.[14] In the *Coard* case of 1999 concerning the detention of an individual by U.S. military forces during the 1983 U.S. invasion of Greneda (which deposed the revolutionary government instituted following the assassination of the Prime Minister),[15] the Inter-American Commission on Human Rights stated that:

> while international humanitarian law pertains primarily in times of war and the international law of human rights applies most fully in times of peace, the potential application of one does not necessarily exclude or displace the other. There is an integral linkage between the law of human rights and humanitarian law because they share a "common nucleus of non-derogable rights and a common purpose of protecting human life and dignity," and there may be a substantial overlap in the application of these bodies of law. Certain core guarantees apply in all circumstances, including situations of conflict, and this is reflected, inter alia, in the designation of certain protections pertaining to the person as peremptory norms (jus cogens) and obligations erga omnes, in a vast body of treaty law, in principles of customary international law, and in the doctrine and practice of international human rights bodies such as this Commission. Both normative systems may thus be applicable to the situation under study.[16]

The applicability of human rights law in times of war is assumed by the aforementioned derogation provisions of human rights instruments. Of course,

---

13. On the rights of individuals in international humanitarian law, see the main treaties in this area of law. *See, e.g.,* DOCUMENTS ON THE LAWS OF WAR (Adam Roberts & Richard Guelff eds., Oxford: Clarendon Press 1989).

14. On the relationship and overlap in applicability between humanitarian law and international human rights law, *see, e.g.,* Coard v. United States, Case No. 109/99, Report No. 109/99, Annual Report of the IACHR (1999) [hereinafter Coard case].

15. *See id.* at paras. 1-4.

16. *Id.* at para. 39.

a valid derogation by a state is not the same as the non-applicability of that state's human rights obligations. In the first place, the state must make a formal declaration of derogation.[17] In the words of the U.N. Human Rights Committee, this "requirement is essential for the maintenance of the principles of legality and rule of law at times when they are most needed."[18] Moreover, only those derogations necessary to meet the needs of the war, and proportionate to that need, are permissible.[19] As the Human Rights Committee stated in relation to the obligations under the ICCPR, "even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation."[20]

Even if a broad series of derogations meet this test, certain obligations are incapable of any derogation, including the obligation not to commit torture and inhuman and degrading treatment and punishment.[21] It follows, then, that in all circumstances, both wartime and peacetime, there will always be a core set of human rights obligations in play, operating in tandem with the obligations under humanitarian law.

As the International Court stated in the *Nuclear Weapons* Advisory Opinion (reaffirmed in the *Wall* Advisory Opinion) in relation to the ICCPR, "the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency."[22] Thus the U.N. Human Rights Committee stated that:

> [t]he Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the

17. ECHR, *supra* note 7, at art. 15(3); *see also* ICCPR, *supra* note 6, at art. 4(3).

18. Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 186 (2003) [hereinafter General Comment 29].

19. *Supra* note 17.

20. *Supra* note 18, at para. 3.

21. ECHR, *supra* note 7, at art. 15(2); ICCPR *supra* note 6, at art. 4(2).

22. Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. 226 (July 8), at para. 25, *available at* http://www.icj-cij.org/icjwww/icases/iunan/iunanframe.htm (last visited April 13, 2005); *see also* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 I.C.J., at para. 105 (July 9), *available at* http://www.icj-cij.org/icjwww/ipresscom/ipress2004/ipresscom2004-2_summary_mwp_20040709.htm (last visited April 13, 2005).

> interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.[23]

It is notable that none of these statements make a distinction, as the U.S. memo extracted above does, between *international* and *non-international* armed conflict.

It might be asserted that human rights law has no place in a wartime situation. In such a situation, different considerations prevail and to consider the niceties of human rights one would respect in peacetime is to misunderstand the needs of the battlefield. In part, this is an argument for total war—that no standards should operate on the battlefield at all. Such an approach would do away with much of the laws of war. If, however, one accepts the premise of humanitarian law—that military necessity must sometimes be trumped by certain basic standards—then this particular objection to human rights law falls away. The question then becomes whether the restrictions placed on the state during wartime by human rights law strike the correct balance between the need to preserve order and the need to safeguard human dignity. If one examines the law in this area, one sees if anything a somewhat generous latitude accorded to states when the derogation provisions of human rights instruments are interpreted by human rights bodies, especially under the European Convention through the invocation of a broad "margin of appreciation" involving deference to state's own decision as to what restrictions on rights are necessary to respond to threats to public order. If, then, the application of international human rights law is not somehow excluded by the wartime context in which some of the activities discussed in our study take place, is it excluded because these activities occur extraterritorially, as the U.S. memo suggests in the alternative?

III. APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS LAW EXTRATERRITORIALLY

Most human rights treaties do not conceive state responsibility simply in terms of the acts of states parties, as is the case, for example, in Article 1 of the third Geneva Convention (on the treatment of prisoners of war), in which contracting parties undertake "to respect and to ensure respect for the present Convention in all circumstances." Instead, responsibility under most human rights treaties is conceived in a particular context: the state's *jurisdiction*. The

---

23. Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) [hereinafter General Comment 31]. In its earlier General Comment 29, the Human Rights Committee made the following remark: "[D]uring armed conflict, whether international or non-international, rules of international humanitarian law become applicable and help, in addition to the provisions in article 4 and article 5, paragraph 1, of the Covenant, to prevent the abuse of a State's emergency powers." *Supra* note 18, General Comment 29, at para. 3.

state is obliged not merely to secure the rights contained in the treaty, but to do so within its "jurisdiction."[24] Thus, a nexus to the state—termed jurisdiction—has to be established before the state act or omission can give rise to responsibility.

The consistent jurisprudence of the main human rights treaty bodies and the International Court of Justice has been to interpret the term jurisdiction under human rights treaties so as to operate extraterritorially in certain circumstances.[25] The second basis for rejecting the application of the Covenant offered by the U.S. Department of Defense memorandum is, therefore, incorrect.[26] The key question is the precise *circumstances* in which jurisdiction operates extraterritorially.

It is here that the United Kingdom rejects the operation of the ECHR to its presence in Iraq, on two alternative grounds. In the first place, the United Kingdom adopts an argument that echoes part of the dictum of the European Court of Human rights in the *Banković* case relating to the NATO bombing of the radio and TV station in Belgrade in what was then the Federal Republic of Yugoslavia (FRY), now Serbia and Montenegro. In that case, the Court stated that the European Convention applies "in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States. The FRY clearly does not fall within this legal space. The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States."[27]

Taken out of context, we might read this dictum to suggest that a particular action taken by one state in the territory of another state would not be governed by the human rights treaty obligations of the first state, if the second state is not also a party to that treaty. Under this view, although the concept of "jurisdiction" under human rights treaties is not limited to a state's own territory, it is limited to the overall territory of contracting states. So states acting outside the territorial space of the human rights instrument are not bound by their obligations in that instrument, thus excluding the ECHR from applying to the United Kingdom in Iraq, and the Inter-American Declaration on Human Rights from applying to the United States in Iraq.

---

24. See e.g. ECHR, *supra* note 7, at art. 1; ICCPR, *supra* note 6, at art. 2. Some obligations are limited to the state's territory, *see, e.g.*, Protocol No. 4 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS No. 46), entered into force May 2, 1968, *available at* http://www.law.nyu.edu/kingsburyb/fall01/intl_law/basicdocs/Protocol4.htm (last visited April 13, 2005).

25. *See* General Comment 31, *supra* note 23, at para. 10.

26. Many human rights treaties include a special clause allowing for the application of the rights they contain to be extended to dependent territories. Whether such rights can *also* apply because of the extraterritorial exercise of "jurisdiction" by the state concerned is beyond the scope of this paper; this question is potentially mediated by the agency issue discussed *supra* note 12.

27. Bankovic v. Belgium, App. No. 52207/99, Eur. Ct. H.R. (2001), at para. 80.

However, a closer evaluation of the context of the *Banković* dictum suggests that this reading is incorrect. In the first place, although out of context it reads like a general statement of principle, in the context of the judgment it is something quite different: a specific response to one of the submissions of the applicants. The applicants had submitted that to find that the acts of NATO states in the then FRY did not take place within those states' "jurisdiction" for convention purposes would "leave a regrettable vacuum in the Convention system of human rights' protection," a problem that the Court had seemed to suggest it was trying to avoid in its earlier case *Cyprus v. Turkey*. The Court chose to respond to this submission in terms of the specific type of vacuum in protection that had prevailed in the *Cyprus v Turkey* case, a gap created where a population reside in a state that is a party to the Convention—and have therefore already been granted rights under it—but the state is unable to secure those rights because the territory is occupied by another Convention state.

Clearly in situations like the then FRY in 1999, and Iraq today, this policy consideration does not apply, because the populations affected did not already have rights under the convention by virtue of their state being a party to the Convention. The court was right to reject its application in the *Banković* case, and would be right to reject it in any case on Iraq. To reject the application of this particular policy basis for extending human rights obligations extra-territorially is one thing, however; to say that such a basis *has* to prevail in order for such obligations to apply is quite another. The United Kingdom seems to suggest that it does, even though the Court's dicta in *Banković* do not make this assertion.

Quite apart from examining the Court was responding to when it made these comments in *Banković*, two further factors mitigate against the U.K. position. In the first place, the Court's comments can be considered *obiter dicta* given that the Court had already reached a conclusion that rendered the case inadmissible, having concluded that the nature of the air strikes by NATO states in the FRY did not render this territory under the jurisdiction of the states concerned as far as the exercise of effective control was concerned.[28]

In the second place, other cases before the Court before and since *Banković* have in fact found that states' Convention obligations *can* be in play in relation to their activities in other states that are *not* parties to the Convention. One things here of the *Öcalan* case, where the Court held that the actions of Turkish agents in relation to the alleged abduction of Abdullah Öcalan in Kenya—not a Convention state—took place within Turkish "jurisdiction" and similarly declared admissible the *Issa* case brought against Turkey in relation to its

28. *Id.* at para. 75.

actions in northern Iraq, the very country in relation to which the United Kingdom insists its Convention obligations cannot apply.[29]

The U.K. argument is limited to the ECHR, and it is notable that of course the United Kingdom is a party not only to the ECHR, but also, like the United States, party to other human rights treaties and of course is subject also to customary human rights law. One other notable treaty is the ICCPR. Here, crucially, Iraq is also a party, and is thus, unlike with the Convention, part of the *espace juridique* of the Covenant.[30] Even if one accepted the United Kingdom's assertions about the inapplicability of the ECHR, then, clearly the same assertions could not be made about the obligations of the United Kingdom and the United States under the ICCPR.

However, the United Kingdom offers an alternative basis for rejecting the application of the ECHR: that "those parts of Iraq"—presumably a reference to the areas under U.K. military control—are not within the United Kingdom's jurisdiction for the purposes of the Convention, because the United Kingdom does not exercise the necessary level of "effective control" over the areas concerned. This argument is significant because it is potentially applicable to human rights law generally, not just the law of the European Convention. Thus, even though the United Kingdom may have read *Banković* wrong, and that limb of its argument fails, the second argument, if successful, would by itself render all those areas of international human rights law conceived in relation to the United Kingdom's "jurisdiction" inapplicable to Iraq.

One might be somewhat surprised to hear an assertion by the United Kingdom that no part of Iraq is under its effective control; ultimately the answer to this question depends on a detailed factual analysis of the level of control asserted by U.K. forces in that country, something that is beyond the scope of this article. However, even if the United Kingdom, despite having almost 9,000 troops in the country, does not actually exercise effective control over any part of it, it is far from clear that the only basis on which jurisdiction can operate extraterritorially for the purposes of international human rights law is in circumstances where the state exercises effective control over territory. A number of cases from the European Commission and Court of Human Rights, the Inter-American Commission on Human Rights, and the U.N. Human Rights Committee have actually established the existence of extraterritorial jurisdiction on the basis of a relationship between the foreign state, on the one hand, and the individual or individual complainants, on the other.[31]

In the aforementioned *Öcalan* case, for example, in establishing the exercise of extraterritorial jurisdiction the Court makes no mention of any

---

29. Öcalan v. Turkey, App. No. 46221/99, Eur. Ct. H.R. (2003), at para. 5.

30. *See* ICCPR ratifications, *supra* note 6 (Iraq ratified the ICCPR on Jan. 25, 1971).

31. See Coard, *supra* note 14; *see also* Öcalan, *supra* note 27.

control over territory—effective or otherwise—on the part of Turkey, focusing instead only on the actions of Turkish agents in relation to the individual concerned.[32] This conception of jurisdiction based on the exercise of control over an individual rather than an area of territory is reflected in the U.N. Human Rights Committee General Comment 31, on Article 2 of the ICCPR, which states that the jurisdictional test in Article 2.1 "means that 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."[33] It would seem, therefore, that the exercise of effective control over individuals by the United Kingdom in Iraq would bring those individuals within the United Kingdom's jurisdiction for the purposes of its obligations under the ECHR and ICCPR, regardless of whether in a broader sense the territory in which such control is exercised is also under U.K. control.

IV. CONCLUSION

Despite the suggestions being made by the United States and the United Kingdom, we have seen that the obligations of these two states under the ICCPR, and the obligations of the United Kingdom under the ECHR, continue to apply to acts and omissions in Iraq insofar as such acts and omissions occur in the context of the exercise of control by the state concerned over individuals or territory. It is regrettable that suggestions are being made which challenge the established position in international human rights law in a manner that would attenuate the application of this law.

32. See Öcalan, *supra* note 29, at para. 93.

33. General Comment 31, *supra* note 23, at para. 10.