



Resolution 1386 (2004)¹

The Council of Europe's contribution to the settlement of the situation in Iraq

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the United Nations Security Council [Resolution 1546 \(2004\)](#) on the situation between Iraq and Kuwait, unanimously adopted on 8 June 2004, and its decision to transfer full responsibility and authority over their country to the Iraqis and to end the occupation by 30 June 2004
2. The Assembly recalls its Resolutions 1326 (2003) on Europe and the war in Iraq and 1351 (2003) on the role of the United Nations in Iraq, and notes with satisfaction that Security Council [Resolution 1546 \(2004\)](#) addresses in detail most of the issues raised in Assembly [Resolution 1351](#) and sets a clear timetable for the transition by outlining the specific sequence of events as had been urged by the Assembly.
3. The Assembly considers it of significant importance that the Security Council resolution was adopted unanimously, as this reflects the resolve of the international community to overcome the past divisions and to assist the Iraqi people to take over the responsibility for its own future. It also welcomes the fact that the Security Council gives the United Nations a leading role in assisting Iraq to build up its future political structures.
4. The Assembly encourages co-operation between the interim government of Iraq and Iraq's neighbours to address regional security issues and open dialogue to strengthen the political process in Iraq.
5. The Assembly regrets the continued violence in Iraq, including hostage taking, and fears that it will hamper satisfactory implementation of Security Council [Resolution 1546 \(2004\)](#). The United Nations Secretary General Kofi Annan made it clear on 18 June 2004 that any planned return of the Special Representative of the Secretary General or of the United Nations Assistance Mission for Iraq (Unami) to Iraq would be irresponsible given the continued violence in the country and the previous targeting of United Nations staff by terrorists. Not only foreigners involved in Iraq's reconstruction, but also Iraqi officials in the transitional authority continue to face danger by virtue of their position. The Assembly expresses its deepest condolences to all victims of the conflict.
6. In the months preceding the transfer of power, the world's attention has been held by various serious violations of human rights and humanitarian law committed by coalition forces (the Multinational Force, or MNF) in Iraq, in particular by members of the United States and British contingents. The Assembly deplores and condemns all such violations unreservedly.
7. The Assembly believes that in order for the United Nations to efficiently implement Security Council [Resolution 1546 \(2004\)](#) and to guarantee the effective transfer of power, it must play the leading role and be able to return to Iraq as soon as possible.
8. Therefore, given the widely-held expectations of increased violence associated with the 30 June 2004 transfer of power, the Parliamentary Assembly believes that in order to enable the broad-based popular participation in the transition to democratic governance in Iraq, the requisite security must be guaranteed.

1. Assembly debate on 24 June 2004 (22nd Sitting) (see [Doc.10224](#), report of the Political Affairs Committee, rapporteur: Ms de Zulueta and [Doc. 10230](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 24 June 2004 (22nd Sitting).



9. The interim government of Iraq faces the immense challenge of implementing the proposed timetable for political transition as agreed by the Security Council resolution and of creating a broad-based consultative process for the election of the future Iraqi government, thus giving the Iraqi people the perception that they control their own political destiny. During the interim period the reintroduction of the rule of law is of crucial importance in order to attract foreign investment and guarantee the Iraqi people full control over their natural resources. 10. The Assembly calls on the Secretary General of the Council of Europe

10. The Assembly calls on the Secretary General of the Council of Europe to propose without delay to the United Nations Secretary General to take advantage of the Council of Europe's expertise in legislative and constitutional issues, in electoral matters and in the building of democratic institutions, in order to assist Unami in the implementation of paragraph 7 of Security Council [Resolution 1546 \(2004\)](#).

11. The Assembly considers that in order to build democracy and restore security in Iraq, the Iraqi authorities' full political control over all major decisions relevant to Iraq's national interest should be assured, including the right to control the actions of international bodies on the territory of Iraq.

12. The Assembly is of the opinion that the democratic model cannot be transposed mechanically, therefore it offers its assistance and expertise, on the understanding that building democracy is the responsibility of the Iraqi people themselves.

13. The Parliamentary Assembly condemns and deplores the torture in prisons managed by the coalition forces. It recalls the report of the International Committee of the Red Cross (ICRC) in February 2004 which drew the concerned authorities' attention to widespread abuse in Iraqi detention facilities. The Assembly underlines that international humanitarian law on armed conflicts, notably the Geneva Conventions, obliges all parties to a conflict to protect the life and dignity of persons not or no longer fighting. Moreover, it notes with regret that the ICRC has faced significant delays in gaining access to detainees in Iraq, as well as to a complete record of all detainees held in Iraq, and recalls that these delays also amount to unacceptable violations of the Geneva Conventions.

14. The Parliamentary Assembly welcomes the efforts of the United States and the United Kingdom military authorities to punish those responsible to the full extent of the law. However, it is concerned about the political precedent set by the United States administration for concurrently attempting to extend the immunity of American soldiers from the jurisdiction of the International Criminal Court.

15. The Assembly also notes that an independent investigation, commissioned by the United States Congress, has revealed that there existed no links between al Qaeda and the previous Iraqi regime. Furthermore, to date no weapons of mass destruction (WMD) have been found in Iraq by the UN or by coalition forces.

16. The Parliamentary Assembly asks the Secretary General of the Council of Europe to propose without delay to the United Nations Secretary General:

16.1. the Council of Europe's expertise for implementing the United Nations Security Council [Resolution 1546 \(2004\)](#), in response to the request for international assistance in Iraq's reconstruction, notably that of the Venice Commission, in the fields of constitutional drafting, legal code reform and election design;

16.2. the Council of Europe's expertise in the fields of culture and education to allow the Iraqi authorities, in particular those responsible for the educational system, to cultivate the values of democracy, tolerance, dialogue, respect for diversity and the preeminence of human rights in Iraqi society and among Iraq's younger generations;

16.3. the expertise of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to allow the United Nations and the interim government of Iraq to supplement the work already being done by the ICRC;

16.4. to contribute in the formation and training of a viable Iraqi police force as regards their rights and duties in the framework of the Council of Europe programme "Police and Human Rights – Beyond 2000", considering the importance for the new Iraqi security forces of guaranteeing security during the transition towards democracy;

16.5. to sponsor training seminars for Iraqi judges on the rule of law, procedural safeguards in the criminal system and norms with regard to human rights and international humanitarian law.

17. The Assembly calls upon those of its member and Observer states that are engaged in the MNF to:
 - 17.1. ensure that their forces and agents, including private contractors, fully and effectively respect international humanitarian human rights and criminal law, according to the established, generally-accepted definitions, in all circumstances;
 - 17.2. ensure, in particular, that detainees are afforded the appropriate status and treated according to the provisions of international humanitarian law relevant to that status, as well as of applicable international human rights law, publish a comprehensive list of all places of detention, and allow full and unhindered access by international organisations to all places of detention;
 - 17.3. ensure that all human rights abuses and offences under international humanitarian and criminal law are promptly and independently investigated and their perpetrators brought to trial in accordance with international standards, so that they may be subjected to appropriate administrative or criminal sanctions fully reflective of the gravity of their misconduct. In particular, they must ensure that neither public officials nor private contractors – whether legal or natural persons – are immune from legal process ensuring full accountability;
 - 17.4. ensure that effective remedies are available for violations and that full reparation, including adequate compensation, is made to the victims or to their families;
 - 17.5. accept the jurisdiction of the International Criminal Court (ICC) over the forces and agents present in Iraq, regardless of the existence of a UN mandate. Furthermore, they should refrain from seeking immunity from prosecution before the ICC for their forces and agents;
 - 17.6. ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
18. The Assembly calls upon those of its member states that are engaged in the MNF to accept the full applicability of the European Convention on Human Rights to the activities of their forces in Iraq, in so far as those forces exercised effective control over the areas in which they operated.
19. The Assembly calls upon its member and Observer states to:
 - 19.1. respond positively to an appeal launched by the Security Council to contribute to a multinational force under the aegis of the United Nations;
 - 19.2. ensure that the general principles of international humanitarian law, human rights and criminal law underlying these recommendations are, in accordance with the established, generally-accepted definitions, fully respected in any future military operations, whether or not conducted under a United Nations mandate. In particular, states should ensure that appropriate guidelines and procedures exist and operate effectively within armed forces and related bodies to safeguard against breaches of these principles;
 - 19.3. ensure that their domestic criminal legislation fully reflects the provisions of international human rights and criminal law, and that violations are investigated, and that those responsible are prosecuted and punished promptly and in accordance with international fair trial standards, in full respect of the positive obligations to protect human rights and of the principle that offences under international criminal law must always be tried and punished. Those states that have not yet ratified the Rome Statute should do so at the earliest opportunity, and those that have done so should refrain from entering into bilateral immunity agreements. The Assembly welcomes the United Nations Security Council's rejection of the ICC immunity resolution. It encourages all states to refrain from proposing such resolutions in future and to oppose any that should be tabled;
 - 19.4. support the ICRC in carrying out its role as guarantor of the Geneva Conventions in Iraq
20. The Assembly calls upon the interim government of Iraq to pave the way to national reconciliation by working, step by step, towards an open, pluralistic society, respectful of fundamental freedoms, economic and social prosperity, women's rights and cultural diversity. In particular, attention must be paid to decreasing the appeal of the radical elements in Iraq which are threatening to destabilise the democratic process today. Secular policies, at equal distance to all ethnic and religious communities, could be a key to the realisation of this historic transition.
21. The Assembly considers this matter to be of the highest importance and resolves to be seized of the questions, firstly, of construction of a fully functioning democracy and secondly, of respect for human rights and the rule of law, until the normalisation of the situation in Iraq.