



Restoring Iraqi Sovereignty: How Independent Will Iraq Really Be?

By [KAL RAUSTIALA](#)

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For months, President Bush has repeated his intention to return sovereignty to Iraq on June 30. On June 8th the U.S., after much diplomatic jockeying, successfully secured a resolution from the U.N. Security Council detailing the restoration of Iraqi sovereignty.

Despite a flurry of attention to the impending handover, the meaning of the restoration of sovereignty remains murky. The President has promised Iraq "full sovereignty." Yet administration officials have at times spoke of "limited sovereignty."

Critics have responded, however, that there is no such thing as limited sovereignty. In the words of Human Rights Watch chief Kenneth Roth, "being sovereign is like being pregnant: you either are or you aren't."

With less than two weeks before the handover, it is worth considering what exactly the return of sovereignty entails.

Defining Sovereignty: Its Meaning In International Law

Sovereignty is conventionally defined as supreme political and legal authority within a given territory. Under international law, only states are sovereign.

Sovereignty bestows upon a state international legal personality--the ability to enter into treaties, join international organizations, negotiate loans from the World Bank, and so on. And, in theory, sovereignty protects a state from interference in its internal affairs by other states.

The concept of sovereignty is typically dated to the Treaty of Westphalia in 1648, which ended the Thirty Years' War in Europe. There, the principle that a king (a sovereign) wields absolute political power within his territory first took hold. Hence scholars often speak of "Westphalian" sovereignty or the "Westphalian state".

[Column continues below ↓](#) Like many myths, the myth of Westphalia has a grain of truth. The modern concept of sovereignty did take shape in the Seventeenth century, though it did not reach its contemporary form until the Nineteenth century. But it is essential to distinguish the formal concept from the political reality.

Formally, sovereignty is absolute and total. As a legal matter, sovereign states are equal to one another--regardless of their size or military power--and their territorial integrity and political independence are protected by international law. The principle of non-intervention in the domestic affairs of a sovereign state was expressly written into the U.N. Charter in 1945, and remains there.

Yet in practice, states have often meddled in the domestic affairs of other states, compromising sovereignty when it suits their purposes. Even the Treaty of Westphalia itself contained restrictions on what the signatory states could do within their own territory.

And over the centuries since Westphalia, powerful states have paid lip service to the principle of sovereignty, even as they intervened in the domestic affairs of their weaker brethren.

"Elastic" Sovereignty: Independence, But with Conditions

For example, in 1903, the U.S. granted Cuba independence subject to certain caveats. One caveat was the so-called Platt Amendment to the Cuban Constitution. The Platt Amendment permitted the U.S. to intervene militarily in Cuba whenever U.S. interests were threatened.

A second caveat was the lease on the U.S. base at Guantanamo, which can only be terminated by the joint agreement of the U.S. and Cuba. (This unusual lease is at issue in the *Rasul* case, currently before the Supreme Court, and discussed in prior columns by **Joanne Mariner** and **Anupam Chander** for this site.)

In sum, Cuba was formally a sovereign state after independence, yet the U.S. exerted extensive control.

Cuba's experience is by no means unique. Great powers have often directed the foreign and domestic policies of weaker but allegedly sovereign states.

One need think only of the satellite states of the Soviet Union during the Cold War. Moscow intervened forcibly when communist rule was threatened in Hungary and Czechoslovakia.

And less dramatically, the Soviets controlled the key foreign policy positions of their supposed allies throughout the Cold War. It is worth noting that many questioned the sovereignty of the Soviet satellites during the Cold War for these reasons. As a practical matter, it was clear that the Eastern European states could not force Soviet troops to leave, nor did they really wield supreme power within their territories. But as a formal matter, those states were still considered sovereign and they still retained the perquisites of sovereignty (such as membership in the UN).

Sovereignty, consequently, is not really like pregnancy. There are, indeed, gradations in practice.

Powerful states meddle in the domestic affairs of weaker states. They install friendly puppet governments and dictate key policy decisions. And they sometimes demand (or inflict) regime change.

At times states, have even given up aspects of sovereignty voluntarily. Many European states have done so with regard to the European Union. Joining the E.U. requires relinquishing some of the attributes of statehood - and sovereignty.

To take an example closer to home, the original thirteen colonies arguably relinquished much of their sovereignty when they formed the federal government. Yet the current Supreme Court never tires of invoking the sovereign status of the states, and ours is technically a system of "dual sovereignty," though the federal government is supreme.

The Bare Bones of Sovereignty: The Right to Send Foreign Troops Home

Despite these complexities, sovereignty is not an empty or completely flexible concept. For example, the U.S. cannot simply declare Iraq sovereign, yet still occupy and govern it as it currently does. If the restoration of sovereignty in Iraq is to have any meaning, it will entail several important consequences.

What are these consequences? Consider two crucial areas of current debate: military affairs and diplomatic relations with the US.

Control over the use of force is at the heart of sovereignty. Hence, some have suggested that Iraq will lack sovereignty as long as the U.S. retains a large military garrison.

Yet the U.S. has kept a substantial troop presence in Germany--a country we also defeated and occupied--for 60 years, and no one contends Germany lacks sovereignty. The key is that as a formal matter, Germany permits these troops. For political and economic reasons Germany has never asked

them to leave. But sovereignty entails its right to do so if it so chooses.

Likewise, as Tony Blair recently stated, final control over the presence of coalition troops must be held by Iraq. The sticky point in recent weeks was whether the Security Council resolution the U.S. sought would state that point clearly or, as the President preferred, leave the issue for future negotiations.

Most U.N. members favored a clear statement in the resolution. The text that emerged, Resolution 1546, largely reflected their demands: Coalition forces will serve "at the request of the incoming interim government of Iraq," and can be asked to leave by Iraq at any time.

Another Sovereignty Basic: The Right to Control Foreign Troops Within Borders

A related point of debate is whether the more than 100,000 coalition troops will be able to maneuver within the country without Iraqi permission. Clearly they can defend themselves from attack. But what if insurgents try to foment civil war? Can coalition forces initiate attacks within Iraq?

If they can, it is difficult to say that Iraq is sovereign. Resolution 1546 gives the multinational force "the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq", but calls for Iraqi leaders and U.S. commanders to reach agreement on "sensitive offensive operations".

Significantly, the resolution does not say what happens if they fail to agree. Nor does it require coalition commanders to refrain from operations in the absence of Iraqi approval.

Another Sovereignty Basic: The Power to Negotiate Independently

The topic of negotiations raises another important implication of sovereignty. While the U.S. occupies Iraq, it need not negotiate with anyone in Iraq.

International law certainly constrains the actions of an occupying power. But the occupier does not have to seek the permission of the defeated government, or treat it as an equal.

However, after the restoration of sovereignty the U.S. and Iraq are on an equal legal plane. Once the occupation is over, the U.S. must then open an embassy and must negotiate its presence--and the presence of the troops--with the Iraqi government. Iraq can reject the U.S. embassy if it wishes.

Can Iraq Get Saddam Back? A Geneva Conventions Issue

Likewise, a sovereign Iraq could demand the return of Saddam Hussein. The U.S. is currently holding Saddam as a POW. Under the [Geneva Conventions](#), repatriation of POWs is required at the end of hostilities.

Recently, the head of the Coalition Provisional Authority, Paul Bremer, said that the U.S. could retain control over Saddam after the handover of sovereignty, because active hostilities were not over. However, this claim misreads international law.

The U.S. cannot terminate the occupation and restore cordial diplomatic relations with Iraq, while simultaneously claiming that active hostilities with Iraq are ongoing. The Geneva Conventions require that the U.S. hand over custody of Saddam when the occupation ends.

(The most recent Administration plan, to hand over custody "legally," but not "physically," illustrates the sort of knotty situations the abrupt handover of sovereignty is producing.)

The Future of Iraqi Sovereignty

Restoring Iraqi sovereignty in deed, as well as word, is no trifling matter. That is one reason that some commentators believe the June 30th date is precipitous.

The June 30 handover lets the Administration relinquish formal control over an increasingly fractious Iraq. But it is not clear that the restoration of sovereignty will be easy or peaceful.

Sovereignty, after all, requires a sovereign. Traditionally, that sovereign was the king. In the American tradition, it is the people. In both cases, there must be clarity on who truly possesses sovereignty.

With the handover in Iraq just weeks away, that clarity is in dangerously short supply.

Interested readers may also want to consult [the Interim Iraqi Constitution](#), and FindLaw's [International Legal Resources](#). - Ed.

Kal Raustiala is a professor of international law at UCLA Law School.