

UN, Detention of Foreigners

[Source: UN Doc. S/RES/664 (August 18, 1990), Available on [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/664\(1990\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/664(1990))]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

The Security Council,

Recalling the Iraqi invasion and purported annexation of Kuwait, and its resolutions 660, 661 and 662,

Deeply concerned for the safety and well-being of third-state nationals in Iraq and Kuwait,

Recalling the obligations of Iraq in this regard under international law,

Welcoming the efforts of the Secretary-General to pursue urgent consultations with the Government of Iraq following the concern and anxiety expressed by the members of the Council on August 17, 1990,

Acting under Chapter VII of the United Nations Charter:

1. *Demands* that Iraq permit and facilitate the immediate departure from Kuwait and Iraq of the nationals of third countries and grant immediate and continuing access of consular officials to such nationals;
2. *Further demands* that Iraq take no action to jeopardize the safety, security or health of such nationals;
3. *Reaffirms* its decision in resolution 662 (1990) that annexation of Kuwait by Iraq is null and void, and

therefore demands that the Government of Iraq rescind its orders for the closure of diplomatic and consular missions in Kuwait and the withdrawal of the immunity of their personnel, and refrain from any such actions in the future; [...].

Discussion

1. a. According to IHL, which individuals have the right to leave Kuwait, and under which conditions? To leave Iraq? (GC IV, Arts 35 and 48) Do those nationals mentioned in para. 1 of the resolution have the right to leave?

b. Who are protected persons under the IHL of international armed conflicts? Are the individuals mentioned in para. 1 of the resolution protected persons as defined by IHL? In making such a determination, is it necessary to know whether the nationals referred to in this resolution are from a neutral State or a co-belligerent State? Why, or why not? Does an Iraqi decision to close diplomatic and consular missions in Kuwait affect the status of these nationals as protected persons under Convention IV? Of what significance is it whether the States of these nationals continue normal diplomatic relations with Iraq? (GC IV, Art. 4)

2. Must Iraq allow all protected persons to leave? If not, why may their departure be prohibited? Who assesses the validity of the justifications for prohibiting departure? What does “contrary to the national interests of the State” mean? (GC IV, Art. 35)

3. Which rules of IHL set out in detail the requirements of para. 2 of the resolution?