

SECOND GULF WAR OF 2003: ITS ORIGINS, LEGALITY AND AFTERMATH

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ABSTRACT

Summary: The purpose of the paper is to discuss the legality or otherwise of the 2003 Second Gulf War. The background to the invasion of Iraq and the underlying causes will be analysed. The main focus of the argument is to question whether the war was legitimate in terms of current international law and the UN charter. The political, cultural and legal consequences of this war with its ramifications even to the present time will be examined. The conclusion is that there must be a major reformation of the Charter in order to prevent future conflicts which threaten international peace and security.

Key Words: Gulf War, Invasion, Legality, Iraq and US.

The complexity of the invasion of Iraq continues to engage both public and expert opinion. Methodologically it is essential to understand the significance of the Iraqi conflict and underlying causes to determine the legality of the invasion. Analysing historical factors and events which culminated in the US led invasion in March 2003 leads to a recommendation for redrafting and reforming the UN Charter. The invasion of Iraq and its aftermath has raised questions about the significance of current international law and the UN charter. There has been debate about whether the war in Iraq spells the end of the UN as a means of resolving crises and the effectiveness of the international legal system. Therefore, the paper will specifically address the legality of the Second Gulf War.

The main questions that will be discussed in this study are whether the invasion of Iraq led by the US and the UK was legal under current international law and the Charter. Was it justified and was it authorized by the UN Security Council? As a consequence of the war, does the charter need to be reformed or overhauled completely?

This study aims to examine the legality of the war and whether the US and UK violated the Charter when they invaded Iraq without a UN mandate and without the authorization of any other international body. It aims to analyse the justifications of the Iraq war and whether the UNSC resolutions (678, 687 and 1441), pre-emptive self defence and Iraqi WMD were sufficiently substantive factors to justify the US/UK attack on Iraq. It also aims to discuss the political, cultural and legal effects of the war and hopefully we will be able to propose a solution to this vital issue.

To achieve these aims, the study is divided into five sections. In attempting to analyse the main issues of the study which questions the legality of the Second Gulf War, a number of relevant historical facts and events need to be discussed. Therefore, the purpose of section one and two are to examine the historical development and underlying causes of the Iraqi conflict which led to the invasion. Given the nature of the case, we cannot discuss the entire historical background of the Iraqi conflict, but must instead confine ourselves to examining the salient points of our topic. Section three examines the legality of the use of force against Iraq under current international law and the Charter. Particularly, it analyses the legality of the pre-emptive use of force against Iraq in order to determine whether it agrees with the above principles. Section four investigates the controversies and changing reasons put forward by the US and UK to justify the invasion of Iraq. The last section examines the political, cultural and mainly legal effects of the invasion.

In conclusion, section one shows that Saddam was supported by the CIA. The US and Gulf States supported him in the war against Iran in order to eliminate the threat of the spread of the Iranian revolution. Assistance from the West allowed him to accumulate large quantities of conventional weapons and WMD materials. The invasion of Iran created the motives for Iraq's invasion of Kuwait which were both political and financial. Saddam mistakenly gained the impression that the US would not intervene in the Iraq-Kuwait dispute and therefore felt free to invade Kuwait. The Americans failed to make it clear to him that they would not tolerate the invasion. The US and its allies moved quickly to confront the Iraqi aggression against Kuwait in order to protect their strategic interests. The UNSC authorized a group of countries led by the US to use force against Iraq on behalf of the UN, without its direct supervision. The UN's inconsistent handling of the Iraq-Iran border issue reflected political expediency which calls for a reform of the Charter to establish an effective mechanism

to resolve any future border disputes which threaten international peace and security. In addition, there is a case to be made for the UN to have under its control an international military force to deal effectively with any act of aggression by a state and to pre-empt future crises.

Section two concludes that the Charter did not give the UNSC authority to enforce a mandatory regime of disarmament against Iraq. US foreign policy toward Iraq focused on pressurising the regime by imposing further conditions for the disarmament of WMD. The military strikes and the continuation of sanctions forced Iraq to suspend cooperation with the weapons inspectors and later to completely end it. It is clear that despite the importance of the disarmament of Iraqi WMD to the US administration, this was not a target in itself, rather a means of continuing to isolate Iraq and overthrow Saddam's regime. The US repeatedly used military force without explicit UNSC authorization, justifying the action by claiming that Iraq had not fully cooperated with the UN inspectors. This section further affirms that the creation of the no-fly zones was illegal and in violation of the Charter and current international law. The flight of US/UK aircraft patrolling the no-fly zones was illegal and in violation of Iraq's sovereignty which gave Iraq the right of self-defence under Article 51. The continuation of sanctions was illegal and ineffective in achieving their goals and severely damaged the Iraqi people and the national infrastructure. The US policy of the continuation of sanctions was designed to punish Saddam in order to overthrow him.

This study reasons that the US did not provide accurate evidence to support the case that Iraq represented an imminent threat. All the UNSC members agreed that Resolution 1441 did not grant automaticity for the use of force but said that another resolution would be necessary. It was clear that Iraq had implemented the terms of the resolution, for even the UN inspectors had not reported any violation in their reports. The UNSC failed to fulfil its responsibilities to prevent the attack because they were hindered by the power of veto exercised by the five permanent members and their reluctance to resolve the issue peacefully. Through an analysis of the role of the UN in the crisis, it is evident that the US dominated the UNSC and its decisions in order to achieve its own political objectives. The UNSC was unable to resolve this crisis due to the continuation of the misuse of the right of veto which was exploited by some of the permanent members in order to achieve their goals as distinct from the will of the international community. This highlights the need for a reformation of the Charter in order to deal effectively with such events in the future.

Section three concludes that this war was illegal and in violation of current international law and the Charter as well as the resolutions of the UN General Assembly. Consequently, it also represents a threat to international peace and security.

It is evident in section four that throughout the course of events the US continually shifted its arguments in order to suit the changing circumstances. They began by emphasising the war on terror, then linked Saddam with Al Qaeda in the minds of the American people and stressing the crucial need to destroy any WMD. They then focused attention on their desire to remove Saddam from power, even sending him into exile. Finally, the ground of the argument moved to the need for regime change and the imposition of democracy in Iraq in order to defuse the volatile situation in the Middle East. They justified their military attack by reasoning that a pre-emptive attack was expedient arguing that the risks were too high to simply wait for an attack by a hostile enemy.

For the above reasons, the study concludes that this war was unjust. The reasons given by the US and UK did not justify their military action against Iraq. The UNSC resolutions 678, 687 and 1441 did not give any explicit authority to use force against Iraq. In addition, the UNSC did not give the US and UK authority to carry out military action against Iraq. The UN inspectors' reports stated that there was no evidence that Iraq had WMD. Inaccurate and partial evidence was presented by the US and the UK 'proving' that Iraq represented imminent threat to them. Reasons of *realpolitik* behind the invasion of Iraq confirm the illegality of this war.

Finally, in section five the most important longterm effect of this war was to erode confidence in the UN. This highlights the need to reform the UN and to amend or re-draft the UN charter in order to deal with the new issues such as terrorism, the use of weapons of mass destruction, pre-emptive self-defence and humanitarian intervention.