

Archived Content

Information identified as archived on the Web is for reference, research or record-keeping purposes. It has not been altered or updated after the date of archiving. Web pages that are archived on the Web are not subject to the Government of Canada Web Standards.

As per the [Communications Policy of the Government of Canada](#), you can request alternate formats on the "[Contact Us](#)" page.

Information archivée dans le Web

Information archivée dans le Web à des fins de consultation, de recherche ou de tenue de documents. Cette dernière n'a aucunement été modifiée ni mise à jour depuis sa date de mise en archive. Les pages archivées dans le Web ne sont pas assujetties aux normes qui s'appliquent aux sites Web du gouvernement du Canada.

Conformément à la [Politique de communication du gouvernement du Canada](#), vous pouvez demander de recevoir cette information dans tout autre format de rechange à la page « [Contactez-nous](#) ».

OPERATION IRAQI FREEDOM

AN UNJUST WAR IN SEARCH OF LEGAL

GROUNDS?

By /par

Lieutenant Colonel Daniel Guertin

25 October 2005

This paper was written by a student attending the Canadian Forces College in fulfilment of one of the requirements of the Course of Studies. The paper is a scholastic document, and thus contains facts and opinions that the author alone considered appropriate and correct for the subject. It does not necessarily reflect the policy or the opinion of any agency, including the Government of Canada and the Canadian Department of National Defence. This paper may not be released, quoted or copied except with the express permission of the Canadian Department of National Defence.

La présente étude a été rédigée par un stagiaire du Collège des Forces canadiennes pour satisfaire à l'une des exigences du cours. L'étude est un document qui se rapporte au cours et contient donc des faits et des opinions que seul l'auteur considère appropriés et convenables au sujet. Elle ne reflète pas nécessairement la politique ou l'opinion d'un organisme quelconque, y compris le gouvernement du Canada et le ministère de la Défense nationale du Canada. Il est défendu de diffuser, de citer ou de reproduire cette étude sans la permission expresse du ministère de la Défense nationale.

OPERATION IRAQI FREEDOM

AN UNJUST WAR IN SEARCH OF LEGAL GROUND?

TABLE OF CONTENTS

Abstract

Section

1. Introduction.
2. Background information on the Law and “just war” theory
3. Analysis of five “Just War” principles in the context of Operation Iraqi Freedom”.
4. Legality of Operation Iraqi Freedom
5. Conclusion

Bibliography

ABSTRACT

Was the United States led coalition attack on Iraq on 20 March 2003 justified and legal? The issue is not black and white but multifaceted. In the context of the attack on Iraq, this paper examines this two-part question using two different approaches: first, by applying five acknowledged principles under the “just war” theory and second, by examining the legality of the war under the United Nations’ Charter and the International Rule of Law. From the reading, it will be understood that a war may be justified and yet illegal, or just the opposite, unjust but arguably legal under the rule of law due to some nebulous “loophole”. This paper will conclude that for Operation Iraqi Freedom, the U.S. has considerably “lowered the bar” of the just war precepts, yet they have some arguable legal ground. It will also show that in the wake of terrorist acts post 9/11, the international community will need to address the issue of pre-emptive self-defence in order to reach a genuine consensus on world security objectives.

Section 1 - Introduction

On 20 March 2003, the United States with a “coalition of the willing”, and without a specific United Nations (UN) resolution, attacked Iraq winning a quick military victory and ousting the government of Saddam Hussein. While the U.S. claimed they acted in accordance with international law, many of the world governments and people thought otherwise creating a host of position papers arguing equally well both sides of the issue. History has shown the inherent risk of not securing a UN resolution. This was demonstrated by NATO’s failure to secure a UN mandate before attacking the former Federal Republic of Yugoslavia in 1999. The attack generated significant condemnation from many countries. A former presiding judge to the International Criminal Tribunal for the former Yugoslavia (ICTY) commented on this action as follows: “...from an ethical viewpoint resort to armed force was justified. Nevertheless, as a legal scholar I cannot avoid observing in the same breath that this moral action is contrary to current international law”.¹

Since the terrorist attacks of 9/11, academics have again turned their attention to the “just war” theory. Theorists have distinguished between the rules that govern the justice of war (Jus ad bellum) from those that govern just and fair conduct in war (Jus in bello)². While the just war considers moral considerations³ for resorting to war (which are not always black and white but rather on a graduated scale), the rule of law is

¹Antonio Cassese, Ex injuria ius oritur, comments, <http://ejil.org/journal/Vol10/No1/com.html> , accessed 10 September 2005.

² Alexander Mosley, The Internet Encyclopedia of Philosophy, Just War theory 2005, part I p.3, from <http://www.iep.utm.edu/j/justwar.htm>, accessed 12 September 2005.

³Ibid.

expressed through various treaties and conventions.⁴ We will see that the principles of the just war theory complement and support the rule of law, yet they are not interchangeable. As a consequence, it is quite possible for a just war to be fought unjustly and an unjust war to be fought strictly in accordance with the law.⁵

I will demonstrate through this study that in OPERATION IRAQI FREEDOM the U.S. significantly “lowered the bar” on the concept of the just of war, yet technically they may well be on some debatable legal ground.

In this paper, in the context of the U.S. attack on Iraq, I will examine the underlying moral tenets that must be considered before resorting to war (jus ad bellum) as well as the legal principles that deal with the use of force under the UN Charter and the International Rule of Law. To support the correctness of my thesis, I will first provide some general background information on the just war theory, the United Nations Charter and the International Rule Of Law. I will then elaborate on five acknowledged principles derived from the just war theory and examine them individually by providing an accepted definition for each of them and determine if the evidences are indicative that the U.S. upheld a high level of “ethical and moral values” under the just war theory. Throughout, to avoid the “hindsight effect”, I will present the sequence of events, the information and evidences available at the time to the participating parties. Finally, I will elaborate on how technically the U.S. may have acted on some reasonable legal ground to attack Iraq in March 2003 as well as providing opposing views.

⁴L. C. Green, *The contemporary of law of armed conflict*, Manchester and New York: Manchester University Press 1993, 11.

⁵ Michael Waltzer, *Just and Unjust Wars: A Moral argument with Historical Illustration*, basic book 2nd edition, 1992, 21.

Section 2 - Background Information

The first half of the twentieth century saw a shift toward increasing restrictions on the rules governing the right to resort to war. However, since the terrorist attacks of 11 September 2001, there are signs that the rules are being re-interpreted. As stipulated in the UN Charter, article 2(4), Nations shall refrain from interfering in the domestic affairs of other nations but there is more that needs to be considered. International Law is composed of both positive law, as codified in the UN Charter and various treaties, as well as customary law, based on historical precedents and accepted practices.⁶ As a philosophical matter, sovereign states derive their autonomy through inherent legitimacy rather than through a decree from the international community. However, as we will see, this fact can create fundamental conflicts within International Law. Because states may decide to voluntarily enter into agreement and commitment under the International Law, it only stands to reason that they may follow their own counsel when it comes to the interpretation of their own commitment under the law.⁷

Some legal advisors regarded the war illegal and felt so strongly against the declaration of war on Iraq, that they have quit their posts.⁸ However, throughout, the United States has maintained that their action was justified and legal even when Kofi

⁶ Paul Christopher, *The Ethics of War and Peace, An Introduction to Legal and Moral Issues*, third edition, Upper Saddle River New Jersey, 2004, 244.

⁷“International Law”, from http://en.wikipedia.org/wiki/International_Law, accessed 9 September 2005.

⁸ Carne Ross, the top Iraq expert at the British Mission to the United Nations, quit the Foreign Office because of the UK government’s conduct over the war in Iraq. Ross, who worked on Prime Minister Tony Blair’s dossier on weapons of mass destruction, regards the war as illegal.

Annan, the United Nations Secretary General, declared explicitly in September 2004 that the U.S.-led war on Iraq was illegal. During an interview with the BBC World Service broadcast, Mr Annan was asked outright if the war was illegal. He replied: "Yes, if you wish." He then added unequivocally: "I have indicated it was not in conformity with the UN Charter. From our point of view and from the Charter point of view it was illegal."⁹

Acting under the Charter of the United Nations - Chapter VII. The most universally accepted basis for the use of force is the authorization of the United Nations Security Council (UNSC). However before the use of force is authorized, the Security Council must determine that the situation amounts to a threat to the peace, breach of the peace or an act of aggression¹⁰. If one of these three conditions is deemed to exist, the UNSC will first likely attempt to resolve the situation by employing non-forceful measures such as embargo, severance of diplomatic relations or other appropriate measures found to be necessary in order to put pressure on the offending State (s) and to give effect to its decisions.¹¹ If non-forceful measures prove unsuccessful or attempting them would be inadequate then the Security Council may act under Article 42 of the UN Charter authorizing the use of forces deemed required to establish international peace and security. Such actions are known as Chapter VII enforcement operations. An exception to the UN Charter's prohibition on the use of force is self-defence. Article 51 of the UN Charter stipulates that the Charter does not "impair the inherent right of individual or

⁹Ewan Mcaskill and Julian Borge, "Iraq war was illegal and breached UN Charter says Annan", Guardian , 6September 2004 - <http://www.globalpolicy.org/security/issues/iraq/attack/law/2004/0916illegal.htm>, accessed 7 September 2005.

¹⁰United nations, Charter of the United Nations, art 39, from <http://www.un.org/aboutun/charter/index/html>, accessed 4 October 2005.

¹¹United Nations, Charter of the United Nations, art 41, from <http://www.un.org/aboutun/charter/index/html>, accessed 4 October 2005.

collective self-defence if an armed attack occurs against a Member of the United Nations”.¹² This right to self-defence is subject to three criteria derived from the 19th century Caroline Affair where British Forces and loyalists raided into the United States to suppress Canadian rebels operating from the U.S. territory. These criteria for self-defence are: necessity, proportionality and in the face of an imminent threat.¹³ The terrorist attacks of 11 September of 2001 further crystallized the applicability of the right of self-defence to acts of terrorism. The day following the attack on the World Trade Centre, the Security Council passed Resolution 1368 affirming the inherent right of self-defence as recognized by the Charter of the United Nations whereas prior to 9/11 the Security Council had not even mentioned this right in the context of terrorism.

Working outside the UN framework. Operating outside the UN framework is usually politically and/or legally risky. For example, the UN tribunals for Rwanda and the former Yugoslavia are currently addressing the legal responsibilities of individuals who have committed crimes of war and crimes against humanity¹⁴. With the Rome Statute having entered into effect on 01 July 2002, having obtained the required 60 ratifications, it can be expected that the International Criminal Court will take this process further.¹⁵

¹²United Nations, Charter of the United Nations, art 51, from <http://www.un.org/aboutun/charter/index/html>, accessed 4 October 2005.

¹³Michael Schmitt, The legality of operation Iraqi Freedom under International Law, *Journal of Military Ethics* (2004), 89, from www.michaelschmitt.org/images/Schmittarticle.pdf, accessed 29 September 2005.

¹⁴Department of Foreign Affairs and Trade, “Canada and the International Court”, http://www.dfait-maeci.gc.ca/cip-pic/current_discussion/futureissues-en.asp, accessed 29 September 2005.

¹⁵Department of Foreign Affairs and Trade, Canada and the International Court, form http://www.dfait-maeci.gc.ca/canadaeuropa/netherlands/can_nether1-en.asp#N_2, *International Criminal Court (ICC)*, accessed 6 October 2005.

Section 3 – “Just War Theory”

Just war theory and Jus ad bellum. Beside the sad reality that people will be killed in war, why should we be so concerned about a just war? Given that nations resorting to war are willing to kill human beings to impose their will on the other, answers can be incoherent and conflicting, and some would even argue against the need or the morality of a just war. Regardless of which side of the morality argument one may choose, there are issues that will remain a concern to any nation. First, a decision to wage war on a sovereign nation always has an impact on international relations. Michael Waltzer in his book *Just and Unjust Wars* states that war will be judged twice, once with regards to the reasons the state is fighting (Jus ad bellum) and then in reference to how the state fought the war (Jus in bello).¹⁶ Second, today’s availability of the media will bring “live” the gruesome results of war to everyone’s living room. With this in mind, we must remember the “highway of death” during the first Gulf war and the impact it had on public opinion and possibly the termination of the war. Finally, the media have escalated the obsession with casualties, thus forcing Western world leaders to seek options other than war or at the very least emphasizing humanitarian grounds for conflict. Regardless of the incoherence in just war theory, we must realize that it is not just a contemporary issue as the legitimacy of armed conflict has been an issue of concern since ancient times.

It is generally accepted that Grotius was the earliest modern writer on the law of war with his book, *DeJure Belli ac Pacis*, published in 1625. He stated that for war to be

¹⁶Michael Waltzer, *Just and Unjust Wars: A Moral argument with Historical Illustrations*. basic book, 2nd edition, 1992, 3.

just, it required to meet the following six criteria: *just cause, proportionality, reasonable chance of success, publicly declared, legitimate authority and last resort*.¹⁷ Other theorists dealing with the justification of why wars are fought have combined the fourth and fifth criteria into a single one: “being declared by a proper authority”.¹⁸ Given that the intent has remained essentially the same, for simplicity I will use these five criteria and assess the U.S.’ actions against them in the Iraq context.

Moral and ethical values under just war theory.

Just Cause. Adherence to “just cause” is the first and arguably the most important tenet.¹⁹ This tenet belongs to the political level and, without a doubt, any country will be judged against this principle long after the conflict is over. What does “just cause” consist of? For example, there is no argument that if a man is being assaulted and his life appears in inevitable danger, he may defend himself and very justly eliminate the aggressor if necessary. A very important point to note is that this right also exists when the threat appears imminent.²⁰ It flows naturally that the same principles apply to a country. It is also generally accepted that a country may use arms to evict an aggressor from its own country or a friendly country. To put it simply, just cause implies self-defence to an act of aggression that has either already occurred or is imminent.

¹⁷Paul Christopher, *The Ethics of War and Peace, an introduction to legal and moral issues*, third edition, Upper Saddle River New Jersey, 2004, 81-90.

¹⁸Mosely Alexander, Internet Encyclopedia of Philosophy, “Just War Theory”, part2 p.1, from <http://www.iep.utm.edu/j/justwar.htm>, accessed 6 October 2005.

¹⁹Mosely Alexander, Internet Encyclopedia of Philosophy, “Just War theory, The Jus Ad Bellem Convention”, part II p.1, from <http://www.iep.utm.edu/j/justwar.htm>, accessed 12 September 2005.

²⁰L.C. Green, *The contemporary of law of armed conflict*, Manchester and New York: Manchester University Press 1993, 1.

The basis for the U.S. attack on Iraq was that Saddam Hussein was in possession of weapons of mass destruction and had ties to Al Qaeda.²¹ While it is clear that Iraq had not attacked the U.S. nor its allies, was there compelling evidence that a threat was imminent? During his speech to the nation on 17 March 2003, three days before the attack on Iraq, President Bush seemed to indicate that an attack was imminent when he stated “We are now acting because the risks of inaction would be far greater”.²²

To make a valuable judgment on this particular comment, it is useful to review the events that could lead a reasonable person to believe that the danger was clear and imminent. From the time Iraq ratified UN Resolution 687 on 10 April 1991, following the ceasefire agreement between Iraq and Kuwait (and participating States), the UN was forced to respond to the Iraqi government which had repeatedly erected systematic obstructions to UN weapons inspection monitoring. A timeline of these actions and reactions follows:²³

- 9 June 1991, the UNSCOM (UN Special Commission) conducts its first weapons inspection. UN inspectors intercept Iraqi vehicles loaded with nuclear related equipment but Iraqi personnel fire warning shots to prevent inspectors from approaching the vehicles. The equipment is later seized and destroyed under international supervision.

²¹“President George W Bush’s speech on Iraq”, New York Times, Transcript of president Bush’s speech last night on Iraq as reported by the New York Times, March 18 2003, from <http://www.globalpolicy.org/security/issues/iraq/attack/2003/0318bushstatement.htm>, accessed 11 September 2005.

²²Ibid.

²³Mideastweb. Iraq – Timeline of UNSCOM Related events, from <http://www.mideastweb.org/iraqtimelineunsc.com.htm>, accessed 26 September 2005.

- 17 June 1991, the UNSC adopts resolution 699 stating that the UNSCOM and the International Atomic Energy Agency (IAEA) have the authority to conduct weapons inspections;
- 15 August 1991, the UNSC adopts Resolution 707 demanding immediate, complete and final disclosure of Iraq's weapons as per Resolution 687;
- 11 October 1991, the UNSC adopts Resolution 715 demanding that Iraq shall accept unconditionally the inspectors and all other personnel designated by the special commission;
- In March of 1992, Iraq declares that the existence of 89 previously undeclared ballistic missiles, chemical weapons which were unilaterally destroyed in summer 1991. A violation of Resolution 687;
- In January 1993, Iraq refuses to let UNSCOM aircraft fly into Iraq. Iraq also begins incursions into the demilitarized "no-fly" zone. The UNSC announces that Iraq's action is an "unacceptable and material breach" of Resolution 687 and warns Iraq of "serious consequences" if it continues. This leads to air strikes in southern Iraq by the U.S., UK and France. UNSCOM is allowed to resume its flights into Iraq;
- 15 October 1994, the UNSC adopts Resolution 949 demanding that Iraq fully cooperate with UNSCOM;
- Between March 1996 and September 1998, the UNSC adopts Resolutions 1051, 1060, 1115, 1137 and 1194, all re-iterate the same statements and demands as per the previous resolutions and condemning Iraq for continuously violating its obligations. Between 17-20 December 1998, after UNSCOM reports Iraq's

failure to fully cooperate, the UK and U.S. commence extensive bombardment in OPERATION DESERT FOX.

From the events noted above, it is clear that Saddam's regime had been a serious problem for the U.S. administration for more than ten years prior to the attack. As a result of Iraq's consistent failure to comply with the UN resolutions, the U.S. administration had long come to the conclusion that the Iraq situation would have to be dealt with eventually. Furthermore, Saddam had killed thousands of Shiites and Kurds rebelling against him and he had attempted to assassinate President Bush (father) in 1992 while he was visiting Kuwait.²⁴ In 1997, the UN inspectors concluded that Iraq was concealing much of its nuclear and chemical weapons programs and then, in 1998, the weapon inspections had completely stopped due to lack of cooperation forcing both the UK and the U.S. to begin air strikes against targets believed to be Saddam's weapons storage. The air strikes were further intensified in 1999 to weaken Saddam's grip on Iraq.

Regardless of the prior events, from 2000 on, the U.S. administration had stayed clear of publicly bringing up the issue of Iraq until the President's State of the Union address on 29 January 2002. In his speech, President Bush identified Iraq, along with Iran and North Korea, as an "axis of evil". He vowed that the U.S. would not permit the world's dangerous regimes to threaten the U.S. with the world's most destructive weapons.²⁵ From June 2002, the administration launched a host of diplomatic, public

²⁴Borgna Brunner, Iraq Timeline, current event and overview of the past, from <http://www.infoplease.com/spot/iraqtimeline1.html>, accessed 4 October 2005.

²⁵Borgna Brunner, Iraq crisis, 2002-Present, from <http://infoplease.com/spot/iraqtimeline2.html>, accessed 11 September 2005.

relations and military preparations against Iraq; most of them being recorded here below along with other important relevant events²⁶:

- June 2002, Bush introduces publicly in a speech at West Point a new doctrine of pre-emption where the U.S. may have to strike before a potential threat becomes an actual one (U.S. National Security Strategy)²⁷;
- 12 September 2002, Bush challenges the UN to enforce its own (UN's) resolutions against Iraq;
- 11 October 2002, Congress authorizes an attack on Iraq;
- 8 November 2002, the UNSC approves Resolution 1441 imposing tough new arms inspections on Iraq and more importantly stating that this resolution is affording Iraq a "final opportunity" to comply with its disarmament obligations;
- 18 November 2002, UN weapons inspectors return to Iraq for the first time in almost four years;
- 7 December 2002, Iraq submits a 12,000 page declaration on its NBCD activities, claiming no banned weapons under Resolution 687;
- 21 December 2002, President Bush approves deployment of U.S. troops to the Gulf region;
- 16 January 2003, UN inspectors discover 11 undeclared empty chemical warheads in Iraq;

²⁶Ibid, 1-7.

²⁷The White House. "The National Security Strategy of the US", Washington, DC: The White House, 17 September 2002, from <http://www.whitehouse.gov/nsc/nss5.html>, accessed 1 October 2005.

- 27 January 2003, formal report from Hans Blix, chief UN weapons inspector, stating: “Iraq appears not to have come to a genuine acceptance, not even today, of the disarmament that was demanded of it”;
- 28 January 2003, President Bush states that he is prepared to attack Iraq without a UN mandate during his State of the Union address;
- 14 February 2003, Inspector Blix, indicates that slight progress had been made with Iraq’s cooperation;²⁸
- 22 February 2003, Hans Blix orders the destruction of Iraq’s Al Samoud 2 missiles by March 1. The U.S. with UK and Spain submit a proposed draft resolution²⁹ to the UNSC stating Iraq had failed to take the final opportunity afforded to it in Resolution 1441.³⁰ 24 February 2003, France, Germany and Russia submit an informal counter-resolution stating among other points that inspections should be intensified and that the military option should only be a last resort;
- 1 March 2003, as directed, Iraq begins destruction of its Al Samoud 2 missiles; and,
- 24 February - 14 March, the U.S., Britain and Spain intensify their lobbying for the proposed resolution of 22 February. It does not yield sufficient support therefore the U.S. decides not to call a vote on the resolution.

²⁸United Nations. “Statement to Security Council”, Press release CS/7764, from <http://www.un.org/News/Press/docs/2003/sc7664.p2.doc.htm>, accessed 29 September 2005.

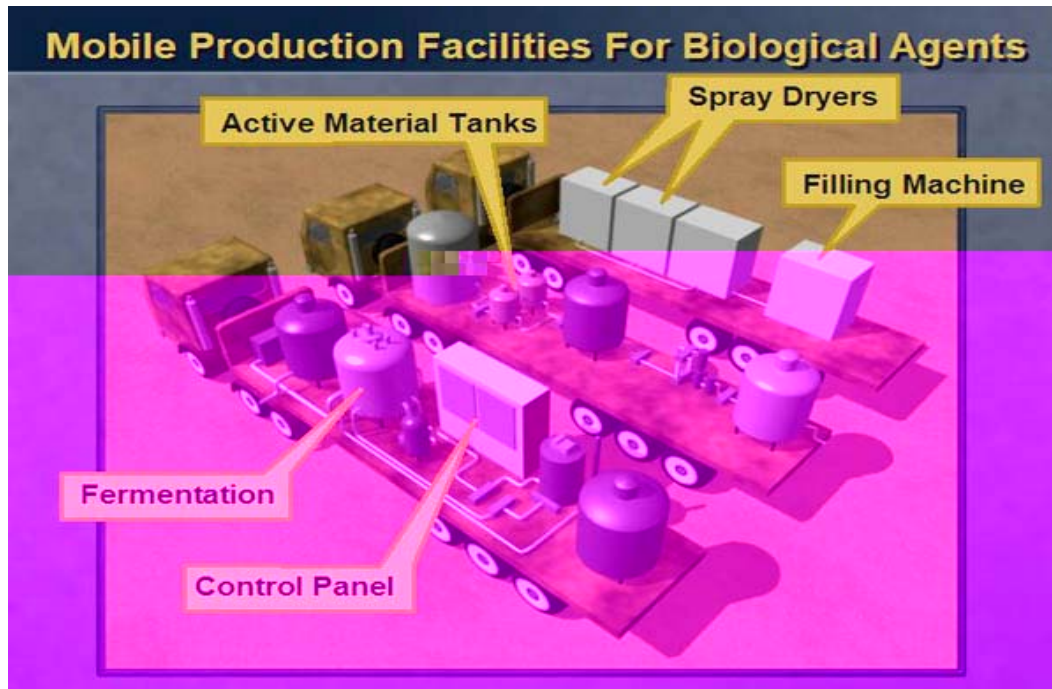
²⁹United Nations. “Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution”, S/2003/215, 24 February 2003, from <http://www.un.org/apps/news/storyAr.asp?NewsID=6256&Cr=iraq&Cr1=inspect&Kw1=Security+Council&Kw2=&Kw3=>, accessed 11 September 2005.

³⁰I contend that the language of the draft resolution would not have been an authority for the U.S. to attack.

From these events one could consider that, from June 2002, the U.S. administration had set a clear course for an armed conflict with Iraq. On the other hand, it can be argued that the U.S.' tough rhetoric against Iraq was designed to serve as coercive diplomacy as well as to applying pressure to the UN to enforce its own resolutions. President Bush stated in his 17 March speech to the nation: "This regime (Saddam's) has already used weapons of mass destruction against Iraq's neighbours and against Iraq's people".³¹ This fact was not disputed, however, how much fear can this have instilled on the American government? Were weapons of mass destruction a real imminent threat or just fear in a distant future? Certainly one factor that must have weighed heavily was the well publicized presentation by U.S. Secretary of State Colin Powell to the UNSC on 5 February 2003³² where he gave evidence from satellite images allegedly depicting mobile biological facilities.

³¹President George W Bush's speech on Iraq, New York Times, Transcript of president Bush's speech last night on Iraq as reported by the New York Times, March 18 2003, from <http://www.globalpolicy.org/security/issues/iraq/attack/2003/0318bushstatement.htm>, accessed 11 September 2005.

³²United Nations. "Secretary of State Presentation, Colin Powell's presentation" to UNSC, 5 February 2003, from <http://www.un.int/usa/03clp0205.htm>, accessed 6 October 2005.



Computer-generated image of an alleged mobile production facility for biological weapons. Absence of more substantial proofs undermined the credibility of the speech on the international scene. Russian experts have always questioned the likelihood of such mobile facilities, which are extremely dangerous and difficult to manage.³³

By the U.S. government's own admission, however, it did not amount to a "smoking gun" but if the U.S. were to wait for a "smoking gun" it would be too late.³⁴ After November 2002, the Iraqi government continued to claim at the UN that they were cooperating with Resolution 1441. However by March 2003, after years of systematic and deliberate obstructions toward every UN resolution, how truthful did this appear to the U.S. government considering that, as recently as 16 January 2003, the UN inspection team had just discovered 11 empty chemical warheads and then, on 22 February, the Al Samoud missiles, in contravention of the UN resolutions? There will always be some doubt whether the U.S. felt a real imminent threat or if it deliberately, several months

³³"The UN Security council and the Iraq war", from http://en.wikipedia.org/wiki/The_UN_Security_Council_and_the_Iraq_war, Colin Powell's presentation to UNSC, 5 February 2003, 4, accessed 9 September 2005.

³⁴Ibid.

ahead, set the course for an armed conflict for other reasons such as inserting a friendly regime in place?

Can we then conclude that the attack was justified as self-defence because an attack was imminent? Fear itself cannot alone be a justification for a pre-emptive strike nor does a potential threat in the future amount to an imminent danger. As alluded to earlier, following the Caroline Affair, the exchange of diplomatic notes penned between the American and British has become the accepted standard prior to the use of force in self-defence defined as: “a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberations”.³⁵

More than two years after the invasion and intensive searches by the Coalition for WMD it now seems clear that the threat was not imminent. Today these claims are almost universally agreed to have been false. However, was it a matter of deceit or an intelligence failure? The basis for the attack was that Saddam was in possession of weapons of mass destruction and had ties to al Qaeda. Did the U.S. act out of sheer frustration from years of a lack of UN resolve and Iraq severely abusing a paralysed system? Given the information available to the Coalition in March 2003, there exists some doubts that the U.S. upheld the value of the “just cause” to a very high standard.

Proportionality. This condition somewhat overlaps into the moral guidelines of how the war should be fought, namely the principles of *just in bello*.³⁶ The principle of proportionality demands that prior to engaging in hostilities, a utilitarian calculation of

³⁵Michael N. Schmitt, “International Law and the Use of Force: The Jus Ad Bellum”, *quarterly journal*, vol ii, no 3, September 03, 92, from <http://www.michaelschmitt.org/Publications.html>, [International Law and the Use of Force: The Jus ad Bellum](#), accessed 12 September 05.

³⁶Moseley Alexander, The Internet Encyclopedia of philosophy, “Just war theory”, part 2 p.2, from <http://www.iep.utm.edu/j/justwar.htm>, accessed 12 September 2005.

the consequences of resorting to arms from both sides be made.³⁷ The condition of proportionality also implies that a specific political end or objective is clearly specified in advance to avoid a war justly begun becoming unjust in its execution through mission creep³⁸. An illustration of this principle is when Gen Schwarzkopf advocated pursuing the Iraqi army into Baghdad in order to destroy Saddam's army as well as topple his government. Gen Scharwzkopf apparently had not kept in mind that the prerogative on Jus ad bellum belongs to the political authorities.³⁹

In 2003, Operation Iraqi Freedom, the invasion of Iraq, was notably swift with the fall of the Iraqi government in approximately three weeks. The casualties of the invading forces were limited (139 for March & April 2003)⁴⁰. A Boston think tank has estimated the number of Iraqi to have been killed between 11,000 and 15,000, with an estimated 20,000 Iraqis injured.⁴¹ While the number of Iraqi losses was still high, this number pales in comparison to the losses caused by the regime Saddam had imposed on his own people in the 80s and 90s. Saddam has been accused of destroying over 4000 Kurdish villages and killing over 100,000 Kurds with chemical/biological agents.⁴² The U.S. took great care to protect the Iraqi oil fields to help rebuild Iraq's economy as well as its infrastructure following the war. To this day, more than two years after the attack on Iraq, it is clear that the U.S. is devoting countless resources to rebuild Iraq in cooperation with a "friendly" democratic government.

³⁷ Paul Christopher, *The Ethics of War and Peace, An Introduction to Legal and Moral Issues*, third edition, Upper Saddle River New Jersey, 2004, 83-84.

³⁸ Mission creep - Expression used in military circles to indicate a ever expanding mission objective.

³⁹ Ibid, 84.

⁴⁰ "Iraq Coalition Casualty counts", from <http://icasualties.org/oif/>, accessed 3 October 2005.

⁴¹ Wikipidia, the free Encyclopedia, "Invaded Iraq, Specialty Definition: 2003 invasion of Iraq", from, <http://www.websters-online-dictionary.org/definition/INVADED+IRAQ>, accessed 14 September 2005.

⁴² Stephen Hughes, "Iraq/Biological Warfare Agent Rotavirus: Was it used in the Iraq-Kurds wars?", 3 July 2002, from <http://www.iraqwatch.org/perspectives/hughes-rotavirus-070302.htm>, accessed 14 September 2005.

What was the motivation of the Americans and did President Bush change the reasons for the attack in order to pursue hidden motives after the war was started? In his address on 17 March 2003, President Bush gave Saddam and his sons 48 hours to leave Iraq and go into exile, making it clear that this was his primary objective. His second objective was also made clear when he urged Iraqi military units to act with honour and protect their country by permitting Coalition forces to eliminate the weapons of mass destruction.⁴³ He also stated that Iraqi soldiers would be given instructions to avoid being “attacked and destroyed”.⁴⁴ In view of those stated objectives, it is debatable that the principle of proportionality was respected to a high standard.

More than two years after the war was won, Saddam and his sons are long gone and it is more doubtful than ever that weapons of mass destruction will be found or if they ever existed in the first place, yet the U.S. remains in Iraq for other reasons, the one that comes to mind is to put a friendly democratic regime in place. It leaves some doubt that the U.S. invaded Iraq only for the stated reasons (a mission creep perhaps!) or that if it had correctly calculated the human and material cost of this “nation building” which has now become more costly both in human⁴⁵ and material resources than the war itself. To mitigate the result of this lack of foresight or deliberately hidden objective, the U.S. are spending enormous amounts of resources to help rebuild Iraq. Furthermore, because the current Iraqi regime wants the U.S. to remain in place for a longer period, it forces

⁴³“President George W Bush’s speech on Iraq”, New York Times, Transcript of president Bush’s speech last night on Iraq as reported by the New York Times, March 18 2003, from <http://www.globalpolicy.org/security/issues/iraq/attack/2003/0318bushstatement.htm>, accessed 11 September 2005.

⁴⁴Julian Borger, “Bush Gives Saddam and his sons 48 hours to leave Iraq”, Guardian, March 18, 2003 from <http://www.globalpolicy.org/security/issues/iraq/attack/2003/0318bushgives.htm>, accessed 10 September 2005.

⁴⁵The US casualties was counted at 1936 at end of September 2005, from <http://icasualties.org/oif/>, accessed 3 October 2005.

upon the U.S. a moral obligation to support the Iraqis in rebuilding their nation. In summary, the general thrust of this concept is that a country should be waging war for a cause of justice, not for self-serving reasons. Forced democratization, as it has now turned out, can only be legal if the Security Council grants a mandate for that purpose, as it did in 1994 (USNC Resolution 940⁴⁶) to return a democratically elected President Aristide to office in Haiti following a military coup.

Since the beginning of the conflict, Coalition leaders have increasingly pointed out Saddam's abuse as further justification for the war. However, it was not given in advance as the cause of the war by the U.S. Because the U.S. intentions for waging war on Iraq seem to have shifted post invasion, it leads one to believe that the U.S. did not uphold this value very high.

Reasonable chance of success. From an assailant's point of view, given a just cause and the right intention, the just war theory asserts that there must be a reasonable chance of success.⁴⁷ Grotius' perspective was that "life is of greater value than liberty". This view constitutes not a rejection of fighting for freedom but a rejection of futile or suicidal resistance.⁴⁸ There was little doubt that the U.S. Coalition would have no problem winning the war. The proof is that it took only three weeks to topple the government. However, more than two years after the attack, it is clear that regime change and winning the "hearts and minds" of the Iraqi people is proving far more

⁴⁶United Nations. Charter of the United Nations, art 39, from <http://www.un.org/aboutun/charter/index/html>, accessed 4 October 2005.

⁴⁷Mosely Alexander, Internet Encyclopedia of philosophy, "Just War Theory", part 2 p.2, from <http://www.iep.utm.edu/j/justwar.htm>, accessed 12 September 2005.

⁴⁸ Paul Christopher, *The Ethics of War and Peace, An Introduction to Legal and Moral Issues*, third edition, Upper Saddle River New Jersey, 2004, 85.

difficult and costly than the war itself. This aspect was either miscalculated or perhaps it was not fully appreciated that many Iraqis would not give up their “way” so easily. Today we can usefully surmise that the U.S. will remain in place long enough to restore peace and security in Iraq; otherwise, the good resulting from this conflict will be outweighed by the evil caused by the war itself. Only some time in the future, once historians have laid-out all the facts, will we be able to assert this conflict has made a better world.

Publicly declared and legitimate authority. The purpose of this principle is twofold. First, it provides the offending nation the opportunity to offer redress in lieu of violence and, secondly, it establishes with certainty that war is not being waged by “private initiative” but being declared by the proper authority (by the head of state).⁴⁹ In order to put a perspective on the words “legitimate authority” an historical example can elucidate the problem: when Nazi Germany invaded France in 1940 it put in place a puppet regime, Vichy. Did the French owe allegiance toward their government? The concept requires reflection of what is meant by sovereignty, what is meant by the state and what is the relationship between a population and its government.⁵⁰

Was President Bush authorized to represent the people of America and declare war on Iraq on their behalf? The War Powers Act of 1973⁵¹ demands that the President of the United States request approval from Congress to use the military against an enemy. This was clearly approved by Congress on 11 October 2002. President Bush also met the

⁴⁹ Paul Christopher, *The Ethics of War and Peace, An Introduction to Legal and Moral Issues*, third edition, Upper Saddle River New Jersey, 2004, 85.

⁵⁰ Mosely Alexander, Internet Encyclopedia of philosophy, “Just war theory”, part 2 p.1, from <http://www.iep.utm.edu/j/justwar.htm>, accessed 12 September 2005.

⁵¹ Public Law 93-148, 93rd Congress H.J. Res 542, November 7 1973, from <http://www.cs.indiana.edu/statecraft/warpow.html>, accessed 21 October 2005.

requirement to provide due warning of impending hostilities as required by the Hague Convention (III) 1907⁵² which originated from the war between Russia and Japan in 1905 where a formal treaty was designed to prevent that future conflict would not be started without a formal warning. While President Bush provided a public ultimatum, so far as the United Nations is concerned, there is no requirement to provide an ultimatum of impending hostilities.⁵³ The U.S. definitively held a very high standard on this issue.

Last resort. War must always be a last resort and only when the other means to achieve a satisfactory resolution have failed.⁵⁴ We need to review the events leading to the Iraq conflict from an historical perspective to determine if resorting to armed force was in fact the “last resort” for the U.S. We need to remember that the UN had been engaged in 12 years of diplomacy, that the Iraqi regime had defied countless UN resolutions and that the lack of UN resolve to enforce these resolutions could eventually lead to a disaster for the U.S. In his address to the UN General Assembly, on the first anniversary of the 9/11 attacks, President Bush specifically stated that the Iraqi threat of weapons of mass destruction, links to terrorists, and humanitarian violations were predominant breaches to the resolutions that compelled the UN to act.⁵⁵ On the other hand, the President of the United States should have realized and taken into account that the lesson of Afghanistan could not have been lost on the Iraqis. The Iraqi leadership

⁵² Department of National Defence, *Collection of documents on the law of armed conflict*, . 2005 edition, 13.

⁵³L.C.Green, *The contemporary of law of armed conflict*, Manchester and New York: Manchester University Press 1993, 71.

⁵⁴Christopher Paul, *The ethics of war and peace: An Introduction to Legal and Moral Issue*, third edition, Upper Saddle New Jersey, 2004, 87.

⁵⁵The White House, Office of Press Secretary, President George W. Bush, “President’s Remarks at the United Nations General Assembly”, September 12 2002, from <http://www.whitehouse.gov/news/releases/2002/09/print/20020912-1.html>, accessed 25 September 2005

must also have realized that the use of WMD would have proven suicidal, indeed, on the basis of the demonstrated resolve by the Americans in Afghanistan; it would have been exceedingly irrational to do so by any state or internal group. Furthermore, the last UN resolution (1441 - 8 November 2002) was exerting pressure on Iraq to comply with its obligations, as demonstrated by their grudging acceptance to let the inspectors return to Iraq; this alone was indicative that Iraq probably feared an attack. Finally, Hans Blix, the UN chief weapons inspector, reported to the UNSC on 14 February 2003 that the Iraqis were now more proactive in their cooperation.⁵⁶ Unless there were some tactical and operational reasons to attack at that point in time, which this author is unaware of, a reasonable person can only be left with the impression that Iraq could have been afforded the time to comply with the “final opportunity” in accordance with UNSC Resolution 1441. To conclude, in these circumstances, that March 2003 was the last window of opportunity to mount an effective defence against a potential Iraqi attack with WMD is not convincing.

Overview of the moral obligations (*just cause, proportionality, reasonable chance of success, publicly declared by legitimate authority and last resort*). There is evidence that the U.S. failed to meet the moral obligations of a just war on several counts. The U.S. mainly failed to demonstrate that the threat was imminent and thereby claim the reason of self-defence. Prior to waging war with Iraq, President Bush further failed to fully identify all motives for the attack. Furthermore, short of a vague statement that the Americans understood the cost of conflict and that war had no certainty except the

⁵⁶United Nations, “Statement to Security Council”, Press Release SC/7664, 14/02/2003, from <http://www.un.org/News/Press/docs/2003/sc7664.p2.doc.htm>, accessed 29 September 2005.

certainty of sacrifice,⁵⁷ he failed to fully clarify the ensuing human and material cost for the operation. While we should remain positive, there are still some doubts that the U.S. will eventually be successful at rebuilding Iraq as a better and a prosperous nation. The cost of this operation to the U.S. in resources and in human lives for both the Iraqis and the Coalition soldiers increases each passing day. With nearly 2000 American fatalities since the beginning of the operation,⁵⁸ mounting pressure from the American public who could decide that this operation has become too costly would force the U.S. government to pull its troops out of theatre prematurely, in the end possibly causing more havoc and a humanitarian catastrophe within Iraq. While the intervention in Iraq is not over yet, and a “just war” is not black and white, there is mounting proof that the U.S. did not hold the “moral bar” very high before embarking on this conflict.

Section 4- Legal Debate

International Rule of Law and the UN Charter. Under article 2 (4) of the UN Charter the use or threat of force between states is not permitted. However, there are two circumstances in which use of force is permissible:

- in collective or individual self-defence against an actual or imminent armed attack (Art. 51);
- when the UNSC has directed or authorized use of force to maintain or restore international peace and security (Art. 42);

⁵⁷“President George W Bush’s speech on Iraq”, New York Times, Transcript of president Bush’s speech last night on Iraq as reported by the New York Times, March 18 2003, from <http://www.globalpolicy.org/security/issues/iraq/attack/2003/0318bushstatement.htm>, accessed 11 September 2005.

⁵⁸ At the end of September 2005, the American casualties amounted to 1933. It was at 139 for the first 2 months of the conflict. Iraq Coalition Casualty counts, from <http://icasualties.org/oif/>, accessed 3 October 2005.

In 2003, there was no explicit UN resolution to use “all necessary means” against Iraq to restore international peace and security in the area. Therefore, under the UN Charter, the U.S. could have only resorted to the reason of self-defence to attack Iraq. As already mentioned at the beginning, due to the precedent set by the Caroline Affair, the right to self-defence remains subject to some criteria: necessity of self-defence, last resort and proportionality. Also, although the UN Charter does not mention the conditions required to proclaim self-defence, the International Court of Justice has stated that self-defence under Article 51 of the UN Charter must satisfy the conditions of proportionality and necessity.⁵⁹ Proportionality is the relationship between means and ends.⁶⁰ In other words, the attack should be only to the extent required to remove the threat, this is to prevent mission creep in its execution. It could be argued that the invasion of Iraq was excessive and that the U.S. could have just used air strikes on suspected weapons facilities as they had done in the past. This line of reasoning however would not have worked because the weapons monitoring teams had just returned to Iraq to search for weapons of mass destruction. Indeed, under those conditions, air strikes could not be justified and would have certainly been perceived very illogical.

What does the concept of necessity consist of? It means that all non-forceful measures have failed or would have failed to prevent an armed attack.⁶¹ As already stated, for 12 years Saddam had erected systematic obstructions in defiance of the cease-fire resolution (UNSCR 687 – 8 April 1991) and many other UNSC resolutions following the first Gulf war. Hence, it is not unreasonable to believe that giving more time for

⁵⁹ Naert Frederik, The impact of the fight against terrorism on the ius [sic] ad bellum, *Ethical Perspectives* 11 (2004), 145.

⁶⁰ Ibid, 147.

⁶¹ Ibid, 147.

Resolution 1441 to work (“the final opportunity”) would have yielded more satisfactory results than the previous resolutions. Saddam Hussein had previously been given many similar opportunities. From the American perspective, these opportunities had been used as a ploy to gain time and advantage.⁶² In short, there were no reasons to believe that Saddam would have eventually taken this final Resolution (1441) more seriously.

Could the U.S. have claimed the right to pre-emptive self-defence as per the September 2002 “National Security Strategy of the United States of America.”⁶³ There is nothing in the UN Charter that provides an expanded right to pre-emptive self-defence. As a precedent, when the Israelis bombarded the Osirak nuclear facility near Baghdad in 1981, the action was condemned by the Security Council as a premeditated and unprecedented act of aggression.⁶⁴ Still the U.S. have asserted through their National Security Strategy that the “imminent” criteria in self-defence needs to be interpreted more liberally since terrorists will remain hidden and will not announce their intention until they have acted, potentially with WMD. In the same breath, however, it is unlikely that the U.S. would be prepared to recognize this broad interpretation to other states. A case in point is that, in 2002 when Russia undertook military action against Georgia, the U.S. condemned the action.⁶⁵ For the moment, under the UN Charter, the law still considers the imminent criteria with a more restrictive interpretation.

⁶²“President George W Bush’s speech on Iraq”, New York Times, Transcript of President’s Bush, New York Times, 18 March 2003, from <http://www.globalpolicy.org/security/issues/iraq/attack/2003/0318bushstatement.htm>, accessed 3 October 2005.

⁶³The White House. The National Security Strategy of the US, Washington DC, 17 September 2002, Part V, from <http://www.whitehouse.gov/nsc/nss5.html>, accessed 1 October 2005.

⁶⁴Frederik Naert , “The impact of the fight against terrorism on the [ius] ad bellum”, *Ethical Perspectives* 11 (2004), 149-150.

⁶⁵Scott Peterson, U.S.- Russia ties jolted by crisis in Georgia , The Christian science Monitor, August 26 2002, from <http://www.csmonitor.com/2002/0826/p01s02-wosc.html>, accessed 21 October 2005.

Regardless, in this particular case, the conditions of necessity and proportionality in self-defence become a moot point as President Bush never based the legality of the attack on an argument of self-defence, pre-emptive or otherwise. Shortly after launching Operation Iraqi Freedom, the U.S. addressed a letter to the president of the UNSC outlining the legal rationale to the armed force justification.⁶⁶ Essentially the letter was a repeat of his reasons previously stated in his 17 March address to the Nation.

Legal justification provided by the US. After Iraq invaded Kuwait in 1990, the UNSC passed Resolution 660 declaring the invasion of Kuwait a breach of the peace and demanded immediate withdrawal.⁶⁷ After a number of resolutions imposing sanctions on Iraq, on 29 November 1990, the UNSC adopted Resolution 678 which authorized member Nations cooperating with Kuwait the use of all “necessary means” to implement Resolution 660 and subsequent resolutions in order “to restore international peace and security in the area.”⁶⁸ This latter phrase empowered the use of force not only to expel the Iraqis from Kuwait but also to create the necessary conditions for regional stability. Finally, in order to give the Iraqis one final opportunity to comply, the resolution set a compliance deadline of 15 January 1991. When Iraq failed to comply, the coalition forces attacked. This action was taken pursuant to Resolution 678, not from a new UNSC resolution. Resolution 687⁶⁹ set forth the terms and conditions to the ceasefire. Primarily, amongst many conditions, Iraq was to destroy all its weapons of mass

⁶⁶“Letter to the President – Security Council”, 20 March 2003, from <http://www.newsmax.com/archives/articles/2003/3/22/195522.shtml>, accessed 1 October 2005.

⁶⁷ United Nations. UN Security Resolutions, Res 660, 2 August 1990, from http://www.un.org/Docs/sc/unscl_resolutions.html, accessed 15 September 2005.

⁶⁸ Ibid, Res 678, 29 November 1990.

⁶⁹ Ibid, Res 687, 3 April 1991.

destruction, allow weapons monitoring teams and cut all ties with groups linked to terrorist activities. Resolution 1441 (8 November 2002) reiterated, as per many other resolutions had in the past, that Iraq was in a material breach of its obligations.

As a matter of customary law, material breach of terms of a ceasefire by one side releases the other from its own obligations, including the requirement to refrain from the use of force.⁷⁰ Therefore, the United States and other coalition states were released from their ceasefire obligations and the use of force contained in resolution 678 became operative again. To further drive this legal point, the U.S. reminded the UNSC president, in the letter forwarded on 20 March 2003, the coalition forces had received a mandate from the Security Council for the use of force during the 1993 strikes⁷¹ on Iraq because Iraq was in material breach of its obligations. Although the 1993 strikes were not specifically authorized by the Security Council (nor requested from SC) there was significant concurrence that Resolution 678 alone was sufficient to resume the hostilities. To prove the point, not only did France (an opponent of the 2003 action) participate in the 1993 operation along with the U.S. and the U.K. but also, then the Secretary General Boutros-Ghali stated at a press conference in Paris:

“The raid was carried out in accordance with a mandate from the Security Council under Resolution 678 (1991), and the motive for the raid was Iraq’s violation of that Resolution which concerns the cease-fire. As General-Secretary of the United

⁷⁰ Department of National Defence, *Collection of documents on the Law of Armed Conflict*, 2005 edition Hague convention (IV) art 36-40, 17.

⁷¹ Mideastweb. The Iraq crisis -Timeline of UNSCOM and inspection related events, from <http://mideastweb.org/iraqtimelineunsc.com.htm> ; Internet; accessed 26 September 2005.

Nations, I can tell you that the action was taken in accordance with the resolutions of the Security Council and the Charter of the United Nations”.⁷²

The argument made was: if the UN considered the 1993 strikes legal and in accordance with the Security Council and the Charter of the United Nations because Iraq had failed to comply with the UN resolutions, then it stands to reason when Iraq repeatedly failed to meet its obligations there were sufficient legal grounds to resume hostilities again. It is certainly the message that President Bush conveyed during his address to the Nation on 17 March 2003, when he stated that under UN resolutions 678 and 687 - both still in effect - the U.S. and its allies were authorized to use force in ridding Iraq of weapons of mass destruction.⁷³ He further stated that, on 8 November 2002, the UN had passed Resolution 1441, finding Iraq in material breach of its obligations and “vowing serious consequences” if Iraq did not fully and immediately disarm.⁷⁴ This argumentation is sound if we discount two points: the intent of Resolution 1441 and the lack of formal support from the UN Secretary General for Operation Desert Fox (17-20 Dec 1998) as he had done previously for the air strikes on Iraq in 1993.

Opposing views to the legal ground. President Bush stated that Resolutions 678, 687 and 1441 were sufficient to resume hostilities with Iraq. The problem with this linear thinking is that when the UN authorized the use of force by Kuwait and participating member states against Iraq under Resolution 678, it was done because Iraq

⁷² Michael N Schmitt, “The Legality of Operation Iraqi freedom under the International law”, *Journal of Military Ethics* (2004), 96, from <http://www.michaelschmitt.org/Publications.html>, [The Legality of Operation Iraqi Freedom under International Law](#), accessed 29 September 2005.

⁷³The White House, “President says Saddam Hussein must leave Iraq within 48 hours”, from <http://www.whitehouse.gov/news/releases/2003/03/iraq/20030317-7.html>, accessed 9 September 2005.

⁷⁴ Ibid.

had invaded Kuwait, not because the U.S. felt threatened by alleged WMD. It is clear that Resolution 678 was ratified to address a particular situation at a particular time and it authorized member states in coalition with Kuwait to take a certain action. While it is true that, for 12 years, Iraq had repeatedly violated the conditions of the ceasefire under Resolution 687, it did not give right to a state that happened to be a coalition partner a perpetual right to use force to restore peace and security in the area. The intent becomes even clearer when one considers that Resolution 1441 was put in place to afford Iraq a “final opportunity” to comply in order to meet its obligations, otherwise it would face “serious consequences”.⁷⁵ This resolution did not contain an automatic trigger or a deadline. If the U.S. felt that Resolution 1441 along with 678 and 687 were sufficient to use force against Iraq then why propose a draft resolution, on 24 February 2003, essentially stating that Iraq had “failed to take the final opportunity afforded to it by Resolution 1441”?⁷⁶ The only reasonable answer to this question seems obvious, the U.S. did not believe that Resolution 1441 along with the others were sufficient ground to legally launch an attack on Iraq.

Section 5 - Conclusion

It is clear that the UN was paralysed and as such, failed in its primary responsibility of maintaining peace and security. It must share part of the blame for not taking the necessary steps aggressively enough which subsequently allowed this situation

⁷⁵United Nations, “UN Security Resolutions”, Res 1441, 8 November 2002, para 2, from http://www.un.org/Docs/sc/unsc_resolutions.html, accessed 4 October 2005.

⁷⁶United Nations, “Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution”, S/2003/215, 24 February 2003, from <http://www.un.org/apps/news/storyAr.asp?NewsID=6256&Cr=iraq&Cr1=inspect&Kw1=Security+Council&Kw2=&Kw3=>, accessed 11 September 2005

to slide into a quagmire with 12 years of failed diplomacy. In addition, Iraq played the biggest part for this diplomatic failure. Iraq failed to meet its obligations under the UN resolutions and, furthermore, failed its own citizens with the cruel treatment it had imposed on them, in consequence the Iraqi regime brought its own demise.

From an ethical and moral viewpoint, before embarking on this conflict, the US was hasty and did not provide sufficient evidence to prove that the threat was real and imminent. To date, all facts support this position. In all evidence, the U.S. seriously lowered the bar in that regard and, as I mentioned at the beginning, it will be judged in that light for a long time to come.

Strictly from a legal point of view, the line of reasoning provided by the US is weak. To maintain the stand and the belief that the action was legal, based on a 12 year old ceasefire resolution (a nebulous point of law at best), is dangerous. It would neither serve the U.S. nor the world's best interest to accept this line of reasoning as it would inevitably open a Pandora's Box. To paraphrase the French Minister of Foreign Affairs, Mr De Villepin's address to the UNSC on 19 March 2003: The respect of law is the keystone of international order, it must be applied specially when the gravest decision must be made – the use of force. Regardless, in the wake of terrorist acts of 9/11, the rules of law will likely evolve and may need re-interpretation as it was never intended that nations should suffer an attack, as the U.S. did on 9/11, before taking action.

BIBLIOGRAPHY

Borger Julian and Macaskill Ewan, “Iraq war was illegal and breached UN charter says Annan”, Guardian, 16 September 2004, from

<http://www.globalpolicy.org/security/issues/iraq/attack/law/2004/0916illegal.htm>,

Internet; accessed 7 September 2005.

Borger, Julian. “Bush Gives Saddam and his sons 48 hours to leave Iraq”, Guardian, 18 March 2003, from

<http://www.globalpolicy.org/security/issues/iraq/attack/2003/0318bushgives.htm>,

Internet; accessed 10 September 2005.

Brailey, Malcom, “Pre-Emption and Prevention: An Ethical and legal Critique of the Bush Doctrine and Anticipatory Use of Force in Defence of the State”. Institute of Defence and Strategic Studies, Nanyang Technological University, The Republic of Singapore, November 2003.

Canada. Department of National Defence, *Collection of documents on the law of armed conflict*. 2005 edition.

Canada. Department of National Defence, B-GG-005-027/AF-021 *The Law of Armed Conflict at the operational and Tactical Level – Annotated – Ottawa: DND Canada, 2001.*

Christopher, Paul, *The Ethics of War and Peace, An introduction to Legal and Moral Issues*, third edition Upper Saddle River New Jersey, 2004.

Secretary of State Presentation, Colin Powell’s presentation to UNSC, 5 February 2003,

<http://www.un.int/usa/03clp0205.htm>, Internet; accessed 6 October 2005.

Department of Foreign Affairs and Trade, “Canada and the International Court.”

http://www.dfait-maeci.gc.ca/cip-pic/current_discussion/futureissues-en.asp; Internet;

accessed 29 September 2005.

George W. Bush, “President’s Remarks at the United Nations General Assembly”, The White House president George W. Bush September 12, 2002,

<http://www.whitehouse.gov/news/releases/2002/09/print/20020912-1.html>, accessed 25 September 2005.

Green, LC, *The contemporary of law of armed conflict*, Manchester and New York: 1993.

Internet Encyclopedia of Philosophy, “Just War theory”, from

<http://www.iep.utm.edu/j/justwar.htm>; Internet; accessed 12 September 2005.

Iraq Coalition Casualty counts, from <http://icasualties.org/oif/>, accessed 3 October 2005

Iraq crisis, 2002-Present, from <http://infoplease.com/spot/iraqtimeline2.html>, accessed 11 September 2005.

Mideastweb, "Iraq – Timeline of UNSCOM (UN Special Commission) Related events", from <http://www.mideastweb.org/iraqtimelineunsc.com.htm>, Internet; accessed 26 September 2005.

Global policy Forum – "International Justice", from <http://www.globalpolicy.org/wldcourt/index.htm>, Internet; accessed 7 September 2005.

Letter to the President – Security Council, 20 March 2003, from <http://www.newsmax.com/archives/articles/2003/3/22/195522.shtml>; Internet; accessed 1 October 2005.

M. Halle, "Invasion of Iraq – Right or Wrong", Canadian Forces College, Canadian Staff College, Master Thesis, 2004.

Michael N. Schmitt, "International Law and the Use of Force: The Jus Ad Bellum", quarterly journal, vol ii, no 3, September 03, <http://www.michaelschmitt.org/Publications.html>, [International Law and the Use of Force: The Jus ad Bellum](#), Connections, September 2003, 89-97, accessed 12 September 05.

Michael N. Schmitt, "The legality of operation Iraqi Freedom under International Law", *Journal of Military Ethics* (2004), www.michaelschmitt.org/images/Schmittarticle.pdf, accessed 29 September 2005.

Mideastweb. "The Iraq crisis -Timeline of UNSCOM and inspection related events", from <http://mideastweb.org/iraqtimelineunsc.com.htm>; Internet; accessed 26 September 2005.

Naert Frederik, "The impact of the fight against terrorism on the ius [sic] ad bellum", *Ethical Perspectives* 11 (2004).

President George W Bush's speech on Iraq, New York Times. (Transcript of president Bush's speech last night on Iraq as reported by the New York Times, from <http://globalpolicy.org/security/issues/iraq/attacl/2003/0318bushstatement.htm>, accessed 11 September 2005.

R.A. Davidson, Decision on Iraq: "Putting Canadian Values and Interest in Context", Toronto: Canadian Forces College National Security Studies Course paper, 2003.

Stephen Hughes, "Iraq/Biological Warfare Agent Rotavirus: Was it used in the Iraq-Kurds wars?", 3 July 2003 from <http://www.iraqwatch.org/perspectives/hughes-rotavirus-070302.htm>, accessed 14 September 2005.

The Massacre of withdrawing Soldiers on the “Highway of Death”, from <http://deoxy.org/wc/wc-death.htm>, accessed 3 October 2005

The White house. “The National Security Strategy of the US”, Washington DC: The White House, 17 September 2002, Internet; <http://www.whitehouse.gov/nsc/nss5.html>, accessed 1 October 2005.

The White House, “President says Saddam Hussein must leave Iraq within 48 hours”, from <http://www.whitehouse.gov/news/releases/2003/03/iraq/20030317-7.html>; Internet; accessed 9 September 2005.

“The UN Security Council and the Iraq war”, from http://en.wikipedia.org/wiki/The_UN_Security_Council_and_the_Iraq_war, accessed 9 September 2005.

The US casualties was counted at 1936 at end of September 2005, from <http://icasualties.org/oif/>, accessed 3 October 2005.

Turner Johnson, James. *Can Modern War be Just?* New Haven and London, 1984.

United Nations, “Charter of the United Nations”, <http://www.un.org/aboutun/charter/index.html>; Internet; accessed 4 October 2005.

United Nations. “Statement to Security Council”, Press release CS/7764, from <http://www.un.org/News/Press/docs/2003/sc7664.p2.doc.htm>, Internet; accessed 29 September 2005.

United Nations, “UN Security Resolutions”, http://www.un.org/Docs/sc/unsc_resolutions.html; Internet: accessed 4 October 2005.

United Nations. “Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution”, S/2003/215, 24 February 2003, from <http://www.un.org/apps/news/storyAr.asp?NewsID=6256&Cr=iraq&Cr1=inspect&Kw1=Security+Council&Kw2=&Kw3;> Internet; accessed 11 September 2005.

Waltzer, Michael, *Just and Unjust Wars: A Moral argument with Historical Illustrations*. USA, second edition, 1992.

Wikipedia, the free Encyclopedia, “Invaded Iraq, Specialty Definition: 2003 invasion of Iraq”, from <http://www.websters-online-dictionary.org/definition/INVADED+IRAQ>, accessed 14 September 2005.