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INVASION OF IRAQ – RIGHT OR WRONG?

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Abstract

In the wake of 9/11, Saddam Hussein's regime was seen by the Bush administration as posing an unacceptable threat to the U.S. The specific issues that threatened international peace and security centred on Iraq's continual defiance of UN resolutions. The American solution was the use of military force, with the objective of achieving regime change. However, the U.S. was unsuccessful in convincing the UN of this plan. Many heated debates within the Security Council split the permanent members. Some argued that more time should be given to the weapons inspectors, while others saw the inspections as being futile. Despite all efforts to find WMD, the weapons inspectors came up empty-handed. However, British and American intelligence believed that Iraq possessed them, and confirmed that the existence of this programme presented an imminent threat to the West. In the end, the United States was unable to achieve a clear UN mandate to authorize military action. Still concerned with lurking imminent threat, in March 2003 President Bush authorized a pre-emptive attack to topple the Iraqi leadership. This essay will argue that the American-led coalition acted in defiance of the UN Charter, and the attack was illegal and unjust under international law and just war theory. The essay will also show that American takeover did not advance the orderly promotion of human rights in Iraq.

It is much easier to make war than peace.[1]
- Georges Clemenceau

The world watched in horror on the 11th of September 2001 (9/11) as terrorists hijacked four commercial airliners and crashed them into the twin towers in New York City, the Pentagon, and a field in Pennsylvania. As people watched in disbelief, panic set in, as many feared further acts of terror would follow. The collapse of the World Trade Center towers and the downing of the plane in Pennsylvania represented the first major attack against civilian targets within the borders of the United States. The world's only remaining superpower had been brutally attacked on its own soil with over 3,000 innocent citizens murdered.[2] This incident triggered an unprecedented chain of events that continues to transform world affairs today.[3] Immediately following 9/11, countries from all over the world showed unparalleled spontaneous support for the United States, demonstrating genuine friendship and the sharing of America's grief. The heartfelt emotion towards the American people was reflected on the front page of the less-than-U.S.-friendly French newspaper, *Le Monde*, when it ran the headline: "*Nous Sommes Tous Americains.*"[4]

Most of the world felt America's pain as the terrorists took pleasure in the successful strikes against key symbols of American might. Terrorism disregards the legal

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[1] Margaret MacMillan, *Paris 1919 Six Months That Changed The World* (New York: Random House Trade Paperbacks, 2003), xxx.

[2] Oleksandr Gladkyy, "American Foreign Policy and U.S. Relations with Russia and China after 11 September," *World Affairs* Vol. 166 Issue 1 (Summer 2003) [journal on-line]; available from http://web16. epnet.com//DeliveryPrintSave.asp; Internet; accessed 25 September 2003.

[3] William Shawcross, *Allies – The U.S., Britain, Europe and the War in Iraq* (United States of America: PublicAffairs, 2004), 13.

[4] Eric Alterman and Mark Green, *The Book on Bush – How George W. (Mis)leads America* (New York: Viking, 2004), 230.

framework of war.[5] There is no doubt that the terrorists who perpetrated these

unconscionable attacks on 9/11 committed a horrendous crime against humanity, an act that

cannot be justified within any religion or law. This was an illegal, barbaric act. With

America bloodied, full of anger and its security compromised, the world waited with

anticipation to see how the U.S. would react. America had been attacked, and in

accordance with international law, as outlined in article 51 of the UN Charter, it had the

right of self-defence.[6]

Within days of the attack, the al'Qa'ida terrorist organization, led by Osama bin

Laden, would claim responsibility. America's response was quick, and in his address to

Congress on 20 September 2001, President George W. Bush declared a *War on Terror.* He

vowed that this war would not end until all terrorist groups were found and defeated. The

president then split the world into two camps by stating: "Every nation, in every region,

now has a decision to make. Either you are with us, or you are with the terrorists."[7] The

day after 9/11, the United Nations Security Council – at the request of the United States -

passed Resolution 1368 (2001).[8] This resolution condemned the terrorists, paving the way,

if necessary, for a measured military response by an American led, UN-sanctioned attack

on those responsible.[9] Similarly, the Secretary-General of NATO declared that invoking

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[5] Paul Christopher, *The Ethics of War & Peace: An Introduction to Legal and Moral Issues*, 3d ed. (New Jersey: Pearson Prentice Hall, 2003), 194.

[6] Office of the Judge Advocate General, "1945 Charter of the United Nations", in Collection of Documents on the Law of Armed Conflict, 2001 ed., ed. Directorate of Law Training (Ottawa: DND, 2001), 61.

[7] George W. Bush, "Address to a Joint Session of Congress and the American People," *The White House President George W. Bush* (September 20, 2001) [on-line]; available from http://www.whitehouse. gov/news/releases/2001/09/print/20010920-8.html; Internet; accessed 23 February 2004.

[8] United Nations Security Council Resolution 1368 (2001), 12 September 2001. This resolution authorized the use of military force to combat terrorism.

Article Five of the North Atlantic Treaty was justified.[10] Further in his address to

Congress, the President placed clear demands on the Taliban - the leadership regime in

Afghanistan – that was harbouring al'Qa'ida. President Bush's demands included the

handing over of Osama bin Laden and his organization. These demands went unfulfilled,

and the Taliban regime suffered the consequences. Operation Enduring Freedom

commenced with the bombing of Afghanistan on 7 October 2001.

A resolution unanimously supported by the Security Council provided the legal

framework for the U.S. led coalition to take military action in Afghanistan.[11]

Subsequently, the Taliban regime was destroyed, an interim government installed, and the

al'Qa'ida terrorist organization was dealt a serious blow, with many of its members killed

or incarcerated at Guantánamo Bay in Cuba. Action in Afghanistan clearly demonstrated

the resolve of the United States and its coalition partners, sending a clear message to the

world about how serious the Bush administration was about wiping out terrorism. This

first round represented a victory for those countries opposed to terrorism. What would the

next step be?

On the 29th of January 2002, the President, in his State of the Union address, touted

the successes achieved in Afghanistan, thanked the military for its efforts, and stated that

more work needed to be done to eradicate the more than a dozen known international

terrorist organizations operating throughout the world. He emphasized that tens of

thousands of trained terrorists were still at large, and that these terrorist groups were hiding

anywhere from jungles to the centres of large cities. Without specifically identifying how

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[9] William Shawcross, *Allies – The U.S., Britain,…*, 64.

[10] Wesley K. Clark, *Winning Modern Wars* (New York: PublicAffairs, 2003), 126.

he intended to deal with these known terrorist groups, the President shifted in midstream to his second priority - Iraq. In his address, he made the link between the *War on Terror* and Iraq – stating that Iraq, along with Iran and North Korea, formed an "axis of evil". These countries posed a grave threat to world order, because of their quest to acquire and assumed willingness to pass on to terrorists' weapons of mass destruction (WMD).[12] This shift from the *War on Terror* to Iraq caught many by surprise. Milan Rai[13] questioned why the Americans shifted the focus on Iraq, when the stated priority was the war on terrorism.[14] Many were surprised by this link and asked why the war was moving in this new direction. Robin Cook - Britain's Leader of the House of Commons who resigned his cabinet position over Britain's decision to go to war in Iraq - made the statement that no evidence could be found linking Saddam Hussein to Al'Qa'ida, despite a desperate search by intelligence agencies of three continents.[15] Others, like Secretary of State Colin Powell, argued that there was evidence. During his address to the UN General Assembly on 5 February 2003, Powell outlined Iraq's WMD programme, showed how Saddam Hussein rewarded Palestinian suicide bombers, and how he fed intelligence information to terrorists. Secretary Powell asserted that leaving weapons of mass destruction in the hands of Saddam Hussein for any period of time would not be an option in a post-September 11th world.[16]

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[11] Paul Christopher, *The Ethics of War & Peace…*, 194.

[12] George W. Bush, "The President's State of the Union Address," *The White House President George W. Bush* (January 29, 2002) [on-line]; available from http://www.whitehouse.gov/news/releases/2002/01/print /20020129-11.html; Internet; accessed 23 February 2004.

[13] Milan Rai is a British citizen and a founding member of ARROW (Active Resistance to the Roots of War) a London based non-violent direct action affinity group.

[14] Milan Rai, *War Plan Iraq – Ten Reasons Against War on Iraq* (New York: Verso, 2002), 130.

[15] Robin Cook, *The Point of Departure* (Toronto: Simon & Schuster, 2003), 287.

[16] William Shawcross, *Allies – The U.S., Britain,…*, 135-136.

Some have speculated that the current Bush administration wanted for some time to depose Saddam, but could not justify intervening prior to 9/11. Then the terrorist attacks provided a catalyst for the Americans to take action against the Iraqi dictator – a plan that had, it is argued, been under development since the first Gulf War ended. Alterman and Green state that the neoconservatives in the Bush administration viewed 9/11 as an opportunity to begin a preventive war against Iraq as opposed to a national tragedy.[17]

All commentators agree that the United States had the right to defend itself against the terrorists responsible for the attacks of 9/11. America's attacks against the terrorists lay within the right of self-defence, as outlined in the UN Charter. But can the same grounds be used to justify the attack on Iraq?

In March 2003, the coalition of the willing, led by the United States of America, invaded Iraq and overthrew Saddam Hussein's regime. Was the United States' action against Iraq in keeping with United Nations policy? Was it a legal action, in terms of being a pre-emptive war? Was it just, in terms of just war theory? And, finally, was it positive, in terms of the orderly promotion of human rights? This essay will argue that the war on Iraq was illegal and unjust. As well, the paper will argue that the approach taken by the Americans in Iraq did not uphold the orderly promotion of human rights.

To support these assertions, the rationale used by the Americans for waging war on Iraq will be presented. A historical overview of American foreign policy in the region and a brief description of the Islamic culture will be given. Following this, the essay will provide a précis of international law to establish a legal framework in assessing the legitimacy of the American's actions. A discussion on anticipatory self-defence will be included to assess the legitimacy of the American pre-emptive policy as applied to Iraq.

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[17] Eric Alterman and Mark Green, *The Book on Bush…*, 5.

Just war theory will then be discussed, in order to assess if the criteria for a just war was met. The essay will conclude with a review of the humanitarian responsibility to protect, and examine whether the American actions resulted in the orderly promotion of human rights.

Rationale for War

Never, never, never believe any war will be smooth and easy, or that anyone who embarks on the strange voyage can measure the tides and hurricanes he will encounter. The statesman who yields to war fever must realize that once the signal is given, he is no longer the master of policy but the slave of unforeseeable and uncontrollable events.[18]

- Winston Churchill

What was the American motivation for invading Iraq? Alterman and Green suggest numerous reasons: Saddam's WMD programme, his connections with Al'Qa'ida, his brutalisation of his people, and the enormous oil reserves. Perhaps President Bush wanted to deflect attention away from the fact that Osama bin Laden had not been captured, or to distract attention from his lack of success on domestic issues.[19] These authors confess that they do not know why the president declared war, because he offered a succession of ever-shifting reasons.

In the build-up to war, many inside the Bush administration provided justification for the invasion. However, the final decision rested with the President, as he was the only person with constitutional authority, as commander-in-chief, who could declare war.[20] In reviewing the numerous communiqués provided by President Bush on Iraq, the key argument he made for the invasion was Saddam Hussein's continual defiance of UN resolutions. In the president's address to the UN General Assembly, on the first

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[18] Benjamin R. Barber, *Fear's Empire – War, Terrorism, and Democracy* (New York: W.W. Norton & Company, 2003), fourth page in book (unnumbered).

[19] Eric Alterman and Mark Green, *The Book on Bush…*, 252-253.

anniversary of the 9/11 attacks, Bush specifically stated that the Iraqi threat of weapons of mass destruction, links to terrorists, and humanitarian violations were the predominant breaches to the resolutions that compelled the UN to act.[21]

The threat of WMDs was based on intelligence that stated that Iraq possessed long-range missile capability as well as chemical and biological weapons. American intelligence also asserted that Saddam Hussein had the will to deploy these weapons, based on his prior use of them against neighbours and his own population. Iraq was thought to be within six months of acquiring nuclear weapons capability.[22] President Bush said, "We acquired irrefutable proof that Iraq's designs were not limited to chemical weapons… but also extended to the acquisition of nuclear weapons and biological agents."[23] Adding to this argument, Prime Minister Blair repeated four times during his presentation of the Iraq Dossier on WMD during the British Parliamentary Debate that Saddam Hussein could deploy WMD within 45 minutes.[24] Therefore, Iraq's possession of WMDs and a missile capability enabling it to quickly launch constituted an imminent and unacceptable threat to the West.

The terrorist threat posed by Iraq was the second reason provided by Bush. He stated that Saddam Hussein aided, trained and harboured terrorists, including members of al'Qa'ida. The president claimed that high-level contacts between Iraq and al'Qa'ida had

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[20] Bob Woodward, *Plan of Attack* (Toronto: Simon & Schuster, 2004), 167.

[21] George W. Bush, "President's Remarks at the United Nations General Assembly," *The White House President George W. Bush* (September 12, 2002) [on-line]; available from http://www.whitehouse.gov/news/releases/2002/09/print/20020912-1.html; Internet; accessed 7 March 2004.

[22] Eric Alterman and Mark Green, *The Book on Bush…*, 254.

[23] George W. Bush, "National Security Strategy of the United States of America," *The White House President George W. Bush* (September 17, 2002) [on-line]; available from http://www.whitehouse.gov/nsc/nssall.html

existed for more than a decade.[25] He further emphasised this link during a meeting held

with representatives from the House in September 2002.[26] Therefore, Saddam's link to

terrorists and the danger of WMDs being passed to them from Iraq also constituted an

imminent and unacceptable threat to the United States.

The third reason provided for waging war was based on humanitarian grounds. The

United States wanted to stop the grave violations of human rights being committed in Iraq.

In his State of the Union address in 2003, President Bush cited several examples of Saddam

Hussein's brutality, two of which included the mass deaths that occurred when he used

WMDs against his own people, and the inhumane methods Saddam used to obtain

confessions by torturing children while their parents watched.[27] In light of Saddam's

continual defiance, regime change in Iraq was being considered as the most effective

solution.[28] As articulated in Bush's speech to the UN General Assembly, the president was

prepared to give diplomacy a chance. However, he made it clear that he was ready to

undertake military action as a fallback to force Iraqi compliance.[29] Saddam's continual

violation of human rights posed a threat to peace and security in the region and therefore

was used as grounds for justification to pursue regime change in Iraq.

The waging of war and committing troops into battle is not an easy decision. To

better understand why the Bush administration pushed so hard for the war, insight is

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[24] Robin Cook, *The Point of Departure…*, 215-216.

[25] Eric Alterman and Mark Green, *The Book on Bush…*, 277.

[26] Bob Woodward, *Plan of Attack…*, 188.

[27] George W. Bush, "The President's State of the Union Address," *The White House President George W. Bush* (January 28, 2003) [on-line]; available from http://www.whitehouse.gov/news/releases/2003/01/print /20030128-19.html; Internet; accessed 8 April 2004.

[28] Bob Woodward, *Plan of Attack…*, 162.

required concerning American foreign policy in the Middle East, particularly in terms of the effects that the 9/11 attacks had on current policy. When President Bush took office in January 2001, his administration's foreign policy did not differ much from his predecessor's. This meant that the Cold War doctrine of deterrence and containment in the region would prevail.[30] Prior to adopting this strategy *carte blanche,* the Bush administration was divided on Iraq. Moderates likes Secretary of State Colin Powell believed that containment was more prudent than an aggressive approach. He did not want to see Iraq dominate the American agenda. Conversely, neoconservatives within the Bush administration pressed fo   a

the president's vision as one that "clearly includes an ambitious reordering of the world through pre-emptive and, if necessary, unilateral action to reduce suffering and bring peace."[36] Richard Perle[37] labels the two factions within the Bush administration regarding American foreign policy as 'hard-liners' and 'soft-liners'. A 'hard-liner' himself, Perle boasts about the fact that the hard-liners have won most policy battles, describing Bush's foreign policy as being based on potent decisive action that clearly includes the use of force against terrorists.[38] Though the authors do not all agree with the drastic policy shift, a common theme that emerges is that it represents a fundamental change toward a more aggressive and proactive approach.

The impression is created that the Bush administration felt that there was no choice. With the devastating effects of the 9/11 attacks still fresh in the minds of most Americans, and with terrorists and state-sponsored terrorism still prevalent, a firm stance had to be taken. This change in policy would send a clear message to state and non-state actors, causing them to be cautious in attempting acts of aggression against the United States. Demonstrating firm resolve, the Bush administration devoted all the resources needed to increase awareness and American readiness levels in order to protect citizens and prevent another 9/11-type attack.

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[36] Bob Woodward, *Bush at War* (Toronto: Simon & Schuster, 2002), 341.

[37] Richard Perle served as an assistant secretary of defense in the Reagan administration and as chairman of the Defense Policy Board under President George W. Bush. He is a resident fellow at the American Enterprise Institute.

[38] Richard Perle, "Beware the Soft-line Ideologues," *Wall Street Journal* (January 7, 2004) [Journal on-line]; available from http:/www.benadorassociates.com/pf.php?id=1034; Internet: accessed 8 March 2004. In the article he lists the supporters of this policy as Cheney, Rumsfeld, Wolfowitz, and Abrams.

The Bush administration was prepared to use pre-emptive force and act unilaterally, if necessary, to neutralize any external threat.[39] The sudden willingness to take such extreme measures represented a significant departure from past policy. The neo-conservatives in the Bush administration faulted the Clinton presidency for multiple foreign policy failures and its inability to effectively deal with the Iraqi problem.[40] Disagreeing with these accusations, Scott Ritter[41] directs his criticism for the pre-March 2003 circumstances in Iraq toward the previous Republican administrations of the Reagan and Bush senior presidencies. According to Ritter, in twelve consecutive years, under two different administrations, policy on Iraq went from "non-existent, to open embrace, to containment, to conflict, and back to containment."[42] In defence of President Clinton, Ritter concludes that the former president inherited a 'hot-potato'. Conversely, Frum[43] and Perle are significantly harsher, accusing Clinton of giving up after Operation Desert Fox[44], and failing to force Saddam Hussein to yield to UN sanctions.[45] These authors go on to assert that this gave the Iraqi dictator greater resolve to resist UN demands, inflating his sense of invincibility before the international community.

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[39] George W. Bush, "President's Remarks at the United Nations General Assembly...

[40] Eric Alterman and Mark Green, *The Book on Bush…*, 195.

[41] Scott Ritter was a former U.S. Marine intelligence officer who served on General Schwartzkopf's staff during the 1991 Gulf War and later served as a chief UN weapons inspector in Iraq from 1991 to 1998 serving under Rolf Ekéus and Richard Butler.

[42] Scott Ritter, *Endgame: Solving the Iraq Problem – Once and for All* (New York: Simon & Schuster, 1999), 132-133.

[43] David Frum – a former special assistant to President George W. Bush, is a resident fellow at the American Enterprise Institute and a contributing editor to *National Review*.

[44] Operation Desert Fox – Clinton administration authorized four days of non-UN sanctioned bombing of Baghdad by American and British forces in December 1998 after the UNSCOM inspection team was yet again stifled by Saddam Hussein. This event would bring about the end of UNSCOM, resulting in no weapons inspections occurring in Iraq for four years despite the stand-up of UNMOVIC in December 1999.

In assessing the effectiveness of the four U.S. administration's foreign policies on Iraq prior to September 11th, faults can be found with each. Changes in global circumstances over the past two decades prevent exact comparisons, but there have been recurring themes in the Middle East through this period that American foreign policy overlooked, misunderstood, or inadequately resolved. A proper analysis requires a broader understanding of the people in the region, their culture, and the issues that have set them against the West.

The Middle East is a cultural kaleidoscope aligned along ethnical, tribal, and religious lines. The predominant religion is Islam. To appreciate the dynamics of the region, knowledge of Islamic culture is required. The following paragraphs will present a brief insight into this culture. It will show that mainstream Muslims are peaceful, law-abiding citizens within the global community; whereas Muslim extremists - who represent a minority - have a tendency to resort to violent means through terrorism in the name of Islam.

Samuel Huntington describes Islam as one of the four great civilizations in the world. He calls it an absolutist faith that combines religion and politics to delineate a clear line separating those in *Dar al-Islam*[46] and those in *Dar al-Harb*[47].[48] Islam represents a

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[45] David Frum and Richard Perle, *An End to Evil – How to Win the War on Evil* (New York: Random House, 2003), 19.

[46] "Primary Concepts: Dar-al-Islam, Dar al-Harb, and Dar al-Sulh," *Media Guide to Islam*. Journal on-line; available from http: mediaguidetoislam.sfsu.edu/religion/03e_concepts.htm; Internet; accessed 8 April 2004. *Dar al-Islam* means "house of Islam". It signifies a geographic location controlled by Muslims where Islamic law is in effect.

[47] "Primary Concepts: Dar-al-Islam, Dar al-Harb, and Dar al-Sulh," *Media Guide…. Dar al-Harb* means "house of war". It is a location where Muslims are not in control and Muslim law is not in effect.

[48] Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996), 47.

fundamental shift from secular societies, where religion and politics are deliberately kept apart.

Islam and Christianity are the only two missionary religions in the world.[49]   The significance of this lies in the competitive environment they create. At various periods in history, Islam and Christianity vied with one another for power, land and souls. The Muslims waged *jihad* wars against Christians, and, conversely, the Christians waged *crusades* against Muslims. The supremacy of each religion would rise and fall in a sequence of spectacular surges and counter-surges, interspersed with periods of calm. Islam is the only civilization in history that has threatened the survival of the West, nearly achieving this feat twice.[50]

The last great Islamic realm was the Ottoman Empire, an empire that met its demise after the First World War.[51] Some place the blame for the fall of the once-mighty Muslim world on Western imperialism and westernization of Muslim elites.[52] John Esposito describes that the demise of Muslim societies brought about overcrowding, poor social support, political corruption, expanding gaps between rich and poor, and a general breakdown of religion and Islamic culture.[53] A key, humiliating event in this Muslim decline was the West's displacement of millions of Palestinians in order to establish the state of Israel. Israel's crushing victory in the 1967 Arab-Israeli war exacerbated the sense

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[49] *Ibid,* 209.

[50] *Ibid,* 209-210.

[51] Margaret MacMillan, *Paris 1919 Six Months That…,* 85.

[52] John L. Esposito, *Unholy War – Terror in the name of Islam* (Toronto; Oxford Press, 2002), 51.

[53] *Ibid*, 83

of failure among Muslims.[54] Arab-Israeli confrontation continues to this day, with a

multitude of peace process attempts continually failing due to violent clashes on both sides.

The beginning of the 1980s would see the start of an Islamic resurgence and an

increase in violent conflicts between Islamic and Judeo-Christian civilizations. The Islamic

resurgence was accelerated with the Soviet-Afghan war in 1979. Muslims around the

world came to the aid of the *mujahedeen* in Afghanistan to help defeat the Soviets. The

West saw this as a triumph for democracy, but Muslims saw as a victory for Islam.[55]

The 1991 Gulf War represented another rallying point for Muslims. Most Muslim

leaders despised Saddam Hussein and condemned him for invading Kuwait. Despite these

anti-Saddam sentiments, Muslim governments were initially divided about providing

support for the American-led action. However, among the Arab and Muslim people,

opinion was from the start overwhelmingly anti-West. The dean of the Islamic College in

Mecca, Safar al-Hawali, declared that the war was not the world against Iraq, but rather

Islam against the West. Saddam Hussein leveraged this popular sentiment, shifting the

focus of his previously secular regime in favour of Islam in order to gain support in the

region.[56]

The resurgence of Islam has resulted in Muslims increasingly refuting Western

influence upon their way of life, politics and morals. According to Huntington, Muslims

resent and fear Western power and the threat it poses to their culture.[57] They see Western

culture as being decadent, acquisitive, corrupt and immoral, giving them further cause to

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[54] *Ibid,* 83.

[55] Samuel P. Huntington, *The Clash of Civilizations…*, 247.

[56] *Ibid*, 249.

[57] *Ibid*, 213.

reject any influence it may have on the Muslim way of life. Muslims feel that there is a great lack of understanding in the West about their culture and values. They also resent the West trying to change them.[58]

Perceived as being economically and technologically weaker than the West, Islamic civilization lacks the resources necessary to effect large-scale ideological change. The only effective strategy Muslim extremists feel they have left open to combat Western influence is terrorist activity. Huntington expresses strongly opinionated views on Islamic fundamentalism and points to Islam as the problem; however, as John Esposito explains, Huntington's views have since been curtailed since 9/11.[59] Esposito comments that over history mainstream Islam has always rejected extremists and terrorists, stating that Islam does not take issue with the basics of Western capitalism.[60] Western society needs to show greater awareness and not portray most Muslims as extremists.

American foreign policy in the Middle East, since 1945, has been inconsistent, often seeking short-term gains in national interest without trying to understand or compensate for ideological differences. The United States' prime interest in the region has been economic, driven by its strategic supply of vast oil reserves. American policy inconsistencies in the region lie at the root of Muslim resentment toward the West. For example, the American support for Israel's occupation of Gaza and the West Bank (in defiance of UN resolutions) is inconsistent with the American's hard-line approach taken toward the Palestinian Authority. The hard stance taken against Pakistan and other Muslim states regarding their nuclear programmes is inconsistent when compared to American

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[58] *Ibid*, 213-214.

[59] John L. Esposito, *Unholy War…*, 127.

tolerance of rival nations' nuclear programmes, such as those of India and Israel. The American involvement shown in Kosovo was noticeably absent in Chechnya and Kashmir conflicts.[61] These inconsistencies continue to fuel anti-Western sentiment among Islamic extremists to this day.

A close look at American foreign policy toward Iraq also reveals inconsistencies. From the time of his ascendance to power in 1979, Saddam Hussein's relationship with the U.S. began with initial support during the eight-year Iran-Iraq war, but then rapidly turned to hostility when Iraq invaded Kuwait in 1990. During the Iran-Iraq war, the Americans provided Iraq with weapons, loan guarantees, and defence advisors. When Iraq used chemical weapons in 1984 against Iranian soldiers, the world witnessed the true character of Saddam Hussein.[62] These illegal actions drew condemnation from the UN Security Council. Ironically, the U.S. was the only country to vote against the UN condemnation of Iraq.[63] Saddam Hussein's use of chemical weapons was not reserved only for his enemies. He also used them against his own population, when he killed 50,000-186,000 Kurds in 1988.[64] The Americans knew that Saddam was gassing not only enemy troops but also his own population. However, the U.S. chose not to condemn Iraqi for these actions.

Regarding Iraq's nuclear ambitions, the former President Ronald Reagan wrote in his autobiography that he was aware that Iraq was attempting to develop a nuclear weapons

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[60] *Ibid,* 128-129.

[61] *Ibid,* 157.

[62] Julian Perry Robinson and Jozef Goldblat, "SIPRI Fact Sheet: Chemical Warfare in the Iraq-Iran War," *Stockholm International Peace Research Institute* (May 1984) [on-line]; available from http://projects.sipri.se/cbw/research/factsheet-1984.html; Internet; accessed 24 April 2004.

[63] Research Unit For Political Economy, *Behind The Invasion of Iraq* (New York: Monthly Review Press, 2003), 31.

capability during his presidency – the Americans did not deter this from happening.[65]

However, Israel became concerned and acted in anticipatory self-defence, pre-emptively

destroying Iraq's Osirak nuclear reactor in 1981. The UN, the U.S., and other countries

formally condemned Israel's illegal actions.[66] During senior President Bush's term in

office, American intelligence analysts reported that Saddam was diverting U.S. supplied

material and funds to acquire a nuclear capability, yet the administration did nothing to

prevent it.[67]

During President Bush senior's first two years in office the policy on Iraq was a

continuance of the one used by the Reagan administration: "Which was to deal with

Saddam Hussein more or less without condition and regardless of consequence."[68] It was

during this timeframe that Saddam Hussein, saddled with severe debt from the Iran war,

with no relief coming from debtor nations such as Saudi Arabia and the United States, felt

that his only option was to invade Kuwait. Iraq's need was purely financial. With his

troops amassed on Kuwait's border, Saddam stated to the American ambassador to Iraq

that the U.S. would not oppose his aim of taking Kuwait, because the United States could

not accept significant casualties in a war.[69] The U.S. ambassador left Saddam with the

impression that the Americans would treat this as a clash between Arab states and that the

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[64] *Ibid,* 31-33.

[65] Ronald W. Reagan, *Ronald Reagan – An American Life* (Toronto: Pocket Books, 1990), 413.

[66] Hilaire McCoubrey and Nigel D. White, *International Law and Armed Conflict* (Brookfield USA: Dartmouth Publishing Company Limited, 1992), 95.

[67] Lawrence F. Kaplan and William Kristol, *The War Over Iraq – Saddam's Tyranny and America's Mission* (San Francisco: Encounter Books, 2003), 41.

[68] *Ibid,* 41.

[69] *Ibid,* 42.

U.S. would not get involved.[70] Saddam's army rolled into Kuwait on August 2, 1991,

catching the Americans and the other Gulf states by surprise.[71]

The invasion of Kuwait represented a significant turning point for U.S. policy in

Iraq. Saddam underestimated President Bush senior's reaction. Several Security Council

resolutions, designed to persuade Iraq to withdraw, were drafted. Unsuccessful in

convincing Iraq, Security Council Resolution 678 authorized military means to liberate

Kuwait.[72] The Iraqi invasion resulted in the UN-sanctioned, American-led coalition forces

removing the Iraqi military from Kuwait.

Despite the liberation of Kuwait, Yossef Bodansky argues that, "no one in the

Muslim world – whether a supporter or an enemy of Iraq – has ever accepted the

declaration that the U.S.-led coalition was assembled primarily to protect a small country

against an aggressor."[73] He asserts that the war was over Saddam Hussein and the fact that

he had control over 20 percent of Persian Gulf oil.[74]

As has been shown in the preceding discussion, the difficulties experienced in the

Middle East are not a recent phenomenon. President Bush believed that Saddam Hussein

needed to be deposed in order to rid the world of Iraq's evil dictator.[75] Winning the *War on

Terror* would have been jeopardized if Saddam Hussein had been left in power. The

legitimacy of Bush's arguments will be assessed in the next sections.

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[70] Research Unit For Political Economy, *Behind The Invasion of Iraq…*, 38.

[71] Yossef Bodansky, *The High Cost of Peace – How Washington's Middle East Policy Left America Vulnerable to Terrorism* (Roseville California: FORUM, 2002), 40.

[72] David Schweigman, *The Authority of the Security Council under Chapter VII of the UN Charter* (Netherlands: Kluwar Law International, 2001), 82.

[73] Yossef Bodansky, *The High Cost of Peace…*, 42.

[74] *Ibid,* 42.

International Law and the Legal Argument

We cannot consider that the armed invasion and occupation of another country are peaceful means or proper means to achieve justice and conformity with international law.[76]

- President Dwight Eisenhower

A state that instigates a war needs to assess the legality of its actions before firing the first shot. In its simplest form, the legal litmus test is a question of morality, of right or wrong, and legality. International law is the framework used to determine whether waging of a war is legal. This section will review international law and examine the legal arguments that currently exist concerning the use of military force. These arguments will then be used to examine the U.S. National Security Strategy and the legal ramifications of its pre-emptive policy, and to assess if the American invasion of Iraq was in keeping with international law.

To determine whether an action is legal within international law, the law itself, its origins, intent and application must all be understood. International law is a term that is often loosely used and not well understood. What does it mean in the post Second World War era? The Office of the Judge Advocate General within the Department of National Defence defines international law as: "The body of law which governs relations between sovereign states…. It is a vital mechanism without which an increasingly interdependent world could not function…."[77] The Canadian Oxford Dictionary defines international law

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[75] George W. Bush, "The President's State of the Union Address...(January 28, 2003)…

[76] Benjamin R. Barber, *Fear's Empire – War, Terrorism…*, 103.

[77] Office of the Judge Advocate General. "The Law of Armed Conflict at the Operational and Tactical Level" In B-GG-005-027/AF-021, 2001 ed., ed. Directorate of Law Training (Ottawa: DND, 2001), 1-1. This definition goes on to make allowance for the employment of armed forces.

as: "a body of rules established by customs or treaty and agreed as binding by nations in their relations with one another."[78]

International law is a complex array of treaties, alliances and binding agreements that covers a wide spectrum. In its simplest form it represents an agreement between two or more states and escalates to more complex agreements like those found within the United Nations that binds over 180 nations. Agreements can range from those pertaining to economic relationships, such as the North American Free Trade Agreement, to military alliances, such as the North Atlantic Treaty Organization.

Adherence to international agreements and dispute resolutions are normally based on a mutually agreed mechanism. A heavily politicized process, there is a strong interdependence that exists between international law and international politics.[79] In dealing with disagreements, debates can arise resulting from different interpretations of the same law. Similarly, breaches to international law become difficult to enforce as there is no single international law enforcement agency, nor are the rulings of international law binding within state borders for jurisdictional reasons. Anthony Clark Arend states, "As a consequence, states can lawfully do as they please unless they have consented to a specific rule that restricts their behavior."[80] Mechanisms that do exist to enforce breaches in the law include diplomatic action, sanctions, or use of military force. Implementing these requires the co-operation from other member states. William Coplin writes that

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[78] The Canadian Oxford Dictionary, ed. Katherine Barber (Toronto: Oxford University Press, 1998), 736.

[79] William D. Coplin, "International Law and Assumptions about the State System," *World Politics Vol. 17, No. 4* (Jul, 1965) [Journal on-line]; available from http:www.jstor.org; Internet; accessed 6 April 2004.

[80] Anthony Clark Arend, "International Law and the Preemptive Use of Military Force," *The Washington Quarterly* (Spring 2003): 93.

international law is 'quasi authoritative' because it is an imperfect system unable to achieve complete acceptance.[81]

At the close of the First World War, the League of Nations represented the world's first attempt to establish a World Court on a global scale.[82] Lack of agreement resulted in some countries refusing to join – the United States, one of its founders, being a significant omission.[83] Ineffective and somewhat dysfunctional, the League of Nations was unable to prevent the Second World War and was therefore dissolved when the UN was formed in 1945.[84] The atrocities of the Second World War provided greater impetus for all states to form a body that would help bring about, for all time, world peace and security.[85]

The Charter of the United Nations is the framework that provides the structure, purpose and jurisdiction of the world body - its *raison d'être*. The UN plays a vital role in attempting to ensure that peace, security and stability exists throughout the world. The UN has no military forces at its disposal, and therefore has little influence on what sovereign states do.[86] The Charter does, however, recognize the sovereign equality of its members, and the right of states to deal with their own domestic matters.[87] The Charter is built on the primacy of non-intervention.

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[81] William D. Coplin, "International Law and Assumptions about the State System," *World Politics Vol. 17, No. 4* (Jul, 1965) [Journal on-line]; available from http:www.jstor.org; Internet; accessed 6 April 2004.

[82] David Schweigman, *The Authority of the Security…*, 221.

[83] Margaret MacMillan, *Paris 1919 Six Months That…*, 83.

[84] *Ibid,* 83.

[85] Office of the Judge Advocate General, "1945 Charter of the United Nations…, 56.

[86] Barrie Paskins, "Intervention and Virtue," in *Political Theory, International Relations, and the Ethics of Intervention,* ed. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 119.

[87] Office of the Judge Advocate General, "1945 Charter of the United Nations…, 57.

A key organ within the UN is the Security Council. Under Chapter VII of the UN Charter, the Security Council has the primary responsibility to maintain and restore international peace and security. Only the Security Council can legally authorize the use of military force.[88] Despite the provision for the use of force it is to be the method of last resort.

As a first premise, article 2(4) of the UN Charter asks all Member countries to refrain from the threat or use of force against another independent state.[89] In the event the use of force is necessary, one of two situations must exist - a state has been attacked or peace and security is threatened or breached.[90] In the first instance, the Charter makes it clear that a nation can use military force when acting in self-defence (article 51 of the UN Charter).[91] In the second, force is permissible only if it has been determined by the Security Council that peace and security have been breached or threatened (article 39) and that the Security Council has authorized force to restore the situation (article 42).[92] The UN has only authorized the use of military force, for the waging of war, twice: Korea in 1950 and Iraq in 1991.[93] In both cases, the determination was pursuant to article 39 of the Charter and called for action to occur in accordance with article 42.

Any sovereign nation has the right to defend itself if attacked. Article 51 of the UN Charter states: "Nothing… shall impair the inherent right of individual or collective self-

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[88] Danesh Sarooshi, *The United Nations and the Development of Collective Security – The Delegation by the UN Security Council of its Chapter VII Powers,* (New York: Oxford University Press, 1999), 3.

[89] Office of the Judge Advocate General, "1945 Charter of the United Nations…, 60.

[90] Danesh Sarooshi, *The United Nations and the Development…,* 178-179.

[91] David Schweigman, *The Authority of the Security…,* 42.

[92] Office of the Judge Advocate General, "1945 Charter of the United Nations…, 60.

defence if an armed attack occurs against a Member of the United Nations."[94] Simply put,
for a nation to attack in self-defence, it must have suffered an armed attack. A breach of
article 2(4), in which an armed attack has not occurred, does not entitle the victim nation to
exercise the right of self-defence.[95]

McCourbrey and White acknowledge that in this age of nuclear missiles, adhering
to a strict interpretation of article 2(4) - which in essence compels a nation to wait for the
missiles to cross its borders before reacting - would condemn an attacked nation to possible
destruction.[96] It has been argued that the law is inadequate to deal with the current
asymmetrical threat that looms from radical terrorist groups, particularly given that
terrorists are close to possessing WMDs. Arguing anticipatory self-defence as the reason
for going to war against Iraq, Christopher Greenwood, an eminent British lawyer, wrote in
a brief for the Parliamentary Committee on Foreign Affairs in 2002: "The threat posed by
a nuclear weapon or biological or chemical weapon used against a city is so horrific that it
is in a different league from the threat posed by cross border raids by men armed only with
rifles."[97]

The answer to the dilemma is not straightforward. The UN Charter is silent on this
matter - a silence that can be attributed to the authors of the UN Charter not anticipating
such developments. It can be argued that because the law is silent, it is illegal to take pre-
emptive action. Others state that technology has rendered the law obsolete, because

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[93] Jutta Brunnée, "The Use of Force Against Iraq: A Legal Assessment," *Behind the Headlines – Canadian Institute of International Affairs* (June 2003): 6.

[94] Office of the Judge Advocate General, "1945 Charter of the United Nations…, 61.

[95] Hilaire McCoubrey and Nigel D. White, *International…*, 89.

[96] *Ibid,* 91.

waiting for an attack would mean taking action too late.[98] Those who argue that a pre-

emptive strike is allowable - as an act of anticipatory self-defence against an imminent

threat - only shift the debate to defining its timeline.

In applying international law to justify military action, a few fundamental principles

need to be considered. Michael Walzer, for example, simplifies the issue by asking a few

essential questions: "Who started the shooting? Who sent troops across the border?"[99]

However, in dealing with anticipatory self-defence, things are not always so simple.

Walzer goes on to explain that aggression often starts without shots being fired or borders

crossed. Similar to the rights of individuals, he supports the right of states to defend

themselves against 'violence that is imminent', stating that they can fire the first shots if

they know they are about to be attacked. He admits, however, that the burden of proof in

accurately anticipating when the attack will occur is difficult.[100] For example, is

'imminent' defined as the commencement of the arming sequence for a missile launch or

the actual launch itself? Is it an hour prior to the launch, a day, a week, or a year? The

literature on this subject does not single out any precise timeframe. According to Walzer,

"the debate is couched… in strategic more than in moral terms. But the decision is judged

morally…."[101] Eyal Benvenisti[102] argues that without Security Council authorization, a

nation cannot know conclusively in advance if the attack is lawful or not. If a nation

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[97] William Shawcross, *Allies – The U.S., Britain,…*, 115.

[98] *Ibid*, 115.

[99] Michael Walzer, *Just and Unjust Wars,* 2d ed. (United States of America: BasicBooks, 1992), 74.

[100] *Ibid,* 74 and 80-81.

[101] *Ibid,* 81.

proceeds without authorization, according to Benvenisti: "they take a chance that if their

actions are interpreted as a violation of the law, they will be held responsible. They weigh

that prospect against the risk of not responding at the time for an attack."[103]

Thomas Franck, the Director of the Center for International Studies at New York

University Law School, argues that a UN interpretation of article 51 includes, in a very

narrow definition, the concept of anticipatory self-defence.[104] The case of the *Caroline* is

often used as the precedent-setting reference in support of this. Acting pre-emptively,

British forces attacked the American ship *Caroline* in her homeport berth based on the

intelligence that she was preparing for an attack against the British in Canada. But the

Caroline incident occurred in 1842, and the argument has often been considered suspect, as

was proven when the Germans tried using it at Nuremberg to justify their invasion of

Norway in 1940.[105] Furthermore, the *Caroline* incident occurred prior to the UN Charter

being established. This was in an era when war was more common in government policy

and when laws differed.

In analyzing anticipatory self-defence and the legitimacy of striking first, Michael

Walzer outlines three fundamentals that must be proven concerning a potential aggressor:

an obvious intent to injure, active preparation that makes that intent a real danger, and a

circumstance in which waiting, or doing anything other than fighting, greatly magnifies the

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[102] Eyal Benvenisti – is the Director of the Minerva Center for Human Rights a the Hebrew University of Jerusalem.

[103] Eyal Benvenisti, "Iraq and the Bush Doctrine of Pre-Emptive Self-Defence," *Crimes of War Project* (August 20, 2002) [on-line]; available from http://www.crimesofwar.org/print/expert/bush-Benvenisti-print.html; Internet; accessed 23 February 2004.

[104] Thomas Franck, "Iraq and the "Bush Doctrine" of Pre-Emptive Self-Defence," *Crimes of War Project*, (August 20, 2002) [journal on-line]; available from http:www.crimesofwar.org/print/expert/bush-Franck-print.html; Internet; accessed 23 February 2003.

risk.[106] Taking a cautious approach in applying his principles, Walzer does not draw the line at imminent attack, but at proving a sufficient threat. In assessing the legality of 'anticipation', his model is based on proving the potential aggressor's intent to commit any of the three criteria elements. The key tools for assessing intent against Walzer's model are intelligence and known facts. As an example, if an attack is launched based on anticipatory self-defence, it must be proven that an imminent threat existed. If intelligence is not sufficient to give a high level of certainty, then the burden of proof lies with the instigator, who should be called to account, after the fact.

As supporters of the war in Iraq, Frum and Perle take a more cautious approach when dealing with suspect intelligence. In their book, *An End to Evil,* they advocate that: "Where intelligence is uncertain, prudent leaders will inevitably minimize risk by erring on the side of the worst plausible assumption. And rightly so."[107] Needless to say, this doctrine is not very different from - 'shoot now, ask questions later'.

So there is a rationale to assume that anticipatory self-defence is permissible, in a limited sense, within the rules of international law. As shown, many distinguished political scientists and lawyers support this position, even though the extent of support varies. Justification then shifts to providing acceptable evidence that the right conditions existed to permit the waging of war based on an imminent threat. Providing this conclusive proof may, at times, only occur *, onl6 BDC cs 1 0 0 scn0 Tc 292w 12 0 0 12 107.99994.rightly so."*

These principles will next be applied to assess the reasons presented by the Bush administration for attacking Iraq. Two of the three reasons outlined earlier compelling the U.S. to pre-emptively use military force against Iraq were its possession of WMDs and its links to terrorists. On both counts, the U.S. pinpointed the imminent threat as being Iraq itself, or terrorists using Iraqi-supplied WMDs in order to attack the West. The obvious question, then, is whether or not Iraq posed a credible threat with intentions to attack the U.S.?

Iraq has never launched an attack against the United States. Therefore, under the strictest definition of article 51 of the UN Charter, the Americans could not claim self-defence. However, America had been brutally attacked on September 11th by Al'Qa'ida, and the Bush administration made the link between this terrorist group and Saddam Hussein. The president stated that 9/11 changed his attitude toward Iraq. Saddam Hussein's past record of invading neighbouring countries, and his use and possession of WMDs precluded President Bush from continuing support for the policy on containment of the Iraqi dictator.[109] Once the Taliban regime in Afghanistan was defeated, the American President pushed for armed intervention in Iraq. Intelligence gathered by the American and British governments bolstered claims that Iraq was harbouring WMDs. The British claimed Iraq was able to launch WMDs within 45-minutes, this was a claim that the American president would also make.[110] In contrast to these accusations were the reports from UNMOVIC[111], asserting that no WMD that posed any imminent threat could be found. However, Chief Weapons Inspector, Hans Blix, did state in his report that they had

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[109] Bob Woodward, *Plan of Attack…*, 26.

[110] *Ibid,* 190.

failed to account for some weapons.[112] The UN, led by the French, Germans and Russians, insisted that the UNMOVIC team be allowed to continue their work, arguing that the course of diplomacy had not yet been fully exhausted. Over the months leading up to the war, arguments bantered back and forth.

Walzer's 'anticipation' model will be used to assess the threat posed by Iraqi WMDs. The first criterion is proving that Saddam Hussein had a manifest intent to injure. Aside from praising the 9/11 attacks[113], Saddam Hussein had not demonstrated any threat, nor had he provoked the Americans by revealing any intent to attack. Saddam Hussein's rhetoric about 'destroying American infidels' only began when American troop build-up was occurring along the Iraqi border.[114] But this rhetoric was no different than what he claimed leading up to the 1991 Gulf War – a time when he had a much stronger military capability. It was also a time when Iraq had chemical and biological weapons, but chose not to use them during the war against the American-led coalition.

In the lead up to March 2003 invasion, the Bush administration knew that Saddam's capability to credibly launch an attack against the West had been greatly diminished, and he did not have sufficient force to make good his verbal threats.[115] Therefore his intent, or ability to injure, as measured against Walzer's criteria was in reality non-existent.

Saddam's links to terrorists and the imminent threat that these links posed is also an empty argument. Though Iraq in the past had known links with terrorist organizations -

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[111] UNMOVIC - UN Monitoring and Verification Inspection Commission

[112] William Shawcross, *Allies – The U.S., Britain,…*, 187-188.

[113] Milan Rai, *War Plan Iraq – Ten Reasons Against…*, 129.

[114] The pre-positioning of troops by the Americans could be argued as an act of intimidation towards Iraq.

namely the PLO - there had been little proven terrorist activity from Iraq since the 1991 Gulf War.[116] An article in February 2002 in the *New York Times* stated that "The Central Intelligence Agency has no evidence that Iraq has engaged in terrorist operations against the United States in nearly a decade…. Saddam Hussein has not provided chemical or biological weapons to al Qaeda…"[117] The argument linking Osama bin Laden with Saddam Hussein was also weak. The head of Israeli intelligence, Major General Amos Malka stated after 9/11, "I don't see a direct link between Iraq and the hijackings… there is no Iraqi infrastructure that we can point to…"[118]

Taking the argument further, even supposing Saddam Hussein did have the military capability to credibly threaten the U.S., there was no evidence of active preparation on Iraq's part throughout the period that could be construed as presenting a "mounting danger" - Walzer's second criterion. There was sufficient monitoring of Iraqi activity that would have alerted the Americans of any danger. With the no-fly zone monitoring in effect, the UN embargo, the continuous satellite coverage, the intelligence reports, and the 108 UN weapons inspectors in the country – all these represented substantial monitors that would have picked up any real escalation of danger. Had there been any sign of activity toward launching an attack, the Americans could have struck quickly to neutralize the impending threat.[119] At the very least, this would have represented unmitigated proof to receive a UN mandate for the use of coercive force.

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[115] Bob Woodward, *Plan of Attack…*, 80-81.

[116] Milan Rai, *War Plan Iraq – Ten Reasons Against…*, 131.

[117] James Risen, "Terror Acts by Baghdad Have Waned, U.S. Aides Say," *New York Times,* 6 February 2002.

[118] Milan Rai, *War Plan Iraq – Ten Reasons Against…*, 128.

The last of Walzer's criteria - namely tolerating unacceptable risk if military action is not taken – hits directly at the crux of the Bush administration's argument. In his 2003 State of the Union address, the president outlined the impending horrors that potentially awaited the U.S. The president said that a terrorist could bring WMD into the country as small and unsuspecting as a vial - provided by Saddam Hussein – and then release it in a heavily populated area.[120]

A threat as difficult to detect as a tiny vial of biological agents, and the deadly potential of it being released among innocent civilians, gave the Americans a cause for grave concern and action. If this indeed had been the case, then the threat certainly needed to be neutralized. However, before a country is invaded for purportedly possessing such capability, verification is needed. Verification of Iraqi WMD capability rested with the UN weapons inspectors. UNMOVIC had been in Iraq for several months prior to the attack occurring and were responsive to American intelligence findings. Reports from Hans Blix did not reveal that any WMDs had been found.[121] Lack of WMD evidence from the weapons inspectors conflicted with the Bush administration's intelligence reports. This discrepancy resulted in a standoff among the permanent members of the Security Council, pitting those that wanted to take pre-emptive action in Iraq (the United States and Britain) against those wanting to give Hans Blix more time (the Russians, French and Chinese). No Member of the Security Council completely ruled out the use of military force in Iraq. The

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[119] Jeffery Record, "The Bush Doctrine and War with Iraq," *Parameters* (Spring 2003): 8.

[120] George W. Bush, "The President's State of the Union Address...(January 28, 2003)…

[121] Bob Woodward, *Plan of Attack…*, 293.

point of disagreement was timing and the conditions that had to be met prior to force being authorized.[122]

With weapon inspections seen as being ineffective and slow, the Bush administration was not prepared to wait any longer.[123] Despite opposition from the UN and without its authorization, the American-led coalition invaded Iraq on the 20th of March 2003.

Whether the American action was legal depends on whether an imminent threat existed. The argument presented earlier showed that there was insufficient evidence to support this assertion. The UN Charter makes it clear that the use of military force to restore peace and security is meant to be a means of last resort. The fact that the weapons inspection process had not been completed is proof that all options had not been exhausted.

Some of the arguments to support anticipatory self-defence utilize the less-than-perfect intelligence information provided to leaders who must then, in turn, make critical decisions. However, the imperative remains with the instigator to justify an attack, should circumstances later prove that the intelligence had been wrong. A year has passed since the war in Iraq and despite an aggressive search for weapons of mass destruction, none have been found. The unacceptable risk and imminent threat - as stated by the Bush administration – has yet to be proven. This implies that the threat to the United States was not imminent, and denies the claim that the United States acted in anticipatory self-defence. Inability to provide this evidence makes the attack on Iraq an illegal act, in accordance with international law.

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[122] Eric Alterman and Mark Green, *The Book on Bush…*, 286.

[123] Bob Woodward, *Plan of Attack…*, 294.

Just War

"For to win one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the acme of skill."[124]

- Sun Tzu

There is a fine line between the legal issues that govern war and just war theory. Though the two are closely related, just war theory can be referred to as the foundation from which laws that govern war evolve. Legal matters are more prescriptive, while just war theory is more philosophic and deals with the moral dilemmas of war. In the book *Just and Unjust Wars,* Michael Walzer states that just war theory, whether deliberate or not, has entered into every argument when states contemplate going to war.[125] Just war theory spans the entire spectrum of warfare - starting with the decision to wage war, how it is to be fought, the treatment of prisoners and civilians, and ending with how restoration will occur after a war has been fought.

An attempt to understand war and why war exists is a logical starting point. This will be followed by a brief overview of the history of just war theory. The theory will then be used to assess whether the actions by the Bush administration in attacking Iraq were just.

Why does war exist? Machiavelli explained war by saying that it was natural for rulers and states to want to expand and conquer, with war being the most vital aspect of political life.[126] Clausewitz similarly defined war as "An act of force to compel our enemy

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[124]Sun Tzu, *The Art of* War (New York: Oxford University Press, 1963), 77.

[125] Michael Walzer, *Just and Unjust Wars…*, xi.

[126] Felix Gilbert, "Machiavelli: The Renaissance of the Art of War," in *Makers of Modern Strategy*, ed. Peter Paret (New Jersey: Princeton University Press, 1986), 24.

to do our will."[127]   To elaborate, he said: "War is… a continuation of political intercourse carried out by other means."[128] Walzer takes it a step further by stating that for as long as people have talked about war they have referred to it in terms of right and wrong. He goes on to add that it is wrong to start a war simply because people get killed.[129]

Historical records of past cultures reveal how certain civilizations have attempted to abide by the principles for just war and the just conduct of war. Christian and Western civilizations, as well as the Chinese in the fifth century B.C., the ancient Egyptians, and even the Babylonian leaders - to name a few - practiced some form of just war.[130] The set of guidelines that today constitutes a just war grew out of Roman law, military theory and practice, religious encyclicals, modern political theory and philosophy, as well as international law and jurisprudence.[131] Saint Thomas Aquinas was a key figure who, in the eleventh century, developed the moral principles of just war theory. He argued on the grounds of three principles that, "for a war to be just it must be declared by the authority of a head of state, for a proportionally good reason, and with a morally good aim."[132] It was not until the works of the Dutch jurist and diplomat, Hugo Grotius - *De Jure Belli et Pacis* (The Law of War and Peace), 1625[133] - that moral principles were transformed into

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[127] Carl von Clausewitz, *On War,* trans. and ed. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1976), 75.

[128] *Ibid*, 87.

[129] Michael Walzer, *Just and Unjust Wars…*, 3 and 22.

[130] Paul Christopher, *The Ethics of War & Peace…*, 8-9.

[131] Karma Nabulsi, "Just and Unjust War," *Crimes of War Project*, [journal on-line]; available from http:www.crimesofwar.org/thebook/just-unjust-war/.html; Internet; accessed 23 February 2003.

[132] Paul Christopher, *The Ethics of War & Peace…*, 50.

[133] The Canadian Oxford Dictionary…, 620.

international law. He defined the terms *jus ad bellum*[134] (justice of war) and *jus in bello*[135] (justice in war).

The principles of *jus ad bellum* and *jus in bello* continue to play a prominent role in the current discussion of just war theory. Using slightly different terminology, Walzer outlines that the moral reality of war is split into two aspects, the first dealing with the reasons states have for going to war, and the second dealing with the methods adopted when fighting.[136] This essay will only deal with the former in assessing whether the actions of the Bush administration were just.

Political leaders should not be risking the lives of their soldiers or asking them to kill without assurances that the cause for war is just.[137] The argument, in the end, comes down to defining what is 'just'. Pacifists and many religious leaders would claim that all wars are unjust. This view can be seen as overly narrow because it does not deal with the reality of war. In assessing the justness of the 1991 Gulf War, Walzer places stress on the two maxims of the just war theory: "first - that war must be a 'last resort' and, second, that its anticipated costs to soldiers and civilians alike must not be disproportionate to (greater than) the value of its ends."[138] Strong similarities can be found when comparing these requirements against two of Thomas Aquinas three moral principles. Walzer is more descriptive, expanding on Aquinas's principles of 'proportionality' and 'morally good aim'.

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[134] Paul Christopher, *The Ethics of War & Peace…*, 2. *Jus ad bellum* - Concerns the conditions that make the use of force permissible and is primarily a political responsibility.

[135] *Ibid*, 2. *Jus in bello* - Concerns the rules governing how war should be conducted and is primarily the responsibility of the military profession.

[136] Michael Walzer, *Just and Unjust Wars…*, 21.

[137] *Ibid*, xi.

Determining the 'justness' of the Bush administration's decision to go to war will be assessed against Walzer's first maxim. However, any attempt to assess America's actions against his second maxim would be premature, as the death toll in Iraq continues to mount. Despite an end to major combat operations proclaimed by the president on 1 May 2003,[139] over 700 American soldiers and countless more civilians have died.[140] Speaking to the press in April, American Secretary of Defense Donald Rumsfeld commented that no one anticipated that the American death toll would be this high.[141]

An assessment to determine whether or not an action was just requires some insight into the circumstances confronting decision-makers during the time in question. As outlined earlier, the attacks of 9/11 represented an extraordinary period for the United States. An atmosphere of fear pervaded, causing the Bush administration to reassess its security policy. In the aftermath of the attacks, the *War on Terror* became the priority. However, President Bush was also concerned with the threat posed by Iraq. He ordered his Secretary of Defense to look at the war plans for Iraq.[142] Bob Woodward's latest book, *Plan of Attack*, clearly presents the struggles within the Bush administration, capturing intimate discussions and debates that occurred between 9/11 and the invasion of Iraq.[143]

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[138] *Ibid*, xiii.

[139] Bob Woodward, *Plan of Attack…*, 412.

[140] Tim Harper, "Left and right both piling on Powell," *Toronto Star,* 25 April 2004, F3.

[141] Robert Burns, "Rumsfeld: Iraq toll higher than expected," *Salon.com News* (15 April 2004) [on-line]: available from http://salonmag.com/news/wire/2004/04/15/deaths/index_np.html; accessed 24 April 2004.

[142] Bob Woodward, *Plan of Attack…*, 2.

[143] BobWoodward's latest book, *Plan of Attack*, has been the subject of much debate in the media with prominent members of the Bush administration and other high profile figures commenting on his works. Bob Woodward spent significant amount of time interviewing the president, his administration and other prominent figures. Through media interviews and correspondence this book, in general, been perceived as an

His book confirms that the neoconservatives in the Bush administration, like Rumsfeld and Cheney, pushed for war, while the moderates, like Powell, took a more cautious approach. Despite the struggles, Woodward makes it very clear that the President kept all options open for as long as he felt comfortable. Directing his Defense Secretary to update the war plan on Iraq two months after 9/11 was a precautionary measure to ensure the U.S. would be ready, should the decision be made to go to war. President Bush was fully prepared to pursue dealing with Iraq through the UN, but quickly became frustrated with the Security Council's lack of support for the American position.[144] Having spent many hours interviewing the President, Bob Woodward commented during an interview on CNN (Cable News Network) that the right decision to go to war was made despite the current difficulties being experienced.[145]

In the wake of 9/11, Saddam Hussein's blatant disregard of UN Security Council resolutions (UNSCR) suddenly became a priority issue for the Bush administration. Stemming from the 1991 Gulf War, seventeen UN resolutions and 30 Security Council Presidential statements had been drafted in relation to Iraq over a 13-year period.[146] In particular, four resolutions are pertinent to the discussion at hand. These are: UNSCR 678 (1990), which authorized Member states to use all necessary force to liberate Kuwait[147]; UNSCR 687 (1991), which declared a formal cease-fire between Iraq, Kuwait and Member

accurate depiction of events and conversations that transpired within the Bush administration as stated by the members.

[144] Bob Woodward, *Plan of Attack…*, 161.

[145] Aaron Brown, interview with Bob Woodward on CNN, 20 April 2004.

[146] George W. Bush, "A Decade of Deception and Defiance – Saddam Hussein's Defiance of the United Nations," *The White House President George W. Bush* (September 12, 2002), 7.

[147] United Nations Security Council Resolution 678 (1990), 29 November 1990.

States[148]; UNSCR 1368 (2001), to combat by all means threats to international peace and security caused by terrorists acts[149]; and, UNSCR 1441 (2002), which iterated the requirements from previous resolutions and warned Iraq that it would face serious consequences if it continued to violate its obligations.[150] The last paragraph in each of these resolutions stated that the Security Council "decides to remain seized of the matter". In the case of Resolution 687, it further stated that the Security Council would take necessary steps to implement the requirements of the resolution.

Most scholars would conclude that the Security Council is the only entity that can authorize military action.[151] President Bush believed he had a Security Council mandate, based on existing resolutions that Saddam Hussein has consistently violated. Despite the debate in the Security Council arguing otherwise, the president firmly held onto this position.   In his address to the UN, on September 12, 2002,[152] and again to the American people on March 17, 2003,[153] the President stated that the U.S. already had UN authority to invade Iraq. The British government made similar claims when the Prime Minister's Office issued a legal justification for going to war, declaring that extant resolutions on Iraq

[148] United Nations Security Council Resolution 687 (1991), 3 April 1991. This resolution also placed a number of demands on Iraq some of them included: destruction of all WMD, establishing UNSCOM and instilling the weapons inspection regime, and not committing or supporting any acts of terrorism.

[149] United Nations Security Council Resolution 1368 (2001), 12 September 2001.

[150] United Nations Security Council Resolution 1441 (2002), 8 November 2002.

[151] Anthony Clark Arend, "International Law and the Preemptive…, 99.

[152] George W. Bush, "President's Remarks at the United Nations General Assembly…

[153] George W. Bush, "President Says Saddam Hussein Must Leave Iraq Within 48 Hours," *The White House President George W. Bush* (March 17, 2003) [on-line]; available from http://www.whitehouse.gov/ news/releases/2003/03/print /20030317-7.html; Internet; accessed 23 February 2004.

were written under UN Charter Chapter VII – the chapter which allows for the use of force.[154]

The American argument is support by David Wingfield. He states that once the Security Council authorizes the waging of war, that authority remains lawful until either the countries carrying out those actions decide that the fighting should stop, or the Security Council enacts a resolution stating that peace and security have been restored in the region.[155] In the case of the Korea War, the Security Council, in effect, said, "North Korea's breach of the peace was off its plate."[156] In the case of Iraq, a cease-fire was declared by the Security Council resolution that placed conditional caveats on Iraq that included a requirement to destroy their WMD.[157] Therefore, according to Wingfield, the Security Council never did explicitly declare the matter resolved. It is well known that Iraq did not comply with these demands. He therefore argues that because the terms of the cease-fire were not met, it meant that hostilities could lawfully resume.[158] He goes on further to say that, for the war to be legal, Resolution 1441 was unnecessary, but that it did provide additional justification in legitimizing previous cease-fire resolutions.

Wingfield's argument, comparing Korea to Iraq, overlooks a fundamental point. Paragraph 34 in Resolution 687 (the UN resolution that declared the cease-fire of the 1991

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[154] British Government, Prime Minister Office, *Legal basis for use of force against Iraq* [on-line]; available from http:/www.pmo.gov.uk/output/Page3287.asp; Internet; accessed 8 March 2004.

[155] David R. Wingfield, "Why the Invasion of Iraq was Lawful," *Behind the Headlines – Canadian Institute of International Affairs* (June 2003): 13.

[156] *Ibid,* 13.

[157] United Nations Security Council Resolution 687 (1991), 3 April 1991.

[158] David R. Wingfield, "Why the Invasion of Iraq was Lawful…, 14.

Gulf War) makes it clear that the matter still remains within the jurisdiction of the Security Council; therefore making it the only authorized body that can decide follow on action.[159]

One of the major requirements of the UN resolutions was the UN weapons inspection programme. From 1991 onward, the cat-and-mouse game of weapon inspections was the prevailing theme in deali

UNSCOM inspectors had previously encountered was also the experience of the UNMOVIC team. This frustrated the chief weapons inspector, Hans Blix. Regardless of his frustration, none of his reports uncovered any WMDs. However, he did condemn Iraq for being obstructionist, slowing down the inspection process.[163] Growing impatient, Vice-President Cheney asserted that Saddam must have had something to hide, providing more fodder for Cheney to convince Bush to go to war.[164] However, regardless of the frustration experienced by the inspection team, Scott Ritter had plainly stated: "As long as monitoring inspections remained in place, Iraq presented a WMD-based threat to no one."[165]

Up to the invasion of Iraq, UNMOVIC weapons inspectors were present, continuing to make progress and not finding any evidence. With time running out, American troops were amassed on the Iraqi border, awaiting orders to attack. The UN insisted that the UNMOVIC team be allowed to continue their work, arguing that the course of diplomacy had not yet been fully exhausted. Growing impatient for the war to start, President Bush addressed the American people on March 17, 2003, sending the clearest indication to date that America was ready to attack – giving Saddam a 48-hour ultimatum.[166] Shortly after the president's address, Kofi Annan ordered all UN workers in Iraq to leave. This included

[162] Milan Rai, *War Plan Iraq – Ten Reasons Against…*, 56.

[163] *Ibid,* 123.

[164] Bob Woodward, *Plan of Attack…*, 234-235.

[165] Milan Rai, *War Plan Iraq – Ten Reasons Against…*, 72.

[166] George W. Bush, "President Says Saddam Hussein Must Leave Iraq Within 48 Hours…

the weapons inspectors and the UN International Atomic Energy Agency inspectors.[167]

They managed to leave Iraq the day prior to the war starting.

Bush was faced with a moral dilemma. As president of the United States, he had a responsibility to protect the interests of the American people. The United States, as a member of the U.N., and as leader of the world's only hegemon, President Bush also had a responsibility for upholding the principles of the UN Charter. When a conflict between the two occurs, which takes precedence?   President Bush had made it clear by his actions which one was more important to him.

Closer analysis reveals that the decision could have been postponed. In assessing Walzer's 'last resort' maxim, the argument of Security Council authorization becomes a moot point. The principal issue is whether all options had been exhausted prior to taking military action. Because the weapons inspection process had not been completed and no WMDs had been found to date, the American position had clearly not reached a state of 'last resort'. The American administration was made aware of this fact, and instead chose to react to less-than-accurate intelligence information.

Despite the president's belief that he did the right thing by invading Iraq, the evidence still shows that the decision was, at most, unjust and, at the very least, premature. No sound reason has been given to date why the president did not allow the weapons inspection programme more time.

Responsibility to Protect – The Humanitarian Cause

"...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to

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[167] "U.N. Secretary General Orders Inspectors, Staff to Leave Iraq," *PBS – Online Newshour Update* (March 17, 2003) [journal on-line]; available from http://www.pbs.org/newshour/updates/evacuate_03-17-03.html; Internet; accessed 16 March 2004.

*gross and systematic violations of human rights that offend every precept
of our common humanity?"*[168]

- Kofi Annan

In addressing the 54th session of the UN General Assembly, Kofi Annan, the UN's
secretary-general, challenged members to uphold the principles of the UN Charter and act
in defence of common humanity.[169] The collective responsibility rests with the
membership of the UN to relieve human suffering still prevalent in the world. In his
address, he chastised the UN for its poor track record in dealing with humanitarian issues,
citing Rwanda and Srebrenica as recent examples. The willingness of states to assist in
humanitarian relief missions has, for the most part, always been welcomed within the
international community. However, when humanitarian intervention necessitates coercive
means, the UN has been more reluctant to sanction the action.

Humanitarian reasons were cited by the Bush administration as a third reason for
ridding Iraq of its brutal dictator, a dictator who continually committed human rights
violations against his own population. This section will discuss the Bush administration's
argument for wanting to intervene on humanitarian grounds, and assess whether the war
was positive for the orderly promotion of human rights.

Once Iraq's humanitarian violations are placed in a global context, it quickly
becomes apparent that there are states that have considerably greater need for humanitarian
assistance than the people of Iraq. This statement is not meant to diminish Iraq's need for
humanitarian assistance. Rather it is presented to reveal covert causes of America's sudden
interest in saving the Iraqi people from their tyrannical dictator.

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[168] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*
(Ottawa: International Development Research Centre, 30 September 2001), 2.

[169] *Ibid,* 2.

The humanitarian crisis in Iraq has developed over the last two decades. In the 1970s, harvesting the benefits of higher oil prices, Iraq diversified from what was then largely an agricultural nation into a more industrialized one. This placed less reliance on imports. Infrastructure was built and a greater percentage of the population was educated. The average Iraqi's standard of living increased – Iraq was investing in itself. This was a sharp contrast to the other Gulf sheikhdoms of Kuwait, United Arab Emirates, and Saudi Arabia, who spent their wealth on improving the standard of living of the royalty and on offshore investments.[170] These innovations transformed Iraq into one of the most diversified economies in the region.[171]

The rise of Saddam Hussein as leader in 1979 began Iraq's descent. The eight-year Iran-Iraq war, the invasion of Kuwait in 1990, the 1991 Gulf War - with the follow-on sanctions - and the 2003 Gulf War all contributed to Iraq's demise. Saddam Hussein's brutal dictatorship was the common thread responsible for these events, and the people of Iraq were the innocent victims.

The world knew for a long time that Saddam was an oppressive tyrant who brutalized and murdered his own population. Despite his abysmal human rights record, Western democratic countries still chose to do business with his regime – in essence turning a blind eye. But the invasion of Kuwait was a turning point that significantly changed the relationship between Saddam and the rest of the world. In defiance of the UN sanctions placed on Iraq after the 1991 Gulf War, the country's population was denied much-needed humanitarian goods. This allegedly increased the mortality rates of children

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[170] Research Unit For Political Economy, *Behind The Invasion of Iraq…*, 29.

[171] *Ibid,* 29.

and invoked undue hardship on the average Iraqi. This condition endured for more than a decade, in part due to UN ordered sanctions.[172]

Cognizant of the human hardships, the UN relaxed the oil-for-food programme in 1999, when it established UNMOVIC.[173] This provided some relief. However, many of the resources were being diverted by Saddam Hussein's regime to line its own pockets. Many argued that the only hope for ending the humanitarian crisis was for a regime change to occur. However, according to international law, a regime change needs to come from within the state. Either the regime steps down (less likely to occur in dictatorial regimes), or the people overthrow the regime from within. The latter was attempted in Iraq after the 1991 Gulf War - an attempt encouraged by President George H.W. Bush. However, this attempt backfired and the end result was more of Saddam Hussein's brutality perpetrated against those responsible for the attempted coup. As described by Bob Woodard this failed attempt had resulted in another slaughter.[174]

There have been several humanitarian interventions in other countries for the purpose of putting an end to human suffering or genocide. Recent UN interventions, such as Rwanda, Kosovo, Somalia and Bosnia, none, with exception of Somalia – which proved to be a failure - received Security Council authorization at the commencement of operations for the use of military force under Chapter VII.[175] This continued lack of UN authorized intervention has resulted in the Security Council's bearing the brunt of much criticism.

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[172] Milan Rai, *War Plan Iraq – Ten Reasons Against…*, 42-43.

[173] *Ibid,* 43.

[174] Bob Woodward, *Plan of Attack…*, 70.

[175] International Commission on Intervention and State Sovereignty…, 1.

Attempting to enact change within the UN regarding its responsibilities for humanitarian atrocities, Canada sponsored an international commission entitled *The Responsibility to Protect.* In its report, this international group makes a series of recommendations toward UN reform - reform that would make the Security Council more responsible and responsive to humanitarian crisis, allowing it to adopt a less restrictive process.

The report acknowledges that intervening in the domestic affairs of states can be harmful, but it also recognizes that exceptional circumstances, when they exist, may necessitate intervention. Falling short of specifically defining 'exceptional circumstances', it gives the general description of "cases of violence which so genuinely 'shock the conscience of mankind,' or which present such a clear and present danger to international security, that they require coercive military intervention."[176] The only organization that can legally authorize the use of military force in any humanitarian intervention rests with the Security Council. The report on *The Responsibility to Protect* recommends that the Security Council continue to be the sole entity within the international community to authorize coercive force, but also emphasizes that it must promptly deal with humanitarian matters that are brought before it.[177] As well, the report specifically deals with the overthrow of regimes on humanitarian grounds. It states that this in itself is not a legitimate objective, but acknowledges that disabling a regime's capacity to harm its people may be necessary.[178]

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[176] *Ibid*, 31.

[177] *Ibid*, 50.

[178] *Ibid*, 35.

In the President's State of the Union address in 2003, Bush clearly outlined the human rights violations of Iraq, pointing out atrocities like Saddam Hussein's gassing of his own population and the torturing of children.[179] In this instance, the Bush administration is to be commended for wanting to relieve the human suffering in Iraq. However, as previously mentioned, it still requires the authority from the Security Council to authorize coercive action on humanitarian grounds. During his address to the United Nations in September 2002, Bush presented to the General Assembly the human rights violations committed by Saddam Hussein.[180] These violations also formed part of the American argument in the Security Council – an argument that was unsuccessful in obtaining a new resolution authorizing coercive means to force Saddam Hussein from power. Jutta Brunnée takes the position that the humanitarian crisis in Iraq did not necessitate urgency. He states that the liberation of the Iraqi people, though a positive side-effect, cannot convert what is otherwise an illegal use of force under international law into lawful action.[181]

States, international organizations and individuals who intervene against oppressive regimes or provide assistance on a humanitarian basis are regarded as good role models and upstanding international citizens. The need for humanitarian relief in Iraq was real and it is honourable that the United States was prepared to intervene militarily to bring Iraqi suffering to an end. However the sincerity of America's action strikes somewhat of a hypocritical chord. The grave humanitarian situation in Iraq has existed for a long time before action was taken. Whether the American stated intention to relieve suffering of the

[179] George W. Bush, "The President's State of the Union Address...(January 28, 2003)...

[180] George W. Bush, "President's Remarks at the United Nations General Assembly…

Iraqi people was genuine or not, the intervention using military force without Security Council approval was still illegal.

Putting the legal argument to one side, the question remains as to whether the action taken by the Americans was positive for human rights? With more than a year having passed since the start of the war, an assessment on human rights conditions can be made. Simply put, the humanitarian crisis that exists today in Iraq continues to mount. After an untold number of civilian deaths, the average Iraqi still lives in fear, not knowing from where the next suicide bomb will come. Unemployment is high and basic amenities, such a water and electricity, are at levels well below than before the war started. Terrorism and acts of terror are on the rise, with no end in sight, and the UN has pulled its aid workers out because of this fear. Quoting one newspaper columnist regarding the current situation, "Anarchy reigns in Iraq, dishonesty in Washington, outrage across the Middle East and anti-Americanism everywhere."[182] The humanitarian crisis in Iraq has taken on a new form. The oppressive and brutal rule of Saddam Hussein's regime has been replaced by the lawlessness and confusion that currently reigns on the streets in Iraq. Despite feverish attempts by the Bush administration to restore order and improve the life of the average Iraqi citizen, the presence of more than 130,000 U.S. troops on the ground and a reported spending of almost five billion dollars a month seems to be insufficient for the Americans to gain the upper hand.[183]

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[181] Jutta Brunnée, "The Use of Force Against Iraq: A Legal Assessment…, 3.

[182] Harron Siddiqui, "U.N. envoy connects dots between Iraq, Israel," *Toronto Star,* 25 April 2004, F1.

[183] Steve Schifferes, "The Cost of the Iraq War: One Year on," *Common Dreams News Center* (8 April 2004) [Journal on-line]; available from http://www.commondreams.org/cgiin/print.cgi?file=/headlines04/0408-08.htm; Internet; accessed 27 April 2004.

Perhaps, in time, the humanitarian situation in Iraq may improve, but with the current volatile situation, only the passing of a large amount of time will make it possible to declare the region a humanitarian success. Based on the existing situation, the current conclusion is the invasion of Iraq has not been a positive example in the orderly promotion of human rights.

Conclusion

The goal of the UN to eliminate war is a noble aim, but one that is far from being achieved. The asymmetrical threat currently emerging in the twenty-first century has created a new dimension that indicates that global conflict is still a reality. Terrorist groups that operate in the form of non-state actors and within rogue states have become the new enemy. The terrorist attacks of 9/11 represented the turning point that has pitted modern armies against a network of sophisticated and, at times, invisible terrorists. Reeling from the attacks of 9/11, the people of the United States genuinely felt threatened and continued to live in fear of follow on attacks. By sustaining this fear among Western populations, terrorist groups could claim a partial success.

It has been shown that the American quest to rid Iraq of Saddam Hussein's regime proved to be very divisive among key allies within the UN. As the world's only hegemon, and having just suffered a brutal attack, the United States was determined to prevent terrorists from striking on its soil again. America feared that the next attack would come from Iraq, or from a WMD provided by Iraq to a terrorist organization. The Security Council failed to support the Americans by not authorizing military intervention in Iraq. Taking matters into its own hands, the United States led a small coalition that brought about the elimination of Saddam Hussein's regime.

The question of whether America's actions are deemed as legal or illegal boils down to whether existing laws were breached. It has been shown that actions taken by the United States were illegal under international law, and could not be supported under just war theory.

Despite this illegal action, the United Nations needs to re-examine what compelled the world's only superpower to take what amounted to, in essence, unilateral action. Technological advances, radical religious fundamental terrorists, and globalization are three phenomena that have drastically changed the world from the one that existed in 1945 when the UN Charter was drafted. No longer is it acceptable to sit and wait for the enemy to attack before self-defence can be invoked. No longer is it acceptable for the UN Charter to give so much power to the few permanent members of the Security Council. Terrorist organizations can no longer continue to exist and wreak havoc in the world without legitimate action being addressed within the UN Charter. And, most importantly, no longer is it acceptable to ignore human rights violations because international jurisdiction recognizes the right of the state over the rights of individuals. Change is occurring in some areas, but the pace is too slow.

Commenting on UN reform, Kofi Annan has made some profound statements about this matter, saying that change is necessary. He stated in September 2003, "that the UN had come to a fork in the road. This may be the moment no less important than 1945 itself when the United Nations was founded."[184] In criticizing the U.S. policy of pre-emption, Kofi Annan did show some sympathy towards America's position when he said, "it is not enough to denounce unilateralism, unless we also face up squarely to the concerns that make some states feel uniquely vulnerable, since it is those concerns that drive them to

take unilateral action."[185] In an interview with William Shawcross, for the book, *Allies,*

Kofi Annan placed the responsibility on the member states to make the UN work better.

He divided the main threats facing the world into 'hard threats,' like weapons of mass

destruction and terrorism, and 'soft threats,' like poverty, deprivation, and AIDS. He then

went on to say that, "more people around the world feel threatened by the soft threats than

the hard ones."[186]

The actions taken by the United States in invading Iraq contravened international

law. Hopefully, in the long run these same actions will prove to the world that UN reform

is long overdue.

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[184] William Shawcross, *Allies – The U.S., Britain,…*, 219.

[185] *Ibid*, 219.

[186] *Ibid,* 220.

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