

Legitimacy of War on Iraq in International Law

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Abstract

This research paper discusses the legitimacy of war on Iraq in international law. It begins with an introduction, concerning general information about the war on Iraq in 2003 and the standpoints of supporters and opponents of the war, followed by an overview on Public International Law, conditions of legitimacy of war in general and to what extent these conditions apply to the case of American invasion of Iraq. Then, the legitimacy of war on Iraq from a lawful perspective was discussed, considering the UN Security Council resolution no.1441, Chapter 7 of the UN Charter and the Human International Law. The legal positions after the war in some countries which participated in it were also overviewed.

The main question which the research paper seeks to answer is:

Was war on Iraq legitimate under public international law?

The results showed that War on Iraq was a clear violation of international law and UN Charter and was in all measures illegitimate.

Some recommendations are presented such as, material and moral compensation to Iraq and a call for suspending the membership of states which led and fought the war in the UN.

Keywords: Public International Law, War on Iraq, Legitimacy.

1. Introduction

American invasion of Iraq, third Gulf War, Iraq occupation as considered by the opponents of this war, or the war of Iraq's liberation as considered by supporters of this war; all these names were used to describe the war on Iraq in the year 2003, "which led to the military occupation of Iraq by the USA with support and help of other countries, such as the UK, Australia and other countries allied with the USA", according to the definition of the Security Council of the UN in respect to the Iraqi case in its resolution no. 1483 of the year 2003.

The invasion process of Iraq started in March, 20, 2003 by the allied forces led by the USA. American and British military forces formed a percentage of 98% of the allied forces. The possession of mass destruction weapons by Iraq was among the most important justifications which the American administration tried to propagandize through its secretary of state Collin Powell in the UN General Assembly and Security Council. The American administration presented a set of justifications before, during and after the war which led to the overthrow of the former regime in Iraq, in order to convince the American and international public opinion in the legitimacy of the war.

These justifications can be summarized as follows:

1. Continuation by the government of President Saddam Hussein to ignore the implementation of the UN Security Council decisions related to allowing the weapon inspection commissions to practice their inspection tasks in Iraq.
2. Continuation by the government of President Saddam Hussein, according to the war supporters led by the USA, to manufacture and possess mass destruction weapons, as well as showing no signs of cooperation by the Iraqi leadership in the implementation of 19 UN decisions in relation to disclosing complete data about the Iraqi arsenal of mass destruction weapons.
3. Possession by the government of President Saddam Hussein of relations with Al-Qaida Organization and other terrorist groups which endanger the security and stability of the world.
4. Spreading democratic thought in the Middle East region.

These justifications, presented by the American administration, were subject to wide range criticism by the opponents of this war from the American public opinion to the international public opinion. In relation to the first justification, it is worth mentioning that the USA had set a final deadline to start military operations, while the inspection teams were active in Iraq.

In respect to the second justification, until now no mass destruction weapons have been found in Iraq. On the contrary, the results of the weapon inspection teams ascertained that Iraq has never possessed mass destruction weapons. Before the outbreak of the war, the head of weapon inspectors in Iraq Hans Blix announced that there were no nuclear, chemical or biological weapons found in Iraq, but rockets were found the range of which is further than the rated range prescribed in the UN decision no. 687 of the year 1991 (150 km). Those rockets were named by Iraq as the Rockets of Perseverance (Al Somoud). In an attempt by the Iraqi President Saddam Hussein to avoid war, he accepted the destruction of these rockets by the team of Hans Blix.

After the fall of Baghdad, the American President sent an inspection team headed by David Key who wrote a report and delivered it to the American President in October, 3, 2003, stating that "no trace of Iraqi mass destruction weapons has been found yet".

Dealing with the third justification, opponents of the war mentioned that there was no evidence on any relation between Saddam Hussein and Al Qaida Organization, and that it was impossible to find any common ideological beliefs, which could connect Al Qaida Organization to the secular ruling regime in Iraq.

In relation to the fourth justification associated with spreading democracy, it is questionable how this could be achieved by military force and changing the official ruling regimes of countries.

War opponents added that the above mentioned justifications have been illusionary claims to gain legitimacy for the war on Iraq. They summarized the actual reasons of the war as follows:

1. The domination of the international oil markets and supporting the US Dollar, where it is worth mentioning that Saddam Hussein issued a decision in 2000 imposing the use of the Euro as a sole currency to purchase Iraqi oil.
2. The guarantee of non-occurrence of an oil crisis in the USA through controlling the second biggest oil reserves in the world.
3. Personal and special interests of large business and defense companies in the USA.
4. The guarantee of the continuation of publicity gained by the American republican party during the events of 11 September 2001 in order to continue the party's dominance on political decision making in the USA.
5. Implementation of the memorandum of Chaney-Rumsfeld-Wolfowitz written in 2000 to pave the way for a more efficient strategic role of the USA in the Middle East.
6. Personal revenge by President George W. Bush from Saddam Hussein who was claimed to have participated in an assassination attempt against his father in Kuwait in 1993, as well as completion of the task of his father in the second Gulf War.

In this research, the legitimacy of the war on Iraq will be discussed from a legal perspective. The main question which this paper seeks to answer is: *was war on Iraq legitimate under public international law?*

2. Overview on Public International Law, Conditions of Legitimacy of War and Its Applicability to the Case of American Invasion of Iraq

In light of public international law, one finds that it goes principally in the direction of narrowing legitimacy of war among members of international community hoping to eliminate the phenomenon of war. According to public international law, war is classified into several types.

It may be legitimate or illegitimate. In addition, a new type of war has appeared, called preventive war or anticipation war, which is often used by the USA to justify its intervention policy in the affairs of other countries. War is legitimate under public international law in the presence of the following four conditions:

1. The state announcing war must have a clear and correct reason giving it the right to be engaged in it.
2. In the decision of announcing war and being engaged in it, justice should be present. This is only available in the case of reliance on law criteria as determined by international lawful legitimacy.
3. Availability of a necessity of war after the exhaustion of all peaceful means to return rights and keep international peace and security.
4. War must be restricted to the goal for which it was legitimated.

Looking at these conditions and attempting to reflect them on the case of American war on Iraq; it is found that the USA tried to justify the war by claiming the presence of mass destruction weapons in Iraq.

In spite of that no trace of these weapons was found in Iraq after numerous inspection tasks by international commissions, the USA carried out military invasion against Iraq. Furthermore, the USA did not consider the criteria of justice and did not rely on the criteria of law, having obtained no international legitimacy for the war on Iraq from the UN. In addition, the USA did not try any peaceful means prior to the military attack and did not present the Iraqi regime any peaceful means in order to settle any misunderstanding. After the war, the overthrow of the regime and the occupation of Iraq, the USA did not stop at the inspection for mass destruction weapons, the announced aim of the war, but went further to control Iraqi financial and natural wealth.

3. Legitimacy of War on Iraq from a Lawful Perspective

In the following section, the issue of legitimacy of war on Iraq will be discussed from a lawful, non political point of view away from sadness sensations which one feels as a result of the occupation of this deep-rooted country.

Many have objected the mission of the invasion of Iraq in 2003, since it in their view contradicts with international law. Shortly before the military campaign, the USA and the UK tried to obtain an international

legitimizing for the military campaign through the UN, but all their attempts failed. The US presented a report to the UN Security Council and relied in this report on information provided by the CIA and the MI5 claiming that Iraq possessed mass destruction weapons. The Iraqi government repeatedly rejected these claims. In January, 12, 2005, the US dissolved its inspection teams as a result of finding no trace of mass destruction weapons in Iraq. In accordance with the US Constitution, the President has no authority to announce war, and this issue is one of the authorities of the American Congress. But, according to American War Powers Resolution of the year 1973, the President may send armed forces to a foreign country for a period of 60 to 90 days without referring to the Congress. In October, 13, 2003 President Bush obtained the consent of the Congress after many controversies with the members of Congress of the Democratic Party.

4. War on Iraq and Security Council Resolution 1441

The UN Security Council issued its decision no. 1441 in relation to mass destruction weapons in Iraq, which gave the international inspectors wide authorities, including the possibility to reach immediately and without any obstacles all sites which they desire to inspect and to all persons whom they want to interview. In case of any objection by Iraq to any item of the decision, Iraq should bear "detrimental consequences". Iraq accepted the decision and showed limitless cooperation, so that the inspection included all state buildings representing the sovereignty of Iraq, such as the republican palace, ministries and even the bed room of the President. Iraq cooperated with the inspectors in relation to the interviews with officials, so that those interviews included Iraqi ministers who enjoy diplomatic immunity according to the public international law. The decision did not include "using force", so that Russia, China and France argued that decision 1441 did not give the USA the right or authority to use force against Iraq. As the members of the Security Council agreed on the decision unanimously, they did not imagine that "detrimental consequences" formed a diplomatic attempt by the USA to justify using force against Iraq. Moreover, American pressures led to the resignation of the head of the international inspection commission Hans Blix because he refused to accept the American dictations.

It is worth mentioning that the Secretary General of the UN Kofi Anan declared after the fall of Baghdad that the invasion was in contradiction to the UN Charter. The USA was determined to target Iraq militarily irrespective of the consensus of the UN, and its referral to the UN was not more than an attempt to gain international legitimacy for the war on Iraq just as in the second Gulf War. Until before days from the beginning of the military campaign, the UK was attempting to obtain an explicit international decision which allows using force against Iraq, in contrary to the US administration which appeared shortly before the military campaign careless about obtaining an international consensus. Here, one can notice the big difference in the British and American perspectives towards the war on Iraq. While the majority of the American public opinion did not object military action against Iraq, British Minister President Tony Blair encountered an intensive objection by the British public opinion to the war on Iraq even among the members of his Labor Party.

5. War on Iraq and Chapter 7 of the UN Charter

The general principle in the UN is that war is not allowed except in definite cases stated in the UN Charter. These cases are: self-defense and collective security according to chapter 7 of the Charter. These two cases are considered to form the legal principle of war legitimacy in the context of public international law. In other cases, war is considered an act of aggression.

Concerning the first case (self-defense), Article 51 of the UN Charter stated that "there is nothing in this Charter which attenuates or declines the natural right of states to defend themselves, individually or collectively, if an armed force has attacked any of the UN members, until the Security Council takes the necessary measures to keep international peace and security. The measures taken by the members in the context of using self-defense right should be immediately conveyed to the Council".

This case does not apply to the American invasion of Iraq, since there was no Iraqi danger which could threaten the security of the USA.

The second case (using measures of suppression and coercion mentioned in Chapter 7 of the Charter), the Charter has bound the UN member states to practice collective action in order to ensure respecting their commitments under the Charter, specifically the guarantee of the integrity of the territories of each state and its political independence. Paragraph 4 of Article 2 of the Charter states that "the UN members refrain in their international relations from threatening to use force or using force against the integrity of territories or political independence of any state or in any manner which does not coincide with the intentions of the UN".

The military campaign against Iraq was a clear violation to the mentioned paragraph and is, therefore, a violation of the UN Charter, taking into account that the intentions of the UN are to keep international peace and security and maintain the sovereignty and independence of the member states. The invasion of Iraq was a violation of

international peace and security, since it undoubtedly led to tension between the states of the world. Until now, the consequences of this invasion can be seen in the international scene. In addition, occupying territories of a UN member state by another state without authorization by the UN, as well as using force to affect the integrity and independence of states without the presence of a self-defense case are considered a further violation of the UN Charter.

It is worth mentioning that the UN Secretary General Kofi Anan declared after the fall of Baghdad that the invasion was in contradiction to the UN Charter. The same opinion was declared by the former UN Secretary General Boutros Ghali. Moreover, in April, 28, 2005, the British Justice Minister issued a memorandum stating that "any military campaign aiming at changing a political regime is an illegal act".

In addition, Paragraph 7 of Article 2 of the UN Charter states that "there is nothing in this Charter which justifies UN intervention in affairs which are in the heart of internal authority of a member state". This paragraph clearly prevents any intervention by the UN in matters which touch the sovereignty of states, although the UN is the highest international authority. So, how could a group of states violate the sovereignty of a UN member state through occupying its territories and overthrowing its elected political regime under the slogan of spreading democracy?!

6. War on Iraq and the Human International Law

Even in cases of legitimate war, there are some matters which states conducting the war should take into account. Among the most important matters is preserving the lives of civilians as well as protecting and caring of prisoners. The rules of Human International Law as a branch of the public international law aim at protecting persons who are not participating in the war or stopped participating in it, as well as protecting financial and other properties not related directly to military operations, in addition to constraining the right of choosing means and methods used in war.

The Human International Law includes the four Geneva Conventions (1949) and two additional protocols (1977):

- First Geneva Convention for enhancement the status of wounded and ill in the armed forces in the field.
- Second Geneva Convention for enhancement the status of wounded, ill and drowned in the armed forces in seas.
- Third Geneva Convention for treating war prisoners.
- Fourth Geneva Convention for protecting civilians in war time.
- First additional protocol to Geneva Conventions concerning protecting the victims of international armed conflicts.
- Second additional protocol to Geneva Conventions concerning protecting the victims of non-international armed conflicts.

The third Geneva Convention concerning war prisoners (1949) defined prisoners as those who fall in the capture of the enemy and belong to certain groups such as: members of armed forces and resistance members who use weapons publicly, as well as those who accompany armed forces (like war correspondents), in addition to navigation stuff and inhabitants of non-occupied territories who resist the enemy. In the international law, matters concerning prisoners have been regulated by international conventions and agreements, particularly the above mentioned Geneva Convention which included the necessity of respecting prisoners and treating them in a good manner without any coercion, in addition to providing them with suitable residence places, foods and medical care and enabling them to practice their religious rites, as well as preventing punishing or insulting prisoners.

The American invasion of Iraq is considered a clear violation of all above mentioned conventions and consequently of the Human International Law. In the war on Iraq a tremendous number of civilians were killed or injured. Moreover, financial and other properties not associated directly to military operations were not protected as stated in the Human International Law. The USA seized Iraqi oil and attained its oil reserves before leaving Iraq. This confirms that the USA aimed at controlling Iraqi oil rather than destroying the claimed mass destruction weapons which did not exist at all. Concerning the third rule of the Human International Law which constrains means and methods used in war, the USA did not respect this rule and used cluster bombs against Iraqis despite such weapons are internationally prohibited.

To all what is mentioned above, one can add the suffering of Iraqi prisoners in the American prisons inside and outside Iraq. An obvious example is what happened in Abu-Ghraib prison and other prisons, which is considered a clear violation of international legitimacy and public international law under the eyes of the whole international community.

7. Conclusion

This research paper aimed primarily at answering the question:

Was war on Iraq legitimate under public international law?

The results of the study showed that war on Iraq was illegitimate and that the USA and the UK clearly violated public international law through leading and fighting this war. Therefore, the illegitimate invasion of Iraq has lawful consequences:

- The illegitimacy of the invasion of Iraq and its results. In light of the legal base: "Everything based on null and void is also null and void", states should not deal with the results of the occupation of Iraq as "fait accompli" (accomplished fate), since this would make them subject to international responsibility as a result of accepting a clear violation of international law and UN Charter.

- In international law, any illegitimate act harming a state or its citizens necessitates compensation. As the invasion of Iraq was a clear violation of international law and UN Charter and caused a tremendous harm to Iraq and its citizens, there is a necessity for material and moral compensation and returning back the situation as it was before the war. A legal precedent is represented by the compensation paid as a result of the Iraqi invasion of Kuwait in 1990.

- Article 6 of the UN Charter states that: "if a member state of the UN repeatedly violates the principles of the UN Charter, the General Assembly may dismiss its membership according to a recommendation from the UN Security Council.

UN member states which did not participate in the war on Iraq are strongly called to recommend to the General Assembly of the UN to dismiss the membership of the states which participated in the invasion of Iraq from the UN Organization.

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