

The Iraq Invasion of 2003: Law and Order or an Illegal Affair?

An analysis of the legitimacy of United States' justifications for the invasion of Iraq through an international law framework.

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1. Introduction

Ten years ago, on March 20th 2003, the United States invaded Iraq. The invasion was fuelled by a 'War on Terror' led by the United States. The world was under the spell of the great dangers of terrorism. 9/11 had put an immediate stop to the feeling of security of the sole superpower of the world, the United States of America. With as little as four airplanes, the confidence and security of the United States was shattered. It was not only a great shock to the world, it also raised many questions concerning international law and the right of self-defence against terrorist attacks.

The use of force is a highly monitored and controlled in the 21st century. After two World Wars and several crises that have fundamentally changed history, the use of force is a restricted right that is carefully monitored. The invasion of Iraq in 2003 was accompanied by controversy in both the news and between states. Some considered it as a lawful resort to force, whilst other parties condemned the action. Although at the first sight, it might seem like a battle in the War against Terror, the Iraq war of 2003 was also in many ways an ending to the preceding problems with Iraq in the international community. The United States have provided three justifications for the Iraq war. The main goal of this thesis is to examine and analyse the justifications and reasons behind the invasion of Iraq in 2003 through an international law framework in order to determine whether the use of force was legitimate.

1.1 Research Question

The invasion of Iraq in 2003 was in several ways paired with turmoil and controversy. The United States made a bold statement in their War against Terror by invading Iraq. The Bush administration made several justifications for their invasion. Yet providing the world with a justification does not mean that it is a legitimate one. The Iraq invasion is a complicated one, haunted by Iraq's history, the war on terrorism and future fears about the augmenting cruelty of terrorists.

There is a need to investigate the events that led up to the invasion, the justifications of the invasion itself and international law in order to come to a conclusion about the legitimacy of the Iraq war. This brings us to the following research question:

"To what extent was the 2003 Iraq invasion, initiated by George W. Bush, in accordance or in contradiction with international law?"

This question needs to be investigated in relation to international law and the international community. A breach of international law needs to be recognized by the international community if the United States has acted *ultra vires*, beyond their powers. If a breach of international law is attributable to the United States of America, there might be a need to give satisfaction to Iraq, which entails an acknowledgement of the breach and a form of apology (Aust, 2010, pp388). This thesis will aim to investigate the research question by examining the invasion of the Iraq war of 2003 and its justifications. It will thus focus on providing the reader with an analysis of the legitimacy of the decision of invading Iraq on the basis of the justifications of the United States. First, the reader will be provided with a theoretical background, which will explain the basic principles of international law and the United Nations. Then, there will be an investigation of the background of the case such as an overview of the Iraq war of 2003, the conflict between Iraq and Kuwait in the early 1990s and the justifications that the United States has provided for the invasion and the war that followed. All the relevant documents concerning the case will be analysed and discussed in order to find an answer to the research question.

1.2 Research Method

This bachelor thesis is based on a literature study. This means that the research question will be examined using several primary sources, and secondary, academic sources. The primary sources will consist of original treaty texts, the UN Charter and several Security Council Resolutions, as well as speeches and governmental expressions of the United States. These sources will be explained and interpreted. The interpretation of the primary texts will be based on a personal interpretation, but

most importantly by the use of academic articles and books that will provide academic reflections upon the subject matter as secondary material. Several perspectives, both in favour and against the invasion will be considered and explained using academic sources. The secondary material will also bring a clarification of the background situation to this case. By examining not only the invasion of Iraq but also the primary sources, background information and its history, there will be a clear view on the event and its circumstances, which will lead to an analysis and an answer to the research question.

2. Exploring International Law

2.1 What is international law?

International law is the management of relations between states through common principles and rules (Aust, 2010, pp4). International law is different from domestic law. It is a law system that goes beyond domestic law and operates with states on an equal level rather than creating a hierarchy between enforcer and subject. A main difference between international law and domestic law is that there is no enforcing power in international law. International law is thus a law system based on cooperation and compromise between states rather than a system with a main institution in control over its subjects. First of all, it is important to note that this thesis is concerned with public international law. There is a distinction between private international law and public international law. Private international law is concerned with conflicts of law (Aust, 2010, pp1). It is occupied with cases that concern domestic law, with an international or foreign touch.

This thesis is hence concerned with international public law, which was also called the Law of Nations (Aust, 2010, pp2), and which is established through the cooperation of states. International law has been developing since the sixteenth century, when Hugo de Groot, a Dutch scholar, started to think about the topic. Another major event was the peace of Westphalia in 1648. Since then, many developments have constructed international law as it is today. There are some key events that are vital to the development of international law. One of those events is the establishment of the League of Nations. This was an international organization that was founded by the Treaty of Versailles in 1919. The main goal of the League of Nations was to enhance communication between states and to prevent warfare as much as possible. It thus unified states in order to promote international peace. The League of Nations ceased to exist on April 18, 1946 (Goodrich, 1947, pp3). One of their greatest achievements was the establishment of the International Treaty for the Renunciation of War as an Instrument of National Policy, also known as the Kellogg-Briand Pact of 1928. According to Maogoto “The Pact prohibited war as an instrument of national policy and recognized the right of self-defence as a legal right, thus tacitly excluding other previously accepted forms of self-help as avenues legitimating the use of military force (Maogoto, 2006, pp2)”.

International law is the result of the cooperation and compromise of the international community since the 16th century. Modern international was initiated with the United Nations Charter in 1945, which main goal was to “protect and maintain international peace and security”. World War II had a huge impact on the international community, and was one of the reasons to make some significant changes in international law. The UN is the main institution of international law, but there are numerous other treaties, declarations and official types of texts that are of utmost importance to international law. Although international law blossomed throughout the 1940s and 50s, the Cold War put a stop to any breakthroughs or developments. After the Cold War, international law and the UN slowly but surely revived. The five main powers of the world, China, Russia, The United States, Great-Britain and France were of the utmost importance because of their position in the world. These five nations were the most powerful politically and through military force. They thus were the nations that needed to cooperate in order to maintain world peace. With the main five powers prepared to negotiate and cooperate- to a certain extent- for international peace and security, international law developed and became what it is today.

2.1.1 Different fields of international law

There are different fields of international law, which are concerned with different kind of rules, principles or issues. They are mainly distinguished in three fields:

Human rights law is concerned with the protection and promotion of human rights at several levels. An example of human rights law is the Universal Declaration of Human Rights. This document was intended to protect and preserve the basic human rights of every human being.

International humanitarian law is also referred to as the law of armed conflict, or Jus in Bello. This field of international law is concerned with creating common rules for proper conduct when there is an armed conflict. These rules of conduct are meant to reduce human suffering to a bare minimum, and to protect the rights of citizens.

International criminal law is the area of law that is occupied with creating a general body or system of law that can punish international crimes. These crimes are usually breaches of pre-emptory norms, which are considered as the most atrocious types of crimes. International criminal law is occupied with few types of crimes, such as crimes against humanity, genocide and war crimes. Aggression and sex crimes are increasingly criminalized as well and may be considered an international crime in the near future. In this specific area of international law, perpetrators can be prosecuted and convicted. The international community can punish perpetrators through international criminal tribunals or the International Criminal Court.

These fields of international law are all aimed at protecting individuals of harm. They are installed in order to provide humans with one of their most basic needs: security and safety. There are, however, also other fields of international law. Consider international economic law or the law of the sea. These fields of international law are meant to create clear boundaries and to prevent conflict. By making clear arrangements, every state knows their rights and their duties towards other states.

2.1.2 Who are the subjects and objects of international law?

An important feature of international law is that only states can 'participate'. This means that only states can make agreements and sign treaties. International law is thus binding upon a state, rather than for example a government. Individuals, however, can be subjects of international law. There are several criteria that a nation has to fulfil in order to be perceived and able to function as a state. These criteria are of crucial importance, considering that if a nation or country is not a state, there can be no participation or functioning in international law. The criteria for statehood were defined in the first article of the 1933 Montevideo Convention (Crawford, 1977, p111). In order to be a state, a nation should have:

- A) A permanent population
- B) A defined territory
- C) A type of government; which means that there has to be an institutionalized power-system that governs the territory and that population.
- D) The capacity to enter into relations with other states

When all these criteria are met, the result ought to be a state with effective control over its population, territory, government and their relations with the international community. A state thus needs to have a certain level of control over its own sovereignty before it can be recognized as a viable legal entity. States are the only legal personalities that exist in international law; they are the subjects of international law (Aust, 2010, p12-13). Individuals are the 'objects' of international law; it is intended to protect their well-being and rights. Despite being the object of international law, individuals can also be subjects of international law. This occurs when an individual is guilty of international crimes. There is thus a key difference between participation of states and individuals in international law. Individuals who act upon certain orders from the state, or who break international law in or as a part of their involvement in an international conflict can be held accountable in international criminal law. It is important to note that there are only few crimes that can be prosecuted through international criminal law, and these are considered the most atrocious of all crimes. States, on the other hand, cannot be prosecuted when they are attributed a breach of international law. At best, they can face measures until the wrongful state terminated the breach. Once the breach is terminated the international community is obliged to immediately stop any measures. Another consequence of a breach of international law for a state can be satisfaction. This

entails an apology and recognition of the wrongful conduct, and often a promise of good behaviour in the future.

International Organizations are a legal personality according to international law. Although they have some rights and powers, they are founded upon consent and cooperation of states. International organizations exist because states want them to exist. Even non-governmental organizations, such as Green peace, are founded upon domestic law (Aust, 2010, pp180-181).

One of the inherent difficulties of international law is to maintain the sovereignty of states and at the same time to remain an authoritative power. In order for international law to have some leverage and incentives for states to obey international law, there need to be consequences. These consequences can vary in gravity, but always need to be appropriate and temporary. In order to understand how a state can be held accountable and still be sovereign, the following question will be answered.

2.1.2 To what extent are states bound by international law?

The sovereignty of a state is crucial for its basic functioning and ability to exercise effective control over their territory and to correctly govern the population. In the national system, the state and government are the highest authority and thus need to be respected and adhered to by citizens. If a governmental institution would not be present, or if the government and its institutions would not be able to exercise the highest power, the effective control over a territory and its inhabitants would be impossible. Other nations also need to respect the sovereignty of other states in order to maintain international peace and security. Thus, it is tricky for states to sacrifice a part of that sovereignty in order to cooperate on an international level, because they need to maintain a certain level of authority themselves. Therefore, states need to *consent* to be bound by international law. They can consent to be bound by signing and ratifying treaties, declarations and other official texts. By signing a treaty, a state agrees to act in line with the treaty but is not yet bound by it. A state is legally bound by a treaty when it has ratified this treaty. Ratification can be a complicated process, but it basically means that a state will take internal measures in order to ensure that national law is in accordance with the document of international law that is about to be ratified. If a state has ratified a treaty, it is just as legally binding as national law upon a citizen. Consequently, a state can be held accountable in case of a breach of the treaty, or an act that violates international law can be attributable to a specific state. In this case, the wrongful state has to provide satisfaction to the other state, or measures such as reparation can be taken against the state that is in violation. However, in many cases measures or reparation are unlikely because they are quite radical in nature. It also often depends on which state commits a wrongful act and to what other state this act is committed. This might seem inconsequential, but international law is mostly directed by politics because it is based on state cooperation. Thus: sovereign states make, interpret and are bound by international law.

2.2 Sources of International law

Although most of international law is based on treaties, that is only one of the several sources of international law. An important aspect of any source is that there has to be agreement between states. The sources of international law are laid down in the Statute of the International Court of Justice (also known as the ICJ) (Aust, 2010, pp5), in article 38. This text can be found after the founding charter of the United Nations, which can be found in the annex. Article 38 states the following sources of international law:

- a) *International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
- b) *International custom, as evidence of a general practice accepted as law*
- c) *The general principles of law recognized by civilized nations;*
- d) *Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.*

2.2.1 Treaties

Treaties are often the result of a compromise or consensus between states that need to address a certain international issue or topic. They have a specific objective and its provisions are laid down in articles. Treaties can be bilateral and multilateral. When a treaty is determined between two states, it is a bilateral treaty. In case multiple states ratify a treaty, it is multilateral. Once a state has signed and ratified a treaty, it is legally binding upon the state. The state is a party to the treaty once it has been ratified. Treaties are ratified by states, not governments, so even in times of change and revolution the treaties will still be legally binding upon the state. The Vienna Convention on the Law of Treaties is a document from 1969 that clarifies how international agreements such as treaties are constructed and how the process of ratification and enforcement should be. The Vienna Convention states clear rules and definitions, which is important in order to prevent confusion of terms or practices. Another important aspect of the Vienna Convention is known as the 'fidelity clause'. This is article 26 of the convention, and is called "Pacta sunt servanda". This means that a state needs to act in good faith in every treaty that it ratifies. This means that they need to comply with the rules that the treaty states. A state should thus not make legislation which is clearly in contradiction with a specific treaty. The fidelity clause is important because the multiple parties of a treaty need to be able to trust their fellow parties that they will act in accordance with the treaty; if this is not the case it is difficult to reach a consensus. This is exactly what happened during the Cold War. States were afraid to sign treaties due to a lack of trust and the confidence other states would not act in good faith. Some treaties are deemed to be of such importance that they become or belong to customary international law.

2.2.2 Customary international law

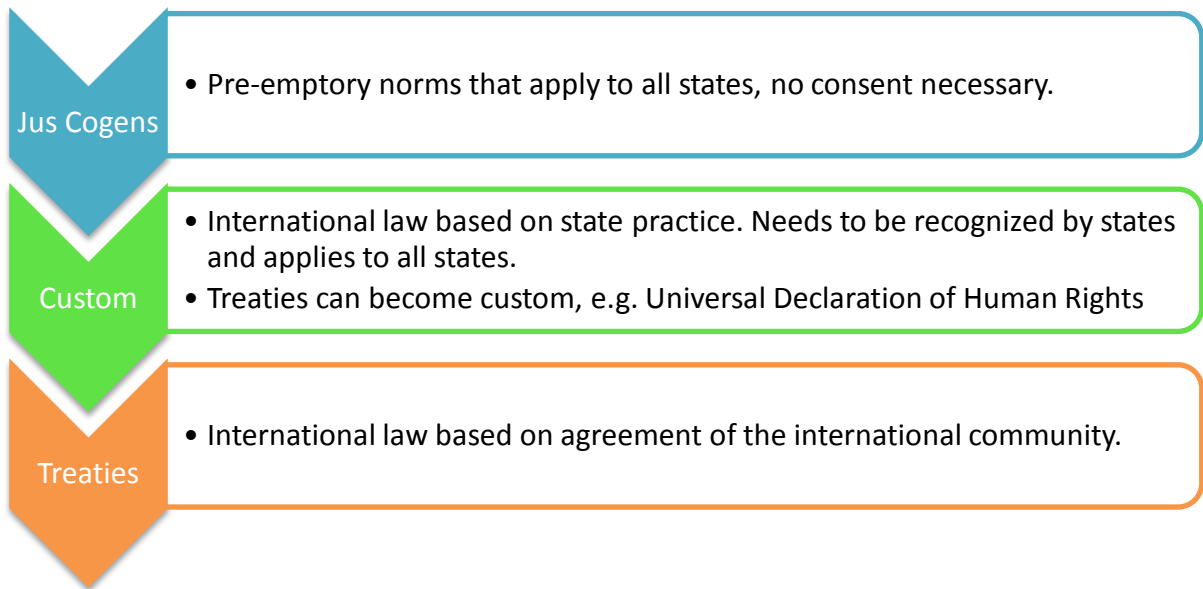
In general, states need to consent to be bound by international law. There are, however, treaties and texts of international law that are deemed to be normal conduct by the international community. In those cases, an accession to such a treaty is superfluous. These texts apply to all states without exception, because they are perceived as 'normal' state conduct; any action or behaviour that is deterrent from the document is seen as a violation of basic rights and regulations. International customary law is thus derived from state practice or custom and is usually developed gradually. In order for international customary law to be legitimate, states also need to recognize that a certain conduct is customary international law. This is referred to as '*opinio juris*' (Aust, 2010; p6-7). Although there has to be recognition of states, it is not necessary for a specific state to recognize customary international law. It is rather about a general consensus that certain principles or rules are customary. A great example of customary international law is the Universal Declaration of Human Rights. The United Nations proclaims the Universal Declaration of Human Rights to be common

practice for all states. There is an important difference between treaties and declarations. Declarations are, in opposition to treaties, not per se legally binding. Declarations entail guidelines rather than legally binding content. All international law texts can become international customary law. So, when the international community recognized the Universal Declaration of Human Rights as customary international law, it became legally binding as well. In case a treaty becomes custom, there is no longer a need for any state to become a party of the treaty. It will be legally binding nonetheless. Thus, when the international community recognizes (*opinio juris*) that the adherence to a treaty, declaration, or any other source of international law should be self-evident, and if such behaviour is customary, the text is customary international law. Customary law can thus apply upon states without the consent of states. This also means that if a state fails to act in accordance with customary international law, it is perceived as equal to the breach of a treaty, which means that there might be measures in case of a sufficiently serious breach.

2.2.3 Jus Cogens

In general, international law is perceived as horizontal. There is no official hierarchy in different treaties or documents. Despite this general idea, there are some fundamental rules that are of the highest significance. They are norms that need to be respected by every state and citizen. Jus Cogens are pre-emptory norms of international law. These pre-emptory norms are basic norms *erga omnes*, which means that they apply to all, so to all states and citizens. It is recognized by the international community that pre-emptory norms cannot be violated under any circumstances. Jus Cogens consist of the worst international crimes, such as genocide, crimes against humanity or war crimes. Article 53 of the Vienna Convention states that any treaty that is in contradiction with a Jus Cogens norm is void. Article 64 also states that if there is a new norm of Jus Cogens, every treaty or document that prescribes rules or law and which is in contradiction to that new norm is void as well. Thus, even though there is no official hierarchy in international law, Jus Cogens creates hierarchy in international law. Concluding from the former information, there is an implied hierarchy of international law. Even though all treaties are equally important, they can also replace or become custom. Once a treaty is custom, there is no longer a need for states to accede the treaty; it will be legally binding upon them as it is. Although international law is mostly constructed through positive law, which consists of law-making such as treaties, many scholars still believe that natural law, or custom, is superior in hierarchy to treaties (Shelton, 2006, pp295). The main thought behind this idea is that a treaty should not interfere with custom that has been existent for a long time, because customary international law is often the result of moral, political or ethical ideas. Due to numerous different opinions and perspectives of different members of the international community, it is often difficult to reach such a consensus, and it thus needs to be cherished. Shelton illustrates her position on the hierarchy in international law with a specific example concerning parking a car. This example is used to think theoretically about Jus Cogens norms, but her use of words illustrates the relationship between custom and treaty in international law. She explains the hierarchy in the following way: "On a street lamp next to the bus stop is a sign reading "No Parking." Above that, a second sign reads "Absolutely no parking." On top, a third sign dictates "Don't even *think* of parking here." (Shelton, 2006, pp304). She then states that signs one and two refer to treaty and custom, the third refers to Jus Cogens norms. Although her general point is about the legal consequences of Jus Cogens, with this example she clearly explains the hierarchy in international law.

This provides us with the following system in international law:



2.3 The United Nations and the Security Council

2.3.1 The United Nations

The UN is an international organization which main objective it is to maintain international peace and security. It was founded in 1945. The incentive to create this international organization was due to the horrors and catastrophes of World War II, and in memory of World War I and its terrible consequences. Also, the United Nations was meant to implement the lessons that were learnt from the failure of the League of Nations (Goodrich, 1947, pp3). Considering the First and Second World War, the League of Nations had dramatically failed in their task to promote and preserve peace. Founding the United Nations was necessary in order to create a new international organization that would be able to maintain international peace and security.

Some relations between states were heading towards disaster on the path that they were on at the time, so there was an immediate need for change. World War II was a shock to the entire world and thus provided an incentive to found an international organization that would monitor the most vital aspect of the international community and its citizens; the relations and conduct between states.

The UN was founded by a treaty, the United Nations Charter. This charter describes the main objectives of the UN, how it functions, their instruments and their powers. Only states can be a member of the UN. Since the UN is an international organization, it derives its powers from the international community. The UN Charter is currently seen as international customary law. The United Nations consists of a General Assembly, the Security Council, an Economic and Social Council, a Trusteeship Council, the International Court of Justice and a Secretariat, as described in article 7. All the member states participate in the General Assembly. The General Assembly discusses, investigates or studies issues or international conflicts and can make recommendations to the Security Council. Decisions are made using majority voting, with each member state having a vote. The Security Council shall be dealt with separately due to its importance. The Economic and Social Council are meant for international law concerning economic, social and environmental matters. Their function is similar to that of the General Assembly: they mostly discuss research and make policy recommendations. A (geographic) selection of member states is represented in the Economic and Social Council. The Trusteeship Council –now suspended since 1994- was a council that assisted ‘trusteeship nations’ in their development to independence. This council consisted of the ‘big five’ powers: China, France, Great Britain, Russia and the United States. (Aust, 2010, pp186-191)

The International Court of Justice is the court of the United Nations that is set up to solve legal conflicts. It is one of the most important establishments of the UN and is in charge of the judicial procedures. There are 15 judges who are selected for nine years. The International Court of Justice resides in the Peace Palace in The Hague. The Peace Palace was founded in 1913 in order to enhance communication between states to prevent warfare. The International Court of Justice, abbreviated the ICJ, deals with cases with subjects from environmental protection to the discussion about borders or conflicts between states. Only states can be a party to a conflict and states have the power to introduce an issue to the International Court of Justice. The ICJ hears and evaluates the issue at stake, but it is important to bear in mind that the ICJ only has an advisory power. This means that the outcome of the ICJ is not legally binding upon states and that both parties can decide what actions they take based on the advice. The ICJ thus does not have an enforcing or decisive power in conflicts. Individuals are prosecuted via international criminal law and their case will be brought to the International Criminal Court, which is a different organ than the ICJ.

The secretariat is the administrative organ of the United Nations and serves the other organs. The head of the Secretariat is the Secretary General.

An important aspect of the UN charter is that the use of force is restricted. Article 2.4 of the UN Charter deals with the use of force and states:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”

Article 2.4 is one of the most vital articles of the UN charter and a norm Jus Cogens. In order to maintain international peace and security, the UN, and specifically the Security Council has received the power to authorize a use of force, whenever they deem it necessary.

2.3.2 Security Council

The Security Council is the body of the UN with the most important task; the maintenance of international peace and security. The Security Council has fifteen members, and as stated in article 23 of the UN Charter, there are five permanent members and ten members that are selected by the General Assembly. The five permanent members are China, Russia, the United States, Great-Britain and France. These are permanent powers because they were the victorious parties of World War II, and because they are still the five major military powers of the world.

In general, international conflicts are to be solved with diplomacy and in peace. When diplomacy and conversation is void, the Security Council can decide to interfere. The Security Council is granted the power to authorize the use of force against other states, only in accordance with the goals and objectives of the UN (UN charter, Article 42; Greenwood, 2003, p18).

The Security Council can adopt Resolutions, either under chapter VI or VII of the UN Charter. Resolutions from Chapter VI are recommendations and not legally binding. Resolutions from Chapter VII, on the other hand, are Resolutions concerning action with respect to ‘Threats to the Peace, Braches of the Peace, and Acts of Aggression’. Due to their high-profile character, any conflicts that are of such gravity are dealt with by the Security Council. A Chapter VII resolution is legally binding upon all member states and is directly applicable and effective. The resolution is in effect and binding upon a state as soon as the resolution is issued. In a Chapter VII Resolution, the Security Council can grant necessary force to be used in situations where it is the last resort to solve the conflict.

2.3.3 Article 51 of the UN Charter: Self-defence.

Article 51 is one of the most controversial articles of the UN Charter. It is the article concerning self-defence. Many scholars have discussed how this article should be interpreted. Although it might seem quite straightforward, there are still several problems with interpretation. Article 51 states:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

Although it is quite a short article, its text is significant. When we analyse this short paragraph, there are some words that can be interpreted in various ways. For example, “the inherent right” refers to custom relating to self-defence (Greenwood, 2003, pp12; Maogoto 2006, pp12; Rogoff & Collins, 1990, pp506). The notion of inherent right indicates that the Charter cooperates with customary international law dating before the Charter, rather than superseding it. Custom and treaty are thus in this case on the same level. Although it is not specified in article 51, several states, and mainly the United Kingdom and the United States claim that anticipatory self-defence is one of those inherent rights (Greenwood, 2003, pp21-22). This means that when there is not a physical attack yet, but when one is imminent, an act of self-defence can be tolerated. In international customary law, this is generally accepted, if the state that is exercising self-defence is acting within the boundaries of clear criteria. The source of this custom of self-defence to an imminent attack is the Caroline-case from

1837 (Greenwood, 2003; p12). Although it is an old case, it is still accepted in the international community as an inherent right of self-defence or customary international law (Greenwood, 2003; pp13; Maogoto, 2006; pp13; Rogoff & Collins, 1990, pp506; Rouillard, 2004, pp116-117).

2.3.3.1 *The Caroline Case*

This case refers to an old incident which involved British forces and Canadian rebels. Britain's crew decided to attack the ship that was occupied by the rebels, because they felt that an attack from the Canadian side was imminent. The attack caused some crew member to die, which resulted in the British captain to be captivated. The British government claimed that the attack was a form of self-defence. It was the Secretary of State Daniel Webster that claimed that an attack was legitimate when they satisfied the following criteria, nowadays known as the 'Webster criteria' (Greenwood, 2003, p13; Aust, 2010, pp209-210):

- The attack needs to be an act of necessary self-defence, leaving no alternatives.
- It needs to be imminent; an attack by the other party needs to be inevitable in a short period of time.
- It needs to be limited to the imminent purposes.
- The attack needs to be reasonable and proportionate to the threat. This means that when, for example, one vessel is threatening another, it is not allowed to attack a whole fleet with an entire navy.

These criteria are quite straight-forward. However, the problem of interpretation remains. When is an attack really imminent? What is necessary, reasonable and appropriate force? There are often disputes when states claim that they have acted according to the Webster-criteria, when the rest of the international community disagrees. It is clear, however, that the state that is acting upon the right of self-defence needs to have sufficient evidence in order to prove that an attack of another state is imminent (Greenwood, 2003, p16; Rouillard, pp117). Rouillard explains that imminence has to be the last resort and that it excludes any form of planning by the nature of its concept (Rouillard, pp117).

2.3.3 Continued.

The 'inherent' right to self-defence in article 51 is thus more complicated than it might seem at first sight. The article can be interpreted in different ways, which makes it ambiguous. For some states, it provides the opportunity to 'stretch' the scope of the article in order for a use of force to be justified as self-defence.

There are generally two approaches to article 51; the Restrictionist Approach and the Counter-Restrictionist Approach. The Restriction Approach argues that the text of article 51 needs to be taken literally, and that an act is only self-defence when it is a reaction to an attack or when an attack is imminent. According to Maogoto, "The International Court of Justice in the Nicaragua Case clearly states that the right of self-defence under Article 51 only accrues in the event of an armed attack" (Maogoto, 2006, pp11). Scholars that take the Restrictionist approach are more conservative and argue that a close reading of the text of Article 51 is necessary in order to adhere to it.

The Counter-Restrictionist Approach is more liberal in its perspective. Their reading of Article 51 involves a liberal reading of the "inherent right" which tolerate a pre-emptive attack in line with the criteria that were set by the Caroline Case. Counter-Restrictionists perceive the reference to the inherent right as an approval of customary international law, with a broader perspective on self-defence (Maogoto, 2006, pp14).

Anticipatory self-defence, for that matter, is mostly condemned. In 1981, Israel attacked Iraq due to a fear that Iraq would develop nuclear weapons, which they would subsequently use against Israel. The international community was furious and the Security Council also condemned the action.

(Maogoto, 2006, pp14-15). The controversy of Israeli action was that their attack did not adhere to the Caroline criteria, and that there was no imminent danger of an armed attack. This case shows two things: one, the use of force in self-defence is controversial and there is no single answer to the question of interpretation. Two, there are clear limits; anticipatory self-defence was largely condemned by the international community and self-defence that is in line with the Caroline criteria are often condoned. Thus, self-defence under the Caroline Criteria can be seen as a custom, which is a part of the inherent right of self-defence that is referred to in Article 51. The next difficulty is, however, to determine when an attack meets the criteria: when is something 'imminent' enough? What is a necessary use of force? Although it is difficult to give an answer, often the response of the international community and the Security Council will provide some clarity. It is thus important to not only read Article 51, but also to realize that its interpretation can give rise to differences of opinion and different approaches to its language.

3. The case study: The Iraq Invasion of 2003

3.1 Iraq's history in international affairs

The invasion of Iraq in 2003 was a continuance to several conflicts and issues between Iraq and the international community. During the 1990s, Iraq was guilty of invading Kuwait and condemned by the international community. Iraqi troops were violating human rights and committed a fundamental breach of international peace and security, which was officially recognized by the Security Council in Resolution 660 (SC Resolution 660, August 2nd 1990). Resolution 660 was not issued under Chapter VII, yet it gave Iraq a clear task in paragraph 2, where the Security Council “*Demands* that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August of 1990.” When this requirement was not met, the Security Council adopted Resolution 661 a few days later, which was a Resolution under Chapter VII, demanding again that Iraq would withdraw their troops from Kuwait, emphasizing the right of individual self-defence or collective self-defence under article 51 of the UN Charter. Furthermore, Resolution 661 imposed economic measures on Iraq that were binding upon all states. These measures entailed bans on the imports of Iraqi products or products from Kuwait, a prohibition for all states to enable export by either Iraq or Kuwait, a prohibition for states to sell military tools or weapons to Iraq or Kuwait, and a prohibition to provide funds, resources or aid to the government of Iraq or “to any commercial, industrial or public utility undertaking in Iraq or Kuwait” in any way, excluding payments for medical or humanitarian purposes (SC Resolution 661, August 6th 1990; paragraph 3 and 4). Despite several Resolutions urging Iraq to withdraw from Kuwait, Iraq did not comply. Consequently, the United Nations Security Council adopted Resolution 678 under Chapter VII in order to put a stop to the on-going violations in the border area of Kuwait and Iraq.

3.1.2 Resolution 678

Resolution 678 was a significant Resolution, issued under Chapter VII, in the conflict between Kuwait and Iraq. It recalls the several previous Resolutions that urged Iraq to quit their operations in Kuwait and to restore the local peace and security. Since Iraq did not comply, paragraph 2 of Resolution 678:

“Authorizes Member States cooperating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in Paragraph 1 above, the above-mentioned resolutions, to use all necessary means to uphold and implement Resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.”

The negligence of Iraq led to Operation Desert Storm, which evacuated the Iraqi troops from Kuwait by February 27, 1991 (Yoo, 2003, pp564). Operation Desert Shield and Storm both refer to the operations that were executed and the actions that were taken by United States military on the basis of the authorization of the use of force by the UN. The United States led a coalition of forces which included Great-Britain, Saudi-Arabia and Kuwait. Their goal was to remove Iraqi troops from Kuwait. The first five-and-a-half months of action were unsuccessful. The actions of the operations included air strikes by the coalition, which failed to remove the Iraqi troops from Kuwait. On February 15th 1991, a ground war was started which successfully removed Iraqi troops from Kuwait by February 27th. After the removal, President Bush Senior initiated a cease-fire (Holland, 1999; pp219).

3.1.3 Resolution 687

Resolution 687 was adopted to create a cease fire between Iraq, Kuwait and the parties that were involved in the liberation of Kuwait (Yoo, 2003, pp564). The Resolution contained strict provisions which Iraq needed to adhere to under chapter VII of the UN Charter. These provisions included strict regulations on the possession of weapons and missiles, and the prohibition of the use, production or possession of all biological and chemical weapons, all ballistic missiles with greater range than 150 kilometres, and the absolute prohibition of nuclear weapons or any materials that can be used to develop nuclear weapons. Any weapons that Iraq still possessed that were in contradiction with the Resolution needed to be dismantled and destroyed. Iraq was obliged to allow inspections in order to

control and supervise their compliance with the Resolution. The Resolution also reminded Iraq of their responsibility to act in accordance with several treaties that they had either signed or ratified.

Despite of the Resolution, Iraq has continued to disobey their obligations (Yoo, 2003, pp565). On several occasions, the Security Council has condemned Iraqi behaviour and their negligence in complying with the Resolution. As Yoo notes, Resolution 1137 was an example of this condemnation. The interpretation of this particular resolution is contested among scholars. Taft and Buchwald perceive the formal recognition of a material breach of the Resolution by the Security Council as an authorization to use force against Iraq (Taft IV & Buchwald, 2003; 559). However it is important to bear in mind that the Resolution was binding between Iraq and the United Nations. Subsequently, it was the responsibility of the UN to determine whether there was compliance or not, and if there was not, what consequences Iraq would face (Franck, 2003, pp612). The Security Council had not explicitly stated that the use of force was authorized when Resolution 687 would be breached, and it was thus not the responsibility of Member State to determine whether there was a need to act upon the breach.

3.1.4 Resolution 1441

Resolution 1441 was adopted in November 2002. The Resolution recalls the earlier sanctions and resolutions concerning Iraq, and deplores the refusal of Iraq to comply with the provisions in Resolution 687, and their obstruction of the schedules inspections. The Security Council determined that there was still a material breach of Resolution 687 under Chapter VII. The Council granted Iraq another chance to comply with the former Resolutions. It also clearly states that the Council remains seized of the matter. This means that the issue is in control of the Council, and that the Member states have no right to interfere (Stromseth, 2003, pp630).

3.2 The United States in the international community

It is important to realize the situation of the United States and their position in the international community in order to get a full overview of the Iraq Invasion of 2003. Therefore, there is a need to discuss U.S. Exceptionalism, The War on Terrorism and the Afghanistan War in short. The course of events of the Iraq war of 2003 will be described as well.

3.2.1 U.S. Exceptionalism

The United States of America is renowned for their large military, patriotism and their status as a sole superpower in the world. American Exceptionalism is “the informal ideology that endows Americans with the conviction that their nation is an exemplary one (Patman, 2006, pp964)”. It thus entails a feeling of superiority of the United States towards other states. This exceptionalism is noticeable in state behaviour, foreign policy and most importantly their position in the international community. Besides their participation in the Security Council and the Trusteeship council as “one of the big five powers”, the United States is also often involved with executing military operations in order to restore international peace and security. In many occasions, the U.S. acts upon Security Council resolutions.

The United States considers itself as a unique nation with a special goal. Due to geographical advantages and plenty of resources, the United States has been privileged in achieving an independent, strong position in the world (Patman, 2006, pp9 64-965). Additionally, their religious foundation, which is mainly Christian, has influenced an ideology that sees the United States of America as a blessed state with the special objective to spread their way of life, “the American dream” to the rest of the world (Patman, 2006, pp964-965). Ryan agrees and states that America perceives itself as “the home of freedom, the protector of democracy and, from its puritan founders, it has inherited a missionary-like zeal to make the rest of the world over in the image of itself (Ryan, 2003, pp70)”. Their motivation to improve the world through their ideological framework has been a positive influence in the international community due to their support to the United Nations and other international organizations (Patman, 2005, pp966), but there is also a downside to United States’ exceptionalism. This downside can be perceived as the refusal to sign and ratify treaties or documents that are important for the international community, such as the Rome Statute, which is the founding treaty of the International Criminal Court (ICC). Although the United States is a signatory state, they have not ratified the Rome Statute and they are thus not a state party, which means that they do not accept the jurisdiction of the ICC. Another example is their awareness of their inviolability, up to a certain extent. Their overwhelming military fortitude results in a lack of accountability in their actions. Whereas a state like Iraq would be held accountable for their actions, for example the failure to comply with the cease-fire, it is less likely that the United States will receive the same treatment. They have the power to veto decisions of the Security Council that would contest their interests and additionally, their status as a super-power will prevent that measures or reparations will be imposed upon the United States. Thus, thanks to their economic and military superiority, and without another super-power serving as a contender (Patman, 2006, pp967), the United States has achieved a special status in the international community, which they are aware of and which expresses itself in exceptionalism.

3.2.2 The War on Terror

The September 11 attacks in 2001, executed by terrorists from al-Qaeda, were a devastating strike to the perception of inviolability of the United States. It was extremely shocking and traumatic to the public and the Bush administration (Patman, 2006, pp972). In a response to these traumatic and shocking events, George Bush Junior declared an international ‘war on terrorism’, which would address the long-existing problem of the terrorism. Ryan considers the War on Terror as a replacement for the Cold War which provides the U.S with new enemies (Ryan, 2003, pp71). Much of Bush’ rhetoric included a sharp contrast between the ‘good’, which refers to the United States and

other Western states, and the 'evil', which refers to terrorist organizations and 'rogue' states that harbour them (Patman, 2006, pp972-973).

3.2.2.1 Resolution 1368

Resolution 1368 was issued by the Security Council on September 12th, 2001. It was a recognition that the 9/11 attacks had endangered international peace and security and that the United States had the right to self-defence. It also states that nations which harbour, aid or support terrorists will be held accountable. It however, does not particularly state that the United States has an authorization to use force; they do, however, authorize force as a part of their inherent right of self-defence.

3.2.2 Continued

In the war on terror, Bush did not only claim to stop terrorist using force. He also imposed economic measures such as freezing bank accounts and threatened with fines for organizations that allegedly traded or assisted the enemy through Security Council Resolution 1373 (Patman, 2006, pp974). Resolution 1373 is a Security Council Resolution that aims for state cooperation to suppress the support and aid to terrorist organization. The United States was therefore able to impose such measures in accordance with Resolution 1373 on suspected terrorists or rogue organizations.

The war on terror was thus not only aimed at states that enabled and supported terrorist organizations, but also aimed at individuals and organizations. It was an operation to eradicate terrorism completely, leaving no power unused, ranging from forming coalitions, using military force to imposing financial measures.

3.2.3 The Afghanistan War

The Afghanistan War was initiated shortly after 9/11, on October 7th 2001, and was justified and legally based on the United States inherent right of Self-defence under article 51 of the UN Charter (Greenwood, 2003, pp21; Patman, 2006, pp974). Their actions in relation to Afghanistan are accepted by the international community and were legitimate (Greenwood, 2003, pp25). Afghanistan was the target because there was clear evidence that they harboured terrorist organization al-Qaeda which had played a vital role in the 9/11 attacks and the Taliban regime (Greenwood, 2003, pp21; Patman, 2006, pp974). Great Britain joined the United States in their operation. The war included air strikes on al-Qaeda's training camps and military targets of the Taliban, followed by ground assaults. The Taliban lost their influence and presence in Afghanistan quickly by force and diplomacy (Patman, 2006, pp274). By the end of 2001, the Afghanistan war was ended (Patman, 2006, pp975).

3.2.4 The Iraq war of 2003

The Iraq invasion of 2003 and the war that followed was a part of the 'war on terror' by the Bush administration, yet it also addressed the continuing negligence of Security Council Resolutions by Iraq (Greenwood, 2003, pp33). We will look at the justifications and reasons for the use of force later on in the analysis. For now, it is important to describe the course of events of the war in order to get a clear background of the war. The United States resorted to force on March 20th, 2003 (Greenwood, 2003, pp33). By using a strategic, organized "shock and awe" campaign with a technologically advantaged army, the United States swiftly chased Saddam Hussein away and took over power and control (Maogoto, 2006, pp44). The war was far from supported by the international community. Some states acknowledged the war as legitimate, whilst others condemned the U.S' action that was executed without explicit approval of the Security Council. In the meantime, inspectors searched for any signs of weapons of mass destruction, which they failed to find. The invasion lasted until May 1st, 2003.

3.3 US Justifications

The United States has justified its invasion on Iraq on several bases. The war was not directly authorized by the Security Council in a Chapter VII Resolution (Stromseth, 2003, pp629; Ulfstein, 2003). President George Bush has declared several reasons why the war ought to be considered legitimate at that time. There was no general consensus in the international community about the legality of the war, in contradiction to the Afghanistan war, which was generally accepted (Falk, 2003, pp592). Not only states struggled with the question of legitimacy, academics all over the world debated and discussed the matter. In general, there are three main US justifications for the war that can be recognized. The first is that the invasion is an act of self-defence, based on an imminent threat of weapons of mass destruction that might have been in development or developed in Iraq. The second justification is based on a war that is meant to enforce international law and waged in accordance with the UN Resolutions, and in particular Resolution 687, which were at the time still largely ignored by Iraq. Thirdly, The United States claimed that there was humanitarian distress in Iraq and that their military assistance was needed in order to liberate the Iraqi people of a suppressive regime (Miller, 2008; pp45). In order to get a clear overview of the legal basis of the justifications of the United States, this section will use several sources besides academic sources. Speeches by President Bush and official statements of the US Government and Congress will clarify the exact justifications of the United States and in what context they were communicated to the public. These sources will serve as the primary sources of this section, and academic material will be used additionally to provide additional perspectives and insight.

3.3.1 The Axis of Evil

(In)Famous for the term, the 'Axis of Evil' speech refers to a speech that was given by President Bush in the State of the Union address in 2002. It refers to the merits and sacrifices of the Afghanistan war but states that it is an overall victory in the war against terror. Bush elaborated on the war against terror and promises that:

"Our nation will continue to be steadfast and patient and persistent in the pursuit of two great objectives. First, we will shut down terrorist camps, disrupt terrorist plans, and bring terrorists to justice. And, second, we must prevent the terrorists and regimes who seek chemical, biological, or nuclear weapons from threatening the United States and the world." (George W. Bush, 2002¹)

In explaining this statement, Bush refers to Iran, North Korea and finally, Iraq. These three states are the greatest threats to US and international peace and security and thus the 'axis of evil', as mentioned in Ryan (Ryan, 2002, pp55). Bush is the most detailed about the threat that Iraq poses:

"Iraq continues to flaunt its hostility toward America and to support terror. The Iraqi regime has plotted to develop anthrax, and nerve gas, and nuclear weapons for over a decade. This is a regime that has already used poison gas to murder thousands of its own citizens, leaving the bodies of mothers huddled over their dead children. This is a regime that agreed to international inspections, then kicked out the inspectors. This is a regime that has something to hide from the civilized world." (George W. Bush, 2002)

The threat that Iraq poses according to Bush refers to the issues that were raised in several Security Council Resolutions. The rhetoric that Bush uses portrays Iraq as a rogue state with something to hide. The statement that Iraq has murdered its citizens is used to imply imminence. The reasoning behind this rhetoric is as followed: if a state would hurt its own citizens, thus neglecting its duty to protect their citizens, it would not hesitate to hurt other innocent people. The Axis of Evil speech most importantly states America's refusal to accept the behaviour of the biggest threats to the US

¹ Primary source: Bush, George W. "Axis of Evil." *Terrorism: Essential Primary Sources*. Ed. K. Lee Lerner and Brenda Wilmoth Lerner. Detroit: Gale, 2006. *Opposing Viewpoints In Context*, pp299-303.

and the rest of the world. It implies an imminent threat that needs to be solved. This is again emphasized by the following statement of Bush:

"We'll be deliberate, yet time is not on our side. I will not wait on events, while dangers gather. I will not stand by, as peril draws closer and closer. The United States of America will not permit the world's most dangerous regimes to threaten us with the world's most destructive weapon." (George W. Bush, 2002²)

Although pre-emptive attacks are clearly forbidden by the UN Charter, and despite of clear criteria that can allow a state to act in self-defence in accordance with Article 51 of the UN Charter, Bush here states that the US will strike when it deems necessary, and thus pre-emptive if necessary. Another important aspect of this fragment is the reference to nuclear weapons. This emphasizes a belief of the US that Iraq would own weapons of mass destruction. The Axis of Evil speech is designed to remind the citizens of the US and the international community of the negligence of Iraq to cooperate with the UN and to adhere to the Resolutions, their past, that has proved Iraq to be a 'rogue' state, and the imminent threat that Iraq poses in the future, as a defiant, terrorist-supporting state.

However, Ryan notes that "if CIA intelligence both pre- and post-9/11 is analysed it becomes apparent that it provides hardly any justification for Bush's claims of an imminent threat and, in fact, points to arsenals far more dangerous and destructive than those of the 'axis of evil' (Ryan, 2002; pp55)". This point will be discussed when analysing US justifications according to international law.

3.3.2 The Iraq Resolution

The term Iraq Resolution refers to a resolution that was issued by the United States and was meant to support the decision of President Bush to pursue military action against Iraq. It was a national United States resolution of October 2002 which authorized the use of military force against Iraq. This Resolution is relevant because it was necessary for President Bush to obtain a national authorization for the use of force, since the Congress has to approve military action of the President before it can be set into motion. It is thus not of international importance but it is significant in the domestic law of the United States. The resolution is significant for this case because it clearly mentions several official reasons for invading Iraq and the use authorizing US military forces. It is thus a primary source that states the justifications of the United States to invade Iraq in 2003. This resolution will be organized in separate justifications to enhance the clarity of the document.

3.3.2.1 Inherent right of Self-defence

The first justification that is being raised is the point of self-defence. In the resolution, a recurring theme is the security of the United States and its citizens. There are, however, two main aspects to the justification of force in relation to self-defence.

First and foremost, the resolution describes the danger of nuclear weapons that Iraq allegedly had developed. According to the resolution, "Iraq poses both a continuing threat to the national security of the United States and international peace and security in the Gulf region and remains in material and unacceptable breach of its international obligations." This quote refers to the obligations that Iraq has under UN Resolution 687. Not only are the possible possessions of nuclear weapons dangerous, they also pose an imminent threat to the United States, based on the treatment of the Iraqi people under the current regime and the hostility that that same regime expresses towards the US.

The second part of the self-defence justification is the danger that those weapons of mass destruction would be sold to or could be acquired by terrorists, which Iraq allegedly cooperated with.

² Primary source: Bush, George W. "Axis of Evil." *Terrorism: Essential Primary Sources*. Ed. K. Lee Lerner and Brenda Wilmoth Lerner. Detroit: Gale, 2006. *Opposing Viewpoints In Context*, pp299-303.

According to the resolution, Iraq continues to aid and harbour other international terrorist organizations, including organizations that threaten the lives and safety of the United States citizens". It is surprising to see that the resolution only provides the Congress with one example of terrorism stemming from Iraq, which was the attempt to assassinate President Bush Senior in 1993 (Miller, 2008). The assassination was planned during a visit of President George Bush Senior to Kuwait in 1993. When the United States discovered the plot, the U.S. "fired twenty-three cruise missiles at Iraqi intelligence targets within Iraq (Maogoto, 2006, pp33)". Their justification for the attack was self-defence based on Article 51 of the UN Charter (Maogoto, 2006, pp33).

However, another dimension of this point is the war on terrorism that the United States is determined to wage, according to the resolution. This resolution thus also seems to imply an authorization for the war on terrorism within Iraq. Thus, the combination of nuclear weapons, Iraq's hostility towards the US and their ability and willingness to provide terrorists with those weapons poses an imminent threat to the United States that needs to be addressed.

3.3.2 Security Council Resolutions

The resolution mentions the Security Council Resolutions several times. It reminds the Congress of the gross violations of Iraq and the material breach that are still existent (at the time) and that needs to be addressed. Force that is being used in order to coerce compliance is justified under Resolution 678. According to the US resolution, Security Council Resolution 678 authorizes: "the use of all necessary means to enforce United Nation Security Council Resolution 660 (1990) and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, ... "Resolution 1441, which posed as a final opportunity for Iraq to comply with the Resolutions, is a confirmation of the UN's authorization of force. There is thus, according to the US, no necessity of acquiring a new Resolution that authorizes the use of force for an invasion of Iraq.

3.3.3 Humanitarian intervention

Humanitarian intervention is the right of another state to intervene in other state's affairs in order to rescue or relief the civil population of an oppression, danger, or situation that violates their human rights (Miller, 2008, pp57). The Bush' administration promised to liberate Iraqi citizens and to "help you build a new Iraq that is prosperous and free. In a free Iraq, there will be no more wars against your neighbours, no more poison factories, no more executions of dissidents, no more torture chambers and rape rooms. The tyrant will soon be gone. The day of your liberation is near" (quoted from Miller, 2008, pp57, excerpt from "President Says Saddam Hussein Must Leave Iraq within 48 Hours"). According to the Bush, the Iraq regime was causing distress and danger among the population of Iraq which was in desperate need of a humanitarian intervention. Therefore, the US needed to intervene. The argument that the invasion was justified based on the need for humanitarian intervention was not in the official Iraq Resolution but it was emphasized in speeches like the Axis of Evil. Quite some scholars believe that this argument was emphasized after the invasion rather than before.

3.4 International law on US justifications

The United States has provided the international community with several justifications for the invasion of Iraq in 2003. The most important task is to consider whether these justifications are well grounded in international law. Justifications might be considered by some as unethical and illegal in nature or illegal but moral for other academics, but the most important question of this work is to address the actual legality of the invasion. Thus, every detail and aspect of a justification needs to be considered and analysed. Let us first consider the US justification of self-defence.

3.4.1 International law on US' claim of self-defence against Iraq.

This section relies on the US claim that there was a need for self-evidence based on an imminent danger of Iraq's willingness and ability to either use or distribute weapons of mass destruction to terrorist organizations. This sentence includes some important notions which raise specific questions that need to be addressed. Firstly, is a willingness and probable ability enough to prove imminence? Second, is there an influence of weapons of mass destruction on this situation? The question that needs to be addressed here is whether an act of self-defence can be perceived as more legitimate and imminent because of the possible damage that can be inflicted when nuclear weapons are used. And thirdly: Can a state legally invade another state when they cooperate with terrorists, or can another state invade a nation with the main objective of attacking the terrorist groups that reside in that country? We need to consider all these aspects of self-defence in relation to article 51 in order to get an overall view of the validity of the legal basis of this justification.

When we recall article 51, it states that:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

In this case, the US is not reacting to an armed attack, which means that their self-defence argument is based on the inherent right that is referred to in Article 51. Another interesting point is that states can use this right "until the Security Council has taken measures necessary to maintain international peace and security." This raises a question in the Iraq case, because the Security Council was already involved in Iraq, albeit in a different, yet related situation. Their supervision on the situation and numerous Resolutions show that the Security Council was monitoring Iraq and the international peace and security. This is a significant point because another justification of the US is based on this situation. However, it is a (too) long shot to merely claim that on this basis alone, the justification of self-defence was not valid. Therefore, there is a necessity to investigate the right of self-defence based on the inherent right according to the Caroline criteria, which are universally seen as customary international law (Greenwood, 2003; pp13; Maogoto, 2006; pp13; Rogoff & Collins, 1990, pp506; Rouillard, 2004, pp116-117). Christopher Greenwood, a present judge for the International Court of Justice, even refers to the Caroline Case as "the famous Caroline dispute, which is still regarded as the classical definition of the right of self-defence in international law (Greenwood, 2002, pp308)". In short, these criteria were: imminence, necessity, reasonability and proportionality (the use of self-defence must be limited). Ulfstein, who sees the inherent right as restricted by customary law, also remarks that there is a need to provide proof of imminence (Ulfstein, 2003, pp13). Thus, self-defence based on imminence needs to be well grounded and there needs to be substantial evidence in order for it to be accepted.

3.4.1.1 Examining the Webster criteria: imminence based on weapons of mass destruction

Scholars such as Ryan, Miller and Franck have found evidence that the US lacked any tangible information that there was actual imminence or that it should have been perceived as such. Ryan has analysed the actual findings and statements of the CIA concerning Iraq's imminent threat to the US and the world. Her research, dating from 2002, shows that the CIA found that Iraq had no incentive to threaten the US, or that it has continued with its development of weapons since operation Desert Fox in 1998. Operation Desert Fox is different from Operation Desert Storm. It consisted of a campaign of air-strikes after Iraq failed to comply with UN resolutions (Condron, 1999, pp115). In 2001, the CIA has declared that the Iraq was seeking to become a regional power, rather than threatening the US (Ryan, 2002; pp57). Franck also notes that inspectors in Iraq were working on reports and made no comments of a plausible attack, or the possession of weapons of mass destruction by Iraq (Franck, 2003, pp611). This point is also confirmed by Miller and Stromseth, who also claim that the United States has failed to find sufficient evidence to support the claim that there was an imminent threat to the United States by Iraq (Miller, 2008, pp51; Stromseth, 2003, pp629). Miller suggests that the US has manipulated and selected bias data in order to justify pre-emptive action. This claim is made in relation to two reports that deny an imminent danger and also, like Ryan's research, confirm that Iraq was mostly concerned with becoming a regional power and with superseding Iran. Furthermore, he refers to the statement of Charles A. Duelfer, who led the investigation against the alleged weapons of mass destruction in Iraq, and stated that Saddam Hussein had no ability to develop nuclear weapons, and is more occupied with relieving himself from UN sanctions. (Miller, 2008, pp47). This research is important, not only because of the information it provides, but also due to the dates of most reports and data that the academics use. They use reports dating from 2000 until 2002, all the information on which Bush and the US government could have access to, and despite of this information the United States claimed that there was in fact imminence. It is dubious that their reports contradict this statement and it can thus be concluded that there is not enough clear, uncontested evidence to clearly indicate imminence in this case. There are too many questions and findings that can cast a reasonable doubt concerning imminence. Considering the gravity of maintaining international peace and security and respecting Article 2(4), which is perceived as a norm *Jus Cogens*, which clearly forbids the threat or use of force and considering the Declaration of Friendly Relations of 1970³, it can thus be concluded that it was unacceptable for the US to claim imminence based on a probability of a nuclear attack by Iraq. However, the Declaration of Friendly relation, and Resolution 49/60 also include that states are not allowed to facilitate or accommodate terrorist groups that prepare attacks on other states (Ulfstein, 2003, pp10.) Ulfstein also notes that although allowing terrorist groups to reside in one's state is incompatible with international law, it does not automatically invoke the right of self-defence under article 51 (Ulfstein, 2003, pp11). This finding results in the next case, in which the US will need to prove that there is an immediate danger resulting from terrorist preparation in Iraq.

3.4.1.2 Examining the Webster criteria: Imminence based on a terrorist threat

Next to the accusation that Iraq would develop nuclear weapons in order to threaten the US, the US also clearly states that Iraq would cooperate with and support terrorists, which would construct an imminent threat to the security of the United States and its people. Bush linked the 9/11 attacks and Al Qaeda to Iraq. Ryan has provided evidence to discard these accusations. The Patterns of Global Terrorism 2000 report of the United States claims that the state Iraq was not involved in any attacks on the West since the attempt to assassinate George Bush Senior in 1993. There is no clear evidence of any other involvement of Iraq in terrorism (Ryan, 2002; pp59). Although the US might have suspected involvement with terrorists, there has not been substantial evidence in relation to history

³ : "No State of Group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law"

or present to justify the existence of an imminent threat based on terrorism. Thus, imminence based on cooperating with terrorism is also a difficult argument to maintain, because there is again, not a sufficient amount of evidence of cooperation with terrorist organizations.

Generally, if imminence is not proven, the other steps are superfluous, because in such a case there is no reason to assume that a counterattack is necessary, appropriate, justified or accepted. However, they are important to consider nonetheless in providing the reader with a clear view of the legitimacy of the invasion of Iraq in 2003. If we assume, for the sake of argument, that there was imminence, would the Iraq invasion of 2003 satisfy the criteria of necessity, reasonability and proportionality? The criterion of necessity is closely related to that of imminence. In this case, the question is whether an invasion was the last resort or whether diplomacy or other measures perhaps of an economic nature could have prevented the use of force.

In the defence of the US, the Security Council was already present in the area and found that Iraq was not particularly cooperative with complying with their former Resolutions. Subsequently, considering the tense relationship between Iraq and the US, diplomacy probably would have been void. The next question is, if the measures taken by the Security Council were enough, and if the US was in a position to impose other measures. The important point here is though, that, in case of imminence, an act of force would have been necessary considering the relationship between the US and Iraq and Iraq's history of neglecting international law or measures. However, since there was no such imminence, it is difficult to argue that the use of force was a last resort to address a possible perceived threat.

3.4.1.3 Examining the Webster criteria: reasonability and proportionality

Next, reasonability and proportionality must be addressed. The main question here is whether the invasion did not use more force than necessary. In this case, there is a case for the US; if there were to be an attack with weapons of mass destruction, the damage would have been catastrophic. The nature of the grounds for self-defence here are severe and the weaponry that Iraq was suspected of possessing is dangerous to the lives of millions of citizens. Plus, if one includes a possibility of terrorists, with a lack care of international law or the lives of innocent people which was demonstrated with the 9/11 attacks, it can be deemed proportionate to address the danger with a use of force and thus the Iraq invasion of 2003. Yet realistically, there was no such threat because there was a clear indication of UN inspectors that Iraq was not advanced enough to possess weapons of mass destruction, although they might have been running programs to develop those arsenals. The question can be complicated and controversial, because in theory, if Iraq would have shown the conduct and hostility that the US claimed, the invasion might have been proportionate and justified. Yet the present case is different and there are many indicators that the force that was used was out of proportion. Even if one considers the dangers of terrorism, which have shown to be very serious, the force is probably still not proportionate because there is simply a lack of clear evidence that Iraq was cooperating with terrorist organizations. Even if there was evidence of terrorist activity, apart from cooperation of Iraq, it would be difficult to invade Iraq as a state based on self-defence. Security Council resolutions on terrorism state that any state that harbours terrorists, are a threat to international peace and security. In such cases, it is the task of the Security Council to assess the situation and, if necessary, to address that issue in a Chapter VII Resolution to that particular state. Another point to consider is the constant supervision of the Security Council that was already present in Iraq, and which was monitoring Iraq's conduct closely. If an invasion were necessary, they would have indicated this in a Chapter VII Resolution.

3.4.1.1 Conclusion: was self-defence a legitimate justification?

Concluding, it is difficult to prove that self-defence was indeed a valid reason for invading Iraq. If one analyses the case from a Restrictionist approach, the literal interpretation of Article 51 would not have allowed an invasion simply because it was pre-emptive and anticipatory. This is also the interpretation of Franck, who states that Article 51 only gives permission to act in case of an armed

attack or when the Security Council authorizes force to be used (Franck, 2003, pp620). In order to exclude all options and to use a framework with a broader perspective on Article 51, the Counter-Restrictionist approach served as the main tool for this analysis. Many options have been considered, but the conclusion remains the same: a lack of evidence constitutes the main problem to the US justification of self-defence. Despite the fact that self-defence leaves a state with sovereignty and the ability to use force, Article 51 also complicates the use of force and the extent to which the use of force can be used. In this case, following the Webster criteria, the situation is not imminent enough and force was not proportional considering the grounds that the US gave for the invasion, even if there was an implication of the existence of weapons of mass destruction. Although the danger of weapons of mass destruction are evident and recognized by the international community, there was no reason to suspect that Iraq had acquired those weapons or that they were in the developing stage of testing those weapons. Due to constant Security Council inspections, there was quite a clear overview of the possibility of Iraq owning such weapons, even if these inspections did not always go as planned or without a hitch. Other weapons that might have been present in the US and against the provisions of the formal cease-fire might have been illegal, but were not capable of reaching the US, and thus could not pose an imminent danger to the United States, which excludes their right to use self-defence due to imminence. Whether the material breach of the Security Council Resolutions were a valid ground for invading Iraq will be considered next.

3.4.2 The Security Council Resolutions

The justification that the US had the power to enforce Security Council Resolutions is a difficult, contested point. Many academics are bifurcated on this topic. Considering the fact that the Security Council has not expressed itself about the invasion, there is also a lot of room for interpretation. First, the perspectives of scholars who claim that the Resolutions were a valid justification will be analysed. Then, this work considers another perspective which disagrees. Finally, there will be a conclusion.

William Taft and Todd F. Buchwald are scholars that argue that the invasion was justified based on the Security Council Resolutions (Taft IV & Buchwald, 2003, pp563). They state that aggressive weapons in the hands of an unstable dictatorial regime are dangerous for a civilian population. Their main argument is two-folded. On the one hand, it is the duty of the Member States of the UN to enforce the Resolution that determined a material breach of the cease-fire, which was recognized by both the Security Council and the international community. Consequently, this was also an authorization to use force. Resolution 1441 implied, with its structure and language, that Iraq was not only in breach of its obligations and of international peace and security, but it also restored the former Resolution that had authorized all necessary means to be used in order to secure international peace and security and compliance with the cease-fire. They provide several examples for their statement that the language of Resolution 1441 implied an authorization of force. The first example is the determination of a material breach and the final opportunity to comply with the former Resolution. According to Taft and Buchwald, paragraph 4 and 11 state that violations need to be reported to the Security Council by either UNMOVIC (The United Nations Monitoring, Verification and Inspection Commission) and the IAEA (International Atomic Energy Agency), or that a report by a Member State, which is allowed under paragraph 4. The UNMOVIC was established in 1999 by the Security Council to monitor Iraq's compliance with their obligations of the Security Council Resolutions concerning the destruction of weapons of mass destruction. These institutions were given the task to find and destroy and prevent the rebuild of weapons of mass destruction in Iraq (Aust, 2010, pp201). Taft and Buchwald consider the discussion that the US had with the Security Council in relation to Iraq's violations, which is an indication that paragraph 12 applied to the situation. Paragraph 12 states that the Security Council: *"Decides to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security"*. Taft and Buchwald state here that, there is no indication in this

paragraph that implicates that there is a need for a further resolution or decision and that the use of force is authorized as soon as the Member State has reported to and discussed Iraq's violation with the Security Council (Taft IV & Buchwald, 2003, pp562). They also note the similarities in language between this Resolution and Resolution 678, which was an authorization to use force. However, a main difference is that Resolution 678 stated a clear authorization to use force and that Resolution 1441 lacks such exact language because it is not a distinct authorization of force.

Christopher Greenwood shares the view that the invasion was legal according to international law, but on slightly different grounds. Greenwood firstly states that resolution 1441 did not constitute an authorization to use force, but that it was one that stated that a breach of Iraq should be reported after which this would be discussed. However, Greenwood believes that according to international law, there was no need for a new authorization, because the previous authorization, Resolution 678 dating from 1990, was not yet terminated by the Security Council (Greenwood, 2003; pp34). Resolution 1441 served to reaffirm it. Greenwood also notes that, despite the claims of some scholars that are opposed to the invasion, the authorization of force was not only intended to solve solely the Iraq-Kuwait conflict and to secure international peace and security in that particular region, but that Resolution 678 had a further stretch, which was also aimed at disarming Iraq. He further argues that there is no indication in the text of Resolution 678 that this was not the case (Greenwood, 2003, pp34). Also, the cease-fire that was proposed in Resolution 687 temporarily removed the authorization to use force but this was recovered when Resolution 1441 recalled Resolution 678 which was an authorization to use force. Greenwood argues that this signifies the unity of the Security Council and their unanimous opinion that the authorization of Resolution 678 was not yet ceased. According to Greenwood, Resolution 1441 is no automatic revival of the authorization provided in Resolution 678, but argues that despite of the requirement of a report of a violation, considered in paragraph 12 (resolution 1441), it does not exclude the right to take action under resolution 678 (Greenwood, 2003, pp25). In his view, the invasion was thus justified when the partaking governments of the invasion relied upon Resolutions 678, 687 and 1441.

John Yoo is another scholar that is convinced that the use of force based on the Resolutions was legitimate and legal according to international law. He claims that both the enforcement of the material breach of Resolution 687 and restoring international peace and security of the region, based on Resolution 678, were valid Security Council authorizations. Like Greenwood's argument, Yoo claims that on the basis of international law and UN custom, Resolution 678 was not void. In its history, the Security Council has always officially terminated an authorization of the use of force. (Yoo, 2003, pp567).

There are several other scholars, on the other hand, that strongly disagree with these arguments. In their perspective, the invasion was not authorized by the Security Council based on former Resolutions.

Jane Stromseth argues that although the breach was serious, it was meant to be assessed by the Security Council, which, according to Resolution 1441, would evaluate a breach if it occurred. The fact that they would consider the situation means that Resolution 1441 was not a ready-to-go authorization for the use of force in case Iraq did not comply at the set date (Stromseth, 2003; pp630-631).

Thomas Franck first follows the reasoning that our former scholars have used and then debunks those arguments. According to Franck, Miller, and McLain, Resolution 678 only applied to the conflict between Iraq and Kuwait, and intended to restore international peace and security in that specific region. They were thus meant to last only until the conflict between Iraq and Kuwait was solved, and there was no indication that the authorization would be valid after Iraq's troops were removed from Kuwait and after the situation that was originally threatening international peace and security was resolved. The authorization of the use of force was meant to enforce Iraq's compliance with

Resolution 660. Also, he notes that the cease-fire, Resolution 687, was an agreement between the UN and Iraq and that it was not the responsibility of the member states to enforce the Resolution, but that of the UN. Even if the US was a party to the cease-fire contract, the Vienna Convention and Article 2(4) of the UN Charter, a norm *Jus Cogens*, would be supreme and prohibit any intervention. Franck concludes that there was no evidence that the Security Council even gave an implied authorization for the use of force for any of the member states, and that the text of Resolution 1441 clearly states that the Security Council stays in control. There was thus no legitimate justification for the use of force under these Resolutions (Franck, 2003, pp612-613).

Richard B. Miller firstly states that the US, and Bush, had exaggerated the actual violations of Iraq (Miller, 2008, pp55). Although Resolution 1441 is a confirmation that Iraq is in material breach and that serious consequences will follow when it will continue, it is still not as decisive as the choice of an authorization of all necessary means in Resolution 687. Based on the language of the Security Council, which Miller notes is ambiguous, it is, however, clear that there was no authorization for military force. Yet on the other hand it also leaves questions to whether any military action was excluded. The language of the Resolution implies that there is a case to be made for military action. However, Miller argues that the fundamental question in this case is whether it is legitimate to invade another state on the basis of obstructing weapon inspectors. Miller states that in a legal point of view, the invasion was disproportionate to the problem at stake. Also, Bush' claims that Saddam Hussein needed to be removed from power in order to enforce Security Council Resolutions, is doubtful, according to Miller. Proportionality has been proven to be very significant in international law and the possibility that there might have been another option before resorting to the use of force is significant. Another legal problem with the disposal of Saddam is that the U.N Resolutions did not give the Member States any permission to do so. Although it might have been a consequence of the invasion, it was clearly not permitted under Security Council Resolutions to invade Iraq with the specific goal of overthrowing Saddam's reign and regime in Iraq, which was clearly on the US agenda.

McLain also notes that there was no clear authorization to the use of force in Resolution 1441, like in Resolution 687 or 688. Additionally, a material breach of a Resolution will not supersede the general prohibition on the use of force, which is stated in article 2(4) of the UN Charter.

Resolution 688 is a different Resolution than those that have been discussed so far. It was a Resolution of the Security Council that condemned Iraqi action in relation to the Kuwait conflict, but it was not specifically published under Chapter VII. For McLain, this Resolution is important because it belongs to the former Resolutions of the conflict, and because Operation Desert Strike that the US executed based on Resolution 688, was condemned by the majority of the Security Council. Operation Desert strike was executed in 1996 and it consisted of air strikes by US' and British air troops against Iraqi air defences. According to McLain, this condemnation illustrates "the tenuous legal basis that Resolution 688 would offer a major U.S. intervention in Iraq today (McLain, 2003, pp245)".

Furthermore, McLain mentions that the compliance of the cease-fire of Resolution 687 was related to Resolution 661. Resolution 661 imposed economic measures on Iraq by the United Nations. If they would comply with the conditions set in Resolution 687, these measures would be lifted (McLain, 2003, p246). This implies that the 'serious consequences' that were discussed in Resolution 1441, urging Iraq to comply with the cease-fire, would more likely be related to the economic measures or an increase of such measures, rather than the authorization to use force in order to restore international peace and security, granted in Resolution 678.

Additionally, McLain argues that the US has a history of requesting an authorization for the enforcement of compliance of Iraq in the cease-fire. These attempts have been unsuccessful despite of Resolution 1154, which was another serious warning to Iraq. China, France and Russia clearly stated that it was not an authorization to the use of force. This example of US conduct and the

reluctance of the international community and the Security Council to approve the request for the use of force as a clause in Resolution 687 impair the argument that former Security Council Resolutions automatically granted an authorization and a legal basis for the use of force (McLain, 2003, pp247).

He further notes that the case that the US made, related to the material-breach theory, is invalid. The material breach theory assumes that once one party has violated the conditions of a contract, so in this case the Resolutions, the violating party should not receive the benefits of the contract. In this case, it translates to the idea that if Iraq violates the Resolutions, the cease-fire is officially void and thus, Resolution 678 authorizing force would be in force again. McLain uses the language of Resolution 687 to debunk this argument. First of all, it is a formal cease-fire between "Iraq, Kuwait and the Member states cooperating with Kuwait in accordance with resolution 678" (Resolution 687, quoted in McLain, 2003, pp249). Although the member states are involved, there is also a clear indication that the Security Council decided that they would stay in control of the situation and any decisions to undertake action. They declare this in paragraph 34 of the Resolution. Based on these arguments, McLain states that "Resolution 687 does not provide for a right of unilateral intervention that vests upon a breach by Iraq nor is it silent on the issue of authority to enforce its provisions (McLain, 2003, pp249)".

A peculiar and intriguing notion that McLain makes is that while the Security Council was drafting the cease-fire, the US had proposed a clause that would authorize force in case that Iraq would not comply, and that this was rejected by the Security Council. This clearly gives us an indication of the ideas of the Security Council. Additionally, McLain concludes that considering UN and Security Council policy, objectives and history of conduct, it is unlikely that the former Resolutions can be used as a legal basis for the invasion of Iraq in 2003. Although McLain shares the opinion that Iraq needs to be penalized for its ignorance, he notes that it is not up to a single state to determine which punishment should be taken and to what extent. After all, the Security Council has been granted the power to manage the use of armed force in conflict in the international community. (McLain, 2003, pp251).

3.4.3 Humanitarian Intervention

The argument of humanitarian intervention was not the main argument for the invasion for war. It was mentioned in speeches but it was clear that the main justification was self-defence based on a possibility of weapons of mass destruction and the ability to cooperate with terrorists. The enforcement of Security Council Resolution was another main argument, but the humanitarian intervention was rather seen as a beneficent side-effect of an invasion. The argument of humanitarian intervention was emphasized after the war rather than before (Kramer & Michalowski, 2005, pp450). A remarkable example of this fact is the US Iraq resolution that was just discussed. In this resolution, there is no clear expression of a need to liberate Iraqi people and intervene in the current situation. This was also emphasized by Miller. The only statement that is made in relation to the Iraq regime is that "it should be the policy of the United States to support efforts to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime". Although it expresses a need to change the dictatorial regime into a democratic one, there is no mentioning of any need to liberate and assist the people. Rather, it appears to be an intrusion on the territorial integrity and sovereignty of Iraq. Although the US might have a valid reason to desire a democracy in Iraq, international law does not prescribe democracy to be a standard nor a necessity. By trying to overthrow Saddam's regime, and by expressively stating that it needed to be replaced by a democratic regime, Bush has crossed a line in international law. The sovereignty of a state means that a nation can decide what type of government it wishes to pursue. The fact that it does not suit an Occidental view does not mean that the US can take the right to overthrow it and replace it with another government that suits that view.

Even if humanitarian was a legitimate argument for waging the Iraq war, there needs to be a focus on who can decide whether a humanitarian cause needs to be served. The Security Council is the main organ that addresses humanitarian distress, which means that if the US' goal was really to liberate the people, it would have needed Security Council approval, despite of the right that a state has to intervene in another state's conduct when it is not respecting vital human rights. The international community would not have accepted US' initiative to enforce international law by its own demand, interpretation or standards.

Furthermore, although Iraqi people might have been in some distress, there was no extremity or threat that was out of the ordinary that could justify an invasion. (Kramer & Michalowski, 2005; pp451) It was nothing new that Saddam's regime was responsible for killing specific citizens, yet Kenneth Roth of Human Rights Watch also emphasized that any violence in 2003 was not something out of the ordinary (Miller, 2008, pp59). Miller states that "no offenses that shock the conscience of humanity were being committed when the war was launched" (Miller, 2008, pp58). It is thus questionable for the US to suddenly claim that there is a need for humanitarian necessity, since there was no sign or significant event that could have illuminated an immediate need for rescue. Another problem with this argument is that it blurs the boundaries of a state's right to intervene. In the Iraq case, there was no clear violation, but there was information on violations of human rights in the past and some indication that it was still going on up to a certain extent. It is unfair for any state to be held accountable for wrongs that have been committed in the past, and it creates a dangerous open window for states to invade other nations on the basis of a humanitarian intervention argument.

The fact that an immediate need had not been addressed by the US or for that matter proven makes the humanitarian intervention justification a slippery slope. Another problematic aspect of the argument is that the necessity of humanitarian intervention was only emphasized after the invasion and the failure to find weapons of mass destruction. This does not only raise doubt about whether it was an actual justification or an excuse, it also raises questions about the ethical nature of the intervention. Next to other scholars, Falk also finds the humanitarian justification doubtful. Falk even claims that the US has used the humanitarian benefits of the war as a distraction from the illegality of their use of force (Falk, 2003, pp597). It seems that the 'rescue' was not moved by altruism but by tactics. This is problematic considering the definition of a humanitarian intervention. It is supposed to be motivated by altruistic incentives to liberate a civil population, and it should not surpass that objective. The US clearly had another agenda when invading Iraq, which is emphasized by their intense focus on nuclear weapons and terrorism. These incentives were the first priority. The fact that their invasion would liberate Iraqi people was but a side effect. Richard A. Falk concludes the same when he states that: "a pro-intervention argument should not be treated as acceptable in circumstances where the use of force is associated with alleged security threats posed by the menace of mega-terrorism, but the justification tendered after the fact emphasizes humanitarian intervention. (Falk, 2003, pp597)".

4. Conclusion

According to international law, the use of force against other states is prohibited. This is a norm *Jus Cogens* and is laid down in Article 2(4) of the UN Charter. A state can only use force or invade another state on a few exceptions. If such exception occurs, there is a valid legal basis to invade another state.

The first exception is on the basis of Article 51, which relates to self-defence. The article recognizes a state's inherent right to use force in order to protect their sovereignty and citizens against an armed attack or an imminent attack. When self-defence is used in a case of imminence, the Webster-criteria apply: the act of force needs to be necessary, insurmountable and proportional. In analysing the United States justifications for the use of force based on self-defence, it has been proven that there was not enough evidence to claim that an act of self-defence was legitimate. Several scholars have expressed their academic views on these justifications. Scholars like Ryan, Miller and Franck have provided convincing evidence that the US could not reasonably argue that there was imminence or necessity for the pre-emptive invasion, based on either a threat of weapons of mass destruction or terrorism. Additionally, a lot of the data that was used by the United States was at best doubtful due to the selective bias of information. Ryan and Miller have provided evidence that there was contradicting evidence to the United States claims of imminence at the time. Therefore, the defence fails to satisfy the Webster-criteria that are customary international law in the inherent right of self-defence. Therefore, due to a lack of an armed attack or imminence, the two situations where self-defence is tolerated, the justification of self-defence against Iraq is not valid.

Another legal basis for the use of force is when a state acts upon a Resolution of the Security Council that authorizes a use of force under Chapter VII. The United States claimed that by materially breaching Resolution 687, the cease-fire Resolution, Resolution 678 was revived. Due to the legitimacy of this Resolution, there was no need to acquire an additional Resolution of the Security Council that granted the use of force against Iraq in 2003. Although the Resolutions were never terminated by the Security Council, it is unlikely that a Resolution of 1990 can grant an authorization to the use of force in 2003. Additionally, the Security Council was an authoritative power and was thus in the position to decide whether force was permitted or not. There should have been a discussion with the Security Council or a new Resolution that authorized force. Also, Resolution 678 only applied to the Iraq-Kuwait conflict, and with the removal of Iraqi troops from that area, the Resolution was void. Weapon inspections and an occupation are two different issues and the US could not have relied on the Resolution that dealt with the latter in order to justify an invasion for the material breach of Resolution 687. The justification that the US acted upon former Security Council Resolutions is thus, in my opinion, not valid because the old Resolutions could not apply to the problem that arisen ten years after the conflict between Iraq and Kuwait. Furthermore, it was the task of the Security Council to decide whether and to what extent force was appropriate.

The last justification that constituted the legal basis of the invasion was the argument of a humanitarian intervention. The Iraqi population allegedly suffered infringements on their human rights and there was systematic murder, torture and rape in Iraq. The Iraqi people were not kept safe under the dictatorial regime of Saddam and their distress needed to be addressed. Not only was this last point neglected until after the war, when the first two justifications were proven to be illegitimate and void, it was also not valid because there was no humanitarian distress that shook the world. The fact this justification was emphasized after the war is doubtful and unethical. Additionally, it is the task of the Security Council to take control over these situations and express a desired conduct of specific states. It was thus not appropriate for the United States to react to an alleged humanitarian intervention that the Security Council had not addressed as problematic. Hence, the justification of humanitarian intervention is not acceptable.

In conclusion, the invasion in Iraq in 2003 was not legal according to international law. Several justifications have been examined and there has been discussion about both pro-invasion arguments and arguments against the invasion. The analysis has shown that the United States did not have valid justifications for the use of force, and has breached international law by invading Iraq.

5. Discussion & Reflection

Although the research question has been answered, there are still some issues to reflect on. Since it has been established that the United States did not provide the international community with satisfactory justifications for the invasion in Iraq in 2003, what can the consequence of a breach of international law by the United States be? The answer to that question is quite simple: due to its powerful position in the international community, it is unlikely that there will be satisfaction, reparation or measures. The United States has unravelled itself somewhat as an enforcer of international law and Security Council Resolutions. . So what are the consequences for Iraq? Fact is that there will be no satisfaction for Iraq. One can see how an exemplary state like the United States would not recognize its mistakes before a -in their perspective- 'rogue' state like Iraq, and an apology is definitely out of the question. Another consequence of the war is that the Iraqi people, whose government was destroyed and of which many were made homeless or orphan, are still rebuilding their society. This year, the war was ended ten years ago, but due its consequences, the real end for the Iraqi people is still far away.

Another question is whether the Security Council and the United Nations need to be reassessed in their functioning and credibility. It might seem like a radical statement but the fact is that the United States has been awarded with a kind of inviolability as a sole superpower. The big five powers of the Security Council, the US, China, Russia, Great Britain and France have contending interests which influences their course of action and agenda. International law is governed by politics up to a great extent. There is a lack of a neutral enforcer without ulterior motives in international law. However, the question is whether this is desirable and even possible. International law is based on consensus and cooperation and it is all, essentially, on a voluntarily basis of states. The Security Council, although it has more members than the mere 5 great powers, has proved itself to be an elite-like organization that mostly deals with international conflicts and breaches of international law of the smaller states, rather than acting unconditionally and always in favour of that what it needs to protect: international peace and security and maybe more or at least just as important, human rights. Yet, due to the composition and again, nature of the Security Council and international law, it will not be possible to achieve major changes. It is simply not realistic. For now, the United States is a great asset to the Security Council due to its willingness and almost missionary-like way of assisting in maintaining international peace and security and in the process of banishing 'evil' from the world in the form of terrorist groups and dictatorial states that mistreat their own citizens. Yet, the United States needs to stay in check. Already in a dominant position, there is no need for the United States to take over the Security Council and its task. Therefore, it is crucial that the Security Council will remain united and balanced.

Although, after ten years, the question of legitimacy and legality of the war should be answered, there is still room for future research, however, not only in this specific area of international law. Ten years after the war, it is appropriate to investigate the aftermath of the war. How has the situation improved in ten years? What about the victims of the war, and the government in Iraq? Has the intense and quick warfare of the War on Terror been effective? What does the future hold for the United Nations and the Security Council? How will US exceptionalism develop, and what would that mean for the world? This research has, for me, raised many questions. Not only about world politics, the United Nations, international law and the United States' exceptionalism. It mostly, for me, raised questions about the aftermath. What happened to the victims of this war? And how has Iraq as a society and nation been rebuilt since the war? Was it in their best interest that their dictator, Saddam Hussein, was forcefully removed from power? Or do many Iraqi citizens prefer the situation that was present more than ten years ago, before the United States decided to invade Iraq in 2003? These are all questions that might be assessed in the future. In the present, it has been demonstrated that the Iraq war in 2003 was an illegitimate use of force in accordance to international law.

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