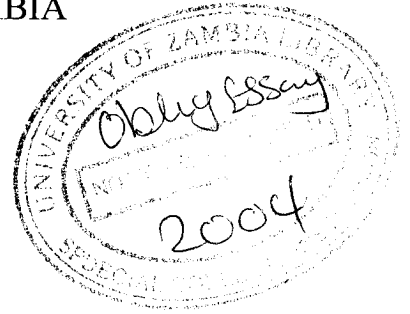


THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



**INTERNATIONAL PEACE AND SECURITY AFTER THE UNITED STATES –LED
INVASION OF IRAQ**

BY

TWAAMBO SHALWINDI

An Obligatory Essay submitted to the University of Zambia in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws (LLB)

DECEMBER 2004

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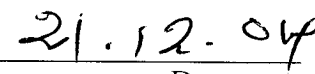
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Professor Carlson Anyangwe



Date

DEDICATION

This work is dedicated to those who have lost their lives as a result of the continuing conflict in Iraq.

ACKNOWLEDGEMENTS

Thanks are due as always to many.

My mum and dad-thank you for your love and support. My sisters, Milimo and Choolwe and my bothers Michelo, Chabota and baby Chipu, thank you. You encouraged me to do my best.

To my supervisor, Professor Anyangwe, I will always be grateful for your patience and support. I have learnt so much from you. Thank you!

Susan and Nkumbiza thank you for your indirect support. I will miss your rooms. Cassandra and Banji, thank you for your laughter. Bako, Joshua, Francis, George, Stanley and Mwendabai, thank you.

Above all, I want to thank my special friend David, for being there for me and for believing in me. You helped to realize that, even when things are bad, we should never look behind, but have the faith and look ahead.

DECLARATION

I, TWAAMBO SHALWINDI, [Computer number: 99059568], DO HEREBY declare that the contents of this directed research paper are entirely based on my own findings. The work used herein that is not my own, I have endeavored to acknowledge the same.

I THEREFORE take full responsibility for the contents, errors, defects and omissions therein.

21/12/2004

Date

Shalwindi

Signature

ABSTRACT

Sixty years after the formulation of the United Nations, the Organisation does not appear to have achieved its basic objectives of maintaining international peace and security and preventing inter-state wars.

A telling recent failure of the United Nations was its inability to prevent the United States- led armed invasion and occupation of Iraq. The invading powers justified their action on a supposed need to make the world a safer place.

Drawing from principles of international law, internet and various newspaper sources the study examines the issue of world peace and security against the backdrop of the Iraq war. The study concludes that contrary to what the invading powers contended, the American- led invasion of Iraq generally speaking appears to have generated increased insecurity, rather than security in the world considering the rise in the levels of violence in various parts of the world.

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Nicaragua v USA, (1986) ICJ REP 14

GENERAL INTRODUCTION

Mankind has always aspired to peace and security. The United Nations Organisation was created with the primary objective of securing international peace and security. Article 2(4) of its Charter for example proscribes inter-state wars. Unfortunately, the United Nations does not appear to have succeeded in preventing inter-state armed conflicts. This failure is in part due to the attitude of the more powerful states that still use war as an instrument of attaining national foreign policy objectives.

One recent example is the United States-led invasion of in violation of the United Nations Charter. The United States claimed that it was invading Iraq so as to make the world a safer place.

This essay examines the current state of international peace and security following the invasion of Iraq.

This study is based on International Law. The methodology of the research was desk research involving consultation of textbooks on international law. The topic is based on an ongoing issue. It was imperative to also use sources from the electronic media notably the internet and newspapers.

The study is organized in the following manner.

The essay considers in chapter one the reasons that the United States provided for the invasion against those of the anti-war activists.

The issues and implications of the United States-controlled administration in Iraq are further discussed in Chapter two.

Chapter three considers the reaction of the Iraqi population in general to the invasion and occupation of their country, the increase in the number of attacks against United States in the Middle East, and the public support given by Osama Bin Laden to American targeted attacks.

The essay interrogates in chapter four the role of the United Nations in maintaining international peace and security against the backdrop of the United States-led invasion of Iraq.

Finally, chapter five ventures some recommendations and conclusions on the subject of international peace and security following the invasion of Iraq.

CHAPTER ONE

THE BACKGROUND TO THE INVASION OF IRAQ

The United States of America and its supporters known as the 'coalition of the willing' launched an armed invasion of Iraq in 2003. The United States gave reasons to back its decision to invade Iraq. However, anti-war activists argued that there were concealed reasons for the invasion that the United States did not reveal to the world. This chapter will thus examine the reasons for the invasion given by both the United States and the anti-war activists. The examination will include the evaluation of these reasons in light of international law in order to ascertain whether the invasion was an infringement of international law or not.

SECTION ONE

REASONS FOR THE INVASION

A.OFFICIAL UNITED STATES REASONS FOR THE INVASION OF IRAQ

There were two official reasons given for the invasion of Iraq by the United States government.¹ However, there was a third reason given which is being relied on now by the United States and Britain since it is clear now, that the first two reasons are baseless.²

1. THE ALLEGED LINK TO AL QAEDA AND VARIOUS OTHER TERRORIST GROUPS

¹ UtopiaX.org- a journey into the unknown

² Roth, K. War in Iraq: Not a humanitarian intervention. Human Rights Watch, World Report 2004. hrw.org

The United States government claimed that the invasion of Iraq could be justified on the basis of the link of Saddam's regime to Al Qaeda and various other terrorist groups.³ It argued that Saddam's regime had links with what it calls Palestinian 'terrorist' groups said to be responsible for 'suicide bombing' attacks. Saddam is said to have famously boasted of paying \$25,000 to each family of a suicide bomber in Palestine. Additionally, it was claimed that Iraq intelligence carried out what the United States said were 'terrorist actions', notably the assassination attempt against former President Bush in Kuwait in 1993. Saddam was also outspokenly hostile to the United States of America.

The United States claimed that this information was evidence that Saddam's regime had a role in the September 11, 2001 terrorist attacks on the New York World Trade Centre twin towers and the Pentagon.⁴ It was further argued that Saddam's regime not only sponsored the September 11, 2001 attacks, but also sponsored the other terrorist attacks on American interests abroad.

President Bush stated that the principal strategic danger to the war on terrorism was the possibility that terrorist could get their hands on chemical, biological or nuclear weapons supplied by Saddam's regime.⁵ This danger was so great that it was necessary to remove Saddam's regime by force in order to make the world safer.

³ Under Secretary of Defense for Policy, Douglas J. Feith. Iraq: One Year Later. The American Enterprise Institute for Public Policy Research, Washington, D. C., Tuesday, May 4, 2004.

<http://www.dod.gov/speeches/2004/sp20040504-0321.html>

⁴ Ibid

⁵ Ibid

However, despite these claims by the United States government, its intelligence has not confirmed a link between Saddam's regime and Al Qaeda.⁶ There is further no evidence of Iraqi sponsorship of alleged terrorist attacks.

2. IRAQ'S ALLEGED POSSESSION OF WEAPONS OF MASS DESTRUCTION AND A SECRET NUCLEAR PROGRAMME

The United States government claimed that Saddam's regime had acquired weapons of mass destruction and a secret nuclear weapons program.⁷ It was argued that Iraq's past record was evidence of its capability to acquire and use the weapons of mass destruction.

Saddam's military used chemical weapons on Iranian troops in the 1980's.⁸ His military was thus the first in history to use nerve gas on the battlefield. Further, Saddam was defiant of numerous attempts by the United Nations Security Council over a dozen years to constrain him or so to compel him to account for or destroy Iraq's weapons of mass destruction. Resolution 1441 passed in 2002 by the Security Council was cited as requiring Saddam to account for and destroy its weapons of mass destruction.⁹ The resolution reinitiated inspections of weapons of mass destruction in Iraq, with the threat of 'serious consequences' if Iraq was to be in 'material breach' of past resolutions.

It should be noted that Iraq was complying Resolution 1441 at the time of the invasion. For instance, Iraq had agreed with the United Nations on a series of concessions, including a

⁶ UtopiaX.org-a journey into the Unknown

⁷ Ibid

⁸ Roth, K. War in Iraq: Not a Humanitarian Intervention.

⁹ Is the U.S invasion of Iraq a violation of International law? The Institute for Public Accuracy.
<http://www.accuracy.org/un2/>

commitment to provide a list of people who would be interviewed without Iraq officials being present.¹⁰ Saddam also agreed to set up a team to search for munitions that had been missed out of its declaration on weapons programmes made in December 2002.¹¹ Iraq also destroyed some missiles before the invasion.

However, the United States Defense Secretary, Donald Rumsfeld speaking to the press on March 12, 2003 claimed that Saddam was merely making a show of destroying a handful of missiles, claiming to have no chemical or biological weapons.¹² The United Nations weapons inspectors led by Hans Blix (Chief Inspector) failed to find any weapons of mass destruction. Rumsfeld claimed that Saddam was hiding chemical and biological weapons, moving them in different locations as often as every 12 to 24 hours and placing them in residential neighborhoods.¹³

The United Nations weapons inspectors failed to find the weapons, because of their failure to interview Iraqi scientists with knowledge of the weapons program.¹⁴

To this date, despite the capture of senior Iraq officials on the list of the 55 most wanted Iraq leaders, the United States has failed to get information on the weapons programs.¹⁵ Extensive interviews with both United States and Iraqi scientists, according to the Washington Post, found that Iraq lacked the material conditions to create the alleged weapons of mass destruction.¹⁶ The paper added that, Iraq's scientific institutions and factories were beaten down by twelve years of

¹⁰ "Saddam's Regime is weakening," says Blair. The Post, 22 January 2003

¹¹ Ibid

¹² BBC News, 29 May 2003

¹³ Ibid

¹⁴ US balks at return of UN Inspectors to Iraq. The Post, 23 April 2003

¹⁵ US seizes top Iraq Scientist. The Post, 6 May 2003

¹⁶ US withdraws Iraq weapons-hunters as WMD lies crumbles. January 10, 2004. World Socialist Website. (1998-2004)

conflict, arms embargo and strangling economic sanctions. The United States has admitted that it never had any evidence that Saddam had acquired a nuclear program.

3. A HUMANITARIAN INTERVENTION

A comparatively minor reason for the invasion was a humanitarian one.¹⁷

The United States government reasoned that Iraq's past record justified humanitarian intervention.¹⁸ The 1988 Anfal genocide which involved the slaughter of up to 100, 000 Kurds was such an example. Another is the brutal suppression of the post- Gulf war uprising, which forced the Iraq Kurds to flee to Turkey's mountainous border where they were stranded in harsh weather and could not return to their homes for fear of being put to death. This brutal suppression involved intense killing of those who participated in the uprising. Additionally, Saddam's rule up to the end of his regime was brutal.¹⁹ There were frequent summary executions and cases of the torture of those who did not support Saddam's regime.

It was therefore necessary, to liberate the Iraq people from the harsh rule of Saddam Hussein. This would open the way development of democratic institutions in Iraq and also inspire the growth of freedom through out the Middle East.²⁰

¹⁷ Roth, k. *War in Iraq: Not a Humanitarian Intervention*.

¹⁸ Ibid

¹⁹ Ibid

²⁰ Under Secretary of Defense for Policy, Douglas J. Feith. *Iraq: One Year Later*.

B. ANTI-WAR ACTIVISTS REASONS FOR THE WAR

Anti-war activists have argued that the invasion of Iraq was not about weapons of mass destruction. It was not about the September 11, 2001 terrorist attacks and terrorist links with Saddam's regime. It was not a humanitarian intervention.

4. THE ISSUE OF OIL

It has been argued that Iraq's oil drove the United States to invade Iraq.²¹

Iraq is a country at the centre of the Gulf, a region with a quarter of world oil production in 2003, and containing more than 60 percent of the world's known reserves.²² Iraq has 115 billion barrels of oil reserves, and perhaps as much again in 90 percent of the country not yet explored. Its capacity is second only to Saudi Arabia.²³ The United States is, in contrast is the world's largest importer of oil. According to the United States Department of Energy forecast, imports will cover 70 percent of domestic demand by 2025.²⁴

After the Gulf War, sanctions were imposed on Iraq by the United Nations, limiting oil production. Sales of oil were allowed under the 'oil for food program' and Iraq sold 60 billion worth of oil from 1998 to 2003.²⁵

It is claimed that the invasion of Iraq would give the United States the opportunity to takeover the Iraqi oil fields. President Bush is said to have persuaded the United Nations to lift oil production limits imposed after the Gulf War.²⁶

²¹ Chapman, J. *The reasons Bush went to war*. The Guardian, 28 July 2004

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

It is claimed that control of Iraq oil would confer benefits on the United States and Britain.²⁷ It would improve security supplies to the United States and possibly Britain. This would be achieved though the setting aside of development and exploration contracts between Saddam and China, France, India, Indonesia and Russia, in favor of United States and possibly British companies. The presence of the United States military would also be an insurance policy against any extremists in Iran and Saudi Arabia.²⁸

According to anti-war activists, the other benefit of the United States control of Iraq oil is well summarized by Dick Cheney's (Vice President of the United States) statement in 1990:

*Whoever controls the flow of Persian Gulf oil has a stranglehold not only on our own economy but also on the other countries of the world as well.*²⁹

Thus, United States control of Iraq oil supplies, and maybe supplies from other gulf countries as well would enable the United States to use oil as power.

However the United States and its allies have denied these claims.³⁰ United States Defense Secretary, Donald Rumsfeld stated on the eve of the war that the United States government would not take forces and go around the world to try and take other peoples oil, because that is not how democracies operate.³¹ British Prime Minister Tony Blair also stated that it was not true

²⁷ Chapman, J. *The reasons Bush went to war*. The Guardian, 28 July 2004

²⁸ Ibid

²⁹ Ibid

³⁰ Kolhaas, C.A. *War in Iraq: Not a "War for Oil"*. In the National Interest. The Nixon Center

³¹ Chapman, J. *The reasons Bush went war*. The Guardian, 28 July 2004

that the issue of Iraqi oil motivated the invasion. He said that, “there was no way whatsoever, if oil were the issue that it would not have been infinitely easier to cut a deal with Saddam.”³²

5. THE ISSUE OF THE DOLLAR

Anti-war activists claimed that the invasion was largely due to an oil currency war.³³

It has been said that in the 1970's, the United States agreed with Saudi Arabia that the Organisation for Oil Producing and Exporting Countries (OPEC) oil, should be traded in dollars.

³⁴ In return, the United States allowed the OPEC countries to operate a production and pricing cartel.³⁵

Today, although about 80 percent of foreign exchange and half of world trade are in dollars, the euro provides a realistic alternative.³⁶ Additionally, euro countries have a bigger share of world trade, and trade with OPEC countries.

The head of OPEC's Petroleum Market Department gave a speech that, dealt with the subject of OPEC oil transaction standard with respect to both the dollar and the euro.³⁷ He stated that from European Unions point of view, it is clear that Europe would prefer to see payments for oil shift from the dollar to the euro. This would increase the demand for the euro and help increase its value.

³² Ibid

³³ Ibid

³⁴ Chapman, J. The Real Reasons Bush Went to War. The Guardian, 28 July 2004

³⁵ Ibid

³⁶ Ibid

³⁷ 'The Choice of Currency for the Denomination of the Oil Bill,' Speech given by Javad Yarjani, Head of OPEC'S Marketing Analysis Department (April, 2002)

<http://www.opec.org/NewsInfo/Speeches/sp2002/spAraqueSpainApr114.htm>

In 1999, Iran switched the pricing of its oil from the dollar to the euro.³⁸ In late 2000, Saddam decided to switch to the euro and later converted his ten billion dollars reserve fund at the United Nations to euros.³⁹ The depreciation of the dollar versus the euro since late 2001 meant that Iraq had profited handsomely from the switch in their reserve currencies.⁴⁰ It has been claimed that Saddam's action sealed his fate and led to the placing of Iran and Iraq in the "Axis of Evil" by President Bush. If the other OPEC countries followed Saddam's switch to the euro, the consequences for the United States would have been huge.⁴¹ Consider the following quote, which illustrates the current supremacy of the United States dollar.⁴²

World trade is now a game in which the US produces dollars and the rest of the world produces things that dollars can buy. The world's interlinked economies no longer trade to capture a comparative advantage; they compete in exports to capture needed dollars to service dollar-dominated foreign debts and to accumulate dollar reserves to sustain the exchange value of their domestic currencies. To prevent speculative and manipulative attacks on their currencies, the world's central banks must acquire and hold dollar reserves in corresponding amounts to their currencies in circulation. The higher the market pressure to devalue a particular currency, the more dollar reserves its central must hold. This creates a built-in support for a strong dollar that in turn forces the world's central banks to acquire and hold more dollar reserves, making it stronger.

³⁸ Clark, W. The Real Reasons for the Upcoming War in Iraq: A Macroeconomic and Geostrategic Analysis of the Unspoken Truth. The Independent Media Center. www.indymedia.org:8081

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Clark, W. The Real Reasons for the Upcoming War in Iraq: A Macroeconomic and Geostrategic Analysis of the Unspoken Truth.

⁴² Ibid

Worldwide switches from the dollar to the euro would end the reign of the United States dollar. The switch would result in a plummeting dollar, a runaway from United States markets and dramatic upheavals in the United States.⁴³

According to anti-war activists, fear over the future of the dollar thus motivated the United States to invade Iraq. It was necessary, to prevent further OPEC countries momentum towards the euro as an oil currency standard. Gaining geostrategic control of Iraq along with its second largest proven oil reserves could only do this.⁴⁴

The United States was going to use the geostrategic control of Iraq as an economic instrument to gain control and ultimately disband the OPEC cartel.

6. THE ISRAELI CONNECTION

It has been claimed that the invasion of Iraq was aimed at protecting Israel. Israel is said to be the United States biggest ally in the Middle East and receives annual direct aid of three to four billion dollars.⁴⁵

This was reported to have been revealed a speech made by a member of a top-level White house intelligence group- Philip Zelikow. Zelikow reportedly made his statements about 'the unstated threat' from Iraq during his tenure on a highly knowledgeable and well connected body known as the President's Foreign Intelligence Advisory Board (PFIAB), which reports directly to the President.⁴⁶

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Chapman, J. *The Real Reasons Bush Went to War*. The Guardian, 28 July 2004

⁴⁶ Ibid

It was claimed that there was abundant evidence that Iraq was tied to ‘ Hamas’ (an anti- Israeli Islamic Resistance Movement), the Palestinian Islamic Jihad and the people who are carrying out suicide bombings in Israel.⁴⁷ It was therefore necessary to remove Saddam from power because there was a danger of biological weapons falling into the hands of the anti- Israeli Islamic groups. The removal of Saddam would guarantee Israel’s security by eliminating its greatest military threats, forging a regional balance of power overwhelmingly in Israel’s favour.⁴⁸ This would generally create a friendlier atmosphere for Israel in the Middle East.

Iraq was thus not a threat to the United States as claimed, but a threat to Israel the ally of the United States.

THE INVASION

On the 18th of March 2003 President Bush of the United States, told Saddam Hussein to disarm or face the military force of the United States and its supporters.⁴⁹ The following day, on March 19 2003, President Bush claimed in a television address that the United Nations had failed to live up to expectations.⁵⁰ He then gave Saddam an explicit warning of the opening of hostilities against Iraq in the form of an ultimatum containing a conditional declaration of war. President Bush emphasised that it was necessary to attack Iraq because; it would not disarm for as long as Saddam held power.

⁴⁷ Ibid
⁴⁸ Chapman, J. *The Real Reasons Bush Went to War*. The Guardian, 28 July 2004
⁴⁹ Mr. Bush’s ultimatum to Saddam Hussein, 18th March, 2003. BBC News UK edition, 29 May, 2003. bbc.co.uk
⁵⁰ Anyangwe, C. The Invasion of Iraq: A Challenge to the Charter Prohibition of Violence in Inter-state Relations. (Journal of Juridical Science Vol 28, No. 2, 2003.) p58

President Bush warned Saddam that the United States would bombard, invade and occupy Iraq at the moment of its choosing if the he and his family did not flee from Iraq within forty eight hours.⁵¹

However, before time given the ultimatum elapsed, the United States on the 20th of March 2003 launched an armed invasion of Iraq with the armed support of Britain, Australia and Spain. The coalition forces attacked Iraq by air, land and sea.⁵² The United States of America went ahead with the invasion, despite worldwide protests denouncing the war.

The conventional hostilities in Iraq ended in May 2003 after the fall of Baghdad and the defeat of The Iraqi conventional forces.

SECTION TWO

INTERNATIONAL LAW AND THE UNITED STATES- LED INVASION OF IRAQ

Having considered the reasons given in the first section of this chapter for the United States-led invasion of Iraq, it will be imperative to look at the invasion in light of international law.

International law is the body of legal rules, which apply between sovereign states, and such other entities as have been granted international personality.⁵³ The United Nations Charter is the instrument that is used by the international community to fulfill this goal. The Charter was created after the Second World War and according to its preamble; its goal is to 'save succeeding

⁵¹ Ibid

⁵² Ibid

⁵³ Schwarzenberger, G. A Manual of International Law, Fifth Edition. (Delhi: Universal Law Publishing Co. Pvt. Ltd) p 3

generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind.'

The Security Council, which is one of the organs of the United Nations, has the 'primary responsibility for maintenance of international peace and security' by taking 'effective collective measures for the prevention and removal of threats to the peace.'⁵⁴ The word collective refers to an action done by or belonging to all members of a group. The international community assesses threats to the peace and takes actions as a whole to address the problem. This entails that; any decisions concerning the use of force have to be decided by the entire Security Council, which is the only body in the world that can legally authorize the use of force. There is thus no room for unilateral use of force to settle disputes. However, there is one exception, embodied in Article 51 of the Charter. According to this article, if a nation is attacked it has the inherent right to defend itself until the Security Council can take action to restore peace and security.

The United States is one of the five permanent members of the United Nations Security Council.⁵⁵ What has to be established is whether the action of the United States was in conformity with the United Nations Charter and international law.

The United States decided to invade Iraq without authorisation from the Security Council of the United Nations, which is the only body with the authority to legalise the use of force. The United

States claimed that Resolution 1441 (2002), which was passed to address the issue of weapons of mass destruction, authorised the use of force without turning to the Security Council for approval.

⁵⁴ Article 24 of the Charter of the United Nations

⁵⁵ Article 23

However, resolution 1441 (2002) in paragraph four states that the Security Council decided to remain seized of the matter and to take such further steps as may be required for the implementation of the resolution. Thus, individual members were not authorized to deal with the issue of use of force against Iraq. Further paragraphs 10 and 11 require weapons inspectors to report to the Security Council any non-compliance by Iraq. Thus, it is clear that resolution 1441 does not authorize any immediate use of force.

This therefore indicates that the United States violated the United Nations Charter and international law when it invaded Iraq with the support of Britain and the other coalition forces.

As was indicated in the first section, the United States claimed that it was necessary to remove Saddam from power in order to liberate the people of Iraq. In other words the invasion was a 'humanitarian intervention.'

However, humanitarian intervention by a state is unacceptable under contemporary international law.⁵⁶ This principle is part of customary international law. The principle of non-intervention by states is impermissible because it is irreconcilable with Article 2(4), which lays down a norm of *jus cogens*⁵⁷. To fall within the terms of the prohibition, the intervention must generally speaking be in opposition to the will of the particular state affected.⁵⁸ Additionally, according to the International Court of Justice in *Nicaragua v United States*⁵⁹ the intervention should serve by design or implication to impair the political independence of that state. The Court added that it could not contemplate the creation of a new rule opening up a right of intervention by one state

⁵⁶ Anyangwe, C. The Invasion of Iraq: A Challenge to the Charter Prohibition of Violence in Inter-State Relations . p 58-90.

⁵⁷ Ibid

⁵⁸ Starke, J. G. Introduction to International Law, Tenth Edition (London: Butterworths: 1989) p 103

⁵⁹ ICJ (1986) 14

against another on the ground that the latter has opted for some particular ideology or political system. The International Court of Justice in the Corfu Channel Case (Merits)⁶⁰ rejected Britain's alleged right of intervention. Concerning this intervention the Court stated:

As the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is less admissible [because] from the nature of things, it would be reserved for the most powerful states, and might easily lead to perverting the administration of international justice itself...Between independent States, respect for territorial sovereignty is an essential foundation of international relations

It is important for states to respect the territorial integrity and independence of other states as guaranteed in Article 2 (4) of the Charter of the United Nations. The United States of America thus had no right to intervene in Iraq. The invasion of Iraq a 'sovereign and independent state' on the basis of 'humanitarian intervention' was thus illegal under international law.

The Human Rights Watch in its 2004 world report, identified factors to determine whether the use of force can be characterised as humanitarian.⁶¹

Military force must be the last reasonable option to either prevent or stop slaughter.⁶² This 'slaughter' could either be genocide or mass slaughter. In Iraq, there was no evidence of

⁶⁰ (1949) ICJ 4

⁶¹ Roth, K. War in Iraq: Not a Humanitarian Intervention

⁶² Ibid

genocide or mass slaughter of Iraqis, which would justify humanitarian intervention of the coalition forces. It is not in dispute that Saddam's rule was brutal and that there were frequent disappearances of some Iraqis. However, the important factor is that there should be mass slaughter or imminent mass slaughter. Before the invasion of Iraq, there were no such conditions. In 1988 during the Anfal genocide of Iraqi Kurds, no country intervened allegedly because, an intervention would undermine 'commercial deals with Iraq, Squander influence in the Middle East, invite retaliation or cost too much money.'⁶³

Secondly, the intervention must be guided by a humanitarian purpose.⁶⁴ This is important because, guidance by humanitarian purpose, affects numerous decisions made in the course of an intervention. Additionally, the aftermath of a humanitarian intervention can determine its success in saving people from harm. In the case of Iraq, the fall of Saddam led to civil disorder.

Looting and violence were the order of the day. It has been suggested that the United States government did not prepare adequately to deal with disorder. If the motive of the United States was humanitarian, then the country would have heeded the counsel given by a United States General, who predicted that 'several' hundreds of troops would be required.⁶⁵ The United States disregarded this counsel and sent only about one hundred and fifty combat troops. It has been argued that the fact there would be civil disorder was foreseeable considering, the disorder, which followed end of the Gulf War. The other cited example is the Bosnia Serb withdrawal from the Sarajevo suburbs in 1996, which was marked by widespread violence, looting and arson.⁶⁶

⁶³ Ibid

⁶⁴ Roth, K. *War in Iraq: Not a Humanitarian Intervention*

⁶⁵ Ibid

⁶⁶ Ibid

The United States also failed to deploy adequate troops trained in policing. The majority of troops sent to Iraq were trained to fight and thus meet threats with lethal force.⁶⁷ This led to constant killing of civilians who were mistakenly fired on. Troops trained in policing only use lethal force as the last resort and would have better suited in Iraq if the invasion of Iraq was driven by a humanitarian motive.

Thirdly, the intervention should have been carried out in compliance with humanitarian and international human rights law.⁶⁸ The coalition forces took care not to harm civilians when attacking fixed pre-selected targets. However, they did not do well when attacking mobile targets of opportunity. The coalition forces allowed, bombs to be dropped on the basis of evidence suggesting little more than, that a member of the former Iraq government was somewhere in a community.⁶⁹ Such operations led to substantial civilian casualties. United States ground forces also used cluster munitions near populated areas leading to loss of civilian lives. This demonstrated a disregard for life. The use of cluster munitions⁷⁰ was curtailed after the substantial civilian deaths in the 1999 North Atlantic Treaty Organisation (NATO) bombing of Yugoslavia.⁷¹

Fourthly, it is important to consider whether the humanitarian intervention reasonably calculated to make things better rather than worse in the country invaded.⁷² It could be argued that life in Iraq would be better without the tyrannical rule of Saddam Hussein. However, Iraq has been rocked by daily violence since the fall Baghdad. There is no security in Iraq with guerillas and

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Roth, K. *War in Iraq: Not a Humanitarian Intervention*

⁷⁰ These refer to bombs that throw out smaller bombs when they explode.

⁷¹ Roth, K, Ibid

⁷² Ibid

insurgents attack coalition troops and Iraqis loyal to the United States. Innocent civilians live in fear. That is why it was imperative for the United States to have deployed adequate troops to deal with the post-invasion chaos.

Finally, before launching a humanitarian intervention, there is need to receive the endorsement of the United Nations Security Council.⁷³ It has been said that an international commitment to an intervention increases the likelihood that adequate personnel and resources will be devoted to the intervention and its aftermath. Approval by the Security Council legalises an intervention.

However it has been argued that, currently, the Security Council cannot be made the sole mechanism for legitimizing humanitarian intervention.⁷⁴ This is because the ‘veto power’ of the five permanent members of the Security Council enables those members to block the rescue of people facing slaughter in order to advance their interests. However, there was no urgency in Iraq in 2003, to justify the United States decision to ignore the Security Council and go ahead with the intervention. As stated in section one, the case of a humanitarian intervention was not the principle reason for the invasion in March 2003. The principle case was built on Iraq’s alleged possession of and failure to account for weapons of mass destruction.

Now that it is clear that there were no weapons of mass destruction in Iraq, the United States is now insisting that it was still necessary to remove Saddam from power in order to liberate the people of Iraq.

⁷³ Ibid

⁷⁴ Roth, K. *War in Iraq: Not a Humanitarian Intervention*

CONCLUSION

This chapter has demonstrated that whatever reasons could be given for the invasion of Iraq, the principles of international indicate that the United States violated international law.

It will be imperative to look at Iraq under the occupation of the coalition forces. The next chapter thus considers the United States-controlled administration in Iraq.

CHAPTER TWO

ESTABLISHMENT OF THE UNITED STATES-CONTROLLED ADMINISTRATION IN IRAQ

SECTION ONE

Following the invasion of Iraq, and the end of the conventional hostilities, there was need for a caretaker administration in Iraq. This chapter thus aims to consider the administrative structures that were put up by the United States as an occupying power. The obligations of the United States and Britain (also recognized as an occupying power) under international humanitarian law will also be considered.

The United States established the Office for Reconstruction and Humanitarian Assistance (ORHA) to act as a caretaker administration in Iraq until civilian rule resumed on June 28, 2004.⁷⁵ However, on May 11, 2003, the United States set up the Coalition Provision Authority to replace the Office for Reconstruction and Humanitarian Assistance.⁷⁶ The head of the Coalition Provision Authority was Paul Bremer whose task was to oversee the United States-led occupation of Iraq until the country was deemed to be in a state in which Iraqi's could once again govern it. On July 13, 2003 Bremer approved the Creation of an interim Governing Council as a way of 'ensuring that the Iraqi people's interests were represented.'⁷⁷ However, the interim governing council was to be subject to the administrator, Paul Bremer. The Coalition Provision Authority could issue decrees on virtually any topic, which immediately became law.⁷⁸ The Governing

⁷⁵ Jay Montgomery Garner a retired United States Army General was appointed administrator.

⁷⁶ Coalition Provisional Authority from Wikipedia the free encyclopedia. <http://en.wikipedia.org/wiki/Coalition-Provisional-Authority>

⁷⁷ Iraq Governing Council. <http://middleeast.reference.org.uk/iraqgc.html>

⁷⁸ Ibid

Council is said to have exited formally as an advisory body. It even had no control over the United States military. According to the Law of Administration for the State of Iraq for the transitional period, the interim constitution that the council approved, the council would cease to function after June 30, 2004.⁷⁹ The council chose to dissolve itself prematurely on June 1, 2004. On June 28, 2004 the United States-led Coalition Provision Authority officially transferred power to a sovereign Iraqi government.⁸⁰ It has been said that the United States still retains de-facto power in the country and that the current government exists only at the pleasure of the United States and other coalition countries, whose military forces will remain in Iraq for the foreseeable future.⁸¹ The United States has indicated that its troops will leave if the sovereign government requests it. Some consider this scenario unlikely, since coalition military and financial support will both be practically indispensable to the new government.

The fact that there was an occupation in Iraq was formally affirmed in the United Nations Council Resolution 1483 of 22 May 2003.⁸² This resolution recognized ‘the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under applicable international law of these states as occupying powers under unified command (the “Authority”).’⁸³ It has been stated that this United Nations resolution did not create the occupation; it simply recognized that it already existed. That is why the United States as an occupying authority had to set up the Office for Reconstruction and Humanitarian Assistance, the Coalition Provision Authority, the Iraqi Governing Council and then handover power to the current Interim Government.

⁷⁹ Iraq Governing Council. <http://middleeast.reference.org.uk/iraqgc.html>

⁸⁰ Iraq Interim Government. Wikipedia the free encyclopedia. <http://en.wikipedia.org/wiki/Iraqi-Interim-Government>

⁸¹ Ibid

⁸² Duncan E.J. Currie LL.B. (Hons) LL.M. ‘Preventive War’ and International Law After Iraq, 2003

⁸³ Ibid

International Humanitarian Law follows a very practical approach in defining military occupation. It refers to factual control over a territory or a population. It does not require any form of declaration or intent of the invading forces.⁸⁴ International Humanitarian Law does not take into account the motives for the presence of foreign military forces on the territory, be they liberation, self-defense, or enforcing pre-emptive doctrine.

Resolution 1483, called 'upon all concerned to comply fully with their obligations under international law including in particular their obligations under international law in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907.' The next section will consider the Geneva of 1949 and Hague Regulations of 1907 in relation to the coalition forces in Iraq.

SECTION TWO

THE HAGUE AND GENEVA RULES ON BELLIGERENT OCCUPATION

International Humanitarian law has two branches, namely the law of Geneva and the law of The Hague.

The law of Geneva has been given form in the four Geneva Conventions of 1949, supplied by their 1977 Protocols.⁸⁵ These instruments set forth rules for the protection of the individual in the event of armed conflict. The texts of the law of Geneva were drawn solely for the benefit of war

⁸⁴ Military Occupation of Iraq: IHL and the maintenance of law and order. Analysis, International Humanitarian Law Research Initiative, 16 April 2003

⁸⁵ Pictet, J. International Humanitarian Law: Definition. In United Nations Educational, Scientific and Cultural Organisation - International Dimensions of Humanitarian Law. (London: Martin Nijhoff Publishers, 1988) p. ix

victims. They do not grant States any rights to the individual's detriment.⁸⁶ Thus, in the Geneva rules 'man' and principles of 'humanity' come first.

The law of The Hague determines the rights and duties of belligerents in the conduct of operations and limits the choice of warfare methods.⁸⁷ The conduct of combatants is under the realm of the rules of The Hague. Texts of The Hague are based in part on military necessities and the preservation of the State.

The law of belligerent occupation is codified in particular in Articles 42 to 56 of the 1907 Hague Regulations and in Articles 47 to 78 of the 1949 Fourth Geneva Convention, which are generally accepted as customary international law.⁸⁸

The Geneva and Hague thus set forth a series of duties and obligations for the parties involved in the occupation of Iraq and the Iraqi population itself. The following are the obligations of the coalition forces under International Humanitarian Law.

OBLIGATIONS OF THE COALITION FORCES IN IRAQ

The obligations of an occupying power can be summed up as permitting life in the occupied territory to continue without being affected by its presence. Because of the passing of authority into the hands of the occupant, the occupant becomes responsible for public order, safety and welfare in the occupied territory. The occupying power is also responsible for ensuring food and medical supplies.

⁸⁶ Ibid p xx

⁸⁷ Ibid

⁸⁸ Customary international law can be defined as international law developed through the practice of states.

A. Welfare, internal security, the maintenance of law and order, cultural property and public safety.

The occupying power's only protected interest is the security of the occupying armed forces; it may take necessary measures to protect that security, but it is responsible to take all measures in its power to restore and ensure, as far as possible, public order and safety.⁸⁹ It has been reported that the members of the 'coalition of the willing' allowed the breakdown of law and order to take place in Baghdad and shot civilians during protest.⁹⁰ In one notable incident, Iraqi soldier, trained and controlled by coalition forces, opened fire on a demonstration in Baghdad's Firdos Square. It was further reported that, as the protestors returned to their homes, the United States army followed with tanks, helicopters and planes, firing at random on homes, shops, streets, even ambulances.

Commenting on the break down of law and order in Iraq, the President of the International Committee of the Red Cross (ICRC), Jakob Kellenberger, said that the United States as occupying power had very clear rights and duties under international law, and called on the United States to fulfill its duty to ensure security.⁹¹ While the United States was not responsible for every looting that occurred in the Iraq territory it controlled, it was required to exercise due diligence to avoid such looting. It has been claimed that in failing to prevent the looting that occurred of the Baghdad museum, the occupying powers breached the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which requires that the "Parties undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property."⁹²

⁸⁹ Article 43 of the Hague Regulations

⁹⁰ Naomi Klein, *The Battle the US Wants to provoke*, The Guardian, 6 April 2004

⁹¹ AFP 6 May 2003, "ICRC Chief urges US to restore law and in Iraq," @ <http://www.reliefweb.int/w/rwb.nsf>

⁹² Article 4(3) of the Convention for the Protection of Cultural Property in the Event of an Armed Conflict. See also Hague Regulations, Article 56 which provides that seizure of, destruction or willful damage done to institutions of

It was claimed that the United States in particular, as the principle country involved, failed to exercise leadership on the matter of the occupation of Iraq. There was lack of agreed and clear policies on such basic matters as how the United States presence in Iraq was to be characterized, how order was to be maintained, and what types of troops would be needed for the work.⁹³ The failure to control widespread looting in Iraq in late April and early May 2003 was symptomatic of the lack of preparation. Additionally, a number of incidents were reported to have been initiated by the coalition forces involving civilian casualties, including the bombing of a Syrian bus,⁹⁴ use of cluster bombs,⁹⁵ destruction of electricity supplies leading to disruption of civilian water supplies,⁹⁶ attacks on Iraqi television stations⁹⁷ and on the Palestine Hotel.⁹⁸

The claim that its forces were not sufficient in number or not appropriately trained is not a sufficient excuse.

B. Ensuring food and medical supplies

Article 55 of the Fourth Geneva Convention provides that “to the fullest extent of the means available to it the Occupying Power has the duty of ensuring the food and medical supplies of the population: it should, in particular, bring in the necessary foodstuffs, medical stores and other

this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

⁹³ The End of Occupation on Iraq(2004)-Part I by Professor Sir Adams Roberts, International Humanitarian Law Research Initiative, 28 June, 2004

⁹⁴ 24 March 2003: CNN, 24 March 2003, “US offers sympathies to victims of bus attacks,”

[@http://edition.cnn.com/2003/WORLD/meast/03/24/sprj.irq.syria.bus](http://edition.cnn.com/2003/WORLD/meast/03/24/sprj.irq.syria.bus)

⁹⁵ Iraq ABC, 23 March 2003, “Iraq Minister says 77 civilians killed at

Basra.”[@http://www.abcnews.go.com/wire/US/reuters20030323_54.html](http://www.abcnews.go.com/wire/US/reuters20030323_54.html), At Hillah: The Age, March 28 2003, “US ‘Cluster Bombing’ Civilians: Iraq,”[@http://www.theage.com.au/articles/2003/03/28/104865834583.html](http://www.theage.com.au/articles/2003/03/28/104865834583.html)

⁹⁶ BBC, 23 March 2003, “Basra Faces Water Crisis,” [@http://news.bbc.co.uk/1/hi/world/middle_east/2879373.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2879373.stm)

⁹⁷ AP 25 March 2003, “New explosions in Baghdad: Iraqi Television knocked off the air after US allies strike”[@http://www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2003/03/25/international2239EST0909.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2003/03/25/international2239EST0909.DTL)

⁹⁸ International Federation of Journalists, 8 April 2003, “IFJ Says attacks on journalists are ‘crimes of war’ that must be punished,”<http://www.ifj.org/publicationa/press/pr/030408iraq.html>

articles if the resources of the occupied territory are inadequate.” Article 56 requires that “to the extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the hospital and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.”

There is also Protocol I,⁹⁹ many of the provisions of which represent customary international law,¹⁰⁰ which supplements the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies. The Occupying Powers are required, to the fullest extent of the means available to them and without any adverse distinction, to also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.

Critics stated that the applicable obligations were not met. It was reported that in urban centers through out southern and central Iraq, millions of civilians are facing disease, including cholera, and possible death due to inadequate access to water as a result of the United States –led invasion of Iraq.¹⁰¹

⁹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (PI) Article 85 (3). The United Kingdom ratified Protocol I on 28, January 1998, and Australia on 21 June 1991, but neither the United States nor Iraq has ratified it.

¹⁰⁰ In its Advisory Opinion on the threat or use of nuclear weapons, the International Court of Justice noted that “in particular, the Court recall that all states are bound by those rules in Additional Protocol I which, when adopted, were merely the expression of the pre-existing customary law, such as the Martens Clause, reaffirmed in the first article of Additional Protocol I.” Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ Reports (1996)

¹⁰¹ Center for Economic and Social Rights, “Special Report: Water under Siege in Iraq: US/UK Military Forces Risk Committing War Crimes by Depriving Civilians of Safe Water”. @ <http://www.cesr.org/iraq/docs/waterundersiege.pdf>

C. Regarding property and resources

The government previously controlling the territory can obviously no longer administer public property (other than that of the municipalities).¹⁰² Such property may therefore be administered by the occupying power. The occupying powers are bound by the Hague Regulations with respect to dealing with Iraq's oil resources.

Article 55 of the Hague Regulations requires that the occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. In other words, it must safeguard the capital of the oil wells, and may only use the revenue for the purposes of the occupation.¹⁰³ If Iraqi oil well were government owned, the U.S. may administer them and sell the oil. According to some opinions, it may use the proceeds not only for the benefits of the local population.

CONCLUSION

This chapter has demonstrated that the occupying powers in Iraq were under obligation to fulfill their duties under International Humanitarian law. What was challenging for the coalition forces and is still a challenge today is maintenance of law and order. The invasion and occupation of Iraq was aimed at improving security in Iraq and in the world. The next chapter will consider whether the United States and its allies fulfilled their goal. This will be done by considering the

¹⁰² Articles 56 of the Hague Regulations

¹⁰³ Langenkamp, R. D, What happens to the oil: International Law and the Occupation of Iraq, January 13, 2003, @ [http://www.energy.uh.edu/documents/behind the gas pump/Langenkamp FullPaper.pdf](http://www.energy.uh.edu/documents/behind%20the%20gas%20pump/Langenkamp%20FullPaper.pdf)

implications of the invasion and occupation of Iraq in terms of security in Iraq and on the international scene.

CHAPTER THREE

IMPLICATIONS OF THE UNITED STATES –LED INVASION OF IRAQ

The United States claimed that the removal of Saddam Hussein's regime would liberate the people of Iraq, and also make the world a safer place. This chapter aims to examine the effects of the invasion in Iraq, on the Muslims and on the international scene. In looking at the effects of the invasion in Iraq, it will be imperative to consider the status of the Iraqi resistance fighters under international law.

SECTION ONE

1. RESISTANCE TO THE OCCUPATION IN IRAQ

The coalition forces in Iraq have been facing resistance from various guerillas and insurgents opposed to their presence.¹⁰⁴ Forces controlled by the interim government have also become targets of the militants.

The resistance in Iraq is made up of the following groups: Ba'athists; ¹⁰⁵nationalists; ¹⁰⁶Muqtada al- Sadr followers; ¹⁰⁷Sunni Islamists; ¹⁰⁸foreign fighters; ¹⁰⁹and non-violent groups.¹¹⁰ In their

¹⁰⁴ Iraqi Resistance from Wikipedia the free encyclopedia @<http://en.wikipedia.org/wiki/Iraqi-resistance>

¹⁰⁵ Former Ba'ath Party Officials and some former agents of the Iraqi intelligence elements and security services whose goal before and after Saddam's capture has been to restore the Ba'athist regime to power.

¹⁰⁶ Mostly Sunni Muslims drawn from former members of the Iraqi military as well as some ordinary Iraqi's. Their fight is directed towards self rule and elections.

¹⁰⁷ Supporters of the Shiite Islamic cleric Muqtada al-Sadr. They believe that the members of the coalition are foreign occupiers and oppressors who have failed to live up to their promises

¹⁰⁸ Iraqi's belonging to the Salafi branch of Sunni Islam, which advocates a return to the pure Islam of the prophet Muhammad and opposes any foreign non-Muslim influence.

¹⁰⁹ Outsider Islamists who have entered the country, mostly through the porous borders of Syria and Saudi Arabia, and see Iraq as the new 'field of Jihad' in the battle against coalition forces. Likely led by suspected al-Qaeda operative Abu ilusab al-Zarqawi.

¹¹⁰ Groups such as the National Foundation Congress set up by Sheik Jaward al-Khalisi which includes a broad range of religious, ethnic and political currents united by their opposition to the occupation

quest to fight the coalition forces coalition backed interim government, the insurgent groups have employed different tactics which include car bombs exploding and killing innocent civilians,¹¹¹ *sabotage on oil pipelines, assassinations and kidnappings of foreigners*¹¹² and attacks on the Iraqi police.

No one is safe in Iraq because the insurgents do not distinguish between civilians and coalition forces. Though many Iraqi's were optimistic about the interim government after the transfer of sovereignty, the resistance fighters saw it as a little more than a western alliance puppet and have continued the fight unabated.¹¹³

The insurgents have vowed to keep fighting because they feel that their independence and sovereignty has been violated. These insurgents believe that they are fighting for a just cause. It is important to establish their status under international law. This is imperative because it will assist in determining, how they are to be treated when captured. That is whether they are to be treated as prisoners of war in accordance with the rules of international humanitarian law relating to treatment of prisoners of war.

The principles and rules contained in the Fourth Geneva Convention for the protection of civilians in international armed conflicts have a bearing only on the position of persons who fall into the category of "protected persons" as defined in the Convention.¹¹⁴ The resistance fighters,

¹¹¹ "Car bomb kills 24..wounds over 100 in Iraq," The Post, 6 October 2004, p. 13

¹¹² "Confusion surrounds Iraqi hostages," The Post, 3 March 2004

¹¹³ Iraqi Resistance from Wikipedia the free encyclopedia @<http://en.wikipedia.org/wiki/Iraqi-resistance>

¹¹⁴ Kalshoven, F. Constraints on the Waging of War. (Geneva: International Committee of the Red Cross: 1987) p. 58

involved in armed conflicts will come under this definition only when they fail to meet the conditions of prisoner-of-war status as set in the Third Geneva Convention. Whenever they do meet those conditions they have a right to be treated as prisoners of war. However, like other combatants, they remain liable to be punished for any specific war crimes they might have committed. In case of doubt as to the status of resistance fighters, a competent tribunal is called to decide the issue.¹¹⁵

If the tribunal finds that the resistance fighters have no right to the status as prisoners of war, they are entitled to be treated as protected persons under the Fourth Convention. However, they run the risk of being subjected to the special security regime under Article five of the Fourth Convention and being deprived of their rights of communication under the Convention. The resistance fighters are liable to be punished for all their acts of armed resistance. In any criminal proceedings they are entitled to such protection as is provided by the rules guaranteeing a fair trial.¹¹⁶

Regarding treatment of prisoners of war, Article 13 of the Third Geneva Convention provides that “Prisoners of war must at all times be humanely treated.” The article also prohibits ‘physical or mental torture’ or ‘any other form of coercion’ for the purpose of securing information relevant to the detaining authorities.

¹¹⁵ Kalshoven, F. Constraints on the Waging of War, p 59

¹¹⁶ Ibid

However, shocking pictures of United States troops torturing prisoners were broadcast across the world.¹¹⁷ The pictures depicted hooded and naked prisoners covering and being sexually abused by their smiling captors, who included women. It is alleged that Saddam Hussein used to torture his own people at Abu Gharib prison.¹¹⁸ In some pictures, the male prisoners are positioned to stimulate sex with each other. British soldiers were alleged to have also taken part in the torture of prisoners.

A member of the Iraqi Governing Council at the time the photos were published openly stated that the torture scandal would increase the sense of dissatisfaction among the Iraqis towards the Americans.¹¹⁹ The insurgents would take advantage of the situation and incite the Iraqis to join the resistance. It is thus clear that the United States and Britain failed to apply principles of international law in their dealings with the prisoners regardless of whether they are resistance fighters or not.

SECTION TWO

2. THE EFFECT OF THE INVASION AND OCCUPATION ON THE ISLAMIC WORLD

Historically, Iraq is regarded as important land of Islam. It has been said that the invasion of Iraq by “Christian nations” could have an effect on Muslims. In other words that Muslims could be radicalized by the invasion of the important Islamic nation of Iraq.¹²⁰

¹¹⁷ *Torture of Iraq Prisoners Prompt Wave of Revulsion* by PA News Reporters.(c)2004 Scotsman.com

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ <http://www.parundundt.com/archives/002190.html>

The terrorist group al Qaeda has benefited from the invasion. This organisation's primary goal is to establish itself as the undisputed champion of Islam. The invasion of Iraq has given it a major opportunity to drive home its argument that the "leader of world infidelity" seeks to destroy Islam and subjugate its believers.¹²¹ This message is aimed at making the Muslims believe that the war on terrorism is actually a war against on Muslims. Abu Musab al-Zarqawi whose group has claimed a series of killings, hostage beheadings and suicide bombings in Iraq and is blamed for some of the worst violence against the United States backed interim Iraqi administration reportedly pledged an alliance with Osama bin Laden's al Qaeda group.¹²² He allegedly stated that his alliance and allegiance to Osama bin Laden the 'sheik of the mujahideen (holy fighters)' was aimed at increasing the "ire of infidels and the fear of the enemies of Islam."

The al Qaeda network is taking advantage of the situation in Iraq to recruit potential terrorists and also for fundraising purposes. Experts believe that although before the invasion, there was terrorist recruitment; the invasion has now accelerated the process. According to Jason Burke author of a book on al Qaeda, the fact that the conflict in Iraq has led to a rise in recruitment for radical groups is now so clear that even the United States officials admit it.¹²³ This is a huge setback on the war on terror. Rohan Gunaratna, an expert on al Qaeda, said that although al Qaeda had been weakened (by the bombing of its bases in Afghanistan by the Americans), it had no trouble in recruiting fresh members among Muslims whose anti- Western passion had been fueled by the war in Iraq. According to him, "for every three to five members they have five to ten more recruits. As a result, active terrorist groups will be able to grow and become more and

¹²¹ Global terrorism after the Iraq War: Special Reports: Publications: U.S. Institute of Peace.
<http://www.usip.org/pubs/specialreports/sr111.html>

¹²² The Post, 19 October 2004, p. 12

¹²³ "The return of al Qaeda," Observer, 18 May 2003, p. 17

influential.”¹²⁴ The world turn in public opinion against the United States of America has also aggravated the situation.

It is claimed that the result is that many Moslems will increase the number of scientifically and technically competent Muslims willing to participate in terrorist attacks.¹²⁵ Skilled chemists, biologists, and engineers could produce much more potent weapons for terrorist attacks.

In Iraq there is a danger that the country will become a central theater for Islamists seeking to attack the United States. Foreign fighters in Iraq are part of the insurgency that is resisting the coalition forces. These foreign fighters have entered the country mostly through the porous borders of Syria and Saudi Arabia, and see Iraq as the new “field of Jihad” in the battle against the coalition forces.¹²⁶ These have been carrying out classic guerilla warfare in Iraq. It has been claimed that those with specific terrorist training will continue to focus on United States and Western interests else were.

The other effect is that European Muslims have also been radicalized. It has been said that in 2003 for the first time, Muslims who were British citizens carried out a suicide bombing in Israel¹²⁷.

This dangerous development could prove to be a considerable security challenge for Europe and the West in General.

¹²⁴ Gedge, R. “Al-Qaeda is now ‘as great a threat as it was before September 11’,” Daily Telegraph, 22 May 2003, p. 4

¹²⁵ Global terrorism after the Iraq War: Special Reports: Publications: U.S. Institute of Peace.
<http://www.usip.org/pubs/specialreports/sr111.html>

¹²⁶ <http://www.usip.org/pubs/specialreports/sr111.html>

¹²⁷ <http://www.usip.org/pubs/specialreports/sr111.html>

Muslims have defended themselves by saying that Islam utterly rejects the kind of terrorism planned against innocent people, women and children.¹²⁸ The Islamic religion as a tolerant and indulgent religion rejects violence and terrorism because they are founded on sin and transgression. Any aggression against a fellow man and suicide is unlawful.¹²⁹ Muslims thus contend that those who have been carrying out terrorist activities are not true Muslims. It is therefore not right to claim that Islam encourages terrorism.

SECTION THREE

3. INCREASING INSECURITY IN THE INTERNATIONAL COMMUNITY

The invasion of Iraq was in the words of the United States, not an ‘invasion’, but a war on terror.¹³⁰ This was a war that was aimed at making the world a safer place. It was claimed by the United States that it was necessary to remove the Saddam regime by force, to prevent weapons of mass destruction getting into the hands of terrorists.¹³¹

The invasion of Iraq was supposed to somehow diminish the danger from al Qaeda. However, the International Institute for Strategic Studies concluded in May 2003 that al Qaeda was “more insidious and just as dangerous” as it was before September 11, 2001.¹³² It was stated by the same source that al Qaeda as a group needs only a small number of intact cells to carry out an operation, even a major one. Decapitation of leadership will thus not suffice for a group that is so

¹²⁸ Al Hageel, S. A.R. The Virtual Position of ISLAM on Extremism and Terrorism. First edition, 2002, p. 91

¹²⁹ Ibid

¹³⁰ Rempel, J. *Post-war Iraq: the unfolding drama*. (c) 2003 Mennonite Central Committee –mailbox@mcc.org

¹³¹ Under Secretary of Defense for Policy, Douglas J. Feith. *Iraq :One Year Later*. The American Enterprise Institute for Public Policy Research, Washington, D. C., Tuesday, May 4, 2004.

<http://www.dod.gov/speeches/2004/sp20040504-0321.html>

¹³² Evans, M, “*Al-Qaeda is now ‘as great a threat as it was before September 11’*,” The Times (London), 14 May 2003, p. 16

ideologically driven and whose ideology is spreading fast. It has been claimed that the invasion has provided al Qaeda with an opportunity to recruit anti-Western Muslims for its terrorist activities.¹³³ If that is the case then, there is no way in which the world can be safer with the increase in the number of terrorists.

The Bush administration also claimed that the invasion would teach nations not to seek weapons of mass destruction. However, the contrary seems to be the case. It has been said that paradoxically, the runaway American victory in the conventional arms race might inspire a new round of proliferation of atomic weapons.¹³⁴ With no hope of matching the United States 'plane for plane', more countries may seek atomic weapons to gain deterrence.¹³⁵

At the international disarmament conference that began in late April 2003 in Geneva, disarmament experts said the United States' lack of commitment was clear.¹³⁶ This has been demonstrated by Bush's signing of Presidential National Security Directive 17, saying that the United States reserves the right to use nuclear weapons against a non-nuclear weapons states (in violation of security Council resolution 984 of 1995); by the United States' refusal to ratify the Comprehensive Nuclear Test Ban Treaty; and by Pentagon's request to have congress lift the ten year ban on developing small nuclear war-heads.¹³⁷

¹³³ "Iraq War helped boost al Qaeda," Toronto Star, 20 May 2003, p.A01

¹³⁴ Easterbrook, G, "*American Power Moves Beyond the Mere Super*," New York Times, 27 April 2003, p. IV: 1

¹³⁵ Ibid

¹³⁶ Popham, P, "Nuclear War Risk Grows As States Race to Acquire Bomb," Independent, 29 April 2003, p. 13

¹³⁷ Borger, J., "*Pentagon wants miniuke ban to be lifted*," Guardian, 7 March 2003, p. 18

On April 24, shortly after the fall of Baghdad, North Korea announced that it possessed nuclear weapons.¹³⁸ This is an indication that the war did not deter nations from acquiring weapons of mass destruction.

The nations that formed the 'coalition of the willing', which invaded Iraq, are at risk of terrorist attacks. The March 11, 2004 Madrid bombings are an example. The attacks were carried out by Muslim fundamentalists because of Spain's involvement in the invasion of Iraq.¹³⁹ The new Spanish government, which was elected after the Madrid bombings, pulled out Spanish troops from Iraq.

The problem is that the terrorist attacks are not confined to the territories of nations like the United States of America. The terrorists are bound to attack wherever the citizens of such a country may be, including embassies and airlines. They do not distinguish between armed or unarmed individuals.¹⁴⁰ For instance it was reported by the New Zealand Herald of Monday March 15, 2004, that the al Qaeda network had warned of attacks on Western Airlines and continued attacks on Westerners. An example of an attack on Westerners occurred in Saudi Arabia. It was reported that workers at a petrochemical site used their passes to access the complex and kill five Western engineers -two Americans, two Britons and an Australian in a shooting spree in the Saudi oil city of Yanbu.¹⁴¹ The gunmen were reported to have shouted, "God is Great" as they shot the Westerners and they were believed to have been al Qaeda members. Such incidents demonstrate that is the innocent who will suffer the consequences of the United States -led invasion of Iraq.

¹³⁸ Sanger, D.E, "North Korea Says It Now Possesses Nuclear Arsenal," New York Times, 25 April , p. A1

¹³⁹ Special report Iraq, a year on. A glimmering of hope. The Economist, March 20-26 2004, p. 25

¹⁴⁰ Al Hageel, S.A.R. The Virtual Position of Islam on Extremism and Terrorism First edition, 2002, p. 77

¹⁴¹ "Two Britons dead in Saudi attack," The Post, 3 May , 2004, p. 12

United Nations Secretary-General Kofi Annan in a television interview on the 17th of October 2004 stated that the Iraq war had done nothing to increase security across the world or halt the activities of international terrorists.¹⁴² He also stated that the terrorist attacks around the world and the violence in Iraq was an indication that the world was not safer at all. Instead the international community had a lot to do improve security and make the world safer.

CONCLUSION

This chapter has demonstrated that the invasion of Iraq has not made this world a safer place. The invasion has had devastating effects in Iraq resulting in daily violence.

Having considered the effects of the invasion on Iraq and the international scene, the next chapter will examine the role of the United Nations in the maintenance of international peace and security.

¹⁴² The Post, 19 October 2004

CHAPTER FOUR

THE ROLE OF THE UNITED NATIONS

Mankind has looked to the United Nations since its formation for a solution to the 'scourge of war', which has plagued mankind from times past. This chapter thus aims to consider the role of the United Nations in the maintenance of international peace and security. It has been said that the United States manipulates the United Nations. This chapter will examine this claim. The role of the United Nations in the conflict in Iraq will also be considered. However, before considering these issues, it will be imperative to briefly look at the defunct League of Nations the predecessor of the United Nations.

The League of Nations was formed after the First World War (1914- 1918). The First World War was the called the 'war to end all wars.' It was a league of states whose objectives were 'to promote international co-operation and to achieve international peace and security.'¹⁴³ However, the League failed to live up to its objectives by failing to prevent acts of aggression by member states¹⁴⁴ and finally the Second World War.

It has been said that the failure of the League of Nations was not due to its constitutional defects, but because members were not prepared to fulfill their obligations and thus ensure its success.¹⁴⁵

Countries like Germany, Italy and Japan, withdrew from the League to pursue their acts of aggression. The League finally collapsed on April 18, 1946.¹⁴⁶

¹⁴³ Bowett, D. W. The Law of International Institutions. (New Delhi: Universal Law Publishing Co. Pvt.Ltd, 2003) p. 17

¹⁴⁴ The League of Nations witnessed the Italo-Abyssinian War of 1934-5, the German march into the Rhineland in 1936, into Austria in 1938, into Czechoslovakia in 1939, the Soviet Unions invasion of Poland in 1939 and finally, the German Invasion of Poland in 1939. See Bowett, p 18.

¹⁴⁵ Bowett, D. W. The Law of International Institutions, p. 21

¹⁴⁶ Ibid p. 22

The failure of the League of Nations to prevent a second world war did not destroy the conviction, shared by many, that only by some form of general organisation of states could a system of collective security be achieved which would protect the international community from the scourge of war.¹⁴⁷

In April 1945, a conference was held in San Francisco to adopt a charter for the United Nations. Franklin D. Roosevelt, Winston Churchill, Joseph Stalin and their advisers laid the groundwork for a stronger and more effective organization. These men represented the 'Big Three'-the United States, United Kingdom and Soviet Union, in conferences held in Moscow, Tehran, Yalta, and Dumbarton Oaks (Washington, D. C). In fact it was President Roosevelt who finally chose the name 'United Nations'.¹⁴⁸

SECTION ONE

MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

The setting up of the United Nations in 1945 after the Second World War intended to give war-weary humans a hope for a world without war. That hope is expressed in an inscription on the wall of the United Nations Plaza in New York, which reads:

THEY SHALL BEAT THEIR SWORDS INTO PLOUGHSHARES AND THEIR SPEARS INTO PRUNNING HOOKS: NATION SHALL NOT LIFT UP SWORD AGAINST NATION, NEITHER SHALL THEY LEARN WAR ANY MORE. (ISAIAH 2: 4 KING JAMES VERSION)

¹⁴⁷ Ibid p. 23

¹⁴⁸ Ibid

The preamble to the United Nations Charter thus expresses these noble aims:

WE THE PEOPLE OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to re-affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.....

The United Nations is thus an instrument of international peace and security. There are provisions, which aim at securing world peace.

Article 2 (3) of the United Nations Charter provides that all ‘members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.’ It has been said that although this obligation is primarily addressed to members of the United Nations, there is no doubt that the principle is one of the central obligations of international law which all states must observe. This principle was enunciated in Legality of the Use of force case (Provisional Measures) Yugoslavia v Belgium (and nine other NATO countries).¹⁴⁹ This obligation to settle disputes by peaceful means may have acquired the status of *jus cogens*.¹⁵⁰ Article 2 (4) of the Charter also provides, ‘All members refrain ...from the threat or use of force against the territorial integrity or political independence of any state.’ The United Nations thus aims at promoting international peace and security.

¹⁴⁹ (1999) 39 ILM 950

¹⁵⁰ Certain fundamental rules of customary international law incapable of being modified by treaty

THE SECURITY COUNCIL

The Security Council is the organ of the United Nations, which has been entrusted with 'primary responsibility for the maintenance of international peace and security.'¹⁵¹ It consists of fifteen members five of whom are 'permanent members,'¹⁵² namely China, France, Russia, the United Kingdom and United States. By acting in behalf of its members, the Security Council acts as agent of all the members and not independently of their wishes. The Security Council is bound by the purposes and principles of the Organisation, so that it cannot, in principle, act arbitrarily and unfettered by any restraints.

The Security Council exercises its function of maintaining international peace and security by two means. The first is the pacific settlement of such international disputes as are likely to endanger international peace and security,¹⁵³ and the second (which presupposes the failure or inapplicability of the first) is the taking of enforcement action.¹⁵⁴

Under Article 39 of the Charter of the United Nations, the Security Council has the power, to determine, on behalf of the organization as a whole, whether or not there has been a "threat to the peace, breach of the peace or act of aggression." There are two forms of enforcement action.

Firstly, enforcement action not involving the use of armed force under Article 41. Secondly, use of armed force by air, sea or land forces under Article 42. But before resorting to either, the council has to determine the existence of 'any threat to the peace (international), breach of the peace, or act of aggression.'

¹⁵¹ Articles 24 – 26 of the Charter of the United Nations

¹⁵² Article 23

¹⁵³ Article 33 of the Charter of the United Nations

¹⁵⁴ Articles 39- 49

Article 48 of the Charter provides that 'the action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the members of the United Nations or by some of them, as the Security Council may determine.' This means that the Security Council in any of its decisions to use force has to act collectively. There is thus no room for unilateral actions.

However, there is one exception embodied in Article 51 of the Charter. This allows the nation the inherent right to defend itself until the Security Council can take action to restore peace and security.

SECTION TWO

MANIPULATION OF THE UNITED NATIONS BY THE UNITED STATES

The United States of America and the Britain tried to pressurize the United Nations to authorize the use of force against Iraq. This was on the basis that Iraq was a threat to international peace and security because of its possession of weapons of mass destruction and violation of United Nations Security Council Resolution 1441 to disarm.¹⁵⁵ United Nations weapons inspectors led by Chief Weapons Inspector Hans Blix, failed to find the alleged weapons of mass destruction. The United States and United Kingdom, realized that they could not get the necessary Resolution to use force from the Security Council without the evidence of weapons of mass destruction. They therefore decided to unilaterally attack Iraq and the invasion began on the 20th of March 2003.

¹⁵⁵ The Invasion of Iraq: A Challenge to the Charter Prohibition of Violence in Inter-State Relations, p. 2

The United States also claimed that Saddam Hussein had links to al Qaeda, the suspects of the September 11, 2001 attacks on the United States. The invasion was necessary because the United Nations to protect it self from further attacks. To date the United States has failed to prove the link between Iraq and al Qaeda. President Bush could not rely on Article 51 of the Charter and claim self defence, because no attack was made on the United States.

Professor Anyangwe puts it that the beginning of an attack by an aggressor is a condition precedent for resort to force in self-defence.¹⁵⁶ He adds that even if it were indisputable in law that a state has a right of anticipatory or pre-emptive self-defence, the invasion of Iraq would still be impermissible. This is because Iraq did nothing to show that it was going to attack any of the members of coalition force. The International Court of Justice in the Nicaragua v USA¹⁵⁷ stated that the primary obligation of every state not to use force has attained the status of *jus cogens*. Thus the principle has to be observed and obeyed by all nations in all circumstances. No exception, exemption or excuse can be justified even in circumstances of prior breach by another state or in reprisals for such prior act.

Iraq is a member of the United Nations, which recognises the independence, and sovereign equality of all its members. The Organisation therefore provides that members are to refrain from the use of force against the territorial integrity and political independence of any state.¹⁵⁸ Thus, no nation has the right to interfere in the affairs of another nation without its consent. However in this case, the United States decided it had to liberate the people of Iraq from the tyrannical rule of Saddam Hussein in the name of humanitarian intervention.¹⁵⁹ There were no circumstances,

¹⁵⁶ Anyangwe, C, p 8

¹⁵⁷ (1986) ICJ Rep 14

¹⁵⁸ Article 2 (1) and (4) of the Charter of the United Nations

¹⁵⁹ Roth, K. War in Iraq: Not a Humanitarian Intervention. Human Rights Watch. World Report 2004. hrw. org

which warranted humanitarian intervention in the case of Iraq. The United States also decided to remove Saddams regime from power in order to put in a government, which was supposed to follow democratic principles. The United States had no right to do that. It is not possible for the world to be dominated by one ideology; all states should be respected when they decide to follow certain values.

Whatever reasons the United States gave for the invasion of Iraq, the fact is that it was a violation of international law and the Charter of the United Nations. President Bush even said that the United Nations had become 'irrelevant.' The problem with the United States is that the United Nations becomes relevant when it wants to legitimise its actions, such as the attack on Iraq by multinational forces, pre-eminently American during the Gulf War. However, the United Nations suddenly became irrelevant when the other Security Council members opposed the baseless 2003 invasion of Iraq.

SECTION THREE

FAILURE OF THE UNITED NATIONS TO PROTECT IRAQ AND IMPLICATIONS OF ITS FAILURE

In its preamble, the United States pledges to save succeeding generations from the scourge of war and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, except in common interest. The issue is whether the United Nations has lived up to its pledge, considering the case of Iraq.

Iraq, just like the United States is a member of the United Nations. However, the country was invaded and occupied without the authorisation of the Security Council, which has been entrusted with the primary responsibility of the maintenance of international peace and security. The United Nations, powerless, did nothing to stop the United States and its allies from invading Iraq. All that was said by the other members of the United Nations including its Secretary General was that the invasion was illegal. These words did not have any effect on the United States and its allies. To this day they have not admitted that their action was an infringement of the Charter of the United Nations and international law. The United Nations has not lived up to its pledge to prevent war in the preamble.

IMPLICATIONS OF THE FAILURE OF THE UNITED NATIONS TO PROTECT IRAQ

Having failed to protect Iraq from the illegal invasion, it is clear that it will be difficult for the people of Iraq to ever trust the United Nations. One particular incident, which demonstrated this fact, was the 2003 suicide bomb attack on the United Nations compound in Baghdad, Iraq.¹⁶⁰

This attack was a result of the increasing perception of the United Nations as a political mouthpiece of the United States according to Middle East experts and United States academics.

The attack was reported to have been an indication of the very low self esteem by which most Iraqis and many Arabs and Muslims held the United Nations.¹⁶¹ In addition to its failure to prevent the invasion of Iraq, the United Nations was associated with “the devastating sanctions and food rations imposed on Iraq by the United States government.”

¹⁶⁰ Deen, T. *UN Bombed for Perceived US Link, Experts Say*, Inter- Press Service, August 19, 2003

¹⁶¹ As'ad Abukhalid, professor of political science at the California State University, quoted in Deen, T., *UN Bombed for Perceived US Link, Experts Say*, Inter- Press Service, August 19, 2003

One expert said that the United Nations had become a willing tool of the United States.¹⁶² This is the reason why the United Nations was seen as part of the United States and United Kingdom belligerent occupation regime in Iraq and thus an appropriate target for indigenous resistance.

This massive bomb attack led to the death of the United Nations Under-Secretary General Sergio Viera de Mello, who was Kofi Annan's special representative in Iraq. Nineteen other people were killed; fourteen of them workers of the United Nations. More than a hundred others were seriously injured.

Kofi Annan was condemned by the Arab world for having something to say about the ills of Palestinian violence and was silent over the United States bombings and occupation of Afghanistan and then Iraq.¹⁶³

It is not only the Arab world and Muslims who have lost confidence in the United Nations. Most nations, which condemned the invasion of Iraq, have no faith in the United Nations, which is seen as an organization that 'barks but cannot bite.' The Security Council has also been said to lack the "teeth" with which to bite.¹⁶⁴

CONCLUSION

It is clear that the United Nations has failed to maintain international peace and security as envisaged when it was created. Its sixty-year record has demonstrated this. The recent invasion of

¹⁶² Francis Boyle, professor of international law at the University of Illinois, quoted in Deen, T, *ibid*

¹⁶³ Professor As'ad Abukhalil, California State University, quoted in Deen, T, *ibid*

¹⁶⁴ Bowett, D. W. The Law of International Institutions, Fourth Edition, p. 41

Iraq while the United Nations stood by indicates that there is need for reform in the United Nations system.

The next chapter, which is the final, one will consider the factors that have made the United Nations ineffective. It will there after offer suggestions on what can be done to make the organization more effective.

CHAPTER FIVE

TOWARDS A SAFER WORLD?

The United States of America claimed that the invasion of Iraq would ultimately make this world a safer place. It was necessary to remove Saddam Hussein's regime in order to prevent weapons of mass destruction from falling into the hands of terrorists. It was necessary to invade Iraq, to deter other nations from acquiring and developing weapons of mass destruction, which would make this world unsafe. It is now over a year since Iraq was invaded by the American-led coalition forces. The question that now arises is whether this world is now a safer place. In other words, it is necessary to establish whether the United States and its allies have achieved their objectives of making this world a safer place.

The United States led-coalition has up to now failed to maintain law and order in Iraq. Almost everyday, there are suicide bombings, killing not only coalition soldiers, but also innocent civilians. Some Muslims believe that the invasion had nothing to do with terrorism, but was a war on Islam. Those who believe that the West is out to crush Islam have become 'fundamentalised.' They have reportedly called on all Muslims to join the fight against the West, particularly countries which participated in the invasion of Iraq. One notable example was the Madrid train bombings in Spain in, March 2004. Those responsible reportedly said that Spain was paying for its involvement in the Invasion of Iraq. The problem is that, such people will not only attack nations that participated in the invasion in their territories, like the September 2001 terrorist bombings in New York City. The threat of terrorists crosses all geographical and ideological lines. Terrorists have a tendency to export violence abroad to countries not party to the conflict

that caused it.¹⁶⁵ They attack wherever nationals of those countries are found. Hypothetically, it could be an attack on an American Airline in Zambia, the British Embassy in Zimbabwe or a hotel frequented by Australians in Kenya. It is Americans, British and Australians, who will be killed, but Zambians, Zimbabweans and Kenyans.

From the on going it is clear that the so –called war on terror has not made this world a safer place. According to the preamble of the United Nations Charter, the United Nations was founded to save succeeding generations from the scourge of war. The United Nations thus has the responsibility of maintaining international peace and security. The increase in acts of violence on the international scene indicates that the United Nations has failed to fulfill its obligations. This final chapter thus aims to identify some weaknesses of the United Nations and offer recommendations aimed at strengthening the role of the United Nations as an instrument of international peace and security.

PROBLEMS OF THE UNITED NATIONS

Before giving recommendations it will be imperative to identify the problems that the United Nations is facing; problems that are hindering the organization from fulfilling its obligation of maintaining international peace and security.

¹⁶⁵ Moore, J. N. Toward Legal Restraint on International Terrorism. ASIL: Proceedings of the 67th Annual Meeting, Washington D C, April 12-14, 1973.(American Journal of International Law, Vol 67, November 1973, No. 5) 89

The first problem concerns the veto power of the five permanent members of the United Nations Security Council.¹⁶⁶ According to Article 27 (3) of the United Nations Charter decisions of the Security Council on all other matters that are not procedural are to be made by an affirmative vote of nine members including the concurring votes of permanent members. This results in power of any permanent member to prevent by its sole vote the taking of a decision, which has the support of a majority of the council.¹⁶⁷

According to Bowett, the justification for granting the five permanent members the veto lies in the “inescapable fact of power differentials.”¹⁶⁸ He adds that the basic premise was that upon those members would fall the brunt of the responsibility of maintaining international peace and security. It was therefore imperative to give them the final or decisive vote in determining how the responsibility should be exercised.

The veto power of permanent members of the United Nations Security Council was also conceived as means of ensuring positive participation of all the ‘five’ permanent members in important decisions to be taken by the council. It has turned out that the veto power has been used to protect the national interests of the permanent members at the sacrifice of the ‘wider cause.’¹⁶⁹ For instance, in the past the some of the five permanent members to prevent their real and potential opponents from entering the United Nations used to the veto. The United States and its allies blocked admission of Eastern European states while, the Soviet Union blocked that of

¹⁶⁶ France, China, Russia, United States of America and the United Kingdom.

¹⁶⁷ Bowett, D. W. The Law of International Institutions, Fourth Edition. (Delhi: Universal Publishing Co. Pvt. Ltd: 2003) p 31

¹⁶⁸ Ibid, p 28

¹⁶⁹ Pellet, A. The Road to Hell is Paved with Good Intentions: The United Nations as Guarantor of International Peace and Security-a French Perspective. In C. Tomuschat, (ed.), The United Nations at Age Fifty. A Legal Perspective. (London : Kluwer Law International)p 192

international community stood by and did nothing to stop the slaughter of over two hundred thousand people.¹⁷⁴

The fourth problem is that the credibility of the United Nations is entirely dependent upon the financial and military support of the United States.¹⁷⁵ It is therefore easy for the United States to manipulate the United Nations. Additionally, it is seems only the permanent members of the Security Council have the capacity to carry out resolutions of the United Nations.¹⁷⁶

The other members are forced to bow down to the wishes of countries like the United States, because if the latter pulled out, the organization would collapse. That is why the United States and Britain could afford to violate international law when they invaded Iraq.

RECOMMENDATIONS

It has been said that any failure on the part of the Security Council, is due more to the attitude of its members than to any constitutional defects in the United Nations Charter provisions.¹⁷⁷ It will thus be imperative to consider some of the principles in the Charter that are supposed to be stressed.

¹⁷⁴ "It is a failure not only for the United Nations; it is a failure for the international community. And all of us are responsible for this failure," lamented UN secretary-general Boutros Boutros-Ghali in speaking of the slaughter in Rwanda. "It is a genocide which has been committed. More than 200,000 people have been killed and the international community is still discussing what ought to be done." As reported on May 26, 1994 the secretary-general said that he had written to over 30 heads of State and begged them to send troops and had worked with different organizations in an effort to find a solution. "Unfortunately," he added, "I failed. It is a scandal. I am the first one to say it." Few African nations could afford the costs of sending troops, especially since the UN has delayed reimbursements because of its own financial difficulties. Most Western nations declined to get involved, and U.S. president Bill Clinton mentioned that using American military power was not justified by the interests at stake. Mr. Boutros-Ghali placed the blame on "donor fatigue," as the nations who supply personnel and money are being asked to do so for 17 different United Nations operations, according to *The New York Times*.

¹⁷⁵ Pellet, A. The Road to Hell is Paved with Good Intentions: The United Nations as Guarantor of International Peace and Security: A French Perspective. P 132

¹⁷⁶ Ibid

¹⁷⁷ Bowett, D. W. The Law of International Institutions, p 26

According to Qizhi He,¹⁷⁸ there should be emphasis on the principles of respect for the independence, sovereignty, territorial integrity, and non-interference in the internal affairs of states.¹⁷⁹ These principles are mandatory and fully binding on member states. The United States lacks respect for these principles. That is why it invaded Iraq and decided it had the duty to get rid of its President and impose principles of democracy. It is time the Americans understood that it is not possible for the world to be dominated by one ideology. All states are sovereign and should be allowed to follow their own ideologies for as long as they do not threaten international peace and security. The United Nations has to seriously address this threat of new 'colonialism.' The principles of refraining from the threat or use of force and of peaceful settlement of disputes also have to be emphasized.¹⁸⁰ All states are supposed to respect the rights of fellow states; non-infringement of the rights of other states is a precondition of peaceful settlement of disputes.¹⁸¹ The observance of these principles by Security Council members, in particular, the permanent members will strengthen the authority of the Council in maintaining international peace and security. The action of the United States and its allies in invading Iraq was a breach of these principles.

Member countries of the United Nations such as the United States need to understand that terrorism cannot be controlled through the use of force.¹⁸² The invasion of Iraq did not discourage terrorists from continuing with their terrorist activities. Instead, it gave them the opportunity to recruit new members to fight the Americans and all who participated in the invasion and as well as those who threaten the existence of Islam.

¹⁷⁸ The Crucial Role of the United Nations in Maintaining International Peace and Security, p 88

¹⁷⁹ Articles 2, 73 and 76 of the Charter of the United Nations

¹⁸⁰ Articles 1, 2 and Chapter 4 of the Charter

¹⁸¹ He, Q. The Crucial Role of the United Nations in Maintaining International Peace and Security, p 88

¹⁸² Moore, J. N. Toward Legal Restraint on International Terrorism. P 89

The United Nations should identify the root causes of terrorism and then address those issues.¹⁸³ Member countries such the United States should try to understand why a sane person would attach explosives to his body and blow himself up. They need to find out what is driving people *inter alia* to blow up planes, hotels and buses. This does not mean that terrorism should be condoned. The crucial issue is identifying the root cause and addressing the problem identified.

It has been said that the problem of peace is closely connected with that of economic development. Peace and economic development are the most important and urgent problems confronting the developing world.¹⁸⁴ Perhaps if the huge economic development between developed and developing countries is reduced the security problems on the international scene will be solved. The United Nations has thus been encouraged to promote international co-operation to solve urgent problems in the areas of economic development and human rights through dialogue and discussion in relevant organs.¹⁸⁵ This will help narrow the scope of differences and enhance mutual understanding between developed and developing countries.

Another issue relates to funding of the United Nations. It is suggested that alternative sources of funding should be found. The United Nations presently is powerless without the financial support of the United States.¹⁸⁶ The United States thus feels it can do whatever it wants even, violating the Charter and international law just to fulfill its interests. Today, the United States even has the courage to call the United Nations 'irrelevant.' It seems the United Nations as a "beggar" of military and financial support is vulnerable and at the mercy of the super powers.

¹⁸³ Ibid

¹⁸⁴ Pellet, A. The Road to Hell is Paved with Good Intentions: The United Nations as Guarantor of International Peace and Security: A French Perspective. p 89

¹⁸⁵ Ibid

¹⁸⁶ Ibid, p 132

Finally, the permanent members of the United Nations Security Council are supposed to lead by example. They are the only ones whose status as nuclear-weapons states has been recognized as legitimate by the Treaty on the Non-Proliferation of Nuclear Weapons.¹⁸⁷ It is difficult to expect other states to desist from developing nuclear weapons if the permanent members of the Security Council have the privilege of developing such weapons. No nation is supposed to be above the law. The members of the Security Council need to seriously examine themselves.

CONCLUSION

It is clear and recognized by the international community that the United States-led invasion of Iraq was a violation of international law. Some of the questions which need to be asked are: who gave the United States and United Kingdom the mandate to be the world's policemen?; under what law do they claim power to go around destroying other states under the pretext of making the world safer?; and for how long could they possibly do that?; and finally, is 'terrorism' the only thing that makes the world unsafe? Unfortunately, to this day, the United States and its allies have not admitted that their action amounted to a clear violation of international law. No matter what reasons they give to justify themselves, the fact is that they violated international law.

This essay has established that the invasion of Iraq has not contributed in any way to improving international peace and security. In fact it can be argued that the world has been made a dangerous place by the invasion. The results of the invasion have been devastating for the people of Iraq who are not safe, wherever they may be in their own country because of insurgency.

¹⁸⁷ 1968 Treaty on the Non-Proliferation of Nuclear Weapons: 729 U. N. T. S. 161; 7 ILM 811 (1968)

The essay has also shown that the United Nations has not effectively fulfilled its role of maintaining international peace and security. Some people have called for the development of a new organization to take over from the United Nations. This action will not solve matters at all. As earlier stated, the main problem is not with the organization, but with the attitude of its members. What is needed is for the members to re-examine themselves and their roles towards achieving international peace and security. Time has come for them to put the interests of the international community ahead of their national interests. This is what will help to achieve the desired goal of peace. It is then that they will truly help the United Nations to 'save generations from the scourge of war' that has from times past ravaged mankind.

The United Nations has to re-build its image. Currently, it is perceived as tolerating violations of international law committed by super powers and their sympathizers, while quickly condemning those violations committed by countries such as Iraq.

Finally, the key for strengthening the role of the United Nations in the maintenance of peace and security is held by those states which possess real strength to fully observe the spirit, objectives and principles of the Charter; and which respect the rights and interests of the majority of states, instead of utilizing the United Nations as an instrument of power politics or for their own policy goals.

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