The 2003 Invasion of Iraq by the United States and the United Kingdom: the Legality of their Claims in International Law, their Responsibility under International Law, and the Co-Responsibility of Kuwait and other Gulf States under Islamic International Law

By

ADAM EL-MUSTAFA OMAR EL-MUMIN

A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN LAW

UNIVERSITY OF KENT AT CANTERBURY

FACULTY OF SOCIAL SCIENCES

KENT LAW SCHOOL

September 2007

ABSTRACT

This thesis focuses upon the recent invasion of Iraq by the US and its few allies. While the central question is concerned with the legality of this war, the original aspect of the thesis lies in its detailed consideration of alternative peaceful dispute resolution mechanisms to be found in international law and Islamic international law, which could have obviated the need for war. The central argument of this thesis is that the history of non-violent dispute resolution methods, together with the proscription in the United Nations' Charter of the use of force, should have dictated a different approach to the perceived problem of Saddam Hussein's regime. The significance of the events leading to war and the subsequent occupation suggest that either international law is currently being flouted or that the "unipolar" world must adjust to a new international legal reality.

While much attention has been paid by international lawyers and scholars to alleged breaches of the UN Charter by the invaders, much less attention has been devoted to the legality of the role of Kuwait and other Gulf states in this crisis in accordance with Islamic international law. Against this background, the question of whether Kuwait and other Gulf states violated the provisions of contemporary international law; the UN Charter and Islamic international law becomes extremely important.

This thesis shows that the obligation to settle international disputes peacefully is compatible with the prohibition on the use of force, and can be considered one of the fundamental principles of Islamic international law predating the First Hague Convention of 1899 and the rise of modern international law. However, the end of the Cold War era shows how the US-UK violated these principles. The thesis further shows how the legality of the Iraq invasion can be examined in the light of two international legal principles: the peaceful settlement of international disputes and the prohibition on the use of force to resolve international disputes.

The basic premise of this thesis is that Islamic international law is consistent with the UN law on control of the use of force. The thesis concludes that *Shari'ah* (Islamic law) is a comprehensive legal and ethical system. Muslims are obliged, as a matter of faith, to conduct their national and international affairs in accordance with the principles of Islam.

ACKNOWLEDGMENTS

I am deeply grateful to my research supervisor, Professor Wade Mansell, for his considerable professional assistance, continued academic guidance, support and constructive criticism during the preparation of this thesis. Thanks are due to the staff of the University of Kent Library, SOAS and the Institute of Advance Legal Studies Library at the University of London for providing me with all relevant materials. I would like to extend my gratitude and appreciation to Lynn Risbridger at Kent Law School for her care and patience. I am also very thankful to colleagues at the University of Kent, academics, friends and lawyers in Sudan, Qatar and the United Arab Emirates for their encouragement.

I would like to express my deepest appreciation to my late father for his support. I am very thankful to my mother for all her unmitigated love, prayers, help and support throughout my studies. A debt of gratitude is also owed to brothers, sisters, and their families for their love, kindness and generous support that enabled me to complete this thesis.

Finally, I would also like to express my gratitude to my wife, Susan, and my children Mustafa, Mohammed and Muntaha for their support, patience and understanding while I have been working on this complex and controversial study.

DEDICATION

I dedicate this thesis in gratitude to the considerable assistance and encouragement given to me by my late grandfather, Omar EL-Mumin, for his legacy, support and encouragement that always lights my personal and academic lives and, above all, by Almighty God, who sustains me.

TABLE OF CONTENTS

Glossary

Asl	Original case.
Ahal al-kitab	The People of the Book.
Ahad	Obligation or treaty.
Ahkam	Judgements, rules or categorisations.
Ahadith Al-Ahkham	The legal saying of the Prophet.
Al-Anfal	Literally, 'the spoil' of war and the name of one of *Surah* of the Qur`an.
Al-Nasikh	Abrogating.
Al-Dalalat	Textual implications.
Al-Istishab	Presumption of continuance.
Al-Jihad al-akbar	High Jihad.
Al-Jihad al-asghar	Low Jihad.
Al-Jahilliyya	The period before Islam.
Allah	God, the Creator.
Al-Maslaha Al-Mursalah	Consideration of Public interest.
Al-Mansukh	Abrogated.
Al-shura	Consultation.
Aman	Pledge of security and safe conduct.
Amir	Prince.
Amir Al-Muminin	Muslim Ruler.
Asheria	Clan.
Asbab Al-nuzul	Occasions of revelation.
Asir	Prisoner.
Ayah	Verse.
Ayah Al-Ahkham	The legal Verses.
Buat al-Mal	Islamic financial authority.
Dar AL-Ahad	The land of Covenant.
Dar Al-Islam	The Muslims World, territory of Islam or the Land of peace (abode of Islam).
Dar Al-Kufr	Non-Muslim territory.
Dar Al- Harab	Territory of war, or the enemy territory; the territory at war with Islam.

Dawla	State.
Dhimmi	A member of one of the Peoples of the Book discretionary or Non-Muslim.
Diya	Blood money.
Far	New case.
Fard or Wajib	Obligatory.
Fard ayan	Obligation to all Muslim. In other word, a duty to be carried out by each Muslim, e.g., daily prayers.
Fard kifaya	A moral obligation only for those capable of assuming it.
Fasad	Corruption.
Fiqh	Islamic jurisprudence, methods of Islamic law or the science of Islamic law.
Fitna	Test or dispute among Muslims.
Fitra	Nature.
Fuqaha	Muslims scholars.
Hadd (had)	Limit; A crime against the law of God for which prosecution is duty of Islamic state.
Hadith	Saying; Event; Tradition i.e. Tradition regarding the Prophet.
Haram	Unlawful or Forbidden.
Halal	Lawful.
Harb	War.
Hirabah	Making war.
Hudna	Temporary peace.
Hukm Shar'i	Law or value of Shari`ah.
Idwan	Act of aggression or Attack.
Ijma	Juristic Consensus or Consensus of eminent and Qualified legal scholars. *Ijma* is the third source of Islamic ideology, it comes next to *Sunn`ah.*
Ijtihad	Personal or legal reasoning, general process of endeavour to comprehend the divine law or independent legal reasoning to formulate.
Ijtihad al-ray	Legal judgement based on reason.

Irtidad	Apostasy.
Isnad	Source or Chain of narrators of *Hadith.*
Istidlal	Deduction.
Istihsan	Juristic preference or Islamic equity.
Istiqra	Induction.
Istislah or Al-Maslahah	Welfare or Public Interest.
Ilm usul al-fiqh	The science of Islamic legal methodology.
I'jaz	Inimitability of the Qur'an.
Isbab or Illah	Effective cause.
Jamhur	Majority of eminent scholars.
Jamhur al-ulma	Learned Muslim jurists.
Jihad	The West has misinterpreted the word *Jihad* as 'just war' in fact, in Islam *Jihad* had a different meaning. It may be war, or an effort to do something such as *Jihad* against poverty, disease or against one's own misdeeds in life.
Jizya	Capitulation tax; Poll tax.
Kafir	Non-Believer.
Madrasas	Islamic law schools.
Mandub	Praiseworthy acts, but not compulsory.
Maslahah al-Islamia al-ailah	Islamic public interest.
Matin	Substance of *Hadith.*
Maqased al-shra'i	The aims of Islamic law.
Millet	Nation.
Mujutahid	One who engages in *Ijtihad.*
Mubah	Indifferent acts or Neutral; permissible; acts resulting in no reward or Punishment.
Muhadana	Negotiate an armistice.
Muharram	Prohibited in general.
Munajman	Gradually.

Murtad	Apostate.
Nashk	Abrogation.
Khalefia	Ruler.
Qadi	Judge.
Qisas	Crime against the person such murder, homicide, maiming, and for which prosecution and punishment is duty of Islamic state.
Qital	Armed fighting or battle.
Qiyas	Application by legal analogy or education.
Qur'an	Muslims the Holy Book; the principal source of Islamic law. The Qur'an is the first source of Islamic ideology.
Ra'y	Juristic Opinion.
Riba	Usury.
Sadd al-Dhara	Blocking the means.
Salam	True peace.
Sahabah	Companions.
Sadur al-Sahabah	The hearts of Companions.
Shari'ah	Islamic law; the right path; literally means 'the road to a source'.
Shurrut	Conditions.
Siyar	Islamic international law; branch of sharia dealing with international relation.
Sunn`ah	The tradition and practices of Prophet Mohammad.
Sura	Chapter of the Holy Book, the *Qur'an.*
Sullh	Peacemaking or reconciliation.
Tahkem	Arbitration.
Taqlid	Imitation; Legal conformity.
Tazir	The literal meaning is to admonish or to punish (with a view to correcting). Refers to offences against public welfare.
Tafsir	Commentary.

Wasata	Meditation.
Ummah	The community of Muslims, or a community having a common religion or ideas.
Urf	Custom.
Usul	Roots or source of the law.
Usul Al-Figh	Islamic research methodology or the roots of Islamic law.
Zakat	Legal Almsgiving, calculated on the basis of one's wealth.

List of Abbreviations

AD	Annual Digest of Public International Law
African J. Int.& Com. law	African Journal of International and Comparative Law
AIHS	Aspen Institute for Humanistic Studies
AJICL	Arizona Journal of International and Comparative Law
AJIL	American Journal of International Law
All ER	All England Reports
ALQ	Arab Law Quarterly
AM	Atlantic Monthly
ASEAN	Association of Southeast Asian Nations
ASIL Insights	Proceedings of the American Society of International Law
Aust. J.P.& Int'l. L	Austrian Journal of Public & International Law
Aust. L. R	Australian Law Reports
Aust.Y.Int'l.L	Australian Yearbook of International Law
Berkeley J. Int'l L.	Berkeley Journal of International Law
BPIL	British Practice in International Law
BPP	Bulletin of Peace Proposal
Brooklyn.L.R	Brooklyn Law Review
BYIL	British Yearbook of International Law
CAP	Coalition Provisional Authority
C&C	Cooperation and Conflict
C. Euro	Council of Europe
Cam. L. J	Cambridge Law Journal
CH	Current History
Chicago. J. Int'l. L	Chicago Journal of International Law
Chin JIL	Chinese Journal of International Law
CJR	Comparative Juridical Review
CLP	Current Legal Problems
Colum. J. Trans'l L.	Columbia Journal Transnational Law Connecticut
Connecticut .L.R	Connecticut Law Review

Cornell L. Rev.	Cornell Law Review
Cornell. J. Int'l.L	Cornell Journal of International Law
CS	Comparative Strategy
CWP	Crime of War Project
CYBIL	Canadian Yearbook of International Law
DSB	Department of State Bulletin
DUKE.J. COMP. and INT'IL	Duke Journal of Comparative and International Law
E&P.W	Economic and Political Weekly
E.g.	For example
ECHR	European Court of Human Rights
ECJ	European Court of Justice
Ed.	Editor
EJIL	European Journal of International Law
ES	Energy Sources
EU	European Union
EuLR	European Law Reports
FAO	Food and Agricultural Organisation
FFWA	The Fletcher Forum of World Affairs
Fla. J. Int'l.L	Florida Journal of International Law
Fordham. Int'l L. J	Fordham International Law Journal
GAOR	General Assembly Official Records
Georgia. J. Int'l & C. L	Georgia Journal of International and Comparative Law
G.J. Int'l.L	German Journal of International Law
GPF	Global Policy Forum
Harv. Int'I L.J	Harvard International Law Journal
Harv. L. Rev	Harvard Law Review
Hous. J. Int'l.L	Houston Journal of International Law
HR	Hague Academy of International Law, *Recueil des Cours*
Hague YB.Int'I.L	Hague Yearbook of International Law
HRQ	Human Right Quarterly
IA	International Affairs

IAEA	International Atomic Energy Agency
ICC	International Criminal Court
ICG	International Crisis Group
ICJ	International Court of Justice
ICJ Rep.	Reports of the International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross/ Crescent
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHT	International Herald Tribune
IJGEI	International Journal of Global Energy Issues
IJMES	International Journal of Middle East Studies
IJWP	International Journal of World Peace
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Report
IMT	International Military Tribunal
Ind.J.Int'l L	Indiana Journal of International Law
Int. L. Q	The International Law Quarterly
Int'l C	International Conciliation
Int'l. J. W. P	International Journal of World Peace
Int'l. P.K	International Peacekeeping
Int'l. R	International Relations
IPC	Iraq Petroleum Company.
IRAN-US CTR	Iran-United States Claims Tribunal Reports
Irish. L.T	Irish Law Times
Israel. L.R	Israel Law Review
ITLOS	International Tribunal for the Law of the Sea
IYBHR	Israel Yearbook on Human Rights
J. Int'l C.J	Journal of International Criminal Justice
J. Pol. PHIL	Journal of Political Philosophy

J.Int.Arb	Journal of International Arbitration
JACL	Journal of Armed Conflict Law
JCSL	Journal of Conflict and Security Law
JIA	Journal of International Affairs
JICJ	Journal of International Criminal Justice
JIDR	Journal of International Dispute Resolution
JLS	Journal of Law and Society
JPR	Journal of Peace Research
LAW & CONTEMP. PROB.	Law and Contemporary Problems
Law & S.R	Law and Society Review
LJIL	Leiden Journal of International Law
LNTS	League of Nations Treaty Series
LoN	League of Nations
LSR	Law and Society Review
MAT	Mixed Arbitral Tribunals
Max Planck UNYB	Max Planck United Nations Year Book
Melbourne. J. Int'l.L	Melbourne Journal of International Law
Mich. J. Int'l. L	Michigan Journal of International Law
Mich. L. R	Michigan Law Review
MLR	Modern Law Review
N. Carolina J.I. L & C. R	North Carolina Journal International Law and Commercial
N. Int'l L. Rev.	The Netherlands International Law Review
N. Y. U.J. Int'l. L & Pol.	New York University Journal of International Law and Politics
N.Y. Times	New York Times
N. Y.B Int'l L.	The Netherlands Yearbook of International Law
NJ	Negotiation Journal
NLJ	New Law Journal
NLR	Naval Law Review
Not.U.C.I.D.L.S	Nottingham University Centre for International Defence
NPR	The Non-proliferation Review
NQHR	The Netherlands Quarterly of Human Rights

NSS	The National Security Strategy of the United States of America.
NWCR	Naval War College Review
Para.	Paragraph
PLO	Palestine Liberation Organisation
PCIJ	Permanent Court of International Justice
PCA	Permanent Court of Arbitration
PW	Prosecution Watch
RIAA	Reports of International Arbitral Awards
RIS	Review of International Studies
San Diego. Int'l. J	San Diego International Law Journal
SLS	Social and Legal Studies
SC	Security Council
SCOR	Security Council Official Records
Southern Illinois U.L.J	Southern Illinois University Law Journal
Stanford. J.I.L	Stanford Journal of International Law
Texas Int'l L. J.	Texas International Law Journal
Third. W. Q	Third World Quarterly
TICLJ	Temple International and Comparative Law Journal
TN	The Nation
Trans. J. L & C. P	Transnational Journal of Law and Contemporary Politics
Trans. L. & C. P	Transnational Law and Contemporary Problems
UAE	United Arab Emirates
UK	The United Kingdom
UKTS	United Kingdom Treaty Series
UN	The United Nations
UN doc. S	United Nations Documents (Security Council)
UN doc.A	United Nations Documents (General Assembly)
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugee

UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
US	United States
USSR	United Soviet Socialists Republics
UNMOVIC	United Nations Monitoring, Verification and Inspection Committee
UNSCOM	United Nations Special Commission.
Va. J. Int'I L	Virginia Journal of International Law
Va. L. R	Virginia Law Review
VCLT	Vienna Convention on the Law of Treaties
Vol.	Volume
WT	The Wold Today
Wash. Q	The Washington Quarterly
Was. Post	Washington Post
West. Va. L. J	West Virginia Law Review
Wall. S. J	Wall Street Journal
WVLR	West Virginia Law Review
WWI	First World War
WWII	Second World War
Y. B. INT'L. HUM. L	Yearbook of International Human Right Law
YJIL	Yale Journal of International Law
YLJ	Yale Law Journal
OIC	Organisation of Islamic Conference
IICJ	International Islamic Court of Justice
WMD	Weapon of Mass Destruction

Table of Treaties and other International Instruments

1648 Peace of Westphalia.

1794 Jay treaty (The United States and Great Britain).

1814 Treaty of Ghent.

1815 Vienna Settlement.

1815 Rhine Commission.

1848 Danube Commission.

1856 Paris Treaty.

1865 The International Telegraphic Union.

1871 The Washington Treaty, 61 BFSP 40 San Juan de Fuca, Moore, Int. Arb., Vol.5.

1872 Alabama Claim Arbitration Agreement; 'The Alabama Award', reproduced in A.Pradelle, N. Polities, *Recueil des Arbitrages Internationl aux*, 2nd ed., Vol.11 (Paris, 1957-1964).

1874 The Universal Postal Union.

1890 The Pan American Union.

1899 The Hague Convention for the Pacific settlement of International Disputes, signed 29 July 1899, entered into force 4 September 1900, Treaty Series 392, 187 CTS410.

1905 The International Institute of Agriculture (Rome).

1907 The International Health Office (Paris).

1907 The Hague Convention for the Pacific settlement of International Disputes, signed 18 October 1907, entered into force 26 January 1910, Treaty Series 536, 205 CTS 277.

1916 The Sykes- Pilot Agreement of 16 May1916.

1919 The Covenant of the League of Nations, in Evans (ed.), Blackstone's International Law Documents 5th ed., (London, Blackstone Press, 2001), 1

1920 April: San Remo Conference assigns Mandate for Iraq to the UK.

1922 Uquavir Treaty.

1928 General Treaty for the Renunciation of War, (The General Act for the Pacific Settlement of International Disputes or Kellogg-Briand Pact) Paris, 27 August 1928 reprinted in 94 LNTS 57).

1932 Exchange of Letters between the Government of Iraq and the British Ruler of Kuwait, 4 October1964, 485 UNTS 321.Greenwood, Weller and Bethlehem (eds.,) *The Kuwait Crisis, Basic Documents*, vol. 1(Cambridge: Cambridge University Press, 1991) 49-50.

1933 Pan-American Treaty of Non-Aggression in *Documents on International Affairs*

(Royal Institute of International Affairs, 1993), 343.

1941 August: Atlantic Charter.

1943 Moscow Conference of Foreign Ministers, (30 October1943).

1943 Teheran Summit Conference, (28 January- 1 December 1943).

1944 Dumbarton Oaks Proposal.

1945 4-11 December: Yalta Summit Conference.

1945 San Francisco Conference

1945 26 June 1945: The Charter of the United Nations.

1945 The Agreement for the Prosecution and Punishment of Major War Criminals of European Axis, (8 August 1945) The Charter of the International Military Tribunal, (London Agreement), signed in London, 8 August1945, 82 *UNTS* 279, (International Military Tribunal) *(Nuremberg Tribunal)*, Reprinted in *AJIL* 39 (1945) 257.

1945 Pact of the Arab League, signed in 22 March1945, entered into force 11 May 1945, 70 UNTS 237.

1945 The Charter of the International Military Tribunal for the Far East, reprinted in 4 BEVANS 20, 1 FERENCZ 523 (1975)

1946 Special Proclamation: Establishment of an International Military Tribunal for the Far East, 19 January 1946, reprinted in *Treaties and other International Acts, Series No1589,* in Charles I. Bevans, (eds), 4*Treaties and Other International Agreements of the United States of America* (1964-1949).

1948 The American Treaty on Pacific Settlement 'Bogotá Pact', 119 UNTS 3.

1948 Universal Declaration of Human Rights.

1949 International Convention for the Suppression of the Financial of Terrorism

1949 Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, (12 August1949) 75 UNTS 287.

1949 Geneva Convention I for the Amelioration of the Condition of the wounded and Sick in Armed Forces in the field (Geneva Convention I), 12 August 1949, 6 U.S.T. 3114, T.I.A.S 3362, 75 UNTS 31.

1949 Geneva Convention II for the Amelioration of the Condition of the wounded, Sick AND Shipwrecked Forces Members of Armed Forces at Sea, (Geneva Convention II) 12 August1949, 6 U.S.T 3217, T.I.A.S. 3363, 75 UNTS 85.

1949 Geneva Convention III Relative to the Treatment of Prisoners of War (Geneva Convention III), 12 August1949, 6 U.S.T 3316, T.I.A.S. 3364, 75 UNTS. 135.

1949 The North Atlantic Treaty. UNTS Vol. 34, 243.

1950 The Arab States Joint Defence and Economic Cooperation Treaty, 13 April 1950, entered into force on 25 October 1952.

1955 Warsaw Treaty. UNTS Vol. 219, 3.

1963 Tokyo Convention on Offences and Certain other Acts Committed on Board Aircraft 14 September1963, 20 UST 2941, 704 UNTS 219.

1969 Vienna Convention on the Law of Treaties, UN Doc. A/Conf.39/27, 1969.

1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (1970), UNGA Res. 2625 (XXV), Supp. 28 at 121, UN Doc.A/8028.

1970 The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December1970, 22 UNTS 1641, 10 *ILM* 133.

1971 Montréal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September1971, 24 UST 565, 974 UNTS 177.

1972 Iraq Petroleum Company Nationalized.

1972 Charter of the Organisation of the Islamic Conference.

1977 Protocol I Additional to the Geneva Conventions of 12 August1949, and Relating to the Protection of Victims of International Armed Conflicts.

1977 Protocol II Additional to the Geneva Conventions of 12 August1949, and Relating to the Protection of Victims of Non-International Armed Conflicts.

1979 Peace Treaty between Egypt and Israel.

1980 September: Iraq invasion of Iran.

1981 Declaration of Algeria established in the Iran– United States tribunals (Algeria Accords)

1986 Taba Arbitration Agreement.

1987 Doha Minute (Qatar- Bahrain Case).

1992 Report of the Secretary-General on an *Agenda for Peace- Preventive Diplomacy, Peacemaking and Peace-Keeping,* UN A/47/277,s/24111,17 June 1992 reprinted at (1992) 31 *ILM* 953.

1993 The Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), SC Res 827 UN SCOR, 48th Sess., 3217th mtg., UN. Doc. S/RES/827 (1993), reprinted in 14 *Hum. Rts. L.J,* (1993)197.

1993 The Statute of International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 (ICTY), UN Doc. S/2504, 3 May 1993, reprinted in 14 Hum. Rts. L. J (1993)198.

1993 May: The UNSC demarcation of Iraq-Kuwait border.

1994 International Criminal Tribunals for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law

Committed in the Territory of Rwanda. SC Res.955 UN SCOR, 49th Sess., UN Doc. S/RES/955 (1994).

1994 The Statute of International Criminal Tribunal for Rwanda (ICTR) reprinted in 33 *ILM* 1590 (1994).

1995 Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, A/50/365-S/1995/728, (23 August1995).

1995 Dayton Agreement/Accords (Brcko Arbitration- Federation of Bosnia-Herzegovina V. Republika Srpska) Arbitral Tribunal for Dispute over Inter-Entity Boundary in the Brcko Area, UN Doc. S/1995/999 (1995); 38 *ILM* 536 (1999).

1996 The Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, A/50/292,S/1996/655, (16 August1996).

1996 Eritrea-Yemen Arbitration Agreement.

1998 November: Iraq Liberation Act passed by the US Congress.

1998 The Rome Statute of the International Criminal Court (ICC), 37 *ILM* (1998) 999, entered into force in 2002.

1998 International Convention for the Suppression of Terrorist Bombings, 9 January 1998, S. treaty Doc. No. 106-6, 37 *ILM* 251.

1999 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict.

2001 Eight Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia since 1991, A/56/352-S/2001/856, 17 September 2001.

2003 March: Letter from the Good and the Great International Legal Academic of Great Britain to *The Guardian*.

Tables of Cases

- Case Concerning Military and Paramilitary Activities In and Against Nicaragua, (Nicaragua v. United States of America), (Merits), ICJ Reports, 1986.
- Dubai/ Sharjah Border Arbitration Case (Dubai/ Sharjah, 19 October1981), 91 *ILR* (1993), 672-3.
- International Criminal Tribunal for the Former Yugoslavia, Decision in Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-1-AR72, 2 October 1995 (Appeals Chamber), reprinted in 35 *ILM* 32 (1996).
- Legality of the Threat or Use of Nuclear Weapons, (Advisory Opinion), ICJ Reports, 95 (1996) 226, at Para 141.
- Legality of Use of Force *(Provisional Measures)* (Yugoslavia/ Belgium and others), ICJ Reports 1999, 124.
- The North Sea Continental Shelf Cases, (Germany/Denmark and The Netherlands), Judgment, ICJ Reports 1969, 3-257.
- The Beagle Channel Case, 1977 (Argentina /Chile), 17 ILM (1978), 634-679; 52 ILR (1979), 93-285.
- Norwegian Fisheries Case, (UK/Norway, 1951) ICJ Reports, 1949, 116.
- Territorial Dispute (Libya/Chad), ICJ Reports 1995, 90.
- The Corfu Channel Case (UK/Albania), (Merits), ICJ Reports 4, 1949.
- Fisheries Case (UK/Norway), ICJ Reports, 1951, 166.
- The Crisbadaran Case (Norway/Sweden, 1909), 11 Reports of International Awards, 155-166.
- Mavromtis Palestine Concessions Case, Jurisdiction (Greek v. UK), PCIJ Series A, 1924, No.2, 6.
- The Alaska Boundary Case (The UK/USA, 1903), 15 Reports of International Awards, 491-540.
- The Anglo-French Continental Shelf Case (1977), 18 Reports of International Awards, 3-129.
- Taba Arbitration Award (Egypt/Israel), 27 *ILM* (1988), 1501; 80 *ILR* (1989) 224.
- Rann of Kutch Arbitration (India/Pakistan), 71 *ILM* (1968), 633; 50 *ILR* 2.
- Alabama Claims Arbitration of 1872 'Alabama Arbitration' (The United States/Great Britain), G.F. de Martens, Nouveall General de Traites, I st Series, 1843-1875, XX, 698.

- United States Diplomatic and Consular Staff in Tehran '*Iran-United States Claims Tribunal*' (United States of America v. Iran), *ICJ Reports*, 1980.
- The *Caroline* Case of 1837.
- 'The Advisory Opinion on the Oil platform Case', *ICJ Reports* (2003) at Para 43.
- Prosecutor v. Akayesu, Trial Chamber, International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T, available at www.ictr-org/ENGLISH/ judgments/ AKAYESU/a kay 001.htm.
- The Tunisia-Libya Continental Shelf Case, Judgment, ICJ Reports 1982, 18-323.
- The Libya/ Malta Case, Judgment, *ICJ Reports*, 1985, 13-187.
- Qatar-Bahrain Case.
- The Eritrea/Yemen Arbitration Case (2nd stage), reproduced in 40 *ILM* (2001), 983-1013; 119 *ILR* (2002), 417.
- Falkland / Malvinas Islands.
- Dogger Bank Case.
- Interpretation of the Treaty of Lausanne Case, 1925, PCIJ ser, B No.12.
- Clipperton Island Arbitration Case (France v. Mexico) 1932, 26 *AJIL* 390.
- Bolivar Railway Co. Claim, (GB v. Venezuela, 1903) 9 RIAA, 445.
- The Lac Lanoux Arbitration Case, 1957, 24 ILR 101, 12 RIAA 285.
- The Tavignano inquiry (France v Italy 1912).
- The Tiger Inquiry (Germany and Spain, 1918).
- The Tubantia Inquiry (Germany and Netherlands, 1922).
- (Lex specialis), Denmark-Malawi Loans agreement, 1966, 586 UNTS3.
- Status of Eastern Carolina Case (Finland v. Russia), PCIJ ser, B (1923), No.5 at 27 (D&M, 601).
- Interpretation of Peace Treaties Case (1950) ICJ 65 (D&M, 601).
- Trail Smelter Case between (Canada v.US, 1935), 162 LNTS 73; 3 RIAA (1907, 1938).
- Western Approaches (France v.UK, 1977, 1978), 18 *ILM* 397 (1979).
- Arbitral Award of the King of Spain (1960) ICJ Rep. 192.
- Case Concerning Oil Platforms (Islamic Republic of Iran v. the United States of America.

CHAPTER ONE

PRELIMINARY CONSIDERATIONS

CHAPTER ONE

PRELIMINARY CONSIDERATIONS

In the name of Allah, the Beneficent, the Merciful!

> And if two parties of believers fall to fighting, then make peace between them. And if one party does wrong to the other, fight the one that does wrong until it returns to the way of Allah; then, if it returns, make peace between them justly, and act equitably, Lo! Allah loves those who act equitably. The believers are brothers: so make peace between your brothers and observe your duty to Allah, that you may receive mercy.[1]

1.1 Introductory Remarks

This study investigates one of the most debated issues, namely, the logic of the United States (US), as the only remaining super power, in the argument that the use of force pre-emptively was the only possible way to resolve its dispute with Iraq. This view raised considerable opposition from certain members of the United Nations Security Council (UNSC).This thesis argues that such unilateral actions are prohibited by Article 2(4) of the United Nations (UN) Charter, and in fact pose a real challenge to the UN system and to international legal rules.

---

[1] The translation of the Glorious Qur'an *Al-Hujurat* [The {Inner} Private Apartments], revealed at Al-Madinah, *Surah* (Q.49: 9 and10). The above verse of the Holy Qur'an is one of the verses shedding light on the framework of the Islamic international law system that regulates the use of force and peaceful settlement of disputes. See, Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: The Johns Hopkins Press, 1966); Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Revised Edition, (Islamic Texts Society, Cambridge, St Edmundsbury Press, 1991); M. Cherif Bassiouni , ed., *Islamic Criminal Justice System*, (New York, Oceana Publication, Inc, 1982); Javaid Rehamn, *Islamic States Practices, International Law and the Threat From Terrorism, A critique of the 'Clash of Civilisation' in the New World Order*, (Oxford and Portland, Oregon, Hart Publishing, 2005); Oussama Arabi, *Studies in Modern Islamic Law and Jurisprudence*, (The Hague, Kluwer Law International, 2001); Joseph Schact, *An Introduction to Islamic Law*, 1st published (Oxford, Oxford University Press, 1964), reprinted, 1966, 1971); Yasin Dutton, *The Origins of Islamic Law, The Quran, the Muwatta and Madinan Amal*, (Richmond, Surrey, Curzon Press, 1999); and, John Burton, *An Introduction to the Hadith*, (Edinburgh, University of Edinburgh Press, 1995).

There is a growing fear following the Cold War that the US often seeks to achieve its interests over less powerful nations by neglect or misuse of the provisions of the UN Charter in resorting to the use of force as an instrument of its national policy. This policy flies in the face of the logic and text of the UN Charter.

The concept of a just war doctrine was determined in the seventeenth century and was eventually replaced by the concept of the prohibition of the use of force only in self-defence in Articles 2(4) and 51 of the UN Charter.[2]The twentieth century is considered as remarkable in the context of the legal regulation of war and armed conflict.[3] By the middle of the 20th century, the absolute right to resort to the use of force had become more and more restricted under the UN Charter.[4]

The primary function of the UN is to maintain international peace and security in general, and for all member states, not only for an individual powerful member.[5]It is an important feature of any genuine international legal system that the law should be applied to all and not denied to less powerful states. Member states party to the UN Charter agreed -amongst other things- not to use threats or force against the territorial integrity or political independence of any states, and to settle their international disputes by peaceful means in such a manner that international peace, security, and

---

[2] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law* (Cambridge, Cambridge University Press, 2002).

[3] Dominic McGoldrick, *From '9-11' To the 'Iraq War 2003' International Law in an Age of Complexity* (Oxford and Portland, Oregon, Hart publishing, 2004) 4; M. Howard, *The Invention of Peace: Reflections on War and International Order* (London, Profile Books, 2000).

[4]The principle of non-use of force in international relations derives from article 2(4) of the UN Charter, which stresses the principle of the prohibition of the use of force. This principle is further analysed in chapter Six. For detailed discussion on this principle see, Ian Brownlie, *International Law and the Use of Force by States* (Oxford, Clarendon Press,1963); Christine Gray, *International Law and the Use of Force,* 2nd edn., (Oxford, Oxford University Press, 2004); Michael Byers, 'Terrorism, the Use of Force and International Law After 11 September', 16 *International Relations* (2002) 155; Adam Roberts and Richard Guelet, ed., *Documents on the Law of War*, 3rd edn, (Oxford, Oxford University Press, 2000).

[5] Kofi Annan, *"We the People": The Role of the United Nations in the 21st Century,* (New York, United Nations Department of Public Information, 2002).

justice are not endangered.[6] Furthermore, they have agreed to resort to the methods of peaceful settlement of international disputes set out in Article 33 (1) of the UN Charter.[7]

Many attempts have been made to place limitations upon the unilateral use of force by states, and further attempts have also been made in the United Nations General Assembly (UNGA) to clarify the scope and exceptions of the prohibition on the use of force. In 1970, the UNGA adopted the Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States and in Accordance with the Charter of the United Nations;[8] in 1975 the Definition of Aggression;[9] in 1982, the Manila Declaration on the Peaceful Settlement of Disputes; and in 1987, the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Non-use of Force in International Relations.[10]

In context of Islamic law, the principles of peaceful settlement of international disputes and non-use of force in international relations are longstanding and fundamental principles in Islamic international law and in customary international law. The *Qur'an* and *Hadith,* as principles sources of Islamic international law, consider resorting to force and waging war as the last resort, and only in response to

---

[6] Article 2 Paragraphs 3 and 4 of the UN Charter.

[7] For detailed discussion on the UN principles see Bruno Simma, *The Charter of the United Nations: A Commentary*, 2nd edn., (New York, Oxford University Press, 2002); M. Evans, *International Law*, (Oxford, 2003); Antonio Cassese, *International Law*, (Oxford, Oxford University Press, 2001); David J. Harris, *Cases and Materials on International Law*, 5th edn., (Sweet & Maxwell, 1998); Ian Brownlie, *Principles of Public International Law*, 6th ed., (Oxford, Oxford University Press, 2003); John Collier, & Vaughan Lowe, *The Settlement of Disputes in International Law: Institutions and procedures,* (Oxford, Oxford University Press, 1999); J.G. Merrills, *International Dispute Settlement*, 3rd edn., (Cambridge, Cambridge University Press, 1998); Christine Gray, *International Law and the Use of Force*, 2nd edn.,(Cambridge University Press, 2004); NIILante Wallage-Bruce, *The Settlement of International Disputes, the Contribution of Australia and New Zealand*, (The Hague, Martinus Nijhoff Publisher).

[8] GA/RES/2625 (1970), reprinted in 9 *ILM* 1292 (1970).

[9] GA/RES/3314 (1975), reprinted in 13*ILM* 710 (1975).

[10] GA/RES/42/22 (1988), reprinted in 27 *ILM* 1672(1988).

an act of aggression (*idwan*).[11] Furthermore, the Qur`an asks believers not to be aggressors because, 'God does not love aggressors.'[12]Undoubtedly, these norms are central obligations in both laws and, more importantly, the ultimate safeguard for less powerful states against unlawful actions by powerful nations.

The UN's system of peaceful settlement of international disputes contains a variety of peaceful means embodied in Chapters VI and VII of the UN Charter; these include legal and diplomatic means.[13]In recent years, there have been deep and significant changes in the interpretation of the provisions of those Chapters. The essence of the present study is to analyse those changes and provisions which govern these principles in the light of the Iraq invasion in March 2003 to provide an answer as to where the UN system stands after the end of the Cold War era.

In March 2003, the US-UK commenced air strikes against the territorial integrity and political independence of Iraq, a member of the UN, without explicit authorization from the UN. The subsequent invasion gave rise to fundamental questions concerning the rules regulating peaceful settlement of international disputes, the use of force in international relations, the humanitarian laws of wars, and concepts and norms of the Nuremberg Trials. The Iraq invasion cannot be viewed as if it were solely a legal debate, because the US's national interests following the 11 September

---

[11] See, Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: The Johns Hopkins Press, 1966); Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Revised Edition, (Islamic Texts Society, Cambridge, St Edmundsbury Press, 1991); Javaid Rehamn, *Islamic States Practices, International Law and the Threat From Terrorism, A critique of the 'Clash of Civilisation' in the New World Order*, (Oxford and Portland, Oregon, Hart Publishing, 2005).

[12] (Q.2:190).

[13] J.G. Merrills, *International Dispute Settlement*, 3rd edn., (Cambridge, Cambridge University Press, 1998); Ian Brownlie, *Principles of International Law*, 6th edn., (Oxford, Oxford University Press, 2003).

2001 incidents[14] and its super power status are major factors in determining its actions in this crisis.

The war on Iraq also gives rise to a hot political and legal debate regarding its legality and necessity. In dealing with the issue of its legality, the thesis's discussion is based on three legal grounds, and questions need to be considered on each of these. First, the legality of the Iraq war in international law and Islamic law, this includes the law concerning the right of a state to resort to force (*jus ad bellum*). Second, the law which regulates the conduct of hostilities, which involves any violations to the rules governing the military operations (*jus in bello*). And finally, the consequences of war on Iraq must be considered.

The purpose of this part of the study is to consider what approach international law should take towards the regulation of the use of force after the end of the Cold War era. It aims to provide a framework for addressing the debate between those who advocate the legality of the war and those who argue its illegality. The thesis examines the role and effectiveness of the UN and international law in obliging member states to comply with its rules, and to oblige Islamic states to comply with the rules of Islamic international law (Islamic law of nations).[15]

On the issue of its necessity, this thesis endeavours to address the questions of an alternative to the war on Iraq, and whether the use of force was an appropriate and effective means to disarm the Iraqi regime. The term 'illegal war' is used in this thesis to emphasise that illegal war is war without the UN Security Council's (UNSC)

[14] See Chapter six paragraph six.
[15] Some light will be shed on this issue in Chapter five.

authorization in contrast to the term 'legal war', which is war under the authorization of the UNSC.

The present study sheds light on the UNSC's dilemmas after the end of the Cold War in the late 1980s. This is discussed in the light of the case of Iraq's invasion of Kuwait in 1990 when the UNSC became active, and in the case of Iraq invasion in 2003 when the UNSC was unable to play its role in maintaining international peace and security.[16]These two cases indicate that the use of force in self-defence is probably the most controversial issue in contemporary international law facing the UN since the end of the Cold War era. This thesis also sheds light on the legality of the military attack by the US-UK against Afghanistan and Iraq, raising questions about which may be the next state to be attacked. One would expect that if the US-UK used force in the near future against another state,[17]they would use the same justification as in their invasions of Afghanistan and Iraq.[18]

The US-UK's apparent act of aggression against Iraq and its civilian population is not the first instance of powerful states using armed force against a member of the UN with the justification of self-defence.[19] However, this invasion constitutes one of the

---

[16] In the case of Iraq's invasion of Kuwait the UNSC adopted number of resolutions for example; S/RES/660(2 August 1990), 661 (6 August 1990), 662 (9 August 1990), 664 (18 August 1990), 665 (25August 1990), 666 (13 September 1990), 667 (16 September 1990), 669 (24 September 1990), 670 (25 September 1990), 674 (29 October 1990), 677 (28 November 1990), 678 (29 November 1990), 686 (2 March 1991), 687 (3 April 1991), 688 (5 April 1991), 707(15 August 1991), 715(11 October 1991), 986(14 April 1995), 1284(17 December 1999), 1441 (8 November 2002).For a discussion of this case see, Lawrence Freedman and Efraim Karsh, *The Gulf Conflict 1990-1991, Diplomacy and War in the New World Order*, (London, Faber and Faber, 1993).

[17] US President Bush in his famous *State of the Union Address* in January 2002 argued that the states of the 'Axis of Evil' Iran, Iraq and North Korea were posing a real threat to the US by developing, chemical, biological and nuclear weapons of mass destruction to be used against the US.

[18] In both cases the US-UK argued –among other- that they had exercised their right of self-defence according to Article 51 of the UN Charter. See, Richard Falk, 'What Future for the UN Charter System of War Prevention?' 97 *AJIL* (2003) 590.

[19] For example, in 1980 Israel attacked the Iraqi nuclear reactor. Israel claimed this action was justified as an exercise of its right to self-defence, and again on 1 October 1985 Israel attacked the headquarters

most serious crises facing the UN today because the justifications for war changed rapidly during the course of the war, from disarming the Iraqi regime of its weapons of mass destruction (WMD), to the freedom of the Iraqi people, to humanitarian intervention to protect human rights in Iraq, to introducing democracy in the country and regime change. It is clear that the US has used the principle of self-defence as a justification to use force to advance its interests with or without the SC's authorisations since the end of the Cold War. This assumption illuminates the importance of reforming UN law.

Indeed, the Iraq invasion raises many questions. It raises the question of whether Bush's wars of pre-emptive self-defence doctrine threaten international peace and security; and to the legality of the US-UK humanitarian intervention in Iraq, defined as:

> The interference of one state in the affairs of another by means of armed force with the intention of making that state adopt a more humanitarian policy, usually the protection of human rights of minority groups.[20]

Furthermore, the invasion and the post-invasion occupation of Iraq raise the question of whether the use of force can be an effective means to disarm a potential a peace threatening country. If so, this might indicate a need for a more radical alteration of the UN Charter. From a legal point of view, it also raises the questions of whether contemporary international law and Islamic international law allow the use of

---

of the Palestine Liberation Organisation in Tunisia and argued that its unauthorized action was in self-defence.

[20]Elizabeth A. Martin and Jonathan Law ed., *A Dictionary of Law*, 6th edn., (Oxford, Oxford University Press, 2006).

force to disarm Iraq or to advance the US's policy of regime change in Iraq, to protect human rights, fight terror after the events of 11September 2001 or to bring democracy to Iraq, which in turn will spread democracy in the Middle East. These are the fundamental arguments that could be put forward to justify war on Iraq. However, the main justification put forward by the US-UK was disarming Iraq. The thesis examines this in Chapters Seven and Eight.

US President Bush stated that the aim of the US's war of pre-emptive self-defence against Iraq was to disarm Iraq of the WMD that posed a threat to the US and international peace and security.[21]The doctrine or strategic approach of pre-emptive self-defence was spelled out in the National Security Strategy of the United States of America *(NSS)* of September 2002 that states: -

> We will disrupt and destroy terrorist organizations by: direct and continuous action using all the elements of national and international power. Our immediate focus will be those terrorist organizations of global reach and any terrorist or state sponsor of terrorism which attempts to gain or use weapons of mass destruction (WMD) or their precursors; defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting pre-emptively against such terrorists, to prevent them doing harm against our people and our country; and

[21] See 'The National Security Strategy of the USA to Combat Weapons of Mass Destruction,' U.S Department of Defence, (*NSS*) (December 2002) at: www.defenselink.mil/pups/.

> denying further sponsorship, support, and sanctuary to terrorists by convincing or compelling states to accept their sovereign responsibilities.[22]

On the other hand, the National Security Strategy of the United States *(NSS)* of 16 March 2006 provides:

> Taking action need not involve military force. Our strong preference and common practice is to address proliferation concerns through international diplomacy, in concert with key allies and regional partners. If necessary, however, under the long-standing principles of self-defence, we do not rule out the use of force before attacks occur, even if uncertainty remains as the time and place of the enemy's attack. When they stand idly by as grave dangers materialize. This is the principle and logic of pre-emption. The place of pre-emption in our national security strategy remains the same. We will always proceed deliberately, weighing the

---

[22] *'The National Security Strategy of the USA 2002'* the White House Washington DC, 17 September 2002, available at: http://www.white house.gov/nsc/nss.pdf>. The *NSS* 2002 further states that:

> For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat...most often a visible most often a visible mobilization of armies, navies, and air forces preparing to attack...we must adopt the concept of imminent threat to the capabilities and objectives of today's adversaries...Our immediate focus will be those terrorist organizations of global reach and any terrorist or state sponsor of terrorism which attempts to gain or use weapons of mass destruction (WMD) or their precursors; defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders...the United States has long maintained the option of pre-emptive actions to counter a sufficient threat to our national security...To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.

consequences of our actions. The reasons for our actions will be clear, the force measured, and the cause just.[23]

Similarly, the United Kingdom's Prime Minster Blair justified disarming Iraq of its WMD in his statements on Iraq to the House of Commons on 25 February, and 18 March 2003.[24]Indeed, after he failed to secure a second UN Resolution, thus, he based his argument on the authority to use force against Iraq under previous UN Resolutions 678 and 1441 as well as Iraq's continued non-compliance with SC Resolutions.

The study focuses generally on the US-UK's claims for war, their justifications, with the general intention of placing their claims under legal examination according to the principles of the UN Charter and international law. The thesis attempts to demonstrate a legitimate basis for this invasion through an examination of the evolutions of the doctrines of peaceful settlement of international disputes and non-use of force in theory and practice.

A related area of this research which needs thorough examination and analysis is a discussion of whether the use of 'smart bombs' and other dangerous weapons in this war, in terms of human casualties, was a violation of laws of war, international humanitarian law and international environmental law. This involves an evaluation of how badly this war destroyed Iraq and damaged the role of the UN as an international body for maintaining international peace and security through its dispute settlement

---

[23] '*The National Security Strategy of the USA 2006*' the White House Washington DC, 16 March 2006, available at: http://www.white house.gov/nsc/nss.pdf>

[24] 'British Military Campaign Objectives' March 2003, House of Commons Research Paper, the Conflict in Iraq at< http://www.publications.parliament.uk/p>

system. [25]

Indeed, the original contribution of this thesis is that it explores the origins and sources of Islamic international law that govern peaceful settlement of international disputes and the use of force in a new approach to bridge the gap between this law and international law. The discussion of Islamic international law in the present study draws mainly on the Glorious Qur'an and the Sunn`ah (practice of the prophet Mohammed); both are the two fundamental sources of Islamic ideology.[26]

It is evident that the Iraq invasion would not have been achieved without the logistic support of Kuwait. In this respect, the main purpose of the thesis here is to indicate the responsibility of Kuwait and other Gulf states in this invasion under Islamic international law.

1.2 A Brief Overview of the Literature on the Legality of the War on Iraq

In the legal literature, there has been considerable debate among international law scholars and lawyers as to the legality of the Iraq invasion, but the issue of responsibility and the role of Kuwait in this invasion have received no attention at all. The legal opinion among international lawyers is split in two: those who support and advocate the legality of the war on Iraq stating that the existing UN Resolutions 678 (1990), 687 (1991) and 1441(2002) gave ample legal authority for the US-UK to use force against Iraq in March 2003. Christopher Greenwood belongs to this category of scholars who support the war, and he concludes:

---

[25] Jane Stromseth, 'Law and Force after Iraq- A Transitional Moment', 97 *AJIL* (2003) 628.

[26] See, Abu Ishaq Al-Shatebi, *Al-Muwafaqat fi usul Al-shari'a*, (ed), Abdulla Diraz, Dar Al-Kutab Al 'ilmiya, Beirut, Lebanon. Malik Ibn Anas, *Al-Muwtt'a*, (ed), Mohammed Fouad Abdelbaqi, 1st ed., (Cairo, Dar Al-Hadeeth); Majid Khadduri, *The Islamic Conception of Justice*, (Baltimort, The John Hopkins University Press,1984).

> I think there is existing authority, deriving from Resolutions 678,687 and 1441. Of course, it would be highly desirable to have a second UN resolution because that puts the matter beyond serious question, but if that is not possible, I would support the use of force without the resolution.[27]

Furthermore, he does not accept the suggestions that the US-UK's soldiers could be committing war crimes if the war took place without a second UN resolution because 'Soldiers on the ground are judged according to the actions they carry out – that is quite distinct from the issue of the legality of going to war.'[28]Similarly, Ruth Wedgwood argues that: 'The ceasefire Resolution 687 and its predecessor 678, which authorised the use of force to expel Iraq from Kuwait (in 1990-1991), are sufficient to use force now (2003). Those resolutions still stand.'[29]

Those who are against the war, arguing its illegality, think that a second specific UN Resolution to authorize the use of force against Iraq is required. Posteraro in his *Intervention in Iraq: Towards a Doctrine of Anticipatory Counter-Terrorism, Counter-Proliferation Intervention* published in 2002 argued in favour of the illegality of war and he states that:

> Unless the United States or an ally is a victim of an Iraqi attack, and the US response is in defence against such attack, it cannot justify a military intervention under the letter of Article 51. Therefore unless there is an Iraqi military offensive against the United States or its

[27] Frances Gibb, 'Breach of International Law Feared if War Starts', *The Times*, (14 March 2003) at< http:// www.ovb.org.uk/reports/2003/rpt20030314f.htm1>
[28] Ibid.
[29] Ibid.

> allies, it is unlikely that the United States will be able to make a case that military action against Iraq meets the strict requirements of Article 51. Although the United States has gradually broadened its interpretations of Article51, it has never claimed a right to act in self-defence unless an armed attack has occurred. The concept of armed attack, however, has proven rather elastic. For the United States to argue that Iraq has perpetrated an armed attack, it will have to rely on less overt actions than past examples of Iraqi aggression against Iran in 1981 and Kuwait in 1990.[30]

Richard Falk's argument is that the war on Iraq was illegal and the invasion could not be justified even if the overthrow of Saddam's regime produced a better life for the Iraqi people or the region. He went on to conclude that Bush's pre-emption doctrine is not an acceptable exception to the Charter system and that 'recourse to war against Iraq should not have been undertaken without a prior mandate from the Security Council.'[31]

Similarly, Thomas Franck who asked in 1970 *Who Killed Article 2(4)?* supports Falk's argument.[32] He dismisses the US-UK's arguments that the invasion of Iraq was

---

[30] C.C. Posteraro, 'Intervention in Iraq: Towards a Doctrine of Anticipatory Counter- Terrorism, Counter-Proliferation Intervention', 15 *Fla. JIL* (2002).

[31] Richard Falk, 'What Future for the UN Charter System of War Prevention? Reflections on the Iraq War' in I. Abrams and W. Gungwu (eds), *The Iraq War and its Consequences, Thoughts of Nobel Peace Laureates and Eminent Scholars*, (Singapore, World Scientific, 2003).

[32] Thomas Franck, Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States, 64 *AJIL* (1970) 809-836. In this article Franck examined the phenomenon of the increased use of force by super-power states, he concluded that:

> The failure of the UN Charter's normative system is tantamount to the inability of any rule, such as that set out in Article 2(4), in itself to have much control over the behaviour of states. National self-interest, particularly the national self-interest of the super-Power, has usually won out over treaty obligation. This is particularly characteristic of this age of pragmatic power politics. It is as if international law, always something of a cultural myth, has been demythologized. It seems this is not an age when men act by principles simply

authorized by previous UNSC Resolutions, or by the allegations that Iraq was in material breach of these resolutions. Franck further asked in 2003 *What Happens Now? The United Nations After Iraq,* he concludes that:

> It is clear that the world now requires decision-making processes...but it is equally clear that those processes cannot possibly be constructed, whether within or without the UN framework, if the US or anyone else treats its preferences as the only denominator.[33]

However, Colin Warbrick argues the case of illegality; he concludes that the use of force by the UK against Iraq without a clear UNSC resolution is a clear breach of international law.[34] This thesis considers the above literature review, and highlights the different arguments of international lawyers on the US-UK's legal cases for the use of force against Iraq.

This introduction outlines the purpose and methodology of the thesis, and the reasons why it provides an original contribution to a better understanding of the rules governing the use of force and peaceful settlement of international disputes in international law and in Islamic international law. In the context of Islamic international law, many questions have been raised: does Islam have a system to govern the use of force or peaceful settlement of disputes and, if so, in what specific ways does this system differ from the UN system?

---

because that is what gentlemen ought to do. But living by power alone...Is a nerve-wracking and costly business.'

[33] Thomas Franck, What Happens Now? The United Nations After Iraq, 97 *AJIL* (2003) 599.

[34] *Citizens' Legal Inquiry into the Legality of Use of Force Against Iraq*, (Gray's Inn, London, 11 October 2002).

The thesis presents some of the salient features of the Islamic international law on the use of force and peaceful disputes settlement system and shows broadly the main points of distinction from the UN system. To this end, the thesis relies in this part on the Arabic sources and materials as reference.

1.3 Objective of the Thesis: Critical Analysis of the Legality of Iraq Invasion in International Law and Islamic International Law

In this dispute, the US has not tried to use peaceful means embodied in the UN Charter to settle its differences with Iraq, nor have UNSC meetings been of much help in this respect. The object of the thesis is to study the rules governing the use of force both as regards its historical development since the Hague Conference for the Pacific Settlement of Disputes 1899, and its current status, to seek reform of the UN Charter by critically investigating the legality of the US-UK's claims leading to the invasion of Iraq in March 2003.

The thesis begins with a brief survey of the historical development of the principles of peaceful settlement of disputes and non-use of force in international relations. This provides a background for consideration of the nature and scope of the UN system. It is based on a legal analysis and critical examination of whether or not the US-UK and Kuwait violated the UN Charter and international law. It also gives a comprehensive analysis of the legal reasons given for the war and policy case for the US-UK with respect to disarming Iraq. This is thought to be best done through critical analysis of six points:

1.3.1 Chapter VI of the UN Charter: the Rules Governing the Principle of Peaceful Settlement of International Disputes

The second original contribution of the thesis is the re-examining of Chapters VI and VII of the UN Charter. The purpose of the thesis in this section is to bring to mind that the only role of the SC in dispute settlement under Chapter VI of the UN Charter is to encourage parties in dispute to reach a peaceful settlement. This poses a problem in that disputants have not complied with the recommendations the SC in many cases. In legal terms, the thesis raises the question of why these provisions were never taken seriously by the US-UK in their dispute with Iraq. The thesis considers the development of the principle of peaceful settlement of disputes by considering the UN settlement system.

However, it can be argued, notwithstanding recent developments, that facilitating peaceful settlement of international disputes has always been a major part of the work of the UN and its agencies, but under paragraph (1) of Article 33 of the UN Charter, the choice of peaceful means is up to the disputant parties. They shall 'first of all' be under an obligation to seek the peaceful means contained in Article 33(1):[35]if they fail to reach a settlement by such means, and if the continuation of such a dispute is likely to endanger the maintenance of international peace and security, they are then under obligation to refer their dispute to the SC under Article 37(1).

Under Article 33(2) the SC has no legal capacity in resolving disputes; it may only persuade disputant parties and make a recommendation on how to settle such a

[35] This principle also stipulated in section 1(3) and (10) of the 1982 Manila Declaration on Peaceful Settlement of Disputes adopted by the UN General Assembly Resolution 37/10,51 U.N. GAOR Supp. 261. UN. Doc .A/37/51(15 Nov, 1982).In this Declaration it has been emphasized that 'The need to extent utmost efforts in order to settle any conflicts and disputes between States exclusively by peaceful means'. It also states that 'The question of the peaceful settlement of disputes should represent one of the central concerns for States and for the United Nations.'

dispute. In considering these legal norms, the dominance of the US as the one remaining super powers, and the case of the invasion of Iraq in March 2003, the thesis also raises the question of whether or not the UN can provide an effective means to settle international disputes peacefully and to prevent wars.

1.3.2 Chapter VII of the UN Charter: the Rules Governing the Principle of Non-use of Force in International Relations

The thesis pays more attention to UN Chapters VI and VII than the others, because the use of force was prohibited by the UN Charter and by Islamic international law; but as the thesis explains these norms are apparently neglected by the US-UK and Kuwait. It should be mentioned that for more than 1400 years Islamic international law regulated the right to use force, but it was only in 1945 that Article 2(4) of the UN Charter regulated this right.[36]

However, the SC has an enforcement role under Chapter VII of the UN Charter entitled 'Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression'. Unlike Chapter VI of the UN Charter, which only outlines the basis of the principle of pacific settlement of disputes, Chapter VII empowers the SC with wide powers and responsibilities to take actions and measures against any state that threatens or breaks international peace and security.

Thus, under Chapter VII of the UN Charter, the SC has preventive and enforcement powers for maintaining international peace and security, which is one of

[36] For a more detailed discussion of this issue see Mohammed Abu Zahra, *Concept of War in Islam*, trans. Mohammad Al-Hady and Taha Omar, (Cairo, Ministry of Waqf, 1961) 18.

the fundamental purposes of the UN.[37] However, the end of the Cold War era marked what has been described as a 'New World Order', which soon revealed the hegemony of the US in a unipolar world where the UN Charter principles on prohibition on the use of force and international law has been reinterpreted.[38]

1.3.3 The Rules Governing Conflict Resolution and Non-use of Force under Islamic International Law

The third original contribution of the thesis is the re-examination of provisions of Islamic international law regulating the use of force and peaceful settlement of disputes. Islamic international law prohibits the absolute use of force; this principle is deeply rooted in the Islamic law of nations.[39]

These provisions regulate the use of force, the treatment of prisoners, and the wounded, and above all recognise peaceful settlement of disputes and prohibit acts of aggression.[40]This thesis pays more attention to the principles of Islamic international law that regulate peaceful settlement of disputes than to other means, as the Islamic rules may have peacefully settled the dispute between Iraq and Kuwait. It should be remembered that the way that this dispute was settled, and the UN Resolutions that resulted from it provided one of the main justifications given by the US-UK to invade Iraq in March 2003.

---

[37] For a discussion on Chapter VII of the UN Charter see, Bruno Simma, ed., *The Charter of the United Nations: A Commentary*, 2nd edn. (2002); David. S. Glass, 'The UN Security Council II: Perception of Bias', 46 *The World Today*, No.12, (December 1990).

[38] See Michael Byers and George Nolte, eds., *United States Hegemony and the Foundations of International Law* (Cambridge, Cambridge University Press, 2003); Phyllis Bennis, *Calling the Shots How Washington Dominates Today's UN*, (Gloucestershire, Arris Books, 2004); S. Smith, 'The End of the Unipolar Moment? September 11 and the Future of World Order', 16 (2) *International Relations* (2002),171.

[39] The principles of Islamic international law on the use of force discussed in Chapter Five of this thesis.

[40] Ibid.

1.3.4 The US's Legal Justification for War on Iraq March 2003

The political and legal concept of *NSS* of 20 September 2002 was seen as the basis for the war on Iraq in 2003.[41]The thesis considers these reasons and provides an analysis of the legal aspects of the US's invasion of Iraq under international law. The primary legal justifications given by the US for war on Iraq were President Bush's pre-emptive self-defence doctrine that gave the US legal justification to meet the Iraqi threat against the US and its allies, sometime in the future.[42] Second, the WMD that the Iraqi regime possessed posed a direct threat to the US, its allies and international peace and security.

The third argument for the invasion was that Saddam Hussein had links with terrorist organisations, in particular with Al-Qaeda. Bush tries, in this justification, to link Saddam to the 11 September incidents. Fourth, Bush further argued that by changing the Iraqi regime he would provide freedom and democracy to the Iraqi people from the dictator. The thesis argues that the evidence used by the US to support its allegations against Iraq has proved to be completely false. Chapter Seven considers the US's legal justification for the Iraq invasion.

1.3.5 The UK's Legal Justification for War on Iraq March 2003

The thesis considers the UK's reasons for war in Chapter Eight. However, the main justification given by Prime Minister Blair for war on Iraq was that Iraqi WMD posed a direct threat to the UK and its allies, and that Iraq had the capacity to deploy some chemical and biological weapons within 45 minutes. Furthermore, the UK argued that

---

[41] Christine Cray, 'The US National Security Strategy and the New "Bush Doctrine" on Pre-emptive Self-defence', *1 Chin JIL* 437 (2002) 440.

[42] President Bush's Graduation speech at West point, 1 June 2002, available at http:// www.whitehouse.gov/news/releases/2002/06/print/20020601-3.html.

the aggressive nature of Saddam Hussein's regime and his record of internal repression and external aggression gave rise to unique concerns about the threat he posed. The British government relied on implied authorisation, and further claim that, with Resolutions 678 (1990), 687(1991) and 1441(2002), the UNSC had authorized the use of force. No more significant evidence has been given by the UK, and the above argument was rejected, as it could be taken only by the SC.[43]

1.3.6 Violations of the UN Charter, the Laws of War, Humanitarian and Environmental Laws

The thesis does not cover all aspects of these laws, but its main concern here is to evaluate the relevant provisions and practice of these laws in the war on Iraq to show to what extent the US-UK also violated these laws. This is examined by exposing and analysing what the four Geneva Conventions, their additional two Protocols, the Nuremberg concepts and norms added to affect and facilitate peaceful settlement of international disputes, non-use of force in general, and co-operation between member states in particular.

1.4 Research Aims and Methodology

The aim of the thesis is to contribute towards the effective understanding of the responsibility of the UN and its dispute settlement system as a pragmatic mechanism for maintaining international peace and security. It does so by exploring the origins and sources of the principles of peaceful settlement of international disputes and the use of force in international law and Islamic international law to advocate that there was no need for war on Iraq at all. This is achieved through examining some aspects

[43] The views of the UK on the legal case for war on Iraq were conveyed to British's parliament in the legal opinion of the Attorney-General. See Lord Goldsmith, Attorney-General Clarifies Legal Basis for Use of Force Against Iraq (18 May 2003), available at <http://www.fco.gov.uk>

of the US-UK's claims for their justification of the decision to invade Iraq in March 2003 and the relevant laws applicable to this conflict. This is explained in Chapters Seven and Eight of this thesis.

Therefore, the main aim of this research is to examination whether contemporary international law allows the use of pre-emptive force, and under what conditions. The hypothesis is that the US-UK's case for war against Iraq was not only misconceived in theory, but strongly damaged the UN dispute settlement mechanism and international relations.[44]

Another purpose of this thesis is to critically investigate the legality of the role of Kuwait and other Gulf states in this invasion under Islamic international law. The concept of peaceful settlement of international disputes and non-use of force in Islamic international law, a topic introduced in this thesis, is a relatively unexplored subject. It should be noted that these concepts receive considerable attention in international law. The thesis elaborates its new original methodology and theoretical analysis in order to explain the issues of peaceful settlement of international disputes and the non-use of force in Islamic international law.

The thesis argues that by considering these norms it can be understood that there was no proven need for war on Iraq. The thesis finds evidence of these principles deeply rooted in Islamic international law; they were more widely respected in the early Islam period than they are in this century.[45]It also finds that this law provides a

---

[44] Franck, n 33 above.
[45] Adbullahi Ahmed An-Na'im, 'Upholding International Legality against Jihad' in Ken Booth and Tim Dunne ed., *Worlds in Collision: Terror and the Future of Global Order*, (Basingstoke, Palgrave Macmillan, 2002).

system for peaceful settlement that could have been applied to the problem of Saddam's regime in Iraq.[46]

While this thesis limits itself to the specific issues of peaceful settlement of international disputes and the non-use of force in international relations, and the methodology adopted does not allow general conclusions on all cases of the use of force, it proposes that the legal use of force in international relations may be possible under international and Islamic international laws. The UN Charter sets out two exceptions to the prohibition on use of force; first, in individual or collective self-defence; and second under the authorisation of the SC. Therefore, the essence of this thesis is to analyze those provisions that govern these principles in the light of the Iraq invasion in March 2003.

Hence, in this thesis the central argument is that the reasons given for war and the use of military force by the US-UK do not provide legal justification under international law. This is so because previous UN Resolutions did not give the US-UK authority to use force against Iraq.

Moreover, the thesis proceeds to examine whether the 11 September incidents constituted an 'armed attack'. Were they justified in either international law or Islamic international law? The aim of the thesis, in this context, is to identify the areas of agreement and disagreement with the US on whether these events justified the unilateral use of force or pre-emptive self-defence.

---

[46] Mohammed Ibn Al-Hasan Al- Shaybani, Kitab al-siyar al-kabir, trans. Majid Khadduri, *The Islamic Law of Nations*, (Baltimore, The Johns Hopkins University Press,1966).

The thesis concludes that the 11 September incidents were contrary to Islamic international law, but it argues and insists that the US's response to that attack must remain within the framework of international law. The thesis further argues that, as a result of the invasion, the UN and its SC needed radical change in its structure and rules.

1.5 The Research raises the following Questions

Were there peaceful means available to the US-UK to settle their dispute with Iraq, and, if so, why had they not used these methods to settle this dispute? The second question is under what circumstances does a state have the right to use force in its international relations? Is the use of force legally permissible? If so, had the US-UK met these criteria in their war on Iraq? Is preventive self-defence as provided in the *NSS* lawful under current international law rules? Is there a right of anticipatory self-defence?

The hardest question is whether or not the US-UK was legally justified, following the 11 September 2001 incidents, to use force in their 'war against terror'? Could their actions be considered as armed reprisals? What is an 'armed attacked' and can such an attack be carried out by non-state actors? How has the war been conducted? That is to say, was the conduct of the war lawful? A further question is should the US-UK be considered as occupying powers in Iraq? If so, what are their obligations and responsibilities under the rules of the law of war?

This leads to the important question of what is the status of Iraqi prisoners of the war in international law and to what extent have the laws of war been breached in this

war? Do the existing UN resolutions give the US-UK legal authority to use force against Iraq? Is this war related to Iraq's failure to adhere to the SC's imposed sanctions to scrap its WMD and chemical weapons? Would a 'material breach' and 'serious consequences' in Resolution 1441(2002) allow the US-UK to use unilateral military action against Iraq?

Finally, was the invasion of Iraq a humanitarian intervention? And if so does this provide legal justification. What is the responsibility of Kuwait in supporting the invasion without the UN's authorisation in Islamic international law? These are the general questions that this thesis seeks to explore. With these questions in mind, this thesis endeavours to make some important discoveries based on the principles of both international law and Islamic international law.

1.6 Structure of the Thesis

The thesis is not intended to provide exhaustive coverage of all aspects of the Iraq invasion. Inevitably many areas are not included, intended to provide a firm foundation for future research study. Therefore, the thesis is divided into three parts and consists of nine chapters, each with an individual subject. It is important to note that, although for the purpose of convenience and structure each Chapter is dealt with under a separate title, the aim is to provide an overview of the UN law and Islamic international law in the context of the war on Iraq. Chapter One is an introduction where preliminary considerations are outlined; the objectives of this study, research aims and methodology, research questions and the structure of the thesis.

In examining the legality of the US-UK's justifications of their invasion of Iraq in March 2003, the thesis discusses, in Chapter Two, a brief descriptive survey of the historical and analytical examination of the principles of peaceful settlement of international disputes and the non-use of force in international relations. To this end, it examines dispute resolution and the use of force pre-Hague, the relevant provisions of The Hague Peace Conventions of 1899 and 1907 that govern the peaceful settlement of disputes and the use of force, the history of the League of Nations: its effects and shortcomings, and the UN system for dispute settlement and the non-use of force in international relations.

Chapter Three focuses on the origins of the dispute between the US-UK and Iraq. It examines briefly the history of Iraq and its place in the region and international community. It also provides an introduction and a brief historical background of the grounds of the dispute between Iraq and the US-UK. This includes Iraq's invasion of Kuwait, and SC Resolutions 678, 687 and 1441.

Chapter Four turns to examine methods of resolving disputes under the UN Charter. The aim of this Chapter is to produce an exclusively legal analysis of different legal and non-legal settlement methods embodied in the UN Charter to give a clear view of the UN dispute settlement system and its function. It seeks to achieve a balance between an examination of theory and practical issues. This Chapter provides reviews of the literature on alternative dispute resolution and the use of force, the nature and scope of legal settlement methods.

Chapter Four also examines Article 2(3) of the UN Charter and the UN dispute resolution machinery, and to this end examines the relevant provisions of the UN Charter on the role of the GA and SC on settlement of disputes and the use of force. Building on these basic principles, it examines in detail Article 33(1) of the UN Charter and the framework of legal and non-legal settlement. The thesis here is designed to provide an overview of international arbitration as an effective means of settling international disputes. The thesis is particularly concerned with the theory, institutional structure and processes by which international arbitration comes into being: the legal framework, within which disputes between states are resolved, and efforts to obtain uniform arbitration rules through multilateral treaties to facilitate effectiveness of international arbitration.

Chapter Five provides an analysis of the concept of peaceful settlement and the use of force in Islamic international law. In this Chapter the thesis examines the use of force in the Glorious Qur'an and Sunn`ah, the doctrine of *Jihad*; and how it would attempt to accomplish what the West and international community has generally failed to resolve peacefully: the problem of the Iraqi regime; and to highlight the Islamic legal principles in the context of the role of Kuwait and other Gulf states in supporting the US-UK's action against Iraq. To this end, it examines the role and responsibility of the Arab League in the settlement of the dispute between Iraq and Kuwait according to the norms of Islamic international law and the principles of the Arab League Charter.

Chapter Six focuses primarily on the legal aspects of the US's war on terror. To this end, it discusses the problem of the legitimacy of the manner in which the US has

conducted its war on terror. The importance of this Chapter is that the thesis attempts to show how the US conducted its war on terror outside of international law. It provides a review of the literature on the legality of the use of force. It examines Articles 2(4) and 51 of the UN Charter and its exceptions. It also gives brief details of the 11 September incidents, the legality of the use of force in response to them, and the meaning and definition of an armed attack. This leads to a discussion of the extent to which the US is bound in its war on terror by the provisions of the UN Charter and the basic principles of international law.

The thesis, in this respect, argues that the prohibition on the use of force is an international obligation equally applicable to all members of the UN. It points out that the unilateral use of force by the US on its pre-emptive war will lead to legalisation of the violations of the norms of international law by powerful states. This in turn makes the UN and the principles of international law irrelevant and ineffective.

Chapter Seven turns to explore the question of the legality of Operation Iraqi Freedom, which led to the invasion of Iraq, and whether the US-UK's claims were legally justified under existing UN resolutions. It focuses on the legal aspects of the invasion in general and the issue of the use of force without UN resolution in particular. This Chapter moves a step further, and aims at establishing whether the Iraq invasion finds support in international law in the light of the US's case for the war. Thus, it examines the US's legal justification for the Iraq invasion under international law. To this end, it examines the invasion using the facts to illustrate the distinction between lawful and unlawful uses of force. It focuses more on the US's main arguments for war.

Chapter Seven also discusses the key points in the US Secretary of State, Colin Powell's speech before the SC on 5 February 2003, which stated that Iraq was: hiding prohibited equipment; attempting to thwart inspection; supported terrorists, and that there was a direct link between Saddam's regime and Al-Qaeda; and was continuing to develop biological, chemical, nuclear weapons and WMD. Furthermore, Iraq did not meet its obligations under Resolution 1441(2002) to provide a comprehensive list of scientists associated with its WMD programs. In other words, the thesis discusses two main arguments that the US used to justify pre-emptive action against Iraq: the alleged link between Iraq's regime and Al-Qaeda and the non-compliance of Saddam's regime with previous UN Resolutions, together with another allegation of possession of WMD.

Chapter Eight examines the UK's legal justification for the Iraq invasion under international law. In this context, on 24 September 2002, the British Prime Minister, released a dossier, which his government said contained evidence and the legal basis to justify their use of force against Iraq by arguing that Iraq has at present: 1- the capability to produce chemical agents mustard gas, sarin, cyclosarin and VX and biological agents anthrax, botulinum toxin, aflatoxin and ricin; 2- up to 20 al-Hussein missiles, with a 650 km range, the warheads of which carry chemical and biological agents; 3- at least 50 al-Samoud liquid propellant missiles, the range of which is thought to be up to 200 km; 4- the capacity to deploy some chemical and biological weapons within 45 minutes; 5- mobile laboratories for producing biological warfare agents; 6- expertise and data to make nuclear weapons. The UK also alleged that Saddam's regime was tied with Al-Qaeda as well as other international terrorist organisations.

Furthermore, the UK claimed Iraq was at that time seeking: 1- nuclear weapons. 2- longer range ballistic missiles with a reach of 1000km, and a new engine testing stand had been built for this purpose; 3- 'Front companies in third countries' were seeking propellant chemicals for ballistic missiles, in breach of the UN embargo, as well as uranium from Africa; 4- to modify L-29 remote-piloted jet trainer aircraft to deliver chemical and biological agents over a larger area. 5- Iraq had persistently failed to co-operate with the UN weapons inspection programme, so violating a large number of UNSC Resolutions.

The chapter examines the definition of an act of aggression, and questions whether the US-UK had the right to wage war on Iraq, or whether they should have used other peaceful means in the UN's dispute settlement system, and whether there is a legal definition of the term 'threat to international peace and security', who determines the existence of such a threat, and the issues of the real objects and motives behind the war. Finally, it deals with the issue of the legality of interventions and the overthrowing of Iraqi regime by military force.

Chapter Nine is the conclusion of this study. The conclusions drawn are mainly critical and designed to shed some light on the implications of the Iraq invasion for future action. The need for radical change in the legal system of the UN are discussed in the light of the US war on terror and particularly its war on Iraq, which is a major cause of political instability in the world. The conclusion recaps the major legal points, propositions and political issues, which have arisen throughout the thesis including the instability and uncertainty of international law and the legal system of the UN due to the US's hegemony since the end of the Cold War.

This study, by examining the relevant principles of these two laws, concludes that the use of force was not an appropriate and effective means to disarm the Iraqi regime, and the reasons given by the US-UK to invade Iraq have proven to be completely false, and have failed to meet the test of legality under international law. Kuwait, in facilitating the invasion, violated Islamic international law, the League of Arab Pact and international laws. The doctrine of preventive self-defence as spelled out in the *NSS* is unacceptable under current international law.

PART ONE

INTRODUCTION TO THE HISTORY OF THE PRINCIPALS OF PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES AND THE USE OF FORCE

CHAPTER TWO

AN HISTORICAL AND ANALYTICAL EXAMINATION OF THE PRINCIPLES OF PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES AND THE USE OF FORCE

2.1 Introductory Remarks

This Chapter discusses whether the principles of peaceful settlement of international disputes and the non-use of force in international relations constitute a historical international obligation that is applicable to all members of the UN. In the process of examining this, reference has been made to The Hague Conventions of 1899 and 1907 and to the UN Charter. The answer to the question of this Chapter is crucial to this thesis because those norms are longstanding and fundamental principles of both international law and customary international law; the way the US-UK have recently acted in their war on Iraq, which is the central interest of this thesis, is considered to conflict with those norms.

A further subject of particular importance to be discussed in this Chapter is the issue of a critical evaluation of the UN system of peaceful settlement of international disputes in the light of the US-UK's invasion of Iraq in March 2003. A variety of theoretical arguments has been made for and against this system and its procedures since the UN Charter created a new policing power in the function of the SC, alternative to the old war ideas. In its unilateral military action against Iraq, the US-UK has relied on the implied authorisation argument, preventing the SC from exercising its legal rights under the UN Charter. To this end, a starting point is a historical examination of these principles in Part One, which consists of two chapters.

In Chapter Two, the thesis examines the origin and the historical background behind the development of the UN's system of peaceful settlement of international disputes and the use of force.

In this context, this part is divided into four sections; the thesis examines international dispute resolution pre The Hague, then The Hague period and its effects and shortcomings. It then examines the League of Nations, its effects and shortcomings, followed by an examination of the UN Charter, in particular Chapters VI and VII. Within the limitations of this study, the analysis concentrates on and describes all peaceful settlement means and procedures that are available to the US-UK to peacefully settle their differences with the Iraqi regime.

Thus, this historical study examines the theoretical bases and all factors of influence in the principle of peaceful settlement of international disputes before the First World War (WWI), during the period of the League of Nations, the Second World War (WWII) and the present context in Articles 2(3), 2(4) and 33(1) of the UN Charter. This is so because the thesis supports the argument that the UN system of peaceful settlement of disputes and the legal prohibition of the use of force could provide peaceful settlement of the problem of the Iraqi regime.

The prohibition of resorting to war and the use of force to settle international disputes is one of the important aims that civilised nations have tried to achieve since the end of the nineteenth Century.[47]The ultimate goal of these aims is to find multilateral bodies to provide effective alternatives to wars by settling international

[47] Even Luard, *The History of the United Nations*, vol. 1, *The Years of Western Domination, (1945-1955)* (New York, the Macmillan Press Ltd, 1982).

conflicts peacefully. Preliminarily, it can be noted that international armed conflicts are the most direct challenges to the stability of the international community. To examine the development of the principle of peaceful settlement of international disputes, it is imperative to discuss its historical development from the Hague Conventions to its present context as in Article 2(3) of the UN Charter.

2.2 Dispute Resolution and the Use of Force pre The Hague

In the late nineteenth Century, peace movements were growing among nations.[48]This worldwide movement encouraged states to find permanent institutions with effective mechanisms to prevent conflicts from escalating and to resolve international disputes peacefully.

To review the history of international dispute resolution one has, therefore, to consider at the same time the development and process of this principle pre the Hague Conventions. In no treaty between states before WWI was there an article that prohibited the threat or use of force. Thus, states were under no obligation to reach a peaceful settlement of disputes. Until the end of WWI, states considered the waging of wars as a sovereign right to protect their national policy and interests. Therefore the use of force to settle differences was lawful.

The main area of interest in treaties before The Hague Conventions 1899 and 1907 was the regulating of issues that resulted from wars, such as how to treat a wounded person and how to deal with their weapons. After 1899, prevention of war, prohibition of the use of force in international relations and peaceful settlement of

[48] Ibid.

international disputes became an objective and one of the main purposes of international treaties.

2.2.1 Treaty of Westphalia 1648

For many centuries states used to resort to the international peace conferences system, especially in the aftermath of wars, seeking an agreement or peace treaty to address current situations. Several conferences within Europe were called to settle the outcome of wars, for example, the Conference of Westphalia of 1648,[49]and that of Utrecht (1713-14).[50]All these peace conferences were regarded as a contribution towards a legalized principle of peaceful settlement of international disputes.

2.2.2 The Concept of Mixed Commissions: the Jay Treaty 1794

Arbitration was the first and best known peaceful means to settle international disputes. The notion of arbitration as a successful peaceful means to settle international disputes remained eventually the same from ancient Greece through the practice of city-states to medieval Europe.[51]For many years before the two Hague Conventions, states referred their disputes to arbitration.[52]Thus, it is quite easy to trace the beginning of international arbitration.[53]The modern international arbitration trend dates from the Jay Treaty of Amity, Commerce and Navigation of 19 November

---

[49] Leo Gross, 'The Peace of Westphalia 1648-1948', 42 *AJIL* 20 (1948)

[50] Gorge Abi-Saab, *The Concept of International Organisation*, (Paris, United Nations Educational, Scientific and Cultural Organisation, 1981).

[51] For a review of the history of arbitration in medieval Europe see Louis B. Sohn, *Settlement of Disputes Relating to Interpretation and Application of Treaties*, Rdc vol.150 (1975) II.

[52] J. H. Ralston, *The Law and Procedure on International Tribunals* (1926), Suppl, to 1926 (rev.ed. 1936).

[53] J. H. Ralston, *International Arbitration from Athens to Locarno* (1929), see also, Louis B. Sohn, *The Function of International Arbitration Today*, Rdc vol.108 (1963)I.

1794 between the US and Britain.[54] In the Jay Treaty, the two parties agreed to settle their differences on commerce and navigation issues by arbitration.[55]

2.2.3 The Treaty of Ghent 1814

The successful practice of the mixed commissions[56]that deployed the Jay Treaty has also been used in the Treaty of Ghent of 1814 on a boundary dispute between the US and Britain as well as in the Alabama Claims Arbitration of 1871-72.[57]

2.2.4 The Vienna Settlement 1815

The Vienna settlement of 1815 extended the historical aim of international peace conferences from peaceful settlement to maintaining international peace and security. The Vienna Conference System was a step towards the Concert of Europe system. It is essential to mention that this new technique of diplomatic settlement through the system of international conferences constituted a significant development of the European system of peaceful settlement of international disputes.

2.2.5 Alabama Claims Arbitration 1871-72

This dispute between the US and Britain over the US's claim that permitting an Alabama ship to be built in Britain was a breach of British neutrality during the American Civil War. The Alabama Claims Arbitration Tribunal consisted of five members with each party appointing one commissioner and the other three neutral

---

[54] A.M. Stuyt, *Survey of International Arbitrations 1794-1989*, 3rd edn., (Dordrecht, Martinus Nijhoff, 1990)1-4; John O'Brien, *International Law*, (Cavendish Publishing Ltd, London, 2002).

[55] This Treaty named after the negotiator the Chief Justice of the US and its former Secretary of State John Jay. For the texts of this Treaty *see* J.B. Moore, *History and Digest of International Arbitration to which the United Nations has been a Party*, vol. 1. (Washington, 1898).

[56] The meaning of the phrase 'mixed commission' indicates that the commission is composed of members of more than one state.

[57] 'Alabama Claims Arbitration of 1872' G.F. *de Martens, Nouveall General de Traites,* I st Series, 1843-1875, XX, 698.

members appointed by three neutral states namely, the King of Italy, the Swiss Confederation President and the Brazilian Emperor. The Alabama Arbitration Tribunal decided by four votes to one in favour of the United States, and ordered Great Britain to pay compensation to the United States in the sum of $15,500.00. This award was complied with by Great Britain.[58] Thus, the award of the Alabama Claims Arbitration may be considered a foundation stone in the future of modern international arbitration.

Indeed, the Jay Treaty,[59]the Alabama Claims Arbitrations and the Ghent Treaty not only established commissions to decide on the issues between the parties but they also established a set of rules of procedures with different missions to settle disputes.[60] According to Simpson, the practice of the Alabama Claims Arbitration 'gave the process of Arbitration a new impetus and introduced a number of rules and practices which were gradually to command general acceptance.'[61]

---

[58] 'The Alabama Award', reproduced in A.Pradelle, N. Polities, vol.11 *Recueil des Arbitrages Internation aux*, 2nd edn., (Paris, 1957-1964)889.

[59] In the Jay Treaty the United States and Great Britain agreed to set up three mixed commissions composed of equal numbers with each dealing with a certain type of dispute existing between both parties. The idea of mixed commissions deployed in this arbitration is that each party to the dispute is to appoint one commissioner and the third commissioner is to be appointed by these two commissioners. The first commission was set up according to Article V of the Jay Treaty composed of three members to deal with the dispute on the St. Croix River boundary. The second commission was set up according to Article VI of the Treaty composed of five members to deal with the British nationals claims against the United States nationals and inhabitants. The third commission was set up according to Article VII of the Treaty composed of five members to deal with the United States nationals' claims due to the illegal action of the Great Britain's seizure of the United States Ships and cargoes during the war between Great Britain and France. The second and the third commissions followed the same procedure of the first commission in appointment of the commissioners; despite the fact that the provisions of Jay Treaty ignored the requirement of at least one of these commissions having to be neutral. But the works of these commissions were to successfully settle the disputes. See, Jean-Pierre Cot, *International Conciliation* (Europa Publications) (transl by R Myers in 1972)2.

[60] M.O. Hudson, *International Tribunals: Past and Future,* (Washington, 1944).

[61] J. L. Simpson, & Fox, *International Arbitration: Law and Practice*, (Stevens & Son, London, 1959).

The Treaty of 1920 settled a dispute between Sweden and Chile. This Treaty is considered to be the first Conciliation Treaty.[62] Reference should also be made here to the fact that Chile is one of the states that recognised arbitration as a successful and effective means for peaceful settlement of disputes.[63] This method has been deployed in different kinds of disputes, with the UK in 1883 and again in 1893, with Haiti in 1890 and with Nicaragua in 1895.[64] This process of mediation was used successfully for many years, but it is not the same as arbitration. This can be seen in the Peace of Westphalia of 1648,[65] and in the practice of Venice and the Pope mediating between France and the Roman Empire.[66]

2.2.6 The 1856 Paris Conference

The 1856 Paris Conference could be considered a main example of these conferences. This conference resulted in the Paris Treaty of 1856, which constituted a landmark in the history of multilateral treaties. The real value of these treaties is that they contained all basic principles that govern international law. Thus, they could be considered an important source of international law. However, within the framework of international conferences, it seems clear that the performance of these conferences did not establish a permanent international organization in the legal terms of international law.

---

[62] The idea of Conciliation as peaceful means is that the dispute is settled on the basis of involvement of a third party who's main role is to ascertain the facts of the dispute and provide acceptable (but non-binding) solutions to the dispute.

[63] For example in 1883 and 1893 Chile set up, with the United Kingdom, mixed commissions to settle different disputes between the two countries.

[64] Stuyt, n 54 above.

[65] Amos S. Hershey, 'The History of International Relations during Antiquity and the Middle Ages', 5 *AJIL* (1911) 901.

[66] Princen. T., 'International Mediation- The View from the Vatican: Lessons from Mediating the Beagle Channel Dispute', 3 *Negotiation Journal (*1987)347-66. *See* also Manfred Lachs. M., *International Law, Mediation, and Negotiation, multilateral Negotiation and Mediation: Instruments and Methods,* (1985), 183-95.

2.3 The Use of Force in The Hague Convention 1899 for Pacific Settlement of Disputes: Its Effects and Shortcomings

The main object of The Hague Convention for the Pacific Settlement of International Disputes of 1899 was to seek effective methods to settle international disputes peacefully. Tsar Nicholas II of Russia called for an international conference to end the use of force, and to find a means to prevent and settle international disputes. The main aims of The Hague Conference of 1899 were to further the maintenance of peace by avoiding armed conflicts, and to establish the principle of pacific settlement of international disputes.

The Tsar's proposals were that the participants at the conference must accept only peaceful methods to settle international disputes, for the purpose of insuring the benefit of a real and durable peace to all peoples, and above all of putting an end to the progressive developments of nations' armaments industries. The most important point here is that the Tsar's proposal in respect of ending the development and proliferation of armaments failed.

In this Conference, the 1899 Hague Convention for the Pacific Settlement of International Disputes was adopted. All great powers at the time attended this Conference, including Russia, the US, the UK, the Netherlands, France, as well as smaller States of Europe, some Asian states and Mexico. This convention was an important step towards the promotion of peaceful means that internationalized and legalized the rules and procedures of settlement of international disputes. It was

drafted by the Inter-parliamentary Union and International Law Association and was ratified by all the powerful states of that time.[67]

Clearly, these aims can be seen from Articles 1 and 2 of the Convention. Article 1 states: 'With a view to obviating, as far as possible, recourse to force in the relations between Sates, the Signatory Powers agree to use their best effort to insure the pacific settlement of international differences.' Article 2 provides that: 'In case of serious disagreement of conflicts, before an appeal to arms, the Signatory Power agrees...' [68]

State Members to the 1899 Conference realised that the only alternative to resorting to the use of force in international conflicts is to establish acceptable international rules and procedures for peaceful settlement of international disputes. In this Conference, Russia proposed the need to establish international commissions of inquiry to settle the disputes between the US and Spain. The proposal was accepted, and a Committee of Inquiry was established in 1904 under Article 9-14 of the 1899 Convention. The successful practice of the Committee of Inquiry and Fact Finding Mission settled the dispute between Russia and the UK over the UK's claims that Russia had sunk its trawlers. [69]

2.3.1 The Permanent Court of Arbitration (PCA) of 1900 and the Dogger Bank Inquiry of 1905

The 1899 Convention recognized arbitration as the main subject and an effective means to settle international disputes. Article 16 states:

---

[67]Report of a Study Group of the David Davies Memorial Institute of International Studies, *International Disputes the Legal Aspects* (London, Europa Publications)103-05.

[68] For the text of the 1899 Convention, *see* M.Marcel Deltenre, *General Collection of the Laws and Customs of War, Text and Comment*, (Bruxelles, 1943).

[69] Charles Cheney Hyde, 'The Place of Commission of Inquiry and Conciliation Treaties in the Peaceful Settlement of International Disputes' 10 *British Yearbook of International Law*, (1929), 96-110.

> In questions of a legal nature and especially in the interpretation or application of international Convention, arbitration is recognized by the Signatory Powers as the most effective, and at the same time as the most equitable means of settling disputes which diplomacy has failed to settle.

Other non-legal peaceful means such as good offices, inquiry and mediation were selected as peaceful means. Inquiry had been defined in The Hague Conventions. The classic case for how successfully inquiry could be used as a peaceful means to settle international disputes is the case of Dogger Bank in 1905 between Russia and Britain.[70]This marked a major step for international settlement of disputes and development of international law in general.[71]

Since the adoption of The Hague Conventions all peaceful methods have been used to settle disputes between states. This achievement is a direct result of long efforts of developing the ideas and demands of the need to find alternatives to the use of force in international relations. The Hague system codified procedures for peaceful settlement of international disputes that are in response to international demands for something to be done to prevent wars, maintain peace and security and to put an end to aggression involving the use of force by states in their international relations.

---

[70] Richard Ned Lebow, 'Accidents and Crises: the Dogger Bank Affair' 31 *Naval War College Review*, (1978) 66-75. Other notable inquiries were in 1912 in *The Tavignano* (France v Italy), between Germany and Spain in 1918 in *The Tiger* and again in 1922 between Germany and Netherlands in *The Tubantia.*

[71] M. A. Nissim Bar-Yaacov, *The Handling of International Disputes by Means of Inquiry*, the Royal Institute of International Affairs, (Oxford, Oxford University Press, 1974)

The Hague Peace Conferences of 1899 and 1907 attempted to make great progress in prohibiting the use of force in international relations, and to oblige states to settle their differences by peaceful means. However, in spite of this, states chose not to resort to the peaceful methods provided by The Hague Conventions. It might be argued that this is due to the fact that the procedure to submit such disputes to these methods was left to the choice of states. In addition to other elements, this was one of the weaknesses of The Hague's system.

As already noted, under the 1899 Convention, arbitration was regarded as one of the peaceful methods to settle international disputes. It is one of the main effective methods that played a primary role in developing the principle of peaceful settlement of international disputes. The Preamble of the 1899 Convention emphasised:

> The parties animated by a strong desire to work for the maintenance of general peace; resolved to promote by their best efforts the friendly settlement of international disputes; recognizing the solidarity uniting the members of the society of civilized nations; desirous of extending the empire of law, and of strengthening the appreciation of international justice; convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of the independent power, will contribute effectively to this result; having regard to the advantages attending the general and regular organization of the procedure of arbitration.[72]

[72] The Preamble of the The Hague Convention of 1899.

If we look back into the preamble and Article 1 of the 1899 Convention, it can be seen that the 'Signatory Powers' recognised the importance of a 'permanent institution' designed for the "maintenance of general peace" and to resolve their disputes peacefully. For this hope to be fulfilled, the Permanent Court of Arbitration (PCA) was created in 1900 under Article 20 of the 1899 Convention as an international 'permanent' machinery set up to settle international differences between states with a binding award. The PCA began to operate only in 1902.

Under the structure of this 'permanent court' there is an International Bureau and an Administrative Council. In 1963 the PCA also adopted the 'Rules of Arbitration and Conciliation for Settlement of International Disputes between Two Parties of which only one is a State'. The experiences and practice of the so-called 'permanent court' proved to be a great achievement of the 1899 Convention.[73]

The most significant failure of the Convention in this regard is that it did not impose any kind of an international obligation on state members to submit their differences to arbitration. However, to govern the procedures and conduct of arbitration, a Permanent Bureau was created to play the role of secretariat with a set of rules. But no states were bound to resort to the PCA rules as mentioned previously. However, with all its weaknesses and failures, the PCA reflects the efforts of the long historical hopes to set up a permanent institution to settle differences between states peacefully.

[73] The text of these rules is reprinted in 57 *AJIL*, (1963), 500-521.

2.4 A Brief History of the Use of Force in The Hague Convention for Pacific Settlement of International Disputes 1907

The 1907 Hague Convention replaced the 1899 Convention. Unlike the 1899 Convention, the 1907 Convention was not ratified by all the powerful states at the time. For example, only in 1970 the UK and most of the Commonwealth countries ratified the Convention. But this Convention worked towards institutionalizing the practice of arbitral tribunals and strengthened the provisions that related to international arbitration. In this regard it did not make any changes to the institutions and rules established by the 1899 Convention, namely the PCA and rules of procedures that govern arbitration and conciliation.[74]

Article 1 of The Hague Convention of 1907 states: 'With a view to avoiding as far as possible recourse to force in the relations between states, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international disputes.'[75]The above Article shows that the main aim of the 1907 Convention has so far been to achieve avoidance of wars and using the system of pacific settlement of international disputes. It might be argued that The Hague Conventions 1907 did not establish a compulsory system for arbitration, nor did it prohibit the use of war to settle international disputes. But on the other hand it tried to establish an arbitration machinery for states if they 'decided to use' this machinery. It also tried to limit the use of force and states' attempt to resolve international disputes through violence.

---

[74] Both versions of the Hague Conventions are reprinted in J. B. Scorrt, ed., *The Hague Conventions and Declarations of 1899 and 1907*, (1915) 4.
[75] Ibid.

2.4.1 The Concept of Commission of Inquiry

The 1907 Convention provided a peaceful means to settle disputes by establishing a Commission of Inquiry. Reference must be made here to the Convention allowing the parties a wide degree of freedom to set up the rules of procedures that govern the conduct of its work and the seat of the Inquiry. It provides that if there is no agreement between the parties on the seat of the commission, the seat of such commission will be at The Hague.[76]

Among other important developments in the practice of international arbitration as a peaceful means to settle international disputes previous to The Hague Conventions, which deserve to be noticed here, is the Mexican Claims Commissions in the 1900s. These commissions were set up to consider a number of foreign claims as a result of the Mexican revolution.[77]

Under Article 15 the International Bureau of the PCA acts as registry for the commission, which sits at The Hague. The offices and staff of the Bureau 'shall be at the disposal of the Contracting Powers for the use of the Commission of Inquiry.' The main problems that the Hague Conventions failed to resolve were: the need to establish a permanent court and to create an effective system of arbitration based on the idea of a compulsory obligation of states to settle their differences by arbitration.[78]

---

[76] Articles 9-36 of the Hague Convention for the Pacific Settlement of International Disputes of 1907 provides for the establishment of international commissions of inquiry. See M. A. Nissim Bar-Yaacov *The Handling of International Disputes by Means of Inquiry*, (Oxford, Oxford University Press, 1974).

[77] These countries, that foreign claims belong to, were the United States, Great Britain, Germany, France and Italy. For a review of these commissions see, Feller A. H, *The Mexican Claims Commissions (1923-1934)*, (New York, 1935).

[78] James B. Scott, ed., *The Hague Conventions and Declarations of 1899 and 1907*, (New York, 1915).

On the other hand, the great value of The Hague Conventions was that they settled a number of serious disputes among powerful states of the time. Among the cases that were settled through recourse to the procedure of PCA, which was founded by the Hague 1899 Convention, mention may be made of a case in 1913 concerning the seizure of vessels in Carthage and Manouba, in 1914 concerning the Timor Frontiers and in 1928 in the dispute over the sovereignty of the Islands of Palms.[79]

It must be noted that the greatest contribution of The Hague Conventions to the principles of peaceful settlement of international disputes, the non-use of force in international relations and to international law was their orientation towards universality of these principles.[80]Under these achievements, reference must also be made to the growth of the role of arbitration as an effective means to settle international disputes. In this regard it is essential to mention that during the long history of international arbitration there was no case of an arbitration award that later developed into a cause of war.

2.5 The League of Nations: its Effects and Shortcomings

To make an effective study of the League of Nations dispute settlement system as a whole, in terms of its aims, achievements, its contributions to the principle of the peaceful settlement of disputes, its success to maintain peace or its failure to do so,

[79] Ibid.

[80] George W. Scott, 'Hague Convention Restricting the Use of Force to Recover on Contract Claims' 2 *AJIL* 78(1908).

one must look at the efforts that were made to put an end to wars as a painful lesson that nations had learned from WWI.[81]

There had been growing demands for the creation of a real organized system of peaceful settlement of international disputes to lessen the danger of wars and to put an end to the historical idea of the absolute national sovereignty of states.[82] Although a major concern with this conception is that it may be used as an excuse for a narrow national policy. Based only on this misconception and historical belief, the results indicate that powerful states always refuse all proposals for compulsory submitting of their differences to arbitration.[83]

Many states learned different lessons from the WWI. First, in order to prevent wars, they urgently needed an internationally effective system. Second, to find such a system, states must provide and support this system with a united peace keeping force. Reference must be made to the contributions of a wide growth of international peace movements, including internationalism and pacifism movements, in supporting these goals. Nonetheless, it is unarguable that many positive developments in international law developed from the practices of the 'Concert of Europe'. This led to the widespread belief that nations must find ways to outlaw wars.

---

[81] For some of the views concerning these efforts see John F. Williams, *Chapters on Current International Law and the League of Nations* (1929); George G. Wilson, *The First Year of the League of Nations,* (Boston, 1921), Alfred Zimmern, *The League of Nations and the Rule of Law 1918-1935* (1939); George W. Scott, *The Rise and Fall of the League of Nations*, (London, Hutchinson and Co Publisher Ltd, 1973).

[82] Jan Christian Sumuts, *The League of Nations: A Practical Suggestion*, (London, 1918); John F. Williams, *The Covenant of the League of Nations and War*, 5 *Cambridge Law Journal* (1933)1.

[83] John S. Bassett, *The League of Nations: A Charter in World Politics*, (New York, 1930).

2.5.1 The Paris Conference 1919

The Congress of Vienna of 1815, the outbreak of WWI in 1914 and the Paris Peace Conference of 1919[84]played a prominent role in creation of the League of Nations as an international organisation.[85]The main sources of the League of Nations' dispute resolution system were borrowed from The Hague system.[86]

The idea of a League of Nations as an international organization was a natural consequence of the realization that states need to consider wide co-operation in all fields to achieve international peace and security for mutual interests. Another source of the League of Nations was the international bodies founded since the nineteenth century to address international problems.[87]An example of this is the Rhine Commission created by the Congress of Vienna of 1815 and the Danube Commission of 1848.[88] However, as mentioned before, despite all the efforts that were made to promote the application of the idea of international organizations and unions, their work and performance, they were not effective, due to the historical problem of the sovereignty of the state.

---

[84] See, James Brierly, 'Some Implications of the Pact of Paris', 10 *BYBIL* (1929) 208; David Hunter Miller, *The Peace Pact of Paris: Study of the Briand-Kellogg Treaty* (New York, The Knicker Bockers Press, 1928).

[85] Quincy Wright, 'The Meaning of the Pact of Paris' 29 *AJIL* 39 (1933) (cited as The meaning of the Pact of Paris)

[86] George W. Scott, *The Rise and Fall of the League of Nations,* (Hutchinson & Co Publishers Ltd, London, 1973).

[87] James T. Shotwell, 'The Pact of Paris with Historical Commentary' 243 *International Conciliation* (November 1928) 445.

[88]Other classic examples of International organizations were the International Telegraphic Union of 1865; the Universal Postal Union of 1874; and the Pan American Union of 1890 and other similar bodies dealing with a wide range of common interests and problems such as the International Institute of Agriculture of 1905 in Rome and in 1907 the International Health Office in Paris.

To this end, the evolution and history of the League of Nations can be divided into three phases. According to Walters[89]the first phase covers three or more centuries, from the time when Europe, abandoning the forms of unity symbolized by the Holy Roman Empire and the Catholic Church, shaped itself into a number of independent national states, down to the end of Napoleonic wars. Walters considered the second phase to cover exactly one century, from the Congress of Vienna to the outbreak of WWI, and the third a period of less than five years, from August 1914 to the Conference of Paris.

In considering the arguments in favour of the League of Nations Walters observed that it was: 'the first effective move towards the organization of a world-wide political and social order, in which the common interests of humanity could be seen and served across the barriers of national tradition, racial difference, or geographical separation'[90]

2.5.2 The Role of the US in the Creation of the League of Nations

The Covenant of the League of Nations was adopted on 28 April 1919.[91]At the beginning, President Wilson of America played a great part in promoting the creation of the League of Nations.[92]He laid down the first draft of the Covenant before the Paris Conference of 1919 that brought the League of Nations into being.[93] Unfortunately, he was not able to carry on his commitment to establish the general association of nations that he had advocated for long.[94] America was outside the

---

[89] Walters F. P, A *History of the League of Nations*, 2 Vols, (London, Oxford University Press, 1952).
[90] Ibid.
[91] John F. Williams, *Some Aspects of the League of Nations* (1934).
[92] Denna F. Fleming, *The United States and the League of Nations, 1918-1938*, 3rd edn., (New York, 1968).
[93] David Hunter Miller, *The Drafting of the Covenant*, (New York, 1928).
[94] See D. Moynihan, *On the Law of Nations*, (Harvard,1990); John F. Whitton, 'The Covenant of the League of Nations and War' 5 *Cambridge Journal* (1933)1; Humphrey Waldock, ed., James L. Brierly,

League of Nations due to its internal political differences promoting isolationism. The absence of America from the League made it possible for many states whose interest's conflict with the League not to comply with the provisions of the Covenant.

Another major weakness of the League lay in the fact that it had been made possible for its Members to withdraw from the League at any time by giving withdrawal notice effective after two years. Many original member states withdrew from the Covenant including Japan, the USSR and Italy.[95]

In the sense of the political history of the war and peaceful settlement of the disputes, the most important aspect in this regard is the need of a political will to prevent wars. On 5 January 1918, Lloyd George addressed the Trade Unions of Great Britain and stated that 'a territorial settlement must be secured, based on the right of self-determination or the consent of government and lastly, we must seek by the creation of some international organization to limit the burden of armaments and diminish the danger of war'.[96]

2.5.3 The Invasion of Ethiopia by Italy and its Consequences

Three days after Lloyd George's speech, President Wilson, in his famous Fourteen Points address to the Congress, stated his reasons and aims of America's War against Germany in 1917, including the point that '(6) a general association of nations must be formed under specific Covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike'.

The Law of Nations, 6thedn., (Oxford,1963); Lassa Oppenheim, *The League of Nations and its Problems,*(1919).

[95] Loe Gross, 'Was the Soviet Union Expelled from the League of Nations?' 39 *AJIL* (1945) 35.

[96] Margaret Macmillan, *Peacemakers The Paris Conference of 1919 and its attempt to End War,* (London, John Murrag Publishers, 2002).

The League of Nations as a first instutionalized system based in Geneva played a prominent part in steering nations towards the acceptance of the need for extraordinary international changes in the many ways that nations act in handling their disputes, based only on their absolute sovereignty rights. Here mention must be made that the exception to this was the invasion of Ethiopia by Italy in 1935; an exception that deserves to be recorded.[97]

The Italian invasion of Ethiopia was the real test of the League's dispute settlement system; it failed to resolve the dispute.[98]Such a failure can be attributed to the simple reason that the European Members of the League did not want to go to war with Italy to enforce the provisions of the Covenant.[99]In particular Article 16 in which Members undertake and accept the obligation to take prompt action against any fellow Member going to war in violation of the Covenant.[100]

Despite the ineffectiveness of the League in settling this dispute, its contribution towards building the system of peaceful settlement of international disputes was notable.[101]Not only had the League addressed the issue of ending war, but it brought new ideas and understandings to the international community. It had addressed the consequences of civil rights and social and economic problems. An explicit example is Article 23 of the Covenant.

---

[97] Italy was an original member of the League of Nations. Ethiopia was a member of the League of Nations since September 1923. Iraq was the first Arab country to become a member of the League of Nations in October 1932. Afghanistan entered the membership of the League on September 1934 the same date of entry as that of the USSR; but by the Council Resolution of 14 December 1939 it was declared to be no longer a Member of the League.

[98] John H. Spencer, 'The Italian-Ethiopian Dispute and the League of Nations' 31 *AJIL* (1937) 614; Lassa Oppenheim, *The League of Nations and its Problems* (1919).

[99] Stern W. B, 'The Treaty Background of the Italo-Ethiopian Dispute' 30 *AJIL* (1936) 189; Winfield, P.H., 'The History of Intervention in International Law', 3 *BYBIL* (1922-1923) 130.

[100] Article 16 of the Covenant of the League of Nations.

[101] Quincy Wright, 'The Test of Aggression in the Italo-Ethiopian War' 30 *AJIL* (1936) 45.

2.5.4 The Use of Force in the Covenant of the League of Nations

For a better understanding of international disputes resolution under the Covenant of the League of Nations, reference to its relevant provisions must be made.[102] The preamble lays down the main aims and objectives of the League.[103] It starts with this phrase: the 'High Contracting Parties'. This gave the Covenant the status of a treaty in legal terms.

It seems that the main aim of the League of Nations was to achieve international peace and security. However, the important question remains how to achieve this aim? The Covenant of the League listed four ways to do so:

1. 'by the acceptance of obligations not to resort to war'[104];
2. 'by the prescription of open, just and honourable relations between nations'[105];
3. 'by the firm establishment of the understandings of international law as the actual rule of conduct among governments.'[106]; and
4. 'by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another.'[107]

---

[102]See generally, Florence Wilson, *The origins of the League of Nations Covenant,* (London, The Hogarth Press,1934); Walp Paul K, *Constitutional Development of the League of Nations*, (Kentucky, Kentucky University Press,1931); George Grafton Wilson, *The First Year of the League of Nations*, (Boston, Little Brown & Company,1921); Gilbert Murray, *From the League to UN*, (Oxford, Oxford University Press,1948); John H., Latane, *Development of the League of Nations Idea*, vol.2, (New York, The Macmillan Company,1932); Travers Twiss, 2 *The Law of Nations*, 2nd ed., (London,1875); Emerich de Vattel, *The Law of Nations* (1758), 3 *Classics of International Law* Transl. by Charles G. Fenwick, (1916).

[103]James B. Scott, 'Interpretation of Article X of the Covenant of the League of Nations' 18 *AJIL* (1924) 108.

[104] Scott, n 86 above.

[105] Ibid.

[106] Ibid.

[107] Ibid.

Article 8 is devoted to the maintenance of the peace. This Article emphasises the importance of the reduction of national armaments to the level required for national safety and the enforcement of international obligations. Article 11 deals with the prohibition of wars and the threat of war. It gave the League the right to 'take any action that may be deemed wise and effective to safeguard the peace of nations'.

Four Articles, 12-15, discuss the principle of peaceful settlement of international disputes and the means available to settle disputes. Article 12 gave the parties the freedom to submit their disputes either to arbitration or judicial settlement or inquiry by the Council; they further had agreed not to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.

Also, it seems that the League Covenant did not consider the arbitration award as a judicial decision or as a legal settlement. It makes a distinction between these two meanings, while international lawyers and scholars permanently attempt to classify arbitration award as a judicial decision.[108]Thus, referring in Article 12 to settlement of disputes by judicial decision should be linked to Article 14 that established the Permanent Court of International Justice (PCIJ).[109]

2.5.5 The Permanent Court of International Justice (PCIJ)

It should be emphasised that from the experiences of the two World Wars, the international community realised the necessity of establishing international courts to deal with the circumstances resulting from each war. Reference must be made to the

[108] John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law; Institutions and Procedures*, (Oxford, Oxford University Press, 1999).
[109] Louis B. Sohn, 'Exclusion of Political Disputes from judicial Settlement' 39 *AJIL* (1944) 694.

PCIJ established after WWI and the International Court of Justice (ICJ) founded following WWII.[110]

For the purpose of this study, attention must also be drawn to Article 22 of the Covenant of the League of Nations, which established the mandates system.[111]It might be argued that this system played an important role in the current crisis in the Middle East. The Covenant gave the reason for the mandates system as being to develop the peoples of the colonial territories that were not 'yet able to stand by themselves under the strenuous conditions of the modern world.'[112]

The only two great powers at the time – Britain and France – agreed in the Sykes-Picot Agreement of 16 May 1916[113]to divide the Arab part of the Ottoman Empire between them as areas of influence. In this context, Iraq, Transjordan (Jordan) and Palestine was yielded to Britain, while France got Syria and Lebanon. They further agreed in the San Remo Conference of 25 April 1920, to declare Iraq and Syria as mandates according to Article 22 of the Covenant of the League of Nations.

As a result of the above agreement, the territorial boundaries of the individual mandates were determined to be the respective mandatory powers. However, from an historical point of view, the idea and practice of the mandate system created many unsolved boundaries disputes. This also includes creation of Israel and the Palestinian

---

[110] Anand R. P, *International Courts and Contemporary Conflicts* (Asia Publishing House,1974).
[111] Arthur Sweetser, *The League of Nations in World Politics,* in *World Organisation: A Balance Sheet of the First Great Experiment,* A Symposium of the Institute on World Organisation 30 Washington (1942).
[112] Gilbert Murray, *From the League to UN* (Oxford, Oxford University Press,1948).
[113] Printed in J.C. Hurewitz's 'The Middle East and North Africa in World Politics, A Documentary Record', 2nd printing, 1975-79, vol.2, 62.

problem that lead to several wars.[114]These shortcomings remain as the greatest challenge that the UN is facing now.

While the League failed to prevent WWI, it resolved many disputes. These include the frontier dispute between Finland and Sweden.[115]Also, in 1925, the League settled the dispute between Greece and Bulgaria and secured withdrawal of Greek forces. Furthermore, it settled the dispute between Iraq and Turkey over Al-Mosul. In this regard, in 1934, the League sent a peace-keeping force, which led to the resolution of the territorial dispute between Colombia and Peru.[116]

Many principal lessons derived from the League's experiences were in fact written into the UN Charter.[117]The history of its dispute settlement system yielded many valuable lessons that in turn made notable contributions to the UN dispute settlement system. Thus, the principles of the non-use of force in international relations and the peaceful settlement of international disputes are common to the League of Nations Covenant and to the UN Charter.[118]

Therefore, this thesis argues that after WWI when the League of Nations was created, it was primarily concerned with military issues and the prevention of wars and violence in the world by the acceptance of obligations not to resort to war.[119]

---

[114] Thomas W.Mallison, and Sally V., *The Palestine Problem in International Law and World Order,* (London, Longman Group, 1986). See also *Palestine and Israel, a Challenge to Justice*, (Durham and London, Duke University Press, 1990).
[115] LNTS, vol. 2, 1920-1921.
[116] F.S.Northedge, *The League of Nations: its Life and Times,* (Leicester, Leicester University Press, 1986).
[117] Sabatai Rosenne, ed., *League of Nations Conference for the Codification of International Law 1930,* 4 vols. (New York, Dobbs Ferry, 1975).
[118] See for example Article 10 of the Covenant of the League of Nations and Article 2(4) of the UN Charter.
[119] Gorge Schwarzenberger, *The League of Nations and World Order*, (London, Constable & Co,1936).

After the failure of the League of Nations to prevent the outbreak of WWII, the UN was created. One of the main aims of the UN is the need to balance the power of the nations that caused wars.[120]

2.6 The United Nations' Legal Framework for Peaceful Settlement of Disputes and the Non-use of Force in International Relations

As noted above, the UN was established in 1945 after the failure of the League of Nations to prevent WWII.[121]The idea of establishing an international organisation to maintain international peace and security can be found in the words of the Atlantic Charter as a direct result of the meeting of Winston Churchill, the British Prime Minster, and Franklin Roosevelt, the President of the US, in August 1941. The main goal of this Charter was 'the establishment of a wider and permanent system of general security'.[122]This concept is also found in the Moscow Declaration when the Foreign Ministers of the three major powers at that time met in Moscow and signed this Declaration.[123]

2.6.1 The Dumbarton Oaks Proposal

In the Teheran Conference of 1943, more attention was given to the idea of the UN as an international organisation 'based on the sovereign equality of all peace-loving

---

[120] According to the preamble of the UN Charter, one of its main aims is:

> To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and...to unite our strength to maintain international peace and security, and to ensure by the acceptance of principles and the institutions of methods that armed force shall not be used, save in common interest.

[121] See Nigel D.White, *The United Nations and the Maintenance of International Peace and Security, Manchester, Manchester University Press(1990;*Derek W. Bowett, *The Law of International Institutions,*4th edn,1982; Evan Luard, *A History of the United Nations,*1982, 2 vols; Adam Roberts and Kingsbury ed., *United Nation, divided World,* 2nd edn, 1993; Christopher C. Joyner, ed., *The United Nations and International Law,* (Cambridge, Cambridge University Press, 1997); F. S. Northedge,*The League of Nations,*1986; R. Righter, *Utopia Lost, the United Nations and World Order,* (1995); Ruth B. Russell, *A History of The United Nations Charter: The Role of United States* the 194-1945, (Washington, 1958).

[122] The Atlantic Charter point 8.

[123] Those States were the USA; the UK; and the Soviet Union, and later joined by China. These four States and France are the permanent members of the Security Council of the United Nations.

states'.[124]As a product of the above conferences, the USA, Soviet Union, Britain and China met at Dumbarton Oaks in Washington where the proposal of the UN current structure was discussed.[125]Many issues remained unresolved in this Conference between the UN founders. At the Yalta Conference of February 1945 these issues were addressed with more attention paid to the trusteeship system, the permanent membership of the SC and the right of veto power.

2.6.2 San Francisco Conference on International Organisation 1945

On 25 April 1945 at San Francisco, the UN Conference on International Organisation began and ended with the signature of the UN Charter. The main aim of this new organisation is to maintain the international peace and security that the League of Nations had failed to maintain. It has six organs: the GA, which comprises all member states of the UN; the SC; the Economic and Social Council; the Trusteeship Council, which has a specialist nature and deals with specific areas of work or activities. These include economic and human rights issues. The other two organs are the Secretariat and the ICJ.

2.6.3 Regulation of the Use of Force in the UN Charter: Chapters VI and VII of the UN Charter

The SC is the only UN organ with a primary responsibility for maintaining international peace and security under Article 24 of the Charter when these disputes pose a threat to international peace and security. Four UN organs have a central role

[124] This Conference was attended by Roosevelt, Churchill and Stalin.
[125] Robert C. Hilderbrand, *Dumbarton Oaks: The Origin of the United Nations and the Search for Post War Security*, (London,1990).

to play in the field of peaceful settlement of international disputes in general: the SC, the GA, the Secretariat and ICJ.[126]

Maintaining international peace and security is one of the central purposes of the UN set out in Article 1 of its Charter. The principles of peaceful settlement of international disputes and the non-use of force in international relations, which are the basis of the present study, are longstanding and fundamental principles of customary international law; they are very closely interrelated as an inseparable unit.[127]

The two principles are the most important fundamental principles of international law embodied in various provisions in the Charter of the UN and have frequently been reaffirmed by the UNGA. For example, in Paragraph 2 of the Manila Declaration on Peaceful Settlement of International Disputes,[128]there is a reaffirmation of 'the need to exert utmost efforts in order to settle any conflicts and disputes between states exclusively by peaceful means and to avoid any military action and hostilities, which can only make more difficult the solution of these conflicts and disputes.'[129]

---

[126]On the role of the UN in peaceful settlement of international disputes see K.V.Raman (ed.), *Disputes Settlement Through the United Nations*, (New York, 1977); Sydney D. Bailey, *How Wars End: The United Nations and Termination of Armed Conflict 1946-1964*, 2 vols, (Oxford, 1982); UNITAR, *The United Nations and Maintenance of International Peace and Security*, (Dordrecht, 1987); Even Luard, *The United Nations*, (Macmillan, 1979); Even Luard, *A History of the United Nations: The Years of Western Domination 1945-1955*, (Macmillan); F. Murphy, *The United Nations and the Control of International Violence,* (Manchester, Manchester University Press,1983).

[127] See generally, M. Evans, *International Law*, (Oxford, 2003); Antonio Cassese, *International Law*, (Oxford, Oxford University Press, 2001); David J. Harris, *Cases and Materials on International Law*, 5th edn., (Sweet & Maxwell, 1998); Ian Brownlie, *Principles of Public International Law*, 6th edn., (Oxford, Oxford University Press, 2003); John Collier & Vaughan Lowe, *The Settlement of Disputes in International Law: Institutions and procedures*, (Oxford, Oxford University Press,1999); J.G. Merrills, *International Dispute Settlement*, 3rd edn., (Cambridge, Cambridge University Press), 1998); Christine Gray, *International Law and the Use of Force*, 2nd edn., (Cambridge, Cambridge University Press, 2004); Sean Murphy, 'Use of Military Force to Disarm Iraq' 97 *AJIL* (2003) 419.

[128] For an analysis of Manila Declaration on Peaceful Settlement of International Disputes see, Office of Legal Affairs-Codification Division, *Handbook On the Peaceful Settlement of Disputes between States,* (New York, United Nations, 1992).

[129]UNGA Res.37/10, 51 UNGAOR Supp. 261, UN Doc A/ 37/51(15 November1982). The U.N Secretary-General believes that the adoption of this Resolution was an important landmark in the history of the United Nations. For a review of the Manila Declaration see, NII Lante Wallage-Bruce,

In the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nation, however, the main aim of this Declaration was to clarify the UN Charter on questions concerning the use of force to settle international disputes.[130]Also in the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations 'United Nations Declaration on the Non-Use of Force.'[131]However, Article 1 of this Declaration reads:

> Every state has the duty to refrain in its international relations from the threat of use of force against the territorial integrity or political independence of any state, or from acting in any other manner inconsistent with the purposes of the UN, such a threat or use of force constitutes a violation of international law and of the charter of the UN and entails international responsibility.

Article 2 states 'the principle of refraining from the threat or use of force in international relations is universal in character and is binding, regardless of each state's political, economic, social or cultural system in relations of alliance.' Article (3) states 'No consideration of whatever nature may be invoked to warrant resorting

---

The *Settlement of International Disputes, the Contribution of Australia and New Zealand*, (The Hague, Martinus Nijhoff Publisher).

[130] *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations* (1970), UNGA Res. 2625 (XXV), Supp. 28 at 121, UN Doc.A/8028 (24 October 1970), reprinted in 9 *ILM* 1292 (1970). It should be noted, however, that the Declaration not only obligated states to settle disputes amicably but it goes further and states they were under duty to do so as early as possible. For further discussion on this declaration see, Robert Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey', 65 *AJIL* (1971) 713; Antonio Tanca, 'The Prohibition of Force in the UN Declaration on Friendly Relations of 1970' in Antonio Casses ed., *The Current Legal Regulation of the Use of Force* (Dordrecht, Boston and Lancaster: Martinus Nijhoff Publishers, 1986).

[131] Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, A/RES/42/22(1988), reprinted in 27 *ILM* 1672(1988).

to the threat or use of force in violation of the Charter.'[132]Without doubt, all these provide that states have an obligation to settle peacefully their international disputes and reject the idea of state violence.[133]

A state's obligation to settle a dispute peacefully is stated in Article 2(3) of the Charter of the UN as follows:

> All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

The prohibition of the use of force is stated in Article 2(4) of the Charter that reads:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.[134]

The UN Charter provides only two exceptions to the principle of the non-use of force. First, force may be used under the authority of the SC to safeguard international peace

---

[132] *The UN Declaration on the Enhancement of the Effectiveness of the Principle of Non- Use of Force in International Relations* adopted in 1987 by the UNGA in its session XLII.

[133] Bosco G., 'New Trends on Peaceful Settlement of Disputes between States' 16 *North Carolina JIL and Commercial Regulation* (1991) 235- 236; See also Judge Abdul G Koroma, 'The Peaceful Settlement of International Disputes' *NILR* (1996) 227-236; J.G. Merrills, 'The Principle of Peaceful Settlement of Disputes' in Vaughan Lowe and Colin Warbrick (eds), *The United Nations and the Principles of International Law, Essays in memory of Michael Akehurst*, (Routledge,1994 Rep.1996) ch 3.

[134]The UN Charter (1945). See Leland M. Goodrich, *The United Nations*, (London, Stevens & Sons Ltd, 1960); and, Bruno Simma, *The Charter of the UN a Commentary*, (Oxford, Oxford University Press, 1994).

and security, and second, under Article 51 of the UN Charter, under the right of self-defence.

Nevertheless, Shinkaretskaia points out that the limits imposed by international law on the use of force are challenged by western scholars, especially the Americans who adhere to the widely held belief that modern international relations are based, to a significant extent, on power and violence as a means to achieve political goals is wholly lawful. To some extent, many western writers also affirm that the coercive settlement of international disputes is admissible.[135]In other words, international law may be ignored and disputes may be resolved by violence or war. This approach contradicts the UN Charter and customary international law.

The Charter requires that all member states settle their international disputes by various peaceful methods, referred to in Article 33(1) of the UN Charter in such a manner that international peace and security and justice are not endangered. This thesis examines the theory and practice of this principle, keeping in mind the recent changes in the interpretation of this principle by the US-UK.[136] This is so because the use of armed force by the US-UK against Iraq in March 2003 is considered to be a classic form of the unauthorised use of force that is unlawful under the UN Charter.

It could be stated that the study of the central role of the UN and its responsibility to maintain peace and security require a comprehensive study of every dispute in which it was supposed to be involved. This study only discusses the events of the Iraq

---

[135] Galina Georgievna Shinkaretskaia, *Peaceful Settlement of International Disputes: An Alternative to the Use of Force*, in W.E., Butler (ed), *The Non-Use of Force in International Law*, (Dordrecht, the Netherlands, Martinus Nijhoff, 1989). In this regard see M.S. McDougal, Michael W. Reisman, and A.R.Willard, 'The World Process of Effective Power: the Global War System' In *Power and Policy in Quest of Law: Essays in Honor of Eugene Victor Rostow* (1998) 353.

[136] Rosalyn Higgins, 'The Place of International Law in the Settlement of Disputes by the Security Council', 64 *AJIL* (1970) 1-18.

invasion and how it challenged the work of the UN as an effective system to maintain international peace and security.

In this context, when discussing a history of any conflict that threatens international peace and security, an academic study follows the methodology of giving only a brief background of the main events of such a conflict and what actions the UN has taken. As this study is concerned almost exclusively with the investigation of the legal basis on which the US-UK invaded Iraq, how the UN has worked in this crisis, evaluating its contributions to the system of peaceful settlement of international disputes and when and why it was used by the invaders, no attempt is made in this thesis to provide a comprehensive history of all disputes in which the UN has been involved. However, the role of the UN as an international disputes settlement system is well documented, and it is of great importance in this thesis to know the outlines of this system and the ability of the UN in settling different international conflicts peacefully.

Indeed, the thesis critically looks further into the important problem of the use of force in international relations by superpower states and answers why, since the end of the Cold War, the numbers of wars and international conflicts have considerably increased. The answers to these questions will significantly contribute to the literature and practice of peaceful settlement of international disputes.

It is necessary to recognise, however, that the study of the UN's peaceful settlement system in this thesis refers only to Articles 1,2, 10-14, 33-38, 52(2) and (3) and 94-96 of the UN Charter and Article 38 of the Statute of ICJ. Therefore, other UN

enforcement measures that do not settle disputes, such as UN peacekeeping operations, are not discussed here, despite the fact that these measures have been used effectively to prevent some conflicts, or have established a platform for a peaceful settlement.

As noted, the UN Charter as a constitutional document was designed in 1945 by the San Francisco Conference. This Charter lays down the institutional framework of the UN as an international organisation.[137]The structure of the UN came as a result of collaboration between five military allies and powerful nations at that time: the UK, France, US, USSR and China. This structure provides new modern ideas and a marked departure from that of the League of Nations' system examined in this Chapter.

To strengthen the power of these five nations over others, firstly they secured for themselves permanent membership seats with veto powers in the SC. The concept of the veto reflects the desire of powerful nations to make the decisions of the SC effective only through the co-operation of its member nations. If a permanent member exercises its right of veto this renders the SC unable to make a decision. However, this was clear during the Cold War era when, due to political considerations, the UN was unable to play it is role to secure international peace and security. This study argues that this reveals the weaknesses of the UN as a dispute settlement system.[138]

---

[137]For a general discussion see, Antonio Cassese, *International Law,* (Oxford, Oxford University Press, 2001);M. Evans, *International Law*,(Oxford, Oxford University Press,2003);Bruno Simma,*The Charter of the United Nations: A Commentary*, (Oxford, Oxford University Press,1994); C.J. Colombos, 'The United Nations Charter',1 *The International Law Quarterly*,(1947)20-33; Pollux, 'The Interpretation of the Charter of the United Nations', *BYBI*, 23 (1946) 52-82; Leland M. Goodrich & Edward Hambro, *Charter of the United Nations*, (London, Stevens &Sons Ltd., 1949); Ruth B. Russel, *A History of the United Nations Charter*, (Washington D.C., the Brookings Institution,1958).

[138] For more details see Anjali. V. Patil, The *UN Veto in World Affairs 1946-1990: A Complete Record and Case Histories of the Security Councils Veto*, (London, Mansell Publishing Ltd,1992).

As noted, Article 1 of the UN Charter sets out the main purposes of this international organisation, and among these purposes is that of maintaining international peace and security.[139]This is reflected in the historical needs for a 'peaceful world' as a demand of 'peace-loving states'.[140]The founders of the UN also wished to establish an international organisation to achieve international cooperation to address other problems in the economic, social, cultural, human rights and humanitarian fields.[141]

In the light of Article 1(1), it might be more accurate to suggest that the UN has two responsibilities in this respect. Firstly, to settle any international disputes or conflict that occur, and secondly to provide disputant parties with effective available means that would settle their differences peacefully.

2.7 Findings and Concluding Remarks on Chapter Two

This Chapter has discussed the historical origins of the principles of peaceful settlement of international disputes and the non-use of force in international relations. It has been established that these two principles have been developed for over a

---

[139] According to Article (1) of the UN Charter, the Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

[140] Louis Henkin, *How Nations Behave* (London, Pall Mall Press, 1968).

[141] See generally, James Barros, *The United Nations; Past, Present and Future*, (New York, The Free Press, 1972); Leland M. Goodrich, *The United Nations*, (London, Steven & Sons Ltd., 1960); Gross, Ernest A., *The United Nations Structure for Peace*, (New York, Harper & Row,1962); Hans Kenlsen, *The Law of the United Nations*, (London, Stevens & Sons Ltd, 1951); Evan Luard, *The UN :How it* works *and what it Does*, London, (The Macmillan Press Ltd, 1979); John F. Murphy, *The UN and the Control of International Violence*, (Manchester, Manchester University Press, 1983); Alf Ross, *The United Nations: Peace and Progress*, (New Jersey, The Bedminster Press Inc, 1966).

century. This Chapter concluded that the historical examination of these principles from the pre Hague Conventions period; the 1899 and 1907 The Hague Conventions; through to the UN era revealed that, pre The Hague Conventions, the commissions set up by the 1794 Jay Treaty were steps forward in establishing some kind of international bodies.

The above efforts could be considered a foundation stone in the history of international arbitration as a peaceful method to settle disputes between states, despite the fact that the number of the members of these commissions were not as equal as those set up later in the Alabama Arbitration Tribunals of 1872. The success of this tribunal marked the beginning of a new era of modern international arbitration.

It seems that the purposes of the two Hague Conventions of 1889 and 1907 had a humanitarian basis besides their role in controlling armaments by prohibiting the use of poisonous weapons. The efforts of The Hague Conventions and the League of Nations in this respect failed as demonstrated by the two World Wars. Negotiation is the preferred method of resolving international disputes, and through negotiations the disputant parties establish direct contact between themselves and discuss their differences in more details. Negotiation, inquiries and mediation (which play an important role and are closely related to negotiation) were already provided for in the two Hague Conventions of 1899 and 1907. The League of Nations and the Pact of Paris did not recognize the right of self-defence, but this right was established in customary international law.

In the aftermath of the Cold War, we are witnessing how today international treaties are being ignored by the US. As regards the principle of the use of force in the UN system, the Chapter concludes that, as we look back at the history of wars during these periods, there were some well known cases in which international law played a role in ending violence between super power states. For example, the Algiers Accords ended the Iranian hostage crisis resulting in the Iran-United States Claims Tribunal established in The Hague in 1980. On the other hand, in 1986 Egypt and Israel agreed to settle their dispute over the Taba strip after submitting it to binding arbitration. However, despite the shortcomings of this arbitration such as provides Israel with a port at the Red Sea, but it settled the dispute between the two countries. It might be argued that this arbitration, in fact, did not resolve the major problem of the Middle East.

The UN system, in its present form, has come into being as an outcome of a rapid evolution in states' practice and a desire to avoid wars that began with The Hague First Convention of 1899. However, this thesis will demonstrate that long before The Hague Conventions, Islamic international law recognised arbitration as a peaceful means to settle disputes and regulate the use of force. This is examined in Chapter Five of thesis.

The following Chapter of the thesis is devoted to a brief history of Iraq and how it became a sovereign state. The thesis discusses the backgrounds of the disputes between Iraq and the US-UK and the Iraqi invasion of Kuwait in 1990; this is because one of the arguments put forward by the US-UK is that the previous UN Resolutions resulting from that war gave them the right to use force against Iraq in 2003.

CHAPTER THREE

ORIGINS OF THE DISPUTE BETWEEN IRAQ AND THE US-UK

CHAPTER THREE

Origins of the Dispute between Iraq and the US-UK

3.1 Introductory Remarks

The UN's dispute settlement system crisis caused by the US-UK's invasion of Iraq in March 2003 raised many issues concerning the future of this system. This Chapter presents a brief history of Iraq and its dispute with the US-UK. It is designed to throw some light on this dispute, which can be traced back before the Iraq invasion of Kuwait in 1990.[142]The thesis, in this Chapter, does not attempt to give a comprehensive analysis of the Iraqi invasion of Kuwait; rather it attempts only to highlight briefly the history of this dispute which is extremely important to this study as it has a direct connection with the legal consequences of the US-UK's cases for invading and occupying Iraq.

The thesis argues that in spite of a ceasefire agreement reached between Iraq and the UN in 1991, hostilities continued. From the beginning, the Gulf War of 1990-1991 seemed to be carried out by the UN, but the US-UK's bombing campaign against Iraq remained outside UN decision-making. Indeed, the SC did not take control of the war in accordance with the UN Charter either, as it has no say in decisions about when the bombing should end. This case shows how the US-UK used the UN to legalise their

[142]On Iraq invasion of Kuwait see Lawrence Freedman and Efraim Karsh, *The Gulf Conflict 1990-1991*, (London, Faber and Faber,1993); E. Lauterpacht, Christopher Greenwood, Marc Weller, and Daniel Bethehem, (ed.,) *The Kuwait Crisis: Basic Documents*, Cambridge International Documents Series vols I,II, III, (Cambridge, Grotius Publications,1991); Colin Warbrick, 'The Invasion of Kuwait by Iraq', 40 *ILCLQ* (1991) 482; Efraim Karsh and Inari Rautsi, 'Why Saddam Hussein Invaded Kuwait', 33 *Survival*, No. 1 (January/February 1991).

unilateral military actions further with no authorization. However, they claimed no need for any further SC approval to launch their military attacks against Iraq.[143]

The US-UK's bombing raids on Iraq continued between 1990-2003, violating both international law and the UN Charter. This is so because there was nothing in either the Charter or general international law which leads one to suppose that previous UN Resolutions called for such unilateral attacks. In this regard it might be argued that all UN Resolutions in this conflict gave explicit authority to the SC itself to act against Iraq, not to the US-UK or any other individual member states.

Over more than a decade the US-UK waged war on Iraq through the UN's continuous sanctions regime, endless bombing and unilateral decision of air patrols over so-called 'no-fly' zones in northern and southern Iraq. It follows from the foregoing discussion that the above actions were carried out without express authorization to use force in any of the UN Resolutions. On the other hand, their claims for such actions were based on allegations that these attacks were in self-defence against unfounded claims of Iraqi military attacks as well as to protect Kurds and Shia.[144]Self-defence is an argument most usually advanced by states as one of the legal justifications for wars. The result is that these actions, as well as economic sanctions, caused the death of a large number of Iraqi civilians.[145]

---

[143] See Phyllis Bennis, *Calling the Shots, How Washington Dominates Today's UN*, (Gloucestershire, Arris Books, 2004) 328; D .W. Greig, 'Self-Defence and the Security Council: What does Article 51 Require?' 40 *ICLQ* (1991).

[144] See Bethlehem, *The Kuwait Crisis: Sanctions and their Economic Consequences*, Parts I and II (Cambridge, Grotius Publications, 1991); Jules Lobel and Michael Ratner, 'By passing the Security Council: Ambiguous Authorizations to Use Force, Ceasefires and the Iraqi Inspection Regime'93 *AJIL* 1 (1999) 124-54.

[145] Geoff Simons, *Targeting Iraq Sanctions & Bombing in US Policy*, (London, Saqi Books, 2002) 89.

According to a recent report, A Dossier On Civilian Casualties in Iraq 2003-2005, of Iraq Count and the Oxford Research Group, covering only two years of the war on Iraq (March 2003-March 2005), 'almost 25,000 Iraqi civilian have met a violent death since the 2003 US-led invasion, with more than a third of the death toll caused by coalition forces...the US and the UK troops are responsible for more civilian deaths than the anti-occupation forces of the insurgency'.[146]The report also states 'the US forces were responsible for the vast majority (98.5 per cent) of the civilian deaths caused by coalition forces, with British troops blamed for a total of 86 during and after the invasion and other nations` troops even fewer'.[147]

The purpose of this Chapter is to analyze the impact of UN Resolutions 660, 678, 687 and 1441, since the text of these Resolutions has been the main argument advanced by the US-UK in a claim to justify their use of force against Iraq in March 2003. The use of force and invasion of Iraq in 2003 raised many questions that this thesis tries to answer.

Many suggestions have been made in the light of what has been happening in recent years, especially at the end of the Cold War era. For example, as to the evolution of the UN, the old San Francisco Conference's concept of the use of force is becoming outdated. Furthermore, after the 11 September incidents, many US scholars put forward the idea that a new category of situations of the use of force should be recognised, such as international terror.

[146] http://channels.aolsvc.co.uk/news/article.adp?id
[147] Ibid.

Throughout history, many US leaders have maintained that power is essential to safeguard their national interests. According to this policy, US President Bush outlined his doctrine of the use of force. He claimed that 'real leadership requires a willingness to use military force, and force can be a useful backdrop to diplomacy, a complement to it, or, if need be, a temporary alternative'.[148]

In Bush's view, the use of force: 'in some circumstances it may be essential; in others counter-productive and using military force makes sense as a policy where the stakes warrant, where and when force can be effective, where no other policies are likely to prove effective, where its application can be limited in scope and sacrifice'.[149]US President Bush believed that his country could and should lead, but he wanted to act in concert, where possible, with the UN or other multinational groups. However, he observed that their desire for international support must not become a prerequisite for acting without such aid, because sometimes a great power has to act alone.[150]

In fact, the US practices in its war on Iraq contradict the theory of President Bush in many aspects. Firstly, the use of force against Iraq in 2003 proved to be ineffective in achieving it is gaols. This thesis examines in detail the US-UK's legal justification for the Iraq invasion in Chapters Seven and Eight. Secondly, the UN inspection regime proved to be effective in disarming the Iraqi regime. According to Ritter, the UN former weapons inspector:

---

[148] President Gorge Bush Sr. elaborated his doctrine of the use of force in a speech given on 5 January 1993 at West Point Military Academy, Public Papers of the Presidents of the United States, George Bush, 1992-1993 (Washington, DC: USGOP, 1993) 2228 at 2230-31.
[149] Ibid.
[150] Ibid.

> During the seven years that the UN weapons inspectors took place in Iraq, Saddam's chemical, biological, and nuclear weapons programs had been effectively destroyed...even if Saddam do have greater capabilities, the most effective solution is the return to UN weapon inspectors not the use of military force.[151]

Furthermore, in 2005 the US President's own appointed commission published its report, which revealed no WMD in Iraq prior the invasion in March 2003. Thirdly, the application of the use of force was not limited in its scope, but in fact it went far beyond its original claims.

Therefore, this Chapter discusses these issues, and it has the following organization: Section One, introductory remarks; Section Two examines briefly Iraq from historical perspectives; Section Three looks at the origins of the dispute between Iraq and the US-UK, the Iraqi invasion of Kuwait and SC Resolutions 660, 678, 687 and 1441.

3.2 Brief Historical Perspectives of Iraq

3.2.1 The Ottoman Empire of 1301

The conflict between Iraq and Kuwait is one of the consequences of the fall of the Ottoman Empire[152]founded by Osman I in 1301, following its defeat in WWI.[153]The most important aspect of this fall was that Britain and France divided the Arab part of

---

[151] William Rivers Pilt and Scott Ritter, *War on Iraq*, (London, Context Books, 2002).
[152] Justin McCarthy, *The Ottoman Turks: An Introductory History to 1923*, (London and New York, Longman, 1997).
[153]G.Getinsaya,'The Ottoman Administration of Iraq 1890-1908',(Manchester,University of Manchester PhD, 1994).

the Empire between them.[154]Their influence was especially seen behind dividing the provinces of the Ottoman Empire into small states, apparently aiming to control it for their own interest in the region.[155]Iraq's three provinces of Basra, Baghdad and Al-Mousl; Palestine, and Trans-Jordan fell under the influence of the UK. France gained Lebanon and Syria.[156]

As noted, under the mandate system of the League of Nations, Iraq also fell under British mandate.[157]However, by controversial agreements, Britain created what came to be known as the Gulf States for its own self-interest, more specifically to control its oil resources.[158]In fact, the oilfields of Mesopotamia were the largest in the world at that time and by 1919,[159]without doubt, oil had become the fuel of the future. The great powers of that time, namely the UK and France, worked hard to control not only these oilfields, but also refineries and pipelines.[160]

Iraq shared long borders with Iran, Turkey, Syria, Saudi Arabia, Jordan and Kuwait.[161]The British determined the Iraqi border with Kuwait and Saudi Arabia in the border agreement of the Uquavir Treaty of 1922.[162]However, it seems that the

---

[154] D. R. Khoury, *State and Provincial Society in the Ottoman Empire: Mousl 1540-1834* (Cambridge, 1997)

[155]The Sykes- Pilot Agreement of 16 May 1916 (printed in J.C. Hurwitz's the Middle East and North Africa in World Polities, A Documentary Record, 2nd printing, (1975-79) vol.2, 62.

[156] Ibid.

[157] Charles Tripp, *A History of Iraq*, (Cambridge, Cambridge University Press, 2000).

[158] A. Jwaideh, 'Midhat Pashs and the Land System of Lower Iraq', *St Antony's Papers*, No. 16, ed., A. Hourani (London, 1963); A. Jwaideh, 'Aspects of Land Tenure and Social Change in Lower Iraq During the Late Ottoman Times', in T. Khalidi ed., *Land and Social Transformation in the Middle East* (Beirut, 1984); M. Farouk-Sluglett and P. Sluglett, 'The Transformation of Land Tenure and Rural Social Structure in Central and Southern Iraq, 1870-1958', *International Journal of Middle East Studies*, 15 (1983), 491-505.

[159] M. Kent, *Oil and Empire: British Policy and Mesopotamian Oil 1900-1920* (London, 1976).

[160] For oil accounts see, H. Mejcher, *Imperial Quest for Oil: Iraq 1910-1928* (London, 1976); R. W. Ferrier, *The History of the British Petroleum Company,* vol. 1, *1901-1932*, (Cambridge, 1982); B. Shwadran, *The Middle East, Oil and the Great Powers* (London, 1955).

[161] Moshe Brawer, ed., *Atlas of the Middle East*, (New York, Macmillan Publishers Co, 1988).

[162] Macmillan, n 96 above.

British failed to mark these boundaries as well as that with Iran and many other boundaries between the Arab states of the Ottoman Empire.

3.2.2 San Remo Conference of 1920

According to the San Remo Conference of 25 April 1920 between the UK and France, the territorial boundaries of the Arabian provinces of the Ottoman Empire were to be determined by the Allied powers (UK and France), but no action was taken in this regard. In effect, frequent border disputes erupted in the region.[163]

3.2.3 The Socio-political Structure of Iraq

Iraq's socio-political structure and religious formation are complex, and its ethnic groups more complex. They include Kurds and Assyrians in the north, Shia Arabs in the south and Sunni Arabs in the rest of the country, and a sizeable minority of Christians are to be found in the northern part of the country as well as the capital Baghdad. Kurds live in Iraq, Iran, Syria and Turkey and hope, as well as the Assyrians, to have their independent states in the area where they historically live.

---

[163] For example the border disputes between Qatar and Bahrain, Abu-Dhabi, Muscat and Saudi Arabia (1952-56), Qatar and Saudi Arabia, Yemen and Saudi Arabia, Yemen and Oman, UAE and Oman, Iran and UAE over Abu Musa and Tunbs Islands in the Gulf, Kuwait and Saudi Arabia, Sudan and Egypt (1958), Iraq-Kuwait (1962, 1991), Morocco- Algeria (1962).For more details see, Evan Luard, 'Frontier Disputes in Modern International Relations', in Evan Luard ed., *the International Regulation of Frontier Disputes* (London, Thames and Hudson, 1970). Furthermore, Luard set out three reasons that cause a large numbers of frontier disputes in general: first, the end of the period of colonialism and the emergence to independence of many states previously dependent. He gave example of this group of claims of Iraq against Kuwait. The second reason is that the penetration of administration to the remotest areas, and the demand for more accurately defined borders than existed before. Thirdly, there are a greater number of opportunities for asserting claims than before, due to the fact that the modern international border provides ideal opportunity for claming rights of territories.

3.3 Factual Background: the Origins of the Dispute between Iraq and the US-UK

3.3.1 The British Involvement in Drawing the Border between Iraq and Kuwait

On 28 January 1932 the UK gave up its mandate over Iraq, but Britain continued to maintain military forces in Iraq until 1947.[164]Meanwhile, it must be acknowledged that British involvement in Iraq affairs shaped the modern history of the country. However, on 13 October 1932 Iraq became a sovereign state and entered the membership of the Arab League in March 1945 as a founding member. In December of the same year, Iraq joined the UN.

From the nineteenth century, and for the duration of the Ottoman Empire, Iraq's land territory comprised the provinces of Mesopotamia (Baghdad, Mosul and Basra) with a territory of 434,924 sq km. As the map indicates, Kuwait was administered from that time (the nineteenth century) as part of the Basra province with a territory of 17,818 sq km.[165]

What is of particular importance for this thesis is that in 1899 the UK adopted Kuwait as a protectorate, and this status did not change until Kuwait became an independent state in 19 June 1961. Only six days later, on 25 June 1961 Iraq declared that Kuwait was an integral part of Iraq since historically it had been administered as part of Basra Province.[166]Kuwait became a member of the UN only in 1963 because of the Soviet veto to prevent its admission before this time. The situation within the Arab League was quite different; it accepted Kuwait to its membership prior to its independence.

---

[164] R. Simon, *Iraq Between Two World Wars: the Creation and Implementation of a National Ideology*, (New York, 1986).
[165] See maps of the Ottoman Empire in 1914 appendix (A.7 and 8) in Justin McCarthy, *The Ottoman Turks: An Introductory History to 1923*, (London and New York, Longman, 1997) 350-351.
[166] R. Schofiled, *Kuwait and Iraq: Historical Claims and Territorial Disputes* (London, 1991).

3.3.2 King Ghazi Ibn Faisal Declaration of 1930 Disagrees with this Border

In reality, as early as the 1930s, Iraqi leaders from King Ghazi ibn Faisal in the 1930s to Abdul Karim Qassim in 1961 declared their disagreement with the borders drawn by the British between Iraq and Kuwait.[167]The dispute over Kuwait's sovereignty was not been settled until 4 October 1963 when Iraq confirmed its sovereignty on condition that the marked border between the two countries must be as agreed in the correspondence that had been exchanged between the Iraqi Prime Minister and the British High Commissioner in Kuwait.[168]The truth of the matter is that despite this confirmation, this border has not been marked, and this is one of the main causes of these wars. It must be said that the historical origins of Kuwait remains the critical question that faces the UN, the Arab League and the international community.

3.4 Iraq's Legal Justifications for Invasion of Kuwait 1990

3.4.1 The Boundary dispute; the economic aggression by Kuwait and UAE against Iraq

While the origin of the dispute between Iraq and Kuwait will be considered in this Chapter, it has not been possible to address all the issues of this dispute. The recent dispute between Iraq and Kuwait can be traced back to when the Iraqi leader Saddam Hussein accused Kuwait and the United Arab Emirates (UAE) of exceeding the quotas of oil production that had been laid down by OPEC.[169]

---

[167]Trevor Mostyn, ed., *The Cambridge Encylopedia of the Middle East and North Africa*, 1st ed., (Cambridge, Cambridge University Press, 1988).

[168] See 1932 Exchange of Letters between the Government of Iraq and the British High Commissioner in Kuwait, in Lauterpacht, Greenwood, Weller and Bethlehem (eds.), *The Kuwait Crisis, Basic Documents,* vol. 1, (Cambridge, Cambridge University Press, 1991), Agreed Minutes between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition, and Related Maters, (4 October 1964) 485 UNTS 321.

[169] Colin Warbrick, 'The Invasion of Kuwait by Iraq', 40 *ILCLQ* (1991) 482.

Iraq considered that such actions from the two countries impacted on the international oil price, driving it down, which greatly affected the economy of Iraq; in particular after its long war with Iran.[170]The Iraq- Iran war began in 1980 and lasted for eight years,[171]during which the US, the UK, France and many western weapons manufacturing countries supplied weapons to both parties.[172]

The US saw Iran- and remains- as the only real threat to its position in the Gulf, as the Ayatollah Al- Khomeini's vision of a universal Islam and unity of all Muslims states in one nation is the new threat that the US must deal with. Thus, the US adopted the policy of 'the enemy of my enemy is a friend'.[173]

In this context, Richard Butler, former UNSCOM senior inspector in Iraq, observed in 2002 that in dealing with the issue of WMD the SC must act whenever there is credible evidence of any violation of the treaties that regulate these deadly weapons. He further argued that in judging any regime's behaviour toward WMD, this judgment must be made away from the policy of 'the enemy of my enemy is my friend', and 'he may be a bastard, but he is our bastard'. According to Butler, these policies are not appropriate when WMD are at issue.[174]

---

[170] C. Tripp, 'Symbol and Strategy: Iraq and the War for Kuwait', in W. Danspeckgruber and Tripp ed., *The Iraqi Aggression Against Kuwait* (Boulder Colo, 1996).

[171] D. Hiro, *The Longest War: the Iran-Iraq Military Conflict* (London, 1989).

[172] For a detailed discussion of the USA, the UK and France's involvement in Iraq-Iran war see, Geoff Simons, *Targeting Iraq Sanctions and Bombing in the US Policy*, (Saqi Books, London, 2002); Lawrence Freedman and Efraim Karsh , *The Gulf Conflict 1990-1991, Diplomacy and War in the New World Order*, (London, Faber and Faber Ltd,1993).

[173] On 2 November1979 the Iranian Islamic leader Ayatollah Khomeini stated that 'the Iranian Revolution is not exclusively that of Iran, because Islam does not belong to any particular people. We will export our revolution throughout the world because it is an Islamic revolution. The struggle will continue until the call "there is no god but God and Muhammad is the messenger of God" is echoed all over the world'. See, F. Rajaee, *Islamic Values and World View: Khomeini on Man, the State, and International Polities*, (Lanham, University Press of America, 1983).

[174] Richard Butler, *Saddam Defiant: the Threat of Weapon of Mass Destruction and the Crisis of Global Security*, (London, Phoenix, 2000).

However, for the Americans the most promising feature of Saddam's regime was that it was Iran's enemy. Thus, according to this policy, in 1982, Iraq was removed from the US list of states that sponsor and support terrorism. This opened the door for Iraq to receive financial credits and up to date arms technology, which made it possible for Iraq to build its military forces. As a consequence of this war, Iraq ended up with foreign debt of US$80 billion.[175]

Iraq claimed that the policy of overproduction of oil quotas adopted by Kuwait and the UAE had caused huge debts for Iraq.[176]Once again Iraq claimed that, since 1980, Kuwait had tapped Iraqi oil in the Rumaila oil field, which lies across the unmarked disputed border, and demanded remission of its debts to Kuwait, acquired during Iraq-Iran war as Iraq had protected Kuwait from Iranian attacks.

It would be a mistake to think that the UN and the Arab League made effective efforts to resolve this dispute. The US's hegemony influenced, without any doubt, their role in this respect. It seemed, at this stage, that neither Arab states nor the UN, as an international organisation responsible for maintaining international peace and security, nor the UK-US, as countries that have strategic interest in the oil of these two countries, did anything to bring this dispute to a peaceful settlement.

3.5 The Role of the US: the Statements of Margaret Tutwiler and April Glasspie

However, the US gave the Iraqi leadership an indication considered by Iraq as a green light for military attack against Kuwait. Therefore, this in turn was interpreted by the Iraqi regime as they would hold a neutral position in the dispute with Kuwait. This

[175] Freedman and Karsh, n 142 above.
[176]Efraim Karsh, Inari and Rautsi, 'Why Saddam Hussein Invaded Kuwait',33 *Survival*, No.I, (January/February 1991).

can be seen clearly in the speech of the US State Department's spokesman Margaret Tutwiler: when answering the question of the real intentions of the movement of the Iraqi troops toward its border with Kuwait she said 'we do not have any defence treaties with Kuwait, and there are no special defence or security commitments to Kuwait'.[177]

On 25 July 1990 the US Ambassador, April Glaspie, stated to the Iraqi leader 'we have no opinion on Arab-Arab conflicts, like your border disagreement with Kuwait'.[178]To some extent, Iraq overestimated the nature of its relations with the US. Iraq did not recognize that the US could use its military force to advance its national interests even against its allies.[179]

3.6 The Role of the Arab League in Settling this Dispute

On 1 August 1990 in Jeddah, Saudi Arabia, the Arab League made a peaceful attempt towards reconciliation. That attempt ended with nothing. This was certainly due to the attitude adopted by Kuwait and other Gulf states in this dispute. It might be argued that this failure must be understood in the context of US policy in the region. However, many Arabs observed that the logical interpretation of this failure was the role of the US and its real intention to destroy Iraq as a powerful state in the region, since Iraq military forces pose a real threat to Israel.

On the one hand, the US gave Saddam an indication not to interfere in this dispute, and on the other hand, they encouraged Kuwait not to listen, accept his

---

[177] Ibid.
[178] 'The Glaspie-Hussein Transcript,' Appendix B, Phyllis Bennis and Michel Moushabeck, eds., *Beyond the Storm: A Gulf Crisis Reader*, (New York: Olive Branch Press/Interlink, 1991).
[179] Ibid.

claims or make any peaceful solution with him. Indeed, the US showed no interest in a peaceful settlement to this dispute at all. In fact, they blocked the SC from taking peaceful action in that crisis and proceeded to war for many reasons: first, the summer which had a direct effect on their forces; second, the cost of war would be spread between the coalitions. Thus, they did not explore the possibilities of finding a mutually acceptable peaceful settlement by creating a framework for direct negotiations, or a common ground of understanding to advance the efforts of the Arab League.[180]

3.7 Iraq's Invasion of Kuwait 1990

On the morning of the second of August 1990 Iraq invaded Kuwait in a clear breach of Islamic international law, the UN Charter and customary international law.[181] Some scholars claimed that, since the end of the Cold War, this was the first case in which the SC had played its main role of maintaining international peace and security as designed by its founders in 1945.[182]

In that respect, the events that followed showed how the UN and its SC had been manipulated by the US to advance their politics and objectives in the region.[183]The legal basis on which the conflict was resolved raised many issues concerning the

[180]For example in the dispute between Iraq and Kuwait in 1961, the response of the Arab League to Iraq claims against Kuwait was very strong. This response led to the withdrawal of the British troops from Kuwait and replaced it with Arab forces.
[181] Christopher Greenwood, 'Iraq's Invasion of Kuwait: Some Legal Issues', 47 *World Today*, No.3, (March 1993).
[182] Christopher Greenwood, 'New World Order or Old? The Invasion of Kuwait and the Rule of Law', 55 *Modern Law Review*, (1992) 153-178.
[183] Bennis, n 143 above.

limitations of the right of individual, collective self-defence and the enforcement powers of the UNSC under Chapter VII of the UN Charter.[184]

On the day of the invasion, the US's response was strong. President George Bush outlined his objectives and policy in response to the invasion as follows: firstly, he demanded immediate, unconditional and complete withdrawal of Iraqi forces from Kuwait; secondly, that Kuwait's legitimate regime should be restored; thirdly, he affirmed that the US committed itself to the security and the stability of the Persian Gulf; finally, he determined to protect the lives of American citizens abroad.

3.8 The Role of the United Nations

Moreover, on the same day of the invasion, the US requested the SC to consider the Iraq invasion pursuant to Articles 39 and 40 of the UN Charter.[185]These two articles fall under Chapter VII of the UN Charter entitled 'Actions with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression'. Hence, the SC adopted a number of resolutions in this dispute.

3.9.1 Security Council Resolution 660 (1990)

It is useful in this context to see how the SC acted in this crisis. It acted with an unusual speed.[186]Interestingly, within 24 hours of the invasion, the SC passed

---

[184]Rosalyn Higgins, 'The Legal Limits to the Use of Force by Sovereign States United Nations Practice' 37 *BYIL*(1961); Yoram Dinstein, *War Aggression and Self-Defence*, 2nd edn., (1994); Oscar Schachter, 'United Nations Law in the Gulf Conflict' 85 *AJIL* (1991), 452.

[185] On Article 39 of the UN Charter see, Robert Cryer, 'The Security Council and Article 39: A Threat to Coherence?', 1 *Journal of Armed Conflict* (1996) 161; Helmut Freudenschub, 'Article 39 of the UN Charter Revisited: Threats to the Peace and the Recent Practice of the UN Security Council' 46 *Austrian J.P.& Int'l L.* 1, (1993).

[186] Amir A. Majid., 'Is the Security Council Working? "Desert Storm" Critically Examined' 4 *AJIL,* (1992) 984-990.

Resolution 660 (1990) on 2 August 1990.[187]Fourteen of the SC members voted in favour of the resolution, none against, and no abstentions. Yemen, which was a member of the SC at the time, did not participate in the voting.[188]The SC determined that there existed a breach of international peace and security as regards the Iraqi invasion of Kuwait; therefore, the SC brought the matter to be dealt with under Articles 39 and 40 of the UN Charter.[189]

SC Resolution 660(1990) first condemned the Iraqi invasion of Kuwait. Secondly, it demanded that Iraq immediately and unconditionally withdraw all its forces to the positions they held before 1 August 1990. Thirdly, in Paragraph (3) the resolution called upon the two parties to begin immediate intensive negotiations to settle their differences.

The SC in its Resolution also recognized other peaceful means of settling international disputes, mainly resorting to regional arrangements through the Arab League. It is unfortunate that the Arab League was very weak in its response to this crisis.[190]Eventually, they did not take an activist line in this dispute or give Iraq a reasonable degree of solidarity because all Arab regimes were in fact deeply influenced by the US hegemony. The Arab League made no fast attempts to settle this dispute; it was not until 10 August 1990, and after the US troops had already been sent to the Gulf without authorization from the UN that they acted.

---

[187] UN Doc. SC Res. 660(Aug.2, 1990), reprinted in 29 *ILM* 1325(1990).
[188] Marc Weller (ed), *Iraq and Kuwait: The Hostilities and Their Aftermath*, (Cambridge, Grotius Publications Ltd , 1993).
[189] Greenwood, n 182 above.
[190] Yezid Sayigh, 'The Gulf Crisis: Why the Arab Regional Order Failed', *International Affairs*, Vol.67, No.2 (July 1991).

The only truthful attempts to settle the dispute by peaceful means, and in accordance with Article 33 of the UN Charter, were made by King Hussein of Jordan who met the Iraqi leader on 3 August 1990. However, King Hussein announced that Saddam had given him consent to attend the Arab mini-summit in Jeddah on 5 August 1990 to seek an amicable Arab solution to this crisis, and that he would withdraw from Kuwait.

As noted, these two peaceful attempts were unsuccessful due to the long-rooted policies of the West, in particular the US-UK in seeking the need for the balance of power during the Cold War. As such examples demonstrate it is clear that US-UK blocked the Arab League and the SC from taking action in this crisis.[191]

In Cairo, the Arab League recognised SC Resolution 660, which demanded Iraqi forces withdrawal from Kuwait, and gave approval for an Arab force to be sent to Saudi Arabia. This came as a direct result of the US's allegation made to Arab leaders that the next Iraqi attack would be upon Saudi Arabia because Iraq wanted to control the oil of the Gulf. The Arab leaders did not read what was behind this allegation. Despite this, the US openly stated that its only goal was to restore Kuwait's independence; many Arabs believe that its hidden goals were oil, destruction of the Iraq military forces, and to achieve its illegal policy of regime change in Iraq to one that would follow the US's policy in the region, as with those regimes in the Gulf and Egypt.

---

[191] Yoram Dinstein, *War Aggression and Self- Defence*, 2nd edn., (1994); Christopher Greenwood, 'New World Order or Old; The Invasion of Kuwait and the Role of Law' 55 *Modern L. R* (1992); D. W. Greig, 'Self-Defence and the Security Council: What does Article 51 require?' 40 *ICLQ* (1991) 366; K. H. Kaikaobad, 'Self-Defence, Enforcement Action and the Gulf Wars, 1980-88 and 1900-91' 63 *BYBIL* 229 (1992) 229; Michael W. Reisman, 'The Raid on Baghdad: Some Reflections on its Lawfulness and Implications', 5 *EJIL*, (1994) 120; Dino Kristiotis, 'The Legality of the 1993 US Missile Strike on Iraq and the Right to Self-Defence in International Law' 45 *ICLQ* (1996), 162; Christine Gray, 'After the Ceasefire: Iraq, the Security Council and the Use of Force', 65 *BYBIL* 135, (1994), 169-72.

Undoubtedly, a possible negotiated peaceful settlement to this problem might have been reached if Arabs had moved quickly towards a peaceful settlement.[192]The need for an Arab settlement can be found in the earlier discussion that led to the adoption of the UN Resolutions. The idea of the replacement of the US military forces' presence in the Gulf by genuine Arab forces would work well, but this was blocked by the lack of will and support for the US policies.

The Permanent Representative of Jordan to the UN addressed the Secretary-General on 6 February 1991 and raised this issue. To explain how the US shut the doors against a sincere peaceful settlement, he further stated:

> How shamed will be the Arabs who allow Arab blood to be shed in this unjust war?...the irony of this war is that it is being waged under the cloak of international legitimacy; its crime is being committed in the name of the United Nations, which was established by humanity to preserve peace, security and justice, and to settle all disputes and conflicts through dialogue, negotiations and diplomacy.[193]

Furthermore, he argued that Kuwait, Saudi Arabia and UAE, as Arab parties to this dispute, had chosen from the beginning to reject any Arab political dialogue with Iraq, and to block any attempt that might prevent the internationalization of the crisis and its resolution by dealing directly with all its causes and effects.

---

[192] Oscar Schachter, 'United Nations Law in the Gulf Conflict' 85 *AJIL* (1991)452-453.

[193]The letter from the Permanent Representative of Jordan to the UN addressed to the Secretary-General dated 6 February 1991, in Iraq and Kuwait: the Hostilities and their Aftermath, ed., Marc Weller, *University of Cambridge, Research Centre for International Law, Cambridge International Documents Series,* vol.3, (Cambridge, Crotius Publications Ltd., 1993).

In doing so they blocked all the good offices of Jordan and others. He argued that the real purpose of this destructive war, as demonstrated by its scope and the declarations of the parties, was to destroy Iraq as a powerful nation, and 'rearrange the area in a manner far more dangerous to the present and future of our nation than the Sykes-Picot agreement'.[194]

The importance of the above statements is demonstrated in Chapter Five, that Islamic international law contains a variety of peaceful means to settle disputes between Arab states without need for US intervention. This is so because the bulk of Arabs are of the opinion that the US represents their real enemy, for many reasons. Moreover, they also hold that the UN has been used by the US-UK to legalise their actions.

In this regard, John Bolton, the US Under-Secretary of State for Arms Control and International Security, and former the US representative to the UN, observed shortly after the end of this war that:

> There is no United Nations.[195]There is an international community that occasionally can be led by the only real power left in the world, and that is the United States, when it suits our interest, and when we can get others to go along...the success of the United Nations during the Gulf War was not because the United Nations had suddenly become successful. It was because the United States, though President Bush, demonstrated what international diplomacy is really all about...when the United States leads, the United Nations will

[194] Ibid. For The Sykes-Picot Agreement 1916 see Appendix (A.5).
[195] Interestingly, in 2005 John Bolton, has been nominated for the position of the US's Ambassador to the UN, the organisation he claimed in 1994 did not excised.

> follow. When it suits our interest to do so, we will do so. When it does not suit our interest we will not.[196]

Without doubt, from the above, one may infer that the US's stance did not give any chance for any peaceful efforts.

The wording of Resolution 660 raises many interpretative issues, such as what chances were given for peaceful Arab settlement. However, as noted, the resolution condemned the Iraq invasion and annexation of Kuwait, but it did not condemn it as a clear violation of the relevant UN Charter articles, in particular Articles 2(3), 2(4)[197]and 39, as an act of aggression. No doubt the armed attack on Kuwait and its annexation was a clear breach of these articles as well as an act of aggression.[198]

This kind of Iraqi action against Kuwait falls under the type of action that the UNGA defines as an act of aggression in its Resolution, 3314 (XXIX) 1974. Article 3(a) states:

> The invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasion or attack, or an annexation by the use of force of the territory of another state or part thereof' is an act of aggression.[199]

---

[196] John Bolton's statement at Global Structure Convocation, (Washington D.C., 21 February1994).
[197]In Article 2(4) of the UN Charter the UN Members are required to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state'.
[198] Burns H. Weston, 'Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy', 85 *AJIL* (1991) 516-517.
[199] See Article 3(a) of the *Definition of Aggression*, UNGA/RES/3314 (XXIX) 1974, reprinted in 13 *ILM* 710 (1974).

Furthermore, Resolution 660 does not explicitly refer to the right of self-defence under Article 51, nor does it impose economic sanctions against Iraq under Article 41 of the UN Charter.

Much more interestingly, however, is that when SC Resolution 660 called upon Iraq and Kuwait to begin immediate intensive negotiations for the resolution of their differences, it did not clearly specify what those differences were. They appear to be differences from the events leading to the Kuwait invasion. It may be concluded that SC Resolution 660 meant the territorial and financial claims that Iraq claimed before the invasion.

From the wording of this Resolution it is clear that the SC was trying to seek a peaceful settlement for this crisis by asking Kuwait and Iraq to negotiate their differences, and use of other peaceful arrangements, but the US blocked all these attempts. However, the SC decided to follow up its decision in this respect, and to meet again to consider whether further steps were necessary to ensure that the parties complied with its resolution.

The SC, in Resolution 660, considered that the invasion constituted a breach of international peace and security; therefore, it referred particularly to Articles 39 and 40 of the UN Charter. In this regard it must be noted that in the following resolutions, enacted in response to this crisis, the SC made no reference to a particular article of the UN Charter.

The SC only referred to what actions it may take in accordance with the articles of Chapter VII of the UN Charter in general. This opens the door wide for misinterpretation of these resolutions by the US-UK's governments to advance their national interests and to act unilaterally to enforced UN economic sanctions. Furthermore, this abuse can also been seen clearly in the duration of the exercise of the right of self-defence, which is understood as an exceptional right to be exercised only until the SC adopted measures under Article 41 of the Charter to maintain international peace and security.

3.8.2 Security Council Resolution 661 (1990)

In response to the Iraqi non-compliance with SC Resolution 660, the SC adopted Resolution 661(1990), which imposed economic sanctions against Iraq on all trade and financial activities except in respect of medical supplies and foodstuffs.[200] In fact these economic sanctions proved to have more serious effects on the people of Iraq than the regime. According to the UN Food and Agricultural Organization, World Food Programme Special:

> The continued sanctions...have virtually paralysed the whole economy and generated persistent deprivation, chronic hunger, endemic under nutrition, massive unemployment and widespread human suffering...a vast majority of the Iraqi population is living under most deplorable conditions and is simply engaged in a struggle for survival...a grave humanitarian tragedy in unfolding.[201]

[200] SC. Res 661(6 August 1991) adopted at the 293 3rd meeting by 13 votes in favour, none against, Cuba and Yemen abstaining. Reprinted in 29 *ILM* 1325(1991).
[201] FAO Alert No.237, July 1993.

The last paragraph of the preamble of Resolution 661 (1990) affirmed 'the inherent right of individuals or collective self-defence, in response to the armed attack by Iraq against Kuwait, in accordance with Article 51 of the Charter'. In paragraph 9 (b) of this Resolution the SC calls upon all states 'not to recognize any regime set up by the occupying Power'. It is interesting to note that many states recognized the Iraqi regime installed by the so-called 'Coalition Provisional Authority (CPA)' of the occupation forces in Iraq in 2005.

3.8.3 Security Council Resolution 662 (1990)

From a legal point of view, Security Council Resolution 662 of 9 August 1990 recognized that the annexation of Kuwait by Iraq in any form and under whatever pretext has no legal validity, and is considered null and void. In paragraph 4 of the resolution the SC decided to keep the item of the annexation of Kuwait on its agenda, and to continue its efforts to put an early end to the occupation. Interestingly, regarding the US-UK's invasion of Iraq in March 2003, the UNSC or GA does not call for putting an early end to the occupation of the country.

On 12 August 1991 the US Government appeared to have decided unilaterally upon interpretation of the authority in the SC resolutions at this point of the crisis, and decided without any authorization from the SC to employ and 'render effective measures' by interdiction of Iraqi commerce at sea to implement economic sanctions imposed by the SC. They argued that the US had legal justifications for its unilateral actions. The essence of the US argument was that this action had been taken in response to the request that the Government of Kuwait made to the US on the legal

basis of the right of individual or collective self-defence in response to Iraq's attack in accordance with Article 51 of the UN Charter.[202]

However, two main observations can be made. First, this legal argument is untenable under Articles 51 and 42 of the UN Charter. In fact, Article 51 states that the right of self-defence can only be exercised 'until the Security Council has taken measures necessary to maintain international peace and security'. Second, according to Article 42 such action can only be legal under authorization of the SC and after the Council has come to a conclusion that economic sanctions have had no effect. Article 42 of the UN Charter states:

> Should the Security Council consider that measures provided for in Article 41 would be inadequate or proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations.[203]

Thus, the US blockade of Iraqi commerce at sea of 12 August 1990 had been carried out without any legal authorization. If we look at the events that led to SC Resolution 662, it is clear that the individual actions the US-UK took against Iraq, without legal authorization from the SC, had a direct impact on the situation, making it more complex and more difficult for any peaceful settlement to be reached.

---

[202] See the US Secretary of State James Baker announcement of 12 August 1990. *NY Times*, (18 August1990), at A1, Col.1.
[203] Article 42 of the UN Charter.

On 7 August 1990 the US President ordered the transfer of US military forces to Saudi Arabia. This action was also taken without the Security Council's resolution or authority, and in fact it aggravated the situation. Iraq reacted to the US's action, and on the same day decided to annex Kuwait. This led the SC to adopting Resolution 662. However, this resolution mainly addressed the annexation of Kuwait, and considered the annexation null and void.

3.8.4 Security Council Resolution 664 (1990)

The main demands in the SC Resolution 664 were that Iraq permit and facilitate the immediate departure of all nationals of other countries from Iraq and Kuwait, and that Iraq should take no action that might endanger the safety, security or health of all foreigners. The resolution further demanded that, in accordance with Resolution 662(1990), the Iraqi annexation of Kuwait should be deemed null and void and the Iraqi order to close all diplomatic and consular missions in Kuwait should be withdrawn.[204] The US President acted further, without any authorization, and moved towards war. On 22 August 1990 he ordered that the reserve forces be mobilized as a further step forward towards war.

3.8.5 Security Council Resolution 665 (1990)

Only on 25 August 1990 according to Resolution 665 (1990), did the SC give the UN and the international community the right to use force to ensure that Iraq complied with Resolution 661 (1990) that imposed economic sanctions on Iraq. In this resolution the SC called upon the UN member states to co-operate with the Kuwait Government, and use its maritime forces to inspect all maritime movements of

[204]UN Re.664 (1990), 18 August 1990 adopted unanimously at the 2937th meeting of Security Council.

shipping in the Gulf to ensure the implementation of the provisions of Resolution 661(1990).[205]

3.8.6 Security Council Resolution 666 (1990)

In SC Resolution 666 (1990), of 13 September 1990 the SC called upon Iraq to comply with its obligations under international humanitarian law, in particular the Fourth Geneva Convention in respect of the safety of other countries nationals in Kuwait and Iraq. At this point in the conflict, while some Arab states and Iran made some efforts to find a peaceful settlement for the dispute, the US pushed for war by calling upon the international community to deploy their military forces to the region. They further pushed hard for financial support from other countries that would not be able to send armed forces to the area.[206]

3.8.7 Security Council Resolution 669 (1990)

In SC Resolution 669 (1990) of 24 September 1990 the SC referred to Article 50 of the UN Charter to support states that may be affected by the UN economic sanctions against Iraq. These states included Turkey, Egypt and Jordan. Interestingly, nothing was offered for Syria or Iran although these two countries in fact suffered a higher degree of economic losses. The grounds and the basis on which Egypt in particular gained support was their claim that its nationals who had worked in Kuwait and Iraq suffered some losses. Thus, the same basis should have been applied to Syrian and Iranian nationals.

Article 50 of the UN Charter states:

---

[205] SC Resolution 665, 25 August1990 reprinted in 29 *ILM* 1329 (1990).

[206] Japan provided US $ 2 bn as military aid and US $ 2 bn as economic aid for some Arab states that likely been threatened by Iraq.

> If preventive or enforcement measures against any state are taken by the SC, any other state, whether a member of the UN or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the SC with regard to a solution of those problems.[207]

3.8.8 Security Council Resolution 674 (1990)

In Security Council Resolution 674 (1990), the SC decided that the Geneva Fourth Convention would apply to Kuwait, and that Iraq as a High Contracting Party to this Convention was under international obligation to comply with its provisions. Under the terms of this Convention, Iraq is liable for such breaches. The SC resolution went further to state that under international law, and because of the Iraq invasion of Kuwait and its consequence, Iraq was also liable to compensate any parties for any loss that resulted from its illegal invasion. This opened the door widely for many parties that suffered any loss resulted from the US-UK invasion of Iraq to be compensated, but no one raised this issue.

3.8.9 Security Council Resolution 678 (1990)

The SC's Resolutions so far proved to have no effect on Iraq's decision to annex Kuwait. This led the SC to adopt its famous Resolution 678 of 29 November 1990 which authorized member states of the UN to 'use all necessary

[207] Article 50 the UN Charter.

means' to force Iraq to comply with its previous resolutions that aimed to liberate Kuwait, and to bring about international peace and security to the Gulf.[208]

The Resolution does not directly authorize UN member states to use force against Iraq. Cuba and Yemen voted against the resolution, and China abstained. In this resolution the SC authorized the member states of the UN to 'use all necessary means' against Iraq in co-operation with the Kuwait Government to enforce its Resolution 660 (1990) if Iraq did not fully implement this resolution on or before 15 January 1991.[209]

The deadline was given to Iraq as a last opportunity for a peaceful settlement. Interestingly, SC Resolution 678 (1990) did not use the term 'the use of armed force' against Iraq. On the contrary, the resolution refers only to 'use all necessary means' to uphold and implement Resolution 660 (1990) and all subsequent relevant resolutions, and to restore international peace and security to the area. However, the use of such broad terminology 'use all necessary means' opened the door to an improper, arbitrary interpretation of this resolution by the US-UK in their attempts to be exempted from international law obligations.

Furthermore, this Resolution referred only to Chapter VII of the UN Charter and did not refer to a particular article in the UN Charter in connection with the use of armed force against Iraq. As noted, this opened the door wide for misinterpretation of its words and meanings, and raised important questions of under which article in Chapter VII of the UN Charter this resolution gives member states the authority to use

[208] SC Res. 678 (29 November1990), UN Doc. S/RES/678, reprinted in 29 *ILM* 1565(1990).
[209] Weston, n 198 above.

force against Iraq? Is it under Article 51 on the principle of collective self-defence, or under Article 42 in connection with the UN's actions in implementation of Article 41 regarding economic sanctions? However, it is beyond any doubt that what took place in this war was not a mandatory action.

Thus, the Malaysian representative to the SC explained that their support of Resolution 678 must not be understood without reservations, because, firstly, 'the authorization of force can only be taken under the terms of the Charter of the United Nations'. Secondly, he insisted on the centrality of the UN role in the maintenance of international peace and security, and that any proposed use of force against Iraq must be brought before the SC for its prior approval, in accordance with the specific provisions of Chapter VII of the UN Charter. Furthermore, he argued, 'this point is not clearly reflected in the words of the resolution, a precedent that may not bode well in the future'.[210]

The last peaceful settlement attempts used in the dispute were in the form of direct negotiations and mediation between Iraq and the US. It is significant, however, that the Americans negotiated this dispute with Iraq, and represented itself as a nation that had the right to speak on behalf of Kuwait. On 13 January 1991 negotiations between Iraq and the US had been arranged in Geneva, but they failed and ran into blind alleys as Iraq would not negotiate directly with Kuwait or the UN.

During this time, the international community's forces, lead by the US-UK, were established around Iraq and Kuwait ready for Operation Desert Storm, which began in

[210] UN Doc. S\PV 2963, 29 November 1990.

the early morning of 17 January 1991. Allied military forces without explicit authorisation from UNSC attacked Iraqi forces in both Iraq and Kuwait. It seems that they used force beyond the main purpose of the liberation of Kuwait.

On 15 February 1991 Iraq agreed to comply with the UN resolutions, especially Resolution 660 (1990), with a view to reach an acceptable political solution to the dispute. Iraq linked its withdrawal from Kuwait with a number of demands.[211]Firstly, a total ceasefire on land, in the air and at sea; Secondly, the annulment of SC Resolutions 661, 662, 664, 665, 666, 667, 669, 670, 674, 677 and 678 and all their consequences. Thirdly, all American forces and their allies that participated in the aggression against Iraq were to withdraw from the Middle East and the Arabian Gulf region.

Fourthly, Iraq demanded the Israeli withdrawal from occupied Arab land in Palestine, the Golan Heights and South of Lebanon in implementation of the SC's and UNGA's Resolutions. If Israel refused to comply with this, the SC was to apply against it the same standard of decisions as Iraq.[212]Fifthly, a full guarantee of Iraq's historical territorial and maritime rights in any peaceful solution was demanded. Sixthly, any political settlement was to be based on the will of people, not in the practice of the Al Sabah family where there are no genuine democratic practices. Iraq further demanded that, on the basis of any such settlement, national and Islamic forces must participate in these process. Seventhly, all states that participated in the

[211] Note verbal from the Permanent Mission of Iraq to the United Nations addressed to the President of the Security Council, (15 February1991).
[212] For more details about the question of double standard in the practice of both the UN General-Assembly and the Security Council see, Thomas Frank, 'Of Gnats and Camels: Is there a Double Standard at the United Nations?', *78 AJIL*(1984) 811.

aggression that destroyed Iraq or its financing should undertake to rebuild what they destroyed.

The eighth point was that all debts incurred by Iraq and other states, as a direct result of the aggression, should be cancelled. Point nine stated that all states in the Gulf, including Iran, must be free from external interference in arranging any security arrangements among themselves. Point ten stated that the Arabian Gulf region should be declared a zone free from foreign military bases and any form of such military presence.

In fact, public opinion in the Arab world strongly supported Saddam's demands, at least in international issues, especially when he announced on 2 April 1990 that if Israel attacked Iraq again – following Israel's attack on Iraq's nuclear reactor of 1981 – 'we will make fire eat half of Israel if it tries to do anything against Iraq'.[213]This statement was interpreted by the West as meaning that Iraq threatened Israel with the use of chemical weapons; meanwhile the West turned a blind eye to the danger of Israel's nuclear weapons.

The US rejected the Iraqi offer to withdraw. The war ended on 27 February 1991 when Iraq accepted the American offer to suspend combat operations. In the course of this air bombardment many Iraqi civilians were killed. In fact, Iraq was to suffer from US–UK bombing for more than a decade. The air attacks on Iraq produced a large number of civilian casualties, including women and children.[214]

[213]Israel's attack on Iraq's nuclear reactor was condemned by SC and GA. Israel claimed that they exercised their inherent right of self-defence according to article 51 of the UN Charter which was rejected by the SC. The GA condemned the attack as an act of aggression.
[214] Simons, n 145 above.

The most deadly American attack on Iraqi civilians was on the Amiriyha civilian shelter in a residential district of Baghdad that was used as a refuge. However, on 13 February 1991 the US rockets destroyed this bunker, causing the death of many civilians.[215]The US justified this by saying that the bunker was a military target, which in fact it was not. What happened in the Amiriyha Shelter proved that in American policy there is no distinction between military and civilian targets.[216]

During the course of the war, debate in the SC focused mainly on the legality of the military action against Iraq. The delegates raised many legal questions. The representative of Yemen, who recommended recourse for this dispute to the ICJ for peaceful settlement, suggested that the real issue was in the question of boundaries between the two parties, as the SC had never set any boundaries: this task had always been left to negotiations, or brought before the ICJ.

The Permanent Representative of the USSR to the UN in his letter to the Secretary- General on 11 February1991 expressed the view that this war went beyond its aims and 'the number of casualties is increasing, *inter alia,* among the peaceful population'. He further submitted that 'the military actions have already caused enormous material damage...however, the logic of the military operations and the nature of the military actions creates a risk that the mandate defined in these resolutions may be exceeded'.[217]

[215] Freedman and Karsh, n 142 above.
[216] Ibid.
[217] Letter of USSR's representative to UN based of the text of the statement made by the President M.S Gorbachev on 9 February1991.UN Doc. S/22215, 11 February1991.

Another example of these debates is in the Tunisian Permanent Representative to the UN's letter to the SC of 13 February 1991 where he argued that the war on Iraq went beyond its only aim of getting Iraqi troops out of Kuwait, and 'it became evident that Iraq's human resources and economic, scientific and cultural infrastructure was being targeted'. He makes once again 'an urgent appeal to the conscience of the world to spare bloodshed, to put an end to devastating war in the Gulf and to settle the dispute by peaceful means'. He further argued that bombardment on Iraq 'constitutes further evidence of the manner in which the Security Council resolutions on the Gulf, particularly Resolution 678 (1990), are being flagrantly transcended', and finally he strongly urged the SC to 'assume its full responsibilities by imposing respect for the United Nations resolutions in order to preserve a minimum degree of credibility for the United Nations, in its capacity as the last resort for the maintenance of international peace and security'.[218]

An Algerian letter to the SC of 14 February 1991 addressed and condemned the attack of the Amiriyha shelter describing what happened as a deliberate attack on civilians and the war in general as savage bombing raids carried out daily by the so-called coalition forces against Iraqi towns and cities.

The Algerian Representative expressed the concern of his country that this war was designed to systematically destroy Iraq's economy. Second, the true nature of the war being waged against Iraqi people and the attack on this shelter could in no circumstances be justified on the basis of international law or humanitarian conventions. Finally, he observed that 'immediate ceasefire so that a process of

[218] UN. Doc. S\P. 2977(Part 1), 13 February1991.

dialogue and negotiations can begin, based on the relevant principles of the Charter of the United Nations'.[219]

The importance of Jordan's letter of 15 February 1991 addressed to SC is that it went into legal points regarding the use of force in this dispute, its aims, the unclear meaning of the UNSC Resolutions. Jordan's Representative further raised his country's concern that they did not agree with the US's interpretation of the expression 'use all necessary means' in SC Resolution 678 of 1990 as implying the use of force against Iraq, and that the SC 'did not even request the Secretary – General to use his good offices and make diplomatic endeavours to reach a peaceful solution to the crisis'. [220]It is clear that the legal basis for SC Resolution 678 was not Article 42 of the UN Charter, which gives the SC authorisation to take military actions when economic sanctions have proved to be inadequate.

3.8.10 Security Council Resolution 687(1991): the Cease-fire Agreement

The SC adopted a number of resolutions in this crisis under Chapter VII of the UN Charter. The most important one for the purpose of this thesis is Resolution 687 (1991) of 3 April 1991.[221]In discussion that led to the adoption of the resolution, the main issue was concern with the legitimacy of the SC's legal actions. However, under the proposal of the resolution in settlement of the legal question of the boundary dispute between Iraq and Kuwait, the SC had no authority. Furthermore, such a Resolution would contradict SC Resolution 660 (1990), which called upon the two

[219] UN. Doc. S/22223, 14 February 1991.
[220] UN. Doc. S/22228, 15 February 1991.
[221] SC Res. 687 (3 April1991), 30 *ILM* 847(1991).

parties to settle their differences by negotiation and other peaceful means embodied in the UN Charter, including regional arrangements.

The Resolution was adopted by 12 votes in favour, one against (Cuba) and two abstained (Ecuador, Yemen). As noted, the language and words of this resolution opened the door widely for misinterpretation of its provisions.[222] This led the US and the UK to use such interpretations to justify their case for war on Iraq in March 2003.

The US-UK argued that they had legal authority to use force against Iraq, according to UN Resolutions 678, 687 and 1441, to disarm Iraq of its WMD.[223] However, as demonstrated in Chapters Seven and Eight of this thesis, such argument is not convincing. This is so because the ultimate goals of the above Resolutions were restoration of Kuwait's sovereignty and restoring peace and security in the region following the Iraqi invasion of Kuwait in 1990.Therefore, the scope of these resolutions cannot extend further in 2003 to advance the interests of the US in response to the 11 September incidents.

Resolution 687(1991) lays down a number of conditions for a formal ceasefire agreement between Iraq, the US and its allies. It imposed conditions of peace, but a number of issues remain unresolved, namely the measure of disarmament of the Iraqi regime. These conditions and demands were considered as a foundation stone in the US-UK's case for their invasion and occupation of Iraq in 2003.This resolution

[222] For more details on the UN ceasefire resolution see, Christine Gray, 'After the Ceasefire: Iraq, the Security Council and the Use of Force', 65 *BYIL* (1994) 135. See also, Lobel and Ratner, 'Bypassing the Security Council: Ambiguous Authorization of Use Force, Ceasefires and the Iraqi Inspection Regime', 93 *AJIL* (1999) 124.

[223] See Chapter Eight for more details accounts of the UK's legal argument for war on Iraq in March 2003.

established the United Nations Special Commission (UNSCOM) to carry out the inspections on the Iraq WMD program in co-operation with the International Atomic Energy Agency (IAEA).

Hence, the explicit purpose of the UN Resolution 687, which set out the ceasefire conditions, was Iraqi disarmament or elimination of its WMD in order to restore international peace and security in the region.[224]In this respect, Paragraph two of the Resolution gives the UN member states the right to 'restore international peace and security in the area.' However, it would be a mistake to argue that the wording of this Resolution give implied authorization for the US-UK to use force against Iraq in March 2003 or revived the authority to use force under Resolution 678 (1990).

There is no question that the inspection process succeeded in destroying Iraq's WMD. The evidence presented by the US Secretary of State Colin Powell to the UN, on 5 February 2003 that Iraq was continuing to develop WMD, was based totally on undisclosed documents.[225]This claim was subsequently proven to be completely false.[226]Furthermore, the resolution created a fund to compensate victims of Iraqi 'illegal invasion' and established a commission to administer this fund. The overall impact of Resolution 687 was to keep Iraq under a continuing bombing campaign. Targeting Iraq has remained very much on the agenda of the US's policy for a long time.

---

[224] Christine Gray, 'From Unity to Polarization: International Law and the Use of Force Against Iraq', 13 *EJIL* 1 (2002).

[225]Transcript of Powell's UN presentation, http://e dition.cnn.com/2003/us/02/05sprj.irg.powell, transcript.03/index.htm1.

[226] For more analyses of the evidence presented by Colin Powell to justify the US recourse to war on Iraq see William M. Arkin, 'A Hazy Target; Before Going to War over Weapons of Mass Destruction, shouldn't we be Sure Iraq has them?' *Los Angeles Times*, (9 March 2003).

3.8.11 Security Council Resolution 1441(2002)

SC Resolution 1441 of 8 November 2002 does not expressly authorise UN member states to use force against Iraq if it does not comply with its terms.[227]In Paragraph (1) the Resolution only determined that Iraq was in material breach of its obligations under relevant Resolution 687 (1991), by not cooperating with the UN inspectors to return to their work. Clearly, this was not authorization to the use of force.

The Resolution recalled all SC previous resolutions since the Iraq invasion of Kuwait in 1990, in particular Resolution 678 (1990), which had authorized UN member states to 'use all necessary means' to restore sovereignty, independence of Kuwait and international peace and security to the region, as well as ceasefire Resolution 687 (1991) that imposed obligations on Iraq to scrap its WMD and ballistic missiles with a range greater than a hundred and fifty kilometres that posed a threat to international peace and security.

Resolution 1441(2002) further deplored the fact that Iraq had not provided an accurate, full, final and complete disclosure, as required by Resolution 687 (1991), of all aspects of its programmes to develop WMD, ballistic missiles, and of all holding of such weapons, their components, production facilities and locations.

Furthermore, the Resolution obliged Iraq to provide complete disclosure of all other nuclear programmes including any which Iraq claimed were for purposes not related to nuclear-weapons-usable materials, to allow access to all sites designated by

[227]On SC Resolution 1441 see, Murphy (ed), 'Contemporary Practice of the United States relating to International Law', 96 *AJIL* (2002) 956.

UNSCOM and IAEA and cooperate fully with their weapons inspectors as well as give access to UNMVIC.[228]

Interestingly, Resolution 1441 deplored the fact that Iraq had failed to comply with its commitments according to Resolution 687(1991) with regard to terrorism, but the Resolution does not explain what these commitments were. The Resolution further reaffirmed the commitment of UN member states to sovereignty and the territorial integrity of Iraq, Kuwait and neighbouring states. Acting under Chapter VII of the UN Charter, the SC decided that the Iraqi regime 'has been and remains in material breach' of its obligations under relevant resolutions, including Resolution 687(1991).

Furthermore, the Resolution decided to afford the Iraqi regime a final opportunity to comply with its disarmament obligations under relevant UN resolutions. Accordingly, Resolution 1441 set up an enhanced inspection regime with detailed rules. Under paragraph 4, the SC decided that any false statements or omissions and any failure by the Iraqi regime at any time to comply with this resolution would constitute a further material breach of Iraq's obligations, and such a breach should be reported to the SC for assessment. Finally, the resolution concluded by recalling that the SC had repeatedly warned the Iraqi regime that it would face serious consequences as a result of its continued violations of its international obligations. On 16 September 2002, Iraq expressly accepted the resolution.[229]

---

[228] On reports of UNMOVIC to the SC see UN Press Releases SC/7664, SC/7665, SC/7666, SC/7682, SC/7687 and SC/7696.

[229] Christine Gray, *International Law and the Use of Force*, 2nd edn., (Oxford, Oxford University Press, 2004).

It has been suggested that in the event of Iraq's non-compliance with its obligations under Resolution 1441, this resolution alone entitled both the US-UK to resort to force even without a further SC Resolution.[230]

Thus, Resolution 1441 alone was not enough to justify the military action against Iraq, and it is clear that, at the time of Resolution 1441(2002), the understanding of other UNSC members (Russia, China, Germany and France) was that a second resolution was needed, expressly authorizing the use of force if Iraq did not comply with the SC. Thus, the US-UK cannot rely on Resolution 1441 automatically giving them the right to use force against Iraq.

However, after adoption of Resolution 1441, the UN weapons inspections regime commenced work, and it worked well since Iraq allowed the inspectors to return to the country. Furthermore, Iraq had produced its declaration of the study of its weapons programme, running to 12,000 pages.[231]The inspectors did not find any WMD, as well as no evidence that Iraq had revived its nuclear weapons programme since the elimination of the programme in the 1990s,[232]but the US-UK still argue otherwise. The SC made no determination of such breaches. Given this legal framework, it is clear that the explicit text of Resolution 1441 did not give the US-UK any legal grounds to use force against Iraq in March 2003.

---

[230] Christopher Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida and Iraq', in Christopher Greenwood, *Essays on War in International Law*, (London, Cameron May Ltd, 2006).
[231] UN SCOR, 58th Sess., 4692 mtg., UN Doc. S/PV.4692 (2003)
[232] Ibid.

8.9 Findings and Concluding Remarks on Chapter Three

The main aim of this Chapter was to present and evaluate the origins of the dispute between Iraq and the US-UK. In the light of the history of the Iraqi invasion of Kuwait and the text of UN Resolutions 660, 678, 687 and 1441 discussed in this chapter, it is nearly impossible to interpret these resolutions as permitting the US-UK to use force against Iraq in March 2003.

This Chapter concludes that the main difference between the legality of use of force in the Iraqi invasion of Kuwait in 1990 and the US-UK invasion of Iraq in 2003 lay in the fact that the first case was a response to the Iraqi act of aggression against Kuwait, whilst in the second case it was not in response to such an act. There was, however, one argument for which the US-UK did not have a good answer: why in both cases the amicable methods found in the UN Charter were ignored. These two wars has exposed some weaknesses in the application of the rules of international law governing the use of force by states.

However, this conclusion does not mean that the Iraqi invasion of Kuwait was legal under international law. A stronger argument against the two wars can be found in long-established principles of international law, prohibition of the use of force and peaceful settlement of international disputes. This is the subject of Chapters Four and Six.

Arabs' and Muslims' public opinion is that, since Saddam's additional military strength became recognised by the US, the West, and Israel; they will not allow Iraq to become a nuclear power in the region. On the one hand, Arabs saw that Israel had

not complied either with the UN Resolutions or the rules of international law, while Iraq had destroyed its military capacity on unfounded allegations.

However, not only the West saw Iraq as a real danger or threat to Israel and its allies, but some Arab leaders such as the Egyptian President Housni Mubarak who has been in presidency since the early 1980s. For narrow interests he felt that if the Iraq-Kuwait dispute had been resolved by Arab settlement this would be in the favour of Saddam. This in turn would transform Iraq into the most powerful Arab country instead of Egypt. However, this was unacceptable to President Mubarak, so he played a crucial role in internationalization of the dispute to the level that we now witness.

The legal justifications for the use of force against Iraq in 1990 are highly controversial. No one in the SC or the GA was able or willing to challenge the scope of the US-UK's military campaign against Iraq. During this war, and between the adoption of Resolutions 678 (1990) and 687 of 14 February 1991 that ended the war, the SC held no meetings to address the course of the war. In fact, the ceasefire declaration was made without an SC resolution. It was Bush, the President of the US, not the UNSC, who announced on 28 February 1991 the termination of military operations. Only on 3 April 1991 did the SC adopt Resolution 687 that set out the terms and conditions of the ceasefire agreement.

The SC in Resolution 660 of 2 August 1990 stated explicitly and unambiguously that it was acting under Articles 39 and 40 of the UN Charter. However, the main goals of Resolution 678 were enforcing Iraq to comply with Resolution 660 and restoring international peace and security to the region. By withdrawal of Iraqi forces

from Kuwait and the restoration of the legitimate Kuwaiti government, the goals were fulfilled.

It would seem, therefore, that Resolution 678 did not explicitly authorize the US-UK, or other member states, to use force against Iraq in 1991, nor does it give the US-UK indefinite authorization of the use of force against Iraq at any time, despite the fact that this Resolution was adopted pursuant to Chapter seven of the UN Charter. This Chapter allows only the SC to 'use all necessary means' to ensure Iraq's compliance with its previous Resolutions. However, even if there were authority in this resolution, it has been exceeded by the US-UK and extended to become a real threat to international peace and security. It is evident that the attacks against Iraq were deemed unreasonable: i.e. bombing and attacks on civilians and the civil, economic, scientific and cultural infrastructure.

Furthermore, the legal basis for Resolution 678 was not Article 42 of the UN Charter, which gives the SC authorization to take military actions when economic sanctions have proved to be inadequate. It is, of course, also true that those military operations undertaken by the US-UK against Iraq are contradictory to the provisions of Article 2(4) of the UN Charter; therefore, the aggression organised by these two countries against Iraq violated the UN Charter.

Thus, the US deliberately prevented the UN from exercising its mandated duty to control military operations. It is clear in this crisis that the UN was left behind, and its Secretary-General played no role to settle this dispute peacefully. Another unfounded legal basis that the US and its allies relied on in their war on Iraq in 1990 was

collective self-defence; but the condition for this right does not exist. This is so because the Iraq did not attack the US to raise it is right of individual or collective self-defence.

Part Two of this study contains two Chapters devoted to examining the principle of peaceful settlement of international disputes. The first, Chapter Four, examines the concept of dispute resolution in the UN Charter. The second, Chapter Five, is a discussion of the concept of dispute resolution and the non-use of force in Islamic international law.

PART TWO

THE CONCEPT OF DISPUTE RESOLUTION IN THE UNITED NATIONS CHARTER AND ISLAMIC INTERNATIONAL LAW

CHAPTER FOUR

DISPUTE RESOLUTION IN THE UNITED NATIONS CHARTER

CHAPTER FOUR

DISPUTE RESOLUTION IN THE UNITED NATIONS CHARTER

4.1 Introductory Remarks

This Chapter focuses primarily on legal and contractual aspects of the principle of peaceful settlement of international disputes in the UN Charter, and discusses whether this principle constitutes an international obligation in both customary international law and the UN Charter. It further looks at the principal types of procedure available to the international community to settle disputes peacefully. In the process of examining this, reference has been made to Articles 2(3) and 33 of the UN Charter.

The aim in this Chapter is to identify the areas of agreement and disagreement of the argument that a negotiated settlement with the Iraqi regime might well have been reached without waging war. It proceeds to examine the existing legal norms and international institutions for peaceful settlement of international disputes, preventing wars, and then looks forward to a variety of peaceful methods available to the US-UK to settle their dispute with the Iraqi regime. In so doing, the Chapter throws light on the UN dispute settlement system in the light of the Iraq invasion to provide clear examination of this system. The aim is to prove how this system has been ignored by evolution of the rules that govern it and how the US-UK have not considered a peaceful solution of this dispute to be in line with their national interest.

In other words, the aim of examination of the UN Charter is to throw light on the general legal framework of this system and to explore the possibility of finding

mutually acceptable peaceful settlement methods contained in other international conventions and treaties to resolve the Iraqi regime's problem with the international community.

4.2 A Brief Overview of the Literature on Conflict Resolution

Disputes between states, as a general rule, are governed by international law, but in a legal sense states may agree that their international relations can be governed by other legal systems; that is to say other agreed sets of rules and procedures.[233] The freedom to choose the applicable law or legal system may be limited by the principles of party autonomy and the obligation to apply mandatory rules of the *lex causae* and of the *Lex arbitr.*[234]

Those defending the US-UK action against Iraq offer a variety of legal arguments; they claim that the invasion was legally justified in self-defence under Article 51 of the UN Charter; they stressed the earlier SC Resolutions passed during the Kuwait crisis calling on Iraq to withdraw from Kuwait in 1990, despite that fact that these Resolutions did not expressly authorize the US-UK to use force against Iraq in March 2003. Furthermore, they advocate that Iraq developed WMD and that Saddam Hussein's regime was linked with AL-Qaeda.

For example, John Yoo argues that international law permitted the war on Iraq on two bases: firstly, under SC authorization to implement the terms of the Ceasefire

---

[233]See *Tunisia-Libya Continental Shelf Case*, ICJ Rep. 23, 38 (1982); (*Lex specialis*), *Denmark-Malawi Loans agreement,* (1966), 586 UNTS3.

[234] See Articles 3(3) and 7 of Rome Convention on the Law Applicable to Contractual Obligation. See Maniruzzaman, 'International Arbitrator and Mandatory Public Law Rules', 7 *J.Int.Arb.* 53(1990); Chukwumerije, 'Mandatory Rules of Law in International Commercial Arbitration', 5 *African J. Int. & Com.law* (1993); Mark Blessing, 'Mandatory Rules of Law Versus Party autonomy in International Arbitration', 24 *J.Int.Arb.*

Agreement of 1991 between the UN and Iraq, because Iraq committed material breaches of these terms. Secondly, international law also permitted the war on Iraq 'in anticipatory self-defence because of the threat posed by an Iraq armed with WMD and in potential co-operation with international terrorist organisations.'[235] He further claims that, after the Ceasefire Agreement of 1991, Iraq continued to develop WMD in violation of the UN resolutions.[236]

The present thesis, however, does not share the above view, and considers that it is unacceptable for the following reasons: firstly, Yoo's broader claims turned out to be wrong. As a matter of fact the UN Charter prohibits the unilateral use of force except: (a) when authorized by the SC and (b) when undertaken in response to an ongoing 'armed attack'.[237]Secondly, surprisingly, the full set of circumstances allegedly surrounding the Iraq WMD and programs have not been discovered. Thirdly, no evidence has been found to link Saddam Hussein's regime with AL-Qaeda.

As the experience of the Iraq invasion in March 2003 has indicated, the US has abused the norms of international law and the UN Charter. In particular the concept of anticipatory self-defence, and has used force outside the SC many times in recent years, in different parts of the World and in a wider set of allegations and justification

[235] John Yoo, 'International Law and the War in Iraq', 97 *AJIL*, (2003) 563. Prof. Yoo was a former deputy assistant attorney general in the US Department of Justice.
[236] Ibid.
[237]On what considered as an armed attack see, the conclusion of the ICJ in Military and Paramilitary Activates in and Against Nicaragua (Nicaragua v. United States) *Nicaragua Case*, ICJ 1, (1986) 93-99; Derek Bowett, *Self-defence in International Law*, (Manchester, 1958); Ian Brownile, *International Law and the Use of Force by States*, (Oxford, 1963); Oscar Schachter, 'The Right of States to Use Armed Force', 82 *Mich. L. Rev.* (1984)1620,

than those described in Article 51 of the UN Charter: against Cuba in 1962,[238] Vietnam 1961-75,[239]the Dominican Republic 1965,[240]Nicaragua,[241]Grenada,[242]Libya in April 1986,[243]Iraq several times between 1991 and 2003, Panama in December 1989,[244]Sudan[245]and Afghanistan in 1989. All this was done without legal authority from the SC.[246]

In 1998 J.G., Merrills defined an international dispute as follows:

> A dispute may be defined as a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter-claim or denial by another. In the broadest sense, an international dispute can be said to exist whenever such a disagreement involves governments, institutions,

---

[238] Abraham Chayes, 'The Legal Case for US Action in Cuba', 47 *Department of State Bulletin*, No 1221 (19 November1962) 963-65.

[239] For detailed analysis of this war see, Richard A. Falk, *The Vietnam War and International Law,* (Princeton, 1968).

[240] Abraham F. Lowenthal, *The Dominican Intervention*, (Cambridge, Massachusetts, 1972); John P. S. McLaren, 'The Dominican Crisis: Inter-American Dilemma', 4 *Canadian Yearbook of International Law* (1966)178.

[241] See Paul S. Reichler and David Wippman, 'The United States Armed Intervention in Nicaragua: A Rejoinder', 11 *YJIL* (1985-86) 462; Nicholas Rostow, 'Nicaragua and the Law of Self-Defence Revisited', 11 *YJIL*, (1987) 437; John L. Hargrove, 'The Nicaragua Judgement and the Future of the Law of Force and Self-Defence', 81 *AJIL*, (1987) 135.

[242] See William C. Gilmore, *The Grenada Intervention: Analysis and Documentation*, (London, 1984); Christopher C. Joner, 'The United States Action in Grenada: Reflections on the Lawfulness of Invasion', 78 *AJIL* (1984) 131.

[243] UN Doc.S/PV. 2682. On this raid see Wallce F. Warriner, 'The Unilateral Use of Coercion under International Law: A Legal Analysis of the United States Raid on Libya on April 14, 1986', 37 *Naval Law Review* (1988) 49; David Turndorf, 'The US Raid on Libya: A Forceful Response to Terrorism', 14 *Brooklyn Journal of International Law* (1988) 187; Christopher Greenwood, 'International Law and the United States Air Operation Against Libya', 89 *West Virginia Law Review* (1987) 933.

[244] UN Doc.S/2/048, UN Doc.s/pv.2902.On this intervention see Ruth Wedgwood, 'The validity of the United States Intervention in Panama under International Law', 84 *AJIL* (1990) 494.

[245]On August 1998, the US fired Tomahawk missiles at EL Shifa pharmaceutical plant in Sudan, destroyed the plant and killed many civilian. They justified their unilateral military action as self-defence as the plant was linked and controlled by bin Laden's terrorist network and 'was producing chemical warfare-related weapons'. However, the US's claims turned out to be untrue as the unguarded plant in fact owned by a well known Sudanese businessman Salah Idris and it only produce pharmaceuticals.

[246]Jules Lobel, 'The Use of Force to Respond to Terrorist Attacks: The Bombing of Sudan and Afghanistan', 24 *YJIL* (1999) 537-558.

> juristic persons (corporations) or private individuals in different parts of the world.'[247]

More importantly, in the Mavromattis Palestine Concessions Case the PCIJ defined a dispute as: 'A disagreement on a point of law or fact, a conflict of legal views or interests between two persons'.[248]However, in the Advisory Opinion in Interpretation of Peace Treaties Case, the ICJ held in what constitutes an international dispute is:

> whether there exists an international dispute is a matter for objective determination, the mere denial of the existence of a dispute [by any party] does not prove its non-existence...there has arisen a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of treaty obligations, confronted with such a situation the Court must conclude that international dispute have arisen.[249]

This means that if we consider the events leading to war on Iraq, it is clear that there was an international dispute between the US-UK and Iraq prior to the invasion in March 2003. MacDougal, Reisman and Willard argue in this respect that 'differences may be resolved by violence or war.'[250]

After divided possible meanings of settling international disputes to peaceful means and coercive means, Storke outlines his views, and argues 'when State cannot

---

[247] Merrills, n 13 above.
[248] Judgement on *Mavromattis Palestine Concession Case* (Greek v. UK), 1924 PCIJ. Ser.A No.2, at 11.
[249] ***Interpretation of Peace Treaties Case***, ICJ Rep (1950) 65.
[250] M.S. MacDougal, Michael W. Reisman, and A.R. Willard, 'The World Process of Effective Power: The Global War System,' in *Power and Policy in Quest of Law: Essays in Honour of Euqene Victor Rostow* (1985) 333.

agree to solve their disputes amicably, a solution may have to be found and imposed by forcible means'.[251]Following this logic, the obligation to settle disputes peacefully is operative only when it does not conflict with the narrow national interests of the parties to a dispute. This is in contradiction to the UN Charter and customary international law, because both approach and regulate peaceful settlement of international disputes and provide comprehensive settlement procedures available to UN members.

In contrast, NII Lante Wallace-Bruce indicates that contemporary international law imposes a duty on states to settle their international disputes by peaceful means. This is:

> Based on the textual analyses of the three United Nations documents, [the UN Charter, the Declaration on principles of International Law Concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations and the Manila Declaration on the Peaceful Settlement of International Disputes] it seem that one is only entitled to conclude that there is an obligation on Members of the United Nations to settle by peaceful means those types of disputes, which if not so settled, are likely to endanger international peace and security.[252]

[251] J.G. Storke, *An Introduction to International Law*, 4th edn., (1984).
[252] NII Lante Wallance-Bruce, *The Settlement of International Disputes, The Contribution of Australia and New Zealand,* (The Hague, Martinus Nijhoff Publisher).

Shinkaretskaia argues that the obligation to settle international disputes peacefully is 'a jus cogens operative at any stage of a conflict'.[253]In Shinkaretskaia's view, the principle of peaceful settlement of international disputes is 'A universal obligation and in accordance with contemporary international law.'[254]He draws attention to, and places no distinction between, legal and political disputes. He defines disputes as:

> The existence in relations between two or more States of unresolved issues, differences, and divergences on particular matters of international life or a divergence in construing or applying agreements and other acts.[255]

Furthermore, he rejects the view that only some types of dispute are subject to the duty of peaceful settlement, while leaving all other types of disputes or differences to be settled by violence or resort to the use of force because contemporary international law and the UN Charter requires all disputes to be settled by peaceful means. However, in this context, Dixon and McCorquodale observed:

> An international legal order, as with any effective legal system, must have some rules in regard to the settlement of disputes. These rules are particularly necessary in an international community where States are not equal in terms of diplomatic power, access to weapons or access to resources, and where there is the potential for massive harm to people and to territory. That these disputes should be settled peacefully is a direct corollary of the prohibition of the

[253] Shinkaretskaia, n 135 above, 39-52.
[254] Ibid.
[255] Ibid.

use of force...The legal obligation to settle disputes peacefully may now have the character of jus cogens, at least if the non-use of force has that character."[256]

Bowett points out that:

> The principle of settlement of dispute by peaceful means is, of course, one of the principles basic to the whole structure of international society. Its juxtaposition in Article 2(3) of the UN Charter with Article 2(4) is no accident of drafting: for it is corollary of the prohibition of the use or threat of force as a means of resolving international disputes. This emerges clearly from the Manila Declaration on the Peaceful Settlement of Disputes adopted by the General Assembly in 1982...therefore the constant reiteration of the obligation not to use force for the settlement of disputes emphasizes the fundamental link between these two Charter provisions.[257]

However, this approach is clearly understandable where there is a political willingness to compromise, and where the protection of less powerful nations, natural resources, civilians and the environment are at issue.[258]For an example of the importance of the role of political will in the settlement of international disputes peacefully, there is the active role that the British Prime Minster Harold Wilson played as third party to settle the territorial dispute between India and Pakistan over The Rann of Kutch in 1968. This settlement was based upon many techniques for

---

[256] Martin Dixon and Robert Mc Corquodale, *Case and Materials on International law*, 3rd edn., (Black Stone Press Ltd, 2000).
[257] Derek Bowett, 'Contemporary Developments in Legal Techniques in the Settlement of Disputes', 180 *Receuil des Cours* (1983-II).
[258] Harold Wilson, *The Labour Government 1964-1970: Personal Record* (1971).

dispute settlement. Both peaceful settlement methods have been used that to say legal and non-legal means. In this dispute the two parties used; mediation, negotiation and good office of the UK, then agreed in their *compromise* (agreement) to submit their differences to arbitration.[259]

One strong impression that does emerge from this brief literature survey, however, is the need for reiteration of states' universal obligation to settle their international disputes peacefully and not to use force in international relations. The UN Charter thus seems to have a restrictive scheme designed by those who drafted it to limit the unilateral use of force by a single state, and to ensure that the use of force is permitted only as an emergency and last resort measure to maintain peace and security.

Without doubt, the two related doctrines, peaceful settlement of international disputes in Article 2(3) and the non-use of force in international relations in Article 2(4) have been developed to maintain international peace and security.[260]By accepting both doctrines, international peace and security will be promoted, and the political integrity of all members of the international community will be respected. Both principles are discussed at great length and compared to each other with reference to the UN Charter and customary international law in this Chapter and in Chapter Six.

---

[259] *The Rann of Kutch Arbitration Case*, 7 *ILM* 633 (1968), 50 *ILR* 2.

[260] Louis Sohn, 'The Future of Dispute Resolution', in R. St. J. MacDonald and D.M. Johnson, eds., *The Structure and Process in International Law: Essays in Legal Philosophy, Doctrines and Theory*, (Boston, MA: Martinus Nijhoff Publishers 1983).

4.3 Dispute Resolution Machinery Based on the Law of the UN Charter

One of the central justifications for the US-UK war on Iraq was the need to disarm the Iraqi regime from its WMD. The Anglo-Americans claimed that they were liberators not occupiers. As a matter of law and fact, international law does not regulate the concept of liberation, there is no liberation law, but we have an international occupation law.

Almost immediately after major hostilities ended, the US-UK officials repeated that they came to Iraq from overseas as liberators, not occupiers, but in fact, the presence of the US-UK military forces in Iraq suggests that they were taking the power of occupiers in Iraq, and were in violation of international law. The aggressive methods of interrogation 'sadistic, blatant, and wanton criminal abuse'[261] used by the US-UK to abuse Iraqi detainees at Abu Ghraib and Basra prisons in 2004 was widespread and reported as 'tantamount to torture.'[262] All these suggest that the Anglo-Americans were not liberators, but in fact invaders and abusers of international law (Appendixes B.6.1- B.6.10).

The UN Charter system provides an obligation on all member states to settle international disputes by peaceful methods of their own choice, or refer their disputes to the three main political organs of the UN with primary responsibility to maintain international peace and security: the SC, the GA and the Secretariat. Therefore, in the UN system of dispute resolution, the obligation to settle international disputes by peaceful means, set forth in Article 2(3) of the UN Charter, is a general obligation in

[261] Bradley Graham, 'Army Investigates Wider Iraq Offences', *Wash. Post*, (1 June 2004)at A1.
[262] David S. Cloud et al., 'Red Cross Found Widespread Abuse of Iraqi Prisoners', *Wall St .J.*, 7 May 2004, at A1.

the broad sense of any dispute or any conflict of view between two or more states without any distinction between legal and political disputes.

According to the UN disputes machinery, if the disputants failed to settle their dispute by peaceful means as set forth in Article 33(1) of the UN Charter they are under specific obligation, in accordance with Article 37(1) of the UN Charter, to refer their dispute to the SC.[263]

Therefore, according to the UN Charter, states are under four obligations in regard to peaceful settlement of international disputes. Firstly, they are under obligation to seek in good faith the settlement of all international disputes by peaceful means as set forth in Article 33(1) of the UN Charter in such a manner that international peace, security and justice are not endangered. Secondly, they are under obligation to submit to the GA any dispute that they fail to settle by peaceful means. Thirdly, they are obliged to refer to the SC any unsettled disputes the continuance of which is likely to endanger international peace, security and justice. Fourthly, they are obliged to consider in good faith any recommendations or terms of peaceful settlement made by the SC or the GA.

Undoubtedly, the US-UK made no direct negotiation or mediation efforts to settle this dispute, nor did UN members make such efforts. Thus, the conflict resolution approach was not effective for many political reasons, despite the fact that this principle is a central obligation of contemporary international law and compatible

[263] Article 37 of the UN Charter reads as follows: '1. shall the parties of a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article they shall refer it to the Security Council.'

with the prohibition of the use of force.[264] It is clear that the US-UK in fact have additional goals other than the Iraqi WMD: the destruction of Iraq's offensive military capacity and a change in the Iraqi regime to a more compliant one, dividing the country into small entities including Sunnis, Shias and Kurds.

These political goals conflict with their obligation to settle international disputes peacefully, and are likely to endanger international peace, security and justice; therefore, they do not consider themselves under an international duty to settle by peaceful means their dispute with Iraq. In other words, because of the American super power they are exempting themselves from international law.

However, Bolton suggests this in his controversial arguments. Besides accusing the Europeans of the two world wars, he argues that international law must not apply to the American due to the doctrine of 'American exemptionlism'. In this context, Bolton points out that:

> In the Middle East it was Europeans who combined Sunnis, Shias and Kurds into on unlikely entity [Iraq], it was they who drew boundaries bringing wealth to the few [Gulf States] and poverty to the many [other Arab countries], it was they who both persecuted and murdered their Jewish populations then sought to assuage their guilt by creating a land for them far way and in other people homes.[265]

---

[264] Interpretation of Peace Treaties Case (1950) ICJ 65 (D&M, 601).

[265] For detailed analysis on the writing of John R. Bolton see Wade Mansell, 'John Bolton and United States Retreat from international law', *Social and Legal Studies,* (London, SAGE Publications, 2005) 462.

According to Bolton's point of view, the US are not legally bound by treaties if these treaties conflict with their national interests and national laws; therefore, they were exempted from the rules of international law and the UN Charter in their military actions against Afghanistan and Iraq in 2003.

4.3.1 Article 2(3) of the UN Charter

The UN Members have a Charter obligation to seek first of all a peaceful solution to their disputes by one of the alternatives methods provided in the Charter. As noted, the fundamental purpose of the UN is the maintenance of international peace and security; therefore, the Charter sets out two important principles for direct approaches to achieve these goals. The first principle is peaceful settlement of international disputes outlined in Chapter VI of the Charter. The second is the non-use of force as outlined in Chapter VII of the UN Charter, and comprises measures against any states that threaten or breach international peace and security.

Article 2(3) of the UN Charter requires that 'All Members shall settle their international disputes by peaceful means in such manner that international peace, security and justice are not endangered.' This means this Article lays down an obligation upon member states to seek settlement of their disputes by peaceful means and not endanger international peace, security and justice by resorting to war as a means of settling disputes. However, this obligation is distinct from states' obligation not to use force in their international relations in accordance with Article 2(4) of the UN Charter or in any other manner inconsistent with the purposes of the United Nations. The text of this principle is the subject of further consideration in Chapter Six.

As noted, the obligation to settle international disputes peacefully is a fundamental rule of the UN Charter and customary international law, and may have acquired the status or character of *jus cogens*.[266] The language of Article 2(3) of the UN Charter clearly indicates and requires all member states to seek in good faith peaceful settlement of their disputes by lists of means available for such purpose.

It is important to note that this obligation is not only applicable to members of the UN, but to all other member states of the international community. Furthermore, Chapter VI of the UN Charter lays down specific procedures for the pacific settlement of international disputes. These classic procedures and mechanisms are referred to in Article 33 (1) of the UN Charter. It is generally accepted that the obligation to seek early peaceful settlement of international disputes embodied in Articles 2(3) and 33 (1) of the UN Charter is a principle of customary international law that finds support in a variety of bilateral and multilateral treaties and many international judicial awards and opinions.[267]

It is arguable, of course, that the dispute settlement technique is not an appropriate or useful way of trying to resolve the dispute with the Iraqi regime or with other 'exile of evil' nations, especially when there are vital interests for the US-UK to consider.

---

[266]See David J. Harris, *Cases and Materials on International Law,* 5th edn., (London, Sweet & Maxwell, 1998); Martin Dixon and Robert McCorquodale, *Cases and Materials on International law* 2nd edn., (London, Blackstone Press Ltd, 1991); M. N. Shaw, *International Law,* 4th ed., (Cambridge, Grotuis Press, 1997); J.G Merrills, *International Dispute Settlement* 3rd ed, (Cambridge, Cambridge University Press,1998); John Collier and Vaugham Lowe, *The Settlement of Disputes in International Law*, (Oxford, Oxford University Press, 1990); Ian Brownlie, *Principles of International Law*, 5th edn., (Oxford, Clarendon Press, 1998); M.D. Evans, *Blackstone's International Law Documents*, 4th ed., (London, Blackstone Press Ltd., 1999); A. Shearer, *Starke's International Law*, 11th edn., (London, Butterworths, 1994); Judge Abdul G Koroma, 'The Peaceful Settlement of International Disputes' 227 *NILR* (1996)234-236; NIILante Wallance-Bruce, *The Settlement of International Disputes, The Contribution of Australia and New Zealand,* (The Hague, Martinus Nijhoff Publisher).

[267] Louis Sohn, *'The Future of Dispute Settlement'*, in the Structure and Process of International Law, (The Hague and Boston, Martinus Nijhoff, 1983); Raimo Vayrynen, 'The United Nations and the Resolution of International Conflicts', *Co-operation and Conflict* 20(3), (1985).

But, despite these vital interests, there are legal norms and obligations in customary international law and the UN Charter, as a treaty requires all international disputes to be settled peacefully. By not doing so the US-UK are in violation of their international obligation to settle disputes peacefully and not to endanger international peace and security.

As noted, Article 2(3) of the UN Charter explicitly establishes a general international obligation that international disputes should be settled peacefully, and requires disputants to resolve their disputes through peaceful means rather than coercion. It may be noted that, while Article 2(3) establishes the obligation to settle international disputes by peaceful means, other articles of the UN Charter establish its legal system, which contain specifically norms, procedures and the various institutions and the UN organs that can participate and facilitate in avoidance and settlement of international disputes.

The process of dispute settlement combines elements of various settlement techniques set out in Article 33(1) of the UN Charter. Thus, the outcome of the dispute settlement process relies on the political will of the parties to reach a compromise. In this respect, it appears that the prohibition of the use of force is obligatory under Article 2(4) of the UN Charter, while Article 33(1) leaves to member states the right to choose between the various means available for peaceful settlement of their disputes.[268]

---

[268] Sydney Bailey, *How War End: the United Nations and the Termination of Armed Conflict*, 1946-1964, (Oxford, Clarendon Press, 1982); Klaus Dicke, *Dispute Settlement in Public International Law: Texts and Material*, compiled by Karin Oellers-Frahm and Norbert Wuhler, (Berlin; New York, Springer Verlag, 1984).

Within this general framework, the UN Charter provides a legal framework within which many international disputes may be settled peacefully if the disputants and the international community have the necessary will. Due to the lack of this will and the hegemony of the US as the only remaining super power nation, all this has played an important role in ignoring the use of the rich variety of peaceful means and procedures available in the UN system to deal with the problem of the Iraqi regime. Thus, it seems that the US-UK consider that war may be the quicker procedure to achieve their goals in Iraq. But these goals seem far beyond the reach of the hands of politicians in both countries as the events in the aftermath of the invasion suggest.

As noted also, according to Article 2(3) of the UN Charter, the principle of peaceful settlement of international disputes rests primary responsibility upon the parties to settle their dispute by peaceful means embodied in Article 33(1). Thus, the scope of Article 33(1) is longer than Article 2(3), which only obliges member states to settle their disputes peacefully. In case of the failure of their efforts, or the lack of finding a peaceful settlement, and where international peace and security are threatened, the institutional responsibility of the UN materializes, and the procedures of Chapter VI or VII of the UN Charter become applicable. However, Article 35(2) extends the obligation in Article 2(3) to third-party states with the right and responsibility to approach the SC or GA.[269]

However, in the Status of Eastern Carolina Case in 1923, the PCIJ states:

[269] Article 35(2)states 'A state which is not a Member of the United Nations may bring to the attention of the Security Council or the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter'.

> It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration or to any other kind of peaceful settlement.[270]

This case raises the question: do states have an obligation to settle their international disputes by peaceful means? The wider view is that in the absence of an agreement they are under no such legal obligation. However, states that are party to the UN Charter have a treaty obligation to settle their international disputes peacefully and not use force in their international relations. Thus, states do have a legal obligation to settle their disputes peacefully whether they have an exist agreement or not because Article 2(3) of the UN Charter obliges states to do so. Therefore, the US-UK breached their international obligation under Article 2(3) of the UN Charter.

The obligation of peaceful settlement of international disputes in Article 2(3), linked with the principle of the non-use of force pursuant to Article 2(4) of the UN Charter, also has strong links with many fundamental principles of international law. For example, it has links with the principle of non-intervention in the internal or external affairs of other states, according to Article 2(7) of the UN Charter.[271]

The principle of peaceful settlement of international disputes has been further recognised in a number of other multilateral treaties such as in Article 5 of the Pact of

---

[270] *Status of Eastern Carolina Case* (Finland v. Russia), PCIJ ser, B (1923), No.5 at 27 (D&M, 601).

[271] Article 2(7) of the UN Charter reads as follows:

> 'Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII'.

the League of Arab States 1945,[272]in Article 1 of the American Treaty on Pacific Settlement (Pact of Bogotá) 1948, and the European Convention for the Peaceful Settlement of Disputes.

The states' obligation to settle their disputes according to the principle of peaceful settlement of international disputes, pursuant to Article 2(3) of the UN Charter, has been reiterated in number of GA Resolutions[273]and international instruments; these include:

1- The Declaration on Principles of International Law Concerning Friendly Relation and Cooperation among States in accordance with the Charter of the United Nations, which explicitly states, after referring to Article 2(3), that 'States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiring, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful methods of their choice'.[274]

2- The Declaration on the Prevention and Removal of Disputes and Situations which May Threaten International Peace and Security and on the Role of the United Nations in this Field,[275]

3- The Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security.[276]

---

[272] This Pact singed in 22 March1945 and entered into force in 10 May 1945, 70 UNTS 237.
[273] For examples, Res 2627 (XXV) of October 1970, Res 2734 (XXV) of November 1970 and Res 4019 of November 1985.
[274] UNGA Res 2625(XXV) UNGOR, 25th sess., supp. No. 28, at 121 (24 October 1970), *ILM* 1292.On this principle see; Pit-Hein Houben, 'Principle of International Law Concerning Friendly Relation and Cooperation among States', 61 *AJIL* (1967) 703; Edward McWhinney, 'Friendly Relations and Cooperation among States: Debate at the Twentieth General Assembly', United Nations, 60 *AJIL*(1966)356; R. Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey', 65 *AJIL* (1971)713; G Arangio-Ruiz, 'The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations', 137 *HR* (1972), 419.
[275] UNGA Res. 43/51.

4- The Manila Declaration on the Peaceful Settlement of International Disputes.[277]This document is considered to be important in setting out a common understanding of the principle of peaceful settlement of international disputes. Article 13 of the Declaration provides 'Neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the states parties to the dispute'.

It should be added here that Article 2(3) not only formulates the general obligation of all states to settle their existing international disputes peacefully, but also they have a further obligation to submit their future disputes to peaceful settlement procedures. The language of Articles 1 and 2 of the UN Charter indicates that the obligation of states to seek in good faith settlement of their disputes is a strict one. Therefore, in general international law and the UN machinery, the US-UK is under obligation to actively and in good faith seek settlement of their dispute and alleged claims with the Iraqi regime by peaceful means currently available in both systems in such manner that international peace and security is not endangered. But there is strong evidence that they did not act in good faith.[278]

As is evident, one of the express purposes of the UN is to ensure the maintenance of international peace and security.[279]Article 2(3) is clearly linked to this purpose laid

---

[276] UNGA Res.46/59. For discussion on the effect of GA resolutions see; D H Johnson, 'The Effect of Resolutions of the General Assembly of the United Nations', 32 *BYIL* (1956), 97; Richard Falk, 'On the Quasi Legislative Competence of the General Assembly', 60 *AJIL* (1966), 782.
[277] UNGA Res 37/10 of 15 November 1982, 21 *ILM* 449. See Bengt, Broms, *The Declaration on the Peaceful Settlement of International Disputes*, in Essays in International Law in Honour of Judge Manfred Lachs, (The Hague; Boston, Martinus Nijhoff Publisher, 1984).
[278] O'Connor, *Good Faith in International Law*, (Brookfield, VT Dartmouth, 1990).
[279] UN Charter, Articles 1, 2(3), 2(4) and 33.

down in Article 1(1) of the UN Charter. It may be recalled in this connection that the UN Charter provides in Chapter (1) that, among other purposes, the aim of the UN is pacific settlement of international disputes that threaten international peace and security.

This means that the obligation to settle international disputes by peaceful means is not only an obligation of the Member States, but it is one of the fundamental obligations of the UN. Therefore, not only were the US-UK in violation of their treaty obligation not to use force against Iraq in 2003, but the UN as an international organisation has failed to comply with its duty to actively seek settlement of the dispute between Iraq and the US-UK.

In this regard, it is unfortunate that the UN did not play any role either prior the Iraq invasion or during the hostilities. Not one of its members tried to refer the dispute for peaceful settlement by the SC or GA, despite the fact that it threatens international peace and security. President Bush asked in his statement at the UNGA on 12 September 2003 'Will the UN serve the purpose of its founding, or it be irrelevant?'[280]

It might be argued that it is clear that the UN is irrelevant in two aspects: firstly because it failed to settle this dispute peacefully and to prevent the war. Secondly for President Bush it is irrelevant too because it failed to endorse recourse to war. Kofi Annan, the UN General-Secretary, the Arab League[281] and international community

[280] '*Will the UN Serve the Purpose of its Founding, or it be Irrelevant*?'. President's Bush Remark at the United Nations General Assembly, White House Text, (12 September 2003).
[281] Despite the fact Amr Mouss, the Arab League Chief warned the US in 2001 that any strikes against any Arab country would be unacceptable.

were not able to help prevent and end this invasion, which resulted in thousands of deaths of Iraqi civilians. What they did was only watch this war on their wide TV screens with eyes wide open as if witnessing an American film on the US's enormous power and how modern violence and wars are conducted.

It is sensible to assume that the US-UK's gross violations of the internationally guaranteed peaceful settlement of international disputes in their dispute with the Iraqi regime, and their military assault upon Iraq, contravening Articles 2(3) and 2(4) of the UN Charter, suggest the absence of a the rule of law in their foreign policies.

The process of war decision-making that led to the invasion of Iraq and its horrific aftermath appears to have more to do with the American leadership and their geostrategic self-interests than it does with respect of its obligations under international law, or because of the UN techniques for peaceful settlement of international disputes were unknown to the President Bush and his advisors, or that these techniques were inadequate to resolve the problem of Saddam Hussein's regime.

As former UN Secretary-General Boutros Boutros-Ghali points out in the Agenda for Peace, arguing that international disputes have gone without peaceful settlement, this is not because there are no peaceful means available, or that the available means is inadequate, but 'the fault lies first in the lack of political will of parties to seek a solution to their differences through such means as are suggested in Chapter VI of the UN Charter, and second, in the lack of leverage at the disposal of third party if this is

procedure chosen.'[282]Thus, the US-UK failed to abide by their obligations spelled out in the UN Charter to settle disputes peacefully and not use force in their international relations.

4.3.2 The General Assembly and Dispute Resolution

The GA of the UN consists of all member states of the UN, each member having one vote and, compared with the function of the SC, a negative vote by a member of the GA would not prevent the GA from taking action.[283]In broad terms, the UN Charter makes peaceful settlement of international disputes a fundamental rule of the UN. The GA recognizes in Resolution 1815 (XVII) states' obligation to settle international disputes peacefully as one of four important basic principles to be studied by its Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States.

Article 1 of the UN Charter clearly implies that the UN and its members are under obligation to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations that might lead to a breach of the peace and security.[284]According to the UN Charter, the GA has a role to play in dispute resolution.[285]The important question, therefore, is how the GA can play this role?

---

[282] Report of the Secretary-General on an *Agenda for Peace- Preventive Diplomacy, Peacemaking and Peace-Keeping,* UN A/47/277,s/24111,17 June 1992 reprinted at (1992) 31 *ILM* 953.
[283] For the procedure of voting in the GA, see Article 18 of the UN Charter.
[284] UN Charter, Article 1.
[285] Gaetano Arangio-Ruiz, 'The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations with an Appendix on the Concept of International Law and the Theory of International Organisation' 137 *Hague Recueil* (1972-III), 419.

4.3.2.1 Article 14 of the UN Charter

On a textual analysis of Article 14 of the UN Charter, it is clear that the role of the GA in dispute resolution is limited only to recommendation measures for a peaceful settlement.[286]This provision has to be read with Article 12, which provides that the GA shall not make any recommendation with regard to any dispute that the SC considers unless it has been requested by the SC.[287]This provision means that the GA has not been given a prominent role to play in dispute resolution, despite the fact that the GA have made remarkable progress in promoting peaceful settlement of disputes by adopting many important principles and declarations.

In this context, this includes the most important declaration to this thesis that is concerned with the responsibility of Kuwait in this invasion, which is the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty.[288]All these Declarations constitute a further step to develop international law,[289]but they are not aimed to be enforceable, and in fact, as the Iraq invasion suggests, have no effect.[290]

One of the most difficult questions arising out of the Iraqi invasion is why none of the UNGA members were prepared formally to condemn the Anglo-American

---

[286] Ibid. Article 14. On the recommendation of the GA see, F. Blaine Sloan, 'The Binding Force of a "Recommendation" of the General Assembly of the United Nations', 25 *BYBIL* 1, (1948).
[287] Ibid. Article 12(1).
[288] UNGA Res, 2131, UN GAOR, 20th Sess., Supp. No. 14, at 11, UN Doc.A/6014, 1966.
[289] For useful overviews of this trend see Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations*, (London, Oxford University Press, for the Royal Institute of International Affairs); A. J. P. Tammes, 'Decisions of International Organs as a Source of International Law', *Recuiel des Cours*, Vol.94, (1958-II) 265-364.
[290]For an argument along these lines see Blaine Sloan, 'The Binding Force of a 'Recommendation' of the General Assembly of the United Nations' *BYIL*, Vol. 25, (1948)1-33; D. H. Johnson, 'The Effect of the Resolutions of the General Assembly of the United Nations', 32 *BYIL*, (1955-56) 97-123; Rosalyn Higgins, 'The Advisory Opinion on Namibia: Which UN Resolutions are Binding under Article 25 of the Charter?', 21 *ICLQ*, (1972), 270.

militarily action against Iraq, and also why did they fail to hold a single meeting to address these issues since the invasion? Despite the fact that Article 35 of the UN Charter provides that the GA may discuss any dispute brought to its attention by any member. The GA's role in this regard again is subject to Articles 11 and 12 of the UN Charter. As far as dispute settlement is concerned, the text of Article 11(3) makes it clear that the GA may be involved in dispute settlement and call the attention of the SC to situations that are likely to endanger international peace and security.[291]

It also emerges from the text of Articles 10, 11and 35 of the UN Charter that the GA are bound no further than to engage in discussion of situations that are likely to endanger international peace and security, and makes no binding recommendation for peaceful settlement. However, the inability of the GA in conflict resolution can be seen clearly in the situation between Iraq and the US-UK in March 2003. Despite the fact that this situation, without doubt, endangered international peace and security, the GA did not make any effort towards discussion or recommendation, nor did it even bring to the attention of the SC the unilateral action undertaken by the invaders.

To some extent it is true that the GA, with the cooperation of the SC, has had an important role in settling some disputes. For instance, between 1974 and 1983 the GA consistently called upon Turkey and Greece in their dispute over Cyprus to continue negotiation to settle this dispute,[292]but it did little to solve the problem of the US President Bush bullying and threatening that the UN had become irrelevant and that the US would act alone and outside of the UN system to disarm the Iraqi regime of its alleged WMD. None of the UN Resolutions provides any legal grounds for the

[291] UN Charter, Article 11(3).
[292] UNGA Res, 3212 (XXIX), 1 November 1974. The efforts of the GA in this regards was endorsed by the SC in its Resolutions 365 (1974) and 774 (1992).

invaders and Kuwait to intervene in the internal affairs of Iraq, or to use force to overthrow the Iraqi regime.

4.3.3 The Role of the Security Council in Conflict Resolution

The original scheme of the UN Charter authorized the SC to take binding decisions to settle disputes that endanger international peace and security. The ultimate goal of Articles 2(3), 2(4) and 33 of the UN Charter is to provide effective alternatives to wars. Many international lawyers and scholars have expressed different opinions on the work of the SC as a political organ of the UN with a wide discretion on dispute resolution. They argue that international law has no real function in dispute settlement.[293] However, pursuant to the textual structure of the UN Charter, the SC is a much more appropriate body for dispute settlement if it is involved in an effective manner in the settlement process.

As noted, the legal framework of the UN Charter provides that one of the main purposes of the UN is to resolve international disputes by peaceful means and not to resort to the use or threat of force in any manner; all this is in conformity with the principles of justice and international law. This means that the work of the SC must be in accordance with international law. The SC must employ international law in its work and decisions, which must be equally applied to all members of the UN.

The SC must not use international law differently when it suits ones of its five powerful permanent members for the political interest of this member over less

[293]For discussion of this argument see Rosalyn Higgins, 'The Place of International Law in the Settlement of Disputes by the Security Council', in Mary Ellen O'Connell ed., *International Dispute Settlement*, (Ashgate-Dartmouth, 2003).

powerful permanent non-members. The UN Charter as a legal instrument envisages the SC's role in conflict resolution to be played in different stages.[294]

For example, the SC can call upon the disputants to settle their dispute by peaceful means embodied in Article 33(1) of the UN Charter, or can advise them to refer their dispute to the ICJ for settlement in accordance with Article 36(3).The evidence indicates that in recent years the SC has found it difficult to make an effective contribution to conflict resolution. That is to say, it is unable to throw its weight behind peaceful settlement of international disputes, or recommend the reference of legal disputes to the ICJ.

However, this means that the system of the UN Charter rejects the use of violence as a means of settling international disputes and lays down and provides in Article 35 of the UN Charter for compulsory reference of international disputes by any member of the UN to the SC or GA. Article 34 of the UN Charter gives the SC the right to investigate any dispute for the purpose of determining whether its continuance is likely to endanger the maintenance of international peace and security. Article 36 gives the SC the right at any stage of an international dispute to recommend appropriate procedures or methods of adjustment.

Thus, in contrast to other peaceful means laid down in Article 33(1) of the UN Charter, the consent of the disputants is not necessary for the SC to exercise its power under Article 34 or for the GA to consider such a dispute.[295]This means the disputants

---

[294] Higgins, n 136 above.

[295]See Bello-Fadile, Ralph Sixtus Babatunde, *The Role of the United Nations in Conflicts Management*, (Zaria, Nigeria, Ahmuda Bello University, 1987); Ann Florini and Tannenweld Nina, *On the Front Lines: the United Nations Role in Preventing and Containing Conflict,* (New York, The Multilateral

may not agree to the SC or GA considering their dispute, and they may not participate in the procedures before the two organs. But this of course does not prevent both the SC and the GA from discussing and examining the dispute and recommending appropriate methods of adjustment.

4.3.3.1 The Role and Responsibility of the SC under Chapter V: Article 24(1) of the UN Charter

In legal doctrine, most international lawyers and scholars hold the view that Article 24(1) confers on the SC primary responsibilities for maintenance of international peace and security.[296] Article 24(1) of the UN Charter states:

> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council shall acts on their behalf.

Thus, the role and responsibility of the SC in conflict resolution is subsidiary to the main responsibility of the disputants. If the parties fail to settle their dispute by peaceful means set forth in Article 33(1) of the UN Charter and all their efforts to take remedial action have been exhausted, and international peace and security are threatened, in this case the responsibility of the SC materializes.

Project, United Nations Association of the United States of America, 984); Moritaka Hayashi, 'Strengthening the Principle of the Peaceful Settlements of Disputes: United Nations Effort and Japan', 27 *Japanese Annual of International Law*, (1984); Kjell Skjelsbaek, 'Peaceful Settlements of Disputes by the United Nations and other Intergovernmental Bodies', *Co-operation and Conflict,* 21 (3), (1986); Raimo Varrynen, 'Is there a Role for the United Nations in Conflict Resolutions?' *Journal of Peace Research*, 22(3), (1985).

[296] Gray, n 229 above.

4.3.3.2 The Role and Responsibility of the SC under Chapter VI of the UN Charter: Article 33(2)

The role and responsibility of the SC in the dispute settlement process is different when acting under Chapter VI or VII of the UN Charter. Within the framework of Chapter VI, the only role the SC has in dispute settlement is to call upon the disputants to settle their differences by peaceful means. It is arguable that one of the main reasons that the Iraq and the US-UK dispute has gone for such a long time without settlement is because the SC has not taken full advantage of the provisions of the UN Charter, which is designed to able the SC to play a more active role in resolving international disputes. Firstly, by encourage disputants to enter into serious negotiations. Secondly, by recommending appropriate methods to prevent and resolve international disputes peacefully.

It is arguable too that, whatever the merits of the US-UK's arguments or the way the US recently tried to make its own interests prevail when it was in conflict with international law and the UN Charter over Iraq, this suggests a failure of international legal order to settle peacefully a dispute threatening general international peace, security and justice. It might be argued that Chapter VI of the UN Charter, which is entitled 'Pacific Settlement of International Disputes', empowers the SC under Article 35 to consider any dispute brought to its attention by any states. Article 36 authorizes the SC to recommend appropriate methods for settlement of disputes, the continuance of which is likely to endanger the maintenance of international peace and security.[297]

The US-UK argued that the UN dispute settlement technique is not an appropriate or useful way of trying to resolve the problem of Saddam Hussein's regime. In

[297] Simma, n 37 above.

reaching that conclusion, the US-UK relied on Iraq's invasion of Kuwait and the UNSC Resolutions in this regard. If so, this indicates a need for a more radical alteration of the UN dispute settlement system. It is interesting to note that in the Nicaragua Case the US argues that:

> This conflict in Central America, therefore, is not a narrow legal dispute; it is an inherently political problem that is not appropriate for judicial resolution. The conflict will be solved only by political and diplomatic means not through a judicial tribunal. The International Court of Justice was never intended to resolve issues of collective security and self-defence and it is patently unsuited for such a role.[298]

It is clear that the Anglo-Americans interpret international law principles in their own way, and only refer to these norms when it suits them. However, despite their understanding of the outcome of the Nicaragua Case, they have opposite views in similar cases. Indeed as Butler points out, the Iraq-Iran eight years war seemed to be justifiable despite the fact that it involved a variety of political, religious and other issues, but there are many legal norms in the UN Charter and customary international law that point to the possibility that this dispute may be submitted to the jurisdiction of the ICJ.[299]

---

[298] *The US State Department's Statement on the US withdraw from the Proceedings initiated by Nicaragua in International Court of Justice*, 18 Jan 1985, reprinted in 14 *ILM*, P.246, see also T. D., Gill, 'The Law of Armed Attack in the Context of the Nicaragua Case', *Hague Yb. Int'l. L*,1, (1988) 30-58.

[299] Richard B. Butler, 'An Overview of International Dispute Settlement', *Journal of International Dispute Resolution* 1, (1986)16; Mary Ellen O'Connell, *International Dispute Settlement,* ed., (Ashgate, Dartmouth 2003).

The involvement of the Americans in this dispute makes it impossible for peaceful settlement. The same applies to many disputes that may be settled peacefully. One example is the Iraqi disagreement with the UNSCOM and the UN inspection regimes in general, and other issues that represent a basis for the war on Iraq. Furthermore, in this war the US-UK used the UN after waging the war: not because they genuinely insisted upon it, but because it suits their policies' goals in Iraq, and this indicate how they dominate the UN.

Article 33(2) of the UN Charter states that the SC shall, but when it deems necessary, call upon the parties to settle their dispute by such means found in paragraph (1) of the above Article. This means that the only role the SC has, in accordance with paragraph (2) of Article 33, is to draw the attention of the disputants to their obligations under Article 2(3) of the UN Charter to settle their disputes by the peaceful means set forth in paragraph (1), which lists a number of traditional and well known techniques available for peaceful settlement of international disputes.

However, Article 33(2) can be characterized as a fundamental policy rule, which empowers the SC with one of its various powers under the UN Charter to maintain international peace and security by appealing to the disputants to settle their dispute by peaceful means provided in Paragraph (1) of Article 33. However, one of the questions this research asks is on what basis the SC determines the existence of a threat to international peace and security? This question is addressed in Chapter Seven. It should be noted that Articles 24 and 39 of the UN Charter clearly establish as a general principle that the SC is the only body that can determine when the

continuance of a dispute endangers international peace and security. This means that individual member states have no such right under the UN Charter.

The role and responsibility of the SC in conflict resolution under Chapter VI is to support legal rules through interpretation and application of law in ways to approve the ability of the UN legal system to accomplish the basic primary purposes of the UN. It can be argued, notwithstanding these developments of international law in the field of settlement of international disputes, that the SC and the Secretary-General of the UN have played little role in the dispute between the US-UK with Iraq. The first, and in some ways the most important, of the arguments of this thesis is the issue of the efforts of the Secretary-General and the scope of his personal diplomacy in handling international disputes and achieving peaceful settlement.

4.3.3.3 The Role of the SC under Chapter VII of the UN Charter: the Legal Limits to its Power, Article 39 of the UN Charter

The war on Iraq is an example of situations in which the SC has not used its powers under Chapters VI and VII of the UN Charter. The UN Charter makes it clear that under Chapter VI the SC is not authorized to impose a peaceful settlement on the disputants, but the position under Chapter VII is quite different and the SC has the power to take binding decisions on members of the UN and to take enforcement actions or collective self-defence.[300]

As submitted before, unlike Chapter VI, Chapter VII of the UN Charter authorizes the SC to intervene in international dispute settlements when it determines that the

[300] Hans Kelsen, 'Collective Security and Collective Self-Defence under the Charter of the United Nations', 42 *AJIL* (1948), 783.

dispute is considered a threat to the peace, is a breach of the peace or an act of aggression. Many questions arose during the Iraqi invasion of Kuwait and the intervention of the SC to resolve this dispute through enforcement action. These include: who determines the existence of a threat to the peace or an act of aggression, the scope and duration of these actions, and the control of the actual conduct of military operations of individual member states?[301]

It is an interesting question as to whether the situation between the US-UK and Iraq prior to the invasion in March 2003 was a threat to international peace and security, or was the use of force by the US-UK against Iraq an act of aggression. If so, why does the SC not take measures to maintain and restore international peace and security?

The role and responsibility of the SC in dispute settlement under Chapter VII contained in Article 39 of the UN Charter reads:

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.[302]

[301] Louis Sohn, 'The Security Council's Role in the Settlement of International Disputes', 78 *AJIL*, (1984) 402-4.

[302] For a full discussion of Article 39, see Freudenschuss, 'Article 39 of the UN Charter Revisited: Threats to the Peace and Recent Practice of the UN Security Council', 46 *Austrian Journal of Public and International Law*, (1993), 1; Frederic L. Kirgis, 'The Security Council's First Fifty Years', 89 *AJIL*, (1995) 506; Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future', 8 *Journal of Conflict and Security Law*, (2003)15; Bruno Simma, ed., *The Charter of the United Nations: A Commentary* , (Oxford, Oxford University Press, 1994).

However, the above Article suggests that the SC authority in settlement of disputes is considerable. First, by the responsibility of the maintenance of international peace and security that is conferred to it by the UN Charter pursuant to Article 24(1). Second, only the SC can determine whether a situation poses a threat to international peace and security. From the above, one may infer that not the Americans, but the SC that has the right to determine whether such a case is threatening the peace, a breach of the peace, or an act of aggression. This Chapter argues that, in accordance with Chapter VII, the role and responsibility of the SC in conflict resolution is not merely to take military actions, but rather to take practical steps towards resolving disputes by creating a framework for direct negotiation and other peaceful methods embodied in Article 33(1) of the UN Charter.[303]

4.4 Peaceful Means of Dispute Settlement: Article 33(1) of the UN Charter

The definition of international disputes and a legal guideline as to which forms of difference or disagreement between states constitute international dispute is not the aim of this section. This is because the use of force by the US-UK in March 2003 to disarm the Iraqi regime of its alleged WMD, which is the main subject of this thesis, is considered a clear form of international dispute that threatens international peace and security, and contains all elements that may be settled by peaceful means.

This statement allows us to examine two questions. Firstly, whether there was a peaceful means available to the US-UK to settle their differences with the Iraqi

[303] See, Kerely. E, 'The Powers of Investigation of the Security Council', 55 *AJIL*, (1961); David Schweigman, 'The Authority of the Security Council under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice', (The Hague/ London/ Boston, Kluwer Law International, 2001); Sean D. Murphy, 'The Security Council, Legitimacy, and the Concept of Collective Security After the Cold War', 32 *CJTL* (1994) 201-288); David D. Caron, 'The Legitimacy of the Collective Authority of the Security Council', 87 *AJIL* (1993) 552-588; Rosalyn Higgins, 'The Place of International law in the Settlement of Disputes by the Security Council', 64 *AJIL* (1970) 1-18.

regime without resorting to the use of force. Secondly, whether the Iraqi alleged failure and non-compliance with the UN Resolutions might lead us to accept that the unilateral use of force is the only possible way to disarm the regime and enforce the UN Resolutions.

A stronger argument against the use of force by the US-UK against Iraq is the longstanding legal prohibition on the use of force in international relations. However, this section seeks to ascertain whether the Iraq invasion could possibly find legal support under the UN Resolutions or the UN Charter by examining the most relevant Article in the UN Charter. Article 33(1) of the UN Charter states that disputants are subject to an international legal obligation to seek first of all a peaceful settlement of their disputes by certain traditional peaceful means. This Article reads,

> The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.[304]

These means do not claim to be comprehensive, but provide a platform to achieve an acceptable peaceful settlement.[305]Thus, this thesis argues that the disputes between Iraq-Iran and Iraq-Kuwait, which led to three wars, may be settled peacefully if the

---

[304] Article 33 (1) of the UN Charter.

[305] See, J.G., Merrills, *International Dispute Settlement*, (Cambridge, Cambridge University Press, 1998); John Collier and Vaugham Lowe, *The settlement of Disputes in International*, (Oxford, Oxford University Press,1999); David J. Harris, *Cases and Materials on International Law*, 5th ed., (London, Sweet & Maxwell, 1998); Martin Dixon and Robert McCorquodale, *Cases and Materials on International Law*, 2nd ed, (London: Blackstone Press Ltd, 1991); M.N Shaw, *International Law*, 4th ed, (Cambridge: Gortius Press, 1997); Ian Brownlie, *Principles of International Law*, 5th ed, (Oxford: Clarendon Press, 1998); and, M.D Evans *Blackstone's International Law Documents*, 4th ed, (London: Blackstone Press Ltd, 1999).

disputants have the chance to settle these disputes in accordance with the principles in Article 33 (1) of the UN Charter and that of Islamic international law. These issues are addressed in Chapter Five.

Butler points out that while international lawyers are concerned in particular with certain traditional peaceful means set forth in Article 33(1) of the UN Charter, there are some other ways in which international disputes may be resolved. Of course, he includes coercion, in particular the use of force and other forms of coercion, voluntary relinquishment, chance and voting.[306]It is generally agreed that the peaceful means set forth in Article 33(1) of the UN Charter are classified into two types; judicial means, which includes arbitration, and ICJ and non-judicial means or diplomatic means that include inquires, negotiation, mediation, conciliation, good office and regional arrangements.

4.4.1 Legal Settlement

4.4.1.1 Arbitration: Definition: Concept and Effectiveness

The Hague Convention for the Pacific Settlement of International Disputes of 1899 defines, in Article XV, international arbitration as follows: 'international arbitration has for its object the settlement of differences between states by judges of their own choice, and on the basis of respect for the law'. The International Law Commission Draft on Arbitral Procedure, Report to the General Assembly, defines international arbitration as 'a procedure for the settlement of disputes between States by a binding award on the basis of law and as a result of an undertaking voluntarily accepted.'[307]

---

[306]Richard B. Butler, 'An Overview of International Dispute Settlement', *Journal of International Dispute Resolution* 1, (1986)16.

[307] *ILC* Yearbook, 1953, vol. II, 202, also see, *Interpretation of the Treaty of Lausanne Case*, (1925), PCIJ ser, B No.12.

There is almost universal consensus that international arbitration is a peaceful means of settling international disputes, and since the 18th Century, international arbitration as a judicial peaceful means to settle international disputes has grown steadily, but all attempts to establish multilateral obligations to resort to international arbitration have met with only a little success.[308] The basic idea of international arbitration is that the disputant parties agree to submit their existing or future disputes to be determined by their choice of sole or more arbitrators, or by a tribunal applying the rules of law.[309]

International arbitration is a consensual legal settlement process; that is to say general agreement by consent. The authority of an arbitral tribunal is usually based on the disputants consent, and they have control over the appointment of the arbitrators. The disputants set out the basic framework procedure of international arbitration,[310] and as a general rule the applicable law in international arbitration is international law, but the parties may agree to other laws. The international arbitration award is binding and final, but it may be set aside on the legal grounds of nullity.

The consent of the parties to disputes is an important element in the process of peaceful settlement; this consent may be given in advance to a specific procedure and rules to be applied for arbitration.[311] The free choice of arbitrators, the rules of

---

[308] See *European Convention for the Peaceful Settlement of Disputes,* 1957. For survey of international arbitrations See, A. Stuyt, *Survey of International Arbitrations, 1794-1970,* (Leyden, 1972); Louis Sohn, 'The Function of International Arbitration Today', 108 *Hague Recueil* 11 (1963); Louis Sohn 'International Arbitration in Historical Perspective: Past and Present' in A H A Soons, ed., *International Arbitration: Past and Prospects,* (Martinus Nijhoff, 1990); Teklewold Gebrehana, *Arbitration, An Element of International Law,* (Almqvist &Wilksell International, 1984).

[309] For general reference see, J.G. Merrills, *International Dispute Settlement,* 3rd ed., (Cambridge, Cambridge University Press, 1998); Simpson & Hazel Fox, *International Arbitration: Law and Practice,* (London, Steven & Sons, 1959); Wetter, *The International Arbitral Process Public and Private,* vol.5, (New York, 1979); Christine Gary & B. Kingsbury, 'Developments in Dispute Settlement: Inter-states Arbitration since 1945', 63 *BYBIL* (1992).

[310] Stephen M Schwebel, *International Arbitration: Three Salient Problems,* (Grotius, 1987).

[311] See, *Clipperton Island Arbitration Case (France v. Mexico)* 26 *AJIL* (1932)390.

procedure, the seat of arbitration and the applicable law is one of basic devices of international arbitration. The purpose here is to leave the resolution of disputes as much in the disputants' hands as is possible.

These devices give international arbitration its important place in the peaceful settlement of international disputes and the promotion of international peace and security. Despite the fact that the awards of early international arbitrations were unreasoned, there was a shift towards reasoned awards in the 19th century when arbitration moved to be a more judicial procedure, and the technique of Mixed Commissions and Lump Sum Settlement remains common.[312] In some cases the parties make no choice of applicable law in their arbitration agreement. If there is no express or implied choice of applicable law, the arbitrators in such a case are bound by private international law to look at the implied choice of law.[313]

International arbitration has taken many forms. For instance, in the 19th Century it took the form of referred disputes to a foreign state ruler or king, as in the Clipperton Island Arbitration Case (France v. Mexico, 1931) when the two parties agreed for the King of Italy King Victor Emmanuel III to determine their dispute over the Island.[314]

---

[312] See, C G. Roelofsen, 'The Jay Treaty and all That: Some Remarks on the Role of Arbitration in European Modern History and its "Revival" in 1794' in A H A Soons, ed., *International Arbitration: Past and Prospects*, (Martinus Nijhoff, 1990); J.G. Merrills, *International Dispute Settlement*, 3rd ed., (Cambridge, Cambridge University Press 1998); *Bolivar Railway Co. Claim*, (GB v. Venezuela,1903) 9 *RIAA* 445; *Jay Treaty Settlement*, US-UK Convention of 8 January 1802; *The Washington Treaty*, 1871,61 *BFSP* 40, *San Juan de Fuca*, Moore, Int. Arb., vol..5; Lillich, *International Claims: Their adjudication by National Commissions*, (1962); Weston, Lillich and Bederman, *International Claims: Their Settlement by Lump Sum Agreements* 1975-1995; Magnus,'The Foreign Compensation Commission', 37 *ICLQ* (1988) 975.

[313] See, Article 3(1) of Rome Convention; Article VII (1), European Convention 1961; Article 28(2) UNCITRAL Model Law; Section 46(3) of the UK Arbitration Act 1996.

[314] *Clipperton Island Arbitration Case* (1931), 26 *AJIL* (1932).

Since the success of the Alabama Arbitrations,[315]arbitration has moved towards its modern place as a judicial settlement means of resolving international disputes.[316]

An ad hoc international arbitration between states remains common. However, it is normal in arbitration that the disputants choose their appointed arbitrator, but in some instances a third party may make the choice of an arbitrator as in the Indo-Pakistan Western Boundary dispute generally referred to as the Rann of Kutch Arbitration Case,[317]and in the Lac Lanoux Arbitration Case between France and Spain when the two parties asked the King of Sweden to choose the president of the arbitral tribunal.[318]

There is no provision for compulsory international arbitration, but some multilateral treaties set out compromissory provisions providing for arbitration of international disputes. For example, the General Act for the Pacific Settlement of International Disputes of 1928,[319]and the Bogotá Act of 1948.[320]However, arbitration has proved useful in a number of international disputes because it has many advantages. The advantages of international arbitration are that, in practice, the parties can exercise a high degree of control on the handling of their differences, in the way in which they need the arbitration to be conducted, what languages are to be used and

---

[315] *Alabama Claims Arbitration, Moore, Int.arb.*, 1, (1871) 496. For analysis and commentary see J.B.Moore, *History and Digest of the International Arbitration to which the United States has been a Party*, vol. 1 (London, 1898).

[316] See, *The Bering Sea Fur Arbitration* (US v. UK, 1893, 1898) *1 Moore International Arbitrations* 935, and *the British Guiana-Venezuela Boundary Arbitration* (1899-1900) 92 *BFSP* 160.

[317] *The Rann of Kutch Arbitration Case*, 50 *ILR* 2 (1968), 7 *ILM* 633 (1968).

[318] *The Lac Lanoux Arbitration Case,* 1957, 24 *ILR* 101, 12 *RIAA* 285.

[319] The General Act for the Pacific Settlement of International Disputes of 1928, 93 *LNTS*, 343. See J.Merrills, 'The International Court of Justice and the General Act of 1928', CLJ (1980)137; Brierly, 'The General Act of Geneva, 1928', 11 *BYIL* (1930) 119.

[320] The Bogotá Charter, 1948, 119 UNTS 3. See Turlington, 'The Pact of Bogotá', 42 *AJIL* (1948) 608; Fenwick, 'Revision of the Pact of Bogotá', 48 *AJIL* (1954) 123.

so on. Furthermore, arbitration is flexible in comparison with international courts, quicker and less expensive.

Arbitration has also proved to be a useful means of settling complex international disputes between states, international corporations and nationals of states against other states. For example, arbitration was used to settle many claims arising after the taking of the US Embassy in Tehran and its diplomatic staff by a group of Iranian students. The action taken by the US of freezing Iran's assets in the US led to the Iran-United States Claims Tribunal which was established in 1981 in accordance with Algeria Accord.[321]

In the boundary dispute concerning the Taba Beach front between Egypt and Israel, the disputants agreed to submit this dispute arbitrate, and they settled it without resort to force.[322]The same applies to the dispute between Ethiopia and Eritrea in 2000.[323]Therefore, the answer to the question of the Arabs' failure to resolve the Iraq-Kuwait dispute has nothing to do with the disputes settlement mechanism. It is evident that the US played an important part in this crisis by blocking any peaceful settlement attempts.

---

[321]Generally see, The Declaration of the Government of the Democratic of Popular Republic of Algeria Concerning the Settlement of Claims by the Government of United States of America and the Government of the Islamic Republic of Iran 20 *ILM* (1981)230; Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), 61 *ILR* (1981) 502; 1980 ICJ Rep. 3; Wayne Mapp, *The Iran-United States Claims Tribunal, The First Ten Years 1981-1991,* (Manchester, Manchester University Press, 1993); David D. Caron, 'The Nature of Iran-United States Claims Tribunal and the Evolving Structure of International Dispute Resolution' 1990,*AJIL*, 84 (1990) 104-56.

[322] *The Taba Boundary Dispute Arbitration Case, Egypt-Israel*, 27 *ILM* 1421 (1988).

[323] Peace Agreement between Ethiopia and Eritrea, 40 *ILM* (12 December 2000) 260. See also 'Ethiopia, Eritrea Recommit to Peace Agreement', 16 *Mealey's International Arbitration Report,* (2001)16.

Against this background, it is evident that, as submitted before, and as the thesis shall discuss in more detail below, The Hague Convention for the Pacific settlement of International Disputes of 1899 devoted Title IV to international arbitration as an effective peaceful means to settle international disputes.[324]It would seem to follow from this analysis that the most appropriate way to ascribe to the duty to settle international disputes peacefully and to act in good faith is that member states should attempt to maximize the present value of the UN Charter and its dispute settlement mechanism to avoid wars.

A significant factor in the development of international arbitration is that its awards are legally binding decisions and implemented voluntarily,[325]but in the UN settlement system the Charter does not provide any measure for the enforcement of international arbitral awards, this being one of the weaknesses of this system.[326]

It is submitted here that the agreement to arbitrate in fact precludes invocation of states' immunity as a legal reason for refusing to arbitrate; as such an agreement is regarded as amounting to a waiver of states' immunity in court proceedings. In this regard, an analysis of states' practice reveals excellent examples of ad hoc arbitration between states including the following: the Trail Smelter Case (Canada v. US, 1935),[327]the Beagle Channel Case (Argentina v. Chile, 1977),[328]Western Approaches

---

[324] Reprinted in Harry Reicher, ed., *Australian International Law, Cases and Materials*, (LBC, 1995) 982-984.

[325] Oscar Schachter, 'The Enforcement of International Judicial and Arbitral Decisions' 54 *AJIL* 1 (1960)

[326] See, P. Sanders (ed.,), Comparative Arbitration Practice and Public Policy in Australia', 9 *Arbitration International* (1993)167; E.H. Bouzari, 'The Public Policy Exception to the Enforcement of International Arbitral Awards: Implications for NAFTA Jurisprudence', 30 *Texas International Law Journal* (1995) 205; *Interim Report on Public Policy as a Bar to Enforcement of International Arbitral Awards*, International Law Association, *Report of the Sixty-ninth Conference* (2000)342.

[327] *Trail Smelter Case* between (Canada v.US, 1935), 162 *LNTS* 73; 3 RIAA (1907, 1938).

(France v. UK, 1977, 1978),[329]the Aviation Dispute (France v. UK, 1978),[330]The English Channel Arbitration Case,[331]the Air Service Agreement Case[332]and the Maritime Frontier Dispute (Guinea-Bissau v. Senegal, 1989, 1990).[333]The awards of arbitration cases in inter-state disputes that are materially affected by procedural or other legal grounds may be challenged in ICJ.[334]

However, international commercial awards are usually challenged before municipal courts, and the International Centre for the Settlement of Investment Disputes (ICSID) has its own internal awards reviewing procedure.[335]Against this background, it is evident that international arbitration has been applied to settle a variety of inter-states disputes many of which were not legal in character; that is to say that they did not raise any issues concerning law.

There have also been cases where international arbitration showed how flexible it was in settling differences between states. As a matter of fact, as in the Arbitration Concerning Heathrow Airport User Chargers Case, the US-UK has applied to

---

[328] *Beagle Channel Case* (Argentina v. Chile, 1977), 52 *ILR*; 17 *ILM* 634 (1978); Martin Shaw, 'The Beagle Channel Arbitration Award', (1978) 6 *Int. Rel.*, 415.
[329] *Western Approaches* (France v.UK, 1977, 1978), 18 *ILM* 397 (1979).
[330] 54 *ILR* 304 (1979), see also, Damrosch, 'Retaliation or Arbitration', 74 *AJIL*785 (1980).
[331] 54 *ILR* 6 (1977).
[332] 18 *RIAA* 416 (1978).
[333] RGDIP 204, 83 *ILR* 1. However, in August 1989 the award in this arbitration was challenged in ICJ by Guinea- Bissau. See ICJ Rep 53, 31 *ILM* 32 (1992).
[334] These grounds were strict and limited, it includes; lack of jurisdiction, procedural defect and public police, See *Arbitral Award of the King of Spain* (1960) ICJ Rep. 192; *North Eastern Boundary*, La Pradelle & Polities, *Recueil des Arbitrages Internationaux*, 1, 355; Alan Redfern and Hunter, *International Commercial Arbitration,* 3rd edn.(1999); Park and Paulson, 'The Binding Force of International Arbitral Awards', 23 *Va.J.Inr'l* L.253 (1983).
[335]See Article 34 of UNCITRAL Model Law, sections 67-73 of the UK Arbitration Act of 1996, Shackleton: 'Challenging Arbitration Awards' *New Law Journal* 22, (November 2002). See also, Michael W. Reisman, *System of Control in International Adjudication*, (Durham, North Carolina and London, 1992).

international arbitration in the past to settle their disputes between the two countries[336] and with other states.[337]Particularly important, however, is why they did not refer their dispute with Iraq to arbitration?

4.4.1.2 The Statute of the ICJ: Problems and Achievements

After analysing arbitration as peaceful means of settlement of international disputes, this section of the thesis moves on to examine specific peaceful means available to states to settle disputes peacefully. The means of judicial settlement of international disputes involves the referral of a particular dispute, by the agreement or consent of the disputants, to a permanent tribunal such as the ICJ or to other international and regional judicial tribunals for a final binding decision, usually on the basis of the principles of international law. The ICJ is the principle judicial organ of the UN established under Article 92 of the UN Charter that states, 'the International Court of Justice shall be the principle judicial organ of the United Nations. It shall function in accordance with the annexed Statutes, which is based upon the Statutes of Permanent Court of International Justice and forms an integral part of the present Charter.' It should be noted that whilst the Statutes of the ICJ is not incorporated into the UN Charter, it forms an integral part of it.

However, the recent success of the ICJ in the dispute resolution between Qatar and Bahrain are due in large measure to the fact that Arab states have the ability to resolve their own disputes, to accept and to enforce binding awards. This case is

[336] See M Witten, 'The U.S -U.K Arbitration Concerning Heathrow Airport User Chargers', 89 *AJIL* (1995)174.
[337] *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran),* 61 *ILR* (1981) 502; ICJ Rep. (1980) 3.

considered an excellent and most successful example of the dispute settlement mechanism between Arab states.

There is, however, an important question here as to why the League of Arab states, which was created under the Pact of Cairo of 22 March 1945,[338]failed to resolve the boundary dispute between Iraq and Kuwait in the early 1990s, while it resolved other disputes between Arab states such as the dispute between Syria and Lebanon in 1949, the boundary dispute between Algeria and Morocco in 1963 and the boundary dispute between the Democratic People's Republic of Yemen and the Yemen Arab Republic in 1972.[339]

However, the UN Charter does provide in Article 94 that each member of the UN should undertake to comply with the decision of ICJ. In any case, if any party fails to comply with the judgment rendered by ICJ, the other party may recourse to the SC to decide what measures are to be employed to give effect to the compliance with ICJ decisions.[340]

This applies in ICJ cases, but what does the UN Charter provide for non-compliance in international arbitration if we consider and compare Article 94 with Article 13(4) of the League of Nations? Nothing in the UN Charter provides for enforcement of arbitration awards. The only Article that may serve to fill this gap is Article 36 (1), which states that should the parties fail to settle their dispute by the

---

[338] UN Sess, Vol. 70, 237, see also, Hussein A. Hassouna, *The League of Arab States and Regional Disputes*, (New York & Leiden, 1975).

[339] For detailed analysis of the role of the League of Arab in dispute resolution between its members see, Hussein A. Hassouna, 'The League of Arab States and the United Nations: Relations in the Peaceful Settlement of Disputes', In *Regionalism and the United Nations*, (United Nations Institute for Training and Research,1979).

[340] Article 94 of the UN Charter.

means indicated in Article 33 (1), they should refer it to the SC to take action under Article 36, or to recommend other terms of settlement as it may consider appropriate.

4.4.2 Non- Legal Settlement

This thesis submits that, whatever the merits of the US-UK's arguments, the subject matter of the their dispute with Iraq is capable of being settled by the UN Charter non-legal settlement techniques, such as negotiation, conciliation, good office and regional agencies or other arrangement as set forth in Article 33(1) of the UN Charter.

4.5 Findings and Concluding Remarks on Chapter Four

This Chapter concludes that there have been many efforts and actions to diminish the perils of waging wars, to stop aggression and to try to guarantee a peaceful international community by settling international dispute peacefully. Article 2(3) established the obligation to settle international disputes by peaceful means, thus this principle is a norm of *jus cogens* character due to the fact that it is a longstanding and fundamental principle of customary international law and matters of international concern. Therefore, the US-UK breached their international obligation under Article 2(3) of the UN Charter and customary international law by the unilateral use of force against Iraq in March 2003.

In contemporary international law, there is a general rule of prohibition on the use of force in international relations. However, according to the textual formulation of the UN Charter, the only exception to the general rule of prohibition is the use of force in self-defence, which is not the case here. This is the subject of Chapter Six. In

spite of this general prohibition, however, the US-UK used force in their dispute with the Iraqi regime.

This Chapter also examined whether there is a peaceful means available to the US-UK to settle their dispute with the Iraqi regime, and concludes that the UN Charter provides comprehensive procedures available to the UN Members to settle their disputes. Furthermore, this Chapter also concludes that the negotiated settlement for these types of dispute might well have been reached without waging this war. This Chapter further submits that the UNSC failed to exercise its power and to adopt necessary measures under Chapters VI and VII of the UN Charter against the US-UK in threatening and breaching international peace and security.

The problem before us is the US hegemony itself, and not only the inability of the UN to address current international challenges. This hegemony makes the UN unable to work as designed by those who drafted its Charter. The defects of the SC, the GA and the UN dispute settlement system in fulfilling the aim for which it was established namely, to maintenance of international peace and security are not be repaired by supporting the unilateral use of force.

CHPTER FIVE

THE CONCEPTS OF DISPUTE RESOLUTION AND NON-USE OF FORCE IN ISLAMIC INTERNATIONAL LAW: THE ISLAMIC LEGAL RESPONSIBILITY OF KUWAIT IN THE IRAQ INVASION

(Islamic Perspectives on the Third Gulf War)

CHAPTER FIVE

THE CONCEPTS OF DISPUTE RESOLUTION AND NON-USE OF FORCE IN ISLAMIC INTERNATIONAL LAW: THE ISLAMIC LEGAL RESPONSIBILITY OF KUWAIT IN THE IRAQ INVASION

5.1 Introductory Remarks

In the name of Allah, the Most Gracious, the Most Merciful

This day I have perfected your religion for you, and completed

My favour towards you, and have consented to grant you Islam

as a religion: a commitment to live in peace.[341]

The above Qur`anic verse has been interpreted by Muslims scholars to imply that Islam, unlike any other system, is a complete way of life.[342]However, Ibn Kathir said in his *tafsir* (commentary) that no injunctions of *the Glorious Qur'an* regarding *halal* (lawful) and *haram* (unlawful or forbidden) are reported to have been revealed to the Prophet Mohammed *salla'llahu'allaihi wa sallama* (peace be upon him) after the above *ayah* (verse).[343]

Muslims interpret the above verse as implying that Islam is a complete way of life containing fundamental norms covering all aspects of human life. The question that arises is if Islam is a complete way of life, does it have a distinct international dispute

---

[341](Q.5:3). *The Glorious Qur'an an Arabic Text an English Translation and Commentary* by Dr. Thomas B. Irving (Al-Hajj Ta'lim 'Ail), The Noble Qur`an Arabic Text an English Translation, (Beirut, Lebanon, Dar An-Nahda Al-Arabiya, 1992).

[342] See, Abu Bakr b. Abd Allah Ibn al-Arabi, *Ahkam al-Qur'an.* (Cairo: Matbaah Dar al-Sa adah, 1330 A.H.); *The Qur`an, The first American Version, Translation and Commentary* by Thomas B. Irving. (Brattleboro (Vermont): Amana Books, 1992); Abu Allah Muhammad b. Ahmad Al- Qurtubi , *al-ami li- Ahkam al-Qur`an* (also known as Tafir al-Qurtubi) 3rd edn., (Cairo, Dar al-Kutub al- Arabiyyah, 1387/1967); Muhammad b. Ahamd b. Rushd Al-Qurbi, *Bidayah al-Mujtahid* (Cairo: Mustafa al-Babi al-Halabbi,1401/1981); Fakhr al-din b. Omar Al-Razi, *al-Tafsir al-Kabir* (also know as Mafatch al-Ghayb), (Beirut, Dar al Fikr, 1398/1978).

[343] Ibn Kathir (A.1), vol. 2,12-14.

settlement system of its own and, if so, what specific ways is this system different from the modern systems such as the UN, other regional and specialized systems?

This Chapter presents many of the salient features of Islamic international law – established even before international law – in particular its dispute settlement system and the principle of the non-use of force in international relations in the light of the war on Iraq in 2003.The main aim here is to contribute towards a better understanding of Islamic international law by showing, generally, the basic elements of distinction from the modern system, which failed to prevent this war.

As noted, this Chapter about Islamic international law proposes that it is not merely a moral obligation on a religious basis, but first and foremost, a living legal obligation on Muslim states. This is, therefore, an attempt to establish – besides post-UN-international law – the legal responsibility of Kuwait and other Gulf states in the Iraq invasion in March 2003, based on Islamic international law principles.

However, this Chapter is faced with several challenges and problems. First, the main difficulty in this study is the fact that Islamic *fiqh* (jurisprudence) or Islamic methodology is not highlighted in existing English works in the same manner as in the Arabic original. Thus, this Chapter is an attempt to convey the content of Arabic sources into English. Second, it is difficult to translate from classical Arabic works, which contain complex legal materials, into English. Added to that, the practical problem of the richness of the Arabic vocabulary and the complexity of Islamic philosophical conceptions is based totally on religious nature. Third, older Arabic texts do usually not bear a date or the place of publication. Fourth, it is a common assumption in Islamic legal literature that authors refer to *Hadith* without citing their

sources, on the basis that such sources are so well known to Muslims legal scholars that they do not need citation. However, this thesis makes more effort to supply these sources where possible.

Finally, there is another main problem: the lack of consistency in the spelling of the Arabic words when translated into English. For instance, both Arabic and non-Arabic authors cite *Kur`an, Quran, Qu`ran, Qur`an* for the Holy Book. Also, *Sunn`ah, Sunnah, Sunn`a, and Sunna* are used for the practice of the Prophet Mohammed. Wherever possible, this Chapter supplies these Arabic words based on my own earlier Islamic study background at undergraduate level studies in the Faculty of Islamic Jurisprudence and Law – at the oldest Islamic high educational institution, University of Al-Azhar in Cairo in 1986 – as well as my fluency in Arabic language and its linguistic skills.

This Chapter is not based on a particular school of Islamic law, but only on the Qur`an and the Sunn`ah. Thus, it is primarily addressed to those who advocate the legality of the role of Kuwait and other Gulf states in the war on Iraq in March 2003. Furthermore, this Chapter is not an examination of the history of Islam or all it is legal norms, rather, it focuses on the role of Islamic law (the *Shari'ah*) and Islamic international law (the *Siyar*), which directly address the question of the role of Gulf states in the war on Iraq. The fundamental objective of this Chapter is to establish the legal responsibility of Kuwait and other Gulf states that participating in the war on Iraq. Thus, this Chapter endeavours to argue that Islamic international law principles could be employed to settle the dispute between Muslims and non-Muslims, as they do not conflict with the principles of Islamic International law.

This Chapter takes the Islamic view that, notwithstanding what the Iraqi regime did in the invasion of Kuwait in 1990, Islamic law prohibits Kuwait and other Gulf states from participating in or providing logistic aids in the war against Iraq in 2003. While the focus of this Chapter is on the responsibility of Kuwait and other Gulf states, the concepts of dispute resolution and the non-use of force in international relations in Islamic international law are assessed in the light of the US-UK's arguments for the unilateral use of force against Iraq in March 2003.

To this end, the Chapter has four objectives: firstly it provides an examination of material (principal) and secondary (subsidiary) sources of Islamic law (the *Shari`ah*) and Islamic international law (*Siyar*). Thus, it examines the fundamental sources of the *Siyar* and its Methods *(Fiqh)*; *The Glorious Qur'an* as a law text; The Sunn'ah of the Prophet Mohammed, upon him be blessings and peace; *Hadith* Material and the subsidiary sources of Islamic law and their meanings. These include *ijma* (juristic consensus); *ijtihad* (legal reasoning); *qiyas* (legal analogy); *istihsan* (juristic preference or Islamic equity); *istishab* (presumption of continuity); *istislah or Al-Maslahah* (welfare or public interest); and *urf-* (custom).

The main aim here is to demonstrate that Islamic law (the *Shari'ah*) is a system of moral obligations derived from the Qur'an; the Hadith and Sunn`ah of the Prophet Mohammed *salla'llahu'allaihi wa sallama* (peace be upon him). This system is very rich and flexible in achieving the public aim of a secure international community and protecting human beings from the impacts of wars.

Secondly, the Chapter examines briefly the main schools of thought in Islamic

jurisprudence. These include the *Hanafi*, the *Maliki,* the *Hanbali* and the *Shafi'i* Schools. Third, the Chapter examines peaceful dispute resolution in Islamic international law, its exceptions, and the responsibilities of Islamic states in this regard. The aim here is to establish that Islamic international law provides useful methods to settle international disputes between states, in particular Islamic states.

The purpose of this Chapter is to address a fundamental issue of the need for a comprehensive study of the main challenges that face Islamic international law in the present day, namely Muslim states' underestimation and misunderstanding of this law, and in particular their duty to settle disputes peacefully in the first place. Thus, the need for this understanding is not only necessary for dispute settlement, but also to address the problem of the shortcomings of the modern process of international law in this context.

Thus, the Chapter examines the important question of whether or not Islamic international law is capable of settling the dispute between Iraq and Kuwait peacefully. It then moves on to discuss peaceful settlement in the Glorious Qur'an and the Sunn`ah, the principles of *tahkem* (arbitration) and *Wasata* (mediation), and the concept of the non-use of force in Islamic international law and its exceptions. This includes a brief discussion of the classical doctrine of *jihad*, its meaning in the Glorious Qur'an, and different interpretations of jihad in the recent period.

The aims here are also to demonstrate that legal norms and principles of international law have their parallel in Islamic international law. The use of force in the Glorious Qur'an and the Sunn`ah, the conduct of war in Islam, treatment of

prisoners of war, and the concept of peace in Islam are critically examined. It is also the aim of this Chapter to outline different approaches to these issues.

Fourth, the Chapter gives special attention to the role and responsibility of the Arab League toward effective implementation of Islamic norms to settle the dispute between Iraq and Kuwait in 1990, as well as their Islamic responsibility in preventing the war on Iraq in 2003. However, the Chapter focuses on their responsibility based on the Glorious Qur'an, the Sunn'ah, and on the League of Arab Charter and Arabic Collective Defence Agreement.

In the context of Arabic terms, this study, first, shall use italics for only the first use of a term. Second, as there is no adequate translation of the Qur'an into English, the translation commentary of Dr. Thomas B. Irving (Al-Hajj Ta'lim 'Ail), has been used for the purpose of this study. However, an effort has been made in this Chapter in regard to the reference to the Qur`an to match its style. For example, the pronouns I, We, Ours, Ourself, He, His, are used throughout this Chapter to indicate the Divine.

This Chapter concludes, *inter alia*, that it is possible to settle the roots of the dispute between Iraq and Kuwait in accordance with Islamic international law. The Chapter asserts that Islamic international law can serve as an important source of settling disputes between nations and a perfect tool to prevent war on Iraq in 2003 if Arabic and Islamic states were to perform their Arabic and Islamic obligations respectively.

5.2 Main Schools of thought in Islamic Jurisprudence

Since the revelation of the Qur'an in 622 A.D., the Islamic jurisprudence developed and many schools emerged.[344]Each of these schools has its own views and interpretations of the sources of Islamic law. Furthermore, these schools are influenced, in one way or another, primarily by different cultural and social factors.

Islam means 'submission' or surrender' to God.[345]It is impossible to understand the implications and the trends in modern Islamic legal reforms without an appreciation of the nature and development of classical Islamic jurisprudence.[346]In other words, to gain a deeper understanding of the nature of Islamic international law one must look at the Islamic schools of thought.[347]The difference of Islamic jurisprudence schools is considered as *rahmah* (blessing) and normal practice in any human society. The Prophet is reported to say '*ikhtliaf ummati rahmah.*'[348]In other words, the blessing of the *Ummah* (Muslims community) lies in the jurists' differences of opinion.

As noted earlier, the basic ethical sources of Islamic law (the Shari'ah) are the Glorious Qur'an and the Sunn`ah of the Prophet Mohammed, upon him be blessings

---

[344] See, Muhammad Mustafa Azami, *Studies in Hadith Methodology and Literature* (Indianapolis, American Trust Publications, 1977); Anmad Qadri, *Islamic Jurisprudence in the Modern World.*2nd edn., (Lahore, Shaikh Muhammed Ashraf, 1981); Abu al-Aynayn Badran Badran, *Usul al-Fiqh al-Islami.* (Alexandria: Mu'assasah Shabab al-Jamiah, 1402/1984); Abu'l-Husayn Muhammad b. Ali Al-basri, *Al-Mutamad fi Usul al-Fiqh*, ed. Shaykh Khalil al-Mays (Beirut, Dar al-Kutab al-Ilmiyyah, 1403/1483).

[345] M. Cherif Bassiouni , ed., *Islamic Criminal Justice System*, (New York, Oceana Publication, Inc, 1982); Javaid Rehamn, *Islamic States Practices, International Law and the Threat From Terrorism, A critique of the 'Clash of Civilisation' in the New World Order*, (Oxford and Portland, Oregon, Hart Publishing, 2005).

[346] Oussama Arabi, *Studies in Modern Islamic Law and Jurisprudence*, (The Hague, Kluwer Law International, 2001)

[347] See, Joseph Schact, *An Introduction to Islamic Law*, 1st published (Oxford, Oxford University Press, 1964), reprinted (1966, 1971); Yasin Dutton, *The Origins of Islamic Law, The Quran, the Muwatta and Madinan Amal*, (Richmond, Surrey, Curzon Press, 1999); John Burton, *An Introduction to the Hadith*, (Edinburgh, University of Edinburgh Press, 1995).

[348] Abu Abdullah al-Dimashqi, *Rahmah al-Ummah fi ikhtulaf al-A'immah*, (Beirut, Lebanon, Dar al-Kutub al- llmiyyah, 1995).

and peace.[349]It is important to realise that the Glorious Qur'an is held by Muslims to be God's final word and complete code of life. In other words, Islam is not only about faith such as prayer and fasting, but its concepts cover a wide area. It may be said that for Muslims Islamic law is comprehensive and flexible in nature, to the extent that it regulates every aspect of human life.

The Islamic law (the Shari'ah) lays down rules and principles that not only regulate religious conduct, but tort; protection of the basic elements of the environment; human rights protection; prohibition of all forms of damage; the making of treaties; the conduct of war and suspension of hostilities.[350]Mention should be made that the prevention of damage and corruption before it occurs is one of the fundamental principles of Islamic law. The Prophet Mohammed *salla'llahu'allaihi wa sallama* (peace be upon him) emphasizes: 'There should be neither harming nor reciprocating harm.' [351]

The Glorious Qur'an and the Sunn'ah are written in Arabic. In this context, Kamali argues that some words of the Qur`an are of Greek and Parisian origin.[352]This study completely disagrees with this conclusion. The Glorious Qur'an says, 'An Arabic Qur'an possessing no ambiguity so that they may do their duty',[353]and in *Sura Fuslat* (Spelled out) 'a Book whose verses have been spelled out, as an Arabic

---

[349] F. M. Denny, *An Introduction to Islam*, (New York, Macmillan Publisher Co, 1994); D. F. Mulla, *Principles of Mahamedan Law*, 18th ed., (Lahore, PLD Publisher, 1990); S. Mahassani, 'The principle of International law in the light of Islamic Doctrine',177 (1) *Recueil des cours de L'academic de deorit int 205 91966),* 229.

[350] Najib Armanzi, *International Law and Islam*, 1st ed., (London, Riad El-Rayyes, 1930).

[351] Yusuf Al-Qaradawi, *Fatawa al-islamiyya bayna al-juhud wa al-tatarruf*, (Qatar, 1982).

[352] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Revised Edition, (Islamic Texts Society, Cambridge, St Edmundsbury Press, 1991).

[353] *Sura al-Zumar* (a Chapter of *Qur'an*), al thronges, ayah (a verse of *Qur'an*) 28 (Q.39: 28).

reading for folk who know.'[354]And in *Sura Al-Nahl* 'We already know they are saying: It is merely a human being who is teaching him! The tongue of the person whom they hint at is foreign, while this is clear Arabic speech.'[355]Furthermore, in *Sura Al-Zukhruf* (Luxury), 'We have set it up as an Arabic Reading so that you may (all) use your reason.'[356]

It is difficult for a person who is not fluent in Arabic to interpret Islam without making any attempt to learn the Glorious Qur'an and the Sunn'ah. This is because the Glorious Qur'an cannot be translated. This is the belief of all Muslims, *Sunni* or *Shai'a*, Arab or non-Arab. Over the last few decades, there have been many attempts to present the meaning of the Glorious Qur'an in other languages, but it cannot replace the Glorious Qur'an in Arabic.

To understand Islam and interpret Islamic principles, one must fully understand its language.[357]To say this is not to characterize Islam as for Arabs only; it is rather to suggest that better understanding of Islamic values and norms must involve Arabic itself.[358]Several western scholars underestimate the importance of Arabic when they speak about Islam; thus, their conclusions are often based on misconceptions about Islam and it is principles.[359]In this context, the Qur'an says 'Yet some men argued

---

[354] Sura *Fuslat* (Spelled out) (Q.41:4).
[355] *Sura Al-Nahl* (Bees) (Q.16: 103).
[356] *Sura Al-Zukhruf* (Luxury) (Q.43:3).
[357] See, Abu Muhammad Ali b. Ahmad Ibn Hazm, *Al-Ihkam fi Usul al-Ahkam*. ed. Ahmad Mummad Shakir. 4 vols. (Beirut, Dar al-Afaq al-Jadida, 1400/1980); Abd al-Wahhab Khallaf, *Ilm Usul al-Fiqh*, 12th edn., (Kuwait, Dar al-Qalam, 1398/1978); Shaykh Muhammad Al-Khudari, *Usul al-Fiqh*. 7th edn., (Cairo, Dar al-Fikr, 1401/1981); Muhyi al Din Abu Zakariya Yahya inb Sharaf Al-Nawawi, *Minhaj al-Talibin*. Eng. E.C Howard. (Lahore, Law Publishing Company, n.d.)
[358] Z. Badawi, 'Are Muslims Misunderstood' *The Independent*, (23 September 2001) at 19.
[359] Noel J. Culson, *A History of Islamic Law*, (Edinburgh, Edinburgh University Press, 1964).

about God without having any knowledge or guidance, nor any enlightening Book.'[360] This is why most Arabic Muslims always seek to acquire sufficient knowledge on, *inter alia*, explanation and interpretation of Islamic theory.[361]

It should be emphasised that, as far as Islam is concerned, western analyses of Islamic norms too often focus on their misunderstanding of Islam.[362]Some frequently prefer to concentrate on the question of war in Islam and the principle of jihad[363] rather than other principles that call for peace and security. In addition, they often misread the principle of jihad and ignore the fact that Islam is a mission of peace for all human beings. The Qur'an says, 'God invites to the Home of Peace, and guides anyone He wishes to, to a Straight Road.'[364]

---

[360] *Sura al-Haji* (Q.22:8). In *Sura Qafir* (The Forgiving[God]) (Q.40:35), The Qur`an 'The one who argue about God's sings without any authority to do so having been brought them, incur the greatest disgust so far as God is concerned and so far as those who believe are concerned. Thus God seals off every overbearing oppressor's heart.'

[361]This branch of Islamic knowledge called the Islamic science of methodology (*ilm usul al-fiqh*). For detailed discussion of this methodology see, Mohammed Abu Zaharh, *Usul Al-Fiqh* (Cairo, Dar Al-Fikr Al-Arabi, 1958); Ibrahim Salqihim, *Usul Al-Fiqh Al-Islami, Matba't Al-Insha'*, (Damascus, 1981); Mahdi Zahraa, 'Unique Islamic Law Methodology and The Validity of Modern Legal and Social Science Research Methods for Islamic Research', 18 *ALQ*, (2003); AbdulHamid AbuSulayman, *Towards an Islamic Theory of International Relations: New Directions for Methodology and Thought*, 2nd edn., (Virginia, the International Institute of Islamic Thought,1993); Mohammed Mustafa Azami, *Studies in Hadith Methodology and Literature*, (Indianapolis, American Trust Publications, 1977); Abu Al-Aynayn Badran, *Usul Al-Fiqh Al-Islami* (Alexandria, Mu'assasah Shabab Al-Jami'ah, 1404/ 1984); Abd al-Wahhab Khallaf, Ilm *Usul Al-Fiqh,* 12th edn.,(Kuwait, Dar Al-Qalaam,1398/1978); Mohammed Yusuf Guraya, *Origins of Islamic Jurisprudence* 'with special reference to the *Muwatta*' of Imam milk', (Lahore, Sh. Mohammed Ashraf, 1985); Shaykh Mohammed Al-Khudari, *Usul Al-Fiqh*, 7th edn., (Cairo, Dar Al-Fakir, 1401/1981); Abu Ishaq Al-Shirazi, Al-Luma fi *Usul Al-Fiqh,* (Cairo, Dar Al-Raid Al-Arabi, 1970); Mohammed Abu AL-Nur Zuhayr, *Usul Al-Fiqh*, 4 vols (Cairo, Dar Al-Tiba`ah Al-Mohammediyyah, 1372/1952); and, Mohammed Khalid Masud, *Shatibi's Philosophy of Islamic Law*, (Islamabad, Islamic Research Institute, 1995).

[362] M. Cherif Bassiouni, ed., *Islamic Criminal Justice System*, (New York, Oceana Publication, Inc, 1982). For example, Bassiouni argued that:

> The western world has all too often seen the wrong side of Islam. Some of it is due to the distorted perceptions of orientalists, but the blame also rests on Muslim scholars, who did not rise to the true challenge of Islam: the challenge of developing a fair and adequate, a just and effective system of criminal justice, as the philosophy and policy of Islam requires.

[363] Noel. J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence*, (Chicago & London, University of Chicago Press, 1969).

[364] *Sura* Yunus (Jonah) (Q.10:25).

In that regard, there is a need for them to correct their wrong views, as in principle jihad cannot be used for imposing Islam on non-Muslims or waging wars of aggression. In this context, the Qur'an says, 'There is no compulsion in the religion. Surely the Right Path is clearly distinct from the crooked path'.[365]This means Muslims cannot force non-Muslims to accept Islam. In practice, however, the Arabic language is rich in simile and metaphor; thus, an understanding of Arabic is essential for better understanding of the Glorious Qur'an. It is also important to note that Arabic has special meanings, which may not be rendered in any other languages. The Glorious Qur'an addresses itself to all human beings. The Qur'an says,

> We have sent you down the Book with truth for mankind. Anyone who is guided will be so for his own sake, while anyone who goes astray will only stray because of it as well. You are not set up as any guardian over them.[366]

And it is a message to the entire world. 'It is merely a reminder to [everyone] the universe.'[367]For Muslims, the Glorious Qur'an is accepted not only as a matter of faith, but as God's law. Thus, Islamic law (the Shari'ah) is the light of peace that is aimed to the entire world. It should be emphasised that earlier Muslims followed this light as a way of life, enabling them to address all problems that faced their lives.

Their practice is based on *ijtihad al-ray* (legal judgement based on reason) that has created schools of Islamic jurisprudence for centuries. Despite the fact that these schools of thought often disagree on some jurisprudence issues, they all agree that the main sources of Islam are the Qur'an and the Sunn'ah. It should be mentioned that

---

[365] *Sura Al-Baqarah* (Cow) (Q.2:256).
[366] *Sura al-Zomar* (Throngs) (Q.39:41)
[367] *Sura al-Takwer* (Extinguished) (Q.81:27)

their main goals were to demonstrate the true meaning of Islam. It would seem, then, that there are many schools of thought in Islamic states. The common foundation of all of these schools is based on the Glorious Qur'an and the Sunn'ah. It is important to emphasize that, as Islam is established in Arabia where the Sunni is and the majority of Muslims are Sunni, this Chapter refers only to Sunni schools of thought.

However, the *Shai'a* schools are the *ithna 'Ashari* or *Twelvers, Zaydi, Isamaili* and *Ibadi*, while the four Sunni schools are: the *Hanafi*, the *Maliki*, the *Hanbali*, and the *Shafi'i* schools.[368]As noted above, all these schools recognize the Glorious Qur`an and the Sunn`ah as the principal sources of Islamic law.[369]The main difference between these schools is the difference of their interpretation of some verses in the Glorious Qur'an, Hadith or the practice of the Prophet Mohammed. Furthermore, this also may be due to the difference of where they were originally formed. In other words, the element of different cultures has an impact on these schools. An-Na`im states that:

> Using these sources [the Glorious Qur`an and Sunn`ah] as well as pre-Islamic customary practice of the Middle East which were not explicitly repudiated by the Qur`an and Sunna, Muslim jurists developed Shari`a as a comprehensive ethical and legal system between the seventh and ninth centuries A.D.[370]

---

[368] A. Daura, 'A brief Account of the Development of the Four Sunni Schools of Law and some Recent Development', 2 *Journal of Islamic and comparative Law*, (1968), 1.

[369] For more details on *Sunni* schools see, Imam Al-Bukhari, Sahih Al-Bukhari; and Imam Muslim, Sahih Muslim. These two books reprinted in multi-volume and cited in many works of Muslims jurists. For example, Imam Al-Nawawi edited Sahih Muslim in six-volumes and in 18 parts (Cairo, 1924).

[370] Abdullahi Ahmed Na`im, 'Toward a Cross-Cultural Approach to Defining International Standards of Human Rights, the meaning of Cruel, Inhuman, or Degrading Treatment or Punishment', in Na`im, A. A. ed., Human Rights in Cross-Cultural Perspectives (Philadelphia, University of Pennsylvania Press, 1992).

5.2.1 Sunni Schools

5.2.1.1 The Hanafi School

Imam Abu Hanifah (d.80/697-150/797) was the leader of the Sunni schools of Islamic law. Imam Abu Hanifah Al-Nuwman ibn Thabat's school of Islamic jurisprudence was established in Al-Kufa in Iraq where he lived. Basically his school relied on analogy (*qiyas*) and Islamic equitable preference (*istihasan*).[371]However, Imam Abu Hanifah is considered the most argumentative Islamic jurist of his time. His background and many other elements enable him to find the right answer to many problems.[372]

5.2.1.2 The Maliki School

Imam Malik ibn Anas ibn Mailk ibn Abi Amir al-Asbahi (d.93/710- 179/796) was the founder of the Maliki School of Islamic jurisprudence. He came from a well known a family of learning, transmission of Hadith and knowledge. Imam Malik was born in 93 A.H, and grew up and died in the capital of knowledge of the Hadith of that time, Al-Madinah. Amongst his great works is *al-Muwatta.*[373]Many eminent Muslims consider this book, 'after the Book of Allah, there is no book on the earth sounder than the book of Malik.'[374]Imam Malik also supports Islamic equitable preference (*Istihasan*) as a subsidiary source of Islamic law.

5.2.1.3 The Hanbali School

Imam Ahmed ibn Hanbal (d. 164/780-240/855) was the founder of the Hanbali

---

[371] A. Rahim, *The Principles of Muhammaden Jurisprudence According to the Hanafi; Maliki' Shafi'i and Hanbali Schools*, (London, Luzac, 1911).
[372] Ahmed ibn Hannibal, *Musnad al-Imam Ahmed ibn Hanbal*, 6 vols, (Beirut, Dar al-Fikr, n.d).
[373] Quoted in Imam Malik, *al-Muwatta, of Imam Malik ibn Anas, the First Formulation of Islamic Law, Imam Malik ibn Anas*, Translated by Aisha Abdurrahman Bewley, (Kegan Paul International, London and New York, 1989).
[374] Ibid.

School of Islamic law.[375]His great book al-Musnad contains over 40,000 Hadith collected by him.[376]

5.2.1.4 The Shafi`i School

Imam Mohammed ibn Idris Al-Shafi`i (d. 150/767-204/820) was the founder of the *Shafi`i* school of Islamic law. Imam Al-Shafi`i was a student of both Imam Abu Hanifah and Imam Malik. He was born in Gaza (*Belad al-Sham*), raised in Mecca, and studied Hadith and Islamic law in Al -Madinah. Before settling in Egypt, Imam Al-Shafi`i travelled to Yemen and Iraq where he gained deep knowledge of different Islamic cultures and customs (*urf*) of these communities. However, he was opposed to Islamic equitable preference (*Istihasan*) to the extent that he said:

> The rules, al-ahkam, should be gleaned from the Qur`an, and the Sunn`ah, or reasoned by analogy (ijtihad) based on them. Istihasan was not found on the Qur`an and Sunn`ah; hence, those who use it have made Shari'ah (new rule) which should not be done.[377]

He wrote his famous book that is called *AL-Risala*.[378]Al-Shafi`i is regarded as the first scholar who laid down a professional legal reasoning.[379]

---

[375] Ibn Hanbal, n 372 above.
[376] Mohammed Abu Zahrah, *Ibn Hanbal*, (Cairo, Dar Al-Fifr Al-Arabi, 1367/1947); Mohammed Sallaam Madkhour, *al-Madkhal lil Fiqh al-Islami: History Sources, and General Theory* (Cairo, Dar an-Nahda al-Arabia,1386/1966).
[377] Mohammed ibn Idris Al-Shai`i, *Kitab al-Umm*. 7 vols. (Cairo, Dar al-Shab, 1321, A.H).
[378] Majid Khadduri, *Islamic Jurisprudence, Shafi 'I's Risala*, Translated with an Introduction, Notes, and Appendices, (The Johns Hopkins Press, Baltimore, 1961).
[379] Ibid.

5.3 The Fundamental Sources of the Shari'ah (Islamic Law) and *Siyar* (Islamic International Law) and their Methods *(Fiqh)*

Islamic international law (Siyar) is an integrated branch of Islamic law; thus, its sources are basically the same as Islamic law. However, Islamic international law contains the principles and rules by which relations between Muslim and non-Muslim states are governed.[380]Furthermore, Islamic international law forms the legal basis not only between Muslim states and others, but also between them and God. This law provides the rules and means to resolve conflicts that arise between Muslim states, as well as those between them and other non-Muslim states.

Islamic international law aims to achieve and establish fair conduct of Muslim states. Indeed, Islamic international law concepts are based on moral and religious norms. However, it might also be argued that since the Treaty of Westphalia of 1648, these concepts have been separated. Thus, modern international law was based only on western values and rejected others cultures and principles.

Bassiouni point out that 'The basis of international law remained Christian and western-European until almost as late as the nineteenth century and was primarily designed for the benefit and use of Christian nations and was, therefore, limited in scope.'[381]From this premise one may infer that Islamic international law differs from international law. The main difference is the fact that Islamic international law is mostly a religion-based law, while international law is a non-religious law based totally on western concepts and culture.[382]

---

[380] Coulson, n 359 above.
[381] Bassiouni, n 362 above.
[382] Wood, 'The Treaty of Paris and Turkey's Status in International Law' 37 *AM. J. INT'L. L* (1943), 262. The point here is that, for example, western states refused to accept Turkey –as a Muslim nation-

The narrow scope and power basis of international law remain clear. International law qualifies as narrow because it only applies to nations. As noted, its approaches reflect the influence of powerful western-Christian states on other weak nations. By contrast, the concepts of international Islamic law regulate Muslim states and their conduct during peace and war as well as the conditions that govern the principle of neutrality. It not only applies to the relation of Muslims states with others nations, but also that of non-Muslim states with individuals in Muslim states. [383]

Based on the above, this Chapter argues first that one of the main and acknowledged aims of Islamic international law is to resolve international disputes and regulate the use of force between states through establishment of an ideal Islamic system. Second, Islamic international law is capable of providing flexible solutions for the problems that not only face Muslims, but the whole world.

In this context, the discussion of Islamic international law draws on the Glorious Qur'an and the Sunn'ah as the only two fundamental sources of Islamic ideology, and other secondary sources. It may, however, be emphasized that *Ilm usul al-fiqh* (classic legal methodology) has always occupied an important place in learning Islamic law.[384]It embodies the study of the different sources of Islamic law and its methodology.

---

in the Concert of Europe in 1856 -which considered as one of the sources of current international law- The situation remains the same almost since that time for western states regard Turkey application for the EU where there is strong opposition to offer her a seat. However, it is unclear why Turkey insists to be a party to the EU despite all these unwelcome messages. Further question is why Turkey also dreams to be a member of the EU while it can establish a strong union with other Arab Muslims states in the Middle East and Iran. There are many elements for such cooperation to be better for Turkey than the EU.

[383] Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: The Johns Hopkins Press, 1966).

[384] Mohammed Abu Zahra, *Usual al-Fiqh*, (Dar Al-Fikr Al-Arabi, Cairo, 1958).

In other words, it contains the methods and rules of interpretation and deduction of the meaning of the Glorious Qur'an and the Sunn'ah as fundamental sources of Islamic law. Indeed, its framework contains many criteria designed to promote understanding of all aspects of Islamic law. As noted earlier, knowledge of Arabic is essential to learn usul al-fiqh, and therefore, to the proper understanding of the text of Islamic law in the Glorious Qur`an and the Sunn'ah.[385]

The classic sources of Islamic law are divided into two: 1) Material sources, the Glorious Qur'an and the Sunn'ah. 2) Formal sources, the *fiqh* literature such as *qiyas* (analogical reasoning) and *ijma* (consensus). However, some have classified the sources of Islamic law into primary and secondary sources. In this context, Prophet Mohammed *salla'llahu'allaihi wa sallama* (peace be upon him) says 'The Qur'an and Sunn'ah are the sources, they will guide you as though you were in broad daylight: any other is a grace.'[386]In another Hadith, the Prophet said, 'I left two things among you. You shall not go astray so long as you hold on to them: the Book of Allah and my Sunnah (Sunnati)'.[387]On the other hand, AL-Shafi'i said that the sources are the Glorious Qur'an, the Sunn'ah, and the consensus based on them, then *ijtihad* (exercising one's own judgement) to model on their guidance by *qiyas* (analogy).[388]

Thus, it might be argued that the Glorious Qur'an and Sunn'ah are the only sources of Islamic law during the lifetime of the Prophet Mohammed. Muslim scholars believe that the principles of Islamic law were completed during the lifetime

---

[385] Kamali, n 352 above.
[386] Rashid Rida, ed., *Majou'at al-Hadith an-Najdia*, (al-Maktaba as-salafiya, al-Madina al-Munawara, Saudi Arabia, 1383 AH)
[387] Abu Ishaq Ibrahim Shatibi, *Al- Muwafaqat fi Usuk Al-Ahkam, ed.,* Mohammed Hasanayn Makhluf, (Cairo, al-Maktaba as-salafiya, 1341 A.H), III, 197; Ibn Qayyim, Ilam, 1, 222.
[388] AL-Shafi'I, al-Umm, vol.7: 492-494 (1993).

of the Prophet. They also believe the Glorious Qur`an to be the literal and final words of God. On the other hand, Sunn`ah is a tradition of the Prophet Mohammed that includes his words and actions and that of his companions.

5.3.1 Material or Principles Sources

5.3.1.1 The Glorious Qur'an as a Law Text

Muslim jurists are in agreement that the Qur`an is a book of religious and moral, but also contain pieces of legalisation.[389]In a conversation between the *Khalefia* or *Amir al-Muminin* Omar ibn al-Kattab and his Companion Abd Allah ibn Abbas, the Khalefia asked ibn Abbas :

> Why should there be disagreement among this Ummah, all of whom follow the same Prophet and pray in the direction of the same qiblah? Ibn Abbas replied, 'O Commander of the Faithful, the Qur'an was sent down to us, we read it and we knew the circumstances in which it was revealed. But there may be people after us who will read the Qur'an without knowing the occasions of its revelation. Thus they will form their own opinion, which might lead to conflict and even bloodshed among them.[390]

It was reported that the Khalefia Omar disagreed with ibn Abbas's statement, but

---

[389] Wael B. Hallaq, *A history of Islamic Legal Theories, An Introduction to Sunni Usul Al-Fiqh,* (Cambridge, Cambridge University Press, 1999) p. 3

[390]Abu Ishaq Ibrahim Shatibi, *Al- Muwafaqat fi Usuk Al-Ahkam, ed.,* Mohammed Hasanayn Makhluf, (Cairo, al-Maktaba as-salafiya, 1341 A.H), III, 197; Ibn Qayyim Al-Jawziyyah , *Ilam al-Muwaqqi'in an Rabb al-alamin ed.,* Mohammed Munir al-Dimashqi, (Cairo, Idarah al-Tiba'ah al-Muniriyyak. 4 vols., n.d.

later he agree.[391]

Qur`an is the verbal noun of word '*Qara`a'* (to read).[392]It literally means 'reading' or recitation'.[393]The Qur`an itself is verbal revelation. Thus, the Qur`an is the words of God 'Allah', and it is untranslatable. As noted, however, its meaning can be translated into other languages. When considering the Qur`anic words, we need to bear in mind that it is God speaking. Furthermore, in the Qur'an there are many alternative names that refer to it. These include *al-Qur'an al-Majid, Glorious or Majestic,*[394]*al-Qur`an al-Karim,*[395]*Mighty,*[396]*al-Kitab*(the book), *huda* (guide), *furgan*(distinguisher), *Mushaf* and *al-dhikr* (remembrance).[397]Kamali, defined the Glorious Qur'an as 'The book containing the speech of God revealed to the Prophet Muhammed in Arabic and transmitted to us by continuous testimony, or tawatur.'[398]

Muslims believe that the Glorious Qur'an is the exact words of God revealed to the Prophet Mohammed.[399]The Glorious Qur'an states in *Sura al-Naml* (The Ants) 'Yet you have been proffered the Qur`an by someone [Who is] Wise, Aware.'[400]In *Sura al-Shu'ara* (Poets) the Qur`an says 'Is a revelation from the Lord of the

---

[391] Muhammad b. Ismail Al-Bukhari, *Sahih al-Bukhari.* 8 vol., (Istanbul, al-Maktabah al-Islamiyyah, 1981).
[392] Kamali, n 352 above.
[393] Ibid.
[394] God called *al-Qur`an al-Majestic* in *Sura Qaf* (The Letter Qaf or Q) '*Q. By the majestic Qur`an.*'(Q.50:1).
[395] God called *al-Qur`an al-Karim* in *Sura al-Waqiah* (The Inevitable) '*That is a Noble Qur`an*'(Q. 56: 77).
[396] God called *al-Qur`an Mighty* in *Sura al-Hijr* (Stone land) '*A.L.R These are verses from the Book, and a clear Reading*' (Q.15:1) and in the verse 87 that reads "*We have brought you seven Oft-Repeated* [verses] *plus the Mighty Qur`an.*" (Q.15: 87).
[397] God called *al-Qur`an al-dhikr* (remembrance) in the verses 5 and 9 of *Sura al-Hijr* (Stone land) that reads 'Yet they say: you to whom the reminder has been sent down, why you're crazy' and 'We Ourself have sent down the Reminder just as We are safeguarding it' respectively.
[398] Kamali, n 352 above.p.14.
[399] In *Sura al-Waqiah* (The Inevitable), The Qur`an says: '*Something*[the Noble *Qur`an*] *sent down by the Lord of the Universe*' (Q.56: 80).
[400] *Sura al-Naml* (The Ants) (Q.27:6).

Universe'[401]and in Sura al-Jathiyah (Crouching) 'The revelation of the Book [happens] through God, the Powerful, the Wise.'[402]

The Glorious Qur'an is described by God as a Book that guides humans to the right path.[403]The Glorious Qur'an states 'This is the Book: in it is guidance sure, without doubt, to those who fear God [those who do their duty].'[404]The Glorious Qur'an has always held a paramount place in Muslims' life despite the fact that many western scholars argue that Islamic law does not meet the necessities of modern life.

According to Khadduri 'The law of Islam, the Shari`a has the character of a religious obligation at the same time it constitutes a political sanction of religion.'[405] For Muslims the Glorious Qur'an and Sunn`ah remains the basic principle of Islamic law. The texts of the Glorious Qur'an are very rich as material sources, more than in every other human legal system.

As noted, the Glorious Qur'an and Sunn`ah deal mainly with the fundamental principles of Islamic law. The fiqh and earlier Muslim practice provide many detailed norms from the Glorious Qur'an and Sunn`ah that suit different circumstances. Thus, it would be inadequate to discuss Islamic law without engaging in proper interpretation of the Glorious Qur'an and the Sunn`ah. In principle, such interpretation is allowed on condition that it does not violate a clear meaning or the basic spirit of Islam and its messages.

---

[401] *Sura al-Shu'ara* (Poets) (Q 26:192).
[402] *Sura al-Jathiyah* (Crouching) (Q 45:2).
[403] Fazlur Rahman, *Major Themes of the Qur`an*, (Minneapolis, Bibliotheca Islamica, 1980).
[404] Sura *al-Baqarah* (The Cow) (Q 2:2).
[405]Khadduri, n 378 above.

From an Islamic legal perspective, in case of any conflict between the Glorious Qur'an and the Sunn`ah on an issue, the Glorious Qur'an prevails, because it is God's words. According to Coulson, there are 'six hundred verses of Qur`anic legislation and the vast majority of these are concerned with religious duties and ritual practice of prayer, fasting and pilgrimage. No more than approximately eight verses deal with legal topics in the strict sense of the term.'[406]

One scholar has observed:

> The book [Qur`an] thus constituted contains, in the Muslim view, not one single word contributed by Muhammed himself, nor, a fortiori by any other human. The Kur`an [Qur`an] is, in strict literal fact, the Book of God. The contents of the book composed by God Himself and divulged phrase by phrase to His human amanuensis who arranged to make it available to men by having it recorded, represent the final and fullest revelation to Man of His Divine Will by the Greater and Master of the Universe.[407]

In the respect of the richness of the Qur'an as examined in this Chapter, Imam Abu Zahara observes that 'There are 500 verses in Qur`an concerned directly with ahkam (ruling.)'[408]For Muslims, Islam is the last of the Divine revelations. The revelation of the Glorious Qur'an to the Prophet Mohammed began with verse the Clot (*Sura al-Alaq*). This verse reads as 'Read in the name of your Lord, who

---

[406] Coulson, n 359 above.
[407] John Burton, *The Sources of Islamic Law, Islamic Theories of Abrogation*, (Edinburgh, Edinburgh University Press, 1990).
[408] Mohammed Abu Zahara, *Usul al-fiqh*, (Cairo, Dar al-Fikr al-Arabi, 1377/ 1958).

creates.'[409]However, this is the first aspect of *i`jaz* (inimitability) of the Glorious Qur`an, as the Prophet never learned to read or write. The Quran expressly states in *Sura Al-Ankabut*:

> It is only the disbelievers who persist in rejecting Our Signs. Thou didst not recite any Book before the revelation of the Qur`an, nor didst thou write one with thy right hand; in that case those who reject it as a fabrication would have had further cause for doubt.[410]

In this context, Kamali mentioned only four aspects of the inimitability of the Glorious Qur`an:[411]these are, first, the linguistic excellence of the Glorious Qur`an. Second, he ascribes to the Glorious Qur`an accuracy of narration of many events which took place over centuries. Third, it speaks with accuracy about future events, and, fourth, concerns its dealings with scientific facts that we only know now.[412]

However, Kamali also states that the inimitability of the Glorious Qur`an may be seen in all aspects of Islamic life.[413]It should be submitted that it is difficult to count all the inimitability of the Glorious Qur`an. This is because by nature our human mind has limits. The inimitability of the Glorious Qur`an is beyond such limitations.

Indeed, there are disagreements between Muslim jurists on whether *Sura al-Ma'idah* is the last *Sura* of the Glorious Qur`an. Some argue that the Qur`an ends with the *Sura al- Ma`idah* verse that reads: 'this day I have perfected your religion for

---

[409] *Sura al-Alaq* (The Clot) (Q.96:1).
[410] *Sura Al-Ankabut* (The Spider) (Q.29: 49).
[411] Kamali, n 352 above.
[412] Ibid.
[413] Ibid.

you, and completed My favour towards you, and have consented to grant you Islam as a religion: a commitment to live in peace.'[414]Others says that the last *ayah* in the Glorious Qur`an is in *Sura al-Baqarah* that reads: 'Fear the day when you will be brought back to God; then every soul will be paid in full according to whatever it has earned, and they will not be treated unjustly.'[415]

The Glorious Qur'an forms the basic foundation of Islamic law. The Glorious Qur`an consists of 114 chapters (*Sura*) and 6236 verses (*ayah*) of different lengths, covering all aspects of human life, spiritually, morally and legally. The shortest *Sura* of the Glorious Qur`an is *Sura al-Kawsar* (Plenty), which consists of only three ayah. The longest is *Sura al-Baqarah* (The Cow) with 286 *ayah*. The longest ayah in the Glorious Qur`an is in *Sura al-Baqarah.*[416]That ayah is considered as setting down the basic principles of tort and contract law in terms of the importance of the fulfilment of contracts, the writing down of conditions of the agreement when entering into a contract, terms of deferment of payments, documentation of specific loans, as well as the role of witness in proofing the terms and conditions of contracts.

The principles and rules of Islamic international law appear in various ayah of the Glorious Qur`an. These are the rules for each topic or branch of Islamic law. For example, the rules relating to war can be found in *Sura al-Baqarah,*[417] *Sura Al-Fath,*[418] and *Sura Al-Hujurat.*[419] This means that the Glorious Qur`an is an indivisible whole. For Muslims, the Glorious Qur`an is a guide not only for belief, but also for all

[414] *Sura al- Maidah* (Q.5: 3)
[415] *Sura al-Baqarah* (Q. 2:281)
[416] Ibid. (Q.2:)
[417] (Q. 2: 211, 216).
[418] Q.48: 7, 10, 15, 18, 20, 29).
[419] (Q.49:9-10).

the actions of their entire life. In other words, they must accept the teaching of the Glorious Qur`an, and follow its guidance in their private and public life.[420]

The Glorious Qur`an explicitly states that it was revealed to the Prophet Mohammed gradually (*munajman*) over a period of time. In other words, the Glorious Qur`an was not revealed to the Prophet Mohammed all at once. The Glorious Qur`an says in *Sura Al-Furgan* 'Those who disbelieve say: Why has not the Qur`an, been sent down to him [Prophet Mohammed] in one single piece [all at once]. Thus [it is revealed] that your hearts may be strengthened, and we rehearse it to you gradually, and well-arranged.'[421]

In this context, Kamali argues that the memorising of the Glorious Qur`an by the Prophet Mohammed and his Companions is 'to large extent, facilitated by the fact that the Qur`an was revealed piecemeal over a period of twenty-three years in relation to particular events.'[422]This study disagrees with this statement, and submits that the memorising of the Glorious Qur`an by the Prophet Mohammed and his Companions is not due to the fact it was revealed as 'piecemeal over a period of twenty-three years.'

Today there are hundreds of thousands of Muslims – Arabic and non-Arabic –of all ages that have memorised the whole of the Glorious Qur`an. The number of those who are able to recite great portions of the Qur`an from memory certainly exceeds hundreds of millions. Without doubt this is not due to the fact that the Glorious Qur`an was revealed over a period of time. In fact this was facilitated by the nature of

[420] Kamali, n 352 above.
[421] *Sura al-Furgan* (The Standard) (Q. 25:32)
[422] Kamali, n 352 above.

the Glorious Qur`an itself. The Qur`an says in *Sura the Moon*, 'We have made the Qur`an easy to memorize; yet will anyone memorize it?'[423]

The text of the Glorious Qur`an consists of something that is beyond human thought and mind. This is simply because it is the word of God. The reading and hearing of the Glorious Qur`an has a different feeling from that of any human beings' words. The Glorious Qur`an has an excellent rhythm that is far beyond the imagination of any human. The Glorious Qur`an is not only a magnificent Book that has been known for fourteen centuries, but it provides guidance, healing, mercy, and is a living Book.

The Glorious Qur`an says 'O mankind, instruction has been given you by your Lord, and healing for whatever is in your breasts, plus guidance and mercy for believers.'[424]The reading of the Glorious Qur`an is different from that of any other piece of literature. The Glorious Qur`an challenges anyone to deny its divine origin by demanding them to provide a written piece that might match its linguistics and structure.[425] The Glorious Qur`an states in *Sura Yunus* (Jonah), *inter alia*, that: 'Or do they say: He [the Prophet] has made it up!? Says: Produce a chapter like it, and appeal to anyone you can manage to besides God if you are so truthful.'[426]And also in *Sura Hud* 'Or do they say: He [the Prophet] has made it up!? Says: Well then bring chapters made up like it! Appeal to anyone you can manage to instead of to God if you are so truthful.'[427]And in *Sura Isra* (the Night Journey) 'Even if men and sprites

---

[423] *Sura al-Qamar* (the Moon) (Q.54:17) The *Qur`an* in this *Sura* mentioned 'We have made the Qur`an easy to memorize' four times in *ayah* No.17, 22, 32, and 40.
[424] *Sura Youns* (Jonah) (Q.10: 57).
[425] Ibid.
[426] *Sura Youns* (Jonah) (Q.10: 38).
[427] *Sura Hud* (Q.11:13).

organized to produce something like this Reading, they would never bring anything like it no matter how much assistance they lent one another.'[428]

As noted earlier, it is surprising to note that those non-Arab Muslims who have memorised the Glorious Qur`an have found difficulty in understanding all of its meaning. This is one of the (*i'jaz* ) inimitabilities of the Glorious Qur`an.[429] In the context of legislation, it is clear that the Glorious Qur`an adopted the method of prohibiting wrong actions gradually; for example, the Glorious Qur`an addressed the problems of consumption of alcohol and gambling early, but gradually: early, before the advance of research in medicine as well as social sciences realised its effects,[430] and gradually, because these two problems were the norm in pre-Islamic Arabia.

Arabs before Islam (the period of the *jahiliyya*) drank alcohol and gambled, and the Glorious Qur`an knew this fact and the effects both on health and finance, but it was difficult to prohibit them all at once. It was difficult for the people at that time to stop dealing with alcohol and gambling at once. With this in mind, they first refused to accept the Glorious Qur`an, to the extent that they described the Prophet as 'a crazy poet'. The Glorious Qur`an states 'and they were saying: Should we abandon our gods for a crazy poet'.[431] 'Rather he has brought the Truth and vouches for the emissaries'.[432]

To tackle these problems, the Glorious Qur`an follows the policy of prohibiting

---

[428] Sura Isra (the Night Journey) (Q.17:88).
[429] Ibid.
[430] Ahmed Abdel Aziz Yacoub, *The Fiqh of Medicine, Responses in Islamic Jurisprudence to Developments in Medical Science*, (London, Ta-Ha Publishers Ltd., 2001).
[431] *Sura al-Saffat* (Drawn up in) Ranks (Q.37:36).
[432] *Sura al-Saffat* (Drawn up in) Ranks (Q.37:37).

these bad habits gradually. First by explaining and advising the people of their effects, and comparing their impact to the possible benefits of abstaining. The Glorious Qur`an's moral advice is clear from the verse 219 in *Sura al-Baqarah*. This verse reads:

> They will ask you about liquor and gambling. Say: In each of them there lies serious vice as well as some benefits for mankind. Yet their vice is greater than their usefulness. They may ask you what to spend. Say: As much as you can spare! Thus God explains His signs to you so that you may meditate.[433]

In the second step of prohibiting these problems, the Glorious Qur`an advises people not to approach prayer (*la taqrabu al-salah*) when they are under the influence of alcohol. This is in verse 4 in *Sura al-Nisa* that reads:

> You who believe, do not attempt to pray while you are drunk, until you know what you are saying; nor after a seminal emission – except when travelling along some road – until you take full bath. If you are ill or on a journey, or one of you has come from the toilet, or has had contact with any women, and you do not find any water, then pick up some wholesome soil and wipe your faces and your hands with it. God is Pardoning, Forgiving.[434]

The third step was a complete ban on the consumption of alcohol and gambling.

---

[433] ***Sura al-Baqarah*** (The Cow) (Q.2:219).
[434] ***Sura al-Nisa*** (Women) (Q.4:43).

This ban was clear to the extent that the Glorious Qur`an considered four acts, including the consumption of alcohol and gambling, as 'works of the devil or Satan'. The verse in *Sura al-Ma'idah* reads: 'You who believe liquor and gambling, idols and raffles are only the filth work of Satan; turn aside from it so that you may prosper.'[435]

In addition to memories of the Prophet and his Companions (*Sahabah*), the 'breasts or the hearts of men', [436]the Glorious Qur`an was written down on whatever materials were available at that time, such as stones, wood, leather, parchment[437]and animal bones such as the shoulder blades of oxen. However, after the death of the Prophet Mohammed, the first Khalifa Abu Baker al-Siddiq collected the Glorious Qur`an from its different documented sources and compared it with what was in the heart of the Companions (*Sadur al Sahabah*). The death of many of the Companions who had memorised the Glorious Qur`an led also Khalifa or Amir al-Muminin, Abu Baker al-Siddiq to ask Zayd ibn Thabit, the scribe of the Prophet Mohammed, to compile the Glorious Qur`an.

This text remained during the period of the second Khalifa Omar ibn Al-Khattab who first established the human right norms that western scholars claim to have created.[438]For instance, Khalifa Omar ibn Al-Khattab set down many principles on the

---

[435] *Sura al-Maidah* (The Table) (Q.5:90).
[436] *Sura Al-Ankabut* (The Spider) (Q.29:50), this ayah reads: 'As it is, the Qur`an is a whole serious of clear Signs pre-served in the hearts of those who have been given the knowledge; and it is only the unjust who persist in denying Our Signs.'
[437] *Sura al-Tur* (The Mount) (Q.52: 1, 2 and 3). The Qur`an says in this verse 'By the Mount and a Book [the Glorious Qur`an] recorded on unrolled parchment.' However, the word *rak* (parchment) it has more than one meaning in Arabic, for instance it mean slavery, and it also mean parchment as in the above verse. This means that the knowledge of Arabic language is very important to understanding the words and the meaning of the *Glorious Qur`anic* text or *tafsir Glorious al-Qur`an* (commentary of the *Glorious* Qur`an).
[438] Bassiouni, n 362 above.

human treatment of slaves as well as laying down practical steps towards the prohibition of slavery. Indeed, slavery was abolished in Islamic law,[439]and all other inhuman treatment of people, before modern human rights law achieved this.[440]

However, due to differences of local dialogues within several tribes in Arabia, the third Khalifa or Amir al-Muminin Osman ibn Affan, ordered to Zayed to collect again the text of the Glorious Qur`an, and to ensure its accuracy by putting it in one volume. All other unknown readings were destroyed. Thus, the only Book authorized by the Khalifa Osman ibn Affan remains to this day. In fact, God says in the Glorious Qur`an that as He revealed the Glorious Qur`an, He will keep it safe. The verse of *Sura al-hajer* (Stone land) reads, 'We Ourself have sent down the Reminder just as We are safeguarding it.'[441]

It should be noted that the Prophet's mission is divided into two periods based on the revelation of the Qur`an. First, when He was in *Mecca* (610-622 A.D.), the place where He was borne, and second in *Al-Madinah al-Munawarra* (622-632 A.D.) where He established the first Islamic state, died and was buried in his Mosque. In fact, His grave is there today open for all Muslims to visit at any time. However, in the first part of the Prophet's life in Mecca, the Glorious Qur`an was largely concerned with establishing the faith. This means the issues of Islamic belief such as worship of only One God, and the belief that Mohammed is *Rasul Allah* (the Messenger of the God). The Prophet and His Companions started the Islamic mission by asking their close relatives and others secretly, and thereafter giving an open invitation to unbelievers of

[439] Abdullahi Ahmed An-Na`am, *Towards an Islamic Reformation: Civil Liberties, Human Rights and International Law*, (New York, Syracuse University Press, 1990).
[440] F. Malekian, *The Concept of Islamic International Criminal Law: a Comparative Study*, (London, Graham and Trotman, 1994).
[441] *Sura al-Hijr* (Stone land) (Q.15:9).

Islam.[442]

As noted, the second part of the Prophet Mohammed's life in Madinah is considered the first Islamic state in the modern sense.[443]Thus, during this period, the Glorious Qur`an consisted of general rules concerned with all aspects of human life. The legal, political,[444]social and economic Islamic matters were regulated during this period.[445]The practice of the first Islamic state in Al-Madinah played an important role in the expansion of Islam to most of Arabia, despite the fact that many enemies surrounded Islam at that time. These included: the strong tribe of *Quraysh*, Bedouin tribes, the Jewish tribes in Al-Madinah, and the famous Byzantine Empire.[446]It is important to note that the pattern of imperial Islam emerged in Al- Madinah. This is evident from the fact that other non-Muslim *ahl- al-Dhimma* such as the Jews of Al-Madinah were free to follow their own religion.[447]

It is submitted that it is also difficult to understand the Glorious Qur`an if one does not look first into the doctrine of abrogation (*naskh*) in the Qur`an, according to the Mecca and Al-Madinah texts.[448]This also includes deep knowledge in

---

[442]Mohammed Hussein Haykal, *The life of Mohammed*, trans. Isma'il Ragi al-Faruqi, (Indianapolis, North American Turst, 1976).

[443] Ali Abd al-Raziq, *Al-Islam wa Usul al-Hukm*, (Islam and the Basis of Government), (Cairo, 1925) is excerpted (trans. Joseph Massad) in Charles Kurzment, ed., *Liberal Islam*: *A Sourcebook*, (New York, Oxford University Press, 1998).

[444] Hamid Enayat, *Modern Islamic Political Thought*, (Austin, University of Texas Press, 1982).

[445]Al-Mawrdi *Al- Ahkam as-Sultaniyyah* , Translated by Asadullah Yate, *Al- Ahkam as-Sultaniyyah: The Laws of Islamic Governance*, (London, Ta-Ha Publishers, 1996); See also, Mohammad Hashim Kamali, '*Siyasah Shariyah* or the Policies of Islamic Government', 6 *The American Journal of Islamic Social Sciences*, No. 1 (1989) 59.

[446] Sohail H. Hashmi, 'Interpreting the Islamic Ethics of War and Peace', in Sohail H. Hasmi, ed., *Islamic Political Ethics, Civil Society, Pluralism, and Conflict*, (Princeton, Princeton University Press, 2002).

[447] John Kelsay, 'Civil Society and Government in Islam', in Sohail H. Hasmi,. ed., *Islamic Political Ethics, Civil Society, Pluralism, and Conflict*, (Princeton, Princeton University Press, 2002).

[448] The Qur`an says in Sura Al-Baqrah (The Cow) (Q. 2:106), 'We do not cancel any verse not let it be forgotten; instead We bring something better than it or else something similar. Do you not know that God is Capable of everything.'

distinguishing the two principles of this doctrine. That is to say the principles of abrogating (*al-nasikh*) and abrogated (*al-Mansukh*).[449]In other words, proper knowledge of the chronological order of the revelation of ayah and its events is required. This has the main role of understanding the basic features of Islamic law. Second, there is also a need to look into the doctrine of occasions of revelation (*asbab al-nuzul*).[450]

In this context, Kamali, observes that:

> The knowledge of asbab al- nuzul is necessary for anyone who wishes to acquire more than a superficial knowledge of the Qur`an…[because the] knowledge of words and concepts [in the Qur`an] is incomplete without the knowledge of the context and the nature of the audience…Ignorance of the asbab al- nuzul may lead to the omission or misunderstanding of a part or even the whole of an injunction…Secondly, ignorance of asbab al- nuzul may lead to unwarranted disagreement and even conflict.[451]

As noted above, it is not accurate to describe the Glorious Qur`an as a pure legal document. It might be argued that the Glorious Qur`an is a constitution in the modern sense, as it laid down the basic legal requirements necessary for any modern nation or state. But if one really knows what the Glorious Qur`an is, it is clear that its text, values and principles make it more than just a legal document. For centuries, the Islamic methodology which is known as *ilm usul al-fiqh*, has made it possible for

---

[449] M. Abu-Zayd, *Al-Nasikh* wa *al-Mansukh: Dirasah Tashri'iyyah Ta'rikhiyyah Naqdiyyah,* (Cairo, Dar- al-Fikr al-Arabi, 1963).
[450] Jalal al-din al- Suyuti, A*sbab al- nuzul*, (Cairo, Dar al-Tahrir li'l-Tab`wal-Nashr, 1963).
[451] Kamali, n 352 above, 39-40.

Muslim jurists and legal scholars to gain deep knowledge of how to interpret the Glorious Qur`an and the Sunn`ah and, to apply their principles and norms to all aspects of Muslim life.[452]

The Islamic science of *ilm usul al-fiqh* basically deals with the way those legal jurists may use the principles of deduction and induction of different substantive Islamic norms and fundamental principles.[453]The scope of Islamic international law can be seen in a collection of principles, norms, doctrines and rules that are extracted mainly from different sources of Islamic law. As noted, these include the Qur`an, the Sunn`ah, ijma (juristic consensus), and other sources.

All this is reflected in the practice of the earlier Islamic state and the works of Muslim jurists and legal scholars who devoted much attention to specialist rulings and detailed discussions of Islamic doctrines and theories.[454]As the Glorious Qur`an is a comprehensive Book, God says 'Ma farratna fi al-kitab min shai (There is no animal [walking] on earth or any bird flying on its wings unless they exist as communities like yourselves. We have not neglected anything in the Book; then to their Lord will they be summoned)'[455]It is submitted that Islamic law is a complete system and interrelated unit, difficult to separate.[456]The theory of Islamic international law is part

---

[452] Mahdi Zahraa, 'Unique Islamic Law Methodology and The Validity of Modern Legal and Social Science Research Methods for Islamic Research', 18 *ALQ*, (2003)

[453] Ibrahim Salqini, *Usul Al-Fiqh Al-Islami*, (Damascus, Matab'at Al-Insha', 1981).

[454] See, Subhi Rajab Mahmassani, *Falsafah al – Tashri fi- Islam*: *The Philosophy of jurisprudence in Islam,* trans. Farhat J. Ziadeh (Leiden, E.J. Brill, 1961); Anmad Qadri, *Islamic Jurisprudence in the Modern World* 2nd edn., (Lahore, Shaikh Muhammed Ashraf, 1981); Ignaz Goldzhier, *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori,(Princeton, New Jersey, Princeton University Press, 1981).

[455] Sura al-anym (Livestock) (Q.6:38).

[456] Al-Qaradha wi Yousif, *Madkhal lidrasat Al-Shari'ah Al-Islamiyyah*, (Cairo, Maktabat Wahbah, 1991).

of Islamic law, and thus has all its features.[457]

5.3.1.2 The Sunn'ah of the Prophet Mohammed, upon him be blessings and peace: Hadith Material

It should be emphasised that as far as the Sunn`ah is concerned, the Glorious Qur`an says 'Say: If you have been loving God, then follow me; God will then love you and forgive you.'[458] And in *Sura al-Ahazab* (The Coalition) 'In God's messenger you have a fine model for someone who looks forward to [meeting] God and the Last Day, and mentions God frequently.'[459]The above Qur`anic verses point towards the argument that the Sunn`ah is a principle source of Islamic law.

The Prophet Mohammed said, 'I left two things among you. You shall not go astray so long as you hold on to them: the Book of Allah [God] and (sunnati) my Sunn`ah.'[460] The Prophet's interpretation of the Qur`an formed the basis of the Sunn`ah (traditions). Thus, it contains the Prophet Mohammed's, upon him be blessings and peace, sayings and deeds during his lifetime.[461] In other words, the contents of these records, or Hadith, are known as the Sunn`ah.[462]

The Sunn`ah's main role is to explain and amplify the Qur`an. It cannot be understood in any way as to override, or as an alternative to, or contradiction of the

---

[457] Mahdi Zahraa, 'Characteristic Features of Islamic Law: Perceptions and Misconceptions', *ALQ* (2000)168.
[458] *Sura Ali- Imran* (the House of Imran), (Q. 3:31).
[459] *Sura al-Ahazab* (The Coalition), (Q. 33:21)
[460] Abu Ishaq Ibrahim Shatibi, *Al- Muwafaqat fi Usuk Al-Ahkam, ed.,* Mohammed Hasanayn Makhluf, (Cairo, al-Maktaba as-salafiya, 1341 A.H), III, 197; Ibn Qayyim Al-Jawziyyah , *Ilam al-Muwaqqi'in an Rabb al-alamin ed.,* Mohammed Munir al-Dimashqi, (Cairo, Idarah al-Tiba'ah al-Muniriyyak. 4 vols., n.d.
[461] Mashood A. Baderin, *International Human Rights and Islamic Law*, (Oxford, Oxford University Press, 2003).
[462] Burton, n 407 above.

Qur`an. There are many great Muslim observers who quote the Prophetic Sunn`ah. The list includes Ibn Omar, Zayd Ibn Thabit, Ibn Mas`ud, Abu Musa Al-Ash`ari, Abu Hurairah and Ibn Abbas. There are six recognized books of the Sunn`ah: Sahih Al-Bukhari (d.256/ 870 A.D.), Sahih Muslim (d.260/ 875 A.D.), Sunan Abu Dawoud As-Sijistani (d. 275/ 889 A.D.), Jami Al-Tirmidhi (d. 279/ 892 A.D.), Sunan An-Nasa`i (d. 303/915), and Sunan Ibn Majah (d. 275/ 887 A.D.). While the *Shai`a* books are al-Kafi by Abu Ja`far al-Kulayni al-Razi (d. 939 A.D.), and al-Istibsar by Abu Ja`far al-Tusi (d.971 A.D.).

The Muwatta of Imam of the Imams, Imam Malik Abu Abdullah Malik ibn Anas al-Asbahi al-Madini, is considered the greatest Islamic work at that time and remains today as the first formulation of Islamic law. Imam Malik is amongst the most famous of the transmitters of the correct Hadith (Sahih). Many believe that his work not only opened several doors for later scholars, but also spread the understanding of Islam. The importance of Malik's work is that he carefully selected only trustful transmitters of Hadiths, and rejected those that were not, or where there is a weakness in their works.[463]

Classical Muslim scholars (*Fuqaha*) and more recent ones observe that the *Sunn`ah* covers details of different matters that are not expressly mentioned in the text of the Qur`an. For instance, according to Imam Al-Shafi`i:

> The Sunn`ah of the Prophet is of three types: first is the Sunn`ah which prescribes the like of what God has revealed in His Book; next is the Sunn`ah which explains the general

[463] Imam Malik ibn Anas, *Al-Muwatta of Imam Malik ibn Anas, The First Formulation of Islamic Law,* translated by Aisha Abuurrahman, (London and New York, Bewley, Kegan Paul International, 1989).

> principles of the Qur`an and clarifies the will of God; and last is the Sunn`ah where the Messenger of God has ruled on matters on which nothing can be found in the Book of God.[464]

Imam Al-Ghazali goes on to point out that there are about five hundred verses in the Qur`an considered as the legal verses (*ayah al-Ahkam*), and there are in the region of one thousand and two (*ahadith al-ahkam*) in the Sunn`ah.[465] As Kamali has rightly assessed, the Hadith differs from the Sunn`ah in the sense that the Hadith is a narration of the conduct of the Prophet, whereas the Sunn`ah is example or the law that is deduced from it.[466]

5.3.2 The Subsidiary Sources of Islamic Law and Islamic International Law and their Meanings

5.3.2.1 *Ijma-* Juristic Consensus

Ijma is the major subsidiary source of Islamic law. It might be agued that, in the modern sense, ijma may be combined with the notion of political consensus in a democratic context.[467]The Prophet says in Hadith that: 'My people (Ummati) would not all agree to something which is wrong.'[468]And 'you are to follow my Sunn`ah and the Usnnah of Khulafa Rashidun (Khalifas) after me.'[469]And in other Hadith he says 'My Companions are like stars, whoever you follow will lead you to the right path.'[470]

---

[464] Mohammed Al-Shafi`i, Al-Risalah (1983) cited in Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Revised Edition, (Islamic Texts Society, Cambridge, St Edmundsbury Press, 1991).
[465] Imam Mohammed ibn Mohammed ibn Ahmed Abu-Hamid at-Tusi-al-Ghazali, *Al-Mustasfa min ilm al-Usul*, 2 vols, (Cairo, Al-Maktba'a al-Amiriya, 1356/1937).
[466] Kamali, n 352 above.
[467] Bassiouni, n 362 above.
[468] Kamali, n 352 above.
[469] Ibid.
[470] Ibid.

This makes ijma the source of Islamic law.[471]

There are differences in opinion amongst Muslim scholars on the legal meaning of ijma as the subsidiary source of Islamic law.[472] For example, Ibn Jarir Al-Tabrai said that ijma is the consensus of the entire Islamic community, or Ummah, on a particular issue, but there is only one scholar who does not agree.[473]According to Ibn Jarir Al-Tabrai, in this case the agreement of all Islamic scholars is called ijma.[474]On the other hand, Imam Al-Ghazali, (d.505/1111) said that ijma is the consensus of the Prophet Mohammed's Ummah on a particular religious matter.[475]

Imam Al- Amidi said that ijma is the consensus of masters in fiqh, or competent persons of sound mind of the Prophet Mohammed's Ummah at a particular time within a categorisation (*Hukm*) of a particular event.[476]Imam ibn Hazm observes that ijma is the consensus on anything that was reported by the Prophet Mohammed and the *Jamhur* (majority of eminent scholars) and was approved as a rule, but there are some other scholars who rejected this meaning of ijma, to the extent that there are no other ijma on Islam at all.[477]He further states 'everyone claim otherwise, in fact he is not knowing what he is saying, and saying what he is not knowing and not understand

---

[471] Ahmad Hasan, *The Doctrine of Ijma in Islam,* (Islamabad, Islamic Research Institute, 1976).
[472] Ibid.
[473] See, Abu Jafar Mohammed Ibn Jarir Al-Tabrai, *al-Ihkam fi Usul al-Ahkam*; Abu Mohammed Ali Ibn Ahmed Ibn Hazm, *al-Ihkam fi Usul al-Ahkam*, 4 vols, ed., Ahmed Mohammed Shakir, (Beirut, Dar al-AFaq al-Jadida, 1400/1980); Sayf al-Din Ali Ibn Mohammed Al-Amidi, *al-Ihkam fi Usul al-Ahkam*, 4 vols, ed., Abd al-Razzaq Afifi, 2nd edn., (Beirut, al-Maktab al-Islami, 1402/1982).
[474] Ibid.
[475] Imam Mohammed ibn Mohammed ibn Ahmed Abu-Hamid at-Tusi-al-Ghazali, *Al-Mustasfa min ilm al-Usul*, 1st ed., al-Hallabai, Al-Maktba'a al-Amiriya, (Bulaq, Cairo, 1322/1906) and *Al-Mustasfa fi'Ulum al-Usul*, (Cairo, 1935 edition).
[476] Sayf al-Din Ali Ibn Mohammed Al-Amidi, *al-Ihkam fi Usul al-Ahkam*, 4 vols, ed., Abd al-Razzaq Afifi, 2nd edn., (Beirut, al-Maktab al-Islami, 1402/1982).
[476] Ibid.
[477] Abu Mohammed Ali Ibn Ahmed Ibn Hazm, *al-Ihkam fi Usul al-Ahkam*, 4 vols, ed., Ahmed Mohammed Shakir, (Beirut, Dar al-AFaq al-Jadida, 1400/1980).

and claimed to be Muslim, but in fact, he is not know the real Islam.'[478]

Imam Abu-Zahara argued that ijma is the consensus about whether something is allowed or not with reference to the Qur`an and the Sunn`ah. It does not create sacred rules as some European jurists think.[479]A recent scholar, Kamali, argues that the 'universal consensus of the scholars of the Muslim community as a whole can be regarded as conclusive ijma.'[480]

As noted from the above definitions, the majority of Muslim masters in Islamic fiqh agree that ijma is a consensus of Muslim scholars or learned persons (Ulama al-Umma) at a time on particular Islamic legal matters (*hukum shar'i*). Thus, ijma is the unanimous opinion or consensus of the majority of eminent and learned Muslim jurists (*Jamhural-ulma*) on a particular legal matter in accordance with the Qur`an and Sunn`ah after the era of the prophet Mohammed.[481]

However, some argue 'ijma was the unanimous opinion of the Sahabah or Khalifas on any point of law not specified in the Qur`an or the Sunn`ah.'[482]This study submits that this is a narrow definition of ijma. This is so because it first suggests that after the Sahabah and Khalifas' era, there will be no ijma. Second, if one assumes that current Muslim Kings and Rulers are considered as Khalifas, the question that arises here is can they contribute positively to Muslim life with ijma on several contemporary issues that challenge the future of the Ummah? This Chapter argues

---

[478] Ibid.
[479] Mohammed Abu Zahara, *Usul al-fiqh*, (Cairo, Dar al-Fikr al-Arabi, 1377/ 1958).
[480] Kamali, n 352 above, p. 168.
[481] Zahraa, n 452 above.
[482] Ali bin Ghanim Ali Al-Shahwani Al-Hajri, *The Iraqi Invasion of Kuwait and the Legality of its Claims in International Law and Islamic international Law*, PhD thesis submitted to University of Kent, Kent Law School, (February 1997) at p. 231.

that the main problem here is that those Kings and Rulers, in fact, are not qualified Muslim jurists. Therefore, it is difficult to say that they can agree on any point of law, as they do not have that deep Islamic knowledge, and therefore, cannot be considered as qualified Islamic jurists.

Indeed, the theory and practice of ijma becomes evident, as it is difficult to have universal consensus on a legal matter.[483]It was narrated that the Prophet Mohammed said, 'My community (Ummati) shall never agree upon an error (al-Khata).'[484]Islam promotes the concept of political unity of all Muslim states and communities (Ummat Mohammed). The main element that unites these states – Arabic and non-Arabic – is Islamic faith (*aquidat al-tawhid*).[485]Therefore, ijma is an important source of Islamic law, and without doubt has an essential role to play in promoting (*maqased al-shra`i*) the aims of Islamic law, which are to achieve peace and security for all human begins.

5.3.2.*2 Ijtihad*- Personal or Legal Reasoning

Ijtihad literally means striving or self-exertion in any activity that entails a measure of hardship.[486]Ijtihad is the fourth source of Islamic law after the Qur`an, the Sunn`ah and ijma. It will be observed that earlier Muslim scholars defined ijtihad as the total expenditure of effort made by a jurist in order to infer, with a degree of probability, the rules of Shari`ah (Islamic law) from detailed sources of evidence. [487]

---

[483] Hasan, n 471 above.
[484] Abu Mohammed Ali Ibn Ahmed Ibn Hazm, *al-Ihkam fi Usul al-Ahkam*, 4 vols, ed., Ahmed Mohammed Shakir, (Beirut, Dar al-AFaq al-Jadida, 1400/1980); Imam Mohammed ibn Mohammed ibn Ahmed Abu-Hamid at-Tusi-al-Ghazali, *Al-Mustasfa min ilm al-Usul*, 2 vols, (Cairo, Al-Maktba'a al-Amiriya, 1356/1937).
[485] Ibid.
[486] Bernard Weiss, 'Interpretation in Islamic Law: The Theory of Ijtihad', 26 *The American Journal of Comparative Law*, (1978)199-212.
[487] Mohammed ibn Ali ibn Mohammed al (ash)-Shawkani, *Risalat al-Qawl al-Mufeed fi Adilat al-Ijtihad wa al-Taqlid: a treatise refusing the doctrine that a Muslim must belong to one of the four madhabih* (Islamic school), Mustafa al-Babi al-Halabi, and (Cairo, 1347/1928).

It is also reported that the Prophet Mohammed asked Muadh ibn Jabal, when he sent him as judge (*Qadi*) to the Yemen, about the sources on which he would rely in making decisions. In reply, Muadh referred first to the Book of Allah (the Qur`an) and then to the Sunn`ah of the Messenger of Allah, and then Muadh told the Prophet he would resort to his own ijtihad in the event that he failed to find guidance in the Qur`an and the Sunn`ah. It was reported in this Hadith that the Prophet was pleased with Muadh's reply.

Therefore, according to Kamali, ijtihad 'is a continuous process of development whereas divine revelation [the Qur`an] and Prophetic legislation [the Sunn`ah] discontinued upon the demise of the prophet.'[488]Indeed, this means that ijtihad can play an important role in addressing the changing circumstances of Ummah and the realties of contemporary life.[489]

It must be stressed that ijtihad has many conditions (*Shurut*): first, its subject must be a question of Islamic law. Second, it is not permissible to apply the doctrine of ijtihad on the matters concerning Islamic rules that are found in the Qur`an and Sunn`ah. In other words, well known of Islamic law (*al-Maruf min al-Shar`iah*), the common principles of Islam such as the existence of God and the sending of Prophets, including the last Prophet Mohammed. The third condition is that ijtihad must be on a matter that the Qur`an and the Sunn`ah is silent about it. Thus, it does not apply to the clear meaning of these two main sources of Islamic law.

The fourth condition, as ijtihad is a collective Islamic obligation (*fared kafa*) on

[488] Kamali, n 352 above, p. 366.
[489] Without doubt, the Hadith of Prophet Mohammed with Muadh ibn Jabal provides authority of Ijithad.

all learned Islamic jurists, is that the person who may be qualified for ijtihad (*mujtahid*) must be a learned Islamic jurist. In other words, he must have a high level of intellectual competence that enables him to render his own sound judgement. Fifth, as noted earlier, the mujtahid must be competent in Arabic language to the highest level that enables him to understand the Qur`an and the Sunn`ah and to go deep into its richness.[490]Sixth, the mujtahid must be knowledgeable in the Qur`an and the Sunn`ah. Finally, he must be knowledgeable in other subsidiary sources of Islamic law such as Ijma, Qiyas, Urf and their conditions.

5.3.2.*3 Qiyas*-Legal Analogy

Qiyas (legal analogy) literally means to compare, to measure something (ascertaining of the length or its quality), or commonly to see if it fits another.[491] *Qiyas* can be defined as a process of finding similar Islamic rules from the Qur`an and the Sunn`ah.[492] As noted earlier, Imam Al-Shafi`i relied heavily on the doctrine of *qiyas* to establish his school of Islamic jurisprudence.[493]

However, legally, *qiyas* means extension of an Islamic law rule (Shari'ah value) from an original case (*asl*) to a new case (*far*), due to the fact that the latter shares the same effective cause (*Isbab* or *illah*) as the former.[494]For instance, Al-Hajri argues throughout his thesis that the Iraqi invasion of Kuwait in August 1990 was illegal in Islamic international law because Kuwait did not attack Iraq.[495]However, there are

---

[490] Kamali, n 352 above.
[491] See, Mohammad Hashim Kamali, *'Qiyas (Analogy)', The Encyclopaedia of Religion*, (New York, The Macmillan Pulishing Company, 1987, XII, 128 ff; Alhaji A.M. Nour, 'Qiyas as a Source of Islamic Law' 5 *Journal of Islamic and Comparative Law*, (1974), 18-51.
[492] Sayyid Mohammad Asghari, *Qiyas wa sayr-e takwin-e an dar Huquq-e Islam*. n.p, (1361/1982).
[493] Yacoub, n 430 above.
[494] Abu al-Aynayn Badran, *Usul al-Fiqh al-Islami* (Alexandria, Mu'assasah Shabab al-Jami'ah (1404/1984).
[495] Al-Hajri, n 479 above.

similarities between that case and Iraq invasion in 2003. Therefore, in applying the principle of *qiyas*, it might be argued that as Iraq did not attack Kuwait in March 2003, thus, by providing its territory to the US-UK to attack Iraq, Kuwait violated Islamic international law. In other words, in applying the principle of *illah* (effective cause) – that is, not to attack others, or support such attacks against Islamic states without legal justification – both Iraq and Kuwait's actions were illegal.

5.3.2.4 *Istihsan* – Juristic Preference or Islamic Equity

Istihsan (juristic preference or Islamic equity) is defined as 'The principle of jurisprudence that in particular cases not regulated by any in controvertible authority of the Qur`an, Tradition or Ijma, equitable considerations may override the results of strict analogical reasoning.'[496]

Doi defines istihsan as 'Equitable preference to find a just solution.'[497]Thus, istihsan is deviation from certain rules based on precedents derived from other rules based on relevant legal reasoning.[498]It might be argued that istihsan, like equity in western law, is based on the concept of fairness.[499]In other words, it is the use of one's own opinion, where there is no rule of positive law, to achieve fair results.[500] The difference between istihsan and equity is that the former is based on Islamic law, whilst the latter is based on national law.[501]

---

[496]Coulson, n 359 above. On Coulson' works on Islamic jurisprudence see Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence*, (Chicago and London, University of Chicago Press, 1969).
[497] Abdur Rahman Doi, *Shari'ah: Islamic Law*, (London, Ta-Ha Publishers Ltd, 1984).
[498] Bassiouni, n 362 above.
[499] See, Ahmed Hassan, 'The Principle of Istihsan in Islamic Jurisprudence', 16 *Islamic Studies* (1977), 347-363; John Makdisi, 'Legal Logic and Equity in Islamic Law' 33 *American Journal of Comparative Law*, (1985) 65-92.
[500] R. Paret, 'Isithsan and Istislah', *Encyclopedia of Islam*, New Edition (Leiden: E.J. Brill 1965, continuing).
[501] Kamali, n 352 above.

5.3.2.5 *Istishab* – Legal Presumption of Continuance

Istishab legally means presumption of continuance. Literally, it means escorting or companionship. Thus, istishab accompanies a past legal rule to the present case without any change.[502]Kamali observes 'Technically istishab denotes a rational proof which may be employed in the absence of other indications; specifically, those facts, or rules of law and reason, whose existence or non-existence had been proven in the past, and which are presumed to remain so far for lack of evidence to establish any change.'[503]

5.3.2.6 *Istislah or Al-Maslahah* – Welfare or Public Interest

Istislah or Al-Maslahah means the consideration of the Islamic community's public interest or welfare. Literally, it means 'benefit' or 'welfare'.[504]In the legal sense, it means a legitimate personal right in formulating laws or the prevention of public harm. However, istislah has a wide meaning of fulfilling what Islamic law was meant for.[505] In other words, as the purposes of Islamic law are to cover all human life, thus any measures that aim to preserve these Islamic fundamentals are Maslahah.[506]

It is observed that Islam is concerned with protecting basic human rights.[507] Among these rights are the rights to security and peace. In this regard Kamali observed:

> The doctrine of maslahah is broad enough to encompass within its fold a variety of objectives, both idealist and pragmatic, to

[502] Abd Allah Mohammed ibn Abi Baker Ibn Qayyim Al-Jawziyyah, *A'lam al-Muwqin`un Rabbi al-Alimin*, (Beirut, Dar al-Fikr, 1397 AH).
[503] Ibid. p. 297.
[504] Baderin, n 461 above.
[505] Paret, n 500 above.
[506] Imam Mohammed ibn Mohammed ibn Ahmed Abu-Hamid at-Tusi-al-Ghazali, *Al-Mustasfa min ilm al-Usul*, 2 vols, (Cairo, Al-Maktba'a al-Amiriya, 1356/1937).
[507] Murad Hofmann, *Islam: The Alternative*, (Gateway Publishing, Reading, 1993).

> nurture the standards of good government, and to help develop the much needed public confidence in the authority of statutory legalisation in Muslim societies. The doctrine of Maslahah can strike a balance between the highly idealistic levels of expectation from the government on the part of the public and the efforts of the latter to identify more meaningfully with Islam.[508]

Imam Malik first introduced the doctrine of istislah or Al-Maslahah, but other Islamic schools such as Shafi'i and Hanabli schools developed it further. Indeed, many jurists such as al-Ghazali and Abu Ishaq al-Shatibi have developed this doctrine further.[509]

5.3.2.7 *Urf* – Custom

Urf literally means that which is known which may be good or bad, legal or illegal. Urf is defined as 'recurring practices, which is acceptable to people of sound nature.'[510]The principle, however, from the above definition is to consider custom (urf) as a valid basis for legal judgements, it must be sound and reasonable in its conclusion.[511]

Thus, in principle, unlawful customs (urf) that do not have any roots in Islamic law are not valid as a source of Islamic law. Kamali goes on to point out the conditions of valid customs (urf) as follows: first, urf must represent a common and

---

[508] Mohammad Hashim Kamali, 'Have We Neglected the Shari'ah-Law Doctrine of Maslahah?' 27 *Islamic Studies*, No. 4, (1988), 287-288.
[509] Ibid.
[510] Kamali, n 352 above.
[511] Ibid.

recurrent phenomenon.[512]Second, it must also be in existence at the time a transaction is concluded. Third, it must not contravene the clear stipulation of an agreement. Finally, it must not violate the *nass*, that is, the definitive principle of the law.[513]

5.4 The Principles of Islamic International Law

It should be noted that Islamic international law is one of 'The general principles recognized by civilized nations' as part of the norms acknowledged by the UN Charter that ought to be applied.[514]For Muslims, Islam is a religion and system of law that applies to all times and everywhere, thus, Islamic international law is capable of providing many solutions to contemporary international problems through its rules of law.[515] In other words, it is able to produce an ideal international system to address the needs of modern realities.[516]Its potential to play this role has been in place for fourteen centuries.[517]In the context of Islamic international law, it is particularly important to observe that the principles in the Glorious Qur'an and the Sunn`ah regulate not only spiritual matters, but international relations between Muslim communities or states as well as their relations with non-Muslims.[518]

These principles may be divided into three parts. The first part deals with the principle of the peaceful settlement of international disputes in the Glorious Qur'an and the Sunn'ah. The second part relates to the Islamic concept of the non-use of force in international relations. The third relates to the concept of peace and war in

---

[512] Ibid.
[513] Ibid.
[514] Lord McNair, 'The General Principles Recognized by Civilized Nations', 33 *BYBIL* (1957).
[515] Ibn Khaldoun, *Al-Muqqadima,* (Introduction).
[516] M. Cherif Bassiouni, 'Protection of Diplomats under Islamic Law', 74 *AJIL* (1980), 609.
[517] Majid Khadduri, 'Islam and the Modern Law of Nations', 50 *AM.J. INT'L L.* (1956), 358.
[518] Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar Translated with an Introduction, Notes and Appendices* by Majid Khadduri (Baltimore: The Johns Hopkins University Press, 1966).

Islam; the grounds of wars; and the conduct of war in Islam.

5.4.1 Peaceful Settlement of International Disputes in Islamic International Law

As noted, Islamic international law does not simply represent religious ideas, but covers wide topics of civil and public law. These include areas as diverse as international human rights and humanitarian law, international commercial law, diplomatic protection, freedom of navigation on the high seas, the conduct of war and international criminal law.

5.4.1.1 Peaceful Settlement in the Glorious Qur'an and the Sunn'ah

The conduct of states in accordance with Islamic law is called Siyar (Islamic international law), which is based on (Shari'ah) Islamic law.[519]According to Khadduri, Islamic international law is not a legal system separate from Islamic law.[520]Rehman observes that Islamic law and Islamic international law have not only had considerable interaction with international law norms, but Islamic international law (siyar) in fact has in many ways been the basic principle in developing international law.[521]

5.4.1.2 Tahkem – Arbitration and *Wasata* –Mediation

Disputes are an integral part of any society and are realities of life. The manner in which disputes are resolved is inevitably influenced by different elements within these societies and others. Disputes between Muslims exist, and Muslims recognize many forms of dispute settlement. This process is based on Islamic norms, values and

---

[519] Ibid.
[520] Ibid.
[521] Javaid Rehamn, *Islamic States Practices, International Law and the Threat From Terrorism, A critique of the 'Clash of Civilisation' in the New World Order*, (Oxford and Portland, Oregon, Hart Publishing, 2005).

Muslim culture. For centuries Muslims accepted these peaceful methods to settle their disputes.

Arbitration (*Tahkem*) was known in Arabia long before the advent of Islam. Disputes were settled between tribes by arbitration and mediation. Islamic law accepts the arbitration process as a legal and peaceful means to settle disputes in civil law (family, tort, commercial law) and public law (Islamic international law). For example, in family law the Qur`an says

> If you fear a split between them (husband and wife) send for an arbiter from his family and an arbiter from her family. If both want to be reconciled, God will arrange things between them. God is Aware, Informed.[522]

In this context, the Qur`an provides in several places the principle of resolving disputes amicably. Both material sources of Islamic international law (the Qur`an and the Sunn`ah), recognise the principle of tahkem (arbitration) or wasata (mediation). This important method of peaceful dispute settlement was developed by the practice of the Prophet Mohammed. Thus, it might be submitted that dispute settlement is regulated by Islamic international law.

On many occasions the Prophet Mohammed himself acted as arbitrator and adjudicator in disputes between Muslims and non-Muslims. For instance, he was appointed as arbitrator by the tribal Chiefs of Mecca during the construction of Kaaba when a dispute arose between tribes who worked together on this job as to which tribe

[522] (Q.4.35).

should have the honour of putting the Black Stone in its place in the building. Furthermore, the Prophet Mohammed also recommended others to be arbitrators in many cases.

The Islamic mediation process (Wasata) is one of the useful methods of dispute resolution under both Islamic civil and public law. This is so because Islamic concepts are based totally on the idea of social peace and community harmony. Thus, wasata may be defined as a problem-solving process in accordance with Islamic law. The main aim of wasata is to re-establish communication between disputants to find a common acceptable settlement for their differences. The purpose of wasata is reaching an agreement between the disputants, which is called the *Sullh* (peacemaking or reconciliation). However, in the context of dispute settlement in Islamic international law, the ultimate objective of the tahkem (arbitration) or wasata (mediation) process is to maintain order and to achieve justice and peace between Islamic states.

5.4.2 The Concept of the non-Use of Force in Islamic International Law

Islamic international law principles and regulations in the time of war include the prohibition of the use of force in the first place, travelling with the Qur`an in enemy territory, the prohibition of killing women and children in military expeditions, and the acquisition of the land of *Dhimmis* who surrender to the concept of paying a poll tax (*jizya*) to Islamic authority (*Buat al-Mal*).[523]

[523] Majid Khadduri, *War and Peace in the Law of Islam* (1955).

5.4.2.1 Its Exceptions

However, the prohibition of the use of force has some exceptions. First, force may be used to stop aggression against Muslims. The Qur`an says in four verses in Sura al-Baqarah 'Fight those who fight against you along God's way, yet do not initiate hostilities; God does not love aggressors.'[524]And in the same Sura the Qur`an says:

> Kill them wherever you may catch them, and expel them from anywhere they may have expelled you. Sedition is more serious than killing! Yet do not fight them at the Hallowed Mosque unless they fight you there. If they should fight you, then fight them back; such is the reward for disbelievers.[525]However, if they stop, God will be Forgiving, Merciful.[526]Fight them until there is no more subversion and [all] religion belongs to God. If they stop, let there be no [more] hostility except towards wrongdoers.[527]

The Qur`an also says 'If then any one transgresses the prohibition against you, transgress ye likewise against him.'[528] On the other hand the Prophet says:

> Whosever killed a human being for other than manslaughter or corruption on earth, it shall be as if had killed all mankind, and whosever saved the life of one, it shall be as if he had saved the life of all mankind.

---

[524] (Q.2:190).
[525] (Q.2:191).
[526] (Q.2:192).
[527] (Q.2:193).
[528] (Q.2: 194).

In the view of these Qur`anic verses and Hadith it would be convincing to argue that Islam calls for the non-use of force except in limited cases as demonstrated above.

5.4.2.2 The Classical Doctrine of Jihad

The Chapter is not intending to get into the issue of jihad in more detail, but briefly states that jihad cannot be used to impose Islam on non-Muslims. The Qur`an says:

> There should be no compulsion in religion. Normal behaviour stands out clearly from error; so anyone who rejects the Arrogant ones and believes in God has grasped the Firmest Handle which will never break. God is Alert, Aware.[529]And 'If your Lord had so wished, everyone on earth would have believed, all of them together! So will you force mankind to become believers?[530]

An important principle in this brief analysis is that jihad can only be used to put an end to the aggression on Muslims.[531]It is submitted that Islam expanded rapidly, not by force as always claimed by western scholars who have an interest in Islamic studies. Saeed has rightly assessed that:

> The Qur`an is clear that war is justifiable in defeating oppression and injustice and in protecting one's homeland and faith; that is, war is largely defensive and precautionary, and is governed by a code of ethics...the doctrine of jihad as part of the process of human thinking has changed in response to

[529] (Q.2:256).
[530] (Q10:99).
[531] Ibn Khaldun, *The Muaddimah: An Introduction to History,* trans. Franz Rosenthal, (Princeton, Princeton University Press, 1967).

temporal circumstances and is expressed in disparate forms.[532]

Interestingly, some so-called 'Muslim' scholars – as their names implies – follow western non-Muslims in their misconception about jihad, and argue that 'The establishment of the new Islamic polity at Medina and the spread of the new religion [Islam] were accomplished by waging war.'[533]In this regard, however, Tibi wrongly interprets the Qur`anic verse 'We have sent you forth to all mankind' (Q.34: 28), as it obliged Muslims to 'disseminate the Islamic faith throughout the world.'[534]

However, Tibi fails to acknowledge that there were differences of opinion among earlier Muslim jurists on whether or not jihad could be used to impose Islam on others. In fact, jihad was used primarily in the earlier time of Islam because there were many non-Muslim communities who were hostile to Muslims and posed threats to them and to their new religion. The Qur`an says 'one hallowed month matches [another] hallowed month, while scared matters have [their] means of compensation. Attack anyone who attacks you to the same extent as he attacked you. Heed God, and know that God stands by the heedful.'[535]Thus, there was not one case of the use of jihad on non-Muslims who were at peace with Muslims and did not pose threats to them.[536]

The final point here is that the concept of jihad has a wide meaning, and the use of

---

[532] Abdullah Saeed, 'Jihad and Violence: Changing Understandings of Jihad Among Muslims' in *Terrorism and Justice, Moral Argument in a Threatened Word*, ed., C.A.J. (Tony) Coady and Michael P. O'Keefe, Melbourne, Melbourne University Press, 2003).
[533] Bassam Tibi, 'War and Peace in Islam', in Sohail H. Hashmi ed., *Islamic Political Ethic, Civil Society, Pluralism, and Conflict*, (Princeton and Oxford, Princeton University Press, 2002), 176.
[534] Ibid, 177.
[535] (Q.2:194).
[536] Saeed, n 532 above.

force represents only one part of it. For example, the Qur`an says 'You should believe in God and His Messenger, and strive in God's way with your property and your persons; that will be better for you if you only knew.'[537]Therefore, as rightly observed by Rehman, jihad does not necessarily mean the use of force.[538]

5.5 The Concept of Peace and War in Islamic International Law

Islamic international law seeks to settle disputes between states peacefully and prohibits the use of force to achieve narrow political goals.[539]After the Qur`an ordered Muslims to prepare for war if they were attacked, He also ordered Muslims to seek peace. The Qur`an says;

> Prepare any [military] strength you can muster against them, and any cavalry posts with which you can overawe God's enemy and your own enemy as well, plus others besides them whom you do not know. God however, knows them! If they should incline to peace, then incline to it too and rely on God. He is Alert, Aware.[540]And, So do not waver, and appeal for peace while you hold the upper hand. God is with you and will never let you be cheated in your actions.[541]

And in another verse the Qur`an says, 'You who believe, enter absolutely into

---

[537] (Q.61:11).
[538] Rehamn, n 521 above.
[539] Fazlur Rahman, 'Law and Ethics in Islam,' in Richard G. Hovannisian, ed., *Ethics in Islam: Ninth Giorgio Levi Della Vida Bienninal Conference* (Malibu, Cal.: Undena Publications, 1985).
[540] (Q. 8:61).
[541] (Q.47:35).

peace! Do not follow Satan's footsteps; he is an open enemy of yours.'[542]In addition, Islam seeks to promote peace and security. The Qur`an places a mandatory injunction on Islamic states to seek peace, and God does not love aggressors. Islamic states are required to co-operate with one another in the prevention of wars and violence. And in *Sura Yunus* 'God invites [us] to the Home of Peace, and guides anyone He wishes to, to a straight road.'[543] In Hadith, the Prophet says 'whoever leaves the community or separates himself from it by length of a span is breaking his bond with Islam.'

Islam also seeks to protect humans and forbids violence and killing people. The Qur`an says 'Who do not appeal to any other deity besides God [Alone]; nor kill any soul whom God has forbidden [them to] except through [due process of] law; nor misbehave sexually. Anyone who does so will incur a penalty.'[544]In this context, Prophet Mohammed asked his Great Companions to be patient, and it is reported that he did not ever call for war except in self-defence.

5.5.1 The Conduct of War in Islam

It is well known for all Muslims that Islamic international law regulates the conduct of war. For instance, Islamic international law prohibits the killing of women and children. It is reported in al-Muwatta of Imam Malik ibn Anas that Khalifa Abu Baker al-Siddiq advised Yazid ibn Sufyan, when he sent him with Muslim armies to Syria, of ten things, including not to kill women and children.[545]The advice is as follows:

---

[542] (Q.2:208).
[543] *Sura Yunus* (Jonah) (Q.10:25).
[544](Q.25:68).
[545]Imam Malik, *al-Muwatta, of Imam Malik ibn Anas, the First Formulation of Islamic Law, Imam Malik ibn Anas*, Translated by Aisha Abdurrahman Bewley, (London and New York, Kegan Paul International, 1989).

> You will find a people who claim to have totally given themselves to Allah. Leave them to what they claim to have given themselves. You will find a people who have shaved the middle of their heads, strike what they have shaved with the sword: I advise you ten things, Do not kill women or children or an aged, infirm person. Do not cut down fruit-bearing tress. Do not destroy an inhabited place. Do not slaughter sheep and do not scatter them. Do not steal from the booty, and do not be cowardly.[546]

Under Islamic international law, the actions on the battlefield are spiritual in the light of the goals and values of the message of Islam. Indeed, these goals and noble values determine the nature of the acts of soldiers and their commanders during and after the hostilities. Thus, a better understanding of these values is essential for proper understanding of Islamic law.

However, it was also reported in al-Muwatta that Omar ibn Abd al-Aziz (99-101) wrote to one of his governors,

> It has been passed down to us that when the Messenger of Allah, bless him and grant him peace, sent out a raiding party, he would say to them, 'Make your raids in the name of Allah, in the way of Allah. Fight whoever denies Allah. Do not steal from the booty, and do not act treacherously. Do not mutilate and do not kill children.' Say the same to your armies and raiding parties, Allah willing peace be upon you.[547]

---

[546] Ibid.

[547] Malik, *al-Muwatta,* (Cairo, Dar ar-Rayan lil Turath, 1408/1988); Imam Malik ibn Anas ibn Malik, *al-Muwatta*, ed., Farouq Salad, 3rd ed., (Dar al-Afaq al-Jadida, Beriut, 1403/1983).

5.5.2 Treatment of Prisoners of War

An important principle in the analysis of Islamic international law is treatment of prisoners of war. The principle of providing of safe conduct in battlefield becomes one of the cornerstones of Islamic international law. This is expressly acknowledged in many Hadith. For example, it was reported that Khalifa Omar ibn al-Kattab wrote to a commander of an army, which he had sent out:

> I have heard that it is the habit of some of your men to chase an unbeliever till he takes refuge in a high place. Then one man tells him in Persian not to be afraid, and when he comes up to him, he kills him. By He in whose hand my self is, if I knew someone who had done that, I would strike off his head.[548]

5.6 The Role and Responsibility of the Arab League in the Settlement of the Dispute between Iraq and Kuwait

Indeed, the aim of this study is to shed light on the theory and position of Islamic international law on the war on Iraq after the failure of the international legal system to prevent the war and save its people. It might be argued that the existing regional organs have contributed greatly to the crisis of the people of Iraq. Also, it might be argued that due to the lack of any effective mechanism to settle disputes between Arab states, Kings and the Rulers of Muslim states often violate Islamic international law.

Islam calls for Muslims to cling firmly together and to patch up any differences

[548] Ibid.

that may stand between Muslims.[549]The Qur`an says:

> Cling firmly together by means of God's rope, and do not separate. Remember God's favour towards you when you were enemies; He united your hearts so you become brothers because of his favour. You were on the brink of a fiery pit, and He saved you from it! Thus God explains His signs to you, so that you may be guided.[550]

And in another verse the Qur`an says:

> The will ask you about Booty. Say: Booty belongs to God and the Messenger, so heed God and patch up any [differences] that may stand between you. Obey God and His messenger if you are believers.[551]

The above verse highlights the duty of the Arab League to settle disputes between Arab and Muslim states to the extent that it recognizes the obligation to unite all their efforts and policies, and not act separately. As noted, Islamic international law seeks to settle disputes between states peacefully, and prohibits the use of force to achieve narrow political goals or other non-Muslim long-term objectives. Islamic international law calls also to keep to the obligations of treaties and agreements as a basic principle in justice and a legal system that guarantees peace and security for all[552]The Qur`an says:

> Believers will succeed! [This means] those who are reverent in their prayer, who refrain from idle talk, who are active in [promoting]

---

[549] Abu Bakr Ahmad b. al-Husayn Al-Bayhaqi, *Al-Sunan al-Kubra*. 10 vols. (Beirut, Dar al-Fikr, n.d).
[550] (Q.3:103).
[551] (Q.8:1).
[552] Abu Dawad al-Sijistani. *Sunan Abu Dawud*. Eng. trans. Ahmed Hasan. 3 vols. (Lahore, Ashraf Press, 1984).

public welfare and who guard their private parts except with their spouses and whomever their right hands may control, since then they are free from blame. Those who hanker after anything beyond that are going too far! And those who preserve their trusts and their pledge, and those who attend to their prayers, will be the heirs who shall inherit Paradise to live there forever.[553]

5.6.1 The Islamic Responsibility of the Arab League to Prevent the War on Iraq in 2003

In fact, the war on Iraq is aggression on an Arabic and Islamic state. Its impacts bear witness to the extent of the weaknesses of not only the official Arabic and Islamic regimes, but also the international legal system to tackle the problem of the US's hegemony. Therefore, this study addresses this issue from the Islamic point of view to establish the legal and political responsibility of Kuwait and other Gulf states that participated in facilitating the Anglo-American war against Iraq and its Muslim population. This examination of the issue is in accordance with the principles of Islamic international law, which many western scholars argue do not exist.

Those who accept Islamic international law tend to do so with the argument that international relations in Islamic international law are not clear except where they deal with wars.[554]This thesis submits that the Qur`an says, 'God invites [us] to the Home of Peace, and guides anyone He wishes to, to a Straight Road.'[555]

[553] (Q.23: 1, 2, 3, 4, 5, 6, 7, 8,9, 10 and 11).
[554] Arthur Nausbum, *A Concise History of the Law of Nations*, (New York, 1965).
[555] (Q.10:25).

5.6 The Role of the Organization of Islamic Conference (OIC) in the Settlement of the Dispute between Iraq and Kuwait

The Organization of Islamic Conference (OIC) was established in September 25, 1969, in Rabat, Morocco. Its main aim is to protect and promote the interests of Muslims. The OIC is composed of main and secondary organs. It is interesting to note that under the Charter of the OIC, the International Islamic Court of Justice (IICJ), the principle judicial organ of the OIC, will be located in Kuwait. The main purpose of IICJ will be dispute resolution between members of Muslim communities.[556]

5.7 The Responsibility of Kuwait and other Gulf States under Islamic International Law

Islam is based on three fundamental unities: first, the unity of God; second, the unity of mankind; and, third, the unity of religion. The Qur`an says, 'The decision rests with Allah only Who hath commanded that ye worship none save him.'[557]And in another Qur`anic verse, The Qur`an says 'follow that which is sent down unto you from your Lord, and seek the protection of no one besides Him.'[558]

Furthermore, The Qur`an says in *Sura Al-Maidah* four very important verses for the discussion of this Chapter: The Qur`an says first, 'Those who do not judge by what God has sent down are disbelievers.'[559] Second, 'Those who do not judge by what God has sent down are wrongdoers.'[560]Third, 'Those who do not judge by what

[556] Rehamn, n 521 above.
[557] *Sura Yusuf* (Q. :40).
[558] *Sura Al-A'raf* (Q.7: 3).
[559] *Sura Al-Maidah* (Q. 5:44).
[560] Ibid. (Q. 5: 45).

God has sent down are perverse.'[561]Fourth, 'So judge between them according to that God has sent down, and do not follow their whims. Beware of them lest they seduce you away from what God has sent down to you. If they should turn away, then know that God only wants to afflict them with some of their own offences; many men are so immoral!'[562]

The application of the above Islamic norms is important with respect to the decision of Kuwait and other Gulf states to provide their unlimited support for the US-UK in their war against Iraq. This support allowed these two non-Muslim countries to use force against the Islamic people of Iraq.

The position of Islamic jurists in regard to the legality of an alliance with non-Muslims in the US-UK war on Iraq 2003 was clear. For example, Imam Ibn Hazm observed that:

> Alliances with non-believers are acceptable where Muslims in such an alliance were sure that harm would not be brought upon fellow Muslims or on those under the protection of Muslims.[563]

It is important to note that the above example, however, is in line with several Qur`anic verses. The Qur`an argues in several places for the illegality of alliances with non-believers.

First, according to the Qur`an:

> You who believe, do not take My enemy and your enemy as friends, offering them affection while they disbelieve in any

[561] **Ibid.** (Q. 5: 47).
[562] **Ibid.** (Q.5: 49).
[563] **Abu** Mohammed Ail ibn Ahmed ibn Hazm, *Al-Mahaly*, Vol. 7 (Beirut, 1349 A.H.).

> Truth that has come to you; they exile the Messenger as well as you yourselves just because you believe in God, your Lord. If you have gone forth to strive for My sake, seeking to please Me, would you secretly show them your affection? I am quite Aware of what you hide and what you show. Any of you who does so will stray from the Level Path.[564]

Second, the Qur`an says:

> God does not forbid you to act considerately towards those who have never fought you over religion nor evicted you from your homes, nor [forbid you] to act fairly towards them. God loves the fair-minded. God only forbids you to be friendly with the ones who have fought you over [your] religion and evicted you from your homes, and abetted others in your eviction. Those who befriend them are wrongdoers.[565]

Third, the Qur`an says: 'You who believe, do not patronize any folk whom God has become angry with; they despair of the Hereafter just as disbelievers despair of the inhabitants of tombs.' Fourth, the Qur`an says: 'You who believe, if you should obey those who disbelieve, they will turn you around on your heels and send you home as losers.'[566]Fifth, the Qur`an says: 'You who believe, do not enlist disbelievers as sponsors, instead of believers. Do you want to give God clear authority against you?'[567]

---

[564] (Q.60:1).
[565] (Q.60:8 and 9).
[566] (Q.3:149).
[567] (Q.4:144).

Six, in *Sura Al-Maida* (The Table) the Qur`an say in two verses:

> 1- 'You who believe, do not accept as sponsors those from among the ones who were given the Book before you nor any disbelievers, if they treat your religion as a joke and a sport. Heed God if you are believers.'[568]
>
> 2- 'You will see many of them making friends with those who disbelieve. How wretched is what their souls have sent on ahead for them, since God is exasperated with them and they will live in torment for ever.' [569]

In considering the above verses and the principle of *istislah* or *al-Maslahah* – welfare or public interest – it is in the interest of the Islamic community that no Islamic state provides any aid to the US-UK to invade a Muslim country. As Iraq did not attack the US-UK prior it is invasion in March 2003, it is of paramount Islamic interest that a peaceful settlement of this dispute is found. The main aims here are to ensure the unity and harmony of the Islamic community (Ummah). God asked Muslims to obey God, the Prophet and not argue with one other, so that they will falter and lose their courage. The Qur`an says, 'Obey God and His messenger and do not argue with one another, so that you will falter and lose your courage. Show patience; God stands besides the patient.'[570]

The Qur`an describes the Muslim Ummah as one unity. The Prophet Mohammed says in this respect 'If two Muslims fight one another with sword, the killer and the

---

[568] (Q.5:57).
[569] (Q.5: 80).
[570] (Q.8:46).

victim are in hell.'[571]And in another Hadith, 'who takes weapon against us, he is not from our Ummah.'[572]Furthermore, the Prophet Mohammed prohibits sales of weapon when there is a fight between Muslims (*fitna*) to block the excuse of providing help to attack others.[573]Islamic international law expressly prohibits the use of force against Muslims and non-Muslims. The conduct of states is also regulated by Islamic international law.[574]Under Islamic international law no authority is given to states to perform any function unless prescribed by its norms. If states act contrary to the above duty, then their actions are illegal.

In accordance with Islamic international law, Kuwait is under fundamental Islamic obligations when it enters into a treaty: first, Kuwait's freedom to enter into agreement with the US-UK to facilitate the entrance of their troops into Islamic territory of Iraq is subject to not being contrary to fundamental Islamic norms and principles. Second, states' obligations in forming treaties or agreements must be performed in good faith *pacta sunt servanda.* This is particularly so in respect of Kuwait's and other Gulf states' actions in the invasion of Iraq in March 2003.

It should be emphasised that as far as Kuwait's actions are concerned, at the end of the second Gulf War, Iraq, Kuwait, and the so-called the UN entered into a Ceasefire Agreement that ended the hostilities. However, in that agreement, both Iraq and Kuwait undertook to respect the boundary between them. Despite that, however, in March 2003, Kuwait acted contrary to the principle of good faith and to its

[571] Al-Suati, *Al-Gama al-saqur*, vol. 2.
[572] Mohammed ibn Ismail Al-Bukhari, *Sahih al-Bukhari*, vol. 8, (Istanbul, al-Maktabah al-Islamiyyah, 1981), *Sahih Muslim*, vol. 1.
[573] Ailam al-Muwqaen, vol.1.
[574] Mohammad Hashim Kamali, 'The Citizen and state of Islamic Law', 3 *Shariah Law Journal,* Published by the International Islamic University, Selangor, Malaysia, (April 1986) 15-47.

international and Islamic obligations, and allowed the US-UK's troops to enter Iraq from it is territory. Islamic international law orders Muslim to fulfil their agreements. The Qur`an says 'These are the limits ordained by Allah so do not transgress them. If any do transgress the limits ordained by Allah, such persons wrong themselves as well as others.[575]

Kuwait's violation of Islamic international law is clear, as the Qur`an says not to follow non-Muslim footsteps: 'Neither the Jews nor the Christians will ever be satisfied with you until you follow their sect. Say: God's guidance means [real] guidance.'[576]And in another verse the Qur`an says 'Fulfil God's agreement once you have pledged to do so, and do not break any oaths once they have been sworn to. You have set God up as a Surety for yourselves; God knows whatever you do.'[577]On the other hand, many Hadith of the Prophet Mohammed also confirm the duty of Islamic states to respect their international obligations.[578]

The detailed examination of both the Qur`an and the Sunn`ah in the light of Islamic international law demonstrates the possibility of settlement of the dispute between Iraq and Kuwait. However, this failed because it required the good faith not only of Iraq and Kuwait, but all Muslim states.

Furthermore, states under Islamic international law are under an obligation to follow the principle of legitimacy and act in accordance with Islamic international law. Islamic values and norms in the determination of any state act are clear. The

---

[575] (Q.2:29).
[576] (Q.2: 120).
[577] (Q.16:91).
[578] H.M Zawati, *Is Jihad a Just War? War, Peace, and Human Rights under Islamic and Public International Law*, (Lewisto,NY. Edwin, Mellen Press, 2001).

Prophet says, 'There should be neither harming nor reciprocating harm.' Based on the Qur`anic provision on the obligation to settle the disputes between Muslims and non-use of force, some Islamic jurists consider that Kuwait acted contrary to these norms.

There are many Qur`anic verses and Traditions of the Prophet Mohammed that enjoin the promotion of peace and security and condemn the Kuwait actions. For example, the Qur`an says 'Never should a believer kill a believer; but if it so happens by mistake, compensation is due: if one (so) kills a believer, it is ordained that he should free a believing slave and pay compensation (wergild) to the deceased's family.'[579]

Long before the UN Charter, Islamic international law operated on an implicit principle of legality. The principle of legality in Islamic international law constitutes a fundamental guarantee of states' security by clearly forbidding the use of force and violence. No single Arabic state disputes that the Qur`an and Sunn'ah are the basis of Islamic international law, and that their provisions and principles are to be rigorously and scrupulously observed by all Muslim Rulers. It should be emphasised that as far as Islamic international law is concerned, all Arabic states, including the Gulf states, have declared Islamic law (Shari`ah) to be the main source of their legislation.

However, it was Kuwait and KSA who, in March 2003, provided their lands for non-Muslims (the US-UK) to invade a Muslim country (Iraq) and use aggression against Muslim citizens. This clearly indicates that Kuwait seems to have departed from its Islamic obligations. Unlike the position of Muslims in the case of Iraq

[579] (Q.4: 92).

invasion of Kuwait in 1990, there is a consensus amongst Islamic scholars and *Fuqhah* that Kuwait violated the established norms of the Islamic law and Islamic international law in 2003. The Qur`an says: 'No matter what you (all) may have differed over in any way, its jurisdiction still [remains] up to God. Such is God, my Lord; on Him have I relied and to Him do I refer.'[580]

The argument of Muslim jurists and scholars is that the manner and circumstances in which Kuwait and other Gulf states provided support to the US-UK, despite their unauthorized actions and the weakness of their argument for war against Iraq in 2003, makes Kuwait and other Gulf states responsible in both Islamic international law and international law. Based on the above injunction, Islamic jurists are unanimous on the illegality of providing aid to aggressors in general and in particular against Muslims.

There are also ample terms in both the Glorious Qur`an and the Sunn`ah suggesting that not only Kuwait, but other Gulf states have violated the objectives and purposes of the Qur`an and the Sunn`ah in the promotion peace and prevention of harm *Maslahah al-Islamia al-ailah* (Islamic public interest) to anyone.[581]The Qur`an says: 'Do not use God as an excuse in your oaths, to keep yourselves from being virtuous, doing your duty, and improving matters among mankind. God is alert, Aware.'[582]

It can be argued that Kuwait's action was serious violations of Islamic law. Using the Americans' concept of treason, that the act will be so only in levying war against Americans and in adhering to their enemies, giving them aid and comfort. The Islamic concept of treason is wider than that of the West, which is limited only to political and

[580] (Q.42:10).
[581] Kamali, n 508 above, p 287-288.
[582] (Q.2:224).

military terms. The concept of treason in Islam covers, besides political and military issues, a spiritual and cultural dimension. Thus, acting against the fundamental principles and beliefs of Islam is serious violations of Islamic law.

5.8 The Principle of Neutrality in Islamic international law

Islamic international law covers international relations during peace and war, and provides the conditions, terms and general principles that apply to them. Therefore, it is important to point out that Islam also regulates the principle of international neutrality. It is well known that states usually apply the principle of neutrality, as it is a declared policy, and therefore do not participate in any act of war between two states. Their main aim here is to avoid entering into wars and their well-known impact on human as well as their financial affects.

However, states declaring neutrality normally undertake many obligations. The important one is not to provide any military, financial or logistic aids to any disputant parties. First, neutrality obliges states not to allow any party to wage war or to take any aggressive action against other states from its land, sea or air territory. However, the failure of this state to respect this duty may give rise to the right of the victim state to launch war against it, or to take any acts that are necessary to stop aggression that comes from the territory of that state.

Second, the neutrality principle in Islamic international law obliges states that have declared neutrality not to train soldiers and troops in its territory to attack another state. Furthermore, it also obliges states not to allow the use of its ports and airports as military logistic ports to any ships or airplanes of any disputant parties that

are at war. Third, neutrality prohibits states from not only providing financial aid to any parties, but any military information or data and intelligence information. The Qur`an says:

> You who believe, refrain from conjecturing too much; even a little suspicion forms a vice. Do not spy on one another, nor let any of you back bite other. Would one of you like to eat his dead brother's flesh? You would loathe it! Heed God, for God is Relenting, Merciful.[583]

However, these are the general principles of neutrality in Islamic international law that apply if the state that has announced neutrality is an Islamic state, other parties in war are non-Muslim, and there are no agreements or defence treaties with Muslim states.

On the other hand, Islamic international law regulates the case of where the two parties in war are non-Muslim states and there are no defence agreements between them and Muslim states, but one of these two states is an aggressor against a lesser power; in this case it is an Islamic obligation on all Muslim states to provide aid and support to the less powerful state if it asks Muslim states after considering the Islamic public interest (al-Maslahah – welfare or public interest) pursuant to the Islamic principle of providing help and aid to less powerful people and states. The Qur`an says: 'If one of the associates should ask you for protection, then grant him asylum until he has heard God's word. Later on escort him to where he can find safety. That

[583] (Q.49:12).

is because they are folk who do not know anything.'[584]This is in the case of non-Muslims, so what is the position of Islamic international law in the case of Muslims in Iraq?

From the above, it might be argued that it is illegal for Muslims to adopt neutrality in three cases. First, if the two parties in war are not Muslim states, but between one of them and Muslim states a treaty (*ahad*) or defence agreement. This is suggested in the practice of the Prophet Mohammed when he fights his tribe (*Quransh*) when they attack the *Khazia* tribe (non-Muslim tribe), which has an agreement with Muslims. The Qur`an says:

> Except for those associates with whom you have already made a treaty; provided they have not failed you in any respect nor backed up anyone against you. Fulfil any treaty [you have] with them until their period is up. God loves those who do their duty.[585]

Second, if war is between Islamic states and non-Islamic states, thus aggression and attack on any Muslim state is treated as if it is on all other Muslim states. In this case, the principle of neutrality does not apply. This is evident from the practice of the Prophet Mohammed when he fought the Romans when they attacked Muslims in *Blad al-Sham* (Syria).[586]

Third, if the war is between two Islamic states in this case Muslims are under obligation to find peaceful settlement to stop *fitna* (trial or testing) among Muslims.

---

[584] (Q.9:6).
[585] (Q.9:4).
[586] Abd all Khalq Al-Nawawi, *International Relations and Legal Systems in Islamic Law*, (Beirut, Dar al-Kitab Al-arbi, 1974).

However, this is clear in the civil strife in Iraq after the fall of Saddam's regime when Muslims were killing one another. If one or both parties refuse, Muslims are under another Islamic duty to use force to secure peace because the impact of the war in this case is on the entire Muslim population resident in these two states. The Qur`an says:

> Whenever two factions of believers fall out with one another, try to reconcile them. If one of them should oppress the other, then fight the one, which acts oppressively until they comply with God's command. If they should comply, then patch things up again between them in all justice, and act fairly. God loves those who act fairly. Believers merely form a brotherhood so reconcile your brethren and heed God so that you may find mercy.[587]

Without doubt, early Islamic states put great attention on peaceful relations with other nations, and war is always a last resort, despite arguments to the contrary. The Qur`an says:

> If there is a faction of you who believe in what I have been sent with, and another faction who does not so believe, still be patient until God judges between us. He is the best of Judges.[588]

In the above verse the Qur`an does not say fight non-Muslims, but orders Muslims to be patient in dealing with disbelievers.

---

[587] (Q.49: 9 and 10).
[588] (Q.7:87).

5.9 The concept of State in Islamic Law

This section discusses briefly the legal concept of (*Dawla*) state in Islamic law. There are a number of schools of jurisprudence that take different views of what is meant by state. These schools base their views in accordance with the relationship between the state and the law.[589]However, these can be divided into three main theories. First, is that state creates law thus, it is above the law. The second theory is that law precedes the state and binds its acts. The third is that both law and state are one thing looked at from different points of view.[590]

Under Islamic law state possesses no supreme power. Therefore, states must act within the limits set out by Islamic law.[591]Furthermore, non-Muslim (*Dhimmi)* in Islamic law consider as a citizens of the Islamic state with full legal capacity and without any interference with their religious freedom and practices. As noted, the Prophet Mohammed established the first Islamic state in Medinah in the light of Qur`anic fundamentals. The guiding norms of the Islamic state are derived from the main sources of Islamic law, that is to say the Qur`an and Sunn`ah. It remains a fact that a number of Islamic states have affirmed in their constitutions that Islamic law is the main source of their national law. Unfortunately, they conduct their international relations in accordance with international law, not Islamic international law.

5.10 Findings and Concluding Remarks on Chapter Five

It would seem, then, that many essential points play an important part in clarifying the issues of this Chapter. First, the inability of existing international law norms to

---

[589] Al-Mubarak, *Nizam al-Islam fi al-Hukm wa al-Dawla*, (Beirut, Al-Maktaba al-IImiya, 1983).
[590] Farooq Hassan, *The Concept of State and Law in Islam*, (Washington, University Press of America, Inc. 1981).
[591] Ibid.

guarantee the legal standards essential to address most of the contemporary problems of the international community, in particular international peace and security. Second, all existing treaties and international agreements for Islamic international law principles and norms that Islam has had established for centuries, which clearly reflect the richness of the system in providing the international community with peace and security, are ignored.

This Chapter has shown by reference to the different schools of Islamic jurisprudence and classical juristic opinions that Islamic international law can contribute to addressing current international relations. Second, this Chapter has also examined both the sources of Islamic law (Shari'ah) and Islamic international law (the Siyar). This examination is useful for several reasons. Firstly, it highlights the Islamic legal norms and principles that govern all Muslim life and affirm the ability of these norms to be applied to the Iraq-Kuwait dispute. Secondly, this analysis strengthens the argument of this Chapter of the illegality of Kuwait's and other Gulf states' role in the war on Iraq in March 2003 and its aftermath from an Islamic perspective.

Furthermore, this Chapter has taken the view that religion has an important role in the Muslim world. Thus, religious institutions should not be limited to providing Rulers with *fatwa* that only serve their political goals, and Islamic states must rely on the principles of Islamic international law in conducting their international relations.

In respect of the use of force in Islam as examined in this Chapter, it must be discussed in the context of the time and circumstances in which Islam was first revealed to the Prophet Mohammed. However, during that period there was no rule of

law, and violence between different tribes was the norm. It was under these conditions that Islam was revealed, but Islam successfully restricted all forms of the use of force and provided regulations and limited exceptions for the general prohibition of the use of force.

Using evidence from Islamic jurisprudence and international law practice, this Chapter challenges the argument that the use of force against Iraq in 2003 is permissible in Islamic law because the use of force in Islamic international law is permitted only in two cases: first, against aggression, and second, in self-defence. In the first case the use of force is limited until the cessation of aggression. Therefore, nothing in Islamic international law justifies Kuwait's and other Gulf states' actions against Iraq, as there was no Iraqi aggression against the US-UK or any Gulf states.

It emerges from the discussion in this Chapter that: first, Kuwait's obligations under international law do not remove their Islamic obligation of the non-use of force against Muslim states. Second, for Arab and Muslim states, this Chapter shows that they have the same obligations under Islamic international law as they do under the Arab League Charter, OIC and international law to not use force against Iraq or provide military aids and logistic support to the US-UK in their continued aggression against Iraq between 1991 and March 2003.

As the Qur`an describes the Muslims as Ummah (one nation), the Qur`an says in *Sura Al- Anbiya* (Prophets) 'This community of yours [forms] one nation, while I am your Lord, so worship Me.' Therefore, they are under obligation not to shed their own blood and not drive one another out of their homes. The Islamic legal analysis of

sources of Islamic international law established the illegality of Kuwait and other Gulf states' acts in the invasion and occupation of Iraq by the US-UK.

Both Arabic and non-Arabic Islamic states need to adopt a more Islamic approach to their international relations based on Islamic international law. To assist the Arab League on the question of settlement of disputes between its members, the proposed regional Islamic or Arabic Court aims to eliminate the problem of differences of Islamic opinion in regard to Islamic legal principles.

Moreover, they also need a positive Islamic international policy towards the misuse of international law by powerful western states and their allies in the region against Muslims. Their objectives must be towards positive development of Islamic international law capable of solving all their international disputes – which were created by the West in the first place – peacefully. Ignorance of Islamic international law norms constitutes a major weakness of Muslim states.

However, as to the question of whether the practice of Kuwait and other Gulf states in the wars on Iraq (1991-2003) changed the Islamic requirement of the non-use of force between Muslims and the obligation to settle disputes peacefully, it is concluded that, when it comes to Islamic international law, no political justification, such as the need to avoid confrontations with the US-UK, applies to the practice of Kuwait and other Gulf states. The fact remains, however, that their actions in the Iraq crises have not altered the position of Islamic international law. This leads to the conclusion that Kuwait's and other Gulf states' alliance with the US-UK against Iraq cannot find support in Islamic international law. As noted, the logistic aid provided to

the US-UK – military and financial – to use force against Muslims is prohibited in Islamic international law.

As this thesis argues in Chapters Seven and Eight, the use of force against Iraq in March 2003 was based on unfounded allegations of Iraqi WMD: pre-emptive and unilateral interpretation of previous UNSC Resolutions on Iraq that in fact did not authorise the use of force. In this context, the Qur`an says in Sura Al-Hujurat verse No. 6 'You who believe, if some scoundrel should come up to you with some piece of news, clear up the facts lest you afflict some folk out of ignorance, and some morning feel regretful for what you may have done.' There is no doubt that pre-emptive and unilateral interpretation of previous UNSC Resolutions and the use of force in accordance with them were argued not to be legal authorisation in the terms of the UN Charter nor yet in Islamic international law.

PART THREE

THE LEGALITY OF IRAQ INVASION UNDER INTERNATIONAL LAW

CHAPTER SIX

THE LEGALITY OF THE US'S WAR ON TERROR

6.1 Introductory Remarks

Recently, the US and its strong ally the UK deployed military force aggressively in response to the 11 September 2001 incidents. These events reveal their willingness to ignore international law and the authority of the UN Charter-based rules.[592]They also raise many important issues under the current international system of regulating the use of force.[593]The US justified its threat of the use of force, and subsequently its broad right of unilaterally attacking Afghanistan and Iraq, as necessary measures undertaken in self-defence under Article 51 of the UN Charter and pre-emptive self-defence respectively.[594]

This justification represents the old American idea of achieving its own narrow national security, interests and foreign policy over others through the UN, other international institutions and international law principles.[595]However, it appears that

---

[592] For detailed analysis of international law governing non-state actors in international law see, M.O' Connell, 'Enhancing the Status of Non-State Actors Through a Global War on Terror?'43 *Col. J. Trans. L.* (2005) 435; Christopher Greenwood, 'War, Terrorism and International Law', 56 *Curr. L eg. Probs*, (2004) 505-529; Michael W. Reisman, 'International Legal Responses to Terrorism,' 22 *Hous.J.Int'l.L.*3,(1999)39; Nigel D. White, *The United Nations and the Maintenance of International Peace and Security*, (Manchester, Manchester University Press, 1990).

[593] Among the recommendations of the 9/11 Commission was that 'Just as we did in the Cold War, we need to defend our ideals abroad vigorously...if the United States does not act aggressively to define itself in the Islamic world, the extremists will gladly do the job for us'.

[594] On the use of force generally see, Christine Gray, *International Law and the Use of Force*, 2nd ed., (Oxford, Oxford University Press, 2004); Thomas M. Franck, 'Legal Authority for the Possible Use of Force against Iraq', *ASIL* Proceedings (1998); UN Doc S/PV, 4644,8.11.(2002);Mary Ellen O'Connell, 'The Legality of the 1993 US Missile Strike on Iraq and the Right of Self-Defence in International Law' 45 *ICLQ* (1996) 162; Antonio Cassese, *International Law*, (Oxford, Oxford University Press, 2001); Yoram Dinsten, *War Aggression and Self-Defence*, 3rd ed., (2001); Michael W. Reisman, 'Assessing Claims to Revise the Law of War', 97 *AJIL* (2003) 82; Jules Lobel, 'The Use of Force to Respond to Terrorist Attacks: The Bombing of Sudan and Afghanistan', 24 *YJIL*,2, (1999) 537; Sean D. Murphy, 'Assessing the Legality of Invading Iraq', 92 *Geo. L. J* (2004); I. Detter, *The Law of War*, 2nd edn., (Cambridge, Cambridge University Press, 2000).

[595] For example Sean Murphy, argues throughout this book, *United States Practice in International Law*, vol. 1: 1999-2001, (Cambridge, Cambridge University Press, 2002): that during President Clinton the US and its political institutions remained actively engaged in abuse and the use of international law

many of the justifications of the use of force against Iraq in 2003 under the policy of the Bush Administration are very similar to those coming directly from previous US Presidents' foreign policies[596]However, there is no doubt that such policies do not find support in international law, and they serve to undermine, rather than promote, international peace and security.[597]

6.2 A Brief Overview of the Literature on the Legality of the Use of Force

In his book published in 2000 before 11 September incidents, Richard Butler, the Chairman of the UNSCOM, the UN 'political body' created after the Kuwait invasion in 1990[598] to disarm and monitor Iraqi WMD, wrote that:

> The bulk of Americans and their allies worldwide...[would be] loath to punish any single nation or people through military strikes or other assaults without specific proof...Under these circumstances, it is quite possible that Saddam could get away with the act [of providing WMD to terrorism organisations]...sadly, on the question of whether there is a defence against such event [terrorist attack], the answer seems to be probably not...even if the crime [of terrorist attack] could be clearly tracked to Saddam [which is not the case of the 11 September incidents]...clearly, it would be unacceptable for

---

and international institutions to advance the narrow interests of the US. For the abuse of international law in the period of President Bush see also Peter Singer, *The President of Good and Evil, Taking George W. Bush Seriously*, (Granta Books, London, 2004).

[596] T. McIlmail, 'US Cruise Attack Was Illegal', *The Advocate*, (13 September 1993) at 11.

[597] Franck, n 33 above.

[598] For different viewpoints on the legality of this war see, Ruth Wedgwood, 'The Enforcement of Security Council, Resolution 687: The Threat of Weapons of Mass Destruction', 92 *AJIL*(1998) 724; Michael W. Reisman, 'Assessing Claims to Revise the Law of War', 97 *AJIL* 82 (2003); Agora 'The Gulf Crisis in International Law and Foreign Relation Law', 85 *AJIL* 62; C. Antonpolos, 'The Unilateral Use of Force by States After the end of the Cold War' *Journal of Armed Conflict Law*, (1999) 177.

> Saddam Hussein to use chemical or biological weapons to kill thousands or ten thousands of innocent people and to do so with impunity. Yet it would probably be equally unacceptable in the eyes of the world community to see the US respond by killing ten thousands of Iraqi civilians in return.[599]

This statement was a copy of what the US officials said prior to the invasion of Iraq in 2003. It suggests that the US had the right of pre-emptive self-defence to meet the alleged Iraqi threat of the use of WMD against the US and its allies sometime in the future. The events following the Iraq invasion reveal that not only had the US killed thousands of innocent Iraqi civilians in response to the September 11 incidents, but they had violated the laws of war and abused human rights in their unfounded case to invade Iraq.

Without doubt, aggression is the worst form of the use of force between states, as well as being an international crime. Article 8 (1) of the Rome Statute of the ICC states:

> 1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.[600]

---

[599] Richard Butler, *Saddam Defiant, the Threat of Weapons of Mass Destruction, and the Crisis of Global Security*, (London, Phoenix, 2000).

[600] Article 8 of the Rome Statute of the ICC reads:

> 2. For the purpose of this Statute, 'war crimes' means: (a) Grave breaches of the Geneva Conventions of 12 August 1949 namely any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in

In fact, this crime is normally committed by states through the acts of individuals. This gives rise to the international responsibility of individuals who planned and prepared the act of aggression.[601] In the Iraq war, many US-UK individuals played a role in the humanitarian crisis that we now witness in Iraq. It is clearly evident that you cannot build peace by killing civilians, abusing the innocent, killing sick and wounded persons, destroying others cultures, raping women and jeopardizing values.[602]

The same UNSCOM Chairman, Richard Butler, said in his meeting with the UN-accredited disarmament organisations in New York in early 1998 that the work of the UNSCOM was 'very close' to the end of the task of monitoring the Iraqi WMD, 'chemical and biological'.[603] This statement should not have been surprising, as no WMD were found in Iraq after the invasion. Furthermore, this statement supports the

---

> the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights to fair and regular trial; (vii)Unlawful deportation or transfer or unlawful confinement; (viii)Taking of hostages.
> (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: [the designated acts include internationally directing attacks against a civilian population as such, against civilian objects that are not military objectives, or against a humanitarian assistance or peacekeeping mission in accordance with the UN Charter; killing or wounding combatants who have surrendered; transfer by an Occupying Power of part of its own civilian population into territory it occupies, or deporting the population of the occupied territory outside the territory; employing poisonous gases or weapons that cause superfluous injury or unnecessary suffering; committing rape, sexual slavery, or forced pregnancy. 37 *ILM,* (1998) 999.

[601] See, Mauro Politi & Giuseppe Nesi, *The International Criminal Court and the Crime of Aggression* (Aldeshot, Ashgate Publishing Inc, 2004); Glueck, 'The Nuremberg Trial and Aggressive War', 59 *Harvard Law Rev.,* (1946) 396-399; *The Charter of the International Military Tribunal for the Far East*, reprinted in 4 BEVANS 20, 1 FERENCZ 523 (1975); Yoram Dinstein, 'Crimes against Humanity', in Markarczyk, J., *Theory of International Law at the Threshold of the 21st Century*, (The Hague, Martinus Nijhoff, 1997); Knut Dormann, *Elements of War Crimes under the Rome Statute of the International Criminal Courts, Sources and Commentary*, (Cambridge, Cambridge University Press, 2002); M. Cherif Bassiouni, *International Criminal Law, Enforcement*, vol. II, 2nd edn., (New York, Ardsley, Transnational Publishers Inc,1999).

[602] Article 1 of the Agreement for the Prosecution and Punishment of Major War Criminals of European Axis, (8 August 1945) The Charter of the International Military Tribunal, 8 UNTS 279, Reprinted in *AJIL* 39 (1945) 257.

[603] Bennis, n 143 above.

claim that the US-UK knew for sure, prior to the invasion, that Iraq in fact did not have such weapons.

It seems clear that they used this justification only to wage their unauthorized resort to force and to hide their intelligence failure to prevent the incidents of September 11. However, the work of UNSCOM, in particular the role of Butler in helping facilitate the US-UK military aggression against Iraq, raised much debate among his senior staff,[604] scholars and international lawyers.[605]

For example, Scott Ritter, a former UN weapons inspector who worked in Iraq, accused UNSCOM and its Chairman Richard Butler of being under the control of the CIA during its work in Iraq. Ritter argues that Iraq does not and cannot have the WMD that the US-UK claimed Saddam had. He further argues that, even if they have such weapons, the most effective way to disarm Iraq is to let the UN weapons inspectors to do their job, and not the unilateral use of force. Ritter's statement turned out to be true.[606]

Alongside this argument, the general movement of legal disagreement with the work of UNSCOM, is the wide belief that Butler's reports as well as that of Hans Blix of the UNMOVIC played a prominent part in the build up towards the invasion of Iraq in 2003.[607]In his book, '*Saddam Defiant, the Threat of Weapons of Mass Destruction, and the Crisis of Global Security*', Butler tries to explain the legal basis

---

[604] W. R. Pitt, *War on Iraq*, (Context Books, 2002).
[605] Jules Lobel & Michael Ratner, 'By passing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime', 93 *AJIL* 124 (1999); Christine Gray, 'After the Ceasefire: Iraq, the Security Council and the Use of Force', *BYIL* 135 (1994).
[606] Pitt, n 604 above.
[607] After the 1993 attack the UNMOVIC was set up to continue the work of UNSCOM.

upon which he reported to the SC on 16 December 1998, which led to Operation Desert Fox.[608]The legal basis of the US-UK attack in that operation was totally based on Butler's report to the SC. Many argue that this report was based mainly on the US's own allegations of Iraqi non-compliance with the SC's demands.

As indication of the operation, the UNSCOM inspectors were withdrawn from Iraq shortly before the report. The next day of Butler's report, the US-UK commenced their military action, which lasted for four days. This means that they were in fact ready for their unauthorized act of aggression. The missile and bombing campaign targeted more than ninety-seven sites in Iraq, many of which were not military, such as an oil refinery and communications buildings.[609]However, according to the US Chairman of the Joint Chiefs of Staff, the bombing campaign killed between six hundred and sixteen hundred of the Republican Guard.[610]

The Gulf states (Kuwait, Oman, Bahrain, Qatar, Saudi Arabia and UAE) all facilitated the attack on Iraq in different ways. From permitting the use of the US bases (Kuwait, Qatar and Oman), to providing other logistic military support such as refuelling strike aircrafts (Bahrain, Qatar, Saudi Arabia and UAE), and other underground support. China, Russia and France condemned the raid. Russia's stand was that this attack was in violation of international law and the UN Charter's fundamental rules on the use of force.[611]

---

[608] Butler, n 599 above, 214-236. However, in a letter dated 15 December 1998, Butler reported to the SC that UNSCOM 'is not able to conduct the substantive disarmament work mandated to it by the Security Council.' UN Doc. S/1998/1172.

[609]Sean Murphy, *United States Practice in International Law, 1999-2001,* vol.1 (Cambridge, Cambridge University Press, 2002).

[610] For how these attacks damage Iraq see, D. Priest, 'US Commander Unsure of How Long Iraq Will Need to Rebuild', *Wash. Post*, 22 December 1998, at A31.

[611] UN Doc. S/PV.3955 (16 December 1998)

It follows from the above that President George Bush argues that the main aims of his policy on the war on terror are to protect the national interests of his country.[612] Putting these arguments aside, however, the US's factual assertions and the truth are rather different and far more complex. The invasion of Iraq in 2003 suggests that Bush's comments turned out to be not true.

The Iraq invasion was not a sudden reaction to the September 11 incidents; it was more probably motivated by the US's own national interests. Clearly, the aim of the use of force against Iraq was to bring about a regime change regardless of its cost.[613] Without doubt, the change of political power that ruled Iraq would benefit Israel. Rightly or wrongly the bulk of like-minded Arabs believed that the US-UK attacked Iraq on behalf of Israel.

There have been many clear cases of, and evidence supports the argument that for more than a decade the US-UK has been attacking Iraq with unconvincing justifications. The large-scale attacks that have been carried out by the US-UK against Iraq since 1991in fact were the build up for the invasion of Iraq in 2003.[614] For example, in June 1993, the US launched a missile attack on Iraq destroying Iraqi intelligence headquarters in Baghdad. The US claimed that this was in response to the Iraqi attack on the US in their attempt to assassinate the former US President George Bush during his visit to Kuwait in April 1993. Of course, the legal justification was

---

[612] Ruth Wedgwood, 'Responding to Terrorism: The Strikes Against Bin Laden', 24 *YJIL*, 2(1999) 559; Michel Schmitt, *Counter-Terrorism and the Use of Force in International Law*, (Garmisch-Partenkirchen, Germany, The George C. Marshall European Center for Security Studies, 2004).

[613] 'Allies Discuss Terrorism and Middle East: Bush and Blair on Policy', *New York Times,* (7 April 2002).

[614] Wade Mansell explained in his article '*Good bye to All That? The Rule of Law, The United States, and the Use of Force*', how this policy has been under the consideration of many US Presidents, see, Wade Mansell 'Good bye to All That? The Rule of Law, the United States, and the Use of Force', 31 *Journal of Law and Society,* 4, (December 2004) 433-486.

that they were exercising the right of self-defence under Article 51 of the UN Charter.[615]

Most seriously, US President Clinton claimed that their acts against Iraq were essential to protect his country's sovereignty, as such an attack (an alleged assassination attempt) was against the US. Furthermore, the US representative to the UN appears to support this allegation. He stated that:

> [We] responded directly, as we were entitled to do under Article 51 of the UN Charter, which provides for the exercise of self-defence in such cases...[Our] response has been proportional and aimed at a target directly linked to the operation against President Bush. It was designed to damage the terrorist infrastructure of the Iraqi regime, reduce its ability to promote terrorism, and deter further acts of aggression against the United States.

In reply to this allegation and misinterpretation of Article 51 of the UN Charter, Hillarie McCoubrey and Nigel D. White argue that, based on the legal grounds and justifications offered for the attack, it was not self-defence, but 'was an example of illegal reprisal'[616]for the following reasons: first, clearly there was no imminent threat. Second, there was no longer any threat as the alleged assassination attempt was in April 1993 while the attack was in June 1993 and, third, no attempts were

[615] Mary Ellen O' Connell, 'The Legality of the 1993 US Missile Strike on Iraq and the Right of Self-Defence in International Law' 45 *ICLQ* (1996) 162.
[616]Hillarie McCoubery and Nigel D. White, *International Law and Armed Conflict*, (Aldershot, Hants, Dartmouth Publishing Co, 1992).

made by the US to settle this issue with Iraq peacefully.[617]

Further arguments in favour of the above are found in Michael Ratner & Jules Lobel's article *'Bombing Baghdad: Illegal Reprisal or Self-Defence?'*, Lobel argues that this attack 'could not plausibly fit within the classical rubric of self-defence, even accepting the facts proffered by the United States.' Ratner characterizes the 1993 raid on Iraq as a reprisal, which is prohibited in international law and customary international law.[618] Finally, Henkin characterizes the raid as a unilateral action by the US 'based on its own decision of its own findings of undisclosed facts, of its own characterization of those facts, and its own interpretation of applicable legal principle.'[619]

The aim of overthrowing the Iraqi regime has remained for a long time on the agenda of four US Presidents: Regan, Clinton, Bush and W. Bush, but has not been achieved for different reasons.[620]Only three days after the 11 September incidents (on

---

[617] Ibid.

[618] See, Michael Ratner and Jules Lobel, 'Bombing Baghdad: Illegal Reprisal or Self-Defence?, *Legal Times*, (5 July 1993), at 24.

[619] Louis Henkin 'Notes from the President', *ASIL NEWSL.*, (June 1993), at 2.

[620] Samuel. R. Berger, the US National Security Advisor during President Clinton administration period said on 23 December1998 that the policy of Clinton on Iraq was to enforce Iraqi regime to comply with the UN Resolutions or to 'the downfall of President Hussein'. See, Thomas W. Lippman, 'Two Options for Iraq in US Policy', *Wash. Post*, 24 December 1998, at A14. See the views of many senior politicians (John Bolton 'US Ambassador of the UN', Zalmay Khalizad 'US Ambassador to Iraq', Donald Rumsfeld 'US Secretary of Defence', Pual Wolfowitz 'US Deputy Secretary of Defence) who played a major part in the war on Iraq in 2003 as well as in Reagan, Bush, Clinton and W. Bush administrations in a letter of Project for the New American Century dated 26 January 1998 explained to President Clinton that the US policy toward Iraq 'is not succeeding, and that we may soon face a threat in the Middle East more serious...We urge you to seize that opportunity, and to enunciate a new strategy that would secure the interests of the U.S. and our friends and allies around the world. That strategy should aim, above all, at the removal of Saddam Hussein's regime from power...the security of the world in the first part of the 21st century will be determined largely by how we handle this threat [Iraq regime]...The only acceptable strategy is one that eliminates the possibility that Iraq will be able to use or threaten to use weapons of mass destruction. In the near term, this means a willingness to undertake military action as diplomacy is clearly failing. In the long term, it means removing Saddam Hussein and his regime from power.That now needs to become the aim of American foreign policy...We urge you to articulate this aim and to turn your Administration's attention to implementing

14 September), the US Deputy Secretary of Defence, Paul Wolfowitz, said that their general aim was 'not just simply a matter of capturing people (responsible for the 11 September accidents, but), ending states who sponsor terrorism'.[621]

However, this also can be seen in the Statement on Post-War Iraq of the Project for the New American Century that provides: 'It is now time to act to remove Saddam Hussein and his regime from power...[this removal] will lay the foundation for achieving three vital goals'[622]According to this statement the first of these goals was to disarm Iraq of its WMD; it turned out that no such weapons existed in Iraq. The second was to establish a democratic government. The third was to develop democracy in the Middle East. This suggests that the Iraqi regime was responsible for the failure of democracy in this part of the world, which is not true because it is clear that the US have supported many regimes in the Middle East that do not follow democratic principles and international human rights norms.

It might be argued that this war was one of many occasions when the US used force for the purpose of furthering national interest without the general approval of the UNSC. For example, in 1987 and 1988, during the Iran–Iraq war, the US attacked Iranian oil platforms in the Arabian Gulf.[623]It claimed that it acted in self-defence pursuant to Article 51 of the UN Charter because the Iranians had used these platforms for military purposes against US vessels. These attacks resulted in what is

---

a strategy for removing Saddam's regime from power.' This letter can be found at (Appendix C.1) and at www.newamericancentury.org.

[621] Simon Jeffery, 'Iraq: Countdown to War', *The Guardian*, (July 2002).

[622]For the text of the 'Statement on Post-War Iraq', Project for New American Century, see (Appendix C. 5) and at www.newamericancenture.org/iraq.

[623] During this war the SC asked the Secretary-General of the UN to establish the facts of the crisis and the accuse of the out break of the hostilities between the parties in term of who party responsible for this war. The SG reported to the SC and hold Iraq responsible for the events lead to the war in 1980. For more on this see, De Guttry and Roncitts ed., *The Iran, Iraq War (1998-1988) and the Laws of Naval Warfare*, (1993).

known as the Case Concerning Oil Platforms.[624]The ICJ award in this case is considered as a landmark in the unilateral use of force. [625]

The second example, in 1998, is when the US launched missile strikes against Sudan and destroyed a Sudanese civil pharmaceutical plant (El-Shaifa) outside the capital Khartoum,[626]as well as many targets in Afghanistan.[627]The US used the same justification of the right of self-defence here as in Operations Desert Storm and Desert Fox during the Gulf War.[628]

Furthermore, the practice of US foreign policy also shows numerous examples of US interference in the internal affairs of other states to change regimes by supporting opposition groups within those states. This support takes the form of providing financial aid and weapons to change their regimes; though changing the Iraqi regime was certainly the most horrific example.[629]This is because many people were killed for no reason.

In such cases, however, the ICJ decided in the Nicaragua v. United States Case (Nicaragua Case) that in contemporary international law there is no general right of intervention or support of any opposition groups within another state. The Court concludes that such acts constitute a breach of the customary principle of non-intervention as well as, if they directly or indirectly involve the use of force,

---

[624] *Case Concerning Oil Platforms* (Islamic Republic of Iran v. the United States of America), ICJ, 6 Nov, at www.icj.org.
[625] Ibid.
[626] Michael Barletta, 'Report: Chemical Weapon in the Sudan', *The Non-Proliferation Review* 6 (1998).
[627] Lobel, n 246 above.
[628]Colum Lynch, 'Allied Doubts Crow about US Strike on Sudanese Plant,' *Poston Globe*, (24 September 1998) A2.
[629]Milan Rai, *Regime Unchanged, Why the War on Iraq Changed Nothing*, (London Sterling, Virginia, Pluto Press, 2003)8.

constituting a breach of the principle of non-use of force in international relations.[630]

It is interesting to note that after the incidents of September 11, President Bush claimed that everything had changed, and that the UN was an irrelevance in the war on terror; therefore, rejecting its authority.[631]In terms of the principle of the non-use of force, the Bush administration's policy of pre-emptive strikes in self-defence without clear authorisation from the UN has numerous normative fault lines, and raises important legal questions concerning the right of individual states to use force in response to a terrorist attack.[632]

Accordingly, we turn now to consider another argument. Richard Falk argues that the US's preventive use of force is not acceptable under international law.[633]The basis of Falk's argument is that by no means whatever could it be reasonably supposed that the right of self-defence, which the US possessed when AL-Qaeda attacked the US on 11 September 2001, could be extended to cover its war on Iraq in 2003. This act of aggression lacks the basic conditions of the necessity of self-defence.

Legally speaking, the main condition of self-defence is that it must be to defend an immediate armed attack. It should be emphasised that this Chapter is concerned with these questions in particular: does the law of the use of force apply to the US's war on terror? Do Articles 2(4) and 51 of the UN Charter – covering refraining from the use of force, the right of self-defence and its limitations – provide the US-UK with

---

[630]*Case Concerning Military and Paramilitary Activities in and Against Nicaragua, ICJ Reports* (1986)14, at para 209, 25 *ILM* (1986) 1023.

[631] In his famous speech to the UN General Assembly in 2002, US President Bush challenged the UN in connection to his allegation that Iraqi regime is represent a threat to the UN and its authority therefore 'will the United Nations serve the purpose of its founding, or will it be irrelevant?'

[632] Gray, n 229 above.

[633] Falk, n 31 above.

a legal basis for their use of force against Iraq?

What is particularly significant is that the aggressive attitude of the Bush administration can be found in its annual National Security Strategy *(NSS)*.[634]This strategy is based mainly on pre-emptive action against terrorist organisations and regimes that are trying to develop WMD, 'nuclear, chemical and biological'. The main feature of this policy is that the US reserves the right to use force in self-defence even if the threat is not judged to be imminent.[635]The question in this regard is, has this changed the UN Charter law on the use of force?

It seems clear that many of the US Administration's officials always claimed the right to act pre-emptively. For example, Abraham Sofaer, former legal advisor to the US State Department has argued that, based only on the US's *NSS*. It is his view that the US must resort to the use of force to respond to the threat of terrorism, even if its claim cannot 'be proved in a real court or in the court of public opinion.'[636]In other words, before any armed attack has occurred.[637]On the other hand, Christine Gray argues throughout her book *International Law and the Use of Force* that Bush's pre-emptive doctrine as set out in the US's *NSS* 'is not clear because it does not explain what form of actions that need to be in response to possible armed attack and what role the UN it has in this case.'[638]

The US has often acted in accordance with the *NSS,* instead of international law in

---

[634] See the *NSS* of the US of March 2002 at < http:// www.whithouse.gov/nsc/nssall.html>.
[635] Ibid.
[636] Abraham Sofaer, 'Sixth Annual Waldemar A. Solt Lecture in International Terrorism, the Law and the National Defence', 126 *MiL. L. REV* (1989) 89.
[637] Ibid.
[638] Gray, n 229 above.

challenging the role of the UN.[639]However, by law, the President of the US is required to submit his national security policy to Congress. Unfortunately, over time, the pressure of the Israeli lobby has influenced the foreign policy of Congress.[640]It is significant that this lobby dominates US foreign policy, in particular its war on terror, and the US dominates the UN.[641]Thus, in turn it might be reasonable to argue that Israel dominates the UN. In other words, Israel, through the UN, has more power than other states.

It is not, of course, surprising that the US has provided Israel with deadly weapons to target civilians in Palestine as well as diplomatic assistance that have given Israel a path not to comply with their obligations under international law. Thus, all UNSC Resolutions against Israel were never enforced, and remain without effect.[642]It is widely known that, on many occasions, the US have backed Israel in standing against passing SC Resolutions that condemn Israel's continued violations of international law, the UN Charter, international human rights and humanitarian law.

---

[639]In January 2000, the US Senator Jesse Helms, Chairman, US Senate Committee on Foreign Relations addressed the UNSC states:

> No UN institution-not the Security Council, not the Yugoslav tribunal, not a future ICC- is competent to judge the foreign policy and national security decisions of the United States…this way Americans reject the idea if a sovereign United Nations that presumes to be the source of legitimacy for the United States Government's policies, foreign or domestic. There is only one source of legitimacy of the American government's policies-and that is the consent of the American people…A United Nations that focuses on helping sovereign states work together is worth keeping; a United Nations that insists on trying to impose a utopian vision on America and the world will collapse under its own weight…if the United Nations respects the sovereign rights of the American people, and serves them as an effective tool of diplomacy, it will earn and deserve their respect and support. But a United Nations that seeks to impose its presumed authority on the American people without their consent begs for confrontation and, I want to be candid, eventual US withdrawal.

See the full text of this speech at www.senate.gov/foreign/2000.

[640]John Mearsheimer and Stephen Walt, 'The Israel Lobby', *London Review of Books* (*LRB*), vol. 28 No.6 (March 2006) at www.lrb.co.uk.

[641] Sheldon Rampton, *Weapons of Mass Deception: The Uses of Propaganda in Bush's War on Iraq*, (London, Robinson, 2003).

[642] Mearsheimer and Walt, n 640 above.

6.3 Prohibition on the Use of Force '*jus in bello*' in the United Nations Charter

This research limits its scope of interest in Article 2(4) of the UN Charter to the expansive meaning of the actions as set out in the UN Charter. However, the UN Charter restricts the right of the use of force to settle international disputes and imposes two limitations on the right of self-defence. The first is explicit in Article 51, in the case of self-defence in response to an armed attack. The second limitation is in the concept of the SC authorization to use force under the provisions of Chapter VII of the UN Charter.[643]For the purpose of this research, it is important, however, to stress that the prohibition on the use of force in international relations was one of the main aims of many treaties.[644]This was the result of the development of the practice of states and the impact of wars.

To this end, we must distinguish between two sets of treaties or laws governing the use of force in international relations. The first is the law prohibiting the use of force in general '*jus ad bellum*'. This can be seen clearly in The Hague Conventions 1899 and 1907 and in the UN Charter. The second set of laws is those that govern the conduct of war if the state has breached its obligations to not resort to the use of force in international relations '*jus in bello*'.[645]As noted, this Chapter discusses the first set of laws only. However, for a considerable time, the theory of the just war enjoyed a high degree of support. The basic idea of this concept is that states have the right of

---

[643] W. Butler (ed.), *The Non-Use of Force in International Law*, (Kluwer Academic Publishers, Dordreht, printed in the Netherlands, 1989); Ian Brownlie, 'The Use of Force in Self-Defence', 37 *BYBIL* 183, (1961).

[644] See Ian Brownlie, *International Law and the Use of Force by States*,(Oxford, Oxford University Press, 1963); E. Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application*, (Dordrecht, The Netherlands, Kluwer Academic Publisher, 1992); V. D . Degan, *Sources of International Law*, (Dordrecht, The Netherlands, Martinus Nijhoff Publisher, 1997); B. Asrat, *Prohibition of Force Under the UN Charter: A Study of Art.2(4)*, (Uppsala, 1991); J. Mrazek, 'Prohibition of the Use and Threat of Force: self-Defence and Self-Help in International Law', 27 *Canadian Yearbook of International Law* 81 (1989).

[645] For further detail and references see Ian Brownlie, *International Law and Use of Force by State*, (Oxford, Oxford University Press, 1963), chs-1-3.

sovereign power of using force whenever necessary for them to further whatever goals they may have.[646]

The 1648 Treaty of Westphalia ended this theory by bringing the idea of the sovereign equality of states.[647]The theory of the state's absolute right to resort to war has changed to the concept of the control of the use of force by states. Many scholars consider this treaty as the first attempt to establish some sort of a collective regulation for the use of force.[648]This treaty provides that disputes be referred first for peaceful settlement or legal adjudication. However, if within 3 years the parties fail to reach a settlement, all other parties to the treaty have the duty to assist the victim party, and they have the right to use force collectively.[649]

The unlimited right to use force can be seen clearly in the practice of states in the period between the 1815 Final Act of the Congress of Vienna and the creation of the League of Nations in 1919. During this period the only limit to the right to use force was the exhaustion of other pacific methods of settling international disputes.

As noted in Chapter Two, The Hague Convention 1899 created the PCA as machinery to settle international disputes peacefully, furthering the concept of limiting the right to resort to war.[650]Furthermore, The Hague Convention 1907 reflected the need for limiting the right to use force.[651]These two Conventions obliged states to seek first of all peaceful settlement of their differences before resorting to

---

[646] Michael N. Shaw, *International Law*, 4th edn., (Cambridge, Cambridge University Press, 1997).
[647] L. Gross, 'The Peace of Westphalia, 1648-1948' *AJIL* (1948) 20.
[648] Antonio Cassese, *International Law in Divided World,* (Oxford, Clarendon Press, 1986).
[649] Ibid.
[650] 26 *NRGT* 2 Series, 920.
[651] 3 *NRGT* 3 Series, 360.

coercion. Finally, the General Treaty for Renunciation of Wars of 1928 (Pact of Paris) sought to outlaw all wars.[652] Article 1 of the Pact explicitly prohibits resort to war except in self-defence.[653]

In the period of the League of Nations the main aims, according to its preamble, were to achieve international peace and security by advancing the concept of peaceful settlement of international disputes and acceptance of obligations not to resort to war. Under Article 10 of the Covenant, member states were under obligation not to resort to use force, and undertook to respect and preserve against external aggression the territorial integrity and existing political independence of all members of the League. In case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.[654]

As can be seen from Article 10, the words of this Article do not clearly state not to resort to use force, but this obligation can be read into the preamble of the Covenant. The ideas of collective security can be seen in Article 11(1) that state:

> Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action

---

[652]The treaty between the US and other Powers providing for the renunciation of war as an instrument of national policy. Signed at Paris, 27 August 1928; ratification advised by the Senate, 16 January1929; ratified by the President, 17 January 1929; instruments of ratification deposited at Washington by the United States of America, Australia, Dominion of Canada, Czechoslovakia, Germany, Great Britain, India, Irish Free State, Italy, New Zealand, and Union of South Africa, 2 March 1929: By Poland, 26 March 1929; by Belgium, 27 March 1929; by France, 22 April 1929; by Japan, 24 July 1929; proclaimed, 24 July1929. This Pact also popularly known as 'Kellogg-Briand Pact' named after the US Secretary of State Franck Kellogg and the French Minster of Foreign Aristide Briand. 94 LNTS 57. On this Pact see, J. L. Brierly, 'Some Implication of the Pact of Paris' 10 *BYIL*, (1929) 208; Ingrid Detter, *The Law of War*, 2nd ed., (Cambridge, Cambridge University Press, 2000).

[653]Article 1 state 'The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.'

[654]The Covenant of the League of Nations art.10.

that may be deemed wise and effectual to safeguard the peace of nations.[655]

However, Article 12(1) of the League obliged members to submit their disputes to arbitration, judicial settlement, or inquiry, and postpone the war until three months after the award by the arbitrators, or judicial decision, or the report by the Council. This Article advanced the idea of peaceful settlement of international disputes by resort to peaceful means, which was discussed in Chapter Four.

The UN Charter, strengthening earlier attempts to outlaw the use of force, therefore considers armed attack and acts of aggression as the most serious breaches of the UN Charter. The ban on the use of armed force is contained in two Articles in the UN Charter, Articles 2(4) and 51 respectively.[656]

6.3.1 Article 2(4) of the UN Charter

In Article 2(4), the principle of prohibiting the use of force in international relations is set out in the normative level. However, this Article expressly sets out the legal requirement to refrain from the use of force in international matters between states.[657] As previously mentioned, and as discussed in more detail below, Article 2(4) of the UN Charter has a prohibitive nature: it clearly prohibits the use of force except in two situations:

1- Under the authorisation of the SC to enforce actions pursuant to Chapter VII of the

---

[655]The Covenant of the League of Nations art.11 (1).

[656] See, Derek W. Bowett, *Self-Defence in International Law*, (Manchester, Manchester University Press, 1958); Oscar Schachter, 'The Right of States to Use Armed Force', 82 *MicH. L. REV.* 1620 (1984); Anthony Clark Arend, 'International Law and the Recourse to Force: a Shift in Paradigms', 27 *Stan. J. Int. l. L* 1, (1990) 14.

[657] Antonio Cassese (ed.), *The Current Regulation on the Use of Force*, (Martinus Nijhoff, 1986).

UN Charter.

2- In response to an ongoing armed attack in accordance with the principle of the inherent right of the individual or collective self-defence under Article 51 of the UN Charter, providing certain conditions are met.[658]

It might be argued that the right of self-defence under Article 51 has been interpreted differently by the US-UK in their war in Iraq. This is the subject matter of Chapters Seven and Eight. However, this interpretation challenges the UN Charter-based rules and international law norms that are designed to prohibit and limit the use of force. This Chapter considers these issues in detail. In this regard, the ICJ has described Article 2(4) of the UN Charter as an important norm of international law. Article 2(4) of the UN Charter provides:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.[659]

Despite the attempts made by the drafters of the UN Charter to avoid the problems of interpretation of the words 'aggression' and 'war' in the Covenant of the League of Nations in Article 2(4) of the UN Charter, in practice the wording of this Article had caused many definition problems. Note that the text does not only prohibit the use of force, but the threat of the use of the force as well. In other words, this prohibition not only applies to the actual use of force, but to any type of threat to use force against the territorial integrity or political independence of any state.

---

[658] Brownlie, n 645 above.
[659] UN Charter art.2 (4).

In this regard, Ian Brownlie defines the threat of force as consisting of the elements of 'express or implied promise by a government of a resort to force conditional on non-acceptance of certain demand of that government.'[660]However, this definition raises the question of whether the threat of the use of force by the non-state actors considers a threat of the use of force in the meaning of Article 2(4) of the UN Charter?

The obligation of the non-use of force between states, which is a prohibitive norm of international law, as noted, is not expressed so clearly in Article 2(4) of the UN Charter.[661]This creates many legal interpretation problems. For example, the US's interpretation of the words of Article 2(4) is the subject of numerous legal debates among scholars.[662]For example, the term 'force' in Article 2(4) raises the question of what is meant by force, as the word force has different meanings. It may mean physical armed hostilities, or it may be other forms of force such as economic or political pressure.

This gap in Article 2(4) was filled by adopting subsequent GA Resolutions to clarify its wording.[663]For example, the main intention of the GA Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States and in Accordance with the Charter of the United Nations (1970),[664] was to clarify the scope and exceptions of Article 2(4) of the UN Charter. Another example was the GA Declaration on the Enhancement of the Effectiveness of the

---

[660] Brownlie, n 645 above.
[661] Gray, n 229 above. Christine Gray argues throughout her book that the regulation of the use of force in Articles 2(4) and 51 of the UN Charter 'cannot constitute a comprehensive code' as they are direct response to the WW II events.
[662] Ibid.
[663] V.N. Fedorov, The United Nations Declaration on the Non-Use of Force, in W. Butler (ed.), *The Non-Use of Force in International Law*, (Kluwer Academic Publishers, Dordreht, printed in the Netherlands, 1989).
[664] A/RES/2625, reprinted in 9 *ILM* (1970) 1292.

Principles of Refraining from the Threat or Use of Force in International Relations,[665] Adopted in 1987, this also clarified the scope of the use of force in Article 2(4) of the UN Charter. This Declaration, after reaffirming the importance of the universal application of the duty of states to refrain from the threat or the use of force in international matters between states, explained what is meant by the threat or use of force.

The Declaration, in Paragraph 8, considers the use of military, economic, political or any other type of measures to coerce against the political system, independence or territorial integrity of any state as the use of force.[666]Despite the fact that the Declaration in many paragraphs repeats Article 2(4) of the UN Charter, it does speak of the inherent right of individual or collective self-defence of states on condition that an armed attack occurs, as set forth in the UN Charter. This Declaration supports the thesis's argument that outlaws the use of force and aggression was not only prohibited in the UN Charter 1945, but also in recent GA Declarations.

Furthermore, according to Article 2(4), the prohibition on the use of force applies to international relations of member states. This means that the UN Charter does not address intra-state differences, which may be found in Chapter VIII of the UN Charter under Article 52 Paragraph 3.[667]

Importantly, Article 2(4) also prohibits other forms of the use of force that may be in any manner inconsistent with the main purpose of the creation of the UN, which is

---

[665] A./RES/42/22 (1988), reprinted in 27 *ILM* (1988) 1672.
[666] The Declaration on the Enhancement of the Effectiveness of the Principles of Refraining from the Threat or Use of Force in International Relations, GA Res 42/22, UN GAOR.
[667] Yoram Distein, *War, Aggression and Self-Defence*, 3rd edn., (Cambridge, Cambridge University Press, 2001).

to maintain international peace and security. In this regard, this study submits that if intra-state differences or the continuation of armed struggle within a particular state is characterized as a threat to peace, a breach of international peace, an act of aggression, or there is a risk of humanitarian crisis, the provision of the UN Charter applies. In this case, the SC must act to maintain international peace and security.

6.4 The Exceptions to the Prohibition on the Use of Force

6.4.1 Article 51 of the UN Charter: Self-defence, its Scope, Individual and Collective Security Machinery in Theory and Practice

The control of the use of force by means of the legal obligation not to use force in international relations relies ultimately on the use of peaceful means embodied in Article 33 (1) of the UN Charter.[668]Three important issues arise from this reliance. The first, which is one of the main concerns of this Chapter and a recurrent concern of the rest of this study, is the obligation not to use force based on self-defence in international matters. The second issue relates to the limits of the right of self-defence. The third relates to the conditions of individual and collective self-defence.

The right of self-defence has developed through the practice of states in international law.[669]Throughout modern history, states have invoked the right to self-defence even when the conditions set down by the UN Charter, in particular ongoing armed attack, do not apply.[670]They have always justified their wrongdoing by relying mainly on the right to self-defence, and have often masked their unlawful resort to the use of force by using international law norms.

---

[668] B. Asrat, *Prohibition on the Use of Force under the UN Charter*, (Iustus, 1991).
[669] Bowett, n 656 above.
[670] For example of these justifications see UNYB 275 (1981).

To further their political goals, states often justify the use of force as self-defence. Examples of the use of this justification are when India invaded Bangladesh in 1970, Vietnam invaded Cambodia in 1978,Tanzania invaded Uganda in 1981, Israel invaded Lebanon in 1982 and the US bombed Libya in 1986. In the last of these, the US claimed that it was exercising its right to self-defence because Libya targeted US nationals worldwide.[671]Furthermore, in 2001, the US attacked Afghanistan claiming that this was in self-defence and in response to ongoing terrorist attacks against the US. The same claim was made for the Iraq invasion in 2003.

On the other hand, Israel has used the same justification many times, and has always violated its international obligations in this respect. For example, their use of force against Syria, Lebanon and Jordan, the raid of Beirut in 1968, the invasion of Lebanon in 1982, the bombing of the PLO Headquarters in Tunisia in 1982, their attack on Iraq's nuclear reactor, and in July 2006 the bombing of Lebanon were justified as the exercise of their inherent right of self-defence embodied in Article 51 of the UN Charter. These are a few examples of misuse of the rights of self-defence by states, in particular the US-UK and Israel, when it is clear that there was no threat of an imminent armed attack against them.

It is apparent that Articles 2(4) and 51 of the UN Charter are very much interrelated: the prohibition on the use of force and the limitations on the right of self-defence's main aim was to maintain international peace and security. However, the scope of the two Articles differs as not all violations of Article 2(4) may permit the use of force in self-defence. Therefore, the scope of self-defence in Article 51 is

[671] The attack was condemned at the GA and SC as illegal use of concept of the right of self-defence but, the SC failed to pass a resolution, SC 2668, 2671 1st meetings (March 1986).

restricted. Article 51 of the UN Charter states:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.[672]

This means that the limitations of the right of self-defence find support in the words of this Article as well as in customary international law. Against this background, it is evident that the right of self-defence as set out in the above Article is one of the exceptions to states' obligation not to use force in Article 2(4) of the UN Charter. However, as prohibition on the use of force is at the core of international legal order after WW II, the UN Charter gives the SC the right to recourse to force under limited conditions. The end of the Cold War era and the collapse of communism renewed the old hopes of a peaceful world. These hopes were soon disappointed when the US became the only superpower of the time.

That is to say, this fact gives the US administration the chance to claim the right to use force frequently. The first was in Operation Just Cause December 1989 when it

[672] UN Charter art 51.

invaded Panama.[673]The second came only a year later in Operation Desert Storm in response to the Iraqi invasion of Kuwait in 1990,[674]and again against Iraq in Operation Desert Fox in 1998. In the light of all this it might be more accurate to suggest that the war on Iraq in 2003 was another attempt to apply this doctrine, but the events following the invasion proved how it damaged international relations and the US's credibility and interests.

6.4.1.1 The Right of Self-Defence as a Temporary Right: the Nicaragua Case

As this Chapter has already argued, many times the US has interpreted the fact that it is the only remaining super power to justify the resort to military force in settling their international disputes with less powerful nations rather than resorting to peaceful means as embodied in Article 33(1) of the UN Charter. As noted, the most common of these arguments to justify the use of force by the US was the old principle of self-defence set out in Article 51 of the UN Charter.

In all above cases there is no validity in the US's arguments as they are contrary to international law as there was no imminent attack or necessity for immediate military action. Therefore, the use of force in these cases can be considered as pre-emptive actions or reprisals, both of which cannot be justified as legitimate self-defence as set out in the UN Charter.

In the light of all this, the ICJ decided in 2003, in the Oil Platforms Case, that the US's actions against Iran did not constitute self-defence under Article 51 of the UN

---

[673]See, Agora, 'US Force in Panama: Defenders, Aggressors or Human Rights Activists?', 84 *AJIL* (1990) 411; V.P. Nanda *et al.*, 'US Forces in Panama' 84 *AJIL* (1990) 494; J.Quigley, 'The Legality of United States Intervention in Panama' 15 *YJIL* (1990) 281; Bar of the City of New York, *The Use of Armed Force in International Affairs: the Case of Panama,* (New York, 1992).
[674]Oscar Schacter, 'United Nations Law in the Gulf Conflict'85 *AJIL*,(1991) 425.

Charter or customary international law, as its conditions do not apply in this case. A second point to be stressed is that to prevent misuse of the right to use force in self-defence under Article 51 of the UN Charter, as noted earlier, the Charter limits the exercise of this right in four ways:

1- As the right of self-defence is not an absolute right, therefore, it must be in response to an ongoing arm attack.

In other words, under the existing UN system the Charter limits this right to actual armed attack.[675] In the case of the Iraq invasion in 2003, Iraq had not attacked the US-UK or one of their allies. Therefore, one must assume that the right of self-defence does not arise.

2- Self-defence must be exercised in response to an actual or imminent armed attack. This is because not all uses of force are considered as armed attacks. The ICJ rule in the Nicaragua Case supports this notion.[676]

The Court held that:

> In the case of individual self-defence, the exercise of this right is subject to the state concerned having been victim of an armed attack. Reliance on collective self-defence of course does not remove the need for this[677]...in the view of the Court, under international law in force today-whether customary international law or that of the United Nations system- states do not have a right of collective armed response to acts which do not constitute an

[675] Henkin, n 140 above.

[676] For important features of the judgment in this case see, M.H. Mendelson, 'The Nicaragua Case and Customary International Law', in W. Butler, ed., *The Non-Use of Force in International Law*, (Kluwer Academic Publishers, Dordreht, printed in the Netherlands, 1989); N. Rostow, 'Nicaragua and the Law of self-Defence Revisited' 11 *YJIL* (1986) 445.

[677] 'Case Concerning Military and Paramilitary Activities in and Against Nicaragua', *ICJ Reports* (1986)14 at para 195, 25 *ILM* (1986) 1023.

armed attack.[678]

The ICJ further pointed out that an isolated armed incident is not considered an armed attack or use of force 'On the other hand, [The ICJ] does not consider that military manoeuvres held by the United States near the Nicaraguan borders, or the supply of funds to the contras, amounts to a use of force.'[679]

This means the right of self-defence does not come into operation until an armed attack actually occurs. It is here submitted that the allegation that Iraq failed to comply with previous UNSC Resolutions would not have entitled the US –UK to use force against Iraq. As Bruno Simma points out:

> with the right of self-defence embodied in Article 51 restricted to the armed attack, and with no further exception to Article 2(4) allowing for the use of force by the individual states, the exercise of force for the enforcement of a vested right or for the purpose of ending another state's unlawful behaviour is prohibited. Not even arbitral awards or judgement by the ICJ may be enforced by means of forcible self-defence.[680]

3- The US-UK alleged that the Iraqi regime was linked to Al-Qaeda. They claimed that Iraqi regime provided aid to this organisation, thus they used force in pre-emptive self-defence.

There is no credible evidence that Iraq has provided weapons or logistical aids to Al-Qaeda in connection with the 11 September incidents. Even assuming that they have provided such support, it could not justify counter-measures taken by the US-UK, and particularly could not justify the use of force. In other words, this allegation

[678] Ibid. at para 211, 25 *ILM* (1986) 1023.
[679] Ibid. at para 227, 25 *ILM* (1986) 1023.
[680] Simma, n 37 above.

does not necessarily justify the use of force against Iraq in self-defence or pre-emptive self-defence.

The ICJ in the Nicaragua Case also ruled that not all support provided by a state to rebels or opposition groups should be considered as an armed attack. The Court further decided, 'neither these incursions nor the alleged supply of arms may be relied on as justifying the exercise of the right of collective self-defence.'[681]This reveals that not every form of support by a state to such groups is deemed to be an armed attack. In other words, an indirect armed attack such as the supply of weapons does not constitute an armed attack.

4- The right of self-defence is a temporary right. The UN Charter limits the right of self-defence to the extent that it requires the use of force to be an emergency action and essential last resort.

This means that if an armed attack occurs, the concerned state can resort to force, taking into consideration that this right is temporary in two ways: 1- The right of self-defence must respect the principle of necessity and proportionality to the defence purpose only. 2- Upon resort to force in self-defence, the state must report the events without delay to the SC to take necessary steps to maintain peace and international order. Therefore, Article 51 excludes self-defence for political ends, other than that allowed in response to an armed attack.[682]

---

[681]Case Concerning Military and Paramilitary Activities in and Against Nicaragua', *ICJ Reports* (1986)14 at para 227, 25 *ILM* (1986) 1023.

[682] Adam Roberts and R. Guelff, *Document on the Laws of War*, (Oxford, Oxford University Press, 2002).

6.4.1.2 Necessity and Proportionality of Self-Defence: Caroline Case

The ICJ in the Nicaragua Case ruled that for 'the US measures in collective self-defence to be lawful, they must be necessary and proportionate.'[683] And in the Caroline Case that the right of self-defence should be restricted to cases in which the necessity of self-defence is instant, overwhelming, leaving no choice of means and moment of deliberation.

The limitation of exercise of the right of individual and collective self-defence also appears clearly established in the work of many scholars from different jurisdictions.[684] Article 51 of the UN Charter, as its language clearly indicates, provides that the exercise of the right of self-defence is an exceptional right open to any state victim of an immediate armed attack. With this argument, this state can use military force to defend itself until the SC adopts necessary measures to maintain international peace and order under Articles 41 or 42 of the UN Charter.[685] But the problem is that for some time the SC was unable to take any action because it did not have a standing armed force.

This research accepts that the right of self-defence is a provisional measure until the SC is able to take on its primary responsibility to maintain international peace and security. This is because the legal logic behind the right of self-defence, as stipulated in Article 51 of the UN Charter, is that it can be used if the state is under an armed attack and has no other choice of peaceful means but to respond to defend itself and the national values of its people. The right of the state in the case of ongoing armed

---

[683] Ibid. at para 195, 25 *ILM* (1986) 1023.
[684] See, Rosalyn Higgins, 'The Legal Limits to the Use of Force by Sovereign States United Nations Practice', 37 *BYIL* (1961) 304; R. Sadurska, Threat of Force, 82 *AJIL* (1984) 239.
[685] Ibid.

attack continues until the SC becomes involved in the matter, and takes on its responsibility of ending the use of force.

Some argue that if the SC is unable or fails because of a vote to adopt necessary measures to restore peace and security, the right of self-defence may be continued. This argument will not stand, as according to the GA Resolution of 'Agenda for Peace'; in such a case the GA will take the responsibility of the SC to restore peace and security.[686]But in reality the GA also did not have a standing force.

This reveals that we have another problem of what type of action the SC deems 'necessary' in the words of Article 51. It may be argued that the Ceasefire Agreement that ended the hostilities in the Gulf War 1991, which contained an obligation from Iraq to withdraw from Kuwait, should have ended the right of self-defence for Kuwait and the US-UK. This research accepts this argument, as in this case the SC has assumed its responsibility for the maintenance of international peace and security. The actions of the SC suspend the right of individual and collective self-defence.

In other words, the Ceasefire Agreement ended any legal right for Kuwait and the US-UK – if they have such a right – thus their military actions on Iraq (1991-2003) violated international law and customary international law as well as the UN Charter. Their claims in this regard cannot be upheld. It follows that the US-UK are under legal obligation to suspend any action based on the right of self-defence once the SC takes part in the matter. By not doing so, they have violated the principle prohibiting recourse to the threat or use of force by their reprisal actions during this period.

---

[686] GA Res 377 AUNGAOR Resolution 10 (1980). See, John Fischer Murphy, 'Force and Arms', in Christopher C. Joyner *ed., the United Nations, and International Law, ASIL* (Cambridge, Cambridge University Press, 1997).

6.5 The 11 September 2001 Incidents

The US-UK war on Iraq was not a sudden reaction to the 11 September incidents, and it was arguably motivated by the US's own interests. It was one of many occasions when the US-UK used force for the purpose of achieving national policies without the general approval of the UNSC. As noted, Article 51 of the UN Charter allows a victim state under ongoing military attack to respond in self-defence in only two limited cases as set out above. However, these two cases or conditions were both absent in the case of the Iraq invasion in 2003.

The course of events and legal complications subsequent to the Iraq invasion reinforced the importance of the concept of restricting the use of force. The US-UK wanted a degree of legitimacy for their war in Iraq. Therefore, they tried to use the UNSC as they did in 1991, but their efforts failed. Interestingly, they acted alone despite the fact that their case for war lacked credibility and faced the strong opposition of Permanent Members of the SC.

A brief summary of the history of the incidents of 11 September 2001 is that on that day, 19 unknown persons boarded and seized control of four US commercial airplanes in Boston, Washington and New York.[687] American Airline flight 11 took off at 7.59 from Boston's Logan International Airport to New York. At 8:46:40 it crashed into the north tower of the World Trade Centre. United Airlines flight 175 took off at 8:14 from Boston's Logan International Airport to New York. At 9:03:11 it crashed into the south tower of the World Trade Centre.

[687] M. Grunwald, 'Terrorists Hijack 4 Airliners, Destroy World Trade Centre, Hit Pentagon, Hundreds Dead', *WasH.Post*, 12 September 2001.

Also, American Airlines flight 77 took off at 8:20 from Dulles International Airport to Los Angeles. At 9:37:46 it crashed into the Pentagon. United Airlines flight 93 took off at 8:42 from New York [New Jersey] Liberty International Airport bound for San Francisco. According to the US's official statement, at 10:03:11 it crashed in Shanksville, PA and killed all its passengers.[688]

The US claims that these incidents killed nearly a thousand people.[689]The US found in the 11 September incidents a chance to advance their own ideological agendas over other nations and finish its policy of targeting the Iraqi regime, which had been left unfinished in its war to liberate Kuwait during the 1990s.

6.5.1 The Legality of the Use Force in Response to the 11 September Incidents

However, less than a week after the 11 September incidents, the statements of the US-UK's officials raised the possibility that their so-called war on terror could extend beyond Al-Qaeda's bases in Afghanistan to Iraq.[690]Therefore, the 11 September incidents were one of the justifications for the war on Iraq, on the grounds that Saddam's regime supported Al-Qaeda's terrorist network. Importantly, international law outlaws reprisals, and had drawn a red line between it and the concept of self-defence. This is the subject of Chapter Seven.

It seems that the use of force in response to the 11 September incidents was a clear type of reprisal because the purpose of the use of force was to punish the Afghan regime for its harbouring Al-Qaeda members responsible for these incidents. This argument finds support in *The Report of the International Law Commission,* which

[688] The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks Upon the United Nations, 6th ed., (W.W. Norton & Company Inc, New York, London).
[689] Ibid.
[690] Jeffery, n 621 above.

recognized that if the purpose of the resort to force was to punish others, it was reprisal not self-defence.[691]

In President George W. Bush's 'State of the Union address' of January 2002, he states:

> States likes these [Iran, Iraq, and North Korea], and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. They could attack our allies or attempt to blackmail the United States. In any of these cases, the price of indifference would be catastrophic... We'll be deliberate, yet time is not on our side. I will not wait on events, while dangers gather. I will not stand by, as peril draws closer and closer. The United States of America will not permit the world's most dangerous regimes to threaten us with the world's most destructive weapons. [692]

In this regard, Henkin argues that 'it remains necessary to continue to develop the law of permissible response to terrorist activities...[which] is not part of the law of self-defence against armed attack contemplate by Article 51 of the UN Charter.'[693] However, the 11 September incidents, have led some to claim that as long as the

---

[691] *The Report of the International Law Commission,* 32nd Session, 11(2) 9 *Yearbook of International Law Commission*, (1980) 53-54.

[692] President Bush, State of the Union Address, Washington, D.C. (29 January 2002),http:// www.whithouse.gov/news/release/2002/01/200201129-11.htm1.

[693] Louis Henkin, Notes From the President : 'The Missile Attack on Baghdad and it Justification', *ASIL* 3, (1993).

protection of the US and its interests worldwide are served, the use of force may be justified.[694]This argument will not be given further consideration here, since it is clear that the US-UK arguments do not provide a convincing legal justification for not using other peaceful means embodied in Article 33(1) of the UN Charter to settle this dispute.

On the other hand, Koh argues that under Article 51 of the UN Charter, the 11 September incidents, or 'strikes', constituted not just as armed attacks against the US, but 'crimes against humanity' because this incident killed civilians and went against the norms of human rights and the 'spirit of the UN Charter required a forceful response to September 11.'[695]He concludes that the US must respond to the 11 September 'tragedy in the spirit of laws, seeking justice, not vengeance; applying principles, not merely power.'[696]

6.5.2 The Meanings and Definition of Armed Attack

The concepts of aggression and armed attack are considered serious breaches of Article 2(4) of the UN Charter that contain states' obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. In fact, the general meaning of the two concepts is different, but they are related to each other in different aspects. Historically, the concept of armed attack is a new concept to deal with the idea of an immediate response to an armed attack.

---

[694] H. Koh, 'The Sprits of Laws', 43 *Harvard International Law Journal*, No: 1 (2002).
[695] Ibid.
[696] Ibid.

There is no disagreement that, under an armed attack, the victim state has the right to self-defence, but the problem arises of what is considered an armed attack. The term 'armed attack' is not defined either in the Covenant of the League of Nations or in the 1928 Pact of Paris. The UN Charter recognizes the right of self-defence as a temporary right and only in response to armed attack, but it does not regulate its content, nor does it define the term 'armed attack'. In general, the concept of armed attack can be found in Article 51 of the UN Charter. This Article does not support the right of pre-emptive self-defence.[697]

Recently, international law and the UN crisis caused by the US-UK unauthorized use of force against Iraq has raised several controversial issues relating to the scope, duration and content of the right of self-defence. For example, first, whether the war on Iraq was an act of aggression, and therefore an international crime that gives rise to individual responsibility. Second, whether Kuwait was in breach of the SC Resolution 687 on the ceasefire by permitting the US-UK to commit their act of aggression from its territory to overthrow the Iraqi regime.[698]

6.5.3 Did the September 11 Incidents Constitute an Armed Attack?

In this context, the ICJ decided in the Nicaragua Case that the US had breached its international obligations under customary international law of not intervening in the internal affairs of another state by supporting and providing logistic aids to the Contras in their long attempts to overthrow the political regime in Nicaragua.[699]Thus,

---

[697] Hillarie McCoubery & Nigel D. White, *International Law and Armed Conflict*, (Aldershot, Hants, Dartmouth Publishing Co, 1992).

[698] Franck, n 32 above.

[699]Frederic Kirgis, 'Pre-emptive Action to Forestall Terrorism' *ASIL* insights, (June 2002), at www.asil.org. In discussing the principle of non-intervention the ICJ further state in Paragraphs 239 to 245, 'The Court finds it clearly established that the United States intended, by its support of the

if we apply this principle in the Iraq invasion case, it may be reasonably concluded that the US-UK breached international law in this war as well in many aspects.

In considering the Nicaragua Case this research argues that it is true that these incidents killed many people, but it is difficult to describe the 11 September incidents as 'strikes' as no military weapons were used and the individuals involved were not regular members of forces of a state. However, the US-UK's abuse of international law and human rights in Iraq war, in the name of war on terror, undermines the US-UK's claims of respect and promotion of human rights worldwide.[700] This is the subject matter of Chapter Eight.

6.5.3.1 The ICJ and the Concept of Armed Attack

Let us now examine the concept of armed attack, which has arisen in many cases. As noted, the ICJ discussed the question of the concept of armed attack in its decision in

---

contras, to coerce Nicaragua in respect of matters in which each State is permitted to decide freely, and that the intention of the *contras* themselves was to overthrow the present Government of Nicaragua. It considers that if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow its government that amounts to an intervention in its internal affairs, whatever the political objective of the State giving support. It therefore finds that the support given by the United States to the military and paramilitary activities of the *contras* in Nicaragua, by financial support, training, supply of weapons, intelligence and logistic support, constitutes a clear breach of the principle of non-intervention. Humanitarian aid on the other hand cannot be regarded as unlawful intervention. With effect from 1 October 1984, the United States Congress has restricted the use of funds to "humanitarian assistance" to the *Contrast* The Court recalls that if the provision of "humanitarian assistance" is to escape condemnation as an intervention in the internal affairs of another State, it must be limited to the purposes hallowed in the practice of the Red Cross, and above all be given without discrimination. With regard to the form of indirect intervention which Nicaragua sees in the taking of certain action of an economic nature against it by the United States, the Court is unable to regard such action in the present case as a breach of the customary law principle of non-intervention'.

[700] In reporting the situation of human rights under current US administration, Amnesty International Annual Report of May 2006 detailed how the US has abused human rights norms. The report state that 'thousands of detainees continued to be held in US custody without charge or trial in Iraq, Afghanistan and the US naval base in Guantanamo Bay, Cuba. There were reports of secret US-run detention centres in undisclosed locations where detainees were held in circumstances amounting to "disappearances"...reports of deaths in custody, torture and ill-treatment by the US forces in Iraq, Afghanistan and Guantanamo continued to emerge. Despite evidence that the US government had sanctioned interrogation techniques constituting torture or ill-treatment, and "disappearances", there was a failure to hold officials at the highest levels accountable, including individuals who have been guilty of war crimes or crimes against humanity.' Full text of the report at www.amnesty.org.

the Nicaragua case.[701] In this case, the Court approached the subject by discussing different aspects of the doctrine of the right of self-defence in accordance with Article 51 of the UN Charter. The Court ruled that Article 51 of the UN Charter is embodied in customary international law, in reply to the US argument that the right of self-defence exists in customary international law and independently from Article 51 of the UN Charter.

The ICJ makes an important distinction between the forms of the use of force. It considers only the gravest forms of the use of force as armed attacks. This means, according to the ICJ rule, less grave use of force will not be considered as an armed attack to qualify the victim state to use force in self-defence. In the words of the Court, the attacks must reach a high level of gravity to be considered as armed attacks: not only action by regular forces across an international border, but also the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to (*inter alia*) an actual armed attack conducted by regular forces.[702]

6.6.3.2 The Oil Platforms Case

The ICJ also applied the principle of gravity in the Oil Platforms Case.[703]The Court here again ruled against the US and its misinterpretation of Article 51 of the UN Charter. According to the ICJ, only a direct, armed attack conducted by regular forces qualifies as an armed attack. Thus, in applying the principles drawn from these two

---

[701] For detailed history of this conflict see John. N. Morre, 'The Secret War in Central America and the Future of World Order', 80 *AJIL* (1986); John N. Morre, 'The Nicaragua Case and the Deterioration of World Order', *81 AJIL* (1987) 151; Macdonald, 'The Nicaragua Case: New Answers to Old Questions', 127 *Canadian Yearbook of International Law*, (1986)150.

[702] Ibid.

[703] See, D. Momtoz, 'Did the Court Miss an Opportunity to Denounce the Erosion of the Principle Prohibiting the Use of Force?' 29 *YJIL* 1 (2004).

cases, the September 11 incidents were not armed attacks, as they were not carried out by regular armed forces. In other words, these incidents were not similar to the type of armed bands, groups, irregulars or mercenaries considered in the Nicaragua Case.

However, the ICJ decision in the Oil Platforms Case was another legal defeat to the US legal cases of the use of force. Despite that, William Taft, the Legal Advisor of the US Department of State disagreed with the ICJ decision in this case and contested its interpretation of the right of self-defence.[704] The view of the 'legal advisor' is that, whatever the US's political beliefs, the act was an armed attack 'based only on political determination'. For Taft, it is not important what international law says; it was an armed attack.

Furthermore, he insists that, despite the ICJ decision in this case, the US will continue to use force in self-defence as it 'understands the norms of international law not as the ICJ ruled.'[705]The proposition of Taft appears to be based on rejection of international law and ICJ authority; therefore, the US should be free to break international law, and the UN Charter will result in more violence.

Article 51 of the UN Charter states that the exercise of the right of individual or collective self-defence is limited 'until the Security Council has taken measures necessary to maintain international peace and security.' Thus, the right of self-defence has a provisional nature. These necessary measures may be either under Articles 41 or 42 of the UN Charter to maintain international peace and security. According to the UN Charter, the SC is the only organ of the UN that has the right first, to answer the

[704] William Taft, 'Self-Defence and the Oil Platforms Decision', 29 *YJIL* (2004)1.
[705] Ibid.

questions of whether there is an armed attack to give the state the right of self-defence whether individual or collective, and second, whether an armed attack has occurred.[706]

In this regard, Bowett points out:

> This clause [until the SC has taken measures necessary] illustrates the essentially provisional nature of action in self-defence under a centralized system; such a system presupposes that the right is inevitable as an interim measure of protection, but that it should cease when the machinery of the centralized system itself operates as an effective protection of the individual members' rights. Accordingly, under the Charter, such action by the individual state, or even by a number of States acting under the "collective" right, is envisaged as a temporary measure and in no way a substitute for the collective action of the Organization. This view is supported by the fact that all members have conferred primary responsibility for maintenance of international peace and security on the Security Council.[707]

It seems that the basis of Bowett's argument is that he rejects the US's idea of the absolute right of self-defence. However, Chayes supports Bowett on this point, and argues that the right of self-defence is superseded once the SC has taken appropriate measures.[708]By contrast, others argue that the right of self- defence in Article 51 of

---

[706] S.A., Al Exandrov, *Self-Defence against the Use of Force in International law,* (The Hague, Kluwer Law International,1996); Leland M.Goodrich, Edward Hambro and P.Simons, *Charter of the United Nations Commentary and Documents,* 3rd edn, (Columbia University Press, 1969).
[707] Bowett, n 656 above.
[708] Abraham Chayes, 'The Use of Force in the Persian Gulf' in Lori F.Damrosch & D.J.Scheffer ed., *Law and Force in the New International Order*, 3rd edn., (1991).

the UN Charter as a legal justification to the use of force is an independent right from the measures undertaken by the SC to maintain international peace and security. Therefore, the UN Charter places no limitation on the right of states to self-defence.[709] The definition of armed attack provided by the ICJ in these cases suggests that there is no legal support in international law that September 11 was an armed attack.

6.6 Findings and Concluding Remarks on Chapter Six

This Chapter examines the role of international law in overcoming the problem of the use of force for political ends through the imposition of legal obligations that limit the purposes for which the use of force may legitimately be exercised. The relevant obligations here are the obligations to seek peaceful settlement of international disputes and not to use force in international matters. The Chapter further attempts to show the normative character and imperative nature of the obligation of the non use of force in international relations, embodied in Articles 2(4) and 51 of the UN Charter, to prove that the US's war on Iraq is a flagrant violation of international law.[710]

The basic method adopted in this Chapter is, firstly, to attempt to give a clear description of the law governing the use of force. In so doing the Chapter refers to historical examination of most of the treaties in this respect. To this end, the feature of this Chapter is to analyze only the law that delimits the use of force in international relations; namely, the provisions of the UN Charter. Thus, it does not address the laws that regulate the conduct of the war in the light of the Iraq invasion, which will be

---

[709] Michael W. Reisman, 'Allocating competences to use Coercion in the Post-Cold War World: Practice, Condition, and Prospects', in LoriF.Damrosch & D.J.Scheffer, ed., *Law and Force in the New International Order*, (1991) 3.

[710] See, Antonio Cassese, *The Current Legal Regulation of the Use of Force*, (Martinus Nijhoff, Dordrecht, 1986); Oscar Schachter, 'The Right of States to Use Armed Force', *82 Michigan Law Review* (1984) 1620.

subject matter of further study. Secondly, it examines the framework of the use of force under the UN Charter; namely, the general exceptions to the prohibition on the use of force, individual and collective self-defence. Lastly, it examines whether the September 11 incidents constituted an armed attack.

Could the use of force against Iraq, in response to the 11 September incidents, find support in the UN Charter and are there are any links between the Iraqi regime and the 11 September incidents or Al-Qaeda? The aim here is to evaluate the US-UK's claims to have invaded Iraq based on these allegations, and to provide an outline account of the legality of the Iraq invasion rather than to present a comprehensive survey of the US-UK's use of force.

The Chapter concludes that the framework provided by the UN Charter for restriction of the use of force in international relations cannot allow unilateral use of force by powerful nations against less powerful nations based only on their own claims.[711]The use of force against Iraq could not be justified under international law unless Iraq mounted a direct attack on the US-UK or one of their allies.[712]Neither the allegation that Iraq failed to comply with previous UNSC Resolutions, nor the alleged Iraqi intention to supply WMD to Al-Qaeda may be relied on as justifying the exercise of the right of collective self-defence against the territorial integrity or political independence of Iraq.

The US has decided to end the work of both UNSCOM and UNMOVIC, and their efforts to disarm Iraq from their alleged WMD. Therefore, they prefer to pursue their

[711]Jules Lobel, 'The Rise and Decline of the Neutrality Act: Sovereignty and Congressional Wars Powers in United States Foreign Policy', 24 *Harv.Int'l L.J.* 1, (1983).
[712] Oscar Schachter, 'The Right of States to Use Armed Force', 82 *Mich. L. Rev.* (1984) 1620.

own narrow interests to change the Iraqi regime rather than to carry out their international obligation not to use force to disarm the regime.

This Chapter devotes substantial attention to the legal basis of the use of force in international relations. It begins with examining the duty to refrain from the use of force in Article 2(4) of the UN Charter and continues through to the right of self-defence and its exceptions as embodied in Article 51 of the UN Charter. This Chapter's finding is that prohibition of the use of force is one of the aims of the UN Charter. As shown in this Chapter, serious efforts have been made to avoid wars and fill the gaps in Articles 2(4) and 51 of the UN Charter. The right of self-defence is a provisional right that can be exercised exceptionally until the UNSC takes on its main responsibility under Article 41 of the UN Charter to maintain international peace and security.

One strong impression that does emerge from this literature survey of the use of force, however, is the need for more warfare analyses of the US-UK's legal justifications of the use of force against Iraq, which is the subject matter of Chapter Seven.

CHAPTER SEVEN

CHAPTER SEVEN

THE UNITED STATES'S JUSTIFICATION FOR THE IRAQ INVASION UNDER INTERNATIONAL LAW

7.1 Introductory Remarks

After analysing, in Chapters Four and Six, the core of the two main and fundamental principles of the international law on 'peaceful settlement of international disputes and non-use of force in international relations' and its exceptions explicitly embodied in Articles 2(3) and 33(1); 2(4), 42 and 51 of the UN Charter respectively, Part Four of this thesis moves on to analyse the legality of the Iraq invasion in international law. This Part first seeks to ascertain whether the Iraq invasion in 2003 could possibly find support in the UN Charter or customary international law.[713]In other words, it discusses the premise and legal arguments for the use of force against Iraq in two Chapters.

Chapter Seven analyses the US's legal justification for the unilateral use of force against Iraq in six Sections. First is preliminary consideration. The second section presents the US's legal arguments for the war in the light of the presentation of its Secretary of State, Colin Powell, to the UNSC on 'Iraq, Failing to Disarm' on 5 February 2003 in the light of the US's justification for war.[714]Thirdly, it examines the legality based on SC Resolutions 660(1990); 678(1990); 687(1991) and 1441(2002). Fourth, it examines the legality based on unilateral humanitarian intervention in the light of explicit exceptions to prohibition on the use of force found in the UN Charter. Fifthly, it examines the legality based on the right of pre-emptive self-defence in the

[713] Vaughan Lowe, 'The Iraq Crisis: What Now?' 52 *ICLQ* (2003) 850.

[714] Secretary Colin L. Powel, 'Remarks to the United Nations Security Council' The U.S State Department, 5 February 2003 available at: www.state.gov/secreatary/rm/2003/17300.htm. See also http:// edition.cnn.com/2003/US/02/05/spri.irq.powell.trancript/index.htm1; UN Doc.S/PV/4701 (5 Feb 2003).

light of Bush's doctrine. Six, it examines the legal arguments against the war. However, Chapter Eight examines the UK's legal justification for war on Iraq.

Further issues of particular importance to be examined in this Part are; first, the possible condition upon which an act of aggression may be justified; second, the role of the ICC and the question of whether the use of force against Iraq amounts to an act of aggression. If so this may gave rise to the accountability of the individuals responsible for waging this war. Finally, a conclusion is drawn as to whether, despite the lack of a real threat from Iraq, the use of force against Iraq was legal under international law or customary international law to prevent Iraq from providing WMD to various terrorist networks.

7.2 The United State's Legal Justifications for the Iraq Invasion in 2003

Central to any discussion on the legality of the Iraq invasion under international law is the US's legal case for the war. From a realistic point of view, this horrific war now appears totally built on false declarations of the danger of Iraq's WMD[715]advanced by the American media,[716]the Israeli lobby in the US[717]and carried out aggressively and unilaterally against the sovereignty, territorial integrity and political independence of Iraq.[718]

---

[715] David Usborne, 'WMD Just a Convenient Excuse for War, Admits Wolfowitz', *The Independent*, (30 May 2003); Remarks by Kofi Annan the former UN Secretary General in his last interview with BBC on 4 December 2006. Annan submits that he stated to the US and its few allies that: 'to go war without Security Council approval would not be in conformity with the Charter.' This interview available at www.newsvote.bbc.co.uk published (4 December 2006).

[716] Michael Moore, Oscar winner states 'Shame on you. We live in the time when we have fictitious elections result that elects a fictitious president. We live in the time where we have a man who's sending us to war for fictitious reasons. We are against this war.' *Daily Mirror*, (Tuesday 25 March 2005).

[717] On the role of Israel lobby in the US foreign police, see Mearsheimer & Walt, n 640 above.

[718] See, Dominic McGoldrick, *From '9-11' to the 'Iraq War 2003' International Law in An Age of Complexity,* (Oxford and Portland, Hart Publishing, 2004); Elizabeth Wilmshurst, 'The Chatham House Principles of International Law on the Use of Force in Self-defence', 55 *ICLQ*, Part 4 (October 2006); Jutta Brunee and Stephen Toope, 'The Use of Force: International Law After Iraq', 53 *ICLQ*, N0. 4 (2004) 785-806; Michael Byers, 'Terrorism, the Use of Force and International Law after September

It appears that the aims of the US's case are the destruction of the Iraqi WMD and regime change[719]by finding alternatives to the UNSC authority process.[720]This is perhaps best illustrated by the reasoning of Powell on the question of the Iraqi WMDs. The question is therefore whether the use of force under the UN Charter applies to the facts relied on in the US's case, or whether there is an exception to the rule applied after the 11 September incidents.[721]

Indeed, many points emerge from Powell's presentation to the UNSC on that day.[722]Nonetheless, before the war on Iraq, the US's argument focused basically on the issues of the Iraqi WMD (nuclear, biological and chemical) and the suggestion of Iraq's imminent threat of an armed attack with these weapons upon the US-UK.[723] The aim of this Chapter is to discuss such a possibility; therefore, the Chapter moves to examine another fundamental question of whether the evidence provided by the US was sufficient to allow the use of force against Iraq. In other words, was the US's

---

11', 51 *ICLQ*, (2002) 401-421; Thomas M. Franck, 'What Happens Now? The United Nations after Iraq', 97*AJIL*, No. 3 (2003) 607-620; Ved Nanda (ed.,) *Law and War on Terrorism*, (Ardesley: Transnational Publications, 2005); Mohmoud Hmoud, 'The Use of Force against Iraq: Occupation and Resolution 1483', 36 *Cornel International Law Journal,* No. 3 (2004)435-453.

[719] Peter Singer, *The President of Good and Evil, Taking George W. Bush Seriously*, (London, Granta Books, 2004). Singer observes 'Since international law does not recognized the desirability of "regime change" as a ground for going to war, there would still be large questions to consider, in particular, question about the possible impact of the war in weakening the constraints of international law.'

[720] J. Simpson, *The War against Saddam: Taking the Hard Road to Baghdad*, (London, Macmillan, 2003); Milan Rai, *War Plan Iraq: Ten Reasons Against the War on Iraq*, (London, Vero, 2002); G Monbiot, 'Dreamers and idiots' *The Guardian* (11 November 2003). Both, Simpson, Rai and Monbiot argued that the US-UK deliberately used force to avoid possible peaceful resolution for Iraq crisis.

[721] On July 2003 in his report to US Senate Armed Services Committee Donald Rumsfeld stated that: 'The coalition did not act in Iraq because we had discovered dramatic new evidence of Iraq's pursuit of WMDs, we acted because we saw the evidence in dramatic new light through the prism of our experience on 9/11' *The Independent,*7 October 2004. See also, William J. Bennett, 'Why We Fight: Moral Clarity and the War on Terrorism,' 176 *Military Law Review*, (2002) 444; Michael Byers, 'Terrorism, the Use of Force and International Law after September 11', 51 *ICLQ*, (2002) 401- 421; Steven R. Ratner, 'Jus ad Bellum and Jus in Bello after September 11', 9 *AJIL*, No.4 (2002) 905-921; Paul Eden and To Donnell (eds.,), *11 September 2001: A Turing Point in International Law and Domestic Law?* (New York, Transnational Publishers, 2004); Sean D. Murphy, 'Terrorist Attacks on the World Trade Centre and Pentagon', 96 *AJIL* (2002) 237.

[722] Powell, n 715 above.

[723] Helen Kinsella, 'How 1,200 Experts Failed to Find Weapon of Mass Destruction', *The Independent*, (Thursday 7 October 2004).

claim of an imminent Iraqi threat credible? However, according to Powell it covers three 'deeply troubling' Iraqi international breaches of continued development of WMDs and acts of terrorism. Powell's contentions are based, in summary, on the following arguments:

7.2.1 Colin Powell's Statement to the SC of 5 February 2003: The US's Legal Arguments for the War on Iraq

It would appear that the US has justified its unilateral use of force against Iraq on five grounds: First, they argue that the use of force was necessary to prevent Saddam from developing WMD that could target the US or their allies. Second, Iraq was in 'material breach' of UNSC resolutions. Third, they also claim that they acted legally in self-defence under Article 51 of the UN Charter. Four, they claim too that Saddam was providing support to Al-Qaeda and other terrorists groups that threatened the US. Finally, they claim liberating the Iraqi people from Saddam's dictatorship and his human rights abuses and that the war would bring freedom and democracy to Iraq and the Middle East.

However, Powell's testimony raises sharp debate as it relies mainly on the wide unilateral right of pre-emptive self-defence in accordance to Bush's doctrine.[724]The

---

[724]In this context, Bush' doctrine opened new era of unilateralism in using force to response to terrorism. This doctrine was spelled out in the National Security Strategy of the USA *NSS*, the White House Washington DC, 17 September 2002, at: http://www.whitehouse.gov/nsc/nss.pdf>. The *NSS* of 2002 argued that:

> For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat...most often a visible most often a visible mobilization of armies, navies, and air forces preparing to attack...we must adopt the concept of imminent threat to the capabilities and objectives of today's adversaries...Our immediate focus will be those terrorist organizations of global reach and any terrorist or state sponsor of terrorism which attempts to gain or use weapons of mass destruction (WMD) or their precursors; defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it

main justification put forward by Bush and Powell is based on the right to use force in self-defence in response to any potential terrorism threat to US national security, even if an armed attack is not imminent.[725]

As mentioned in Chapter Six, Article 51 of the UN Charter in defining the use of force in response to future terrorist attacks or non-state actors is unclear. Furthermore, the silence of this Article in defining the term 'armed attack' opens the door for different interpretation on the meaning of Article 51 and, therefore, the scope of the right of self-defence. This legal situation led powerful states to use their wide discretionary powers to extend the scope of self-defence to allow pre-emptive self-defence.

As a result, this has raised different legal debate among eminent scholars, and we can roughly divide their opinions into two groups. Those who approach the issue from the law of the UN Charter and customary international law argue that self-defence is

---

> reaches our borders.. the United States has long maintained the option of pre-emptive actions to counter a sufficient threat to our national security...To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively...we must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge." On the other hand NSS of 2006 argued that"[T]aking action need not involve military force. Our strong preference and common practice is to address proliferation concerns through international diplomacy, in concert with key allies and regional partners. If necessary, however, under the long-standing principles of self-defence, we do not rule out the use of force before attacks occur, even if uncertainty remains as the time and place of the enemy's attack. When the stand idly by as grave dangers materialize. This is the principle and logic of pre-emption. The place of pre-emption in our national security strategy remains the same. We will always proceed deliberately, weighing the consequences of our actions. The reasons for our actions will be clear, the force measured, and the cause just.

See, Christian Gray, 'The US National Security Strategy and the New "Bush Doctrine"', 1 *Chinese Journal of International Law* (2002) 437.

[725] Jody Williams, 'Iraq and Pre-emptive Self-Defence', in Irwin Abrams & Wang Cungwu, *The Iraq War and its Consequences, The thoughts of Nobel Peace Laureates and Eminent Scholars* (ed.,) (World Scientific Publishing Co, Singapore, 2003). Jody Williams, Nobel Peace Laureate 1997, has argued that 'I dot not believe that a national security doctrine based on pre-emptive self-defence serves the best interests of the people of the United States'. See also, Miriam Saprio, 'Iraq: The shifting Sands of Pre-emptive Self-Defence' 97 *AJIL*, No. 3 (2003) 599-607.

limited only to an actual armed attack, and until the SC takes necessary measures to maintain international peace and security.[726]

On the other hand, those who approach this issue from the notion of a new threat to international peace and security posed by rogue nations with WMD and links to terrorism networks, support a wide interpretation of self-defence to extend beyond a response to an armed attack to cover the so-called 'war on terror'.[727]The main argument of this group is to extend the scope of self-defence to allow anticipatory self-defence in response to a terrorism threat or unilateral military attack against states that support international terrorism networks, without need for UN authorization.[728]

However, there is controversy over the real threat posed by Iraq to the US and its allies prior the war.[729] Richard Gardner argues that:

> Neither the new Bush doctrine nor the strict interpretation of the "jurisprudes" represents good law or good policy. The new strategic to environment, marked by suicidal terrorists and the spread of mass destruction weapons, requires a different approach...The new Bush

---

[726] Thomas Franck, 'What Happens Now? The United Nations after Iraq', 97 *AJIL*, No. 3 (2003) 607-620; Christian Gray, 'The Use and Abuse of the international Court of Justice: Cases Concerning the Use of Force after Nicaragua', 14(5) *EJIL* (2003) 867.

[727]G.M. Travalio,'Terrorism, International Law, and the Use of Military Force', 18 *Wis. ILJ* (2000)145. Travalio argued that in addition to an armed attack the use of force may be legally in case of terrorism even if an armed attack has not occurred. He concludes that:

> It is generally believed that the right of self-defence, even if it extends beyond the "armed attack" of Article 51, does not permit the use of force to punish an aggressor after a threat has passed, nor does it permit the use of force to deter a less than imminent threat by way of the bass in the international law for this limitation is the famous Caroline case.

See also, M. Bothe, 'Terrorism and the Legality of Pre-emptive Force', 14 *EJIL* (2003) 227. Bothe arguing that in case of such threat the response must be within the UNSC authority rather than left to individual member states.

[728] See, John Yoo, 'International Law and the War in Iraq', 97 *AJIL*, No. 3 (2003) 563- 567; Ruth Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Pre-emptive Self-defence', 97*AJIL*, No. 3 (2003)576- 585; Ian Brownlie, *International Law and the Use of Force by States*, (Oxford, Oxford University Press, 1963).

[729] See, UN Doc. S/PV/4714 (7March 2003).

> doctrine is not only counterproductive, it is also unnecessary for the defence of US interests.[730]

As noted, in accordance with Bush's doctrine, whenever the US's interests are in question, the US claims to be able to use military action directly and beyond the scope of self-defence as set out in Article 51 of the UN Charter and customary international law, even without the UNSC's authority, and regardless of any limitations imposed by Charter law on the use of force.[731]Therefore, in reaching that conclusion, the US relied on the above speech.

This Chapter submits that the legal bases for the use of force are, of course, a principle this study has explained before in Chapter Six, regulated by the UN Charter and customary international law. Hence, the UN Charter recognizes that the use of force may be necessary and legal if its sole purpose is to prevent and remove threats to peace, and the suppression of acts of aggression or other breaches of the peace and security. However, the core of international law relating to the use of force *Ius ad bellum* is embodied in Article 2(4) of the UN Charter.[732]This Article, as Chapter Six

---

[730] Richard Gardner, 'Neither Bush nor the "Jurisprudes"' 97 *AJIL* (2003) 585-590. In the context of the 'new danger of catastrophic terrorist' Richard concludes that the Bush doctrine is wrong and the best way in secure the US national interests by adopting the following:

> 1. Armed force may now be used by the a UN member even without Security Council approval to destroy terrorist groups operating on the territory of other members when those others members fail to discharge their international law obligation to suppress them. 2. Armed force may also be used to prevent a UN member from transferring weapons of mass destruction to terrorist groups. 3. Article 51 continues to limit self-defence to cases of an actual or imminent armed attack in accordance with *Caroline* doctrine, but self-defence can be extended to permit a state to rescue its citizens (and others) faced with a clear and present threat to their security. 4. A right of "humanitarian intervention" permits military action by the United Nations or regional organisations to prevent genocide or similar massive human rights violations.

[731] On the US hegemony see Michael Byers and G Nolto (eds.,) *The US Hegemony and the Found Action of International Law*, (Cambridge, Cambridge University Press, 2003)

[732] Christopher Greenwood, 'The Relationship between *Ius ad Bellum* and *Ius in Bello'*, 9 *Review of International Studies* (1985) 221.

of this thesis also demonstrates, expressly prohibits using or threatening of the use of force against any member of the UN, except in two cases.[733]

In this respect, with the two exceptions of Article 2(4) of the UN Charter on the use of force in mind, the UN Charter does not contemplate any specific provisions for determining whether pre-emptive self-defence is to take precedence over the non-use of force.[734]It must be mentioned that the well-known case of Caroline laid down the basic requirement of the use of force in self-defence in general and anticipatory self-defence in particular. It states that: 'Pre-emptive action in foreign territory is justified only in case of an instant and overwhelming necessity for self-defence leaving no choice of means and no moments of deliberation.'[735]

Thus, the use of force is legitimate through Articles 51 of the UN Charter if an armed attack occurs; therefore, nothing in the UN Charter authorizes unilateral preventive military action, even when there is hard evidence to support such action.[736] In case of such evidence, it must be disclosed to the UNSC to act in accordance with the relevant Chapters of the UN Charter.[737]It might be argued that the UNSC is irrelevant or unable to take such actions; therefore, the parties concerned must act unilaterally to protect their own citizens from the scenarios of a terrorist attack with WMD. But the result is that the UN Charter law on the use of force was breached.

---

[733] See, Sean D. Murphy, 'Terrorism and the Concept of "Armed Attacks" in Article 51 of the U.N Charter', 43 *HILJ*, No.1 (2002) 41-52; Simon Jeffery, 'Iraq: Countdown to War', *The Guardian*, (July 30, 2002). In this article Jeffery explains the rhetoric of how the US-UK had threats waged war against Iraq just less than a week after 11 September incidents as 14 September by the hawks in Bush administration; Paul Wolfowitz; James Woolsey; Bush; Donald Rumsfeld; John Bolton; as well as by the UK officials who followed the US hawks such as Jack Straw; Geoff Hoon and Blair.

[734] Gray, n 299 above.

[735] *Caroline Case* (1837), 2 Moore Digest of International Law, 409.

[736] Oscar Schachter, 'The Right of States to Use Armed Force', 82 *MICH.L. REV* (1984) 1620, 1634-35.

[737] M. Bothe, 'Terrorism and the Legality of Pre-emptive Force', 14 *EJIL* (2003) 227.

It appears that this argument finds support within the US, and is widely advocated by many American scholars and politicians who reject the UN's authority.[738]For example, Senator Jesse Helms, Chairman of US Senate Committee on Foreign Relations, addressing the UNSC on 20 January 2000, submitted that:

> No UN institution – not the Security Council, not the Yugoslav tribunal, not a future ICC…is competent to judge the foreign policy and security decisions of the United Nations…American Courts routinely refuse cases where they are asked to seek to sit in judgement of our government's national security decisions.[739]

This means that, when acting internationally, the US considers itself to be above international institutions and international law. Such argument however, creates a situation in which we find that there is no rule of law in determining states' foreign policy.

Senator Helms further argues his position of the non-competence of such international institutions to supervise the US's decisions by saying that:

> If we do submit our national security decisions to the judgement of a Court of the United States, why would Americans submit them to the judgement of a international Criminal Court, a continent away,

---

[738] For example see, Abraham Sofaer, 'On the Necessity of Pre-emptive', 14 *EJIL* (2003) 209, (In this article Sofaer argued that the right of self-defence allows the US to use force in many cases not only in case of armed attacks); John Yoo, 'International Law and the War in Iraq', 97 *AJIL*, No. 3 (2003) 563-567; Ruth Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Pre-emptive Self-defence', 97 *AJIL*, No. 3 (2003) 576- 585 and William Taft and Todd Buchwald, 'Pre-emption, Iraq, and International Law', 97 *AJIL*, (2003) 557-558.

[739] Senator Jesse Helms, Chairman US Senate Committee on Foreign Relations, addressed the UNSC on 20 January 2000, at http://www.senate.gov/foreign/2000/pref 01200.cfm.

comprised of mostly foreign judges elected by an international body made up of the UN General Assembly.[740]

Importantly, this position further assumes that the US does not legally abide by the treaties; it has exempted itself from the rule of international law in its military actions against so-called terrorism.[741]The fact remains, however, that this logic finds no support under the existing UN system or customary international law. It is important to emphasise in this regard that the UNSC remains fully empowered under Chapter VII of the UN Charter to take necessary action to maintain and restore international peace and security.[742]Therefore, the US has no authority to impose individual or collective decisions to defend its citizens from future attacks outside the framework of the UN.[743]

Despite this, the US's practice with international law and its institutions reveals that it has often used them to legitimate its foreign policy, in particular the use of force.[744]In fact, the collapse of the USSR and the end of the Cold War made it possible for the US to stretch international law and make use of international institutions.[745]However, if this trend continues, there will be a real problem for the rule of international law and these institutions in the maintenance of international peace and security.[746]

---

[740] Ibid.
[741] L. Campbell, 'Defending Against Terrorism: A Legal Analysis of the Decision to strike Sudan and Afghanistan', 74 *Tul.L. Rev.* (2000) 1075.
[742] Joes Alvaez, 'Judging the Security Council', 90 *AJIL* (1996) 1.
[743] Anthony Aust, *Modern Treaty Law and Practice*, (2001)
[744] For detailed discussion of the US foreign policy and its relationship with international law see, Sean D. Murphy, *United States Practice in International Law, Vol.1:1999-2000,* (Cambridge, Cambridge University Press, 2002).
[745] Majid, n 521 above, 984.
[746] Bennis, n 143 above.

In the political history of war and peace, it is true that the UNSC was not effective in much of its work, and many of its Resolutions were not implemented: especially those against superpower states or 'Client States' sponsored by superpower nations such as Israel.[747]In the light of all this, it might be more accurate to suggest that, in applying the express language of the UN Charter, the only two exceptional cases for the use of force remain as follows:

(a) In two cases of the inherent right of self-defence (individual or collective), in accordance with Article 51 of the UN Charter, if an armed attack occurs, and until the UNSC has adopted measures under Articles 41 or 42 of the UN Charter, to maintain international peace and security.[748]

This means that this right must come to an end once the UNSC acts, but in reality the SC may not be able to act if a Permanent Member uses the right of veto. As noted earlier, Article 51 of the UN Charter lays down the scope and conditions of self-defence, which explicitly include that the threat must be of an actual or imminent armed attack where the use of force is the only available means to avert such an attack. In other words, as a last resort, thus the use of force in response to attack must only be proportional to the level of the attack. All this is until the UNSC has taken measures necessary to maintain international peace and security. However, on the face of it, Article 51 on self-defence does not apply in the Iraqi case, as Iraq has not attacked the US or its allies directly or indirectly.[749]

---

[747] Ibid.

[748] Rosalyn Higgins, *Problems and Process, International Law and How we Use it*, (Oxford, Clarendon Press, 1994).

[749] In this context, the ICJ states in Paragraph 195 in the *Nicaragua* case that:

> In the case of individual self-defence, the exercise of this right is subject to the state concerned having been the victim of an armed attack. Reliance on collective self-defence of course does not remove the need for this....[T]he Court does not believe that the concept of 'armed attack' includes not acts by armed bands where

(b) If the use of force was authorized by the UNSC in accordance with the rules embodied in Chapter VII of the UN Charter, as a last resort, and in response to any threat or breach of the peace, and act of aggression.[750]

In this context, this Section argues that, based on the law of the UN Charter and customary international law, the principle of pre-emptive self-defence is not recognised as a legal basis for the use of force, even if an action in contravention to national interests is under consideration.[751]

7.2.2. Legality Based on SC Resolutions 687 (1990) and 678 (1991)

> The cease-fire that ended the first Gulf war in April 1991 required Iraq to give up weapons of mass destruction and to accept UN inspectors who would inspect and monitor the destruction and removal of chemical, biological, and nuclear weapons. The Iraq government led by Saddam Hussein accepted these terms, but Saddam deceived the world, continuing to develop weapons of mass destruction. Hence he was in breach of

---

such acts occur on a significant scale but also assistance to rebels in the from of the provision of weapons or logistical or other support.

See generally, Roslyn Higgins, 'The Legal Limits to the Use of Force by Sovereign States, United Nations Practice' 37 *BYIL* (1961) 304; J. F. Kunz, 'Individual and Collective Self-Defence in Article 51 of the Charter of United Nations', 41 *AJIL* (1947), 897; D.W. Greig, 'Self-Defence and the Security Council: What does Article 51 Require', 40 *ICLQ* (1991) 389; Hans Kelsen, 'Collective Security and Collective Self-Defence under the Charter of the United Nations', 42 *AJIL* (1948), 792.

[750] David Schweigman, *The Authority of the Security Council under Chapter VII of the United Nations Charter*, (The Hague: Kluwer International law, 2001).

[751] See Rosalyn Higgins, *Problems and Process: International Law and How We Use It*, (Oxford, Clarendon Press, 1994); Christine Gray, *International Law and the Use of Force, 2nd ed.*, (Oxford, Oxford University Press, 2004); Bruno Simma, The *Charter of the UN A Commentary*, (Oxford, Oxford University Press, 1994); Antonio Cassese, *International Law*, (Oxford, Oxford University Press, 2001); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, ICJ Reports, 14-98 (1986) at Paras 226-238; *The Caroline* (1837), 2 Moore Digest of International Law 409.

> the cease-fire and the coalition that had fought Iraq in 1991 was free to resume hostilities.[752]

7.2.2.1 Disarming the Iraqi Regime: UNSC Resolution 1441 (2002)

It is submitted that the fears that the US might become the main player in violation of international law in its foreign policy are not exaggerated. In fact, first in the US's justifications for war on Iraq was to disarm Iraq of WMD.[753]It would seem appropriate that this goal could have been achieved by a greater reliance on the UN's disarming process and international dispute settlement methods. In other words, it is not clear that the dispute settlement process cannot deal with the issues of the Iraq WMD adequately. In this context, Dominic McGoldrick submits that:

> The legality argument of the US and the UK based on Security Council Resolutions is a tenable and defensible one...unless we have an international legal system in which all states ultimately rather then merely initially exercise a right of auto-interpretation then one is forced to the conclusion that the better view of international law in 2003 is that the US and the UK acted illegally.[754]

It is clear that the US relied on UNSC Resolution 1441, which sets out steps to disarm Iraq,[755]to give the impression that it implies the use of force. There is nothing

---

[752] For the first argument offered by Bush for the war on Iraq see, Peter Singer, *The President of Good and Evil, Taking George W. Bush Seriously*, (London, Granta Books, 2004).

[753] Ibid. Bush submits at Press Conference on 6 March 2003 that: '1441, the Security Council passed unanimously last fall, said clearly that Saddam Hussein has one last chance to disarm. He hasn't disarmed.'

[754] McGoldrick, n 3 above.

[755]The Representative of France Addresses the UNSC argued that: 'In unanimously adopting Resolution 1441 (2002) we collectively expressed our agreement with the two stage approach proposed by France: disarmament through inspection and, if this strategy should fail, consideration by the

in UNSC Resolution 1441 that expressly authorizes the use of force against Iraq in 2003, nor does it imply that military action may be relied on in such a case.[756]There is no doubt that a quick look at the wording of Resolutions 678 (1990), which authorized the 'use all necessary means' against Iraq in 1991; 687 (1991); and 1441 (2002) clearly indicates that Resolution 1441 required further resolution to authorize the use of force.[757]

Therefore, Resolution 1441 does not and cannot be misinterpreted as authorizing the use of force, and the US does not have a permissible ground for the use of force in self-defence.[758]Vaughan Lowe submits that: 'there is the fact that Resolution 1441 on its face patently does not authorize the use of force against Iraq and does not indicate that the authorization to the 1991 states acting in coalition with Kuwait could possibly be revived.'[759]Furthermore, Lowe argues that: 'there is nothing in the Resolution 1441 that gives anyone the right to decide when the final chance has exhausted'.[760]

There are certainly cases where it is difficult to identify the bases of US foreign policy. It may well be that, as noted, justifications for war were found in the testimony of its Secretary of State Colin Powell on 5 February 2003 to pursue the UNSC to authorise the use of force against Iraq.[761]This is documentary evidence of how this war was built on false justifications to the extent that Col. Lawrence Wilkerson, Powell's chief staff advisor, said to the CNN 'I wish I had not been involved in it... it

---

Security Council of all options including restoring to force. Clearly it was in the event that inspection failed and only in case, that a second Resolution could be justified'.UN Doc.S/PV/4707/p11 (14 February 2003).

[756] SC Res. 1441 UNSCOR 57th Sess., 4644th mtg., UN Doc. S/Res/1441 (2002).

[757] Schachter, n 192 above.

[758] Frederic L. Kirkis, 'Armed Force in Iraq', *ASIL Insights*, (18 March 2003).

[759] Lowe, n 714 above.

[760] Vaughan Lowe, 'Would War be Lawful without Another UN Resolution', *Crime of War Project*, (10 March 2003) available at: www.crimesofwar.org/special/irag/news-iraq-2.html.

[761] Powell, n 715 above.

was sort of a Chinese menu provided by the White House...it was anything but an intelligence document with some assertions based on the word of known fabricators.'[762]

Nonetheless, in 2005 Bush changed his legal justifications for the war on Iraq of 2003. His new legal justification is to protect oil fields by establishing a permanent military presence in Iraq.[763] What is more, Bush now argues that the US must prevent oil fields from falling into the hands of terrorists. Here again Bush sought to give the new impression that al Qaeda still presented a real threat to the US. He said:

> We will not rest until victory is America's and our freedom is secure...if Zarqawi and Bin Laden gain control of Iraq, they would create a new training ground for future terrorist attacks....they'd seize oil fields to fund their ambitions...they would recruit more terrorists by claiming historic victory over the United States and our coalition.[764]

These shifts in the US's justification for war on Iraq, as well as the recent revelations of torture and degradation of Iraqis at Abu Ghraib (see appendixes B. 6.1 to B.6.10) and other US detention facilities in Iraq, have undermined its legal case for invading Iraq in 2003.[765]Arabs and Muslims believe that this was a nature and represent the values of the US.

---

[762] CNN.*com.*
[763]Jennifer Loven, 'Bush Gives New Reasons for Iraq War', *Associated Press*, (31 August 2005).
[764] Ibid.
[765] See, Mark Bowden, 'Lessons of Abu Ghraib', *Atlantic Monthly*, (July/Aug. 2004) 37- 40; David S. Cloud et al., 'Red Cross Found Widespread Abuse of Iraqi Prisoners', *Wall Street Journal*, (7 May 2004), at A1.

It could be argued that this new justification reveals the fall of Bush's doctrine and war justifications.[766]All this makes it clear that he failed to achieve his intended Iraq policies and military strategy of dominating the region and reshaping the Middle East. As the matter stands today, month by month, it becomes clearer that the profits of war in Iraq will be less and the cost greater than Bush and Cheney had hoped at the beginning.[767]Saddam and his advisors are right to say that the war 'is going to be a bloody war.'[768]

All these deaths should never have happened: Al-Qaeda still operates in Afghanistan; Bin Laden is free; there are no WMD in Iraq; Iraq is not a safe place, and the deaths of US troops are growing in both countries. This is not, however, due to a lack of adequate peaceful settlement methods in the UN Charter. Article 33 (1) provides that international disputes must be settled by 'negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice' as shown in Chapter Four. Rather, the problem is the US's foreign policy after the 11 September incidents.

At the same time, it is clear that the US's efforts failed to get the approval of the UNSC to use force, as it did in 1991, based on Powell's controversial speech. A testimony Powell said in 2003 to be 'backed up by sources, solid sources. These are not assertions. What we're giving you are facts and conclusions based on solid

---

[766] Janathan Steele, 'The Bush Doctrine Makes Nonsense of the UN Charter', *The Guardian*, (7 June 2002). In this article Janathan argued that if Bush doctrine not rejected by the US allies 'Article 51 of the UN Charter will have suffered a mortal blow.'

[767] In this context, on 19 March 2003 Tariq Aziz Iraqi Deputy Premier warned the US-UK troops in Iraq that 'It is going to be a bloody war and it will take a long time. It is not going to be a short war unless President Bush decides to end his aggression. It is not going to be a picnic for him', *Daily Mirror* (20 March 2003).

[768] Ibid.

intelligence.'[769]By contrast, on 3 April 2004 Colin Powell said that his testimony was in fact based on information that now appears not to be legally 'solid'.[770]

7.2.2.2 The Danger of Iraq's Weapons of Mass Destruction

The first part of Powell's false arguments to authorise the use of force against Iraq is the danger of Iraq's WMD with the possibility of being available to terrorist organisations such as Al-Qaeda.[771]According to Powell, this capability put the US and its allies at imminent risk. Powell argues that the purpose of UNSC Resolution 1441 of 8 November 2002 was to disarm the Iraqi regime of WMD, and Iraq did not comply with this obligation. Furthermore, Powell strongly asserts that Iraq was in fact in material breach of its obligation under this Resolution by continued development of these weapons.[772]On the other hand, at a Press Conference in Cairo on 24 February 2001 and in the context of this point, Powell stated that Saddam 'has not developed any significant capability with respect to WMD. He is unable to project conventional power against his neighbours.'[773]

Nevertheless, Powell has stated that since Resolution 1441 gave Iraq one final chance to comply with its provisions, in particular to allow the return of inspectors from UNMOVIC and IAEA to do their job of disarming Iraq of WMD, or it would face serious consequences of the use of force to enforce this Resolution. As noted earlier, it must be mentioned that in the aftermath of the Gulf War of 1991 and the

---

[769]Powell, n 715 above.
[770]Powell: Some Iraq Testimony not 'solid', Saturday, 3 April 2004, at http://Edition.cnn.com/2004/US/04/03/powell.iraq/index.html.
[771] See, Michael Byers, 'Terrorism, the Use of Force and International Law after September 11', 51 *ICLQ*, (2002), 401- 421; Steven R. Ratner, 'Jus ad Bellum and Jus in Bello after September 11', 9 *AJIL*, No.4 (2002) 905-921
[772]Powell, n 715 above.
[773] On the credibility of Powell's argument see, John Pilger, 'The Big Lie', *The Daily Mirror* (22 September 2003); Peter Singer, *The President of Good and Evil, Taking George W. Bush Seriously*, (London, Granta Books, 2004).

Ceasefire Agreement concluded between parties, the UNSC adopted Resolution 687 of 3 April 1991 and subsequent Resolutions that called for the withdrawal of Iraqi troops from Kuwait and the disarmament of Iraq.

Powell's analysis and arguments are interesting as they represent an attempt to build the impression that in many instances Iraq failed to comply with its international obligations. In the meantime, the normative framework of Resolution 687 provides, among other demands, that Iraq's WMD must be destroyed and monitored. However, UNSC Resolution 699 of 17 June 1991 established a UN Special Commission, (UNSCOM). This was the controversial UN body charged with the task of the disarmament of Iraq's WMD.[774]

However, on 17 December 1999 the UN Monitoring, Verification and Inspection Committee (UNMOVIC) replaced the UNSCOM. In this context, Powell relied on two reports, the first from Blix of UNMOVIC dated 27 January 2002 that states 'Iraq appears not to have come to a genuine acceptance, not even today, of the disarmament which was demanded of it.' and that of El Baradei of IAEA that states Iraq 'did not provide any new information relevant to certain questions that have been outstanding since 1998.[775]However, Powell wrongly relied on these reports as they provide evidence of the use and development of these controversial weapons taking place in Iraq.

Notwithstanding this, it must be recognised that this argument will not fit within the UN system, but rather represents an example of an illegal version of President

[774] For full detailed work of the UNSCOM available at http<:// www. un.org/depts/unscom>.
[775] Ibid.

Bush of America's exemptions.[776]The crude version of this position assumes that in securing the US's national interests there are no legal obligations to comply with international law.[777]Therefore, the US has an absolute right to disarm Iraq on behalf of the UN without clear authorization.[778]This viewpoint needs to be revised, as there were no exemptions in international law.

From the analysis of the negotiation history of Resolutions 687 and 1441 our findings indicate that both Resolutions were adopted under UN Charter VII with arguable authorization of the use of force by 'all necessary means' in Resolution 687, but not in 1441.[779]The true interpretation of Resolution 1441 indicates that the Resolution made no reference to the use of force under Article 42 of the UN Charter, nor gave the US any right to conclude alone that Iraq was in material breach of its international obligation as set out in the Resolution.

What is clear is that such determination is the responsibility of the UNSC in accordance with Articles 42 and 53 of the UN Charter. Whilst Resolution 687 does seem to be made with reference to in Articles 41 and 42 of the UN Charter, however, distinction must be made between the two Resolutions. In fact, it has been argued that

---

[776] For discussion of American exceptionalism see Wade Mansell, 'Goodbye to All that? The Rule of Law, International Law, the United States and the Use of Force', 4 *Journal of Law and Society* Vol.31 (2004) 433-56.

[777] See, John Bolton, 'The there Really "Law" in International Affairs?' 10 *Transnational Law and Contemporary Problems,* (2000) 1; John Bolton, 'Should We Take Global Governance Seriously?' 1 *Chicago Journal of International Law*, (2000) 205; Michael Glennon, 'Limits of Law, Prerogatives of Power and American Hegemony in an Unplanned World Order', 5 *Journal of Conflict and Security Law,* (2000) 3.

[778] For example the *NSS* states that:

> [W]hile the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting pre-emptively against such terrorists, to prevent them doing harm against our people and our country; and denying further sponsorship, support, and sanctuary to terrorists by convincing or compelling states to accept their sovereign responsibilities.

[779]For the full text of UNSC Resolution 1441(2002), see UN web site, at http:// www.un.org/Docs/scres/2002/sc2002. htm.

Resolution 687 is legally problematic for the following reasons. First, it keeps the US-UK bombing campaign against Iraq over more than a decade without UN mandate. Second, the basis of this bombing and the economic sanctions is outside the legal requirement of the UNSC. Third, the use of this controversial use of enforcement measures has been at the discretion of the US as the sole actor in this field.[780]

Another point needing to be discussed here in the Kuwait crisis, as Article 43 of the UN Charter provides no reference or agreement for the US-UK to deploy their troops to use force against Iraq. Furthermore, there is no command and control by the Military Staff Committee in accordance with Articles 44-48 of the UN Charter.[781]

It is interesting to note that Resolution 687 is a type of UN Resolution that recently designed to give the US uncontrolled policy and a free hand to continue its long campaign against Iraq. All this in the absence of an effective UNSC role to examine the legitimacy of the extremely broad military action implicitly granted to the US. Furthermore, while Chapter VII only gives the authority of determination of existence of any threat to international peace and security to the UNSC, it does not recognize the legality of the unilateral use of force by powerful states to this end.

Therefore, despite the fact that Resolution 1441 states, in Paragraph 1, that Iraq has been and remains in material breach of its disarmament obligations, this does not mean it gives the US-UK authorization to use force to disarm Iraq. As noted above, the language of Resolution 1441 does not imply authorization of the use of force as in

---

[780] Simons, n 145 above.

[781] See, Christopher Greenwood, 'The Gulf Conflict and the New World Order', *Modern Law Review*, (March 1992); Marc Weller, 'The Kuwait Crisis: A survey of Some Legal Issues', 3 *AJICL*, (1993), 1-31; Nigel N. White, 'The Legality of Bombing in the Name of Humanity,' 5 *Journal of Conflict and Security Law*, (2000) 22-43.

Resolution 687(1991), which will not renew its authority to use force in 2003, but needs a new and clear authorisation for the use of force from the UNSC.

Further difficulty may arise from the fact that the legitimacy of the US-UK's actions against Iraq appeared to be challenged by UNMOVIC and IAEA. On this point, for example, Al-Baradei, Director General of IAEA reports to the UNSC, on 14 February 2003 that since his last report of 27 January, the agency had conducted more inspections at 19 locations. In the context of Iraqi cooperation, he concludes that Iraq had continued to provide immediate access to these locations and that the IAEA found no hard evidence of ongoing prohibited nuclear or nuclear-related activities in Iraq.

On the other hand, Scott Ritter, the UN inspector who resigned to show his opposition to Bush's policy on Iraq WMDs, said:

> by 1995 there were no more weapons in Iraq, there were no more documents in Iraq, there was no more production capability in Iraq because we were monitoring the totality of Iraq's industrial infrastructure with the most technologically advanced, the most intrusive arms control regime in the history of arms control.[782]

Furthermore, he added that:

> The CIA knew this, the British intelligence knew this, Israeli intelligence knew this, German intelligence, and the whole world knew this. They weren't going to say that Iraq was disarmed because nobody could say that, but they definitely knew that the Iraqi capability regarding WMD had been reduced to as near to zero as

[782] Scott Ritter and Seymour Hersh: *Iraq Confidential*, (Nation Books, 26 October 2005).

you could bring it, and that Iraq represented a threat to no one when it came to weapons of mass destruction.[783]

This indicates that Powell's arguments regarding Iraqi WMD were an example of the US's fabrication, as they do not provide a convincing legal justification for why they should not follow the UN's peaceful inspection regime and process designed to scrape Iraqi WMD.[784]In reality, the Arab-Israeli conflict plays a major part here. This thesis disagrees, therefore, with those scholars and politicians who assert that it is a Palestinian-Israeli conflict. This is a narrow reading for this conflict. In fact, it is an Arabic, Muslim-Israeli conflict, as Israel still occupied Arab lands in Syria and Lebanon as well as Al-Qads Mosque. It is widely believed in Arab opinion that one of America's objectives behind the war on Iraq was destroying Iraqi military strength; not out of love for Gulf states, but to protect the Israel state that was established on Arab lands.

Furthermore, the role of the US in the Middle East is seen, in Arab opinion, to manifest itself in the support of its ally Israel and provides financial support to undemocratic regimes in the region. These regimes are usually seen as subservient agents to the US's policy in the region, such as Jordan and Egypt, as well as servicing its interests of guaranteeing a steady source of oil of the Gulf's monarchies.

Also, it would appear that the UNSC had lost its credibility by adopting Resolution 1441 (2002), as there were no strong factual grounds to conclude that Iraq

---

[783] Ibid.
[784] John Strawson (ed.,), *Law after Ground Zero*, (Sydney, London and Portland, Glasshouse Press, 2002).

had WMD at the time of adopting the Resolution.[785]It might be argued that the war was mounted on the basis of allegations that now prove to be false. It is suggested that, while there is some validity in the US's claim over Iraq WMD, this claim should be rejected for the following reasons: first, Blix's declaration of 7 March 2003 that Iraq had made 'substantial' progress in destroying its long-range missiles, and that he had found insufficient evidence of biological or chemical weapons in Iraq.

Even though Blix's report challenged the US case for war on Iraq based on WMD, Bush continued to argue that Iraq must be disarmed.[786]Second, no WMD were used against US-UK troops in Iraq during the course of the hostilities. Third, none of these weapons has so far been identified. This failure indicates the fact that these weapons and its associated programme were roundly destroyed in the second Gulf war in 1991and throughout the US-UK's long, massive bombing campaign against Iraq.[787] Another challenge in Blix's report to the US's case is their allegation that Iraq had not co-operated with inspections as set out in UN Resolution 1441; therefore, Iraq had breached this Resolution.

However, Blix said in his report that the inspections were making progress, but more intelligence information was needed. Of course, the US has contributed in different ways to provide Iraq with legal and political reasons not to co-operate with the inspection regime. Firstly, by it is decision to use the CIA alongside the UN

---

[785] Pilger, n 775 above.

[786] Ari Fleischer White House spokesman said on 20 March 2003 that 'The opening stages of disarmament of the Iraqi regime have begun.'

[787] Rupert Cornwell and Paul Waugh, '1,200 Weapons Inspectors Spent 90 Days in Iraq. The Exercise Cost $300m and the Number of the Weapons Found? 0', *The Independent*, No. 5,292 (Friday 3 October 2003). They reported that 'The meagre results (of ISG reports) seem bound to reinforce contentions that the US and British governments, wilfully or by error, grossly exaggerated the scale and the imminence of any threat from Saddam.'

inspectors to legalise its hidden purposes as a part of its strategy against Iraq. Secondly, as noted earlier, by not lifting it is unfair and long-standing political and economic sanctions against Iraq.

7.2.2.3 Hiding Unauthorized Modified Vehicles

Powell's second point on authorising the use of force against Iraq is based on alleged intercepted telephone conversations and satellite photographs taken by US sources, including its best intelligence, which, as noted, he later said was not 'solid' enough to invade Iraq. Unfortunately, in this argument, Powell seems to indicate that Iraq was developing WMD, but Powell's intelligence sources approach is too narrowly tailored to address the issue of WMD adequately.

In these recorded conversations Powell tries to show how Iraqi Republican Guard officials were hiding an unauthorized modified vehicle from the UN inspectors. Powell argues that hiding this prohibited equipment is clear evidence that Iraq is producing more WMD, and therefore is in breach of Resolution 1441. Powell's argument must be rejected, as Resolution 1441 contains no clear authority permitting the US to use force against Iraq, even there were creditable evidence that Iraq had breached Resolution 1441 or had hidden such weapons.

It should be noted, first of all, that the claim of such authority in Powell's arguments derives its force from US intelligence reports. However, there are a number of factors that suggest that this service has lost its credibility. For example, Charles Duelfer, the CIA weapons inspector reported in October 2004 in his 1,200 pages report that at the time of the Iraq invasion in 2003, Iraq did not have WMD. The

report further indicates that Saddam had eliminated his existing stocks in 1991.[788]Obviously, this is very critical, and contrary to what Powell said of the ability of Iraq to produce more WMD.[789]

7.2.2.4 Monitor the Work of Inspections: the role of the CIA

In an attempt to clarify the US's position, Powell presented another set of allegations and arguments concerning the Iraqi attempt to thwart inspections by creating a high level committee headed by Taha Yassin Ramadan, the Iraqi Vice President, and Saddam's Advisor Lt. Gen. Amir Al-Saadi to monitor the work of inspections. Powell said that the main role for this committee was to adopt the policy of no more cooperation with the inspections teams.

According to Powell this is best done by not assist them in their search for the WMDs, by hiding chemical weapons from the UN's weapons inspectors as well as spying on them. Powell claimed that all this resulted in the inspectors were being unable to do their jobs. It should be noted that this contradicts Blix's report.

Beyond this, there are further claims made by Powell. He claims that solid sources told the US that Iraqi officials and scientists are removing everything from documents related to Iraq's nuclear program to WMD. These include, according to Powell, missile brigades, rocket launchers and warheads cable of carrying biological warfare agents in various locations outside Baghdad.[790]

---

[788] Tom Baldin, 'Saddam had only Weapons of Mass Corruption', *The Times*, No.68200 (Thursday, 7 October 2004).
[789] Pilger, n 775 above.
[790]Powell, n 715 above.

Powell's position was not clear, however. He further argues that these weapons have been hidden by Iraqi officials in a 'large grave of palm trees and were to be moved every one to four weeks',[791]all this to escape detection and to deceive the UN's weapons inspectors. Finally, Powell argues in this point that Iraq not only hides weapons, but also people, in violation of UNSC Resolution 1441 that requires Iraq to comply with the obligation to allow the inspector's access to all scientists and officials.

In order to remove all doubts about the role of the CIA in creating the problem between Saddam and the inspectors, Powell claims that Iraq did not assist the UN's weapon inspectors in their search for the WMD. In fact, this claim has been criticised on the grounds that the US's involvement in the work of the inspectors did not assist these regimes by building the wrong impression in the international public mind that Iraq was not co-operating with inspectors. Therefore, it was the US who was not assisting the inspections, and not Iraq, for many reasons.[792]

For example, on 30 October 1998 the US-led campaign in the UNSC refused to confirm that it would consider the lifting of economic sanctions against Iraq, even though UNSCOM declared that Iraq had disarmed. This action was met by the Iraqi decision not to co-operate with UNSCOM. It might be argued that Iraq was given every logical reason not to co-operate with UNSCOM. Another logical reason was the role of the CIA in the inspection, which was supposed to be carried out by the UN and

[791]Ibid.
[792]Sean D. Murphy, *United States Practice in International Law: 1999-2001*, vol.1 (Cambridge, Cambridge University Press, 2002).

its agencies, not the US. This role was confirmed by the US on 6 January 1999 when they acknowledged that they had spied on Iraq through the work of UNSCOM.[793]

In fact the US used the inspectors to achieve its aim of regime change.[794]Scott Ritter, the former UN weapons inspector, explained how the CIA used the UN inspectors to remove Saddam by military coup. He said that there was a:

> Role played by the CIA in infiltrating UNSCOM and using UNSCOM for devices. And the ultimate tragedy of this is that from that point on, every time a UN weapons inspector went into Iraq-somebody with a blue hat-they weren't viewed by the Iraqis as somebody who was trying to disarm Iraq, they were viewed by the Iraqis as somebody trying to kill their President, and they were right.[795]

However, he described the Iraqi Prime Minster Ayad Allawi as a 'paid agent of British intelligence and the CIA.'[796]Furthermore, it is evident that Allawi worked with the CIA to remove Saddam by a military coup that organized under the cover of the UN weapons inspection.[797]

---

[793]Tim Weinner, 'US Spied on Iraq Under UN Cover, Officials Now Say', *N.Y. Times*, (7 January1999) at A1.
[794] Tim Weinner, 'US Used UN Team to Place Spy Device in Iraq, Aids Say, *N.Y. Times*, (January 8, 1999) at A1; Barton Gellman, 'US Spied on Iraqi Military Via UN', *WasH. Post*, 2 March 1999; Philip Shenon, 'CIA was with UN in Iraq for Years, Ex-inspectors Says,' *N.Y. Times*, (23 February 1999) at A1.
[795] Ritter and Hersh, n 784 above.
[796] Ibid.
[797] Steven Lee Myers, 'Iraqi Ask Us to Do More to Oust Saddam', *N.Y. Times*, (3 July 2000) at A7.

Indeed the main reason for Iraq not to co-operate with the UN inspection was the fact that the US announced that sanctions would not be lifted as long as Saddam ruled the country.[798]It is disturbing to note this announcement gave a certain impression about the aim of the US sanctions and the role of inspections, and drew attention to how often the US had used the UNSC and international law to achieve its own policies in violation of international law and the UN Charter.[799]

In the context of the UNSC's refusal to confirm the lifting of economic sanctions programmes against Iraq, this raises the question of whether the UNSC was in breach of Resolution 687, in particular Paragraph 22. The lesson that can be drawn from this is that, unfortunately, the UNSC contributed towards the humanitarian catastrophes occurring in Iraq, in which many principled norms of international humanitarian law were abused.[800]

In fact, it may well be true that UNSCOM's early efforts succeeded, but the US-UK's governments covered this up. The reason for this was that the UN would have no other choice but to lift its economic sanctions imposed on Iraq since 1991. This suggests that these two countries were not ready to accept that Iraq had no WMD. Of course, the main purpose was to use this as justification to invade Iraq, overthrow Saddam and control Iraq's oil.

This aim was not in accordance with established principles of international law and customary international law. However, the costs of the economic sanctions and

---

[798] Michael Reisman and Douglas Stevick, 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes', 9 *EJIL* (1998) 86.
[799] Bennis, n 143 above.
[800] Milan Rai, *War Plan Iraq: Ten Reasons against War with Iraq*, (Verso Books, 2002).

their effect and damage on civilians suggest that US policy posed a threat to international peace and security, as the number of civilians killed during these sanctions was greater than those killed by Saddam.[801]The evidence at hand suggests the possibilities for peaceful settlement of Iraq's WMD through the UNSCOM inspection regime; but a closer analysis of Bush's behaviour and his advisors' policy in accordance with *NSS* clearly reveals that all justifications for war were only an excuse for it.

In most cases of the use of force, Iraq's oil was in the Bush administration's strategy. The argument in support of this is, for example, the investigation case taken by the FBI on how Iraqi oil contracts were given to the US Vice-President Dick Cheney's former company, Halliburton. These investigations reveal that these contracts were worth billions of dollars and awarded directly to Halliburton without the normal tendering process. Notably, it seems certain that no tender invitations were sent to other potential bidders, and all this during the military occupation of Iraq under the so-called Coalition Provisional Authority (CPA) the sole actor in Iraq at the time.[802]

Consequently, controlling Iraq's oil, as well as other oil-producing states in the Gulf the US, not only controls international oil prices, but also serves to reform the region as the main aim of the American-Zionists.[803]As a result, by a permanent

---

[801] Simons, n 145 above.
[802] Cited in *The Guardian*, (London and Manchester, 29 October 2004).
[803] Ritter and Hersh, n 784 above. In this interview Ritter submitted that:

> If you want to know what the administration has in mind for Iraq, here's a hint: It has less to do with weapons of mass destruction than with implementing an ambitious U.S. vision to redraw the map of the Middle East. The new map would be drawn with an eye to two main objectives: controlling the flow of oil and ensuring Israel's continued regional military superiority. The plan is, in its way, as ambitious as the 1916 Sykes-Picot agreement between the empires of Britain and

military presence in Iraq, the US could control the world economy, which in turn would expand the American economy, which was suffering from the 11 September incidents and widespread corruption that led many US giants to fail and declare bankruptcy.

7.2.2.6 Access to Scientists

The fourth piece of Powell's evidence is the access to scientists. In advocating for authorising the use of force against Iraq, Powell went on his arguments to assert that Iraq was not complying with its obligation under UNSC Resolution 1441 by not permitting the UN inspector's access to all scientists. Therefore, Iraq was in further material breach of its international obligations. With these factors in mind, Powell suggests that Iraq's alleged violation of the UNSC Resolution 1441 is as follows:

a) Saddam had been directly involved in the effort to prevent interviews with scientists; therefore, the Iraqi officials only allowed the inspectors to conduct interviews with scientists in the presence of Iraqi officials.

France, which carved up the region at the fall of the Ottoman Empire. The neo-imperial vision, which can be ascertained from the writings of key administration figures and their co-visionaries in influential conservative think tanks, includes not only regime change in Iraq but control of Iraqi oil, a possible end to the Organization of the Petroleum Exporting Countries and newly compliant governments in Syria and Iran - either by force or internal rebellion. For the first step - the end of Saddam Hussein - Sept. 11 provided the rationale. But the seeds of regime change came far earlier. "Removing Saddam from power, according to a 1996 report from an Israeli think tank to then-incoming Prime Minister Benjamin Netanyahu, was "an important Israeli strategic objective." Now this has become official U.S. policy, after several of the report's authors took up key strategic and advisory roles within the Bush administration. They include Richard Perle, now chair of the Pentagon's Defence Policy Board; Douglas Feith, undersecretary of defence; and David Wurmser, special assistant in the State Department. In 1998, these men, joined by Donald Rumsfeld and Paul Wolfowitz (now the top two officials in the Pentagon), Elliott Abrams (a senior National Security Council director), John Bolton (Undersecretary of State) and 21 others called for a determined program to change the regime in Baghdad.

For detailed discussion on the role of Israel lobby in the US foreign policy toward the Middle East See, John Mearsheimer and Stephen Walt, 'The Israel Lobby and the US Foreign Policy', 28 *London Review Books*, No.6 (2 March 2006).

b) That Saddam threatened all scientists not to disclose any information to inspectors, or they would face serious consequences, as well as the Iraqi Vice President Ramadan threatening that anyone cooperating with the inspectors in doing their job was committing treason.

c) The Iraqis did not provide the inspectors with a comprehensive list of their all scientists working in their WMD programmes.

d) The gravity of the false statements made by Iraqi officials about the threat that their deadly WMD programmes to the region and worldwide real danger they posed.

Once again, Powell's very limited approach does not address these issues adequately.

Indeed, as noted above, despite UNSC Resolution 1441 that finds that Iraq has not cooperated with UNSC Resolution 687 of 1991 on inspection and disarmament obligations and has been and remains in material breach of its obligations, nonetheless Iraq's failure must be seen alongside the circumstances of the inspections and the role of the CIA in this task; all this must be considered. On the other hand, Iraq's non-cooperation with the UN inspectors would not be a legal justification for the US to use force unilaterally against Iraq.[804]

7.2.2.6 The Danger of the Iraqi's Biological Weapons Programme

The fifth point in Powell's presentation is the danger of the Iraqi's biological weapons programme, which they intended to use in terrorist attacks. In this allegation, Powell claims that they have evidence that the Iraqis had not accounted for their biological weapons, such as anthrax and its associated agents, which includes 400 bombs.[805]

---

[804] Ingrid Detter, *The Law of War*, 2nd ed., (Oxford, Oxford University Press, 2001).
[805] Powell, n 715 above.

Powell continues his allegation that, according to their 'convincing evidence', they have 'well-documented' evidence that the Iraqis were continuing to develop biological weapons by using mobile production facilities such as moving trucks and trains. For Powell, the main aim here is to make it difficult for inspectors to discover them.

According to Powell, the Iraqi deception in this regard took place for many years. Powell's well-document evidence to prove this allegation is as follows:

a) First, an Iraqi eyewitness who Powell claimed to be a chemical engineer working on one of the mobile production facilities. Powell said this eyewitness reported and explained how the Iraqis deceived the UNSCOM team by only started protection of biological weapons agent on weekend holiday in Iraq (Friday) and removed it from the site before the inspectors started their job on Statuary.

b) The second evidence Powell claims was a confirmation of the existence of such mobile production facilities by an Iraqi engineer who knew more details about their program of biological weapons.

c) Powell's third evidence is again said to be an Iraqi 'in a position to know' that Iraq had such mobile production facilities.

d) The last if Powell's evidence is an Iraqi Major who, according to Powell, confirmed that the Iraqis had research mobile laboratories as well as mobile production facilities.

Furthermore, Powell claims that Iraq had modified aerial fuel tanks for Mirage jets to be used in spray biological weapons with the capability to use many deadly

biological agents such as anthrax, botulism toxin, aflatoxin, ricin, gas gangrene, plague, typhus, tetanus and cholera.[806] In supporting his argument on this point, Powell argues that Saddam has a long record of experience of the use of such weapons. First, in his war with Iran, and second against his own peoples; therefore, he is ready to use them again.[807]It is clear that the aim of this point in Powell's allegations against Iraq is to link Saddam with the development of these weapons, but the merits of this assumption must be dismissed, as there were no biological weapons found in Iraq.

7.2.2.7 The Danger of Iraq's Chemical Weapons

Powell's sixth point was regarding Iraq's chemical weapons, which he claims were not accounted for. According to Powell, these include 550 artillery shells with mustard and the capability to produce 500 tons of chemical agents.[808]Nonetheless, Powell claims that the US had evidence that Iraq's chemical weapons existed.[809] Furthermore, Powell claims that Iraq had produced four tons of deadly VX nerve agents, and had already put it into weapons ready for delivery. According to Powell, this evidence was confirmed by UNSCOM and UNMOVIC in its reports before the UNSC. Furthermore, he claimed that the Iraqis used their civilian industries and their operations to produce chemical weapons. Consequently, they deliberately designed this kind of dual-use infrastructure of their chemical weapons programmes, which would be unlikely to be inspected.[810]

---

[806] Ibid.
[807] William Taft and Todd Buchwald, 'Pre-emption, Iraq, and International Law', 97 *AJIL*, (2003) 557-558.
[808]Powell, n 715 above.
[809] Ibid.
[810] Ruth Wedgwood, 'Responding to Terrorism: The Strikes against Bin Laden', 24 *YJIL* (1999) 559-576.

In his efforts to explain how Saddam's chemical weapons are dangerous, Powell goes on to explain that Iraq was able to deliver these deadly weapons. To this end Powell showed:

a) Photographs of what he claims to be an Al-Moussaid (ph) chemical complex showing how Iraq used this site for producing chemical weapons as they bulldozed and graded the site. Powell claims that this shows how the Iraqis literally removed the crust of the earth around this site to conceal chemical weapons: evidence that must be there to prove their years of producing chemical weapons.

b) Powell also played an intercept of what he claimed to be a communication between two commanders in the Iraqi Second Republican Guard Corps. In this conversation, Powell claims that these two commanders were discussing hidden chemical weapons, and therefore Iraq had chemical weapons.

However, after five months of the Anglo-American invasion of Iraq, David Kay, the Head of the CIA-led Iraq Survey Group, said in his first report that 'We have not yet found stocks of weapon.'[811] This reveals how these two governments exaggerated the imminent danger of Iraq's WMDs, as there were no nuclear weapons before the invasion. Eventually, Kay, who was in charge of the US weapons inspectors in Iraq, resigned, admitting that he did not believe there were any stockpiles of chemical or biological weapons in Iraq.[812]

Unfortunately, Powell delivered his argument regarding Iraqi nuclear weapons without any significant support. For instance, the aim of the seven issues examined by Powell concerning Iraqi nuclear weapons was to send an early warning of the danger

[811] For the analysis of 'David Kay's Report on Iraqi WMD' see, *The Independent,* (3 October 2003).
[812] Ibid.

of Iraq's WMD, and make these issues more complex and unlikely to be resolved peacefully. Powell pointed out that Saddam Hussein was a dangerous leader because he had nuclear weapons.[813]Powell advocated that the international community must act now to authorise the use of force against Iraq to stop the Iraqi regime from developing WMD before they became the dangerous ones in the region.

Specifically, Powell claimed that for more than a decade the US has had proof that Saddam remains determined to acquire nuclear weapons. But was such determination proof that Saddam in fact had nuclear weapons? Powell's point turns out to be untrue because, since the Iraq invasion in March 2003 and changing the regime in Iraq, the US-UK found nothing to conclude that Saddam had a nuclear weapons programme. Ultimately, Powell fails to expound on this argument sufficiently.

Powell's inaccuracy was exposed and his unsuccessful efforts failed under legal and logic reasoning. To support his position, Powell furthermore suggested that if Iraq was not stopped in 1991, Saddam could have produced a nuclear bomb by 1993. This is a clear justification of bombing Iraq in June 1993.[814]It may be argued, however, that the US's legal justification for the bombing was as an exercise of the right of self-defence in response to Iraqi alleged attempts to assassinate President George Bush during his visit to Kuwait in April 1993 (two months before the attack).[815]

This attack cannot qualify as self-defence as the condition of self-defence does not apply here, as the principle of necessity and proportionality laid down in the Caroline case was not established. Under such a rule there is always a risk not only that it

[813] Baldin, n 790 above.
[814] Evans, 'Clinton Opts for Tomahawk' London, *The Times*, (28 June 1993).
[815] McGoldrick, n 3 above.

challenges the rules governing self-defence, but also the UN as international organisation charged with maintenance of international peace and security. Furthermore, this will encourage others to abuse of the UN Charter law and customary international law on the use of force.[816]

To prove his allegation Powell turns to further justifications such as the story that Saddam had a massive nuclear weapons programme that covered many different techniques to enrich uranium. Powell tried to convince the UNSC in his unfounded case of Iraq's nuclear weapons by focusing on more fundamental international problems such as that Saddam already possessed two out of the three key components needed for building a nuclear bomb. Therefore, he had a cadre of nuclear scientists with the expertise as well as a bomb design ready for use. It will thus be seen that even if Saddam had a bomb design this would not provide an excuse for the use of force against Iraq.

Furthermore, Powell claims that, since 1998, Saddam's main aim was to acquire the third and last component he needed for his nuclear bomb; therefore, he has made many attempts to acquire high-specification aluminium tubes from 11 different countries.[817]

From Powell's perspective, it appears that there was no doubt in his mind that all these efforts from Saddam and his cadre of key nuclear scientists show that they were

---

[816] Elizabeth Wilmshurst, 'The Chatham House Principles of International Law on the Use of Force in Self-defence', 55 *ICLQ*, Part 4 (October 2006);

[817] Cited in *The Independent*, No. 5,219 (10 Thursday 2003), 'The Niger Connection: What we Know, What we don't know, and What we may Never be Told'. In reply to US argument for the war that Saddam sought uranium from Africa to build nuclear weapons. However, the recent assessment was revealed that this argument was fraudulent.

putting in place the missing piece that Saddam needed to make his nuclear bomb. Powell ignores or skims over issues such as similar tubes as well as magnets might be used for civil purposes, and the fact that the monitoring process is likely would detect any Iraqi attempts to abuse the disarmament regime imposed on their WMDs programmes.

It is important to note that another blow to Powell's allegation came this time from the IAEA, which was empowered to monitor and evaluate the issues of Iraq's WMDs. However, in this regard, Al-Baradi said, 'we have to date found no evidence that Iraq has revived its nuclear programme' and that 'we have no evidence of ongoing prohibited nuclear or nuclear-related activities in Iraq.'[818]

Furthermore, Al-Baradi submitted, 'the IAEA's experience in nuclear verification shows it is possible, particularly with an intrusive verification system, to assess the presence or absence of a nuclear weapons programme in a state even without the co-operation of the state.'[819]Powell, however, fails to acknowledge that some problems run throughout his arguments. These are, however, important points as, on the other hand, he cites no material evidence to support his allegation in this regard. It may be that there were marginal cases of Iraqi abuse of the inspection regime, which may well be resolved without resort to force and without any human costs associated there with the war.

---

[818] Mohammed Al-Baradi, Director General of the IAEA 'The Status of Nuclear Inspections in Iraq,' Statement to the United Nations Security Council, New York, 27 January 2003, available at: www.un.org/News/dh/iraq/elbaradei27jano3.htm.
[819] Ibid.

7.2.2.8 Iraqi Prohibited Arms Systems

Powell's eighth point is that Iraq possessed arms systems that were ready to deliver WMD. According to Powell, these included ballistic missiles and unmanned aerial vehicles. To support the US's views, Powell typically analyses the goals of Saddam before the Gulf War in 1991. In these eight points Powell attempts to break his analytical mould by arguing that Saddam has a history of using long-range ballistic missiles not only to attack his neighbours, but other nations beyond his borders. It is clear that Powell means by this the use of missiles by Saddam against Israel during Kuwait crisis in 1991.

Powell used these lessons to support his position and argues for the use of force against Iraq to destroy these weapons that can fly over 1,200 kilometres. For instance, based on his historical and military analyses, Powell argues for the use of force against Iraq specifically if Iraqi weapons could be used to deliver biological and chemical agents not only to its neighbours, but other countries including the US. It is equally clear, however, that the UNSCOM evidence before the war suggests that Iraqi long-range missiles were destroyed in 1991.[820]Furthermore, in his remarks after the US air strikes on Iraq in 1999, President Clinton said in December 19, 1999, that there are 'Significant damage on Saddam's weapons of mass destruction programs, on the command structures that direct and protect that capability and on his military and security infrastructural.'[821]

---

[820] See, Representative of Iraq, UN Doc S/PV/4707, 31.

[821] President Clinton address to the Nation on Completion of Military Strikes in Iraq, 34 *WEEKLY. COMP. PRES.* Doc.2516, 25161318 (28 December 1998).

In this context, Blix's report of 7 March 2003 indicates the fact that these weapons were destroyed, contrary to Powell's allegations.[822]Overall, Powell does not, however, acknowledge that the US's actions against Iraq during the period 1990-2003 were contrary to international law. The hunt for Iraq's alleged WMD has formally come to an end according to the Iraq Survey Group (ISG), a body established by Bush to find WMDs in Iraq.[823]This report, however, contradicts all Powell's claims pre-war about the threats of Iraq's WMD and reconstituting their nuclear programme.[824]

The report emphasizes that disarming Iraq of its WMD certainly did not follow the recommended peaceful settlement of international disputes procedures embodied in Article 33(1) of the UN Charter. The creation of UNSCOM and UNMOVIC seems, therefore, to offer the possibility of establishing an effective system to disarm Iraq if the CIA does not become involved and aggravate the situation. In other words, this is something that might be achieved only by fact, and not the mere threat of the use of force, and not necessarily even then.

It might be argued that the issues of disarming Iraq were burdened by the US-UK's threats and Iraq's reaction of non-compliance. Therefore, the two parties have developed no supportive conditions. As noted earlier, peaceful negotiated settlement for Iraq's WMD might well have been reached without the use of force following the end of the Kuwait crisis in the 1990s.

---

[822] Cited in *The Guardian*, (Published in London and Manchester, Thursday 28 April 2005).

[823]The *NSS* of 2006 provides that '[T]he Iraq Survey Group also found that pre-war intelligence estimates of Iraqi WMD stockpiles were wrong- a conclusion that has been conformed by a bipartisan commission and congressional investigations. We must learn from this experience if we are to counter successfully the very real threat of proliferation.' The National Security Strategy of the USA, the White House Washington DC, (16 March 2006), available at: http://www.white house.gov/nsc/nss.pdf>.

[824] See, the analysis of 'David Kay's Report on Iraqi WMDs', *The Independent,* (3 October 2003).

7.2.3 Legality Based on Unilateral Humanitarian Intervention

> A change of regime in Iraq would liberate that country from a tyrant who had, during the long years of his rule, been responsible for the deaths of hundreds of thousands of his own people and allowed others to remain in grim poverty while he pored the country's oil revenues into military projects and extravagant palace for his own luxury.[825]

The argument of unilateral humanitarian intervention based on the theory of Saddam's record of genocide and widespread massacres in 1998s against his own people justifying the use of force in 2003 as the situation in Iraq threats international peace and security.[826]In this context, the opinion of legal scholars is divided over this right. First, some argue that the UN Charter makes no reference to the use of force for unilateral humanitarian intervention. Second, another group argue that unilateral humanitarian intervention must be allowed to address human rights problems in some undemocratic regimes.

7.2.3.1 Article 2(7) of the UN Charter

International law and the UN Charter regulate and prohibit states from intervening in the affairs of others in what is known as the principle of non-intervention in accordance with Article 2(7) of the UN Charter, which states:

> Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially

[825]On the second argument offered by Bush for the war on Iraq see, Peter Singer, *The President of Good and Evil, Taking George W. Bush Seriously*, (London, Granta Books, 2004). Singer argued that this is 'ethical argument not legal justification of the attack on Iraq.'
[826] McGoldrick, n 3 above.

> within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.[827]

Therefore, the purpose of the principle of non-intervention into domestic jurisdiction of other states is to protect state sovereignty from being distorted by the self-interest of powerful states, and hence to prevent disruption to public order and society from being damaged by military intervention as such as the Iraq invasion revealed.[828]From the above analyses it is clear that nothing in the UN Charter suggests that regime change and bringing democracy was a legal basis for the use of force against the domestic jurisdiction of Iraq.[829]There are, however, many problems associated with the use of force by the US to introduce democracy in Iraq while, as noted earlier, it supported many undemocratic regimes in the Middle East and around the world.[830]Therefore, the US's original claim of creating a pro-West democracy in Iraq finds no support in international law.[831]

---

[827] Simma, n 37 above.

[828]Dan Danielsen, on Antony Angies, 'Imperialism, Sovereignty and International Law' 100 *AJIL*, 3 (2006) 757-762.

[829]Gregory H. Fox and Brad R. Roth (ed.,), *Democratic Governance and International Law*, (California, Chapman University, 2001).

[830]Seumas Milne, reported that; 'The resistance to occupation has already changed the balance of power, Iraq has now become the crucible of global politics' Seunas argued:

> [T]he real meaning of US promises of freedom and democracy was spelled out this week (25 September 2003) by two decisions of the US appointed, and increasingly discredited Iraqi government council. The first was to out the entire economy, except oil, up for sale to foreign capital. The second was to impose restrictions on the Arabic satellite TV stations al-jazera and al-arabiya for their reports on the resistance to the occupation.

[831] See, Marc Weller, 'Democracy through Fire and Sword?' 144 *New Law Journal* (1994) 1385-1386; Christine Gray, *International Law and the Use of Force*, 2nd edn., (Oxford, Oxford University Press, 2004).

7.2.3.2 Liberating Iraqi People

The main argument for humanitarian intervention as justification for war on Iraq was to resolve the problem of civilian population that justifies the military intervention necessary to prevent a genocide threat. However, the failure of many states to fulfil their obligations under the UN Charter and customary international law caused tremendous damage in Iraq and to its civilians, as well as having a negative impact on the economy of a large number of countries in the region.

In the context of exceptions to prohibition on the use of force, others argue that there were three possible legal bases of the use of force recognised in international law.[832]Therefore, they added in a case of humanitarian intervention under the controversial doctrine of protecting human rights,[833]as exceptional and new bases have emerged recently in the Kosovo crisis,[834]as well as the legal justification to protect Iraqi Kurds and Shia in the so-called 'no-fly zones' in Northern and Southern Iraq.[835]

---

[832] On these exceptions see, Christopher Greenwood, 'International Law and UN military Operations' 1 *YBIHL* (1998) 3; Nigel D. White, 'The Legality of Bombing in the Name of Humanity', 5 *Journal of Conflict and Security Law*, 27 (2000); Abraham Sofaer, 'International Law after Kosovo', 36 *Stanford Journal of International Law* (2000)1-21; Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford, Oxford University Press, 2000); The British Attorney General's Advice to Blair on Legality of Iraq War of 7 March 2003, available at: www.globapolciy.org/security/issues/irag/ document/2003/0307advice.htm.

[833] Adam Roberts, 'The So-Called 'Right' of Humanitarian Intervention', 3 *YBIHL* (2000)3.

[834] Louis Henkin, 'Kosovo and the Law of Humanitarian Intervention', *AJIL* (1999) 824; Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects' 10 *EJIL* (1999)1.

[835]See, Ingrid Detter, *The Law of War*, 2nd edn., (Oxford, Oxford University Press, 2001); Dino Kristiotis, '*The Kosovo Crisis and Nato's Application of Armed Force Against the Federal Republic of Yugoslavia*', 49 *ICLJ*, (2000); Bruno Simma, 'NATO, the UN and the use of Force: Legal Aspect', 10 *European Journal of International Law*, No.1 (1991). For detailed discussion on violation of human rights in Kosovo in 1999, see, Report of the Secretary-General Prepared Pursuant to Resolutions 1160 (1998), 1199 (1998), and 1203 (1998), UN Doc. s/1999/293 (1999), as well as letter dated 23 March 1999 from Secretary-General addressed to the President of the Security Council, UN Doc.s/1999/315 (1999).

In spite of this, the UN Charter is not addressing the issue of the protection of human lives in internal conflicts, as Article 2(7) of the Charter, as we have seen, prohibits the UN and its member states from intervening in the domestic affairs of other states. But this prohibition must not 'prejudice the application of enforcement measures under Chapter VII' if such conflicts threat international peace and security.[836] Furthermore, it is the UNSC, not individual states that are charged with the responsibility of determining when international or internal conflicts threaten international peace and security.

By contrast, another question arises of what is the situation in the case of credible evidence of genocide committed within that state? However, without doubt, genocide is a crime against humanity, and should be punished as a war crime under international law.[837]Hence, given the clear understanding of the language of Article 2(7) of the UN Charter, this Article was not designed to address the case of genocide, which must be dealt with under the provision of the Convention on the Prevention and Punishment of the Crime of Genocide.

In view of these considerations, this Chapter submits that the humanitarian intervention in the case of genocide must only be dealt by the UNSC.[838]This is because the evidence suggests that the seriousness of ethnic cleansing, in which hundreds of thousands of people were killed, is such that, as in the Kosovo and

---

[836] Christopher Greenwood, 'Is there a Right of Humanitarian Intervention?' *The World Today*, (Feb, 1993).

[837] See, William A. Schabas, *Genocide in International Law,* (Irish Centre for Human Rights, National University of Ireland, Galway, 2001); Isador Walliman and M.N. Dobkowski, *Genocide and the Modern Age: Etiology and Case Studies of Mass Deaths*, (New York: Greenwood, 1977).

[838] Dieter Fleck, *The Handbook of Humanitarian Law in Armed Conflict*, (Oxford, Oxford University Press, 1999); Ryan Goodman, 'Humanitarian Intervention and Pretexts for War', 100 *AJIL*, No.1 (2006) 107-141.

Rwanda cases, it needs international emergency protection.[839] This is so because first, in most cases it threatens international peace and security directly or indirectly. Second, because of the possibility of involvement other states, especially when they share ethnic groups.[840]

7.2.3.3 Protection of Human Rights in Iraq

Finally, in his conclusion Powell says that Saddam's record of human rights violations should be considered by the UNSC. He argues that Saddam conducted ethnic cleansing against the Kurds and the Shias in 1980s. It has also been suggested that, while these incidents may be true, Powell ignores many facts. First, when these alleged incidents happened in the 1980s, Saddam was a close friend to Americans who provided him with these weapons.[841] Second, however, the US took no action at the time of these incidents of killing to stop more killing.[842]Third, it appears that these weapons were also used against Iranian troops in the 1980s, but the US has taken no action.[843]Fourth, if it is true that Kurds and Shias were victims of Saddam, this nevertheless does not exclude the US from criminal liability as these crimes were

---

[839] Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects,' 10 *EJIL* (1999).

[840]Amnesty International's Report of Sudan, May 2006. For full report see, http:// web.amnesty.org/web/web.nsf/print/DCF47A9E6FAD558A802571680035F615,Main Parties Sign Darfur Accord, BBC News, (May 2006), http// www.newsvote.bbc.co.uk.

[841] The Qur`an describes in verse 67 of *Surat al- Zukhruf* (Luxury) this relation as 'On that day even bosom friends will become one another's enemies, unless they have done their duty.' However, this is what happening today as the old friends (Saddam and the US) are enemies.

[842] Many believe Saddam and Tariq Aziz have an intimate knowledge of the US' constant support for Saddam regime during the 1980s (Iraq-Iran war) and would undoubtedly try to avoid responsibility for their war crimes by making speeches in courts that would provide details of the close relationship between American administrations and Saddam.

[843]Many reports states that Donald Rumsfeld met Saddam during Iraq-Iran war to improve the relationship with Iraq. On the other hand, some of these weapons were in fact exported by US companies and involved many American politicians. This is explaining why the US did not want this issue and gassing Kurds in Halabja case to be discussed in Iraqi courts while Saddam is alive. This also explaining why they hanged Saddam on 'Muslim *Eid'* two days before the end of 2006 ('special day' as submitted by the Iraqi National Security Advisor Momafak al Rubaie) in this way and only in one minor case 'Dujail case' while other cases includes gassing Kurds and Shias cases were binding? Saddam execution brought worldwide criticism of the Iraqi government and its Primer Minster Nouri Al-Malki.

committed by weapons they supplied to Saddam and all these crimes were well known to the US-UK, but they did nothing to stop it.

There is accordingly no basis for viewing Saddam as a human rights abuser. Rather, occurrence of these incidents simply represents an exercise of the US double standards policy.[844]In other words, these events are alleged to have occurred with the performance and help of the US; therefore, it cannot rely on Saddam to excuse its liabilities under international law; in particular the principles laid down by the Four Geneva Conventions; its two Additional Protocols; and human rights norms. So the alleged ethnic cleansing of Kurds and Shias occurred with the full knowledge of the US, and was carried out by its weapons supplied to Saddam.

In the context of the US double standards policy, it should be noted that the US often blocks any international effort to condemn Israeli violation of human rights and international law. This includes especially Israel's violations of the Fourth Geneva Conventions that deal with issues of the treatment of civilians under occupation, as well as the conditions of Palestinian detainees in Israel's prisons. Another example of this support is the fact that the US-UK blocks Arab and international financial support to the democratic government of Hamas and turns a blind eye to Israel's human rights record regarding civilian Palestinians behind bars for years without charge or trial: these include women and children. The unsatisfactory nature of human rights protection afforded by the US in its war on Iraq casts much doubt about the

[844] Amnesty International's Annual Report of May 2006 argued that the 'war on terror' resulting in wider spread of human rights abuses not only by the US-UK troops in Iraq but of 'systematic torture' by Iraqi forces supported by the invaders. See, Amnesty International's Report, 'Another Report, More Abuse' at: http://www.khaleejtimes.com, (May 2006).

creditability of their claim of promoting democracy in the region and protection of human rights.[845]

Furthermore, it might be argued that, in connection with the Kurds' and Shias' allegations in the 1980s, Saddam saw these ethnic groups were supporting Iran in its war with Iraq. Despite this, from an international law perspective, it appears that the response of the US-UK to this by imposing on Iraq the so-called 'no-fly-zones' in northern and southern Iraq without UN support was illegal. This is so because in all UNSC Resolutions in this regard there is no express legal authority for any of these countries to impose such zones in Iraq. It is quite clear, this was another violation of the UN Charter and international law and put a further end to their claim of protecting human rights.

Whether or not, for instance, Saddam violated human rights in Iraq, it might be argued that the US's claim of protecting human rights in Iraq was just an excuse for war. This so because the Americans have committed serious human rights abuses in Iraq since the invasion in March 2003, and also their human rights record worldwide is not as clean as they claim. For example, Amnesty International reported in its annual report of 2006 that:

> Thousands of detainees continued to be held in the US custody without charge or trial in Iraq, Afghanistan and the US naval base in Guantainamo Bay, Cuba...thousands of 'security internees' were held without charge or trail by US forces in Iraq... evidence continued to emerge of the torture and ill-treatment of detainees in

[845] Ibid.

Guantainamo, Afghanistan and Iraq, before and after the abuses in Abu Ghraib prison, Iraq which come to light in April 2004.[846]

Therefore, Powell's failure to address human rights violations by Americans and its allies in the Middle East again casts much doubt about the credibility of his overall presentation.[847]

7.2.3.4 Changing Saddam's Regime: Bringing Democracy to Iraq and the Middle East

It might be argued that this highly organised technical war that has both impressed and angered the international community[848]was planned over a decade.[849]This was done through the promotion of neo-conservatives[850]and the media,[851]and finally it was made possible by the September 11 incidents.[852]For example, during President Clinton's administration, Samuel R. Berger, the US National Security Advisor said on 23 December 1998 that the main aim of the US foreign policy in Iraq was to achieve two purposes: first, complete Iraqi compliance with all UNSC Resolutions relating to the Gulf War of 1991;[853]second, the overthrow of Saddam Hussein.[854]It would seem, then, that these aims do not resolve the question of the legality of the invasion of Iraq.

---

[846] Amnesty International at http:// www.amnesty.org/web/weeb.nsf/press.

[847] Ryan Goodman, 'Humanitarian Intervention and Pretexts for War', 100 *AJIL*, No.1, (2006) 107-141.

[848] Jackson Nyamuya Maogoto, 'New Frontiers, Old problems: The War on Terror and the Notion of Anticipating the enemy, 1 *NILR* vol. L1 (2004) 1-39.

[849]Simons, n 37 above. See generally, United States National Security Strategy 2002 at http://www.whitehouse.gov/nsc/nss.htmI; Bacton Gellman and Vernon Loeb, 'A Major Aim: kill Saddam "Palace Guards"', *WASH. POST*, (19 December 1998).

[850] See the Project for the New American Century's letters of 26 January 1998 to President William J. Clinton; of 20 September 2001 to President George W. Bush; their first and second statements on Post-War on Iraq, at http://www.newamericancentury. org/Iraq-20030328 htm.

[851] Greg Mitchell, 'CNN Makes News with WMD Special, but Press Deserves Blame, Too,' *Editor and Publisher*, (19 August 2005).

[852] Michael Byers, 'Terrorism, the Use of Force and International Law after September 11', 51 *ICLQ*, (2002), 401-421.

[853] Ruth Wedgwood, 'The Enforcement of SC Resolution 687: The Threat of Force Against Iraq's WMDs', 92 *AJIL* (1998) 724.

[854] Thomas W. Lippman, 'Two Options for Iraq in US Policy,' *WASH. POST*, (Dec. 24, 1998), at A14.

More than this, the hawkish Bush administration has argued that the removal of Saddam from power by military action would lay the basic foundation for the US to achieve three vital national interests and goals in the region: first, to disarm Iraq from WMDs and its ability to produce new weapons. Second, to stabilize Iraq through establishing a democratic government.[855]Third, this will assist in the development of democracy in the Middle East. It follows that one must recognise that this conduct acknowledges the significance of the US's departure from international law principles; in particular the principle of non-intervention in the domestic jurisdiction of states, as establishing democracy is considered a matter within the internal affairs of states.

It might be argued that the UN has none of its own police forces, but this would not automatically, of course, give the US-UK the right to use force to disarm Saddam. On the contrary, it could have led to more difficulties and angry relations between states. It is also true that those Arab problems could be solved without the involvement of the West, in particular the Americans and the British as they failed to win credibility with Arabs if we look at the way they dealt with the problems in Palestine.

For example, at the moment in the Arab world, there is only one single leader who was elected in a free and fair election: the Hamas leader Ismail Haniya. But the international community, led by the US, put pressure on Hamas to recognise Israel by cutting off funding since Hamas won the election. This financial crisis has been

[855] William D. Hartung, The Hidden Costs of War: How the Bush Doctrine is Undermining Democracy in Iraq and Democracy in America, in Irwin Abrams and Wang Gungwu, *The Iraq War and its Consequences, The thoughts of Nobel Peace Laureates and Eminent Scholars* ed., (World Scientific Publishing Co, Singapore, 2003).

created by the US to force the democratically elected government of Hamas to quit. They are punishing Hamas for winning the election by withholding international aid as well as blocking any Arab efforts to assist this government.

On the other hand, within Iraq, the US transferred power to unelected Iraqi members supported by the US-UK troops. This raises another question, is this democracy that Bush and Blair want the Arabs to believe that, by invading Iraq and overthrowing Saddam, will spread to the region?

As this study has already argued, the evidence strongly suggests that Bush made use of the September 11 incidents to exploit a great sense of insecurity in Americans' minds to mislead them as to his real aims in the war. This being so, emphasis was placed on the issue of Iraq WMDs and the abuse of human rights: these were only pretexts used by the US and ultimately are almost certainly not the real causes or motives for the war.[856]Others argue that the real motives of the war were: to achieve a hidden US foreign policy that aimed to protect the flow of the oil; [857]secure return of the US-UK big oil giants back to Iraq that were excluded during the Iraqi's oil nationalization movement in 1972;[858]to ensure the survival of Israel and continue its military superiority in the region by removing Saddam.

---

[856]Ryan Goodman, 'Humanitarian Intervention and Pretexts for War', 100 *AJIL*, No.1 (2006) 107-141.
[857] James Paul, 'Confidential Document on Iraq Oil Lobbying', *Global policy Forum*, (July, 2006). In this article Paul examines the secret document 'recorded conversation' indicates the secret lobbying meeting held shortly after Iraq invasion (Wednesday 23 July 2003) in Australian embassy in London between the BHP Billiton and the Australian Foreign Minster Alexander Downer and the former British Foreign Secretary Malcolm Rifkind to discuss their plan to secure control of the Iraqi huge oil field of Halfayah. See Appendix C.2.
[858] Carola Hoyos, 'Exiles Call for Iraq to Let in Oil Companies', *Financial Times*, (7 April 2003).

In this context, President Bush argued that: 'in 1 year, or 5 years, the power of Iraq to inflict harm on all free nations would be multiplied many times over...we choose to meet that threat now, where it arises, before it can appear suddenly in our skies and cities.'[859]Indeed, the US and IAEA has turned a blind eye to the Israel's nuclear weapons and its associate programmes. It is unlikely that any action may be brought against Israel, and the UN in any event is not capable of expressing its concerns over these weapons that are no less dangerous than any other WMD.

However, there is a further problem here: the recent war between Israel and Hezbollah in Lebanon sends a clear message to the Americans and their foreign policy in the region.[860]It is true that many Arabs believe that the Iraq war is about oil and the superiority of Israel in the region. This logic begins with the self-evident role of oil in Bush's war on Iraq as well as a century-long interest of the US-UK oil giant and their struggles to control the huge oil reserves in Iraq is evident.[861]

---

[859] President Bush Address to the Nation on Iraq, 17 March 2003, 39 *WEEKLY. COMP. PRES.* Doc. 338 (24 March 2003) 338-340.

[860] Israel lunched this war in response to the killing of eight Israeli soldiers and capture of others two by Hezballah on 12 July 2006. Hezballah made it clear that its action was mainly for exchange these soldiers with thousands of Lebanese; Palestinian and others Arabs remains in Israel's prisons for many years without charge or trail in violation of international human rights norms. Shortly after this incident the IDF bombed Lebanon comprehensively. Destroyed the country's infrastructure this includes Beirut's international airport, roads, power stations, bridges, hospitals, and petrol stations and imposed an air and sea blockade for more than month and killing hundreds thousands of innocent civilian. It might be argued that this war was indicates that the US have acted again as it did on the war on Iraq contrary to international. The evidence suggests that Israel was acted in this war as a proxy as the US includes Hezballah as one of its so-called 'war -on-terrorism' target. It is true that it was the US that supports Israel in this war. Provide it with smart bombs which killed many Lebanese children in Qana and Bint Jbeil. It was the US; Bush; Rice; Rumsfeld and Bolton who blocked international efforts to cease-fire with aim to give Israel more time to finish the job. It was Bush who said on 16 July, that 'As a sovereign nation, Israel has very right to defend itself'. It was Blair who said on 14 July, that 'I entirely understand the desire, and indeed need, for Israel to defend it self properly'. None of these two Presidents put any efforts to stop the war to extend Bolton said 'how to ask my to cesses fire with terrorists'. This logic reveals the danger of Americans unilateral and military thinking. Many have been surprised as IDF dropped tonnage of bombs on Lebanon but it failed to achieve its stated purpose of the war which was disarm Hezballah and return of the two soldiers.

[861]Greg Muttitt, 'Crude Designs: The Rip-off of Iraqis Oil Wealth', *Platform, Global Policy Forum and others*, (November 2005). Muttitt argues that:

Indeed, our findings suggest that the idea of regime change and removing Saddam from power dates back to the Iraq invasion of Kuwait in 1990 and its consequences.[862] Nevertheless, within the Bush administration and Pentagon hawks, Paul Wolfowitz, the Deputy Secretary of Defence was, and has remained, a prime advocate to remove Saddam from power and to install a new puppet government in the country.[863] However, Wolfowitz is reported to have said shortly after the 11 September incidents, on 14 September that it is 'not just simply a matter of capturing people, [but] ending states who sponsor terrorism.'[864]Hence, it is clear that the US would have invaded Iraq, whether or not there were WMD, whether or not the UN approved its military actions, and whatever its consequences.

On the other hand, it could be argued that the US's ambitions in Iraq go back to the end of the WWI, which ended Turkish influence in the Middle East.[865]The US has generally been the main importer of Iraqi oil that ranks second to Saudi Arabia. Therefore, it would appear that Iraqi oil shaped US policy towards Iraq for years. Moreover, the US Presidents Franklin Roosevelt and Harry Truman's administrations as well as other administrations within the US were keen to ensure control of the oil

---

> The US-UK in fact have long had their eyes on the massive energy resources of Iraq and the Gulf. In 1918 Sir Maurice Hankey, British's First Secretary of the War Cabinet wrote: oil in the next war will occupy the place of coal in the present war, or at least a parallel place to coal. The only big potential supply that we can get under British control is the Persian [now Iran] and Mesopotamian [now Iraq] supply control over these oil supplies becomes a first class British war aim". Furthermore, Muttitt argues that "After World War II both the US and UK identified the importance of Middle Eastern oil. British officials believed that there a vital price for any power interested in world influence or domination, while their US counterparts saw the oil resources of Saudi Arabia as a stupendous source of strategic power and one of the greatest material prize in world history.

[862] See, Marc Weller, 'The Kuwait Crisis: A Survey of Some Legal Issues' 3 *AJICL* (1991); Oscar Schachter, 'United Nations and the Gulf Conflict' 82 *AJIL* (1991); Amir Majid, 'Is the Security Council working? "Desert Storm" Critically Examined', 14 *AJICL*, (1992); Christopher Greenwood, 'The Gulf Conflict and the New World Order', *Modern Law Review*, (March 1992); Milan Rai, *Regime Unchanged, Why the War on Iraq Changed Nothing*, (Pluto Press, London, Sterling, Virginia, 2003).
[863] Michael W. Reisman, 'Why Regime Change is (Almost Always) a Bed Idea', 98 *AJIL*, No.3 (2004).
[864] Jeffery, n 621 above.
[865] Global Policy Forum , *Oil in Iraq*, at http://www.globalpolicy.org/security/oil/irqindx.htm.

reserves in the Middle East by rendering unlimited support to Kings and undemocratic governments. As a result, the US has supported regimes that enjoy no popular mandate such as the Shah of Iran, Saddam and other Gulf's monarchies despite their bad records of violation of human rights: corruption and large-scale ethnic cleansing against their own citizens using US's chemical weapons.[866]

It appears that the argument that by removed Saddam from power, Iraq will be a safe, free and democratic country is proven to be wrong.[867]Indeed the fact remains that, since the overthrow of Saddam in 2003, Iraq is not a safe place, and the US-UK troops found themselves entering into long-term expensive war in Iraq. Bearing in mind, as noted, the impact of war on Iraq is that murder, kidnap and car bombings have become the norm of the life for the people of Iraq.[868]

In this regard, The Lancet report of October 2004 estimates that 100,000 Iraqi civilians (half of them women and children) have died since the invasion in March 2003.[869]By contrast, a recent survey report of The Lancet of 2006 estimates the rate of war deaths in Iraq as 'equivalent to one every three minutes.'[870]However, this report says that total amount of deaths in Iraq since 2003 is 655.000, which is 2.5 per cent of the Iraqi population.[871]However, the US-UK rejected the report's findings despite the

---

[866] Penny Green and Tony Ward, *State Crime: Governments, Violence and Corruption*, (London and Sterling: Pluto Press, 2004).
[867] Middle East Report No.52 'The Next Iraq War? Sectarianism and Civil War', *International Crisis Group* available at: http:// www.crisisgroup.org/home/index.CFM? id=3980&1=1.
[868] Patrick Cockburn, 'From Iraq: the Reality an Exclusive Extract', *The Independent*, (12 October 2006). Patrick points out that 'The overthrow of Saddam Hussein was supposed to bring them (Iraqis) freedom, democracy and peace. But murder, kidnap and lawlessness have become the facts of life for the people of Iraq.'
[869]Sarah Boseley, '100,000 Iraqi Civilians Dead, Says Study', (London and Manchester, *The Guardian,* 29 October 2004).
[870]Andrew Buncombe and Ben Russell, 'The Lancet: 655,000 the Toll of War in Iraq', *The Independent*, (12 October 2006).
[871]Ibid.,

fact that the methodology that was adopted in the report appeared credible, as a team of Iraqi doctors conducted it.

Meanwhile, the Lancet report described the war and deaths in Iraq as follows: 'The combination of a long duration and tens of millions of people affected has made this the deadliest international conflict of the 21st century and should be of grave concern to everyone.'[872] However, the report findings cast another doubt on Powell and Bush's claim that the aim of the war was to provide Iraqis with safety and freedom if Saddam was overthrown. The report reveals that the idea of creating a liberal democracy in Iraq could never be achieved.

By the time of The Lancet report of October 2006, it had become clear that the US could not be sure of securing its aims in Iraq by force. The problem runs deeper than the simple risk of overthrowing Saddam. In might be argued that the US-UK's leaders, for instance, should be tried for war crimes committed in Iraq. This may include the mistreatment of Iraqi detainees in the Abu Ghraib prison scandal and the killing of wounded persons in Haditha and Falluja.[873] Interestingly, these practices of torture and mistreatment of detainees are regularly condemned by the US-UK when performed by other states.

---

[872] Ibid.

[873] Aaron Glantz, 'Bush and Saddam Should Both Stand Trial, Says Nuremberg Prosecutor', *Global Policy Forum* , at http://www.globalpolicy.org/security/oil/irqindx.htm

7.2.4. Legality Based on the Rights of Pre-emptive Self-defence

7.2.4.1 Pre-emptive Self-defence and the *NSS*

The final point in Powell's testimony is on so-called fighting terror in accordance with Bush's doctrine of pre-emptive self-defence.[874]As noted, Bush's doctrine was spelled first in his speech to the US Military Academy on June 2002.[875]However, this fourth step of Powell's arguments to authorise the use of force against Iraq is the link between Iraq and terrorism in an attempt to link Saddam with the 11 September incidents.[876]The basis of this argument is that the US's security requires pre-emptive action when necessary to defend their liberty and lives.

John Yoo submits that, without considering the UN Charter, customary international law provided the US with authority to use force against Iraq on two grounds: to enforce existing UNSC Resolutions and to eliminate a dangerous threat to international peace and security under the right of self-defence.[877]In spite of this, the evidence suggests this was a devastating blow to Powell's credibility. Indeed, the

---

[874] For Powell's statement that Saddam has link to terrorism see, Michael W. Reisman, 'Assessing Claims to Revise the Laws of War', *97AJIL*, No. 1 (2003) 82-90; Helen Duffy, *The 'War on Terror' and the Framework of International Law*, (Cambridge, Cambridge University Press, 2005).

[875] President Bush Commencement Address at the US Military Academy in West Point. Bush argued that 'If we wait for threats to fully materialize, we will have waited too long. [...]We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge. In the World we have entered, the only path to safety is the path of action, and this nation will act' (June 2002), 38 *WEEKLY COMP. PRES.* Doc (10 June 2002) 944, 946.

[876] Dino Kristos, 'Arguments of Mass Confusion', 15 *EJIL*, No. 2 (2004), 233-278.

[877]Yoo, n 235 above. Yoo agued that:

> Resolution 1441's finding that Iraq was in material breach allowed the United States and its allies to terminate the cease-fire created by Resolution 687 and resume the use of force as authorized by Resolution 678 [and]...Independent of support provided by the UN Security Council Resolutions, authority for the armed intervention in Iraq stemmed from the national right of self-defence...the customary international law right to use force in anticipatory self-defence is a well established aspect of the "inherent right" of self-defence.

However, in his conclusion John provided three factors he assumed necessary for the use of force in anticipatory self-defence against terrorist groups with WMDs as following: 1. does nation have WMDs and the inclination to use them? 2. Nations will have to use force while taking into account the available window of opportunity. 3. Nations will have to take into account that the degree of harm from a WMD attack would be catastrophic. It is clear that all John arguments in this respect not stand as there were no WMDs found in Iraq could justified the use of force in anticipatory self-defence.

central argument regarding Powell's presentation to the UNSC is the ties of Saddam to Al-Qaeda, Abu Musab Al-Zarqawi, and therefore with terrorism. Powell's failure to address the definition of terrorism in this presentation detracts from the credibility of his overall arguments.

It is easy to see the sort of difficulties that faced Powell when making his arguments about the war on terrorism.[878]Powell argues that Iraq's link to terrorism goes back decades to when Iraq supported the Palestine Liberation Organisation (PLO) in their fight for freedom and returns their own state. Powell fails to acknowledge the fact that every day the Israelis killed many innocent Palestinians, and there was no doubt that the US failed to condemn these killings. This suggests, however, that state terrorism is the most dangerous type of terrorism. Given this, if we bear in mind that the US gave Israel absolute rights in their struggle with Arab without any limitations to their actions, any restrictions, or even consideration to their obligations under international law.

Furthermore, Powell asserts that Saddam was associated with Osama bin Laden and the Al-Qaeda network. However, this thesis submits that the ideology of Saddam was not in the same line of that of bin Laden. In fact, Bin Laden many times accuses Saddam and this regime of being a secular atheist and socialist. Powell claimed that this group established a training camp in north-eastern Iraq to train people in poison and explosives. Powell argues that Saddam not only supported terrorism, but he

[878] Miriam Sapiro, 'Iraq: The shifting Sands of Pre-emptive Self-Defence' *97 AJIL*, No. 3 (2003) 599-607.

provided a safe haven for senior members of Al-Qaeda after the invasion of Afghanistan, such as Zarqawi.[879]

7.2.4.2 Fighting Terror

Powell claims that Al-Qaeda established a network in Baghdad where it operated from for eight months. Powell argues that Al-Qaeda, from its new operation, could direct its activities to the Middle East and beyond. This is unlikely to be true, however, since the inaccuracy of Powell's argument in this respect comes from Powell himself. Powell said this camp was located in northern Kurdish areas where Saddam has no control. In such circumstances, it is not surprising that Powell failed to acknowledge that Saddam had nothing to do with this alleged camp. Similarly, it may be supposed that it reveals the quality of Powell arguments.

Powell guided the UNSC Members through his discussion on the link between Saddam and Al-Qaeda at the meeting of Al-Qaeda members with Iraqi intelligence official in Khartoum in 1996. He then analyzed the impact of these meetings and cooperation in the attacks against American embassies in Kenya and Tanzania in 1998.

According to Powell this cooperation is clear since Iraq not only supports Al-Qaeda, but other Islamist terrorist groups such as Hamas and the Palestine Islamic Jihad. As these groups attack Israel, therefore, in Powell's view Iraq supports terrorists. Powell failed to acknowledge the difference between resistance and terror as well as the civilian deaths caused by Israel's deliberate attacks against Palestine on

[879]Powell, n 715 above.

a daily basis and the destruction of their land, fields, and homes by Israeli troops. To Powell these attacks were not terrorist acts. After all, there was no evidence to link Saddam with Al-Qaeda, and Powell's definition of an act of terrorism is too narrow, as are his attempts to link Saddam with Al-Qaeda, and therefore with international terrorism.[880]

Based on Powell's allegations, not only does Iraq support these groups by training them, but Iraq also provides Al-Qaeda with training in WMD and chemical and biological weapons that it has a deep interest in acquiring. The main aim of this argument was to link Saddam with terrorism to justify the US's right of pre-emptive self-defence to protect its civilians from further Al-Qaeda attack with WMD fomented by Saddam.[881]

It is necessary to assess Powell's allegation in this regard. At first glance Powell's arguments seem to oversimplify the issue of authorizing the use of force by the UNSC, and his attempt to link Iraq with the 11 September incidents failed. Against this background, it is evident that this failure is linked to the failure of his government and its intelligence authority to stop the 11 September incidents. Powell's argument seems to mainly rely on arguable key points. These include alleged recorded conversations, satellite images of alleged active chemical munitions bunkers and mobile biological weapons labs that are linked to terrorism.

---

[880]Michael W. Reisman, 'International Legal Responses to Terrorism' 22 *Houston Journal of International Law*, 3 (1999) 51-54.

[881] Jackson Nyamuya Maogoto, 'New Frontiers, Old problems: The War on Terror and the Notion of Anticipating the enemy', 1 *NILR* vol. L1 (2004) 1-39.

However, all this evidence does not support the US's case as, from the above arguments; we can deduce that all this evidence can be easily provided by any intelligence services in any part of the world. Thus, from a legal point of view, you cannot rely on your own evidence to justify the use of force for political goals. As noted earlier, the wording of the provisions of the UN Charter suggests that the Charter limits the use of force and empowers the UNSC to take the measures necessary to maintain and restore international peace and security.[882] Thus, the UNSC is the only body that can determine if there were links between Saddam and Al-Qaeda. In fact, as Geoff Simons argues, there are good reasons for thinking that the massacre of Iraqi civilians and the destruction of civil infrastructure in Iraq by the US-UK between 1990 and 2003 must qualify as an act of aggression.[883]

Despite Powell's arguments to the effect that the retention of the principle of limitation on the use of force no longer applies, not surprisingly Powell did not receive support from UNSC members to authorize the use of force against Iraq. As a consequence, as the above legal analysis shows, his arguments failed to persuade the UNSC to use force against Iraq. Therefore, the only possible alternative for the US was to misinterpret the UN Charter, in particular the principle of the non-use of force: that is to say, the tactic of unilateral pre-emptive military strikes, which was widely condemned by the international community. This was the same approach adopted by the US and NATO in the Kosovo crisis, which somehow became a serious problem.

At the same time, it should be emphasized that it is suggested that while it seems there is some validity in Powell's arguments in terms of Iraqi WMDs, it should be

[882] Higgins, n 749 above.
[883] Simons, n 145 above.

rejected. First, in April 2004, Powell said that part of his testimony to the UNSC in February 2003 was based on intelligence that appears to have been unreliable.

Therefore, it should also be emphasized that this is why international law recognizes that it is necessary to impose restrictions on the right to the use of force by states. Indeed, this case indicates that without these restrictions on the freedom of states to act unilaterally to achieve their narrow national interests, international peace and security would be threatened. Second, as no WMD were found in Iraq.[884]Third, Powell was unable to find any convincing evidence to link Saddam with Al-Qaeda. It was Powell and Rumsfeld who dismissed Saddam's claim that Iraq did not have WMD.[885]It was the US that used and spied on weapons inspectors, not Saddam.[886]

In considering the issue of the US's spied on the UN inspectors, it is important to point out that the former UN Secretary-General, Boutros Boutros Ghali, Kofi Annan and as the former UN chief weapons inspectors Hans Blix have said that they were

---

[884] Julian Borger, Ewen Mac Askill and Patrick Winlour, 'The Hunt for Weapons of Mass Destruction Yields-nothing' *the intelligence claims of huge Iraqi stockpiles were wrong*, says ISG report, *The Guardian*, (Thursday 25 September 2003).

[885] In a news conference on 12 March 2003 Donald Rumsfeld said that '(Saddam) claims to have no weapons or biological weapons. Yet we know he continues to hide biological and chemical weapons, moving them to different locations', *The Independent*, (Thursday 7 October 2004).

[886]Ritter and Hersh, no 784 above. Ritter explained how the CIA and British intelligence had used the UN inspectors to advance their policy of regime change in Iraq. Ritter has submitted that:

> We always knew about regime change. I mean, when I first came in, we knew about regime change. In terms of the infiltration, you know, some people say it's my fault because I'm the guy who brought in the character I call Modaz and the special activities staff, the covert operators of the CIA. We used them in 1992; we used them in 1993 because it's tough to do inspections in Iraq. You know, they're not necessarily the friendliest people in the world when you're trying to go to a site that they don't want you to get in. And you can't have a bunch of thin-necked, geeky scientists trying to do this job. You need guys with thick necks and thick arms, and the CIA had plenty of these guys who could do logistics, they could do planning, they could do communications in austere environments. So we used these guys, and we used them in June (coup attempt). We were used by the United States, though, and they're the most powerful nation on the Security Council that we as inspectors worked for. So how do you turn to your boss and say, hey, you've used us? We won't tolerate that. Well, you can't do that. What you have to do is continue to plod forward and just redouble your efforts to maintain the integrity of a process that tragically had been terminally corrupted by that point.

also spied on by the US.[887]This is a somewhat crude way of achieving national interest and constituting ill-convinced actions without any legal or moral justifications. Clearly, such behaviour will have unnecessary consequences on the work of the UN and its relationship with the US as the host state.

However, another express statement was also made by the UNSCOM chief inspector when he said that his office as well as his home in New York was bugged.[888]Blix added that he had expected to be spied on by the Iraqis, but eventually he found that his own side spied on him.[889]Similarly, Richard Butler, former UN chief weapons inspector, said he would prefer to walk in a park for confidential talks than his office because the US spied on him all time.[890]In spite of these factors, one cannot ignore that the US violated international law whilst claiming that it was working to spread democracy in the world.[891]

Eventually, another blow to Powell's speech and credibility came from the US. The US's Senate Report contradicts all Powell and Bush's claims to invade Iraq. The report found that not only was there no links between Saddam and Al-Qaeda but also that Iraq had ended its WMD program in 1991 without any ability to reconstitute it since. The report says 'Saddam Hussein was distrustful of al-Qaeda and viewed Islamic extremists as a threat to his regime, refusing all requests from al-Qaeda to

[887] Ibid.
[888] Cited in *The Independent* (Sunday, 29 Feb 2004).
[889] Ibid.
[890] Ibid.
[891] Ibid.

provide material or operational support.'[892]This means that there were no links between Saddam and Al-Qaeda prior the war.

We might note another weakness in Powell's argument that this link between Saddam and Al-Qaeda provided a legal justification for the use of force against Iraq. In this regard, the Senate Intelligence Select Committee in its assessment of war justifications also dismissed Powell and Bush's claims of the links between Saddam and an Al-Qaeda man in Iraq, Al-Zarqawi, who was killed on 7 June 2006. The report said, 'Post war information indicates that Saddam Hussein attempted unsuccessfully to locate and capture Zarqawi, and that the regime did not have a relationship with, harbour, or turn a blind eye toward Zarqawi.'[893]

This indicates how the Bush administration created a false impression of the dangers of the link between Al-Qaeda and the Iraq aftermath of the 11 September incidents. It was Bush who said on 18 March 2003 that: 'The danger is clear using chemical, biological, or, one day, nuclear weapons obtained with the help of Iraq, the terrorist could fulfil their stated ambitions and kill thousands or hundreds of thousands of innocent people in our country or any other.'[894]

It was Dick Cheney who said on 14 June 2004 that: 'Saddam Hussein was in power, overseeing one of the bloodiest regimes of the 20th century [he added Saddam] had long-established ties with Al-Qaeda.'[895]It was Bush who said on 15 June 2004, when asked about his evidence of the link between Saddam and Al-Qaeda that his

[892] Stephen Collinson, 'No Qaeda-Saddam Links: Senate Report', *Agency France Press*, (8 September 2006).
[893] Ibid.
[894] Cited in *The Independent*, (Thursday 7 October 2004).
[895] Ibid.

hard evidence to links Saddam with Al-Qaeda is 'Zarqawi. Zarqawi is the best evidence of connection to Al-Qaeda affiliates and Al-Qaeda.'[896]Furthermore, it was Bush who said on 14 August 2006 that 'imagine a world in which you had Saddam Hussein who had the capacity to make a weapon of mass destruction, who was paying suicides to kill innocent life...who had relations with Zarqawi.'[897]

However, Bush failed to answer the question of who was paying to kill innocent lives in Palestine and recently in Lebanon. It was Bush and the US who provided Israel with smart bombs and other deadly weapons that killed innocents in Gana I and 2, Mruhen, and Bent Gebeel in Lebanon in 2006. It was the US who provided Israel with cluster bombs that killed many children in Lebanon and in occupied lands in Palestine. Thus, we can see that his own people later discredited all Powell's claims for the invasion of Iraq.

7.3 An Assessment of the Legal Arguments against the War

7.3.1 Non-Express Authorisation to the use of Force in the UN Resolution 1441: The 'use all necessary means'; 'material breach', and, 'serious consequences' Arguments

Powell failed this time to convince the UNSC for the war on Iraq as they did in 1991. As a result the UNSC refused to endorse the US-UK's invasion case. The situations in the UNSC were as follows: only four members of the UNSC supported the US's draft resolution to authorize the use of force: the US, the UK, Spain, Australia and Bulgaria.

This means only two UNSC Permanent Members, the US and the UK. The representative of the US argued that Iraq was developing WMD and failing to

[896] Ibid.
[897] Ibid.

cooperate with inspectors in accordance with Resolution 1441.He further argued that the UNSC already had authorization to use military force against Iraq in previous UNSC Resolutions during Kuwait crisis.[898]

From a broad legal perspective, the UK's position was that it preferred a second UNSC Resolution to authorise the use of force, but it expected to join the US-led action against Iraq even without clear authority from the UNSC. The UK presented to the UNSC a draft of a resolution that set a deadline of 17 March 2003 for Saddam to disarm from its WMD. However, the evidence shows that the UK knew for certain that there were no WMD in Iraq prior to the war. Spain stated that as Iraq failed to cooperate, therefore it supported the US stand, and it believes military attacks against Iraq could legally proceed without UNSC authorization. Bulgaria stated that it backed a peaceful resolution and could support US-led military intervention against Iraq without UNSC authorization.

However, in contrast, states opposing the UN Resolution were three UNSC Permanent Members: France, Russia and China. Another three states opposing the resolution were Germany, Syria and Angola. The position of France was held to be very strong in opposing to the war.[899]This position was advocated clearly by its President Jacques Chirac – the most bitter critic of the war on Iraq – who said, on 10 March 2003 that his country would vote against any UN Resolution that could pave the way to war as a 'question of principles and moral issues' and 'war can only lead to

[898] Greenwood, n 182 above.
[899] See, UN Doc. S/PV/4701, 23-25 and UN Doc. S/PV /4707, pp 11-13.

the development of terrorism [and] the war will break up the international coalition against terrorism.'[900]

Russia, as a Permanent Member, submitted that, as in the case of France, it would vote against any resolution that authorizes the use of force against Iraq, and that the inspectors efforts to disarm Iraq should continue; therefore, there was no need for an additional resolution. China, as a Permanent Member, said the inspectors should continue their work and there was no justification for military action against Iraq at that time.[901]

Germany, Syria and Angola, as elected members of the UNSC but without vote, said they would not accept any draft resolution that authorized the use of force against Iraq. Syria, despite its ideological and long history of political differences with Iraq, added that Iraq was cooperating with UN inspectors and that the UN sanctions should be lifted.[902]Furthermore, it stated that UN Resolution 1441 did not set a timetable,[903] and therefore the UN should not have concluded that time had run out. Angola said inspectors should continue in order to peacefully disarm Iraq, and there was no justification for military action at that time.

However, five members that were undecided were Pakistan, Mexico, Guinea, Chile and Cameroon. Pakistan, an Islamic country, said it supported further inspections, but it could not support US-led military action against Iraq (a member of ICO). This is no surprise as the role of Pakistan in supporting the US war on

---

[900] Cited in 'Britain Sets New Tests for Saddam' *The Guardian* (4 May 2003).
[901] See, UN Doc. S/PV/4701, 23-25 and UN Doc. S/PV /4707, 11-13.
[902] Ibid.
[903] In response to the UK draft resolution that set 17 March 2003 as a time limit for Saddam to disarm.

Afghanistan, another Islamic country, was highly condemned by Muslims. However, it played the same role as Kuwait in the war on Iraq in 2003.

Mexico supported further inspections, but it could support military actions if it were authorized. Guinea says it supported continued inspections, and there is no justification for military action at this time. Chile and Cameroon's stand was that they supported the inspection and military action against Iraq was not yet justified.[904]This was the situation inside the UNSC at that time.

It would be incorrect, however, to attribute full blame for human rights violation in Iraq on Saddam. In this context, Richard Falk argues the same in his Article published shortly after the Iraqi Criminal Court imposed a death sentence by hanging on Saddam for ordering genocide and massacre against Shias and Kurds in the 1980s.[905]Thus, from an international law perspective, our submission is that Article 51 of the UN Charter and customary international law that regulates the right of self-defence does not recognise the right of pre-emptive attack.[906]

---

[904] See, UN Doc. S/PV/4701, 23-25 and UN Doc. S/PV /4707,11-13.

[905] Richard A. Falk, 'A Dubious Verdict' Agency Global', *International Herald Tribune*, (7 November 2006) Richard argues that:

> The American stage managing of this judicial process in Baghdad has been evident to close observers all along. It always seemed legally dubious to initiate a criminal trial against Saddam, while the American occupation was encountering such strong resistance by Saddam loyalists, especially as the U.S.-led invasion was widely regarded throughout the world as itself embodying the crime of aggressive war, a crime for which surviving Nazi leaders were charged and punished at Nuremberg after World War II. This reality constitutes a fundamental flaw in this whole judicial process. In effect, why Saddam? Or differently, why not Bush, Dick Cheney and Donald Rumsfeld? The cost of this political opportunism by the United States goes beyond the narrow circumstances of this trial. No one doubts that Saddam and the other defendants were substantively guilty of crimes against humanity when they killed 148 civilians in the town of Dujail back in 1982 after a failed assassination attempt; collective punishment is an international crime whatever the provocation. But the potential contribution to building a legal tradition of accountability applicable to political leaders has been undermined in this instance by the circumstances and auspices of the this tribunal - and by the way the prosecution proceeded.

[906] Antonio Cassese, *International Law*, (Oxford, Oxford University Press, 2001).

Furthermore, it might be argued that the US's legal justification relies mainly on the threat of an Iraqi future attack with nuclear weapons based on Bush's doctrine of pre-emptive attack, which is a new principle that is not recognised in international law.[907]For instance, as far as the right of self-defence is concerned, this argument suggests that the US-UK has authority over the UNSC and members of the international community as well as international law.[908]

On the other hand, Resolution 1441 should be interpreted in the light, first, of the peaceful efforts to disarm Iraq, second, the UN Charter provisions designed to settle disputes peacefully, and third, the rule designed to restrict the resort to force to achieve the UN objectives of maintenance international peace and security. It may, and indeed must, not permit implied authorisation such as 'material breach'; 'will face serious consequences' and 'a final opportunity to comply with its disarmament obligations' as authorisation of the use of force. It has been pointed out, however, that the US cannot claim that Iraq invoked international law where the situation has been created by a breach of international law on the US's part.

7.4 The Role of the UN in Legalizing Iraq's Invasion: SC Resolutions 1472 (2003); 1483 (2003); and, 1546 (2004)

In the light of the allegations summarized above, which did not convince the UNSC prior to the invasion, the US ignored the UN and used force without authorisation. Of course, they will need the organisation at a certain point to give them international

[907] Michael W. Reisman and Andrea Armstrong, 'The Past and Future of the Claim of Pre-emptive Self-defence', 100 *AJIL*, 3 (2006) 525-550.
[908] John Bolton 'Is There Really "Law" In International Affairs': *10 Transnational Journal of Law and Contemporary Politics*, (2000), 1.

legitimacy for their illegal actions as well as to help them to get out of this costly mistake.[909]

The argument in support of this finding is that, to legalise their invasion and occupation only two months after the invasion, they came seeking the help of the UN as a partner to endorse the occupation of Iraq. Therefore, in order to overcome the consequences of the invasion of Iraq without UN authority, the UNSC adopted Resolution 1483 of 22 May 2003.[910]

As explained, the exact legal basis for military action against Iraq was not expressly authorised in any UNSC Resolutions.[911]This has led to speculation over the war and its real aims as well as the role and effectiveness of the UNSC and the GA, as no effort was made to condemn the war.[912]However, as in most cases of the use of force in the past, this war does not appear to be in self-defence.

It may be noted that the majority of the international community present on the day of Powell's presentation supported the returning of the inspectors of UNMOVIC and IAEA to finish their work to disarm Iraq. Only the US-UK and their few allies took the position not to follow international law and the will of the international community for peaceful means to achieve the single end of disarming Iraq from its

---

[909] Roland Watson, Elaine Monaghan and Richard Beeston, 'America Asks UN to Help Sort Out Iraq', *The Times*, No. 67859, (Thursday 4 September 2003).
[910] UN Doc.S/RES/1483 (2003), reprinted 42 *ILM* 1016 (2003).
[911] Franck, n 33 above.
[912] For example, it well known that in the Falkland (Malvinas) Islands, the GA as the SC both adopted number of Resolutions aimed to settle the dispute peacefully. The GA first adopted Resolution 2065(XX) in 1965 that called for the UK and Argentina to negotiate with view to settle the dispute peacefully and again in 1973 in its Resolution 3160(XXVIII) as well as Resolution 49(XXXI) of 1976 and 9 (XXXVII). In S/RES/502 (1982) the SC called upon them to seek peaceful settlement for the dispute and its Resolution S/RES/505 requested the Secretary-General to use its good offices to achieve peaceful settlement of the dispute.

alleged WMD. They ignored the UN and operated with a free hand in the Iraq invasion, but when they realised their wrongdoing and Iraqi resistance they were forced to seek the UN's assistance to end the chaos, bloodshed and scandalous actions caused by their invasion.[913]

This Chapter submits that the extent to which UNSC Resolutions 1483 (2003), 1490 (2003), 1500 (2003), 1511(2003), 1518 (2003) and 1546 (2004), which deal with Iraq, provide support for the US-UK is open for question.[914]First, the mandate made to the US clearly indicates that the UN is operating in close conformity with the wishes of the Bush administration. Second, it only assists the US-UK in the international cover they needed to legalise their violation of international law. Third, it gives the US legal grounds to achieve its policies that aim to maintain a permanent military presence in Iraq for its geo-strategic reasons in the region.[915]

---

[913] See, David Usborne, Colin Brown and Anne Penketh, , 'The Re-United Nations', *The Independent*, No. 5,505, (New York and Georgia, Wednesday 9 June 2004); Roland Watson, Elaine Moraghan and Richard Beeston, 'America asks UN to help sort out Iraq', *The Times*, No. 67859 (Thursday 4 September 2003). They argued that: 'The US turning to the UN to help extricate the US from its increasingly costly post war plight.' However, this is the most dramatic change of direction since the start of the war (when) the last year, the US said that the UN irrelevance when it refused to back the use of the force against Iraq 'But faced with mounting casualties, rising costs and increased unrest, the White House has been forced to seek help from body reviled by Washington conservatives.'

[914] It must be noted that between Iraq invasion in March 2003 and June 2004 the UNSC had adopted five Resolutions on Iraq: 1- In summary Resolution 1483 of 22 May 2003 authorized lifting non-military sanctions on Iraq imposed by Resolution 678 of 1991 and recognised the US-UK as occupying powers in Iraq, called on them to improve security and stability in Iraq and create the UN Special Representative in Iraq. This resolution provided a legal basis for occupation of Iraq. 2- Resolution 1490 of 3 July 2003 disbanded the UN Iraq-Kuwait observer mission and removed the demilitarised zone between the two countries. 3- Resolution 1500 of 14 August 2003 passed to establish the UN assistance mission for Iraq and welcomed the creation of Iraqi Government Council. 4- Resolution 1511 adopted on 16 October 2003 to mandated the UN to "strengthen its role in Iraq and called for the Government Council to draw up a timetable for local elections and new constitution for Iraq 5- Resolution 1518 of 24 November 2003 passed to establish a committee charge with identify resources to be transferred to the development fund to build Iraq and Resolution 1546 of 23 May 2004 to transfer the power to Iraqi government. However, as noted above all these Resolutions its main aims as led down by the US was to legalise and provide the US-UK with international legitimacy for the invasion of Iraq and to get away with their violation of international law.

[915] Mohmoud Hmoud, 'The Use of Force against Iraq: Occupation and Resolution 1483', 36 *Cornel International Law Journal,* No. 3 (2004) 435-453.

Of considerable importance concerning the impact of the Iraq war is the role of the ICC.[916] It must be emphasized, however, that a glance at the way in which the US conducted this war reveals that it involves legal issues needing to be addressed by the ICJ and ICC. In this regard, many US officials made various false statements about Iraq.[917]These include statements to the media, at the UNSC and in the US Congress: all these to authorise the war on Iraq. These statements include those of Bush, Cheney, Condoleezza Rice as a National Security Advisor, the US Press Secretary Ari Fleisher, Powell, Donald Rumsfeld and Paul Wolfowitz. In might be argued that all of the above-mentioned names played a part in this war; therefore, they must be held accountable for it and its consequences.

On this point, the UN Charter makes no attempt to define the concept of an act of aggression, but merely authorises the UNSC in Article 39 to specify what constitutes a threat to peace, breach of peace and act of aggression. Without doubt the acts of the US officials were a clear act of aggression. It is true that the UN have, however, experienced many difficulties in interpreting Article 39, although it appears to be generally accepted among UN members that the UNGA's efforts to fill the gaps in the UN Charter in its Resolution 3314 (XXIX) is reasonable to be treated as addressing the question of defining an act of aggression, as well as norms set down in the Nicaragua Case. As illustrated in the definition of an act of aggression, the use of force against Iraq amounts to acts of aggression and a breach of Article 2(4) of the UN Charter, as it was carried out without clear authorization from the UNSC.

---

[916] The Statue of an International Criminal Court was adopted in 1998. However, the main opponent to the ICC is the US. 37 *ILM* 999 (1998). See Antonio Cassese, et al (ed.,), *The Rome Statute for an International Criminal Court,* (Oxford, Oxford University Press, 2002).

[917] Rana Kabbani, 'No One is Taken in by the US Lies: The Graves of Falluja Show the Reality of Iraq's Occupation', *The Guardian*, (Tuesday 23 November 2004).

Consequently, it could validly be argued that the US was stepping into an unknown adventure in Iraq and, based on the above criteria, many war crimes have actually taken place in Iraq. There are clear indications that the large scale of collateral damage and civilian deaths, and the gross violation of international law norms caused by the US-UK campaign contained many elements of war crimes, to the extent that there may be a legal basis for applying Nuremberg Tribunal norms;[918]The United Nations International Criminal Tribunal for Former Yugoslavia (ICTY);[919]and The United Nations International Criminal Tribunal for Rwanda (ICTR).[920]

In these respects, any member of the UN seeking to enforce its Resolution is required to produce documentary evidence to the UNSC to follow procedures designed to maintain international peace and security. Therefore, the burden of proving that Iraq had breached UN Resolutions lies on the US-UK who made such allegations. These findings raise serious concerns about the prosecution of the US-UK and other leaders who planned to wage this war in accordance with Article 5 of the UNGA Resolution 3314 of 1974 that defines aggression and the violation of international human rights law and customary international law in accordance with the principles of above war criminal tribunals. Both Bush and Blair aggravated the risk posed to international peace and security by Iraq's WMD before the invasion in 2003. It is a well-known fact that these fears were not founded.

7.4 Findings and Concluding Remarks on Chapter Seven

This Chapter recaps the basic points developed in previous Chapters and examined whether the Iraq invasion in 2003 could possibly find support in the UN Charter,

---

[918] International Tribunal (Nuremberg) Judgment and Sentences, 41 *AJIL* (1947) 172.
[919] The Statute of International Tribunal for Former Yugoslavia (ICTY) reprinted in 14 *HUM. Rts. L. J.* 211 (1993).
[920] The Statute of International Criminal Tribunal for Rwanda (ICTR) reprinted in 33 *ILM* 1590 (1994).

international law or customary international law. This war and its aftermath demonstrates that the US's argument that Saddam had a connection with terrorism and could possibly have employed WMD against the US as set out in *NSS;* and Powell's presentation turned out to be just an Anglo-American vehicle to legalise unauthorized war.

In analysis of the war justifications, this Chapter called for the war on Iraq to be legitimately mandated and to be justified in terms of Articles 42 and 51 of the UN Charter. In fact, the US invoked the right of self-defence as a legal justification for military action against Iraq. Because Iraq had not attacked the US; planned to attack or played any part in 11 September incidents; nor were there express provisions made in Resolution 1441 to cover the use of force against Iraq.

Thus, this Chapter concludes that a breach of international obligations occurs when a state refuses or fails to perform its obligations undertaken in accordance with the UN Charter or customary international law. This leads to a second conclusion. Essentially, the effect of any breach of international law is not a legal justification for parties concerned or any member of the UN to take unilateral action (except in self-defence), but to bring the matter to the attention of the UNSC as well as the UNGA. The general rule here is that international law places the burden of legal justification of the use of force on states that violate the principle of prohibition of waging wars. The ICJ adopted a similar approach in the Nicaragua Case.

The war on Iraq was planned as part of a war on terrorism under which the US-UK moved away from their international obligations under the UN Charter, human

rights law and customary international law. These findings raise serious concerns about the right of anticipatory self-defence as legal justification for war on Iraq as well as challenging the role of the UN, and normatively of the fundamental principle of the non-use of force. When considering the legality of the Iraq war, one should bear in mind that the UN Charter and customary international law contain rules covering justification for wars *jus ad bellum* and regulation of wars *jus in bello,* as well as elements necessary for investigation and prosecution of war crimes.

An identical analysis of the US's legal justification for war on Iraq, this thesis submit that it contain a weak arguments. First, Iraq possessed and was developing WMD. Second, pre-emptive self-defence against terrorist acts and renew authority to use force from previous UNSC resolutions. Third, Iraqi links with Al-Qaeda. Fourth, bring democracy and liberation of Iraqi.

All the above arguments and evidence released to date regarding justifications for the invasion in 2003 have dramatically been clear false justifications and wrong policy. It is clear that all this constituted a violation of Iraq sovereignty as well as breach of international law.

Most notably, the justification for war on Iraq offered by the US does not provide positive evidence that the existence of Iraqi WMDs have threatened international peace and security, as it is evident that Iraq did not have these weapons prior the invasion. These findings stress the potential problems of the UN in securing international peace and security, the dangers of the US hegemony and of the international new system built around the idea of the pre-emptive use of force. On the

contrary, the UN peaceful system stands confused under the strains placed upon it by the US hegemony that does not conform to the rules of the UN Charter. The aim of making Iraq a safe and better place has not been achieved.

CHAPTER EIGHT

THE UNITED KINGDOM'S JUSTIFICATION FOR THE IRAQ INVASION UNDER INTERNATIONAL LAW

CHAPTER EIGHT
THE UNITED KINGDOM'S JUSTIFICATION FOR THE IRAQ INVASION UNDER INTERNATIONAL LAW

8.1 Introductory Remarks

After analysing in Chapter Seven the US's justification for the invasion and occupation of Iraq in 2003 and the possible grounds for the use of force, this Chapter focuses mainly on the UK's justification for the war on Iraq under international law. Therefore, it first examines the UK's reasons for the war against Iraq. As the thesis asked in Chapter Seven, the fundamental question of this Chapter is whether the evidence provided by the UK was sufficient to allow the use of force against Iraq. In other words, was the UK's claim of an imminent Iraqi threat credible?

The problem of the UK's legal justification for invading and occupying Iraq is clear from the fact that the war's purposes were continually changing. This can be seen in the light of the UK Prime Minister's statements before the House of Commons on 25 February 2003 and 18 March 2003, and in his dossier of 24 September 2002 entitled 'Iraq's Weapons of Mass Destruction', which claimed to set out credible evidence and the legal justification for the war on Iraq, in addition to the advice of Lord Goldsmith, the British Attorney General in 'The Legal Basis for the Use of Force against Iraq' of 17 March 2003.

Therefore, in reaching that conclusion, the UK relied on the above evidence as justification for war on Iraq. Second, with these problems in mind, this Chapter turns to critically review and analyse the legal definition of the words 'act of aggression' under Article 39 of the UN Charter, and the UNGA Resolution 3314 of 1974 defining

acts of aggression. Although, as noted above, the primary purpose here is to assess the legal consequences of using force to invade, occupy and carry out the mass killing of innocents in Iraq without UNSC authorization.[921]It is widely believed that, as the UK has signed up for the International Criminal Court Statute (ICC), this raises the question of the possibility of referral of the invasion of Iraq and its consequences to the ICC for prosecution of individuals, leaders and senior commanders in the British military forces responsible not only for war crimes committed in Iraq, but environmental and cultural damage.

8.2 The United Kingdom's Legal Justifications for War '*jus ad bellum*'

8.2.1 The September 2002 Dossier: 'Iraq's Weapon of Mass Destruction, the Assessment of the British Government'

As noted, this Chapter explores the UK's legal justification for the use of force against Iraq and asks whether it found support in international law. In its unlimited support for the US's aggressive and militaristic foreign policies in the aftermath of the September 11 incidents, the UK's legal justifications for the war on Iraq can be seen as the 'weakest link'.[922]

Critics of the UK commonly point out that it followed in the US's footsteps. In the context of the use of force, this thesis has already shown that there are only two legal cases for the use of force; in individual or collective self-defence under Article 51 of the UN Charter, and if authorised by the SC under Chapter VII of the Charter. It might be argued that there are a number of other cases in customary international law

[921] GA Res. 3314, UN GAOR, 29th Sess., Supp.No.31, at 142 (annex), UN Doc.A/9631 (1975).
[922]Tony Blair, PM Statement Opening Iraq Debate (18 March 2003), at http://www.number-10-gov.uk/output/page 3294-asp>.

for the use of force; that is to say, on a humanitarian basis, self-determination and in protection of nationals abroad, which will not be discussed in this Chapter.[923]

Before assessing the merits of these justifications it is useful to clarify a number of points. The first objection to war has already been mentioned briefly; why should we not exhaust all peaceful methods in the UN Charter? Second, many attempts were made to stop Blair from resorting to force on Iraq without the express authorisation of the UNSC. Unfortunately, these efforts did not succeed. Third, it should be emphasized that the original objection to the war was wider, but regrettably failed to stop the war.

These efforts included massive public opposition: the Stop the War campaign where more than 30 million people in 300 cities around the world demonstrated on Saturday 15 February 2003; within the Labour Party when many members challenged the rush to war; the House of Lords as well as the House of Commons and Public Interest Lawyers in their letters to Blair dated 22 January 2003,[924]and to Defence Secretary Geoff Hoon on the same day.[925]Notwithstanding their shortcomings, this line of opposition to Prime Minster Blair was intended to prevent the war on Iraq and to save Iraqis from the scourge of the war. Fourth, it has been suggested that this does not sound like the kind of democracy that the British would be proud of.

---

[923] Michael W. Reisman, 'Assessing Claims to Revise the Laws of War', 97 *AJIL* (2003) 82-89.

[924] On this letter the Public Interest Lawyers put Blair of notice of committed war crime if force use on Iraq without UN authorisation.

[925] On this letter the Public Interest Lawyers put Geoff Hoon on notice of the consequences of the use of force against Iraq without UN authorisation and held him as Defence Minster responsible for the crime of aggression and crime against peace as well as accountable to ICC in The Hague. See, George Farebrother and Nicholas Kollerstrom eds., *The Case against War, The Essential Legal Inquiries, Opinions and Judgments concerning War in Iraq*, 2nd edn., (Nottingham, The Legal Inquiry Steering Group, Institute for Law and Peace, Russell Press Ltd., 2004).

Therefore, the British Parliament was split over the role of the UK in the war. However, this Chapter argues two main points: that it is true that the British Parliament authorised the Iraq invasion, which turned out to be built on unfounded justifications, but it was against the democratic wish of the British people.[926]Many commentators from diverse perspectives argue that this has impacted on democracy in the UK, as Blair did not tell the truth about why they were going to war. However, by 14 July 2003, 66% of British voters believed their Prime Minister had misled them over the war in Iraq.[927]The second point is that some within the Labour Party remain adamantly opposed to Blair's leadership.[928]

In the context of the UK's arguments for war, Blair said in the House of Commons on 25 February 2003 'The biological agents we believe Iraq can produce include anthrax, botulinum toxin, aflatoxin and ricin. All eventually result in excruciatingly painful death.'[929]Furthermore, he said on 18 March 2003 'Iraq continues to deny that it has any WMD, though no serious intelligence service anywhere in the world believes them...We are asked now seriously to accept that in the last few years – contrary to all history, contrary to all intelligence – Saddam decided to unilaterally to destroy those weapons.'[930]Despite this, it soon became evident that all Blair's claims proved to be untrue. On 13 July 2003 the former UN chief inspector, Hans Blix, said in reply to Blair that his claim in the Government's

---

[926] In reaction to Iraqi Survey Group (ISG) report Jeremy Corbyn, Labour MP for Islington North said 'Hans Blix was denied time to go back in to Iraq 19 months ago. Since then, many thousands have died allegedly in a war for WMD and we now have confirmation for the illegal occupying forces that there are no such weapons. Those that supported the war should hang their heads in shame. I look forward to Tony Blair being put to close scrutiny in Parliament about this next week.' *The Independent*, London, Thursday 7 October 2004.
[927] *The Daily Mirror*, Monday 14 July 2003.
[928] Ibid.
[929] House of Commons, 25 February 2003.
[930] House of Commons, 18 March 2003.

dossier that Saddam could strike using WMD within 45 minutes had been a 'fundamental mistake.'[931]

All these statements were efforts to convince MPs, members of the Labour Party and the British public that the UK had a legal case for the use of force against Iraq without UN authorisation. The effect of this war is that many in the Middle East believe that the military actions taken by the US and the UK resulted in the deaths of many Iraqi civilians. In their view, the elected representatives in both countries voted for all these deaths; therefore, the citizens of these nations were responsible for all tragedies happening in Iraq.[932]

The reasoning set out above is undoubtedly consistent with the fact that on 6 July 2004 Blair said to the Evidence to Commons Liaison Committee, 'I have to accept we haven't found them [WMD] and we may never find them. They could have been removed. They could have been hidden. They could have been destroyed.'[933]On the other hand, many believe that Blair's credibility has been destroyed as he lied to his people when he knew that he was to taking his country to war without legal justifications.

In the light of this discussion, Blair also said on 14 July 2004, in his statement on the Butler report 'I have to accept, as the months have passed, it seems increasingly clear that at the time of invasion, Saddam did not have stockpiles of chemical or

---

[931] *The Daily Mirror*, Monday 14 July 2003 at 2.
[932] Robin Cook, 'Now we know Just How far Parliament was Mislead over Iraq'. *The Independent*, London, 4 September 2003.
[933] *The Independent*, London, 4 September 2003.

biological weapons ready to deploy.[934]It is clear that he lied about the war's aims, which he said were to stop Saddam from planning an attack on the UK, while basically he knew that Saddam had no capability, as there were no WMD found in Iraq.[935] It is evident that Saddam was not really a threat to his neighbours and certainly he was no threat to the UK or to any of its allies.

It is against this background and having made these points of clarifications – the failure of the democratic process in the UK and the UN Charter to address fully or convincingly the use of force against Iraq – that many developments since the Iraq invasion in 2003 must be noted. In general terms, not surprisingly, recent reports show that the British public are paying the price of Labour's failure to address the issue of disarming Iraq from WMD peacefully. The recent report in the Lancet shows that deaths in Iraq have risen dramatically among British and the Americans troops as well as Iraqi civilians, and ultimately the war did not achieve its aims.[936]

It might be argued that the justifications offered by the UK for the war on Iraq can properly be identified as another warning message of the death of the UN system based on a peaceful world, as well as highlighting weaknesses in rules that govern the use of force. For example, in 1981, the UNGA passed a Resolution condemning

---

[934] Blair's Statement on the Butler Report, 14 July 2004.

[935] Kim Sengupta, 'We saw no WMDs- No 10 Labelled US 'Naive Dupes', *The Independent*, London, Thursday 7 October 2004.

[936] See, Andrew Buncombe and Ben Russell, 'The Lancet: 655,000 the Toll of War in Iraq', *The Independent*, 12 October 2006; Maggie O'riordan, 'After the TV War the Reality of War', Sunday *Mirror*, 23 March 2003, in its report of 'Many No' Maggie described the impact of the war only for only 72 hours of the being of the hostilities with true pictures shows the what damage the war caused to Iraqi. *No Chance*, a picture of 'a dead Iraqi soldier lies wrapped in a blanket as soldiers from 29 Commando secure Al-Faw. *No Escape*, a picture of 'a US solider guards Iraqi prisoners of war in a makeshift barbed wire pen outside Safwan. No Surrender this is a picture of two headless bodies of Iraqi soldiers in Al-Faw 'lie slumped in a trench, the white flag of surrender at their side them'. No Mercy, is a picture of 'a badly burn Iraqi baby in Baghdad' with his mum crying. No Help, another picture for an old Iraqi 'woman hit by shrapnel begs for help in Safwan.'

Israel's attack on the Iraqi nuclear reactor, and considered this an act of aggression, but concerning the US-UK's large scale attacks on Iraq between 1991 and 2003 the UNGA failed to condemn any of these. Secondly, the UNSC failed to condemn the US attack on Libya in 1986 despite the fact that the UNGA again declared in its Resolution 41/39 that the attack was considered an act of aggression.[937]The inability of the UN to address the vital question of the use of force by the US-UK without authorisation represents a challenge to international peace and security.

It is, however, worth giving brief consideration to the UK's arguments that dragged the British into an unauthorised war in which the US-UK found their troops in a struggle for survival in the face of Iraqi resistance. First of all, in support of his case, the British Prime Minster released, on 24 September 2002, a dossier that he claimed contained evidence and legal justifications for the use of force against Iraq. In fact, these justifications were based mainly on the right of self-defence and the war on terrorism, as Al-Qaeda posed an imminent threat to the UK with the possibility of employing WMDs.[938]Furthermore, Blair claimed that the one of the aims of the war

---

[937] Judith Gardam, *Necessity, Proportionately and the Use of Force by States*, (Cambridge, Cambridge University Press, 2004).

[938] For detailed discussion on the concept of war on terror see general, Michael N. Schmitt, *Counter-Terrorism and the Use of Force in International Law,* George C. Marshall European Center for International security studies, The Marshall Center papers No.5; Gilbert Guillaume, 'Terrorism and International Law',53 *ICLQ* (2004), 537-548; Michael Barletta, 'Report: Chemical Weapons in the Sudan', *The Non-proliferation review*, vol.6, (1998); Michael Reisman, 'International Legal Responses to Terrorism', 22 *Houston Journal of International Law,* No.3 (1999)51-4; Ruth Wedgewood, 'Responding to Terrorism: The Strikes against Bin Laden' 24 *YJIL* (1999), 559-57.; Pual Eden, *11 September 2001:A Turning Point in International or Domestic law?*(New York, Transnational Publishers, 2004); John Strawson (ed.,) *Law after Ground Zero* (Sydney, London and Portland: Glasshouse press (2002); Jules Lobel, 'The Use of Force to Respond to terrorist attacks: The Bombing of Sudan and Afghanistan', 24 *YJIL* (1999) 537-557; Dominic McGoldrick, *from '9-11' to the 'Iraq War 2003', International Law in an Age of Complexity,* (oxford and Portland, Oregon, Hart publishing, 2004); J.N Maogoto, 'New Frontiers, Old Problems: The War on Terror and the Notion of Anticipating the Enemy', *NIIR*,vol. LI(2004); Elizabeth Wilmshurs, 'The Chatham House Principles of International Law on the Use of Force in Self-defence', 55 *ICLQ* part 4(October 2006); Sean Murphy , 'Terrorism and the Concept of 'Armed Attack' in Article 51 of the U.N Charter', 43 *HILJ.*(2002) 43; Michael Byers, 'Terrorism, the Use of Force and International Law after September 11', 51 *ICLQ*, Vol. (2002) 401-401; John Yoo, 'International Law and the War in Iraq', 97 *YJIL*, (2003).

on Iraq was to enforce UN Resolutions. According to Blair, the threat of armed attack by Iraq was imminent. In addition, Saddam regime was linked to Al-Qaeda.[939]There are several problems with this account, which this Chapter discusses below.

It is important to emphasise in this regard that Blair has provided no credible evidence that Iraq has carried out or intended to carry out attacks on the UK or its allies, or that the UK has the right to use force to enforce UN Resolutions without clear authorisation from the UNSC.[940]On the other hand, this thesis also argues that the UK had not exhausted all peaceful means to settle its dispute with Iraq. In other words, it would have been better to tackle Iraq's WMD peacefully before launching a military attack on Iraq.

For the purpose of exploring the UK's arguments raised regarding the war on Iraq, they are grouped into three types of argument: first, disarming Saddam from WMD; second, enforcing the UN Resolutions against Iraq; third, the danger of Iraqi WMD and the UK's right to exercise its inherent right of self-defence.

8.2.2 Disarming the Iraqi Regime

The controversies that exist over the concept of disarming Saddam without UN authorization, however, have left their mark. Without doubt, it was not mentioned in the UN Charter as one of the exceptional cases when states can use force. In spite of this, Blair argued in favour of war, and considered that the use of force was necessary to disarm Saddam from WMD. Any analysis of the UK's justification for the use of

---

[939] See, Response of the Secretary of State for Foreign and Commonwealth Affairs to the Second Report of the Foreign Affairs Committee, Session 2002-2003, cm 5793.
[940] Bowett, n 656 above.

force against Iraq would be incomplete if we did not examine the dossier of 24 September 2002.[941]

The dossier justified the use of force against Iraq at that time using the following arguments, which turned out to be false. First, Blair claimed that prior to the invasion Iraq had the capability to produce the chemical agents mustard gas, sarin and cyclosarin. Blair also claimed that Saddam not only had the above, but also VX and the biological agents anthrax, botulinum toxin, aflatoxin and ricin.[942]Second, the Iraqi regime, prior to the invasion, also had up to 20 Al-Hussein missiles, with a 650km range, the warheads of which carry chemical and biological agents. Third, Saddam had at that time at least 50 Al-Samoud liquid propellant missiles, the range of which is thought to be up to 200km. Fourth, in the same line, prior to the war Saddam had the capacity to deploy some chemical and biological weapons within 45 minutes, using the tactic of mobile laboratories for producing biological warfare agents.

As noted earlier on 13 July 2003, the former UN chief inspector, Hans Blix, challenged Blair and said:

> I don't know exactly how they calculated this figure [45 minutes]. They over calculated the intelligence they had. A weapon is also about a means of delivery and it seems to me highly unlikely there were any means of delivering biological or chemical weapons within 45 minutes.[943]

---

[941] 'What we were Told, what we Known Now and the Unresolved Issues', *The Independent,* Friday 6 February 2004.
[942] Mark Steel, 'Looking for WMD? Come to London's Docklands Exhibition, Hurry, Hurry, Hurry to the Chemical Warehouse off the M25 when we've gone Anthrax Crazy', *The Independent*, 4 September 2003.
[943] *The Daily Mirror*, Monday 14 July 2003 at 2.

Fifth, in addition to Saddam's weapons capabilities described above, Blair claimed that Iraq had the expertise and data to make nuclear weapons.

Furthermore, Blair claimed that prior to the war Iraq was seeking prohibited weapons, including trying to develop nuclear weapons; Iraq was seeking to produce longer range ballistic missiles with a reach of 1000km and a new engine testing stand had been built for this purpose; Iraq had been recently engaged with 'front companies in third countries' who were seeking propellant chemicals for ballistic missiles in breach of the UN embargo, in addition to uranium from Africa countries such as Nigeria; Iraq was seeking to modify the L-29 remote-piloted jet trainer aircraft to deliver chemical and biological agents over a large area that could be used against many neighbouring countries.

First of all, as noted above, at the heart of Blair's case for invading and occupying Iraq in 2003 was his claim that Iraq was able to launch WMD in 45 minutes.[944] However, as noted, it is clear that the 45 minutes in the UK's legal justification was inserted to give the matter a degree of urgency. The concept of urgency to deal with the Iraq WMD issue was also used to justify the use of force against Iraq by the US. It establishes that the Iraq imminent attack was not real.[945]

In this context, Robin Cook, the British former Foreign Secretary who resigned over the war row, said:

---

[944] Michael Byers, 'Pre-emptive Self-Defence: Hegemony, Equality and Strategies of Legal Change', 11 *J. Pol. PHIL.*, 171, 177-79 (2003).

[945] The ISG Report, 'The Final Judgment, Saddam Less of a Threat in 2003 than in 1998', *The Independent*, 7 October 2004.

> It establishes that Iraq had no stockpile, no biological agents, no chemical feed stocks, no plants to manufacture them and no delivery systems to fire them...Saddam was no threat to us and had no weapons of mass destruction to pass to terrorists. Brushing the UN inspectors aside in order to go to war on false intelligence was a colossal blunder.[946]

It is widely believed that the 45 minutes was inserted in the dossier behind the backs of the Joint Intelligence Committee (JIC) responsible for the dossier, to strengthen Blair's political objectives.[947]

Nonetheless, on September 2003, the Intelligence Chief, Brian John, said that the dossier exaggerated the case for the war, as the claim that Iraq could launch WMD in 45 minutes was 'over-egged.'[948]It might be argued that even if Iraq failed to co-operate with the UN inspection regime this did not violate any positive Charter law, as most of the work of this regime was outside its scope. It will thus be seen that even if Saddam had WMD this would be no excuse for the use of force by the UK. In the face of the UK's argument that it had the unilateral right to use military force to disarm Saddam, it must be emphasised that these arguments were weakly presented as to their legal grounds and interpretation of Resolutions 678, 687 and 1441.

---

[946] Iraq: the Final Verdict, 'Nothing to Justify the Invasion' *The Independent*, Thursday 7 October 2004.
[947] Two Reporters, 'One Story: Campbell Sexed Up the Dossier', *The Independent*, Wednesday 13 August 2003.
[948] Kim Sengupta, Paul Waugh and Ben Russell, *The Independent*, 4 September 2003.

8.2.3 Enforcing United Nations Security Council Resolutions

Blair has gone to extraordinary lengths to argue that one of the purposes of the Iraq invasion was to enforce UNSC Resolutions about Iraq and its WMD.[949]The basis of this argument is that Iraq persistently failed to co-operate with the UN weapons inspection programme designed to disarm its WMD, violating a large number of UNSC Resolutions in this respect, so that the weapons inspection team was eventually withdrawn due to Iraqi non-cooperation. It would seem, then, that the UK's allegation that Iraq failed to comply with the UNSC Resolutions would not justify the use of force by the UK or any member of international community to enforce Iraq to comply with these Resolutions, as the conditions of the use of force were not met.[950]

From this it follows, as can be deduced from the above justification, that the Iraqi WMD threat was imminent to the extent that it could be ready for use in few minutes. To many legal scholars, this is just a cover for the use of force by the UK.[951]The controversial suggestion that the UK has the right to enforce UN Resolutions – in particular Resolutions 678, 687 and 1441 that deal with Iraqi WMD – as Iraq had not complied with these Resolutions, is in conflict with the UN Charter.

This thesis argues that it might be true that there were a few occasions where Iraq did not comply with the UN and its authority, but if Iraq had breached any of the UNSC Resolutions this would not have given the UK any right to use force unilaterally to secure Iraqi compliance. This fell under the duty of the UNSC who is authorised by the UN Charter to deal with such situations, not the UK or any other individual member state. This is a quite a different matter, however, as the proper

[949] For full discussion of the UK's justification for war on Iraq see, *The Guardian*, 5 March 2004.
[950] Higgins, n 749 above.
[951] Frank, n 33 above.

response to Iraqi non-compliance with the UNSC Resolutions, besides the inadequacy of the sanctions, should have been to seek alternative methods for disarmament through the UN inspection regime; not by using force.

Indeed as the case of the Iraq invasion suggests, there may be many problems with the concept of the unilateral use of force in cases involving enforcing the UNSC Resolutions. In this way, the effects of states' non-compliance with the UNSC Resolutions will require new policy and different approaches to tackle the problem. However, this will advance the UN's role in maintaining international peace and security. This is not to suggest the death of the UN. Rather, the suggestion here is that the Iraq case illustrates yet another aspect of the failure of the UNSC to prevent wars.

8.2.3.1 Security Council Resolutions 678, 687 and 1441

This section deals with question of whether Resolution 1441 provides legal justification for the UK to use force against Iraq as was also applied in the US's justification in Chapter Seven. In order to answer this question, it is necessary to note that one of the justifications offered by the UK for the use of force against Iraq was Iraq's non-compliance with UNSC Resolution 1441 (2002).[952]In this respect, as shown in Chapter Two, there is controversy over the actual intention of Resolution 1441. Therefore, perhaps the clearest attempts to justify the use of force are made in the UK's argument that Resolution 1441 authorised the use of force against the Iraqi regime in 2003 without further Resolution. It was mentioned that, first, Iraq was 'in

[952] UNSC Resolution 1441 (8 November 2002), 42 *ILM* 250 (2003)

material breach' of UNSC Resolution 687, which imposed the conditions for the ceasefire at the end of second Gulf War of 1991.[953]

The UK's second argument is that its authorisation to use force derives from the prior UNSC Resolution 1441 on Iraq following the second Gulf War,[954]as this Resolution states that in case of Iraqi non-compliance it would face 'serious consequences'. Therefore, according to Blair, this means the use of force without need for further Resolution. The third argument, however, based also on Resolution 1441, is that since Iraq had breached Resolution 1441, the conditions set out on a ceasefire agreement in Resolution 687 had terminated and, therefore, Resolution 687 was revived. According to Blair, this gave the UK the right to use force without the need for a new Resolution. There are several problems with this argument. It is not easy to terminate the obligation set out in Resolution 687 in this way.

However, the revived and implied authorisation arguments indicate a serious problem of giving individual member states the right to interpret UNSC Resolutions.[955]It would seem, then, that there is no judicial decision on interpretation of UNSC Resolutions on Iraq of what constitutes 'serious consequences' and 'threat to international peace and security'. Interpretation of legal terms with such serious effects it is by no means to be left to individual states motivated by political consideration as set out, for example, in the US's *NSS*.[956]

---

[953] SC 3955th meeting, 16 December 1998, see 'United Kingdom Materials on International Law' 69 *BYIL* (1998)590-591.
[954] Edger O'Ballance, *The Second Gulf War*, (Galago Books, 1992).
[955] For the impact of unilateral interpretation of the rule govern the use of force see, Marcelo G. Kohen, 'The Use of Force by the United States after the end of the Cold War, and its impact on International Law' in Michael Byers and George Nolte (ed.,) *United States Hegemony and the Foundations of International Law*, (Cambridge, Cambridge University Press, 2003).
[956] ICJ ruled out in Nicaragua case that there was no such doctrine in international law.

It should be noted that, in analysis of Resolution 1441, it is clear that it sets out a framework of different steps and obligations on Iraq to disarm its WMD peacefully.[957] As pointed out previously, the UNSC decides in Paragraph 1 of Resolution 1441 that 'Iraq has been and remains in material breach of its obligations' to scrap its WMD and cooperate with UN weapons inspectors. Therefore, the Resolution gives Iraq a 'final opportunity to comply with its disarmament obligations under relevant Resolutions.'[958]The framework of the disarmament of Iraq as set out in Resolution 1441 provides that Iraq must fully cooperate with the inspection regime. However, in case of any failure of Iraq to comply, the heads of UNMOVIC and IAEA are under a duty to report such failure to the UNSC to decide what actions may follow.[959]

In this sense, Paragraph 4 of Resolution 1441 does not support the UK's case, as it says that the Council:

> Decides that false statements or omissions in the declarations submitted by Iraq pursuant to this Resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of this Resolution shall constitute a further material breach of Iraq's obligation and will be reported to the Council for assessment in accordance with Paragraphs 11 and 12 below.[960]

Furthermore, as Paragraph 12 expressly says that the UNSC will 'Consider the situation and the need for full compliance with all of the relevant Council Resolutions

---

[957] Gray, n 229 above.
[958] Paragraph 1 of UNSC Resolution 1441 (2002)
[959] Paragraph 11 of UNSC Resolution 1441(2002)
[960] Paragraph 4 of UNSC Resolution 1441 (2002)

in order to secure international peace and security.'[961] Finally, the UNSC decides, 'The Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations.'[962]

In analysing the language of Resolution 1441, it is clear that it does not provide any authorisation for the UK to use force against Iraq. The words 'serious consequences' were misunderstood as authorising the use of force. It is self-evident that nothing in the wording of Paragraph (4) implies that any failure of Iraq to comply or cooperate with its obligation under this Resolution, even it reported to UNSC, would provide any legal justification for the use of force on Iraq.

Contrary to that, the UK argued that the Iraqi failure suspended the US-UK obligation under the Ceasefire Agreement pursuant to the provisions of Resolution 687 adopted at the end of the Gulf War of 1991. Such argument lacks any legal basis for a simple reason: the circumstances in which this Resolution was adopted were different to those of 2003. Accordingly, it is important to emphasise that Resolution 1441 does not allow any force to be used to enforce its provisions, as it indeed required a further assessment and, therefore, new authorisation for the use of force. Thus, any use of force contrary to that requirement would be in violation of Charter law.

Even more clearly, it is a fact that the UK's failure to exhaust all peaceful means to resolve its disagreement with Iraq indicates the attitude of Blair's Government towards its support for the US's, and outlaw states such as Israel's, breaches of

[961] Paragraph 12 of the UNSC Resolution 1441 (2002)
[962] Paragraph 13 of the UNSC Resolution 1441(2002)

international law. This underlines the role of international law in maintaining international peace and security and, more importantly, the lack of rule of law in UK foreign policy.

It is not surprising that it can be clearly seen in the statements of Blair's Government officials that they did not consider the use of force against Iraq to be illegal, ignoring the advice of the British Attorney General to Blair on the legality of the Iraq war. However, in this document, the Attorney General advised Blair that pre-emptive self-defence attack is 'Not a doctrine which, in my opinion, exists or is recognised in international law.'[963]This means that the UK's claim of its right to use military force, based on a wide interpretation of Resolution 1441, cannot find support in international law.[964]

In discussing the wording of UNSC Resolution 1441 and the argument that it provides for the use of force against Iraq in 2003, the British Attorney General concludes that:

> The language of Resolution 1441 leaves the position unclear and the statement made on adoption of the Resolution suggests that there were different points of view within the Council as to the legal effect of the Resolution…I remain of the opinion that the safe legal course would be to secure the adoption of a further Resolution to authorise the use of force.[965]

The question that then arises is whether Resolution 1441 implies the use of force.

---

[963] British Attorney General's Advice to Blair on Legality of Iraq War, 7 March 2003 at http://www.globalpolicy.org/security/issues/iraq/document/2003/0307advice.htm.
[964] Gray, n 33 above.
[965] Ibid.

In considering the above advice and the statements made prior the adoption of Resolution 1441, in particular the joint statement made on 8 November 2002, by France, China and Russia, it is clear that the intention of the UNSC was that Resolution 1441 does not automatically authorise the use of force against Iraq.[966]

It is also clear from the negotiating history of UNSC Resolution 1441 that there is no support for the position of the UK in this regard. The reasoning set out above is undoubtedly consistent with the arguments of the bulk of legal scholars. To cite one example, Higgins argues that the UN Charter provides 'no entitlement' for individual states to 'enforce prior Security Council Resolutions by the use of force.'[967]

Indeed, for a variety of reasons there are considerable differences of opinion among scholars. Two areas appear particularly important here with regard to Resolution 1441. First, it is clear that the interpretation of Resolution 1441 must be a legal matter concerning the ICJ and its advisory opinion role, and not subject to political discretion of individual members of the UN, as this Resolution was not sufficient in itself to provide a legal basis for the use of force against Iraq.

---

[966] The statement state that:

> Resolution 1441 (2002) adopted today by the Security Council excludes any automatically in the use of force. In this regard, we register with satisfaction the declarations of the representatives of the United States and the United Kingdom confirming this understanding in their explanations of vote, and assuring that the goal of the resolution is the full implementation of the existing Security Council resolutions on Iraq's weapons of mass destruction disarmament. All Security Council members share this goal. In case of failure by Iraq to comply with its obligations, the provisions of paragraphs 4, 11 and 12 apply. Such failure will be reported to the Security Council by the Executive Chairman of UVMOVIC or the Director General of the IAEA. It will be then for the Council to take position on the basis of that report. Therefore, this resolution fully respects the competences of the Security Council in the maintenance of international peace and security in conformity with the Charter of the United Nations.

[967] Higgins, n 749 above.

In order to be persuaded by this justification, one would need to be satisfied that Resolution 1441 expressly authorised the UK to use force against Iraq. Second, in setting out ICJ jurisdictions, Article 36(2) of the Statute of the ICJ states that the Court could consider all disputes, which include:

> All legal disputes concerning: a) the interpretation of a treaty; b) any questions of international law; c) the existence of any fact which, if established, would constitute a breach of an international obligation; d) the nature or extent of the reparation to be made for the breach of an international obligation.[968]

In this way, it is clear that the issue of the interpretation of Resolution 1441 and the question of whether Iraq failed to co-operate is a legal question that must be dealt with by the ICJ.

There are clearly weaknesses in Blair's arguments to legalize the UK militaristic policy against Iraq. Therefore, he ignored and simplified the advice of the British Attorney General. Consequently, the UK invoked the two exceptions of the fundamental norms of the prohibition of the use of force. This reveals that interpretation of Articles 42 and 51 of the UN Charter must be narrow, as the use of force must be limited to only the two exceptions discussed earlier: in individual or collective self-defence under Article 51 of the UN Charter, and under authorisation of the UNSC. However, all these conditions were not met for the UK's legal case to use force against Iraq.

---

[968] Ibid.

As already noted, In this regard, the UN Charter sets out the purposes of the UN and obliges member states to settle disputes peacefully and limit the use of force[969] by establishing the principle of prohibition of the use of force in Article 2(4).[970] On the other hand, Chapter VII of the UN Charter prohibits aggression, and empowers the UNSC to identify any act of aggression.[971] The point here is to stress that the UN Charter gives the UNSC the right to impose measures to enforce its decisions,[972] as well as other measures involving the use of force.[973]

It is clear that the UNSC has the power to determine whether Iraqi non-cooperation constitutes a threat to international peace and security. Thus, considering the wide discretion the UNSC has in making such determination, the UK has no right to determine that Iraq's non-cooperation gives rise to authorizing the use of force.

---

[969] Article 1 of the UN Charter states:

> (1) the purpose of the United Nations are: To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to breach of peace.

[970] Article 2 (4) of the UN Charter states:

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

[971] Article 39 of the UN Charter states:

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

[972] Article 41 of the UN Charter states:

> The Security Council may decide what measures not involving the use of armed force are to be employed to give the effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

[973] Article 42 of the UN Charter states:

> Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate; it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea, or land forces of Members of the United Nations.

What this Chapter is asserting here is that the UK does not have the right to determine that Iraq's non-cooperation constitutes a threat to international peace and security. If the above view were accepted, on the one hand Article 51 of the UN Charter would be without effect. On the other hand the UNSC and its power, as well as the concept of the UN as a forum for the maintenance of international peace and security, would be undermined.

8.2.3.2 The Iraqi WMD and the Right of Self-Defence

The question arises, in this section, of whether self-defence is a legitimate basis for war on Iraq to enforce it to scrap its WMD. Indeed, the right of self-defence as noted in Chapter Seven is an exception to the prohibition of the use of force between states: thus, it must be interpreted narrowly. It is commonly understood that the UN Charter imposes another restriction on this right: that is to say that states must inform the UNSC of their actions. In other words, states may exercise the right of self-defence until the UNSC takes on its responsibility for the maintenance of international peace and security; but in most cases of the use of force in self-defence and in states' practice there are many cases when the conditions of this right has been invoked.[974]

The main arguments put forward by states shows that they mainly relied on Article 51 of the UN Charter as legal cover for their military actions.[975]However, this gives rise to an urgent need to define many phrases in Article 51 of the UN Charter, such as what constitutes a threat to peace as well as effective regulation and control of the use of self-defence as an excuse for the use of force outside the UN framework.

---

[974] Higgins, n 749 above.

[975] See, Michael Byers and George Nolte (ed.,) *United States Hegemony and the Foundations of International Law*, (Cambridge, Cambridge University Press, 2003); 'Contemporary Practice of the United States' 84 *AJIL* (1990), 545.

It is clear that the inherent right of self-defence raises particular problems for the UN peaceful settlement system, as the US-UK presently remains active in the use of this right as a cover for the use of force. This Chapter argues that Article 51 of the UN Charter clearly acknowledges that in the case of an armed attack occurring against any member state the victim state has an inherent right of individual or collective self-defence. Furthermore, Article 2(7) imposes on the UN an obligation not to intervene in internal affairs of states.

With these principles in mind, the right of self-defence does not justify the use of force against Iraq, as the above argument does not include the two basic possible legal bases for resort to force in self-defence.[976]The claim that, prior to the war, Iraq had the capacity to produce chemical weapons and other long range missiles that could carry chemical and biological agents does not give a legal ground under international law for the use of force for the following reasons:

1. At that time, Iraq had not launched an actual armed attack against the UK or its allies.
2. Even if Iraq had such capacity, a claim that turns out to be false, the threat from Iraq was not imminent. At the same time, to rely on the right of self-defence under Article 51 of the UN Charter the UK must show that the use of force to disarm Iraq from its WMD was necessary, and the only method available to scrap these weapons.
3. The right of self-defence requires that the use of force against Iraq must be a proportionate response to an Iraqi armed attack. In other words, an attack by Iraq must be instant, overwhelming, leaving no choice of means, and no

[976] Higgins, n 749 above.

> moment of deliberation.[977] It is well established that the requirements of necessity and proportionality are not recognized in international law, but are a basic core of customary international law.[978]

Within this context, these principles demonstrate that these conditions were essential for the use of force against Iraq. More importantly, while accepting the need to disarm Iraq, this thesis finds no support in the UK's legal justification for the war on Iraq, as none of these conditions were met. Accordingly, it is important to note that all these conditions do not arise in Blair's justification, as his country had not been subject to any of these requirements.

In this regard, Oppenheim argues that if some requirements are met the anticipatory use of force may be lawful. He states that:

> While anticipatory action in self-defence is normally unlawful, it is not necessarily unlawful in all circumstances, the matter depending on the facts of the situation including in particular the seriousness of the threat and the degree to which pre-emptive action is really necessary and is the only way of avoiding that serious threats, the requirement of necessity and anticipatory self-defence are more pressing in relation to anticipatory self-defence than they are in other circumstances.[979]

---

[977] *The Caroline* case of 1837.

[978] Gray, n 33 above. On proportionality and necessity see, 'The Nicaragua Case, The Advisory Opinion on the Legality of the Threat or the Use of Nuclear Weapons', *ICJ Reports* (1996) 226, at Para 141; 'The Advisory Opinion on the Oil platform Case', *ICJ Reports* (2003) at Para 43.

[979] Eli Lauterpacht, *Oppenheim's International Law*, 7th edn., Vol. 2, (London, Longmans, Green, 1952).

This section now turns to humanitarian intervention as a legal justification for the use of force.[980]At the very least, the Iraq invasion cannot be justified on the legal ground of humanitarian intervention as in Kosovo where there may be a sound legal basis of urgent need for the protection of other ethnic groups within the country. This Chapter also argues that, prior to the war, the human rights situation in Iraq was not causing a threat to international peace and security.[981] Therefore, it is by no means just if one describes Blair's concept of humanitarian intervention as justifying the use of force against Iraq in 2003.

On the other hand, Detter argues that anticipatory force falls under the prohibition of the use of force in Article 2(4) of the UN Charter, entailing a presumption that it is illegal. A mere threat of attack, according to Detter, does not warrant military action.[982]However, as discussed before, the use of force may be legal if authorised by the UNSC when acting under Chapter VII of the UN Charter to maintain international peace and security. Obviously, this does not also apply in the Iraq invasion case for the reasons discussed above.

8.3 The Meaning and Definition of Act of Aggression

8.3.1 Article 39 of the UN Charter

The main aim of this section is to demonstrate the importance of promoting accountability where it becomes increasingly essential.[983]It is clear that any use of force begins with civilian casualties and raises many questions in this respect. The

---

[980] Adam Roberts, 'Humanitarian War: Military Intervention and Human Rights' 69 *International Affairs* (1993) 429.
[981] Adam Roberts, 'The So-called "Right" of Humanitarian Interventions', 3 *Y. B. INT'L. HUM. L.* 3, (2000) at 6-7, 49-51.
[982] Detter, n 806 above.
[983] Knut Dormann, *Element of War Crimes under the Rome Statute of the International Criminal Court, Sources and Commentary*, 1st edn., (Cambridge, Cambridge University Press, 2002).

right of the unilateral use of force raises another question of whether the UK's action against Iraq can be considered as constituting an act of aggression or war crime, and if so how the UN system addresses this question.[984]As noted earlier, Article 39 of the UN Charter states, 'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.'[985]

Several points relating to this Article call for comment. First, the wording of the above Article demonstrates that the UNSC remains entitled to determine the existence of any threat to the peace, breach of the peace, or act of aggression. Second, it has to be noted that under Chapter VII of the UN Charter only the UNSC is empowered to authorise the use of force or any other means to maintain peace if international peace and security has been threatened or breached.[986]Third, at the same time, Article 39 of the UN Charter does not define what constitutes a threat or breach to peace, or even an act of aggression,[987]leaving much room for many interpretations and several arguments as to its meaning.

Therefore, to fill this gap the UNGA attempts to define an act of aggression in Resolution 3314 (XXIX) of 1974.[988]Of course, the US rejected the UNGA definition of aggression. However, it must also be noted that before the UNGA definition, many

---

[984] Colin Warbrick, 'The United Nations System: A Place of Criminal Courts?', *Transnational Law and Contemporary Problems,* (1995) 237-61.
[985] Ferencz B., *Defining International Aggression*, (Dobbs Ferry, Oceana, 1979).
[986] Helmut Freudenschuss, 'Article 39 of the UN Charter Revisited: Threats to the Peace and the Recent Practice of the UN Security Council', 46 *Austrian Journal of Public & International Law,* (1993) 1.
[987] Ibid.
[988] Definition of Aggression, A/RES/3314, reprinted in 13 *ILM* 710(1974).

attempts were made to define aggression.[989]This includes the Agreement for Pacific Settlement of Disputes; the Geneva Protocol of 1924; the Soviet Declaration of Aggression of 1933; the Convention for the Definition of Aggression of 1933;[990]the Buenos Aires Convention of 1936;[991]the Saafabad Pact of 1937 between Iraq, Afghanistan and Turkey;[992]and the Harvard Draft Convention on Rights and Duties of States.[993]It is interesting to note that the ICC Statute failed to define aggression.[994]In spite of the absence of a definition of aggression in the ICC Statute, it remains clear that the idea of penalising violations of human rights and the laws of war *'jus in bello'* can be traced back to Nuremberg and the Tokyo Tribunals.[995]The recent experience of the International Criminal Tribunal for the former Yugoslavia (ICTY)[996]and the

---

[989] Julius Stone, *Aggression and World Order*, (London, Stevens & Sons Ltd., 1958).
[990] 147 *LNTS* 71.
[991] 6 Hudson 361.
[992] 190 LNTS 21.
[993] Detter, n 806 above.
[994] The Rome Statute establishing the International Criminal Court was entered into force on 1 July 2002. For detailed discussion of the debates led to the Statute of the ICC, See generally, M. Cherif Bassiouni, (compiled.,) *The Statute of the International Criminal Courts: A Documentary History*; (Transnational Publishers, Inc, 1998); Antonio Cassese, 'On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law', 9 *EJIL* 2 (1998); Henry J. Steiner and Philip Alston, *International Human Rights in Context, Law, Politics, Morals*, (Oxford, Oxford University Press, 2000); George Schwarzenbereger, 'The Problem of an International Criminal Law', 3 *Current Legal Problems* (1950)263-96; M. Cherif. Bassiouni, (ed.,) *International Criminal Law, Procedural and Enforcement Mechanisms*, 2nd edn., Vol. II, (Transnational Publishers, 1999); Roelof Haveman, Olga Kavran and Julian Nicholls, eds., 'The Context of the Law' in *Supranational Criminal Law: a System Sui Generis,* Vol. 1, (Grotius Centre for International Legal Studies, Leiden University Campus, The Hague).
[995] See Yoram Dinstein and M. Tabory, *War Crimes in International Law*, (The Hague, Martinus Nijhoff, 1996); Mauro Politi and Giuseppe Nesi, *The International Criminal Court and the Crime of Aggression*, (Aldershot, Ashgate Publishing Inc, 2004); Cherif Bassiouni, *International Criminal Law, Enforcement*, vol. II, 2nd edn., (Transnational Publishers, Inc, Ardsley, New York, 1999).
[996] See generally, *The Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (ICTY). SC Res 827 UN SCOR, 48th Sess., 3217th mtg., UN. Doc. S/RES/827 (1993), reprinted in *14 Hum. Rts. L.J*, (1993), 197; Rachel Kerr, *The International Criminal for the Former Yugoslavia*, (Oxford, Oxford University Press, 2004); *The Statute of International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (ICTY), UN Doc. S/2504, 3 May 1993, reprinted in *14 Hum. Rts. L.J* .(1993),198; *The Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, A/50/365-S/1995/728, 23 August 1995; *The Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, A/50/292,S/1996/655, 16 August 1996; Colin Warbrick, 'Evaluating the ICTY and its Completion Strategy: Efforts to Achieve Accountability for War Crimes and their Tribunals' 3 *Journal of*

International Criminal Tribunal for Rwanda (ICTR), considered another attempts, despite their shortcomings.[997]

However, UNGA Resolution 3314 (XXIX) defines aggression in Article 1 as, 'The use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.'[998]The ICJ confirmed this definition in the Nicaragua case.[999]However, the Court considered the definition as expressing customary law in addressing the question of whether self-defence can only be exercised in case of an armed attack.[1000]

Indeed, in applying this definition to the facts emerging from the Iraq war in 2003, this includes for example, the US Marines' assault on Falluja as one of the disturbing pictures that illustrates the true human cost of the war on Iraq.[1001] It may be

---

International Criminal Justice (2005), 82; Gideon Boas & William A.Schabas ed., *International Criminal Law Developments in the Case Law of the ICTY'*, (Leiden/Boston, Martinus Nijhoff Publishers, 2003).

[997]See, M. Cherif. Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability', 59 *LAW and CONTEMP. PROB.* 9 (1996); Ivan Simonovic, 'The Role of the ICTY in the Development of International Criminal Adjudication', *Fordham International Law Journal* 23 (1999) 440-59.

[998] Definition of Aggression, A/RES/3314, reprinted in 13 *ILM* 710(1974).

[999] *Nicaragua* case, 1986 ICJ at 103, paras 187-201.

[1000] Ibid.

[1001] Article 8 of the Rome Statute state:

> 1. the Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. 2. For the purpose of this Statute, 'war crimes' means: (a) Grave breaches of the Geneva Conventions of 12 August 1949 namely any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights to fair and regular trial; (vii)Unlawful deportation or transfer or unlawful confinement; (viii)Taking of hostages.

appropriate to argue that the US-UK committed a war crime in this case.[1002] Given widespread hostility in Iraq, it might also be concluded that crimes against humanity and peace were committed.[1003]A further example, however, is deliberately attacking civilian areas with cluster bombs and other imprecise weapons with their extra effects. All this gave rise to applying not only the Nuremberg and Tokyo Tribunals norms,[1004] but also the International Criminal Tribunal for former Yugoslavia (ICTY)[1005]and the International Criminal Tribunal for Rwanda (ICTR).[1006]It will be remembered too that

---

> (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: [the designated acts include internationally directing attacks against a civilian population as such, against civilian objects that are not military objectives, or against a humanitarian assistance or peacekeeping mission in accordance with the UN Charter; killing or wounding combatants who have surrendered; transfer by an Occupying Power of part of its own civilian population into territory it occupies, or deporting the population of the occupied territory outside the territory; employing poisonous gases or weapons that cause superfluous injury or unnecessary suffering; committing rape, sexual slavery, or forced pregnancy.] 37 ILM. 999, (1998).

[1002] Louis B. Sohn, 'Definition of Aggression', 45 *Virginia Law Review*, (1959) 697.

[1003] *International Criminal Tribunals for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda.* SC Res.955 UN SCOR, 49th Sess., UN Doc. S/RES/955 (1994).

[1004] See generally, *The Charter of the International Military Tribunal for the Far East*, reprinted in 4 BEVANS 20, 1 FERENCZ 523 (1975); Article 1 of the Agreement for the Prosecution and Punishment of Major War Criminals of European Axis, (8 August 1945). The Charter of the International Military Tribunal, 8 UNTS 279, Reprinted in *AJIL* 39 (1945) 257.

[1005] See generally, *The Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (ICTY). SC Res 827 UN SCOR, 48th Sess., 3217th mtg., UN. Doc. S/RES/827 (1993), reprinted in *14 Hum. Rts. L.J*, (1993), 197; Rachel Kerr, *The International Criminal for the Former Yugoslavia*, (Oxford, Oxford University Press, 2004); *The Statute of International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (ICTY), UN Doc. S/2504, 3 May 1993, reprinted in *14 Hum. Rts. L.J* .(1993),198; *The Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, A/50/365-S/1995/728, 23 August 1995; *The Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, A/50/292,S/1996/655, 16 August 1996; Colin Warbrick, 'Evaluating the ICTY and its Completion Strategy: Efforts to Achieve Accountability for War Crimes and their Tribunals' 3 *Journal of International Criminal Justice* (2005)82; Gideon Boas & William A.Schabas ed., *International Criminal Law Developments in the Case Law of the ICTY'*, (Leiden/Boston, Martinus Nijhoff Publishers, 2003); Ivan Simonovic, 'The Role of the ICTY in the Development of International Criminal Adjudication', 23 *Fordham International Law Journal* (1999) 440-59.

[1006]See Helen Fein, (ed.,) *The Prevention of Genocide: Rwanda and Yugoslavia Reconsidered*, (New York, Institute for the Study of Genocide, 1994); Prosecutor v. Akayesu, Trial Chamber, International Criminal Tribunal for Rwanda, 1998 Case No. ICTR-96-4-T, available at www.ictr-org/ENGLISH/ judgments/ AKAYESU/a kay 001.htm.

there are rules in the Statute of the International Criminal Court that seek to bring war criminals to justice.[1007]

Nonetheless, principle 6 of the Nuremberg norms defines what is meant by crimes against peace.[1008]It outlines certain acts as crimes against peace: these include, first, any planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances.[1009]Second, any participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned above.[1010]

In that legal order, Articles 5, 7 and 8 of the Rome Statute of the International Criminal Court (ICC)[1011]provide jurisdiction over the crime of aggression and define 'crimes against humanity' and 'war crime'. [1012]In the light of the conduct of the war in Iraq it might be logical to argue that the UK violated the principles of necessity, proportionality and humanity against Iraq and its civilian population.[1013]In such a case, it would be useful to also apply the concept of penalising individuals for crimes committed in this war in violation of these principles.

[1007] M. Cherif Bassiouni, 'Establishing International Criminal Court: Historical Survey', 149 *MIL. L.REV*. 49-63 (1995).
[1008] Glueck, 'The Nuremberg Trial and Aggressive War', 59 *Harvard Law Rev*, (1946), 396,399.
[1009] Philippe Sands, (ed.,) *From Nuremberg to the Hague, the Future of International Criminal Justice*, (Cambridge, Cambridge University Press, 2003).
[1010] Public International Law and Policy Group, 'War Crimes', 2 *Prosecution Watch*, Issues 5, 30 October 2006.
[1011] See generally, The Rome Statute of the International Criminal Court (ICC), 37 *ILM* 999 (1998); John Jones & Steven Powles, *International Criminal Practice*, 3rd edn., (Oxford, Oxford University Press, 2003); Pierre Prosper and Roger Clark, Justice without Borders: The International Criminal Court, *Temple International and Comparative Law Journal 17* (2003), 55-96.
[1012] Schwelb, E., 'Crimes against Humanity', 23 *BYIL* (1946).
[1013] UNWCC, *Law Reports of Trails of War Criminals*, (London, HMSO, 1947-49).

8.4 The Responsibility of Kuwait under International Law

8.4.1 Articles 2(1) 'Sovereign Equality'; 2(2) 'Good Faith' and 2(7) 'Domestic Jurisdiction' of the UN Charter

After discussing the responsibility of Kuwait and other Gulf states under international Islamic law in Chapter Five, this section turns to examine another aspect of the war on Iraq. In other words, not only Kuwait's legal obligations under international law, but the criminal responsibility of its leaders under international criminal law for crimes committed in Iraq. Special emphasis will be put on the role of Kuwait and its impact thereto. This role was the first case of a foreign military operation taking place against an Arab state from the land of another Arab state. However, Resolution 665 of 25 August 1991, reaffirms amongst other things that the principles laid down in the Geneva Convention of Protection of Civilian Persons in Time of War applied to the Kuwait crisis, as Iraq, under this Convention, was responsible for the grave breaches committed.

In applying these principles, it might be true to argue that not only Bush and Blair could be held liable for their order to invade and occupy Iraq, but also Kuwait and other Gulf leaders.[1014]Without doubt, Kuwait made an actual contribution to the invasion of Iraq. It played a decisive role in the invasion. For example, it not only provided the US-UK with intelligence and logistic support, but also allowed the aggressors to use their territory, which constitutes a clear breach of the UN Charter, and also violates the rules of international law. Specifically, violation of the Geneva Conventions and their two additional Protocols by providing the US-UK direct or indirect assistance in the use of force, contrary to the principles of military necessity and proportionality, to overthrow Saddam.

[1014] Bassiouni, n 1000 above.

However, the ICJ held in the Nicaragua case that:

> An armed attack is to be understood as meaning not merely action by regular armed forces across an international border, but also the sending by a state of armed bands on the territory of another state, if such and operation, because of its scale and effects, would have been classified as an armed attack had it been carried out by regular armed forces.[1015]

From a legal point of view, all these states were also guilty of this by allowing the US-UK to use their territory to wage this war. Indeed, any analysis of this war reflects the vital role played by Kuwait in placing their territory at the disposal of the US-UK to perpetrate their unilateral military action against Iraq causing incidental deaths of Iraqis.[1016]

It might be argued that Kuwait wanted to get rid of the Saddam regime, but we could put on the other hand the advantage they gained by waging aggressive war against Iraqi civilians. It is true they managed to overthrow Saddam and execute him, killed his two sons and many Iraqis, but the question of concern to this Chapter is whether the Iraqis will forgive them.[1017]Will the world forget the Photograph of Ali Ismail Abass, (Appendix B.4) the 12-year-old Iraqi boy whose home was hit by a US-UK rocket killing all members of his family?

[1015] *Nicaragua Case* paras. 187-201.
[1016] See, Article 3(F) of the UNGA Resolution 3314.
[1017] E. Van Sliedregt, *The Criminal Responsibility of Individual for Violation of International Humanitarian Law*,(T.M.C ASSER Press, The Hague, 2003).

Jon Lee Anderson, the New Yorker correspondent who visited him at the hospital, described his condition as:

> The child's legs were smooth, but his entire torso was black, and his arms were horribly burnt. At about the bicep, the flesh of both arms became charred, black grotesqueries. One of his hands was a twisted, melted claw. His other arm had apparently been burned off at the elbow, and two long bones were sticking out of it. It looked like something that might be found in a barbecue pit.[1018]

No one denies that the tension between these two countries shapes their relationship today. It would not be difficult to show that this has had an impact on the relationship not only between Kuwait and Iraq, but also with Kuwait relationship with the rest of the Arab world. It remains to be seen how Arab states will rebuild their solid relationship.

In considering the relationship between Kuwait and war on Iraq, the General Assembly's Declaration on the Inadmissibility of Intervention in the Domestic affairs of States and the Protection of Their Independence and Sovereignty explicitly provides that 'No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state.'[1019]Article 2 states 'No State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State,

---

[1018] *The Times,* 10 April 2003 at 14.

[1019] Article I of the General Assembly's Declaration on the Inadmissibility of Intervention in the Domestic affairs of States and the Protection of Their Independence and Sovereignty, GA Res. 2131, UN GAOR, 20th Sess., Supp. No.14, at UN Doc.A/6014 (1966).

or interfere in civil strife in another State.'[1020]In this respect, two documents also support our argument: first, the Finalized Draft Text of the Elements of Crimes Preparatory for the International Criminals Court;[1021]second, a somewhat similar view is expressed in the Finalized Draft Text of the Rules of Procedure and Evidence, Preparatory Commission for the International Criminal Courts.[1022]

The most controversial of Kuwait's claims is its right to punish Saddam for his illegal invasion in 1991. The question that arises at this point is, of course, whether Kuwait could have such a right under international law. Without doubt, no violation of international law and the laws of war are justified by a case involving such unconvincing reasons as those put forward by Kuwait. It would not be difficult to show that the Kuwait's actions constitute an act of reprisal, as Saddam did not attack Kuwait in 2003.

Interestingly, Kuwait has not yet been accused of responsibility for cross-border military attacks on Iraq in 2003. No states condemned Kuwait's action as being contrary to its obligations under the UN Charter. It follows that it is clear that Kuwait violated Article 2 (4) of the UN Charter. This section further argues that Kuwait was under a legal obligation not to provide its territory to assist the US-UK to attack Iraq. This obligation derives from the general principle of international law,[1023]Islamic law and the Arab League Charter.

[1020] Ibid. Article 2.
[1021] UN Doc. PCNICC/2000/INF/3Add.2 (2000).
[1022] UN Doc. PCNICC/2000/INF/3/Add.1 (2000).
[1023]Ahmed M. Rifaat, *International Aggression, Study of the Legal Concept: Its Development and definition in International Law,* 2nd edn., (Stockholm, Humanities Press, 1979).

On the other hand, the logistic support provided by Kuwait to overthrow Saddam also amounts to a breach of the principle of non-intervention.[1024] Our above arguments are based on the following:

1. Kuwait had to accept a treaty law obligation incorporated in Article 2(4) of the UN Charter to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any states or in any other manner inconsistent with the purposes of the UN Charter.
2. Kuwait had special legal responsibilities concerning the implementation of its commitments established in the Ceasefire Agreement that ended the Second Gulf War in 1991.
3. This thesis observes that, in accordance with the principles of Islamic law and Arab League Charter that obligates all Arab states not to attack each other, Kuwait was under another obligation not to provide its territory for the US-UK to attack Iraq.
4. Kuwait played a vital role in the war, as it is the only state that allowed the invaders to use its territory, without which it would have been difficult for them to invade Iraq.

As with the examples of Kuwait's aggression against Iraq, the GA Resolution 3314 sets out in Article 3 examples of what constitutes an act of aggression; however, this does not cover the harbouring of terrorists groups as the ICJ held in the Nicaragua Case.[1025]Above all, Article 3 proceeds to proscribe certain acts of illegal use of force

---

[1024] *Nicaragua Case,* Paras 239-245.

[1025] See, *The Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v USA), Nicaragua Case, ICJ Reports,* (1986) Para 118-2; Marcelo G. Kohen, 'The Use of Force by the United States after the end of the Cold War, and its impact on International Law' in Michael Byers and George Nolte (ed.,) *United States Hegemony and the Foundations of International Law*, (Cambridge, Cambridge University Press, 2003).

as acts of aggression.[1026]It is important to note that, pursuant to this Article, the typical acts of aggression included here played an integral part in the Iraq invasion, as the UK had violated the principle of distinction that obliges parties at war to distinguish between combatants and the civilian population.[1027]

8.5 The US-UK's Legal Responsibility under International Criminal Law

8.5.1 The Need for Accountability and the purpose of Nuremberg Tribunal

Essentially, the Nuremberg Charter was designed to outlaw aggressive war. Several recent reports suggest abuse of international law as well as war crimes committed in Iraq.[1028]In addition, the way in which this war was carried out deliberately targeted civilian areas and environments. Without doubt, war has had its impact: this for example, includes public health matters; damage to resources and other environmental issues, which might be the subject of further study. These violations have significantly

---

[1026] Article 3 of the UNGA Resolution 3314 states:

> Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:
> (a) The invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasions or attack, or any annexation by the use of force to the territory of another state or part thereof;
> (b) Bombardment by the armed forces of a state against the territory of another state or the use of any weapons by a state against the territory of another state;
> (c)The blockade of the ports or coasts of a state by the armed forces of another state;
> (d) An attack by the armed forces of a state on the land, sea or air forces or marine and air fleets of another state;
> (e) The use of armed forces of one state which are within the territory of another state with the agreement of the receiving state , in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of agreement;
> (f) The action of a state in allowing its territory, which it has placed at the disposal of another state, to be used by that other state for perpetrating an act of aggression against a third state;
> (g) The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed forces against another state of such gravity as to it amount to the acts listed above, or its substantial involvement therein.

[1027] Darry I Robinson, 'Defining "Crimes against Humanity" at the Rome Conference', 93 *AJIL* 43 (1999).

[1028] Peter Spiegel, Amnesty Report, Coalition Forces 'Mistreat Civilians', *Financial Times*, (Thursday 24 July 2003).

increased the number of innocent civilians in Iraq deliberately killed, injured, displaced, and the disappearance of many other persons.[1029]

Against this background it might be argued that the Nuremberg norms apply to those who have committed international crimes in Iraq such as:

1. Disproportionate attacks, genocide, massacres, and killing of injured persons as in Falluja.
2. Acts of torture, mistreating civilians by using inhumane methods and degradation at Abu Ghraib and other US-UK detention facilities where many Iraqi detainees were placed under prolonged sleep deprivation and restraint in 'painful positions' as reported by Amnesty International in July 2003.

Hence, it might be argued that this gives rise to the need to prosecute those responsible for violations of international law and the law of war.[1030] Furthermore, it is clear that these entire actions amount to acts of torture and inhumane treatment of detainees, and all US-UK as well as Iraqis officials involved have to be punished for committing war crimes and crimes against humanity.[1031]

The main approach to this problem is the call for international efforts, with a view to examining whether Bush and Blair should stand trial for war crimes committed in the Iraq war, which led to an estimated 655,000 deaths.[1032]It is true, as Saddam put it in his first appearance in court in July 2004, that 'The real criminal is Bush.'[1033]The point, however, is that the legal responsibility lies with all states participating in the

---

[1029] Yoram Dinstein, 'Crimes against Humanity', in Markarczyk, J., *Theory of International Law at the Threshold of the 21st Century*, (The Hague, Martinus Nijhoff, 1997).
[1030] Ibid.
[1031] Spiegel, 1031 above.
[1032]Andrew Buncombe and Ben Russell, 'The Lancet: 655,000 the Toll of War in Iraq', *The Independent*, 12 October 2006.
[1033] Christiane Amanpour, 'Saddam in Court: The Real Criminal is Bush', *CNN*, (1st July 2004)

war or providing logistic support and facilitating the war: that is to say not only the US-UK and Australia, but also Kuwait and other Gulf States. In this regard, it might be argued that the US was the state taking the decisions, and it never discussed or debated with its few allies that resorted to force against Iraq; but this argument will not stand as the responsibility, in this case, being shared between all states.

8.5.2 The Establishment of the International Criminal Court (ICC)

8.5.2.1 The US's opposition to the ICC

The US, driven by its own self-judging and national interest, was strongly opposed the creation of the ICC.[1034]However, despite its opposition to the ICC, to the extent that Senator Jesse Helms announced publicly that the ICC as an international treaty is 'dead on arrival',[1035]it did not object to the jurisdiction of the ICC when the UNSC referred atrocities committed in Sudan's Darfur conflict to the ICC.[1036]This is clear when the SC expressed in its Resolution 1593 of 31 March 2005 'Its grave concern over the deteriorating humanitarian and human rights situation in the Darfur region' in West Sudan.[1037] However, the main aim for the US's opposition to the ICC is its fear that the US's politicians and soldiers could be prosecuted for international crimes they have committed around the world.[1038]

[1034] Kenneth Roth, *The Court the US Doesn't Want*, N.Y Rev. Books, (19 November1998), in Henry J. Steiner and Philip Alston, *International Human Rights in Context, Law, Politics, Morals* Text and Materials 2nd edn., (Oxford, Oxford University Press, 2001).
[1035] David Scheffer, 'The United States and the International Criminal Court', 93 *AJIL* 12 (1999).
[1036] UNSC Res.1593 (2005) UN Doc. A/RES/1593.
[1037] Ibid.
[1038] For detailed discussion of Darfur crisis and the UNSC Resolution 1593 on refereeing this dispute to ICC see, Matthew Happold, '*Darfur, the Security Council, and the International Criminal Court*', 55 *ICLQ* Part 1 (January 2006), and for discussion of the US' opposition to the ICC see, 'The President Bill Clinton's statement, the White House, Office of the press Secretary, Signature of the International Criminal Court Treaty', 31 December 2000, at http://www.usembassy.state.gov/posts/pk1; Theodor Meron, 'Reflections on the Prosecution of War Crimes by International Tribunals', 100 *AJIL*, No. 3, (July 2006) 551; Ruth Wedgwood, The Constitution and the ICC, in Sarah B. Sewall and Carl Kayse, ed., *The United States and the International Criminal Court, National Security and International Law*, American Academy of Arts and Sciences, (New York, Rowman and Littlefield Publishers, Inc, 2000); Kenneth Roth, *The Court the US Doesn't Want*, N.Y. Rev. Books, (19 November 1998) 45.

8.5.2.2 The ICC's jurisdiction Over War Crimes Committed in Iraq

In terms of the way in which the US-UK as the occupying power in Iraq are dealing with these various international law and human rights violations, there are many major things going wrong. The importance of these expressions is that during the war on Iraq the US-UK deliberately targeted the media to cover its war. For example, in November 2002, the US also deliberately destroyed an Al-Jazera office in Kabul, and US officials said they believed that the target was a terrorist site.[1039]Similarly, the US deliberately killed Tarek Ayoub, an Al-Jazera network journalist, who was killed in April 2003 when a US missile hit his office in Baghdad. The US State Department said that the air strike was a mistake. Furthermore, on 21 March 2003 ITN reporter Terry Lloyd was killed by a US marine.[1040]

However, since the official end of the Kuwait crisis in 1991, the US-UK's policy on Iraq is to keep the Iraq disputes unresolved, and attacking and sanctions continues to weaken the Iraqi regime. As noted earlier, this is evident by the fact that the US-UK have never tried to settle this dispute peacefully, despite the fact that many of the elements of peaceful settlement already exist. On the other hand, it is true that Saddam tried in good faith to end the conflict and left the sanctions that were so effective on Iraq, but he was being punished by the US-UK for refusing to give oil and related activities to US-UK firms. There is no need to take the analysis further, as the case of Halliburton shows they hold no-bid oil contracts worth billions of dollars in Iraq since the fall of Saddam's regime.[1041]

[1039] Thomas M. Franck, 'Editorial Comment: Terrorism and the Right of Self-Defence', 97 *AJIL* 839 (2001).

[1040] David Mannion, 'We must Prevent another Murder like Terry Lloyd's, Death on the Road to Basra', *The Guardian*, (Monday 19 March 2007).

[1041] Andrew Buncombe, 'The Oil Business, Halliburton from Bush's Favourite to A National Disgrace' *The Independent*, (Wednesday 14 March 2007).

The failure to recognize the oil motive as an instrumental force in the US-UK war on Iraq is to ignore the very essence of the US-UK's recent policies. It is unquestionable that both governments intend to benefit from Iraq oil through overthrowing Saddam and occupying the country. It is simply not realistic to ignore the oil element; however, the link remains real.[1042] This is not to suggest that Israel's security is not an element in this war. Rather, the suggestion here is that oil is the principle aim of the war.

It is clear that the decision to get rid of Saddam resulted in a temporary benefit for the US-UK, but this was done at the cost of many Iraqis, which has also resulted in long-term losses for the American and British troops in Iraq. Furthermore, the root of the US-UK difficulties lay in many aspects. Shortly after the fall of Baghdad and the disappearance of Saddam, Bush landed on the deck of an aircraft carrier to announce 'mission accomplished' in Iraq. Since then, the situation in Iraq has not improved, as there is, apart from oil, no sign of any of the aims of the war being achieved.

On the contrary, there are many signs of a deteriorating political situation for both Bush and Blair as a consequence of the aftermath of the war on Iraq. The main achievement of the war on Iraq has really been to generate more resistance for Bush's policy in Iraq and the Middle East. In general, as far as achievements are concerned, since the end of the Bush mission in Iraq 2003, more American and British troops have been killed than those that died during the conduct of the war. In other words, it soon became evident that the human costs of the war often exceeded the benefit gained by waging the war.

[1042] Ibid.

Another difficulty is that much evidence suggests that the US-UK's claims about Iraq's WMD threats and its links with terror have points that prove to be false.[1043]For example, this was evident in The Secret Downing Street Memo of 23 July 2002.The Memo said, 'Saddam was not threatening his neighbours and his WWD capability was less than that of Libya, North Korea or Iran.'[1044]As mentioned earlier, the UN system is an essential instrument in dealing with international disputes, but as an international institution charged with making international peace and security the UN is weak.[1045]

As concerns the role of the UNSC in counteracting the threat to international peace and security, it could play a decisive role in determining when a threat to international peace and security exists. There are currently many legal scholars who argue that the enlargement of the number of Permanent Members of the SC to include Germany, Japan and countries representing Africa and Latin America should, on the one hand, increase its role. On the other hand, it would then have an effective role in those UN decisions that affect the whole world. The other approach is to encourage states to submit their disputed to the ICJ as the judicial method for settling international disputes, the ICC, and *ad hoc* tribunals as well as other regional organisations. These are issues that are discussed as arguments for reforming UN law to meet the current international political reality.

[1043] Julian Borger, Ewen MacAskill and Patrick Wintour, 'The Hunt for Weapons of Mass Destruction Yields–Nothing', intelligence claims of huge Iraqi stockpiles were wrong, says ISG report, *The Guardian*, (Thursday 25 September 2003).

[1044]The Secret Downing Street Memo of 23 July 2002 at http:// www.globalpolciy.org/ security/issues/Iraq/document/ 2002/0723 downing. htm.

[1045] Michael Reisman, 'Institutions and Practices for Restoring and Maintaining Public Order', 6 *DUKE.J. COMP. and INT'IL.*(1995) 175.

8.6 Findings and Concluding Remarks on Chapter Eight

In conclusion, this Chapter offers the following findings and observations about the UK's justification for war on Iraq. First, it should be noted that, in the light of the drafting history of the UN Charter, it might reasonably be concluded that the focus of the drafter has been on the prohibition of the use of force to maintain international peace and security, rather than on the more controversial concept of the right of pre-emptive self-defence. Second, it is important to draw attention to the fact that this Chapter reveals that the principled projection of the use of force between states finds support not only in the UN Charter, but also in customary international law.

Of particular relevance to the object of limitation on the use of force are the issues of controlling the use of grave violence in the international system and of settling international disputes peacefully within the institutional legal framework of the UN. Third, the use of force in the Iraq war represents a shift away from the classic international law system of purely prohibiting the use of force – except in limited cases – towards the absolute right of states to use force.

The central argument of this Chapter of the thesis, then, is that the legal authority for the use of force against Iraq in the UK's case does not have any legal grounds, as it lacks the basic legal requirements. First, none of the UNSC Resolutions since the Kuwait crisis explicitly authorizes the UK to use force against Iraq; second, the explicit purpose of Resolution 1441 was peaceful disarmament of Iraq, but the UK Government has interpreted this as covering not only disarming Iraq, but also extending to other claims such as bringing democracy to Iraq.

This view was justified on the grounds that Resolution 1441 implied giving the UK the right to use force to achieve these goals. As mentioned earlier, this is clearly contrary to the provisions of the UN Charter on the use of force. In arriving at this conclusion, this Chapter must disagree with Christopher Greenwood's conclusion that there was an existing authority for the war deriving from Resolutions 678, 687 and 1441.

However, Article 2(4) makes express reference to the obligation of member states to refrain from the use of force in international relations, while Article 51 restricts the use of force and provides only two exceptions from prohibiting of the use of force expressed in Article 2(4); however, neither of these applies here.

Based on the terminology of UNSC Resolution 1441, Iraq was in 'material breach' of its obligation to disarm its WMD, and therefore, 'will face serious consequences' as well as offering Iraq 'a final opportunity to comply with its disarmament obligations.' This must not be understood as authorisation of the use of force. In other words, this does not, of course, imply the use of force, nor does it appoint the UK as the sole judge of whether there is imminent danger. The intelligence failure in both the US and UK cannot be excused for failing to apply international law. On the contrary, it probably assumes that the possible solutions for the Iraq problem must be sought in accordance the UN Charter.

Hence, it would seem appropriate that the issue of peaceful disarmament of Iraq should be given priority over the use of force. The failure in this respect is not, however, due to absent or inadequate peaceful provisions in the UN Charter, or the

failure of the UN inspections regime. From the perspective of international law, it is clear that the attitude adopted by the UK in this dispute is not similar to the UN Charter approach applied when its provisions are seeking to exclude certain cases from restricting fundamental rules on the use of force.

Three important points on the consequence of the war represent a great challenge to the case for war. First, the situation in Iraq has not stabilized at the moment. From the point of view of the security and democracy dimension, the situation has worsened since the fall of Saddam, as America made serious mistakes not only by invading Iraq, but also by dissolving the army. The second point is that it becomes clear that they did not have any plans of what to do after the overthrow of Saddam. The third point is that you cannot build peace and democracy by jeopardizing other important values such as the pictures published by *The Sun* on Tuesday 8 April 2003, on Page 9, of the British troops taking showers naked in Basra shortly after invading a Muslim country (Appendix B.2).

One final point needs to be kept in mind: despite the fact that the US has not ratified the ICC Statute and has formally announced its intention not to become a Party Member, all violations of international law; international humanitarian law; human rights law; Geneva Conventions and laws on war must be investigated, and those that committed these acts brought to international justice. For the UK, as Blair's Government has ratified the ICC Statute, Article 7 of the ICC Statute defining crimes against humanity is broad enough to cover its role in this war. Hence, this Chapter sees no reasons why Blair, Bush and other authors of the war should not stand trial.

Without any need for a reference to Islamic international law, one cannot exclude, for instance, the substantial involvement of Kuwait from accountability. Indeed, Kuwait's acts against Iraq and its civilian population resulted not only in many tragedies that shocked the world, but in numerous crimes committed against civilians, which constitute international crimes. For Kuwait, apart from the morality of the situation, launching war against Iraq despite the risk of civilian deaths was not legally justified. No one has condemned Kuwait, despite the fact that it has played an enormous part in creating the problem in the region that we now witness.

In order for the UN Charter law to function as an effective international system, there must exist an international legal authority with the capability to enforce its collective will, as intended by its drafters, against the Charter law breakers. The advert of a new era of aggression on the scale of the attacks on Iraq and the war crimes committed across the country poses another challenge for international peace and security.

CHAPTER NINE

A CONCLUDING APPRAISAL

CHAPTER NINE

A CONCLUDING APPRAISAL

The objective of this study is to critically analyse the legality of the invasion of Iraq in international law and the responsibility of Kuwait and other Gulf states under Islamic international law. The purpose of this concluding Chapter is not to summarize all the arguments and conclusions made in the main text of the thesis. Rather, this Chapter intends, first, to draw attention to several questions that follow from it. Second, it recaps the main points developed in the study. Third, it assesses the effectiveness of the principles that govern the use of force in international relations and the peaceful settlement of international disputes in Islamic international law as well as international law. The originality of this study lays both in the research questions that it raises and the methodology adopted.

The thesis explores whether the Iraq invasion could find support in international and Islamic international law. In its preliminary considerations the thesis outlines the objective of the study, the aims and its methodology. Hence, attention is paid to the principles of peaceful settlement of international disputes and the use of force in international relations, the use of force in Islamic international law and the principle of non-alliance with non-Muslims against Muslims.

The thesis shows that the creation of the UN in 1945 did not prevent the superpower states from producing nuclear, chemical and bacteriological weapons. The eight-year war between Iran and Iraq (1980-1988) also witnessed the failure of the 1925 Geneva Protocol, which aimed to ban dangerous weapons such as chemical and bacteriological weapons.

As regards conflict resolution, the thesis concludes that arbitration is the traditional means of international dispute settlement, and its advantages and disadvantages are well understood. This is normally by a binding award on the basis of law, and as a result of a voluntarily accepted undertaking. The essential difference between arbitration and judicial settlement is that arbitration depends on consent, and the disputant parties have a wide freedom in deciding the law to be applied, the procedures and the composition of the arbitral tribunal. However, judicial settlement means the settlement of disputes by a proper international permanent judicial tribunal, which applies fixed rules of law and procedure.

It is generally accepted that there are two types of arbitration agreement. The first is the agreement of parties to refer their existing disputes to arbitration, known as the *compromise,* which provides that the arbitral tribunal decision will be final and binding on the disputants. The second is an arbitration clause in mutual agreement between parties, known as *clause compromissoire,* under which they agree to submit future disputes arising under such an agreement to arbitration.

As argued in the course of the thesis, throughout the 19th Century arbitration was frequently used to settle international disputes, and proved to be the most effective means for international dispute resolution. This period also witnessed new trends of states' commitment to submitting not only their existing disputes to arbitration, but also future ones arising as a result of their treaties. Since then international arbitration has grown steadily as an effective means to settle international disputes.

In the context of the question of the legality of the war on Iraq in 2003, the thesis asks whether, and to what extent, the *NSS* of 20 September 2002 provided the US-UK

with legal grounds to use force without express UNSC authorization. The study argues that the *NSS* raised heavy criticism as to its controversial concept of opposing terrorism and so-called 'rogue states' to 'prevent our enemies from threatening us, our allies, our friends with weapon of mass destruction.' The thesis argues that under current international law the new terrorist, rogue states and WMD threats do not justify the use of force in pre-emptive self-defence.

The thesis also asks whether previous UN Resolutions give the US-UK the right to resort to force against Iraq. From the text of Resolution 687(1991) it appears that the explicit purpose of this resolution was the disarmament of Iraq's WMD. This resolution further provides that, prior to the lifting of economic sanctions imposed on Iraq by the UN's previous resolutions, Iraq must destroy or render harmless, under international supervision, all its nuclear, chemical and biological weapons, all its ballistic missiles with a range of greater than 150 kilometres, and all associated materials and facilities.

However, the Ceasefire Agreement in Resolution 687 (1991) is an international agreement claiming to be between Iraq and the UN: in fact it is not, as the end of hostilities was declared by the US, not the UNSC. Thus, only parties to this agreement are entitled to terminate its effect, and the SC was the only organ that had the right to determine whether Iraq complied with the terms of this agreement.

It has been demonstrated that UN Resolution 688(1991) does not give the US the right to conduct air patrols over 'no-fly zones'. The Resolution did insist that Iraq allow access by the international humanitarian organisations to all those in need of

assistance, but it did not establish so-called 'no-fly zones' to protect the Shiite and Kurdish people. However, the main aim of this resolution was to prevent any further persecution of these groups and to secure their return to their area.

UN Resolution 705 established a compensation regime to compensate victims of the Iraqi invasion of Kuwait on the grounds that Iraq had violated its international obligations not to resort to force. The SC inspections regime on Iraq was imposed and carried out by a military force of the US, and against Iraq's sovereignty. This model of control of armaments proved to be inadequate to settle such a dispute. Part of the problem is that the UN does not have standing forces.

It is clear that economic sanctions against Iraq in Resolutions 661, 665, 666 and 670 (1990) were based on Articles 39 and 41 of Chapter VII of the UN Charter. These sanctions in fact were damaging to the Iraqi economy and affected its military capacity, but if we look at the nature of these open-ended sanctions, they had no effect on the Iraqi regime in bringing about a radical change in its policy.

The thesis answers the question with the claim that the US-UK undertook Operation Iraqi Freedom in pre-emptive self-defence to secure the disarmament of the Iraqi regime from its weapons of mass destructions. However, it is recognised that this was undertaken pursuant to *NSS* and without clear authorization from the SC. They wrongly relied on President Bush's pre-emptive strikes and implied authorization doctrines, which were rejected by the SC Permanent Members (Russia, China, and France) as well as by other members of NATO and EU member states. Thus, the UN or NATO forces did not undertake Operation Iraqi Freedom.

In the US statement, the US Secretary of Defence Donald Rumsfeld said, 'this war is an act of self-defence, to be sure', and Secretary of State Colin Powell explained their very weak case of the use of force in self-defence against Iraq. Powell's various assertions suffer from four very serious weaknesses. First, he does not cite a single authority from the UN Charter to support his assertions. Since most of Powell's assertions are untrue, the lack of reference to evidence to support his assertions casts much doubt on the credibility of his entire arguments.

For example, he stated that Iraq was developing WMD where there were no such weapons prior to the invasion. Second, Powell was unable to find any convincing evidence to link Saddam with Al-Qaeda. Third, Powell and the *NSS* failed to provide a more concrete definition for the term terrorism. The narrow definition of terrorism offered in the *NSS* as 'premeditated, politically motivated violence perpetrated against innocents' is inadequate. Four, Powell said in 2003 that his testimony was 'backed up by sources, solid sources. These are not assertions. What we're giving you are facts and conclusions based on solid intelligence.' By contrast, on 3 April 2004, he said that his testimony was in fact based on information that now appears not to be legally 'solid'.

On the other hand, the US-UK waged the war on Iraq with little public support and without international authority. Saddam represented no threat, and after one year of the Iraq invasion Blair was forced to admit that prior to the war Iraq did not have WMD. The US-UK did not have a proper plan for war, thus they waged it without effective plans, as Iraq is still a bloody mess after the war.

This thesis further argues that the use of conflict resolution methods found in the UN Charter and Islamic international law might have achieved the main goals in UN Resolutions 660, 678, 687 and 1441. In fact, the rule of Article 33 of the UN Charter was never fully pursued, and the measures taken by the SC in this crisis have not solved the problem, nor have they restored international peace and security in the region.

In accordance with Chapter VI of the UN Charter (Articles 33, 34, 35, 36, 37, 38), it is the responsibility of the SC to take positive action in finding ways for a peaceful settlement of this dispute by creating some sort of a legal or political framework for negotiations. The thesis argues that no role was left at all for the SC in this regard.

According to the texts of Resolutions 678 and 687, the purpose of these resolutions was the liberation of Kuwait and restoring peace and security to the area. In this context it is important to emphasise that the US-UK repeatedly argued that Resolution 1441 (2002) constitutes a legal basis for the preventive use of force against Iraq in 2003. The thesis discusses the question of whether a 'material breach' in Resolution 1441 would allow the US-UK to resort to force against Iraq without a further UNSC resolution.

It is clear that Resolution 1441(2002) placed a set of demands on Iraq with regard to its WMD. Thus, it provided no authorization to use force, nor did it give the US-UK the right to determine alone whether Iraq was in material breach of its international obligations. Therefore, neither the combined effect of Resolutions 678, 687 and 1441, nor the Iraqi violation of these resolutions, or its failure to meet the

demands on Resolution 1441 support the US-UK's reasons for invading Iraq in March 2003. The words 'use all necessary means' in Resolution 678, at Paragraph 2, to implement Resolution 660 (1990) do not support the US-UK's argument in this respect because the sole aim of this Resolution was to restore the sovereignty, independence and territorial integrity of Kuwait.

The main question remains whether the use of force was in fact carried out by the UNSC, pursuant to Articles 39, 48 or 51 of Chapter VII of the UN Charter. By examining Article 39, it is clear that the SC is the only organ that can determine the existence of any threat to peace, breach of the peace and acts of aggression.

Furthermore, this article gives the SC the right to recommend or decide what measures should be taken according to Article 41, which provides for peaceful settlement, or Article 42, which provides for the use of force. During the military campaign against Iraq in 1990, the SC failed to adopt any further Resolutions either to control the use of force, or to establish a Military Staff Committee to direct the conduct of the war according to Article 47 of the UN Charter. Nor did the Secretary-General, or any organ of the UN, try to exercise and play their full role and duties regarding military operations.

In answering the question of whether the US-UK was justified in exercising self-defence in their war on Iraq, the circumstances required under Article 51 of the UN Charter for the exercise of this right were not present. To reach that conclusion, this study considers whether the US and UK were victims of an armed attack by Iraq. This research has seen no evidence that the conduct of Iraq prior the invasion was consistent with such a situation. Furthermore, even if, in 2001, Iraq supplied weapons

to the 11 September attackers, this does not justify the use of force in self-defence against Iraq in 2003.

In considering the third condition of the right of self-defence in terms of the question of whether the US-UK's military activities on Iraq in 2003 met the criteria of necessity and proportionality, the thesis cannot find that the military activities in question were undertaken in the light of necessity, and finds that some of them cannot be regarded as satisfying the criterion of proportionality. Rather, the Iraq invasion demonstrates that the US-UK's actions were based only on their power, disregarding their international obligation not to use force in international relations and to settle their disputes with others by the peaceful means available in Article 33(1) of the UN Charter settlement system.

The basic claim in this thesis is that the Kuwait invasion and the Iraq invasion are closely related. The difference between the two is that the Iraq invasion was carried out with the support of Kuwait. Hence, Kuwait in fact was in material breaches of the terms of SC Resolution 687 on the ceasefire that ended its occupation. These breaches include its obligations to refrain from the use of force against Iraq and not to permit any actions from its territory against Iraq. This is so because, in fact, in March 2003, the US-UK's troops entered Iraq from Kuwait to overthrow the Iraqi regime.

Furthermore, Kuwait gives logistic military support to the US-UK forces, without which it would have been difficult for them to invade Iraq. In particular, I suggest that Kuwait's and the Gulf states' action in all this was in violation of their international obligations embodied in the Islamic international law; the League of Arabs Charter; the UN Charter; and international law principles.

After examining the different points of view, this thesis concludes that the US-UK engaged in a unilateral armed attack against Iraq in 2003, using arguments that implied that the UN peaceful settlement process was inappropriate for this conflict and in their war on terror in general. Their tool was to re-establish a new norm for the use of force and reinterpretation of international law principles, since only such an attack could legally justify reliance on the right of self-defence as a fundamental principle of international law. The concept of reformulating the right of self-defence to pre-emptive self-defence as offered by *NSS* could provide legal justification for many states to attack others. This also may provide other states to assert their right of pre-emptive self-defence against the US-UK.

It seems that the US's military action against Iraq was driven by the *NSS* that make no distinction between terrorism and those who knowingly harbour or provide aid to them; therefore it failed – in contrast to the war in Kuwait invasion – to build up a strong coalition to join its war on Iraq. It also may be reasonably concluded that Article 51 of the UN Charter proscribes the legality of the pre-emptive military actions as set out in Bush's doctrine. The basis of this conclusion is that, pursuant to Article 51 of the UN Charter and customary international law, there are three criteria for the use of force in self-defence:

1. The use of force must be proportional.
2. The use of force may be used only on the face of an ongoing or imminent attack. In other words, to counter an ongoing armed attack.
3. The use of force must be necessary; that is to say the only alternative when all peaceful means are exhausted.

In an initial analysis of the above three criteria on the US-UK war on Iraq, none of them were met. Thus, the US-UK violated the principle prohibiting recourse to the threat or use of force by invading Iraq in 2003, and, as we have subsequently discovered, no WMD and no links between the Iraqi regime and Al-Qaeda were found.

Legally speaking, even if the Iraqi regime had supplied weapons to this group, neither this supply, nor the 11 September incidents constitute an armed attack on the US-UK. Therefore, there was no legal basis for waging war on Iraq. This is so because the ICJ decided in the Nicaragua case that in customary international law the providing of arms to the opposition in another state does not constitute an armed attack on that state. The Court further said: 'neither these incursions nor the alleged supply of arms may be relied on as justifying the exercise of the right of collective self-defence.' Thus, while this thesis admits that acts of terrorism are criminal and unlawful and may require some counter measures, such measures must not go far beyond the limitations of the right of self-defence set forth by the UN Charter.

Drawing on the UN Charter and customary international law, I then introduce an alternative approach to the settlement of disputes peacefully. I identify three key features of Islamic international law. First, the importance of settlement of international disputes peacefully; second, the non-use of force in international relations except to stop aggression; third, the illegality of providing support to non-Muslims to wage aggression against Muslims. I argue that Islamic international law recognises several methods to settle disputes between states: these include arbitration and mediation.

There is an argument as to whether Islam is a complete way of life and has a distinct international dispute settlement system of its own. I have answered that question with the claim that Muslims have always spoken of international law when referring to the legal international system, rather than Islamic international law: a term that is still unexplored and very rarely used. In other words, the legal aspects of Islamic international law have not yet been considered to constitute an independent and important system that contains a set of norms able to address the complexity of the modern international relations.

In the context of Islam is a complete way of life, as stated by the Qur`an, the harm of alcohol is more than its benefits, so it should be avoided completely. This means that the evils of alcohol cited 1400 years ago, but it is only announced late last century that alcohol increases the chances of many diseases. However, a recent study of the Cancer Research UK has revealed that alcohol causes bowel cancer and that the more alcohol people drink the greater their risk of bowel cancer. It has also been announced that alcohol is one of the main risk factors for liver cancer and increases the chance of heart diseases and other physical, mental and social diseases affecting people as a result of consumption of alcohol over long period of time.

Contrary to the view of some western scholars, the thesis does not divide the world into *Dar Al-Islam* (the Muslims territory) and *Dar Al-Harab* (territory of war). This is so because the above classification is based on *ijtihad* (personal or legal reasoning) and *Tafsir* (commentary) of early *Fuqaha* (Muslims scholars). Without doubt, *Fiqh* (Islamic jurisprudence) and *Usul- Al-Fiqh* (Islamic research methodology) are developed over time, like any type of knowledge. Thus, it is

difficult to apply *Ra`y* (juristic opinion) of these *Madrasas* (Islamic law schools) to argue that recent Islamic international law must apply the same.

The *NSS* of 2002 and 2006 is a problematic foreign policy with regard to the use of force. The central theme of these documents is the 11 September incidents and the so-called 'rogue state'. The argument that the use of pre-emptive self-defence to combat terrorism is a new phenomenon of the US government finds no support in current international law principles.

Since the 11 September incidents, the US has increasingly asserted its authority for the unilateral use of force and claimed a special status to extent it exempt itself from the rules of international law. As such, their arguments were facilitated by a change in the concept of the use of force in the post-Cold War era. The accompanying reinterpretation of the notion of 'threat to peace and security' in Article 39 of the UN Charter led the US to extend the use of force to future attacks and terrorism threats.

The thesis shows how the US-UK exaggerated the case for war on Iraq. The British Iraq dossier was not strong enough and is a misguided false document. The key point is that, for example, the document (Appendix C. 7) contradicts the British Prime Minster Blair's statement when he said that 'I am in no doubt that he [Saddam] has made progress on WMD and that he has to be stopped, and the document disclose that his military planning allows for some of the WMD to be ready within 45 minutes of an order to use them.' The thesis argues that this statement led MPs and the British public to believe that Saddam should be dealt with urgently, while the US-UK were

almost certainly aware before the war that Saddam posed no immediate threat of offensive military actions to them or any other country.

The thesis concludes that the US-UK's armed forces as occupying power in Iraq under responsibility in accordance with Article 53 of Additional Protocol to the Geneva Convention that prohibits 'any acts of hostility directed against the historic monuments, works of arts and places of worship which constitute the cultural or spiritual heritage of peoples'. The thesis concludes that they attacked cities, which in turn resulted in the killing of civilians and destruction of Iraqi cultural heritages.

Above all they destroyed the Iraqi state by demobilizing the army and police force. They also failed to ensure public order and safety by not taking steps to prevent the looting of the Iraqi National Museum in Baghdad as well as hospitals and archaeological sites in Iraq while their troops stood by (appendix B.7). All these acts constitute violations of the above Article since such actions were clearly foreseeable.

Since the March 2003 invasion, the US-UK occupation of Iraq has utterly failed to bring peace, respect of human rights and democracy as originally claimed. The aggressive detention and inhuman interrogation tactics used in Abu Ghraib prison are grave breaches of international law (appendixes B.6). Without doubt these acts constitute war crimes and are prohibited by The Hague Conventions and the Geneva Convention as well as the Convention against Torture, which prohibits the use of any form of torture. Article (5) of the UDHR 1948 reads, 'No one shall be subjected to torture or to cruel, in human or degrading treatment or punishment.' The thesis concludes that under the doctrine of 'command responsibility' applied by the US-UK

in war trials after WWII, their leaders, senior officials and commanders must be held accountable for grave violations of international law.

It becomes clear that the UN system of collective security has failed to prevent the war on Iraq and to offer its population adequate protection against the unilateral resort to force by the US-UK. The international community needs to consider whether the UN Charter should be revised. The thesis argues that Islamic international law should be considered as a perfect legal system, and there is no reason why Islamic states should not take Islamic international law principles into account. It would seem that it is time for Muslim states to apply Islamic international law in all their international relations and to recognize the effectiveness and richness of this law.

SELECTED BIBLIOGRAPHY

1- Books:

A. Rahim, *The Principles of Muhammaden Jurisprudence According to the Hanafi; Maliki' Shafi'i and Hanbali Schools*, (London, Luzac, 1911).

A. Shearer, *Starke's International Law*, 11th ed., (London, Butterworth, 1994).

A.M. Stuyt, *Survey of International Arbitrations 1794-1989*, 3rd ed., (Dordrecht, Martinus Nijhoff, 1990).

Abd all Khalq Al-Nawawi, *International Relations and legal Systems in Islamic Law*, (Beirut, Dar al-Kitab Al-arbi, 1974).

AbdulHamid AbuSulayman, *Towards an Islamic Theory of International Relations: New Directions for Methodology and Thought*, (Virginia, the International Institute of Islamic Thought, 2nd ed., 1993).

Abdullah Ahmed An-Na`im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus,* (Philadelphia, University of Pennsylvania Press, 1992).

Abdullah Ahmed An-Na'im, 'Uploading International Legality against Jihad' in: Ken Booth & Tim Dunne, *Worlds in Collision: Terror and the Future of Global Order,* ed., (Basingstoke, Palgrave Macmillan, 2002).

Abdullah Saeed, 'Jihad and Violence: Changing Understandings of Jihad Among Muslims' in C.A.J. (Tony) Coady and Michael P. O'Keefe, ed., *Terrorism and Justice, Moral Argument in a Threatened Word*, (Melbourne, Melbourne University Press, 2003).

Abdur Rahman Doi, *Shari'ah: Islamic Law*, (London, Ta-Ha Publishers Ltd., 1984).

Abraham Chayes, 'The Use of Force in the Persian Gulf' in Lori F.Damrosch & D.J.Scheffer ed., *Law and Force in the New International Order*, 3rd edn., (, 1991).

Adam Curle, *Making Peace,* (London, Tavistock, 1971).

Adam Roberts & Benedict Kingsbury, ed., *United Nation, Divided World*, 2nd ed., (Oxford, Clarendon Press, 1993).

Adam Roberts & Richard Guelet, ed., *Document on the Laws of War*, 3rd ed., (Oxford, Oxford University Press, 2002).

Ahmad Hasan, *The Doctrine of Ijma in Islam,* (Islamabad, Islamic Research Institute, 1976).

Ahmed Abdel Aziz Yacoub, *The Fiqh of Medicine, Responses in Islamic Jurisprudence to Developments in Medical Science*, (London, Ta-Ha Publishers Ltd. 2001).

Ahmed M. Rifaat, *International Aggression, Study of the Legal Concept: Its Development and Definition in International Law*, 2nd ed., (Stockholm, Humanities Press, 1979).

Alan O'Day, ed., *War on Terrorism*, (Ashgate, 2004).

Alf Ross, T*he United Nations: Peace and Progress*, (New Jersey, the Bedminster Press Inc., 1966).

Alfred Zimmern, *The League of Nations and the Rule of Law 1918-1935* (1939).

Ali bin Ghanim Ali Al-Shahwani Al-Hajri, *The Iraqi Invasion of Kuwait and the Legality of its Claims in International Law and Islamic international Law*, PhD thesis submitted to University of Kent, Kent Law School, (February 1997).

Amos Yoder, *The Evolution of the UN System*, (London Taylor & Francis, 1993).

Anand R. P., *International Courts and Contemporary Conflicts*, (Asia Publishing House, 1974).

Andrew M. Dorman, & Otte, Thomas G. *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention,* (Aldershot, Dartmouth, 1995).

Angelo Rasahayagam, *Afghanistan a Modern History*, 2nd ed., (London, New York, I.B. Tauris, 2005).

Anjali V. Patil, *The UN Veto in World Affairs 1946-1990: A Complete Record and Case Histories of the Security Councils Veto*, (London, Mansell Publishing Ltd, 1992).

Anmad Qadri, *Islamic Jurisprudence in the Modern World*.2nd ed., (Lahore, Shaikh Muhammed Ashraf, 1981).

Ann Florini & Tannenweld Nina, *On the Front Lines: the United Nations Role in Preventing and Containing Conflict,* (New York: The Multilateral Project, United Nations Association of the United States of America, 1984).

Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (London and New York, 1993).

Anthony Paesons, *From Cold War to Hot Peace*, (London, Michael Joseph Ltd., 1995).

Antonio Cassese, eds., *The Current Legal Regulation of the Use of Force*, (Dordrecht, Boston and Lancaster: Martinus Nijhoff Publishers, 1986).

Antonio Cassese, 'Why States Use Force with Impunity: The "Black Holes" of International Law', in Antonio Cassese, ed., *Violence and Law in the Modern Age* 30 (Oxford, 1988).

Antonio Cassese, et al ed., *The Rome Statute for an International Criminal Court,* (Oxford, Oxford University Press, 2002).

Antonio Cassese, *International Law in Divided World,* (Oxford, Clarendon Press, 1986).

Antonio Cassese, *International Law*, (Oxford, Oxford University Press, 2001).

Antonio Tanca, 'The Prohibition of Force in the UN Declaration on Friendly Relations of 1970' in Antonio Tanca, ed., *Foreign Armed Intervention in International Conflict*, (London, Martinus Nijhoff Publishers, 1993).

Aritstide R. Zolberg, *Escape from Violence (Conflict and the Refugee Crisis in the Developing World)*, (Oxford, Oxford University Press, 1989).

Arthur Nausbum, *A Concise History of the Law of Nations*, (New York, 1965).

Arthur Sweetser, 'The League of Nations in World Politics', in *World Organisation: A Balance Sheet of the First Great Experiment, A Symposium of the Institute on World Organisation* (Washington (1942)30.

A. O. Curwurah, *The Settlement of Boundary Disputes in International law*, (Dobbs Ferry, N Y: Oceana, 1967).

A. Jwaideh, 'Aspects of Land Tenure and Social Change in Lower Iraq During the Late Ottoman Times', in T. Khalidi ed., *Land and Social Transformation in the Middle East* (Beirut, 1984)

A. Jwaideh, 'Midhat Pashs and the Land System of Lower Iraq', *St Antony's Papers*, No. 16, ed., A. Hourani (London, 1963).

B. Hoglund, & J.W. Ulrich, eds., *Conflict Control and Conflict Resolution*, (Copenhagen, Munksgard, 1972).

B. Shwadran, *The Middle East, Oil and the Great Powers,* (London, 1955).

Bar of the City of New York, *The Use of Armed Force in International Affairs: the Case of Panama*, (New York, 1992).

Bar-Yaacov N, *The Handling of International Disputes by Means of Inquiry*, (Oxford, Oxford University Press, 1974).

Bassam Tibi, 'War and Peace in Islam', in Sohail H. Hashmi ed., *Islamic Political Ethic, Civil Society, Pluralism, and Conflict*, (Princeton and Oxford, Princeton University Press, 2002).

Belatchew Asrat, *Prohibition of Force Under the UN Charter: A Study of Article 2(4)* (Uppsala, 1991).

Bello-Fadile, Ralph Sixtus Babatunde, *The Role of the United Nations in Conflicts Management*, (Zaria, Nigeria: Ahmuda Bello University, 1987).

Bengt Broms, *The Definition of Aggression in The United Nations* (Turku, 1968).
Benjamin B. Ferencz, *Defining International Aggression: The Search for World Peace: A Documentary History and Analysis,* vol. 2, (Bobbs Ferry & New York, Oceana Publications Inc, 1975).

Berridge G.R, *Return to the UN*, (London, Macmillan Academic & Professional Ltd. 1991).

Berridge G.R. & Jennings A. *Diplomacy at the UN*, (London, Macmillan Press Ltd, 1985).

Boutros Boutros- Ghali, *Agenda for Peace: Preventive Diplomacy, Peace Making and Peacekeeping*, A/47/277-S/24111, (17 June 1992).

Brian Urquhart, 'The UN and International Security after the Cold War', in: Adam Roberts & Benedict Kingsbury, ed., *United Nation, Divided World, the UN's Roles in International Relations* 2nd ed., (Oxford, Clarendon Press, 1993).

Broms Bengt, *The Declaration on the Peaceful Settlement of International Disputes*, in Essays in International Law in Honour of Judge Manfred Lachs, (The Hague; Boston, Martinus Nijhoff, 1984).

Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects', in Nigel N. White, ed., *Collective Security Law*, (Dartmouth Publishing Company, 2003).

Bruno Simma, *The Charter of the United Nations: A Commentary*, 2nd ed. (New York: Oxford University Press, 2002).

Bryon Dexter, *The Years of Opportunity: The League of Nations, 1920-1026* (New York, 1967).

C G. Roelofsen, 'The Jay Treaty and all That; Some Remarks on the Role of Arbitration in European Modern History and its "Revival" in 1794' in A H A Soons, ed., *International Arbitration: Past and Prospects*, (Martinus Nijhoff, 1990).

C. E. Osgood, *An Alternative to War or Surrender* (Urbana, IL: University of Ilinois Press, 1962).

C. R. Symmons, *The Maritime Zones of Islands in International Law* (The Hague, Nijhoff, 1979).

C. Tripp, 'Symbol and Strategy: Iraq and the War for Kuwait', in W. Danspeckgruber and Tripp ed., *The Iraqi Aggression Against Kuwait* (Boulder Colo, 1996).

Cesar P. Romano, *The Peaceful Settlement of International Environmental Disputes: a Pragmatic Approach,* (Kluwer Law International, 2000).

Charles Cheney Hyde, *International Law, Chiefly as Interpreted and Applied by the United States*, 2nd ed., (Boston, 1947).

Charles Tripp, *A History of Iraq*, (Cambridge, Cambridge University Press, 2000).
Christian David Nicholson, *The US "War on Terrorism" and the International Court of Justice: the Case for widening the advisory jurisdiction of the Court*, (2002).

Christine Cray, *International Law and the Use of Force*, 2nded., (Cambridge, Cambridge University Press, 2004).

Christopher C. Joyner, ed., *The United Nations and International Law*, (Cambridge, Cambridge University Press, 1977).

Christopher Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida and Iraq', in Christopher Greenwood, *Essays on War in International Law*, (London, Cameron May Ltd, 2006).

Christopher Greenwood, 'Self-Defence and the Conduct of International Armed Conflict' in Yoram Distein and Mala Tabory, eds, *International Law at a Time of Perplexity*, (Dordrecht, Boston and Lancaster: Martinus Nijhoff Publishers, 1986).

Christopher Greenwood, 'The UN as Guarantor of International Peace and Security: a UK View' in Christian Tomuschat, eds., *The United Nations at Age Fifty: A Legal Perspective*, (Hague, London and Boston: Kluwer Law International, 1995).

D. Hiro, *The Longest War: the Iran-Iraq Military Conflict* (London, 1989).

D. Moynihan, *On the Law of Nations*, (Harvard, 1990).

D. R. Khoury, *State and Provincial Society in the Ottoman Empire: Mousl 1540-1834* (Cambridge, 1997).

D.D.Newsom, *The Sensitive Link (The Swiss role in the US –Iran Hostage Crisis)*, (Festschrif Probst, Zurich, 1984).

Danesh Sarooshi, *Humanitarian Intervention and International Humanitarian Assistance*, (London, HMSO Publication, 1994).

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

Daniel Frei, ed. *Managing International Crises*, (Beverly Hills, CA. Sage, 1981).

David Davies Memorial Institute of International Studies, *International Disputes, the Legal Aspects*, (Europe Publications Limited, 1972).

David Dewitt, & Haglund, David & Kirton, John, *Building a New Global Order*, (Oxford, Oxford University Press 1993).

David J. Harris, *Cases and Materials on International Law*, 5th edn, (London, Sweet & Maxwell, 1998).

David J.Scheffer, ed., *Law and Force in the New International Order* (San Francisco, Oxford, Boulder 1991).

David Hunter Miller, *The Peace Pact of Paris: Study of the Briand-Kellogg Treaty*, (New York, The Knicker Bockers Press, 1928).

David R. Smock, *Making War and Waging Peace*, (Washington D.C., United States Institute of Peace Press, 1993).

David Schweigman, *The Authority of the Security Council under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice,* (The Hague, London, Kluwer Law International, 2001).

David V. Lewis, *Power Negotiating Tactics and Techniques,* (Englewood Cliffs, NJ: Prentice-Hall, 1981).

De Guttry and Roncitts ed., *The Iran, Iraq War (1998-1988) and the Laws of Naval Warfare*, (1993).

De Waart, P. I. J. M. *The Element of Negotiation in the Pacific Settlement of Disputes between States*, (The Hague, Martinus Nijhoff, 1973).

Dean G. Pruitt, and R.C. Snyder, eds., *Theory and Research on the Causes of War* (Englewood Cliffs, NJ: Prentice-Hall, 1969).

Denna F. Fleming, *The United States and the League of Nations, 1918-1938*, 3rd ed., (New York, 1968).

Dennis J.D. Sandole, and Ingrid Sandole-Staroste, eds. *Conflict Management and Problem Solving: Interpersonal to International Applications* (London: Frances Pinter, 1987).

Derek W. Bowett, 'The Use of Force for the Protection of Nationals Abroad' in Antonio Cassese, (eds), *The Current Legal Regulation of The use of Force*, (Dordrecht, Boston and Lancaster: Martinus Nijhoff Publishers, 1986).

Derek W. Bowett, *Self-Defence in International Law*, (Manchester, Manchester University Press, 1958).

Derek W. Bowett, *The Law of International Institutions*, 4th ed., (1982).

Dieter Fleck, *The Handbook of Humanitarian Law in Armed Conflict*, (Oxford, Oxford University Press, 1999).

Dilip Hiro, *The Longest War: the Iran-Iraq military Conflict*, (Grafton Books, 1989).

Dominic McGoldrick, *From '9-11' to the 'Iraq War 2003' International Law in An Age of Complexity*, (Oxford and Portland, Hart Publishing, 2004).

E. Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application*, (Dordrecht, The Netherlands, Kluwer Academic Publisher, 1992).

E. Van Sliedregt, *The Criminal Responsibility of Individual for Violation of International Humanitarian Law*, (T.M.C ASSER Press, The Hague, 2003).

E.L.M. Burns, *A Seat at the Table*, (Toronto, Clarke, Irwin, 1972).

Eddie Escultura, *Struggle for Peace*, (Quezon City, Kalikasan Press, 1988).

Edger O'Ballance, *The Second Gulf War*, (Galago Books, 1992).

Edward E. Azar, and John W Burton, eds *International Conflict Resolution: Theory and Practice*, (Boulder, CO, Lynne Rienner, 1986).

Edwards K. Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Applications,* (Dordrecht, The Netherlands, Kluwer Academic Publishers, 1992).

Eileen Carroll & Karl Mackie, *International Mediation- The Art of Business Diplomacy,* (The Hague, Kluwer Law International, 2000).

Eli Lauterpacht, Christopher Greenwood, Marc Weller, and Daniel Bethlehem, ed., *The Kuwait Crisis: Basic Documents, Cambridge International Documents Series Volumes I, II, III,* (Cambridge, Grotius Publications, 1991).

Eli Lauterpacht, *Oppenheim's International Law*, 7th ed., vol. 2, (London, Longmans, Green, 1952).

Ellen P. Stern, *The Limits of Military Intervention*, (London, Sage Publications Ltd., 1977).

Elizabeth A. Martin and Jonathan Law ed., *A Dictionary of Law*, 6th edn, (Oxford, Oxford University Press, 2006).

Emma Playfair, eds., *International Law and the Administration of Occupied Territories,* (Oxford, Clarendon Press, 1992).

Ernest A. Gross, *The United Nations Structure for Peace*, (New York, Harper & Row, 1962).

Evan Luard, *A History of the United Nations*, vol 1, (Hong Kong, The Macmillan Press Ltd, 1982).

Evan Luard, *A History of the United Nations: The Years of Western Domination 1945-1955*, (New York, the Macmillan Press Ltd, 1982).

Evan Luard, ed., 'Frontier Disputes in Modern International Relations', in *the International Regulation of Frontier Disputes*, (Thames and Hudson, London, 1970).

Evan Luard, *The UN: How it works and what it Does*, (London, The Macmillan Press Ltd, 1979).

F. Kalshoven, *Constraints on the Waging of War*, (Geneva, ICRC, 1987).

F. Rajaee, *Islamic Values and World View: Khomeini on Man, the State, and International Polities,* (Lanham, University Press of America, 1983).

F.P. Walters, *A History of the League of Nations*, (London, Oxford University Press, 1960).

F.S. Northedge & M. D. Donelan *International Disputes: The Political Aspects* (London: David Davies Memorial Institute of International Studies, 1971).

F.S. Northedge, *The League of Nations: its Life and Times,* (Leicester, Leicester University Press, 1986).

Farer. T. J., 'The United Nations and Human Rights: More than a Whimper, Less than a Roar' in: Adam Roberts and Benedict Kingsbury (eds.), *United Nations, Divided World,* 2nd ed., (Oxford, Oxford University Press, 1994).

Farhad Kazemi, 'Perspectives on Islam and Civil Society', in Sohail H. Hashmi, ed., *Islamic Political Ethic, Civil Society, Pluralism, and Conflict*, (Princeton and Oxford, Princeton University Press, 2002).

Farooq Hassan, *The Concept of State and Law in Islam*, (Washington, University Press of America, Inc. 1981).

Fazlur Rahman, *Major Themes of the Qur`an*, (Minneapolis, Bibliotheca Islamica, 1980).

Feller. A. H., *The Mexican Claims Commissions 1923-1934, (*New York, 1935).

Ferencz B., *Defining International Aggression*, (Dobbs Ferry, Oceana, 1979).

Florence Wilson, *The origins of the League of Covenant,* (London, The Hogarth Press, 1934).

Frederic L. Kirgis, *International Organization in their Legal Setting*, 2nd (St. Paul. MINN., West Publishing co, 1993).

Frederick Posses, *The Art of International Negotiation* (London Business Books, 1978).

Frederick S. Dunn, *Peaceful Change: A Study of International Procedures*, (New York: Council of Foreign Relations, 1937).

Frederick Sherwood Dunn, *The Protection of Nationals: A Study in the Application of International Law* (Baltimore, 1932).

G. Getinsaya, 'The Ottoman Administration of Iraq 1890-1908', (Manchester, University of Manchester PhD, 1994).

G. Tanja, *The Legal Delimitation of Intentional Maritime Boundaries* (The Hague, Kluwer Law Publishers, 1990).

Gaetano Arangio-Ruiz, *The United Nations Declaration on Friendly Relations and the System of the Sources of International Law* (Sijthoff & Noordhoff, 1979).

Galina Georgievna Shinkaretskaia, 'Peaceful Settlement of International Disputes: An Alternative to the Use of Force', in W E Butler, ed., *The Non-use of Force in International Law*, (Dordrecht, Netherlands; Boston, Mass. Martinus Nijhoff, 1989).

Geoff Simons, *Targeting Iraq Sanctions & Bombing in US Policy*, (London, Sagi Books, 2002).

George Farebrother and Nicholas Kollerstrom eds., *The Case against War, The Essential Legal Inquiries, Opinions and Judgments Concerning War in Iraq*, 2nd ed., (Nottingham, The Legal Inquiry Steering Group, Institute for Law and Peace, Russell Press Ltd, 2004).

George Grafton Wilson, *The First Year of the League of Nations*, (Boston, Little Brown & Company, 1921).

George Schwarzenberger, *The League of Nations and World Order*, (London Constable & Co. Ltd., 1936).

George Scott, *The Rise and Fall of the League of Nations,* (Hutchinson & Co Publishers Ltd, London, 1973).

George W. Downs, *Collective Security beyond the Gold War*, (Michigan, The University of Michigan Press, 1994).

Gideon Boas & William A.Schabas ed., *International Criminal Law Developments in the Case Law of the ICTY'*, (Leiden/Boston, Martinus Nijhoff Publishers, 2003).

Gilbert Murray, *From the League to UN*, (Oxford, Oxford University Press, 1948).

Glen Segell, *Disarming Iraq*, (London, 2004).

Gorge Abi-Saab, *The Concept of International Organisation*, (Paris, United Nations Educational, Scientific and Cultural Organisation, 1981).

Goronwy J. Jones, *The UN & the Domestic Jurisdiction of States*, (Cardiff, University of Wales Press, 1979).

Gregory H. Fox & Brad R. Roth, ed., *Democratic Governance and International Law*, (California, Chapman University, 2001).

H. G. Darwin, 'Methods of Peaceful Settlement: A: Negotiation.' In: *International Disputes: The Legal Aspects,* (London: David Davies Memorial Institute of International Studies, 1972) 77-82.

H. Chesnut, ed. *Contributions of Technology to International Conflict Resolution,* (London. Pergamon Press, 1987).

H. Mejcher, *Imperial Quest for Oil: Iraq 1910-1928* (London, 1976).

H. Wilson, *The Labour Government 1964-1970: Personal Record* (1971).

H.M. Zawati, *Is Jihad a Just War? War, Peace, and Human Rights under Islamic and Public International Law*, (Lewiston, NY. Edwin, Mellen Press, 2001).

Hamid Enayat, *Modern Islamic political Thought*, (Austin, University of Texas Press, 1982).

Hans Blix, *'The Principle of Peaceful Settlement of Disputes'* in: *The Legal Principles Governing Friendly Relations and Co-operation Among States* (Leyden: Sijthoff, 1966).

Hans Blix, 'The Role of the IAEA and the Exiting NPT Regime' in S.A Khan ed., *Nuclear War, Nuclear Proliferation, and their Consequences,* (1986).

Hans Kelsen, *Principles of International Law*, 2nd ed, (New York: Rinehart and Company Inc, 1952).

Hans Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems*, (London, Stevens and Limited, 1950).

Hans Schmidt, *The United Stated Occupation of Haiti; 1915-1934,* (New Brunswick, Rutgers University Press, 1971).

Helen Duffy, *The 'War on Terror' and the Framework of International Law*, (Cambridge, Cambridge University Press).

Helen Fein, ed., *The Prevention of Genocide: Rwanda and Yugoslavia Reconsidered*, (New York, Institute for the Study of Genocide, 1994).

Helms I Robert F. & Dorff, Robert H., *The Persian Gulf Crisis*, (London, Praeger Publishers 1993).

Henry J. Steiner and Philip Alston, *International Human Rights in Context, Law, Politics, Morals*, 2nd ed., (Oxford, Clarendon Press, 2000).

Herb Cohen, *You can Negotiate any Thing*, (Secaucus, N J.: Lyle Stuart, 1983).

Herbert W. Briggs, *The Law of Nations*, (New York, Appleton – Century – Crofts Inc, 1952).

Hersch Lauterpacht, eds, *Oppenheim's International Law: A treatise, Vol. II., Disputes, War and Neutrality*, 7th ed, (London, New York and Toronto: Longmans, Green and Co, 1952).

Hillarie Mccoubrey, & Nigel D. White, *International Law and Armed Conflict*, (Aldershot, Dartmouth Publishing Ltd., 1992).

Humphrey Waldock, ed., James L. Brierly, *The Law of Nations*, 6th ed., (Oxford, 1963).

Hussein A. Hassouna, 'The League of Arab States and the United Nations: Relations in the Peaceful Settlement of Disputes', in: *Regionalism and the United Nations*, (United Nations Institute for Training and Research, 1979).

Hussein A. Hassouna, *The League of Arab States and Regional Disputes*, (New York & Leiden, 1975).

I. Dore, *International Law and the Superpowers, Normative Order in a Divided Word,* (New Jersey, Rutgers University Press).

Ian Brownlie, *International Law and the Use of Force by States*, (Oxford, Oxford University Press, 1963).

Ian Brownlie, *Principles of Public International Law*, 6thed., (Oxford, Oxford University Press, 2003).

Ian John Stone, *Aftermath of the Gulf War: an Assessment of the United Nations Action*, (London, Lynne Rienner Publishers, 1994).

Ibn Khaldun, *The Muaddimah: An Introduction to History,* trans. Franz Rosenthal, (Princeton, Princeton University Press, 1967).

Ibrahim Shihata, and W. T., Onorato, 'Joint Development of International Petroleum Resources in Undefined and Disputed Areas' in: Blake GH, Pratt, MA and Schfield CH, eds., *Boundaries and Energy: Problems and Prospects* (The Hague, Kluwer Law International, 1998).

Ignaz Goldzhier, *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori, (Princeton, New Jersey, Princeton University Press, 1981).

Ingrid Detter, *The Law of War*, 2nd ed., (Cambridge, Cambridge University Press, 2000).

Ira M. Lapidus, *A History of Islamic Societies*, 2nd ed., (Cambridge, Cambridge University Press, 2002).

Irwin Abrams & Wang Gungwu, ed., *The Iraq War and its Consequences, thoughts of Nobel Peace Laureates and Eminent Scholars*, (Singapore, World Scientific Publishing Co, 2003).

Isador Walliman and M.N. Dobkowski, *Genocide and the Modern Age: Etiology and Case Studies of Mass Deaths*, (New York: Greenwood, 1977).

J. A. C. Gutteridge, *The United Nations in a Changing World*, (Manchester, Manchester University Press, 1969).

J. B., Scorrt, ed., *The Hague Conventions and Declarations of 1899 and 1907*, (1915).

J. Bercovitch & J. Z. Rubin, *Mediation in International Relation Multiple Approaches to Conflict Management*, (Macmillan).

John Collier & Vaughan Lowe, *The Settlement of Disputes in International Law*, (Oxford, Oxford University Press, 1990).

J. L. Simpson, & Hazel Fox, *International Arbitration: Law and Practice*, (Stevens & Son, London, 1959).

J. Simpson, *The War against Saddam: Taking the Hard Road to Baghdad*, (London, Macmillan, 2003).

J.C. Hurewitz *The Middle East and North Africa in World Politics, A Documentary Record*, 2nd printing, vol. 2 (1975-79).

J.G. Merrills, 'The Principle of Peaceful Settlement of Disputes', in Vaughan Lowe and Colin Warbrick, ed., *The United Nations and the Principles of International Law, Essays in Memory of Michael Akehurst*, (Routledge, 1994 Rep.1996).

J.G. Merrills, *International Dispute Settlement*, 3rd ed., (Cambridge, Cambridge University Press,1998).

J.G. Storke, *An Introduction to International Law*, 4th ed., (1984).

J.H. Ralston, *International Arbitration from Athens to Locarno* (1929).

J.H. Ralston, *The Law and Procedure on International Tribunals* (1926), Suppl, to 1926 (rev.ed. 1936).

James A. Wall, *Negotiation: Theory and Practice*, (Glenview, IL: Scott, Foresman and Co., 1985).

James B. Scott, ed., *The Hague Conventions and Declarations of 1899 and 1907*, (New York, 1915).

James Barros, *The United Nation; Past, Present and Future*, (New York, The Free Press Ltd, 1972).

James T. Shotwell, *War as An Instrument of National Policy*, (New York, Harcourt Brace and Company, 1929).

Jan Christian Sumuts, *The League of Nations: A Practical Suggestion*, (London, 1918).

Javaid Rehamn, *Islamic States Practices, International Law and the Threat From Terrorism, A critique of the 'Clash of Civilisation' in the New World Order*, (Oxford and Portland, Oregon, Hart Publishing, 2005).

Jean Combacau, 'The exception of Self Defence in U.N. Practice' in: Antonio Cassese, ed., *The Current Legal Regulation of the Use of Force* (Dordrecht, 1986).

Jean-Pierre Cot, *International Conciliation* (Europa Publications, transl by R Myers in 1972).

J.H.W Virzijl, *International Law in Historical Perspective, Part III, State Territory* (Leyden, Sithoff, 1970).

Jody Williams 'Iraq and Pre-emptive Self-Defence', in Irwin Abrams and Wang Gungwu, ed., *The Iraq War and its Consequences, The Thoughts of Nobel Peace Laureates and Eminent Scholars* (World Scientific Publishing Co, Singapore, 2003).

John Burton, *An Introduction to the Hadith*, (Edinburgh, University of Edinburgh Press, 1995).

John Burton, *The Sources of Islamic Law, Islamic Theories of Abrogation*, (Edinburgh University Press, 1990).

John W. Burton, *Conflict and Communication: The Use of Controlled Communications in International Relations*, (London Macmillan, 1969).

John Francis Murphy, 'Force and Arms', in *The United Nations, and International Law*, ed., Christopher C. Joyner, *ASIL*, The American Society of International Law, (Cambridge, Cambridge University Press, 1997).

John Francis Murphy, *The UN and the Control of International Violence*, (Manchester, Manchester University Press, 1983).

John Fischer Williams, *Chapters on Current International Law and the League of Nations* (1929).

John Fischer Williams, *Some Aspects of the Covenant of the League of Nations*, (London, Oxford University Press, 1934).

John G. Stoessinger, *Why Nations Go To War*, 6th ed., (New York, St. Martin's Press, 1993).

John H. Latane, *Development of the League of Nations Idea*, Vol.2, (New York, The Macmillan Company, 1932).

John Jones & Steven Powles, *International Criminal Practice*, 3rd edn., (Oxford, Oxford University Press, 2003).

John Kelsay, 'Civil Society and Government in Islam', in *Islamic Political Ethic, Civil Society, Pluralism, and Conflict*, ed., Sohail H. Hashmi, (Princeton and Oxford, Princeton University Press, 2002).

John Mearsheimer and Stephen Walt, *The Israel Lobby and the US Foreign Policy*, (London Review Books, Vol. 28. No.6 , March 2, 2006).

John Norton Moore, *History and Digest of International Arbitration to which the United Nations has been a Party*, Vol. 1. (Washington, 1898).

John Norton Moore, 'The Role of Regional Arrangements in the Maintenance of World Order' in: Cyril E. Black and Richard A. Falk, eds., *The Future of the International Legal Order vol. III: Conflict Management*, (Princeton and New Jersey: Princeton Press, Princeton, 1971).

John O'Brien, *International Law*, (Cavendish Publishing Ltd, London, 2002).

John RWD Jones & Steven Powles, *International Criminal Practice*, 3rd ed., (Oxford, Oxford University Press, 2003).

John S. Bassett, *The League of Nations: a Charter in the World Politics* (New York, 1930).

John Strawson, ed., *Law after Ground Zero* (Sydney, London and Portland: Glasshouse Press, 2002).

John T. Dunlop, *Dispute Resolution: Negotiation and Consensus Building*, (Dover MA: Auburn House, 1984).

Joseph Schact, *An Introduction to Islamic Law*, (1st published Oxford, Oxford University Press, 1964), reprinted, 1966, 1971).

Judith Gardam, *Necessity, Proportionately and the Use of Force by States*, (Cambridge, Cambridge University Press, 2004).

Julie Dahlits & Detlev Dicke, *The International Law of Arms Conflict and Disarmament Proceeding of the Symposium*, (United Nations, Geneva, New York, 1991).

Julius Stone, *Aggression and World Order*, (London, Stevens & Sons Ltd., 1958).

Jurgen Dedring, *Recent Advances in Peace and Conflict Research: A Critical Survey*, (Beverly Hills, CA: Sage, 1976).

Justin McCarthy, *The Ottoman Turks: An Introductory History to 1923*, (London and New York, Longman, 1997).

K.V.Raman (ed.), *Disputes Settlement Through the United Nations*, (New York, 1977).

Keith Suter, ed., *Alternative to War: Conflict Resolution and the Peaceful Settlement of International Disputes*, 2nd (Sydney, Women International League for Peace and Freedom, 1986).

Kenneth Roth, *The Court the US Doesn't Want*, (N.Y. Rev. Books, November 19, 1998).

Klaus Dicke, *Dispute Settlement in Public International Law: Texts and Material,* Compiled by Karin Oellers-Frahm and Norbert Wuhler, (Berlin; New York, Springer Verlag, 1984).

Knut Dormann, *Element of War Crimes under the Rome Statute of the International Criminal Court, Sources and Commentary,* 1st ed., (Cambridge, Cambridge University Press, 2002).

Kofi Annan, *"We the People": The Role of the United Nations in the 21st Century,* (New York, United Nations Department of Public Information, 2002).

Kofi Annan, *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*, (New York: United Nations, July 1998).

Lassa Oppenheim, *The League of Nations and its Problems*, (1919).

Lawrence Freedman and Efraim Karsh, *The Gulf Conflict 1990-1991Diplomacy and War in the New World Order*, (London, Faber and Faber Ltd, 1993).

Leland M Goodrich, *The United Nations,* (London, Stevens & Sons Ltd, 1960).

Leland M. Goodrich, & Edward Hambro, *Charter of the United Nations*, (London, Stevens &Sons Ltd, 1949).

Leslie C. Green, *The Contemporary Law of Armed Conflict*, (Manchester University Press, 2000).

Lincoln P. Bloomfield, ed. *The Management of Global Disorder: Prospects for Creative Problem Solving.* (Lanham, MD: University Press of America, 1987).

Lori Fisler Damrosch, 'Commentary on Collective Military Intervention to Enforce Human Rights' in: Lori Fisler Damrosch & David J. Scheffer, ed., *Law and Force in the New International Order* (San Francisco, Oxford, Boulder, 1991).

Lori Fisler Damrosch, & Scheffer J. David, *Law and Force in the New International Order,* (Oxford, Westview Press, 1991).

Louis B. Sohn, *Systematic Survey of Treaties for the Pacific Settlement of International Disputes, 1928-48* (Lake Success: United Nations Publications, 1948).

Louis B. Sohn, 'The Future of Dispute Resolution', in R. St. J. MacDonald and D.M. Johnson eds., *The Structure and Process in International Law: Essays in Legal Philosophy, Doctrines and Theory*, (Boston, MA: Martinus Nijhoff Publishers, 1983).

Louis B. Sohn, *Settlement of Disputes Relating to Interpretation and Application of Treaties*, Rdc Vol.150 (1975) II.

Louis B. Sohn, *The Function of International Arbitration Today*, Rdc vol. 108 (1963).

Louis Henkin, *How Nations Behave, Law and Foreign Policy*, (New York: Council on Foreign Relations, Columbia University Press, 1979).

Louis Henkin, *International Law: Politics and Values*, (Dordrecht, Boston and London: Martinus and Nijhoff Publishers 1995).

M. A. Nissim Bar-Yaacov, *The Handling of International Disputes by Means of Inquiry*, the Royal Institute of International Affairs, (Oxford, Oxford University Press, 1974)

M. Cherif Bassiouni, ed., *Islamic Criminal Justice System*, (New York, Oceana Publication, Inc, 1982).

M. Cherif Bassiouni, (compiled.,) *The Statute of the International Criminal Courts: A Documentary History*; (Transnational Publishers, Inc, 1998).

M. Cherif Bassiouni, *International Criminal Law, Enforcement*, Vol. II, 2nd ed., (Transnational Publishers, Inc, Ardsley, New York, 1999).

M. Evans, *Blackstone's International Law Documents*, 4th ed., (London, Blackstone Press Ltd., 1999).

M. Evans, *International Law*, (Oxford, Oxford University Press, 2003).

M. Kent, *Oil and Empire: British policy and Mesopotamian Oil 1900-1920* (London, 1976).

M. Marcel Deltenre, *General Collection of the Laws and Customs of War, Text and Comment*, (Bruxelles, 1943).

M. Margaret Ball & Hugh B. Killough. 'Pacific Settlement of International Disputes' in M. M. Ball and H. B. Killough, eds. *International Relations*, (New York: Ronald, 1956).

M. O. Hudson, *International Tribunals: Past and Future*, (Washington, 1944).

M. S. Daoudi & M. S. Dajani, *Economic Sanctions: Ideals and Experience* (London, Boston, 1983).

M.H. Mendelson, The Nicaragua Case and Customary International Law, in W. Butler (ed.), *The Non-Use of Force in International Law*, (Kluwer Academic Publishers, Dordreht, printed in the Netherlands, 1989).

M.Howard, *The Invention of Peace: Reflections on War and International Order* (London, Profile Books, 2000).

M.S. McDougal, Michael W. Reisman, and A. R. Willard, 'The World Process of Effective Power: the Global War System', in *Power and Policy in Quest of Law: Essays in Honour of Eugene Victor Rostow* (1998).

Majid Khadduri, *Islamic Jurisprudence, Shafi 'I's Risala, Translated with an Introduction, Notes, and Appendices*, (The Johns Hopkins Press, Baltimore, 1961).

Majid Khadduri, *The Islamic Conception of Justice*, (The John Hopkins University Press, Baltimore, 1984).

Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar Translated with an Introduction, Notes and Appendices* by Majid Khadduri (Baltimore: The Johns Hopkins University Press, 1966).

Majid Khadduri, *War and Peace in the Law of Islam* (1955).

Malcolm N. Shaw, *International Law*, 5th ed. (Cambridge: A Grotius Publication, Cambridge University Press, 2003).

Mallison, Thomas W. and Sally V., *The Palestine Problem in International Law and World Order,* (Longman Group, London, 1986).

Manfred Lachs M., *International Law, Mediation, and Negotiation, Multilateral Negotiation and Mediation: Instruments and Methods*, (1985).

Marc Weller (ed), *Iraq and Kuwait*: *The Hostilities and Their Aftermath*, (Cambridge, Grotius Publications Ltd, 1993).

Marcel M.T.A. Brus, *Third Party Disputes Settlement in an Interdependent Word. Developing a Theoretical Framework,* (The Netherlands: Martinus Nijihoff Publishers, 1995).

Marcelo G. Kohen, 'The Use of Force by the United States after the end of the Cold War, and its impact on International Law' in Michael Byers and George Nolte ed., *United States Hegemony and the Foundations of International Law*, (Cambridge, Cambridge University Press, 2003).

Margaret Macmillan, *Peacemakers the Paris Conference of 1919 and its Attempt to End War*, (London, John Murrag Publishers, 2002).

Margaret P. Doxey, *International Sanctions in Contemporary Perspective* (New York, 1987).

Mark Zacher, *International Conflicts and Collective Security, 1946- 77,* (New York, Praeger, 1979).

Martin Dixon & Robert McCorquodale, *Cases and Materials on International law,* 2nd ed., (London, Blackstone Press Ltd., 1991).

Martin Dixon & Robert Mc Corquodale, *Case and Materials on International law,* 3rded., (London, Blackstone Press Ltd., 2000).

Martin Patchen, *Resolving Disputes between Nations: Coercion or Conciliation* (Durham, NC: Duke University Press, 1988).
Martin Shaw, *Dialectics of War* (Pluto, 1988).

Martin Shaw, *The New Western Way of War: Risk-Transfer War and its Crisis in Iraq* (Polity, 2005).

Martin Shaw, *War and Genocide: Organised Killing in Modern Society* (Polity, 2003).

Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law* (Cambridge, Cambridge University Press, 2002).

Mary Ellen O'Connell, ed., *International Dispute Settlement*, (Aldershot, Ashgate Publishing Inc, 2003).

Mashood A. Baderin, *International Human Rights and Islamic Law*, (Oxford, Oxford University Press, 2003).

Mauro Politi and Giuseppe Nesi, *The International Criminal Court and the Crime of Aggression*, (Aldershot, Ashgate Publishing Inc, 2004).

McWhinney, E., *Judicial Settlement of International Disputes: Jurisdiction, Justifiability and Judicial Law-Making in the Contemporary International Court,* (Dordrecht: Martinus Nijhoff Publishers, 1991).

Michael Akehurst, *A Morden Introduction to International Law*, (London, Routledge, 1993).

Michael Akehurst, 'Humanitarian Intervention', in Hedley Bull, ed., *Intervention in World Politics 95* (Oxford, 1984).

Michael Brecher, Jonathan Wilkenfeld and Sheila Moser, *Crises in the Twentieth Century,* vol. I: Handbook of International Crises, (E Elmsford, NY: Pergamon Press, 1988).

Michael Byers and Georg Nolte ed., *United States Hegemony and the Foundations of International Law*, (Cambridge, Cambridge University Press, 2003).

Michael Donelan, *Peace Settlement of International Disputes: Report of a Conference at Ditchley Park, 8-11 January 1971*, (Enstone: Ditchley Foundation, 1971).

Michael Howard, 'The Historical Development of the UN's Role in International Security', in Adam Roberts & Benedict Kingsbury, ed., *United Nation, Divided World, the UN's Roles in International Relations* 2nd ed., (Oxford, Clarendon Press, 1993).

Michael N. Schmitt, *Counter-Terrorism and the Use of Force in International Law*, George C. Marshall European Centre for International and Security Studies, The Marshall Centre Papers No. 5, (2004).

Michael W. Reisman, 'Allocating competences to use Coercion in the Post-Cold War World: Practice, Condition, and Prospects, in *Law and Force in the New International Order*, ed., 3 (L.F.Damrosch & D.J.Scheffer, 1991).

Michael W. Reisman, *System of Control in International Adjudication*, (Durham, North Carolina and London, 1992).

Milan Rai, *Regime Unchanged, Why the War on Iraq Changed Nothing*, (Pluto Press, London Sterling, Virginia, 2003).

Milan Rai, *War Plan Iraq: Ten Reasons against War with Iraq,* (Verso Books, 2002).
Miller, David Hunter, *The Drafting of the Covenant*, (New York, 1928).

Milton Letltenberg, & Shefer, Gabrlel, *Great Power Intervention In the Middle East*, (New York, Pergamon Press, 1979).

Mohammad Hashim Kamali, *'Qiyas (Analogy)', The Encyclopaedia of Religion*, (New York, The Macmillan Pulishing Company, 1987, XII, 128 ff.

Mohammad Hashim Kamali, '*Siyasah Shariyah* or the Policies of Islamic Government', 6 *The American Journal of Islamic Social Sciences*, No. 1 (1989), 59.

Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Revised Edition, (Islamic Texts Society, Cambridge, St Edmundsbury Press, 1991).

Mohammed Al-Shafi`i, Al-Risalah cited in Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, Revised Edition, (Islamic Texts Society, Cambridge, St Edmundsbury Press, 1991).

Mohammed Bedjaoui, *The New World Order and the Security Council, Testing the Legality at its Acts*, (Dordrecht, The Netherlands, Martinus Nijhoff Publishers, 1994).

Mohammed Hussein Haykal, *The life of Mohammed*, trans. Isma'il Ragi al-Faruqi (Indianapolis, North American Trust, 1976).

Mohammed Mustafa Azami, *Studies in Hadith Methodology and Literature*, (Indianapolis, American Trust Publications, 1977).

Mohammed Yusuf Guraya, *Origins of Islamic Jurisprudence* 'with special reference to the *Muwatta*' of Imam milk', (Lahore, Sh. Mohammed Ashraf, 1985).

Moshe Brawer, ed., *Atlas of the Middle East*, (Macmillan Publishers Co, New York, 1988).

Muhammad Mustafa Azami, *Studies in Hadith Methodology and Literature* (Indianapolis, American Trust Publications, 1977).

Murad Hofmann, *Islam: The Alternative*, (Gateway Publishing, Reading, 1993).
Nagendra Singh, *The Role and Record of International Court of Justice*, (Dordrecht, Martinus Nijhoff Publishers, 1989).

Najeeb Al-Nauimi & Richard Meese, *International Legal Issues Arising Under the United Nations Decade of International Law*, (The Hague Martinus Nijhoff Publishers, 1994).

Natalino Ronzitti, 'Use of Force, *Jus Cogens* and State Consent' in Antonio Cassese, eds., *The Current Legal Regulation of the Use of Force*, (Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1986).

Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, (Oxford, Oxford University Press, 2000).

Nierenberg, Gerald I. *Fundamentals of Negotiating,* (New York: Howthorn Books, 1973).

Nigel D. White, *Keeping the peace: The United Nations and the Maintenance of International Peace and Security,* 2nd ed, (Manchester and New York: Manchester University Press, 1997).

Nigel. D. White, *The UN and Maintenance of International Peace and Security*, (Manchester, Manchester University Press, 1990).

Niilante Wallace-Burce, *The Settlement of International Dispute, Legal Aspect of International Organisation*, vol. 31 (Martinus Nijhoff Publishers).

Nissan Oren, ed. *Termination of Wars: procedures, and Aftermaths* (Jerusalem: Magnes Press, Hebrew University, 1982).

Nissim Bar-Yaacov, M.A., *The Handling of International Disputes by Means of Inquiry,* (Oxford , Oxford University Press,1974).

Noel J. Coulson, *A History of Islamic Law*, (Edinburgh University Press, Red wood Books, Trowbridge, G. B., 1994).

Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence*, (Chicago and London, University of Chicago Press, 1969).

Norman Bentwich, & Martin Andrew, *a Commentary on the Charter of the UN*, (London Routledge & Kegan Paul Ltd, 1950).

O'Connor, *Good Faith in International Law*, (Brookfield, VT Dartmouth, 1990).

Oellers–Frahm K. & Novbent Wuhler *Disputes Settlement in Public International Law, Text and Materials,* (New York, 1984).

Office of Legal Affairs-Codification Division, *Handbook On the Peaceful Settlement of Disputes between States*, (New York, United Nations, 1992).

Office of Public Information, *The United Nations and Human Rights* (United Nations, New York, 1973).

Oscar Schachter, *International Law in Theory and Practice,* (Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1991).

Otomar J. Bartos, *The Process and Outcome of Negotiation*, (New York: Columbia University Press, 1974).

Oussama Arabi, *Studies in Modern Islamic Law and Jurisprudence*, (The Hague, Kluwer Law International, 2001).

Paul Eden and To Donnell (eds.,), *11 September 2001: A Turing Point in International Law and Domestic Law?* (New York, Transnational Publishers, 2004).

Paul K. Walp, *Constitutional Development of the League of Nations*, (Kentucky, University of Kentucky Press, 1931).

Peck C., *The United Nations as a Dispute Settlement System*, (The Hague, Kluwer law International, 1996).

Penny Green and Tony Ward, *State Crime: Governments, Violence and Corruption*, (London and Sterling: Pluto Press, 2004).

Peri. J. Bearman, Th. Bianquis, Clifford Edmund. Bosworth, E.Van Donzel and W.P. Heinrichs, ed., *Encyclopaedia of Islam*, (Brill, 2004)

Peter J. Van Krieken, ed., *Terrorism and the International Legal Order: with Special Reference to the UN, the EU and Cross-border Aspects*, (The Hague, TMC Asser, 2002).

Peter Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force,* (Amsterdam, Het Spinhuis, 1993).

Peter Mangold, *Super Power Intervention in the Middle East*, (London, Croom Helm Ltd., 1978).

Philip Alston, *International Human Rights in Context, Law, Politics, Morals Text and Materials* 2nd ed., (Oxford, Oxford University Press, 2001).

Philip Alston, *The United Nations and Human Rights: A Critical Appraisal*, (Oxford, Oxford University Press, 1992).

Philippe Sands, ed., *From Nuremberg to The Hague, the Future of International Criminal Justice,* (Cambridge, Cambridge University Press, 2003).

Phyllis Bennis, *Calling the Shots How Washington Dominates Today's UN,* (Gloucestershire, Arris Books, 2004).

Pinhas Inbari, *the Palestinians between Terrorism and Statehood,* (Sussex Academic Press, Brighton, 1996).

Pual R Pillar, *Negotiating Peace: War Termination as a Bargaining Process* (Princeton University Press, 1983).

R. Opie, et al. *The Search for Peace Settlement* (Washington, D, C.: Booking Institute, 1951).

R. Paret, 'Isithsan and Istislah', *Encyclopedia of Islam*, New Edition (Leiden: E.J. Brill 1965, continuing).

R. Righter, *Utopia Lost, the United Nations and World Order*, (1995).

R. Schofiled, *Kuwait and Iraq: Historical Claims and Territorial Disputes* (London, 1991).

R. Simon, *Iraq Between Two World Wars: the Creation and Implementation of a National Ideology* (New York, 1986).

R. W. Ferrier, *The History of the British Petroleum Company,* vol. 1, *1901-1932,* (Cambridge, 1982).

R.L. Bindschedler, *'Good Offices', Encyclopaedia of Public International Law*, (The Netherlands, 1981).

Rachel Kerr, *The International Criminal for the Former Yugoslavia*, (Oxford, Oxford University Press, 2004).

Raia Shehadeh, *From Occupation to Interim Accords: Israel and the Palestinian Territories*, (Kluwer Law International and CIMEL Book Series No.4, 1997).

Raymond R. Probst, *Commentaries to the Geneva Conventions of 1949,* in: Jean S. Pictet, (Geneva, ICRC, 1958).

Raymond R. Probst, *Commentary on the Additional Protocols of 1977 to the Geneva Conventions of 1949,* ed., Y.Sandoz, Ch. Swinarski and Zimmermann, (Geneva, ICRC, 1987).

Raymond R. Probst, *Encyclopaedia of Public International Law, in Particular: Settlement of Disputes*, (Amsterdam, 1981).

Raymond R. Probst, *Good Offices in the Light of Swiss International Practice and Experience,* (Dordrecht, 1989).

Report of a Study Group of The David Davies Memorial Institute of International Studies, *International Disputes the Legal Aspects*, (London, Europa Publications).

Resolving Deep Rooted Conflict: A Handbook (Lanham, MD: University Press of America, 1987).

Richard A. Falk, *The Great Terror War*, (Gloucestershire, Arris Books, 2003).

Richard A. Falk, *The Vietnam War and International Law,* (Princeton, 1968).

Richard A. Falk, 'What Future for the UN Charter System of War Prevention? Reflections on the Iraq War' in I. Abrams and W. Gungwu (eds), *The Iraq War and its Consequences, Thoughts of Nobel Peace Laureates and Eminent Scholars*, (Singapore, World Scientific, 2003).

Richard Butler, *Saddam Defiant, the Threat of Weapons of Mass Destruction, and the Crisis of Global Security*, (London, Phoenix, 2000).

Richard Cannaughton, *Military Intervention in the 1990s: A New Logic of War*, (London, Routledge, 1992).

Richard Holbrook, *To End a War*, (New York: The Modern Library, 1999).

Richard I. Miller, *The Law of War*, (London, Lexington Books, 1975).

Richard J.Erickson, *Legitimate Use of Military Force against State-Sponsored International Terrorism* (Washington, 1989).

Richard N. Haass, *Intervention: The use of American Military Force in the Post-Cold War World*, (Washington DC, The Brookings Institution, 1994).

Ritchie Ovendale, *The Middle East since 1914*, 2nd ed., (London, New York, Longman, 1998).

Robert C. Hilderbrand, *Dumbarton Oaks: The Origin of the United Nations and the Search for Post War Security*, (London, 1990).

Robert H. Farrell, *Peace in Their Time: The Origins of the Kellog-Briand Pact* (1968).

Robert W. Gregg Boulder, Colo.; *About Face/ The United States and United Nations.* (London: L. Rienner Publishers).

Roberto Barsotti, 'Armed Reprisals', in Antonio Cassese, ed., *The Current Legal Regulation of the Use of Force* 79 (Dordrecht, 1986).

Rolof Haveman, Olga Kavran and Julian Nicholls, eds., 'The Context of the Law' in *Supranational Criminal Law: a System Sui Generis,* vol. 1, (Grotius Centre for International Legal Studies, Leiden University Campus, The Hague).

Rosalyn Higgins, *Problems and Process: International Law and How We Use It*, (Oxford, Clarendon Press, 1994).

Rosalyn Higgins, The Place of International Law in the Settlement of Disputes by the Security Council, in Mary Ellen O'Connell, ed., *International Dispute Settlement*, (Ashgate-Dartmouth, 2003).

Roslyn Higgins, *The Development of International Law through the Political Organs of the United Nations,* (1960).

Rosemarie Said Zahlan, *The Making of the Modern Gulf States: Kuwait, Bahrain, Qatar, the United Arab Emirates and Oman,* (1989).

Ruth B. Russell, *A History of the United Nations Charter*, (Washington D.C., the Brookings Institution, 1958).

Ruth Wedgwood, 'The Constitution and the ICC', in Sarah B. Sewall and Carl Kayse, ed., *The United States and the International Criminal Court, National Security and International Law*, American Academy of Arts and Sciences, (New York, Rowman and Littlefield Publishers Inc, 2000).

S. P., Sharma, 'The Relevance of Economic Factors to the Law of Maritime Delimitation between Neighbouring states' in E. D., Brown & R. R., Churchill, eds., *The UN Convention on the Law of the Sea: Impact and implementations*, Proceedings Law of the Sea Institute Nineteenth Annual Conference, (Honolulu, Law of the Sea Institute, 1987).

S. T. Alxandrov, *Self-Defence against the Use of Force in International Law*, (The Hague, Kluwer Law International, 1996).

Sabatai Rosenne, ed., *League of Nations Conference for the Codification of International Law 1930*, (Four Volumes) (New York, Dobbs Ferry, 1975).

Scott Ritter and Seymour Hersh: *Iraq Confidential*, (Nation Books, 26 October 2005).

Sean D. Murphy, *United States Practice in International Law, Vol.1:1999-2000,* (Cambridge, Cambridge University Press, 2002).

Sheldon Rampton, *Weapons of Mass Deception: the Use of Propaganda in Bush's War on Iraq,* (London, Robinson, 2003).

Sohail H. Hashmi, 'Interpreting the Islamic Ethics of War and Peace', in Sohail H. Hashmi, ed., *Islamic Political Ethic, Civil Society, Pluralism, and Conflict*, (Princeton and Oxford, Princeton University Press, 2002).

Sydney D Bailey, & Daws Sam, *The UN: A Concise Political Guide*, (London, the Macmillan Press Ltd, 1995).

Sydney D Bailey, *The Procedure of the UN Security Council*, (Oxford, Clarendon Press, 1975).

Sydney D Bailey, *The UN: A Short Political Guide,* (London, Macmillan Press ltd, 1989).

Sydney D. Bailey, 'Peaceful Settlement of International Disputes', in K. Venkata Raman, ed., *Disputes Settlement Through The United Nations,* (New York, Oceana Publications , Inc, 1977).

Sydney D. Bailey, *How War End: the United Nations and the Termination of Armed Conflict, 1946-1964*, (Oxford, Clarendon Press, 1982).

T. Hillier, *Sourcebook on Public International Law,* (London, Cavendish Publishing Limited, 1998).

T. Treves, 'New Trends in the Settlement of Disputes and the Law of the Sea Convention,' in Scheiber, H. N., ed. , *Law of the Sea: The Common Heritage and Emerging Challenges* (The Hague, Nijhoff, 2000).

T.B. Millar ed., *Current International Treaties* (London, 1984).

The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks Upon the United Nations, 6th ed., (W.W. Norton & Company Inc, New York, NY, London).

Thomas G. Weiss, *Collective Security in A Changing World*, (London, Lynne Rienner Publishers, 1993).

Thomas J. Knok, *To End All Wars*, (Oxford, Oxford University Press, 1992).

Travers Twiss, *The Law of Nations*, 2nd ed., (London, 1875).

Trevor Mostyn, ed., *The Cambridge Encylopedia of the Middle East and North Africa*, 1st ed., (Cambridge, Cambridge University Press, 1988).

UNITAR, *The United Nations and Maintenance of International Peace and Security*, (Dordrecht, 1987).

United Nations, *Handbook on the Peaceful Settlement of International Disputes,* (The United Nations, New York, 1992).

V. D. Degan, *Sources of International Law*, (Dordrecht, The Netherlands, Martinus Nijhoff Publisher, 1997).

V. Pechota, *The Quiet Approach. A Study of the Good Offices Exercised by the United Nations Secretary- General in the Cause of Peace, a UNITAR Study*, (1972).

V. Umbricht, *Principles of International Mediation (the Case of East African Community),* (Collected Courses of The Hague Academy of International Law, 1984).

V.N. Fedorov, The United Nations Declaration on the Non-Use of Force, in W. Butler (ed.), *The Non-Use of Force in International Law*, (Kluwer Academic Publishers, Dordreht, printed in the Netherlands, 1989).

Vaughan Lowe, 'Peace without Justice: Reconsidering the Law on the Use of Force' in W. E. Butler, eds., *Perestroika and international law*, (Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1990).

Ved Nanda (ed.,) *Law and War on Terrorism*, (Ardesley: Transnational Publications, 2005).

W. Butler (ed.), *The Non-Use of Force in International Law*, (Kluwer Academic Publishers, Dordreht, printed in the Netherlands, 1989).

Walters. F. P, A *History of the League of Nations*, 2 vols, (London, Oxford University Press, 1952).

Wayne Mapp, *The Iran-United States Claims Tribunal, The First Ten Years 1981-1991,* (Manchester, Manchester University Press, 1993).

Wellens K., *Economic Conflicts and Disputes before the Word Court (1922-1995),* (The Hague, Kluwer Law International, 1996).

William A. Schabas, *Genocide in International Law,* (Irish Centre for Human Rights, National University of Ireland, Galway, 2001).

William C. Gilmore, *The Grenada Intervention: Analysis and Documentation*, (London, 1984).

William D. Hartung, 'The Hidden Costs of War: How the Bush Doctrine is Undermining Democracy in Iraq and Democracy in America', in Irwin Abrams and Wang Gungwu ed., *The Iraq War and its Consequences, The thoughts of Nobel Peace Laureates and Eminent Scholars,* (World Scientific Publishing Co, Singapore, 2003).

William M. Habeeb, *Power and Tactics in International Negotiations*: *How Weak Nations Bargain with Strong Nations*, (Baltimore, MD: Johns Hopkins University Press, 1988).

William Rivers Pilt & Scott Ritter, *War on Iraq*, (London, Context Books, 2002).

Williams I. Zartman, *Ripe for Resolution*, (Oxford, Oxford University Press, 1985).

Williams I. Zartman, *The 50% Solution: How to Bargain Successfully with Hijackers, Strikers, Bosses, Oil Magnates, Arabs, Russians, and Other Worth Opponents in this Modern World* (Garden City, NY: Anchor Press, 1976).

Yasin Dutton, *The Origins of Islamic Law, The Quran, the Muwatta and Madinan Amal*, (Richmond, Surrey, Curzon Press, 1999).

Yoram Dinstein & M. Tabory, *War Crimes in International Law*, (The Hague, Martinus Nijhoff, 1996).

Yoram Dinstein, 'Crimes against Humanity', in J. Markarczyk, *Theory of International Law at the Threshold of the 21st Century*, (The Hague, Martinus Nijhoff, 1997).

Yoram Distein, *War, Aggression and Self-Defence*, 3rd ed., (Cambridge, Cambridge University Press, 2001).

Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam*, English translation, (Cairo, 1997).

2- Arabic Books:

Thomas B. Irving (Al-Hajj Ta'lim 'Ail), The Noble Qur`an Arabic Text an English Translation, (Beirut, Lebanon, Dar An-Nahda Al-Arabiya, 1992).

Abd Allah Mohammed ibn Abi Baker Ibn Qayyim Al-Jawziyyah, *A'lam al-Muwqin`un Rabbi al-Alimin*, (Beirut, Dar al-Fikr, 1397 AH).

Abd al-Wahhab Khallaf, *Ilm Usul al-Fiqh*, 12th edn., (Kuwait, Dar al-Qalam, 1398/1978).

Abu Abdullah al-Dimashqi, *Rahmah al-Ummah fi ikhtulaf al-A'immah*, (Beirut, Lebanon, Dar al-Kutub al- llmiyyah, 1995).

Abu al-Aynayn Badran Badran, *Usul al-Fiqh al-Islami*. (Alexandria: Mu'assasah Shabab al-Jamiah, 1402/1984).

Abu Allah Muhammad b. Ahmad Al- Qurtubi , *al-ami li- Ahkam al-Qur`an* (also known as Tafir al-Qurtubi). 3rd edn. (Cairo, Dar al-Kutub al- Arabiyyah, 1387/1967).

Abu al-Wahhab Khallaf, *Ilm Usul al-Fiqh*, 12th edn., (Kuwait, Dar al-Qalam, 1398/1978).

Abu Bakr Ahmad b. al-Husayn Al-Bayhaqi, *Al-Sunan al-Kubra*. 10 vols. (Beirut, Dar al-Fikr, n.d).

Abu Bakr b. Abd Allah Ibn al-Arabi, *Ahkam al-Qur'an.* (Cairo: Matbaah Dar al-Sa adah, I330 A.H.)

Abu Dawad al-Sijistani. *Sunan Abu Dawud*. Eng. trans. Ahmed Hasan. 3 vols. (Lahore, Ashraf Press, 1984).

Abu Ishaq Al-Shatebi, *Al-Muwafaqat Fi Usul Al-shari'a*, (ed), Abdulla Diraz, Dar Al-Kutab Al 'ilmiya, (Beirut, Lebanon).

Abu Ishaq Al-Shirazi, Al-Luma fi *Usul Al-Fiqh,* (Cairo, Dar Al-Raid Al-Arabi, 1970).

Abu Ishaq Ibrahim Shatibi, *Al- Muwafaqat fi Usuk Al-Ahkam, ed.,* Mohammed Hasanayn Makhluf, (Cairo, al-Maktaba as-salafiya, 1341 A.H), III, 197.

Abu Jafar Mohammed Ibn Jarir Al-Tabrai, *al-Ihkam fi Usul al-Ahkam.*

Abu Muhammad Ali b. Ahmad Ibn Hazm, *Al-Ihkam fi Usul al-Ahkam.* ed. Ahmad Mummad Shakir. 4 vols. (Beirut, Dar al-Afaq al-Jadida, 1400/1980).

Abu'l-Husayn Muhammad b. Ali Al-basri, *Al-Mutamad fi Usul al-Fiqh*, ed. Shaykh Khalil al-Mays. (Beirut, Dar al-Kutab al-Ilmiyyah, 1403/1483).

Ahmed ibn Hannibal, *Musnad al-Imam Ahmed ibn Hanbal*, 6 vols, (Beirut, Dar al-Fikr, n.d).

Ali Abd al-Raziq, *Al-Islam wa Usul al-Hukm*, (Islam and the Basis of Government), (Cairo, 1925) is excerpted (trans. Joseph Massad) in *Liberal Islam*: *A Sourcebook*, ed., Charles Kurzment (New York, Oxford University Press, 1998).

Al-Mawrdi *Al- Ahkam as-Sultaniyyah* , Translated by Asadullah Yate, *Al- Ahkam as-Sultaniyyah: The Laws of Islamic Governance*, (London, Ta-Ha Publishers, 1996).

Al-Mubarak, *Nizam al-Islam fi al-Hukm wa al-Dawla*, (Beirut, Al-Maktaba al-IImiya, 1983).

Ash-Shafi'I, al-Umm, vol.7: 492-494 (1993).

Al-Qaradha wi Yousif, *Madkhal lidrasat Al-Shari'ah Al-Islamiyyah*, (Cairo, Maktabat Wahbah, 1991)

Al-Suati, *Al-Gama al-saqur*, vol. 2.

Fakhr al-din b. Omar Al-Razi, *al-Tafsir al-Kabir* (also know as Mafatch al-Ghayb), (Beirut, Dar al Fikr, 1398/1978).

Ibn Kathir (A.1), vol. 2, 12-14.

Ibn Khaldoun, *Al-Muqqadima,* (Introduction).

Ibn Qayyim Al-Jawziyyah , *Ilam al-Muwaqqi'in an Rabb al-alamin ed.,* Mohammed Munir al-Dimashqi, (Cairo, Idarah al-Tiba'ah al-Muniriyyak. 4 vols., n.d.

Ibn Qayyim, Ilam, 1, 222.

Ibrahim Salqini, *Usul Al-Fiqh Al-Islami*, (Damascus, Matab'at Al-Insha', 1981).

Imam Al-Nawawi edited Sahih Muslim in six-volumes and in 18 parts (Cairo, 1924).

Imam Malik ibn Anas, *Al-Muwatta of Imam Malik ibn Anas, The First Formulation of Islamic Law,* translated by Aisha Abuurrahman, (London and New York, Bewley, Kegan Paul International, 1989).

Imam Mohammed ibn Mohammed ibn Ahmed Abu-Hamid at-Tusi-al-Ghazali, *Al-Mustasfa min ilm al-Usul*, 1st ed., al-Hallabai, Al-Maktba'a al-Amiriya, (Bulaq, Cairo, 1322/1906) and *Al-Mustasfa fi'Ulum al-Usul*, (Cairo, 1935 edition).

Imam Mohammed ibn Mohammed ibn Ahmed Abu-Hamid at-Tusi-al-Ghazali, *Al-Mustasfa min ilm al-Usul*, 2 vols, (Cairo, Al-Maktba'a al-Amiriya, 1356/1937).

Irahim Salqihim, *Usul Al-Fiqh Al-Islami, Matba't Al-Insha'*, (Damascus, 1981).

Jalal al-din al- Suyuti, A*sbab al- nuzul*, (Cairo, Dar al-Tahrir li'l-Tab`wal-Nashr, 1963).

M. Abu-Zayd, *Al-Nasikh* wa *al-Mansukh: Dirasah Tashri'iyyah Ta'rikhiyyah Naqdiyyah,* (Cairo, Dar- al-Fikr al-Arabi, 1963).

Malik Ibn Anas, *Al-Muwtt'a*, ed., Mohammed Fouad Abdelbaqi, 1st ed, (Cairo, Dar Al-Hadeeth).

Malik Ibn Anas, *al-Muwatta,* (Cairo, Dar ar-Rayan lil Turath, 1408/1988).

Imam Malik ibn Anas ibn Malik, *al-Muwatta*, ed., Farouq Salad, 3rd ed., (Dar al-Afaq al-Jadida, Beriut, 1403/1983).

Mohammed Abu AL-Nur Zuhayr, *Usul Al-Fiqh*, 4 vols (Cairo, Dar Al-Tiba`ah Al-Mohammediyyah, 1372/1952)

Mohammed Abu Zahara, *Usul al-fiqh*, (Cairo, Dar al-Fikr al-Arabi, 1377/ 1958).

Mohammed Abu Zahra, *Concept of War in Islam*, trans. Mohammad Al-Hady and Taha Omar, (Cairo, Ministry of Waqf, 1961).

Mohammed Abu Zahrah, *Ibn Hanbal*, (Cairo, Dar Al-Fifr Al-Arabi, 1367/1947).

Mohammed Ibn Al-Hasan Al- Shaybani, 'Kitab Al-siyar Al-kabir', trans. Majid Khadduri, *The Islamic Law of Nations*, Baltimore, (The Johns Hopkins University Press, 1966).

Mohammed ibn Ali ibn Mohammed al (ash)-Shawkani, *Risalat al-Qawl al-Mufeed fi Adilat al-Ijtihad wa al-Taqlid: a treatise refusing the doctrine that a Muslim must belong to one of the four madhabih* (Islamic school), Mustafa al-Babi al-Halabi, (Cairo, 1347/1928).

Mohammed ibn Idris Al-Shai`i, *Kitab al-Umm*. 7 vols. (Cairo, Dar al-Shab, 1321, A.H).

Mohammed Khalid Masud, *Shatibi's Philosophy of Islamic Law*, (Islamabad, Islamic Research Institute, 1995).

Mohammed Sallaam Madkhour, *al-Madkhal lil Fiqh al-Islami: History Sources, and General Theory* (Cairo, Dar an-Nahda al-Arabia,1386/1966).

Muhammad b. Ahamd b. Rushd Al-Qurbi, *Bidayah al-Mujtahid* (Cairo: Mustafa al-Babi al-Halabbi, 1401/1981).

Muhammad b. Ismail Al-Bukhari, *Sahih al-Bukhari*. 8 vol., (Istanbul, al-Maktabah al-Islamiyyah, 1981).

Muhyi al Din Abu Zakariya Yahya inb Sharaf Al-Nawawi, *Minhaj al- Talibin*. Eng. E.C Howard. (Lahore, Law Publishing Company, n.d.).

Rashid Rida, (ed.,), *Majou'at al-Hadith an-Najdia*, (al-Maktaba as-salafiya, al-Madina al-Munawara, Saudi Arabia, 1383 AH).

Sayf al-Din Ali Ibn Mohammed Al-Amidi, *al-Ihkam fi Usul al-Ahkam*, 4 vols, ed., Abd al-Razzaq Afifi, 2nd edn., (Beirut, al-Maktab al-Islami, 1402/1982).

Sayyid Mohammad Asghari, *Qiyas wa sayr-e takwin-e an dar Huquq-e Islam*. n.p, (1361/1982).

Shaykh Mohammed Al-Khudari, *Usul Al-Fiqh*, 7th edn., (Cairo, Dar Al-Fakir, 1401/1981).

Subhi Rajab Mahmassani, *Falsafah al – Tashri fi- Islam*: *The Philosophy of jurisprudence in Islam.* Trans. Farhat J. Ziadeh (Leiden, E.J. Brill, 1961).

Yusuf Al-Qaradawi, *Fatawa al-islamiyya bayna al-juhud wa al-tatarruf*, (Qatar, 1982).

3- Journals Articles:

A. Daura, 'A brief Account of the Development of the Four Sunni Schools of Law and some Recent Development', 2 *Journal of Islamic and comparative Law*, (1968), 1.

A. J. P. Tammes, 'Decisions of International Organs as a Source of International Law', *Recuiel des Cours*, Vol.94, (1958-II) 265-364.

A.G. Mezerik, 'The Kuwait and Iraq Dispute', 7 *International Review Services*, (1961) 66.

Aaron Glantz, 'Bush and Saddam Should Both Stand Trial, Says Nuremberg Prosecutor', *Global Policy Forum*, at, www.globalpolicy.org/security/oil/irqindx.htm.

Abdul G Koroma, 'The Peaceful Settlement of International Disputes' *NILR* (1996) 227-234.

Abraham Chayes, 'The Legal Case for US Action in Cuba', 47 *Department of State Bulletin*, No. 1221 (19 November 1962) 963-65.

Abraham Sofaer, 'International Law after Kosovo', 36 *Stanford Journal of International Law* (2000) 1-21.

Abraham Sofaer, 'On the Necessity of Pre-emptive', 14 *EJIL*, (2003) 209.

Abraham Sofaer, 'Sixth Annual Waldemar A. Solt Lecture in International Terrorism, the Law and the National Defence', 126 *MiL. L. REV.*89 (1989).

Adam Roberts, 'The So-called "Right" of Humanitarian Interventions', 3 *Y. B. INT'L. HUM. L.* 3, at 6-7, (2000) 49-51.

Agora, 'US Force in Panama: Defenders, Aggressors or Human Rights Activists?', 84 *AJIL* 414 (1990).

Ahmed Hassan, 'The Principle of Istihsan in Islamic Jurisprudence', 16 *Islamic Studies* (1977) 347-363)

Ahmed M. Ajaj, 'Humanitarian Intervention: Second Reading of the Charter of the United Nations', 7(4) *Arab LQ* (1992).

Alfred P. Rubin, 'Legal Response to Terror: An International Criminal Court?' 43 *Harvard International Law Journal*, No. 1 (2002) 65.

Alhaji A.M. Nour, 'Qiyas as a Source of Islamic Law' 5 *Journal of Islamic and Comparative Law*, (1974), 18-51.

Amir A. Majid., 'Is the Security Council Working? "Desert Storm" Critically Examined' 4 *AJIL* (1992) 984-990.

Amos S. Hershey, 'The History of International Relations during Antiquity and the Middle Ages', 5 *AJIL* (1911) 901.

Andrew M. Scott, 'Non-Intervention and Conditional Intervention', 22 *Journal of International Affairs* (1968) 208-216.

Anthony Aust, *Modern Treaty Law and Practice*, (2001).

Anthony Clark Arend, 'International Law and the Recourse to Force: a Shift in Paradigms', 27 *Stan. J. Int. L. L* 1, 14(1990).

Anthony Clark Arend, 'The Obligation to Pursue Peaceful Settlement of International Disputes during Hostilities' *Va. J. Int'l L* 24:1 (Fall 1983) 701-730.

Anthony D'amto, 'Israel's Air Strike upon the Iraqi Nuclear Reactor', 77 *AJIL* (1983) 584.

Antonio Cassese, 'On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law', 9 *EJIL* 3 (1998).

Antonio Cassese, 'The International Community's "Legal" Response to Terrorism', 38 *ICLQ* (1989) 589.

Antonio Donini, 'Beyond Neutrality: On The Campability of Military Intervention and Humanitarian Assistance', *The Fletcher Forum of World Affairs*, 19 (2) (1995) 29-45.

Barry A. Feinstein, 'The Legality of the Use of Armed Force by Israel in Lebanon – June 1982', 20 *Israel Law Review* (1985) 362.

Barry M. Blechman, 'The Intervention Dilemma', *The Washington Quarterly*, 18 (3), (19950 63-73.

Bengt Broms, 'The Definition of Aggression', 154 *Hague Recueil* (1977-I) 299.

Bernard Weiss, 'Interpretation in Islamic Law: The Theory of Ijtihad', 26 *The American Journal of Comparative Law*, (1978), 199-212.

Blaine Sloan, 'The Binding Force of a 'Recommendation' of the General Assembly of the United Nations' *BYIL*, Vol. 25, (1948)1-33.

Bosco G., 'New Trends on Peaceful Settlement of Disputes between States'16 *North Carolina JIL and Commercial Regulation* (1991) 235-236.

Brierly, 'The General Act of Geneva, 1928', 11 *BYIL* (1930) 119.

Bruno Simma, 'NATO, The UN and The Use of Force: Legal Aspects' 10 *EJIL* (1999)1.

Burns H. Weston, 'Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy', 85 *AJIL* (1991) 516-517.

C.C. Posteraro, 'Intervention in Iraq: Towards a Doctrine of Anticipatory Counter-Terrorism, Counter-Proliferation Intervention', 15 *Fla. JIL* (2002).

Charles Cheney Hyde, 'The Place of Commission of Inquiry and Conciliation Treaties in the Peaceful Settlement of International Disputes', 10 *British Yearbook of International Law*, (1929) 96-110.

Charles G. Fenwick, 'Intervention: Individual and Collective', 39 *AJIL* (1945) 645-663.

Chibli Mallat, 'Shi'ism and Sunnism in Iraq: Revisiting the Codes', *Arab Law Quarterly*, 8 (2) (1993) 141-159.

Christian Walter, 'Security Council Control Over Regional Action', 1 *Max Planck Yearbook of United Nations Law* (1997) 129-93.

Christine Chinkin, 'The Legality of Nato's Action in the Former Republic of Yugoslavia (FRY) Under International Law', 49 *ICLQ* 910 (2000).

Christine Gary & B. Kingsbury, 'Developments in Dispute Settlement: Inter-states Arbitration since 1945', 63 *BYBIL* (1992).

Christine Cray, 'The US National Security Strategy and the New "Bush Doctrine" on Pre-emptive Self-defence", 1 *Chinese Journal of International Law* 437 (2002) 440.

Christine Gray, 'After the Ceasefire: Iraq, the Security Council and the Use of Force', 65 *BYBIL* 135, (1994) 169-72.

Christine Gray, 'From Unity to Polarization: International Law and the Use of Force Against Iraq', 13 *EJIL* 1 (2002).

Christine Gray, 'The Use and Abuse of the international Court of Justice: Cases Concerning the Use of Force after Nicaragua', 14(5) *EJIL* (2003) 867.

Christopher C. Joner, 'The United States Action in Grenada: Reflections on the Lawfulness of Invasion', 78 *AJIL* (1984)131.

Christopher Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida and Iraq', 7 *San Diego International Law Journal* (2003).

Christopher Greenwood, 'International Law and the United States Air Operation against Libya', 89 *West Virginia Law Review* (1987) 933.

Christopher Greenwood, 'International Law and UN military Operations' 1 *YBIHL* (1998) 3.

Christopher Greenwood, 'Iraq's Invasion of Kuwait: Some Legal Issues', 47 *The World Today*, No.3 (March 1993).

Christopher Greenwood, 'Is there a Right of Humanitarian Intervention?' *The World Today*, (Feb 1993).

Christopher Greenwood, 'New World Order or Old? The Invasion of Kuwait and the Rule of Law', 55 *Modern Law Review* (1992), 153.

Christopher Greenwood, 'The Gulf Conflict and the New World Order', *Modern Law Review*, (March 1992).

Christopher Greenwood, 'The Relationship between *Ius ad Bellum* and *Ius in Bello'*, 9 *Review of International Studies* (1985) 221.

Christopher Greenwood, 'War, Terrorism and International Law', 56 *Curr. L eg. Probs.* (2004) 505-529.

Chukwumerije, 'Mandatory Rules of Law in International Commercial Arbitration', 5 *African J. Int.& Com.law* 561(1993).

Clyde Eagleton, 'The Jurisdiction of the Security Council over Disputes' 40 *AJIL* (1946) 513-533.

Colin Warbrick, 'Evaluating the ICTY and its Completion Strategy: Efforts to Achieve Accountability for War Crimes and their Tribunals' 3 *Journal of International Criminal Justice* (2005) 82.

Colin Warbrick, 'The Invasion of Kuwait by Iraq', 40 *ILCLQ* (1991) 482.

Colin Warbrick, 'The United Nations System: A Place of Criminal Courts?', *Transnational Law and Contemporary Problems,* (1995) 237-61.

Colombos C. J., 'The United Nations Charter', 1 *The International Law Quarterly*, (1947), 20-33.

Colum Lynch 'Allied Doubts Grow about US Strike on Sudanese Plants,' *Boston Globe*, (September 24, 1998) A2.

D. H. Johnson, 'The Effect of the Resolutions of the General Assembly of the United Nations', 32 *BYIL*,Vol. (1955-56) 97-123.

D. Momtoz, 'Did the Court Miss an Opportunity to Denounce the Erosion of the Principle Prohibiting the Use of Force?' 29 *YJIL* 1 (2004).

D.W. Greig, 'Self-Defence and the Security Council: What does Article 51 Require?' 40 *ICLQ* (1991) 366.

Dan Danielsen, on Antony Angies, 'Imperialism, Sovereignty and International Law' 3 *AJIL* Vol.100, (2006) 757-762.

Dapo Akande, 'The Role of the International Court of Justice in the Maintenance of international Peace', 8 *African Journal of International and Comparative law,* (1996) 592-616.

Darry I Robinson, 'Defining "Crimes against Humanity" at the Rome Conference', 93 *AJIL* 43 (1999).

David Abramowitz, 'The President, the Congress, and Use of Force: Legal and political Considerations in authorizing Use of Force against International Terrorism', 43 *Harvard International Law Journal*, No. 1 (2002) 71.

David D. Caron, 'The legitimacy of the Collective Authority of the Security Council', 87 *AJIl* (1993) 552-88.

David D. Caron, 'The Nature of Iran-United States Claims Tribunal and the Evolving Structure of International Dispute Resolution' 84 *AJIL*, (1990) 104-56.

David M. Malone and Karin Wermester, 'Boom and Bust? The Changing Nature of UN Peacekeeping', 7 *International Peacekeeping*, (2000) 37-54.

David O'Brien, 'The Search for Subsidiarity: The UN, African Regional Organizations and Humanitarian Action', 7 *International Peacekeeping*, 2000, 57-83.

David P. Forsythe, 'International Criminal Courts: A Political View', 15 *Neth. Q. H. R.* 5 (1997).

David S. Cloud et al., 'Red Cross Found Widespread Abuse of Iraqi Prisoners', *Wall Street Journal*, (May 7, 2004), at A1.

David Scheffer, 'The United States and the International Criminal Court', 93 *AJIL* 12 (1999).

David Turndorf, 'The US Raid on Libya: A Forceful Response to Terrorism', 14 *Brooklyn Journal of International Law* (1988)187.

David, S. Glass, 'The UN Security Council II: Perception of Bias', 12 *The World Today*, Vol.46, (December 1990).

Derek W. Bowett, 'Collective Self-Defence under the Charter of the United Nations', 32 *BYBIL* (1955-65) 130-161.

Derek W. Bowett, 'Contemporary Developments in Legal Techniques in the Settlement of Disputes', 180 *Receuil des Cours* (1983-II) 169.

Derek W. Bowett, 'Reprisal Involving Recourse to Armed Force', 66 *AJIL* (1972)1.
Dino Kristiotis, 'Arguments of Mass Confusion', *EJIL*, Vol.15, No. 2 (2004) 233-278.

Dino Kristiotis, 'The Kosovo Crisis and Nato's Application of Armed Force Against the Federal Republic of Yugoslavia', *ICLJ*, Vol.49, (2000).

Dino Kristiotis, 'The Legality of the 1993 US Missile Strike on Iraq and the Right to Self-Defence in International Law', 45 *ICLQ* (1996) 162.

Domingo E. Acevedo, 'Collective Self-Defence and the Use of Regional or Subregional Authority as Justification for the Use of Force', 78 *ASIL* Proceedings 69 (1984).

E. Kerley, 'The Power of Investigation of Security Council', 55 *AJIl* (1961).

E. Schwelb, 'Crimes against Humanity', 23 *BYIL* (1946).

E.A., JR. Plunkett, 'UN Fact-Finding as a Means of Settling Disputes'9, *Va.J. Int'l L* (1968-9).

Edward M. Wise, 'Terrorism and the Problem of an International Criminal Law', 19 *Connecticut Law Review*, (1987) 799-830.

Edward McWhinney, 'Friendly Relations and Cooperation among States: Debate at the Twentieth General Assembly', United Nations, 60 *AJIL* (1966) 356.

Efraim Karsh, and Inari Rautsi, 'Why Saddam Hussein Invaded Kuwait', *Survival*, Vol.33, No. I, (January/February 1991).

Elizabeth Wilmshurst, 'The Chatham House Principles of International Law on the Use of Force in Self-defence', *ICLQ*, Vol. 55. Part 4 (October 2006).

Emerich de Vattel, *The Law of Nations* (1758), 3 *Classics of International Law* (1916, transl. by Charles G. Fenwick).

F.Blaine Sloan, 'The Binding Force of a "Recommendation" of the General Assembly of the United Nations', 25 *BYBIL* 1, (1948).

Fenwick, 'Revision of the Pact of Bogotá', 48 *AJIL* (1954) 123.

Franck E. Vogel, 'The Trial of Terrorists under Classical Islamic Law', 43 *Harvard International Law Journal*, No. 1 (2002) 53.

Franz Wirl, 'The World Oil Market after the Iraq-Kuwait Crisis: Economic and Politicoeconomic Consideration',16(1) *Energy Sources*, (1994) 75-88.

Frederic L. Kirgis, 'Pre-emptive Action to Forestall Terrorism' *ASIL* insights, (June 2002), at www.asil.org.

Frederic L. Kirkis, 'Armed Force in Iraq', *ASIL Insights*, (18 March 2003).

Frederic L. Kirkis, 'The Security Council's First Fifty Years', 89 *AJIL*, (1995) 506.

Freudenschuss, 'Article 39 of the UN Charter Revisited: Threats to the Peace and Recent Practice of the UN Security Council', 46 *Austrian Journal of Public and International Law*, (1993)1.

G.M. Travalio, 'Terrorism, International Law, and the Use of Military Force', 18 *Wis. ILJ* (2000) 145.

Gaetano Arangio-Ruiz, 'The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations with an Appendix on the Concept of International Law and the Theory of International Organisation' 137 *Hague Recueil* (1972-III) 419.

Gamal M. Badr, 'The Exculpatory Effect of Self-Defence in State Responsibility', 10 *Georgia Journal of International and Comparative Law'* (1980) 1.

Gavin A. Symes, 'Force without Law: Seeking a Legal Justification for the September 1996 US Military Intervention in Iraq', 19 *Mich. J. INT'L L.* 581(1998).

Georg Schwarzenbereger, 'The Problem of an International Criminal Law', 3 *Current Legal Problems* (1950) 263-96.

George A. Finch, 'A Pact of Non-Aggression' 27 *AJIL* (1933) 725.
George A. Finch, 'The Nuremburg Trail and International Law', 41 *AJIL* (1947) 20.

George H. Aldrich, 'Progressive Development of the Laws of War: A Reply to Criticisms of the 1977 Geneva Protocol I', *Virginia Journal of International Law* (1986) 693.

George W. Scott, 'Hague Convention Restricting the Use of Force to Recover on Contract Claims' 2 *AJIL* 78(1908).

Gerald Fitzmaurice, 'The Definition of Aggression', 1 *ICLQ* (1952) 137.

Gerald Fitzmaurice, 'The General Principles of International Law Considered from the Standpoint of the Rule of Law', 92 *Hague Recueil* (1957-II) 5.

Gerald Fitzmaurice, 'The Law and Procedure of the International Court of Justice: General Principles and Substantive Law', 27 *BYBIL* (1950) 1.

Gilbert Guillaume, 'Terrorism and International Law', *ICLQ* Vol. 53, (2004) 537-548.

Gill, T. D., 'The Law of Armed Attack in the Context of the Nicaragua Case', *Hague Yb. Int'l. L*,1, (1988) 30-58.

Global Policy Forum, *Oil in Iraq*, at www.globalpolicy.org/security/oil/irqindx.htm.

Glueck, 'The Nuremberg Trial and Aggressive War', 59 *Harvard Law Rev.*, (1946)396-399.

Gordon Ruth, 'United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond.' 15(2) *Michigan Journal of International Law* (1994) 529-589.

Greg Muttitt, 'Crude Designs: The Rip-off of Iraqis Oil Wealth', *Platform, Global Policy Forum and others*, (November 2005).

H. Koh, 'The Sprits of Laws', *Harvard International Law Journal*, vol. 43, No: 1 (2002).

Hans J. Morgenthau, 'Diplomacy', 55 *Yale Law Journal,* (1946) 1067-1080.

Hans Kelsen, 'Collective Security and Collective Self-Defence under the Charter of the United Nations', 42 *AJIL* (1948) 783.

Hans Kelsen, 'The Settlement of Disputes by Security Council' 2 *The International Law Quarterly,* (1948) 173-213.

Helmut Freudenschub, 'Article 39 of the UN Charter Revisited: Threats to the Peace and the Recent Practice of the UN Security Council'. 46 *Austrian J.P.& Int'l L.* (1993) 1.

Hersch Lauterpacht, 'The Universal Declaration of Human Rights', *BYIL*, Vol. 25 (1948), 354.

Hugh Thirlway, 'The Law and Procedure of the Intentional Court of Justice: Part Five' 64 *BYIL* (1994) 1-54.

Hugh Thirlway, 'The Law and Procedure of the Intentional Court of Justice: Part Six' 65 *BYIL*(1995) 1-102.

Ian Brownlie, 'The Use of Force in Self-Defence', 37*BYBIL* (1961) 183-268.

International Tribunal (Nuremberg) Judgment and Sentences, 41 *AJIL* (1947) 172.

Isaak I. Dore, 'The United States, Self-Defence and the U.N. Charter: A Comment on Principle and Expediency in Legal Reasoning', *24 Stanford Journal of International Law* 1 (1987).

Ivan Simonovic, 'The Role of the ICTY in the Development of International Criminal Adjudication', *Fordham International Law Journal* 23 (1999) 440-59.

J. E. S. Fawcett, 'Intervention in International Law: A Study of Some Recent Cases', 103 *Hague Recuil* (1961-II) 343.

J. F. Kunz, 'Individual and Collective Self-Defence in Article 51 of the Charter of United Nations', 41 *AJIL* (1947) 897.

J. L. Brierly, 'The Covenant and the Charter', 23 *BYIL* (1946) 83-94.

J. Mrazek, 'Prohibition of the Use and Threat of Force: Self-Defence and Self-Help in International Law', 27 *Canadian Yearbook of International Law* 81 (1989).

J. Nobel, 'Realism Versus Interdependence: The Paradigm Debate in International Relations', 19 *Bulletin of Peace Proposal*, (1988) 167-173.

J.G. Merrills, "The International Court of Justice and the General Act of 1928", 1980 *CLJ* (1980)137.

J.Quigley, 'The Legality of United States Intervention in Panama' 15 *YJIL* (1990) 281.

Jackson Nyamuya Maogoto, 'New Frontiers, Old Problems: The War on Terror and the Notion of Anticipating the enemy', 1 *NILR* Vol. L1 (2004) 1-39.

James B. Scott, 'Interpretation of Article X of the Covenant of the League of Nations' 18 *AJIL* 108 (1924).

James H. Anderson, 'New World Order and State Sovereignty: Implication for UN-Sponsored Intervention'16 *The Fletcher Forum of World Affairs*, (1992) 127-137.

James H. Laue, 'The U.S. Institute of Peace: A Federal Commitment to dispute Resolution' 1:2 *Negotiation Journal,* (April 1985) 181-192.

James L. Brierly, 'International Law and Resort to Armed Force', 4 *Cam. L. J* (1930-32) 308.

James L. Brierly, 'Some Implications of the Pact of Paris', 10 *BYBIL* 208 (1929).

James Mayall, 'Non-Intervention, Self-Determination, and the 'New World Order', *International Affairs*, 67 (3) (1991) 421-429.

James Paul, 'Confidential Document on Iraq Oil Lobbying', *Global Policy Forum*, (July, 2006).

James T. Shotwell, 'The Pact of Paris with Historical Commentary' 243 *International Conciliation* 445, (November 1928).

Jane Stromseth, 'Law and Force after Iraq- A Transitional Moment', 97 *AJIL* (2003) 628.

Jean-Pierre L. Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention: Its Validity Under the UN Charter', *Comparative Juridical Review*, 17 (1980) 27-86.

Jeffrey Record, 'Defeating Desert Storm (and Why Saddam Didn't)', 12 *Comparative Strategy,* (1993) 125-140.

Jennifer Miller, 'International Intervention; the Use Invasion of Panama', 31*Harvard International Law Journal* (1990) 633-646.

Jimmy Carter, 'Principles of Negotiation' 23:1 *Stanford Journal of International Law*, (Spring 1987)1-12.

Joachim von Elbe, 'The Evolution of the Concept of the Just War in International Law', 33 *AJIL* (1939) 655.

John Bolton 'Is There Really "Law" In International Affairs': *10 Transnational Journal of Law and Contemporary Politics*, (2000), 1.

John Bolton, 'Should We Take Global Governance Seriously?' 1 *Chicago Journal of International Law*, (2000) 205.

John Colombos, 'The United Nations Charter' 1 *The International Law Quarterly* (1947) 20-33.

John F. Williams, 'The Covenant of the League of Nations and War', 5 *Cambridge Law Journal* 1(1933).

John H. Spencer, 'The Italian-Ethiopian Dispute and the League of Nations' 31 *AJIL* 614 (1937).

John L. Hargrove, 'The Nicaragua Judgement and the Future of the Law of Force and Self-Defence', 81 *AJIL* (1987) 135.

John Makdisi, 'Legal Logic and Equity in Islamic Law' 33 *American Journal of Comparative Law*, (1985), 65-92.

John Mearsheimer & Stephen Walt, 'The Israel Lobby and US Foreign Policy', *London Review Book)*, vol.28, No.6 (23 March 2006).

John N. Morre, 'The Nicaragua Case and the Deterioration of World Order', 81 *AJIL* (1987) 151.

John N. Morre, 'The Secret War in Central America and the Future of World Order', 80 *AJIL* (1986).

John P. S. McLaren, 'The Dominican Crisis: Inter-American Dilemma', 4 *Canadian Yearbook of International Law* (1966) 178.

John R. D'Angelo, 'Resort to Force by States to Protect Nationals: The U.S. Rescue Mission to Iran and its Legality under International Law', 21 *Virginia Journal of International law* (1981) 485.

John Yoo, 'International Law and the War in Iraq', 97*AJIL*, No: 3 (2003) 563- 567.

Jose E. Alvarez, 'Judging the Security Council', 90 *AJIL* (1996) 1-39.

Judith Gardam 'Proportionality and Force in International Law', 87 *AJIL* 391 (1993).

Jules Lobel, & Michael Ratner, 'Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease–Fires and the Iraqi Inspection Regime', 93 *AJIL* (1999) 124-154.

Jules Lobel, 'The Rise and Decline of the Neutrality Act: Sovereignty and Congressional Wars Powers in United States Foreign Policy', 24 *Harv.Int'l L.J.* 1, 1983.

Jules Lobel, 'The Use of Force to Respond to Terrorist attacks: The Bombing of Sudan and Afghanistan', 24 *YJIL,* (1999), 537-557.

Jutta Brunee and Stephen Toope, 'The Use of Force: International Law After Iraq', 53 *ICLQ*, N0. 4 (2004) 785-806.

K.H. Kaikaobad, 'Self-Defence, Enforcement Action and the Gulf Wars, 1980-88 and 1900-91' 63 *BYBIL* (1992) 229.

Karin Von Hippel, 'Democratisation as Foreign Policy: The Case of Haiti' 51(1) *The Wold Today,* (1995) 11-14.

Karsten Nowrot and Emily W. Schabacker, 'The Use of Force to Register Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone', 14 *AM. U. Int'l L. REV.* 321 (1998).

Keith Harper, 'Does the United Nations Security Council have the Competence to Act as Court and Legislature?' 27 *New York University Journal of International Law and Politics,* (1994) 57-103.

Kerely E, 'The Powers of Investigation of the Security Council', 55 *AJIL*, (1961).

Kjell Skjelsbaek, 'Peaceful Settlements of Disputes by the United Nations and other Intergovernmental Bodies', *Co-operation and Conflict 21 (3)* 1986.

Kristen Walker, 'An Exploration of Article 2(7) of the United Nations Charter as an Embodiment of the Public / Private Distinction in International Law', 26 *New York University Journal of International Law and Politics*, (1994) 173-199.

L. Campbell, 'Defending Against Terrorism: A Legal Analysis of the Decision to strike Sudan and Afghanistan', 74 *Tul.L. Rev.* (2000) 1075.

L. Gross, 'The Peace of Westphalia, 1648-1948' 20 *AJIL* (1948).

Leland M. Goodrich, 'The Peaceful Settlement of Disputes.' 9:2 *Journal of International Affairs,* (1955) 12-20.

Leo Gross, 'The Peace of Westphalia 1648-1948', 42 *AJIL* 20 (1948).

Liz Heffernan, 'Military Action under the Auspices of the United Nations' 2(3) *Irish Law Times,* (1993) 59-62.

Loe Gross, 'Was the Soviet Union Expelled from the League of Nations?', 39 *AJIL* 35(1945).

Lord McNair, 'The General Principles Recognized by Civilized Nations', 33 *BYBIL* (1957).

Lori F. Damrosch and David J. Scheffer, 'Politics Across Borders: Non-intervention and Non-forcible Influence over Domestic Affairs', 83 *AJIL* (1989) 1.

Louis B. Sohn, 'Definition of Aggression', 45 *Virginia Law Review*, (1959) 697.

Louis B. Sohn, 'Exclusion of Political Disputes from judicial Settlement' 39 *AJIL* (1944) 694.

Louis B. Sohn, 'The Security Council's Role in the Settlement of International Disputes', 78 *AJIL*, (1984) 402-4.

Louis Henkin, 'Kosovo and the The Law of Humanitarian Intervention', *AJIL* (1999) 824.

Louis Henkin, 'Notes From the President: The Missile Attack on Baghdad and it Justification', *ASIL* 3, (1993).

Louis R. Beres, 'After the Gulf War: Israel, Pre-emption, and Anticipatory Self-Defence', 13 *Houston Journal of International Law* (1991) 259.

Louis R. Beres, 'Israel and Anticipatory Self-Defence', 8 *Arizona Journal of International and Comparative Law* (1991) 89.

Louise Doswald-Beck, 'The Legal Validity of Military Intervention by Invitation of the Government', 56 *BYBIL* (1985) 189.

M. Witten, 'The U.S -U.K Arbitration Concerning Heathrow Airport User Chargers', 89 *AJIL* (1995)174.

M. Bothe, 'Terrorism and the Legality of Pre-emptive Force', 14 *EJIL* (2003) 227.

M. Cherif Bassiouni, 'Establishing International Criminal Court: Historical Survey', 149 *MIL. L.REV.* (1995) 49-63.

M. Cherif Bassiouni, 'Protection of Diplomats under Islamic Law', 74 *AJIL* (1980), 609.

M.Cherif Bassiouni, 'Searching for Peace and Achieving Justice: The Need for Accountability', 59 *LAW and CONTEMP. PROB.* (1996) 9.

M. Farouk-Sluglett and P. Sluglett, 'The Transformation of Land Tenure and Rural Social Structure in Central and Southern Iraq, 1870-1958', *International Journal of Middle East Studies*, 15 (1983) 491-505.

M.J.R. Martz, 'Conflict Resolution and Peaceful Settlement of Disputes.' In Governance in the Western Hemisphere New York: *Aspen Institute for Humanistic Studies,* (1982) 151-178.

Macdonald, 'The Nicaragua Case: New Answers to Old Questions',127 *Canadian Yearbook of International Law*, (1986)150.

Mahdi Zahraa, 'Characteristic Features of Islamic Law: Perceptions and Misconceptions', *ALQ* (2000) 168.

Mahdi Zahraa, 'Unique Islamic Law Methodology and The Validity of Modern Legal and Social Science Research Methods for Islamic Research', 18 *ALQ*, (2003).

Majid Khadduri, 'Islam and the Modern Law of Nations', 50 *AM.J. INT'L L.* (1956), 358.

Marc Weller, 'Democracy through Fire and Sword?' 144 *New Law Journal* (1994) 1385- 1386.

Marc Weller, 'The Kuwait Crisis: A Survey of Some Legal Issues', 3(1) *African Journal of International and Comparative Law,* (1991) 1-40.

Mark B. Baker, 'Terrorism and the Inherit Right of Self-Defence (A Call tot Amend Article 51 of the United Nations Charter)' 10 *Houston Journal of International Law* (1987) 25.

Mark Blessing, 'Mandatory Rules of Law Versus Party Autonomy in International Arbitration', 24 *J. Int.Arb.*.

Mark Bowden, 'Lessons of Abu Ghraib', *Atlantic Monthly* (July/Aug. 2004) 37-40.

Martti Koskenniemi, 'The Place of Law in Collective Security', 17 *Michigan Journal of International Law,* (1996) 455-90.

Martti Koskenniemi, 'The Police in the Temple: Order, Justice and the UN: A Dialectical View', 6 *European Journal of International Law*, (1995) 325-48.

Mary Ellen O' Connell, 'Enhancing the Status of Non-State Actors Through a Global War on Terror?'43 *Col. J. Trans. L.* (2005) 435.

Mary Ellen O' Connell, 'The Legality of the 1993 US Missile Strike on Iraq and the Right of Self-Defence in International Law' 45 *ICLQ* (1996) 162.

Mary Ellen O'Connell, 'Enforcing the New International Law of the Environment', 35 *German Journal of International Law*, (1992) 293-332.

Mary Ellen O'Connell, 'Enforcing the Prohibition on the Use of Force: The UN's Responses to Iraq's Invasion of Kuwait', 15 *Southern Illinois University Law Journal*, (1991) 453.

Mary Ellen O'Connell, 'Regulating the Use of Force in the 21st Century: The Continuing Importance of State Autonomy', 36 *Colum. J. Trans'l L.* (1997-1998) 473.

Mary Ellen O'Connell, 'The UN, NATO and International Law After Kosovo', 22 *HRQ* (2000) 57.

Matthew Happold, 'Darfur, the Security Council, and the International Criminal Court', 55*ICLQ* Part 1 (January 2006).

Michael Akehurst, 'The Use of Force to Protect Nationals Abroad', 5 *International Relations* (1977) 3.

Michael Barletta, 'Report: Chemical Weapons in the Sudan', 6 *The Non-proliferation Review* (1998).

Michael Byers, 'Pre-emptive Self-Defence: Hegemony, Equality and Strategies of Legal Change', 11 *J. Pol. PHIL.*, (2003) 171-179.

Michael Byers, 'Terrorism, the Use of Force and International Law after September 11', 51 *ICLQ*, (2002) 401- 421.

Michael Ratner and Jules Lobel, 'Bombing Baghdad: Illegal Reprisal or Self-Defence?', *Legal Times,* (5 July 1993) at 24.

Michael Glennon, 'Limits of Law, Prerogatives of Power and American Hegemony in an Unplanned World Order', 5 *Journal of Conflict and Security Law* (2000) 3.

Michael J. Bazyler, 'Re-Examining the Doctrine of Humanitarian Intervention in

Light of Atrocities in Kampuchea and Ethiopia', *Stanford Journal of International Law*, 23 (2), (1987) 547-619.

Michael W. Reisman & Douglas L. Stevick, 'The Applicability of International Law Standard to United Nations Economic Sanctions Programmes.'9 *European Journal of International Law* (1998) 86-141.

Michael W. Reisman and Andrea Armstrong, 'The Past and Future of the Claim of Pre-emptive Self-defence', 3 *AJIL,* vol. 100 (2006) 525-550.

Michael W. Reisman, 'Assessing Claims to Revise the Laws of War', 97 *AJIL*, No. 1 (2003) 82-90.

Michael W. Reisman, 'Institutions and Practices for Restoring and Maintaining Public Order', 6 *DUKE.J. COMP. & INT'IL* (1995)175.

Michael W. Reisman, 'International Legal Responses to Terrorism' 22 *Houston Journal of International Law*, 3 (1999) 51-54. Michael Reisman, 'The Raid on Baghdad: Some Reflections on its Lawfulness and Implications', 5 *EJIL* (1994) 120.

Michael W. Reisman, 'Why Regime Change is (Almost Always) a Bed Idea', 98 *AJIL* No.3 (2004).

Middle East Report No.52 'The Next Iraq War? Sectarianism and Civil War', *International Crisis Group* available at: http:// www.crisisgroup.org/home/index.CFM? id=3980&1=1.

Miller Jennifer, International Intervention; the US Invasion of Panama.' 31 *Harv. Int'I L.J.* (1990) 633-646.

Miranda Kazantis, 'Grounds for Intervention', 19 *Socialist Lawyers* (1993) 8-9.

Miriam Sapiro, 'Iraq: The shitting Sands of Pre-emptive Self-Defence' 97 *AJIL* No. 3 (2003) 599-607.

Mohammad Hashim Kamali, 'Have We Neglected the Shari'ah- Law Doctrine of Maslahah?' 27 *Islamic Studies*, No. 4, (1988) 287-288.

Mohammad Hashim Kamali, 'The Citizen and state of Islamic Law', 3 *Shariah Law Journal,* Published by the International Islamic University, Selangor, Malaysia, (April 1986) 15-47.

Mohmoud Hmoud, 'The Use of Force against Iraq: Occupation and Resolution 1483', 36 *Cornel International Law Journal,* No. 3 (2004) 435-453.

Murphy (ed), 'Contemporary Practice of the United States relating to International Law', 96 *AJIL* (2002) 956.

Nasir Khan, 'US Abuse of UN in Gulf War', *Economic and Political Weekly*, 29 (35), (1994)2277-2282.

Nice Krisch, 'Unilateral Enforcement of the Collective Will: Kosovo, Iraq and the Security Council', 3 *Max Planck UNYB* 59 (1999).

Nicholas J. Wheeler, 'Legitimising Humanitarian Intervention: Principles and Procedures', 2 *Melbourne Journal of International Law* (2001) 550.

Nicholas Rostow, Nicaragua and the Law of Self-Defence Revisited, 11 *YJIL* (1987) 437.

Nigel D. White, 'The Legality of Bombing in the Name of Humanity,' 5 *Journal of Conflict and Security Law* (2000) 22-43.

Nigel D. White, 'The UN Security Council and Settlement of Disputes', *Nottingham University Centre for International Defence Law Studies,* (1994) 1-20.

Ole Gunnar Austvik, 'The War Over the Price of Oil: Oil and Conflict on the Persian Gulf', 5(2-4) *International Journal of Global Energy Issues* (1993)134-143.

Oliver Morse, 'Methods of Pacific Settlement of International Disputes: Difficulties and Revision' *Brooklyn Law Review*, (25 December 1958) 21-32.

Oran R. Young, 'Intervention and International Systems', 22 *Journal of International Affairs* (1968) 177-187.

Oscar Schachter, 'International Law in Theory and Practice: General Course in Public International Law' 178 *RCADI*, (1982) 396.

Oscar Schachter, 'The Enforcement of International Judicial and Arbitral Decisions' 54 *AJIL* 1 (1960).

Oscar Schachter, 'The Right of States to Use Armed Force', *82 Michigan Law Review* (1984) 1620.

Oscar Schachter, 'United Nations Law in the Gulf Conflict' 85 *AJIL* (1991) 452-453.

P. H. Winfield, 'The History of Intervention in International Law', 3 *BYBIL* (1922-1923) 130.

Park and Paulson, 'The Binding Force of International Arbitral Awards', 23 *Va.J.Inr'l* L.253 (1983).

Paul S. Reichler and David Wippman, 'The United States Armed Intervention in Nicaragua: A Rejoinder', 11 *YJIL* (1985-86) 462.

Payam Akhaven 'Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?', 95 *AJIL* 7 (2001).

Philip H. Gulliver, 'Negotiations as a Mode of Dispute Settlement: towards a General Model.' 7 *Law and Society Review,* (1973) 667-691.

Philip M. Brown, 'The Interpretation of the General Pact for the Renunciation of War', 23 *AJIL* (1929) 374.

Pierre Prosper and Roger Clark, Justice without Borders: The International Criminal Court, *Temple International and Comparative Law Journal 17* (2003) 55-96.

Pit-Hein Houben, 'Principle of International Law Concerning Friendly Relation and Cooperation among States', 61 *AJIL* (1967) 703.

Pollux, 'The Interpretation of the Charter of the United Nations', 23 *BYBIL* (1946) 54-82.

President Bush Address to the Nation on Iraq, 17 March 2003, 39 *WEEKLY. COMP. PRES.* Doc. 338 (24 March 2003) 338-340.

Princen T., 'International Mediation- The View from the Vatican: Lessons from Mediating the Beagle Channel Dispute', 3 *Negotiation Journal (*1987) 347-66.

Public International Law and Policy Group, 'War Crimes', *Prosecution Watch*, Vol.2, Issues 5, (30 October 2006).

Quincy Wright, 'The Legality of Intervention under the United Nations Charter', *Proceedings of the American Society of International Law*, 51 (1957) 79-90.

Quincy Wright, 'The Meaning of the Pact of Paris' 29 *AJIL* (1933) 39 (cited as The meaning of the Pact of Paris).

Quincy Wright, 'The Test of Aggression in the Italo-Ethiopian War' 30 *AJIL* (1936) 45.

R. Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey', 65 *AJIL* (1971) 713.

R. Sadurska, Threat of Force, 82 *AJIL* 239 (1984).

R. Y. Jennings, 'The Caroline and Mclean Cases', 32 *AJIL* (1938) 82.

Rachel Kerr, 'International Judicial Intervention: The international criminal Tribunal for the Former Yugoslavia', 15 *International Relations* 20 (2000).

Raimo Varrynen, 'Is there a Role for the United Nations in Conflict Resolutions?' *Journal of Peace Research*, 22(3) (1985).

Raimo Vayrynen, 'The United Nations and the Resolution of International Conflicts', *Cooperation and Conflict,* 20(3) 1985.

Ramses Amer, 'The UN Reactions to Foreign Military Interventions' 31*Journal of Peace Research*, (1994) 425-444.

Richard A. Falk, 'A Dubious Verdict, Agence Global', *International Herald Tribune*, (7 November 2006).

Richard A. Falk, 'On the Quasi Legislative Competence of the General Assembly', 60 *AJIL* (1966)782.

Richard A. Falk, 'The Beirut Raid and the International Law of Retaliation', 63 *AJIL* (1969) 415.

Richard A. Falk, 'What Future for the UN Charter System of War Prevention?' 97 *AJIL*, No. 3 (2003) 590- 598.

Richard A. Falk, 'What War? A Year after Gulf War, Joy is a Ghost' 254 (4) *The Nation,* (1992) 112-113.

Richard B. Bilder, 'Some Limitations of Adjudication as an International Dispute Settlement Technique' *Va. J. Int'l L* 23:1 (Fall 1982) 1-12.

Richard B. Bilder, An Overview of International Dispute Settlement, *Journal of International Dispute Resolution* 1, (1986) 16.

Richard Gardner, 'Neither Bush nor the "Jurisprudes"' 97 *AJIL* (2003) 585-590.

Richard N. Hass, 'Ripeness and the Settlement of International Disputes' 30:3 *Survival* (May/ June, 1988) 232-251.

Richard Ned Lebow, 'Accidents and Crises: the Dogger Bank Affair', 31 *Naval War College Review*, (1978), 66-75.

Robert B. Lloyd, 'Mozambique: The Terror of War, the Tensions of Peace.' 95(591) *Current History,* (1995) 152-155.

Robert Cryer, 'The Security Council and Article 39: A Threat to Coherence?', 1 *Journal of Armed Conflict* (1996) 161.

Robert Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey', 65 *AJIL* (1971) 713.

Rome Convention on the Law of Applicable to Contractual Obligation; Maniruzzaman, 'International Arbitrator and Mandatory Public Law Rules', 7 *J.Int.Arb.* (1990) 53.

Roslyn Higgins, 'The Advisory Opinion on Namibia: Which UN Resolutions are Binding under Article 25 of the Charter?', *ICLQ*, Vol.21, (1972)270.

Roslyn Higgins, 'The Legal Limits to the Use of Force by Sovereign States, United Nations Practice' 37 *BYIL* (1961) 304.

Roslyn Higgins, 'The Place of International Law in the Settlement of Disputes by the Security Council' *AJIL* 64 (1970) 1-18.

Roy May & Gerry Cleaver, 'The OAU Intervention in Chad: Mission Impossible or Mission Evaded', *International Peacekeeping*, Vol.1 (1998).

Ruth E. Gordon, 'Humanitarian Intervention by the United Nations: Iraq, Somalia and Haiti', 31 *Texas Int'l L. J.* (1993) 43.

Ruth Wedgwood, 'Responding to Terrorism: The Strikes against Bin Laden', 24 *YJIL* (1999) 559-576.

Ruth Wedgwood, 'The Enforcement of Security Council Resolution 687: The Threat of Force against Iraq's Weapons of Mass Destruction', 92 *AJIL* (1998) 724.

Ruth Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Pre-emptive Self-defence', 97*AJIL,* 3 (2003) 576- 585.

Ruth Wedgwood, 'The validity of the United States Intervention in Panama under International Law', 84 *AJIL* (1990) 494.

Ryan Goodman, 'Humanitarian Intervention and Pretexts for War', 100 *AJIL*, No.1 (2006) 107-141.

S. Mahassani, 'The principle of International law in the light of Islamic Doctrine', 177 (1) *Recueil des cours de L'academic de deorit int 205 91966),* 229.

S. Smith, 'The End of the Unipolar Moment? September 11 and the Future of World Order', 16 (2) *International Relations* (2002) 171.

Sean D. Murphy, 'Assessing the Legality of Invading Iraq', 92 *Geo. L. J* (2004).

Sean D. Murphy, 'Terrorism and the Concept of 'Armed Attack' in Article 51 of the U.N Charter', 43 *Harvard International Law Journal,* (2002) 43.

Sean D. Murphy, 'Terrorist Attacks on the World Trade Centre and Pentagon', 96 *AJIL* (2002) 237.

Sean D. Murphy, 'Use of Military Force to Disarm Iraq' 97 *AJIL*, (2003) 419.

Shackleton: 'Challenging Arbitration Awards' *New Law Journal* 22, (November 2002).

Shah M. Tarzi, 'Iran-Iraq Foreign Politics: Impact of US Gulf Intervention', *International Journal of World Peace*, 9 (3) (1992) 35-48.

Stern, W. B., 'The Treaty Background of the Italo-Ethiopian Dispute' 30 *AJIL* 189 (1936).

Steven R. Ratner, 'Jus ad Bellum and Jus in Bello after September 11', 9 *AJIL*, No.4 (2002), 905-921.

Sydney D. Bailey, 'Intervention: Article 2(7) Versus Article 55-56', *International Relations*, 12(2), (1994)1-10.

Symmons C. R., 'Reflections on Maritime Delimitation in the *Qatar/Bahrain* Case of 16 March 2001 (Merits)' 52 *ICLQ*, (2003) 53-80.

Symmons C. R., 'Reflections on the Concept of Proportionally in the Law of Maritime Delimitation'16 *IJMCL* (2001) 433-463.

Symmons C. R., 'Reflections on the Eritrea/ Yemen Arbitration of 17 December 1999 (Second Phase: Maritime Delimitation)' 48 *NILR* (2001)197-225.

T. Mcllmail, 'US Cruise Attack Was Illegal', *The Advocate*, (September 13, 1993) at 11.

Th. A. Van Baarda, 'Is it Expedient to Let the World Court Clarify, in an Advisory Opinion of, the Applicability of the Fourth Geneva Convention in the Occupied Territories?' 10 *The Netherlands Quarterly of Human Rights*, (1992) 4.

The Report of the International Law Commission, 32nd Session, 11(2) *Yearbook of International Law Commission*, 9, (1980), 53-54.

Theodor Meron, 'Reflections on the Prosecution of War Crimes by International Tribunals', 100 *AJIL*, No. 3, (July 2006) 551.

Thomas M. Franck, 'Editorial Comment: Terrorism and the Right of Self-Defence', 97 *AJIL* (2001) 839.

Thomas M. Franck, 'Legal Authority for the Possible Use of Force against Iraq', *ASIL* Proceedings (1998).

Thomas M. Franck, 'What Happens Now? The United Nations after Iraq', 97 *AJIL*, No. 3 (2003), 607-620.

Thomas M. Franck, Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States, 64 *AJIL* (1970) 809-836.

Thomas M. Frank, 'Of Gnats and Camels: Is there a Double Standard at the United Nations?', *78 AJIL*(1984) 811.

Tom J. Farer, 'Panama: Beyond the Charter Paradigm', 84 *AJIL* (1990) 503.
Trevor A. Delaney, 'Article 2(7) of the United Nations Charter: Hindrance to the Self-Determination of Western Sahara and Eritrea?'2 *Comparative Juridical Review*, (1990) 413-447.

Turlington, 'The Pact of Bogotá', 42 *AJIL* (1948) 608.

Ugo Villani, 'The Security Council's Authorization of Enforcement Action by Regional Organizations', 6 *Max Planck UNYB* (2002) 535.

UNWCC, Law Reports of Trails of War Criminals, London, HMSO, 1947-49.

V. P. Nanda *et al.*, 'US Forces in Panama' 84 *AJIL* (1990) 494.

V.S Mani, 'The Role of Law and Legal Considerations in the Functioning of the United Nations', 35 *Ind.J.Int'l L* (1995) 91-118.

Vaughan Lowe, 'The Iraq Crisis: What Now?' 52 *ICLQ* (2003) 850.

Vaughan Lowe, 'Would War be Lawful without Another UN Resolution', *Crime of War Project*, (10 March 2003) available at: www.crimesofwar.org/special/irag/news-iraq-2.htmI.

W. Andy knight, 'Towards a Subsidiarity Model for Peacemaking and Preventive Diplomacy; Making Chapter VIII of the UN Charter Operational', 1 *Third World Quarterly,* Vol.17(1996) 49.

Wade Mansell, 'Goodbye to All that? The Rule of Law, International Law, the United States and the Use of Force', 31 *Journal of Law and Society* 4 (2004) 433-56.

Wade Mansell, 'John Bolton and United States' Retreat from international law', *Social and Legal Studies,* (SAGE Publications, London 2005) 462.

Wallce F. Warriner, 'The Unilateral Use of Coercion under International Law: A Legal Analysis of the United States Raid on Libya on April 14, 1986', 37 *Naval Law Review* (1988) 49.

Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future', 8 *Journal of Conflict and Security Law*, (2003)15.

William E Holder, 'Towards Peaceful Settlement of International Disputes' *Australian Yearbook of International Law,* (1968-1969) 102-122.

William J. Bennett, 'Why We Fight: Moral Clarity and the War on Terrorism,' *Military Law Review*, Vol.176 (2002) 444.

William Taft and Todd Buchwald, 'Pre-emption, Iraq, and International Law', 97*AJIL* (2003)557-558.

William Taft, 'Self-Defence and the Oil Platforms Decision', 29 *YJIL* 1 (2004).
Wood, 'The Treaty of Paris and Turkey's Status in International Law' 37 *AM. J. INT'L. L.* (1943) 262.

Yezid Sayigh, 'The Gulf Crisis: Why the Arab Regional Order Failed', 67 *International Affairs*, No.2 (July 1991).

Yoram Dinstein, 'The Interaction of International Law and Justice', 16 *Israel Yearbook on Human Rights* 9 (1986).

4- Newspaper Articles:

Andrew Buncombe and Ben Russell, 'The Lancet: 655,000 the Toll of War in Iraq', *The Independent*, (12 October 2006).

Andrew Buncombe, 'The Oil Business, Halliburton from Bush's Favourite to A National Disgrace' *The Independent*, (Wednesday 14 March 2007).

Bacton Gellman and Vernon Loeb, 'A Major Aim: Kill Saddam' "Palace Guards", *WASH. POST*, (19 December 1998).

Barton Gellman and William Drozdiak, 'US Troops Enter Northern Iraq to Set Up Camps', *The Washington Post*, (8 April 1991) at A38.

Barton Gellman, 'US Spied on Iraqi Military Via UN', *WasH. Post*, (2 March 1999).

Bradley Graham, 'Army Investigates Wider Iraq Offences', *Wash. Post*, (1 June 2004) at A1.

C. Drew, 'Occupation of Iraq Illegal, Blair Told' *The Guardian*, (22 May 2003).

Carola Hoyos, 'Exiles Call for Iraq to Let in Oil Companies', *Financial Times*, (7 April 2003).

Christiane Amanpour, 'Saddam in Court: The Real Criminal is Bush', *CNN*, (1 July 2004).

D. Priest, 'US Commander Unsure of How Long Iraq Will Need to Rebuild', *Wash. Post* (22 December 1998) at A31.

David S. Cloud et al., 'Red Cross Found Widespread Abuse of Iraqi Prisoners', *Wall Street Journal*, (7 May 2004), at A1.

David Usborne, 'WMD Just a Convenient Excuse for War, Admits Wolfowitz', *The Independent*, (30 May 2003).

David Usborne, Colin Brown and Anne Penketh, 'The Re-United Nations', *The Independent*, No 5,505, (New York and Georgia, Wednesday 9 June 2004).

Donald Rumsfeld Statement at News conference on 12 March 2003 '(Saddam) Claims to have no Weapons or Biological Weapons. Yet we know He Continues to Hide Biological and Chemical Weapons, Moving them to Different Location', *The Independent*, (Thursday, 7 October 2004).

Evans, 'Clinton Opts for Tomahawk' London, *The Times*, (28 June 1993).

Frances Gibb, 'Breach of International Law Feared if War Starts', *The Times*, (14 March 2003) at< http:// www.ovb.org.uk/reports/2003/rpt20030314f.htm1>

G. Monbiot, 'Dreamers and idiots' *The Guardian* (11 November 2003).

Greg Mitchell, 'CNN Makes News with WMD Special, but Press Deserves Blame, Too,' *Editor and Publisher*, (19 August 2005).

Helen Kinsella, 'How 1,200 Experts Failed to Find Weapon of Mass Destruction', *The Independent*, (Thursday 7 October 2004).

Iraq: the Final Verdict, 'Nothing to Justify the Invasion' *The Independent*, (Thursday 7 October 2004).

J Crawford *et al.*, 'War would be Illegal', *The Guardian,* (7 March 2003).

Janathan Steele, 'The Bush Doctrine Makes Nonsense of the UN Charter', *The Guardian*, (7 June 2002).

Jennifer Loven, 'Bush Gives New Reasons for Iraq War', *Associated Press*, (31 August 2005).

John Pilger, 'The Big Lie', *The Daily Mirror* (22 September 2003).

Julian Borger, Ewen Mac Askill and Patrick Winlour, 'The Hunt for Weapons of Mass Destruction Yields-nothing' *The Intelligence Claims of Huge Iraqi Stockpiles were Wrong*, says ISG report, *The Guardian*, (Thursday 25 September 2003).

Julian Borger, Ewen MacAskill and Patrick Wintour, 'The Hunt for Weapons of Mass Destruction Yields –Nothing', *The Guardian*, (Thursday, 25 September 2003).

Kim Sengupta, 'We saw no WMDs-No 10 Labelled US 'naive Dupes', *The Independent*, (London, Thursday 7 October 2004).

Kim Sengupta, Paul Waugh and Ben Russell, *The Independent*, (4 September 2003).
Kofi Annan the former UN Secretary General in his last interview with BBC on 4 December 2006, available at www.newsvote.bbc.co.uk published (4 December 2006).

M. Grunwald, Terrorists Hijack 4 Airliners, Destroy World Trade Centre, Hit Pentagon, Hundreds Dead, *WasH.Post*, (12 September 2001).

Maggie O'riordan, 'After the TV War the Reality of War', *Sunday Mirror*, (23 March 2003).

Mark Steel, 'Looking for WMD? Come to London's Docklands Exhibition, Hurry, Hurry, Hurry to the Chemical Warehouse off the M25 when we've gone anthrax crazy'. *The Independent*, 4 September 2003.

Michael Moore, Oscar winner, 'Shame on you. We live in the time when we have fictitious elections result that elects a fictitious president. We live in the time where we have a man who's sending us to war for fictitious reasons. We are against this war.' *Daily Mirror*, (Tuesday 25 March 2005).

New York Times, 'Allies Discuss Terrorism and Middle East: Bush and Blair on Policy', (7 April 2002).

Patrick Cockburn, 'From Iraq: the Reality an Exclusive Extract', *The Independent*, (12 October 2006).

Peter Spiegel, Amnesty Report, Coalition Forces 'Mistreat Civilians', *Financial Times*, (Thursday 24 July 2003).

Philip Shenon, 'CIA was with UN in Iraq for Years, Ex-inspectors Says,' N.Y. *Times*, (23 February 1999) at A1.

President Bush Commencement Address at the US Military Academy in West Point. Bush, (June 2002), 38 *WEEKLY COMP. PRES.* Doc (10 June 2002) 944-946.

Rana Kabbani, 'No One is Taken in by the US Lies: The Graves of Falluja Show the Reality of Iraq's Occupation', *The Guardian*, (Tuesday 23 November 2004).

Robin Cook, 'Now we know Just How far Parliament was Mislead over Iraq'. *The Independent*, (London, 4 September 2003).

Roland Watson, Elaine Moraghan and Richard Beeston, 'America asks UN to help Sort out Iraq', *The Times*, No. 67859 (Thursday 4 September 2003).

Sarah Boseley, '100,000 Iraqi Civilians Dead, Says Study', (London and Manchester, *The Guardian,* (29 October 2004).

Simon Jeffery, 'Iraq: Countdown to War', *The Guardian*, (30 July 2002).

Stephen Collinson, 'No Qaeda-Saddam Links: Senate Report', *Agency France Press*, (8 September 2006).

Steven Lee Myers, 'Iraqi Ask Us to Do More to Oust Saddam', *N.Y. Times*, (3 July 2000) at A7.

The Daily Mirror, Monday 14 July 2003 at 2.

The Guardian 'Britain Sets New Tests for Saddam' (4 May 2003).

The Guardian, (5 March 2004).

The Guardian, (Published in London & Manchester, 29 October 2004).

The Guardian, (Published in London & Manchester, Thursday 28 April 2005).

The Independent (Sunday, 29 February 2004).

The Independent 'I look forward to Tony Blair being put to close scrutiny in Parliament about this next week', (London, Thursday 7 October 2004).

The Independent, (London, 4 September 2003).

The Independent, (Thursday 7 October 2004).

The Independent 'David Kay's Report on Iraqi WMDs', (3 October 2003).

The Independent, The Niger Connection: What we Know, What we don't Know, and what we may Never be Told' No. 5,219 (10 Thursday 2003).

The ISG Report, 'The Final Judgment, Saddam Less of a Threat in 2003 than in 1998', *The Independent*, (7 October 2004).

The Times, (10 April 2003) at 14.

Two Reporters, One Story: Campbell Sexed Up the Dossier, *The Independent*, (Wednesday 13 August 2003).

Thomas W. Lippman, Two Options for Iraq in US policy, *Wash. Post* (24 December 1998) at A14.

Tim Weinner, 'US Used UN Team to Place Spy Device in Iraq, Aids Say, *N.Y. Times*, (8 January 1999) at A1.

Tom Baldin, 'Saddam had only Weapons of Mass Corruption', *The Times*, No.68200 (Thursday 7 October 2004).

William M. Arkin, 'A Hazy Target; before going to War over Weapons of Mass Destruction, shouldn't we be Sure Iraq has Them?' *Los Angeles Times*, (9 March 2003).

Z. Badawi, 'Are Muslims Misunderstood' *The Independent*, 23 September 2001 at 19.

5- Miscellaneous Documents:

- Human Rights Watch (HRW), Civilian Deaths in the NATO Air Campaign, February 2000, volume 12, number 1 at < http://www.hrw.org./reports/2000/nato> (Last visited 16 February 2007).

- Human Rights Watch, *Under Orders: War Crimes in Kosovo*, (New York, Washington, London and Brussels: Human Rights Watch, 2001).

- International Law Association, *Report on Rules of Customary International Law*, Maurice Mendelson, 'State Acts and Omission As Explicit or Implicit Claims', (London: ILA, 1992).

- Dictionary of Law, (Oxford, Oxford University Press, 2004) at http://aol. oxfordrefence. com/ views/ENTRY.htm1

- The National Security Strategy of the USA, the White House Washington DC, (17 September 2002), available at: http://www.white house.gov/nsc/nss.pdf>

- The National Security Strategy of the USA, the White House Washington DC, (16 March 2006), available at: http://www.white house.gov/nsc/nss.pdf>

- British Military Campaign Objectives" March 2003, House of Commons Research Paper, the Conflict in Iraq at: www.publications.parliament.uk/p.

- Citizens' Legal Inquiry into the Legality of Use of Force Against Iraq, 11 October 2002 at Gray's Inn, London.

- The British Attorney-General Lord Goldsmith, Clarifies Legal Basis for Use of Force Against Iraq (18 May 2003), available at <http://www.fco.gov.uk>

- Polities, A Documentary Record, 2nd printing, (1975-79) vol.2, 62.

- John Bolton's Statement at Global Structure Convocation, Washington D.C., 21 February 1994.

- The US Secretary of State James Baker announcement of 12 August 1990. NY Times, 18 August 1990. at A1, Col.1.

- Note Verbal from the Permanent Mission of Iraq to the United Nations addressed to the President of the Security Council, 15 February 1991.

- President Gorge Bush's speech on 5 January 1993 at West Point Military Academy.

- British Attorney General's Advice to Blair on Legality of Iraq War, 7 March 2003at:www.globalpolicy.org/security/issues/iraq/document/2003/0307advice.htm

- The President Bill Clinton's statement, the White House, Office of the press Secretary, Signature of the International Criminal Court Treaty, (31 December 2000) at http://www.usembassy.state.gov/posts/pk1

- Response of the Secretary of State for Foreign and Commonwealth Affairs to the Second Report of the Foreign Affairs Committee, Session 2002-2003, cm 5793Tony Blair, PM Statement Opening Iraq Debate (18 March 2003), at http://www.number-10-gov.uk/output/page 3294-asp>.
- Secretary Colin L. Powel, "Remarks to the United Nations Security Council" The U.S State Department, 5 February 2003, at http:// www.state.gov/secreatary/rm/2003/17300.See also edition.cnn.com/2003/US/02/05/spri.irq.powell.trancript/index.htm1;UNDoc.S /PV/4701 (5 Feb 2003)

- The US State Department's Statement on the US withdraws from the Proceedings initiated by Nicaragua in International Court of Justice, 18 Jan 1985, reprinted in 14 *ILM*, p.246.

- President Bush, State of the Union Address, Washington, D.C. (29 January 2002), http:// www.whithouse.gov/news/release/2002/01/200201129-11.htm1.

- Report of the Secretary-General Prepared Pursuant to Resolutions 1160 (1998), 1199 (1998), and 1203 (1998), UN Doc. s/1999/293 (1999).

- Secretary-General addressed to the President of the Security Council, UN Doc.s/1999/315 (1999).

- Amnesty International's Report, 'Another Report, More Abuse' at: http://www.khaleejtimes.com, (May 2006).

- Amnesty International's Report of Sudan, May 2006. For full report see, http://web.amnesty.org/web/web.nsf/print/DCF47A9E6FAD558A802571680035F615,Main Parties Sign Darfur Accord, BBC News, (May 2006), http// www.newsvote.bbc.co.uk.

- Senator Jesse Helms, Chairman US Senate Committee on Foreign Relations, addressed the UNSC on 20 January 2000, at http://www.senate.gov/foreign/2000/pref 01200.cfm.

- Mohammed Al-Baradi, Director General of the IAEA 'The Status of Nuclear Inspections in Iraq,' Statement to the United Nations Security Council, New York, 27 January 2003, available at: www.un.org/News/dh/iraq/elbaradei27jano3.htm.

- Ari Fleischer White House spokesman Statement on 20 March 2003 that "The Opening Stages of Disarmament of the Iraqi Regime have Begun".

- Representative of Iraq, UN Doc S/PV/4707, p31.

- President Clinton address to the Nation on Completion of Military Strikes in Iraq, 34 *WEEKLY. COMP. PRES.* Doc.2516, 25161318 (28 December 1998).

6- Table of Selected Resolutions Adopted by the UNSC on Iraq 1990-2004

- Security Council Resolution 660 (2 August 1990), reprinted in 29 *ILM* 1325(1990).
- Security Council Resolution 661(6 August 1991), adopted at the 293 3rd meeting reprinted in 29 *ILM* 1325(1991).
- Security Council Resolution 662 (9 August 1990).
- Security Council Resolution 664 (18 August 1990), adopted unanimously at the 293 7th meeting.
- Security Council Resolution 665 (25 August 1990).
- Security Council Resolution 666 (13 September 1990).
- Security Council Resolution 667 (16 September 1990.

- Security Council Resolution 669 (24 September 1990).
- Security Council Resolution 670 (25 September 1990).
- Security Council Resolution 674 (29 October 1990).
- Security Council Resolution 677 (28 November 1990).
- Security Council Resolution 678 (29 November 1990).
- Security Council Resolution 686 (2 March 1991).
- Security Council Resolution 687(3 April 1991), reprinted 30 *ILM* 847(1991).
- Security Council Resolution 688 (5 April 1991).
- Security Council Resolution 689 (9 April 1991).
- Security Council Resolution 707 (15 August 1991).
- Security Council Resolution 715 (11 October 1991).
- Security Council Resolution 986 (14 April 1995).
- Security Council Resolution 1154 (2 March 1998).
- Security Council Resolution 1284 (17 December 1999).
- Security Council Resolution 1368 (6 October 2001), UN Doc. SC/7143.
- Security Council Resolution 1373 (28 September 2001), UN Doc. SC/7158
- Security Council Resolution 1441 (8 November 2002), reprinted 42 *ILM* 250 (2003).
- Security Council Resolution 1472 (28 March 2003) UN Doc.S/RES/1483 (2003), reprinted 42 *ILM* 1016 (2003.
- Security Council Resolution 1478 (24 April 2003).
- Security Council Resolution 1483 (22 May 2003) UN Doc.S/RES/1483 (2003), reprinted 42 *ILM* 1016 (2003).
- Security Council Resolution 1490 (3 July 2003).
- Security Council Resolution 1500 (14 August 2003).
- Security Council Resolution 1511 (16 October 2003).
- Security Council Resolution 1518 (24 November 2003).
- Security Council Resolution 1546 (2004).
- Security Council Resolution 1593 (2005) on refereeing Darfur crisis to ICC, UN Doc. A/RES/1593.

7-Table of Selected Resolutions Adopted by the UNGA

- 1982 Manila Declaration on Peaceful Settlement of Disputes adopted by the UN General Assembly Resolution 37/10,51 U.N. GAOR Supp. 261. UN. Doc .A/37/51(15 November 1982).

- 1974 Definition of Aggression, A/RES/3314, reprinted in 13 ILM 710 (1974); UN GAOR, 29th Sess., Supp.No.31, at 142 (annex), UN Doc.A/9631 (1975).

- 1988 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or use of Force in International Relations, A/RES/42/22 (1988), reprinted in 27 ILM 16 (1988).

- 1996 The General Assembly's Declaration on the Inadmissibility of Intervention in the Domestic affairs of States and the Protection of Their Independence and Sovereignty, GA Res. 2131, UN GAOR, 20th Sess., Supp. No.14, at U.

- GA/RES/2625 (1970), reprinted in 9 *ILM* 1292 (1970).

8-Selected Websites:

http://www.defenselink.mil

http://www.publications.parliament.uk

http://www.globalpolicy.org

http:// www.hrw.org

http://www.khaleejtimes.com
http://www.senate.gov

http://www.usembassy.state.gov

http://www.amnesty.org

http:// www.asil.org.

http:// www.icj.org.

http:// www.un.org

http:// www.newamericancenture.org

http:// www.newsvote.bbc.co.uk

http:// www.ovb.org.uk

http:// www.whithouse.gov/news/release

http:// www.whithouse.gov

http:// www.ilo.org

http:// www. ohchr.org/english

http:// www. uncher.ch

http:// www.aseansec.org

http:// www.un.org

http:// www. coe.int

http:// www. europa.eu.int/indext-en

http:// www.africa-union.org

http:// www.ictr.org

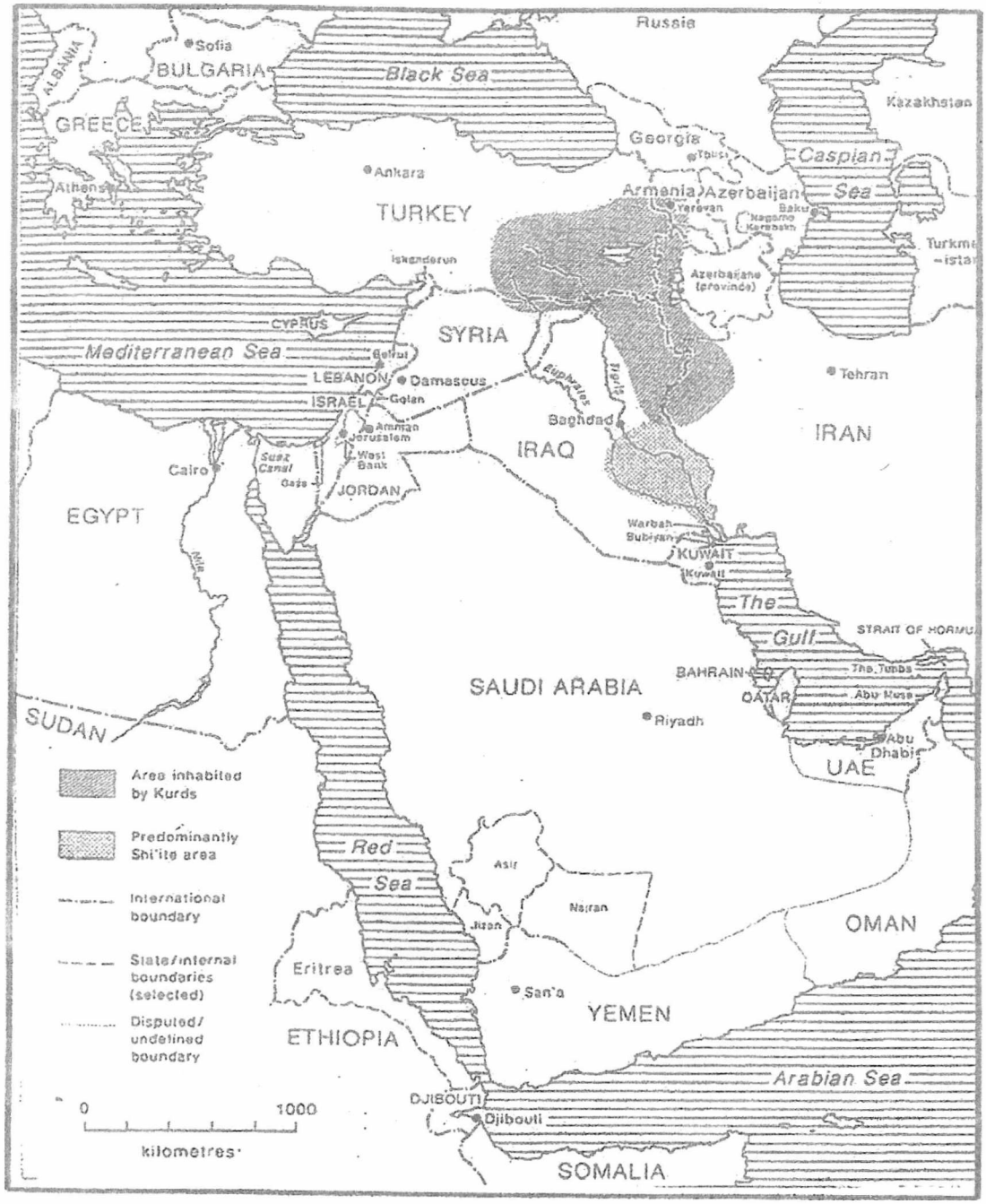
http:// www.icty.org

http:// www.icrc.org

http:// www.oxfordrefence.com

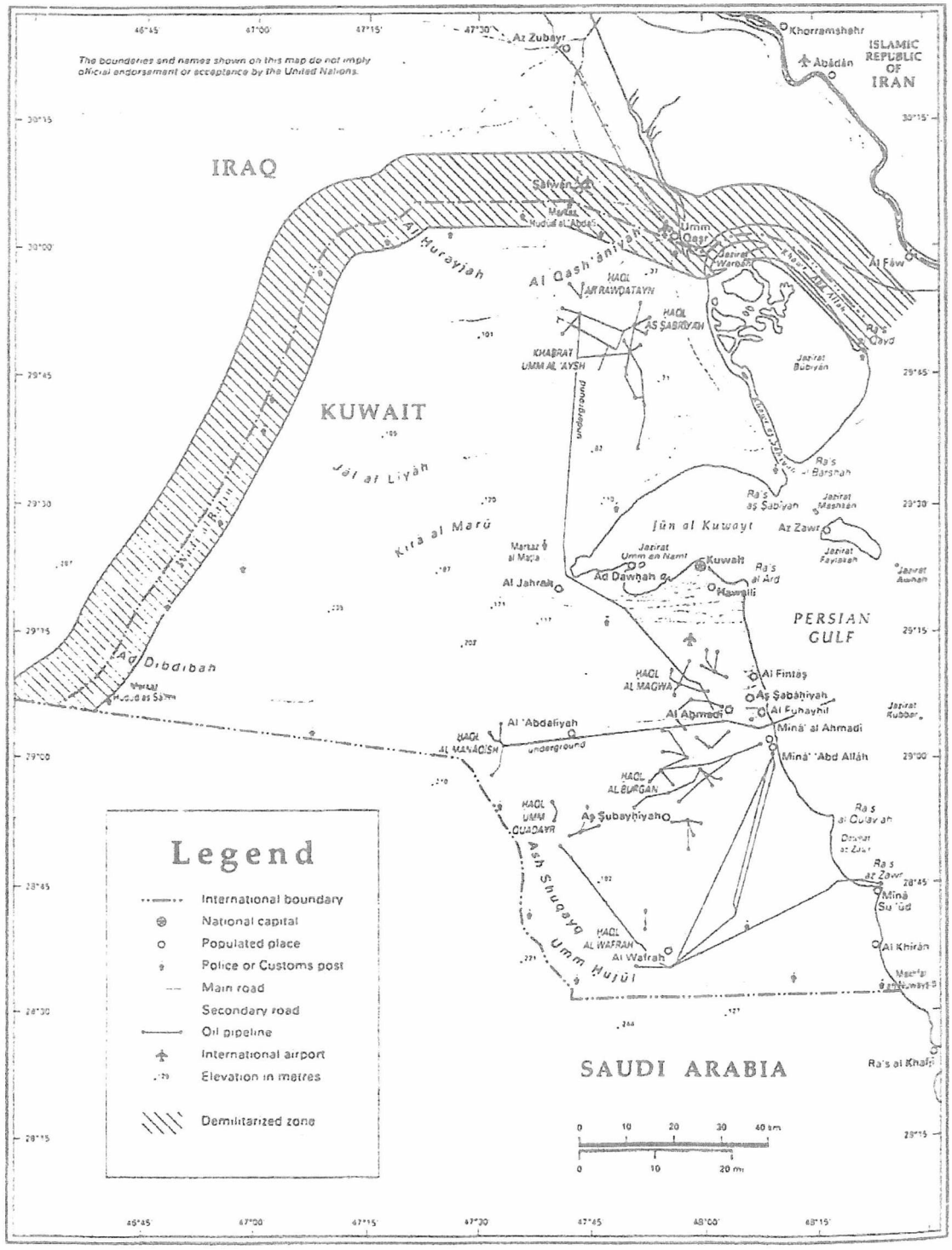
APPENDICES

Appendix A.1



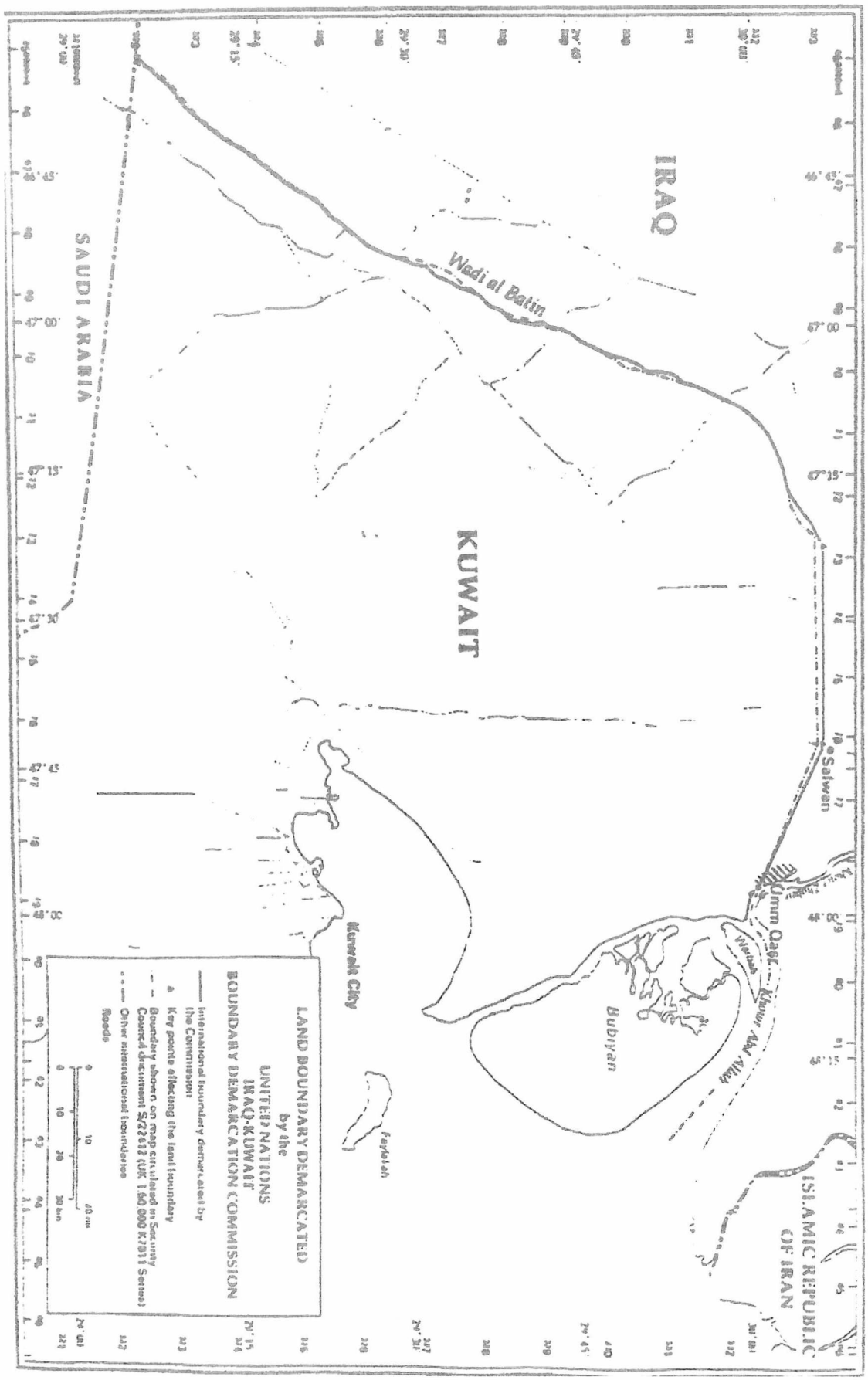
Appendix A.1 Map: (Location of Iraq and Kuwait, Iraq and Turkey) in the Middle East.

Appendix A.2



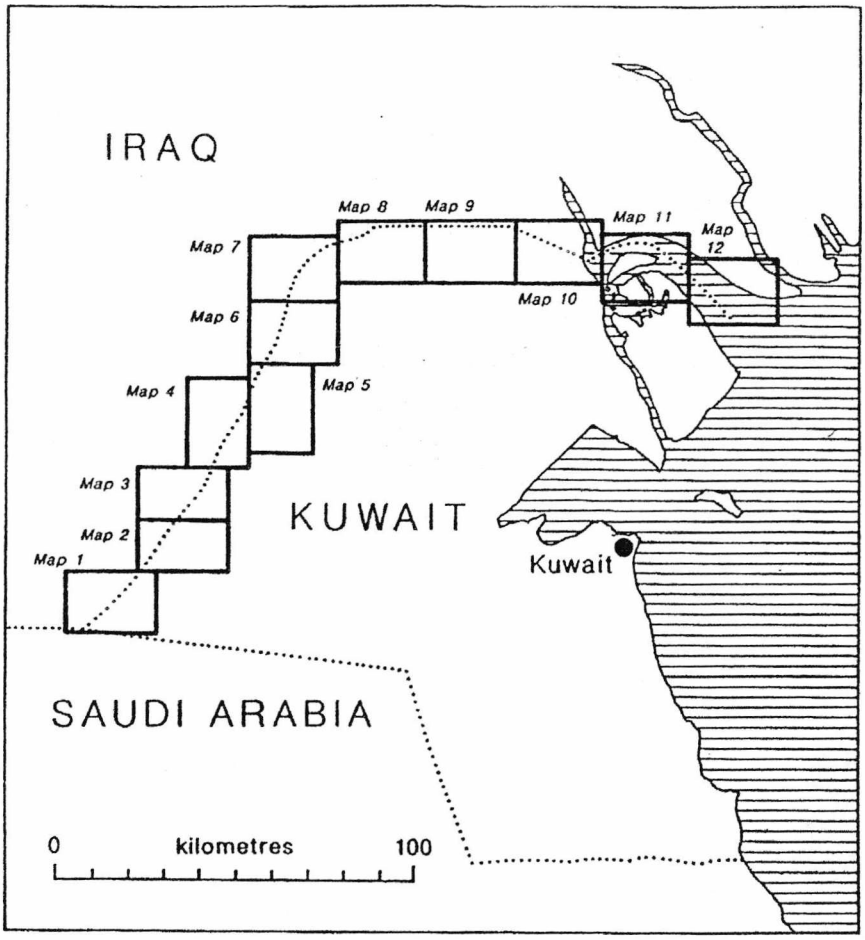
The above map, indicating the extent of the demilitarized zone on the Iraq/Kuwait border, was transmitted by the UN Secretary-General in his Addendum to the Report on the Implementation of Paragraph 5 of Security Council Resolution 687 (1991), 5 April 1991, S/22451Add.2. The zone, and the deployment of the United Nation Iraq-Kuwa Observation Mission forces within it, has been modified in accordance with the changes indicated on the map

Appendix A.2 Map: UN. Map No. 3632, S/22454/Add.2 adopted by Marc Weller *Iraq and Kuwait: The Hostilities and their Aftermath,* (Cambridge, Grotius Publications limited, 1993).

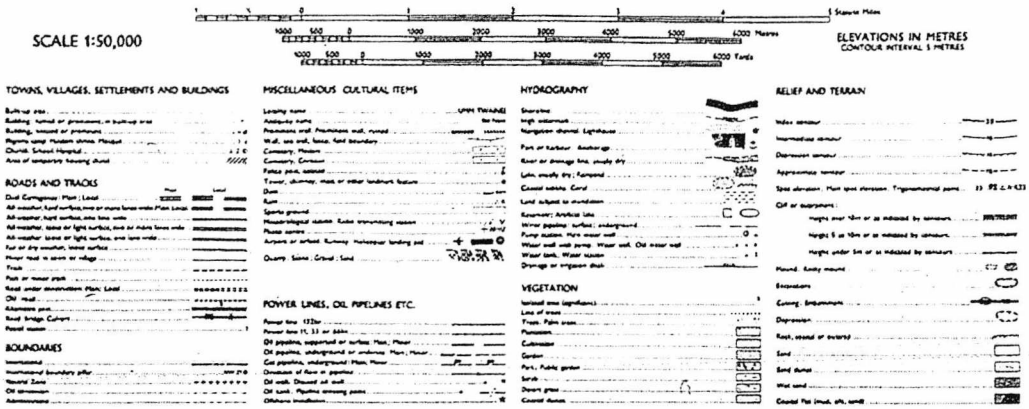


The above map is reproduced form the Further Report of the Iraq-Kuwait Boundary Demarcation Commission, contained in the Letter from the UN Secretary-General to the President of the Security Council, August 12, 1992, UN. Map No. 3680, IKBDC/Rep.6,at p.25 adopted by Marc Weller *Iraq and Kuwait: The Hostilities and their Aftermath,* (Cambridge, Grotius Publications limited, 1993) 769.

Appendix A.4

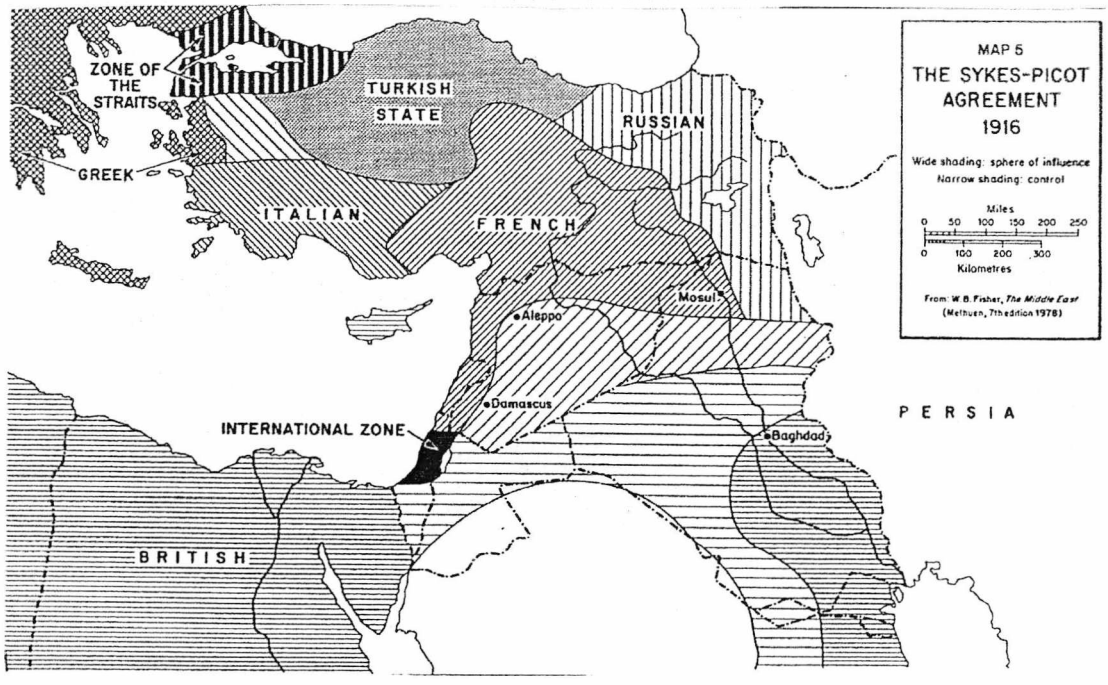


The following 12 maps were placed before the Security Council in a letter from the Permanent Representative of the United Kingdom, 28 March 1991. This letter is reprinted in Chapter 10, Document 1, page 433. The maps are referred to in Resolution 687 (1991).

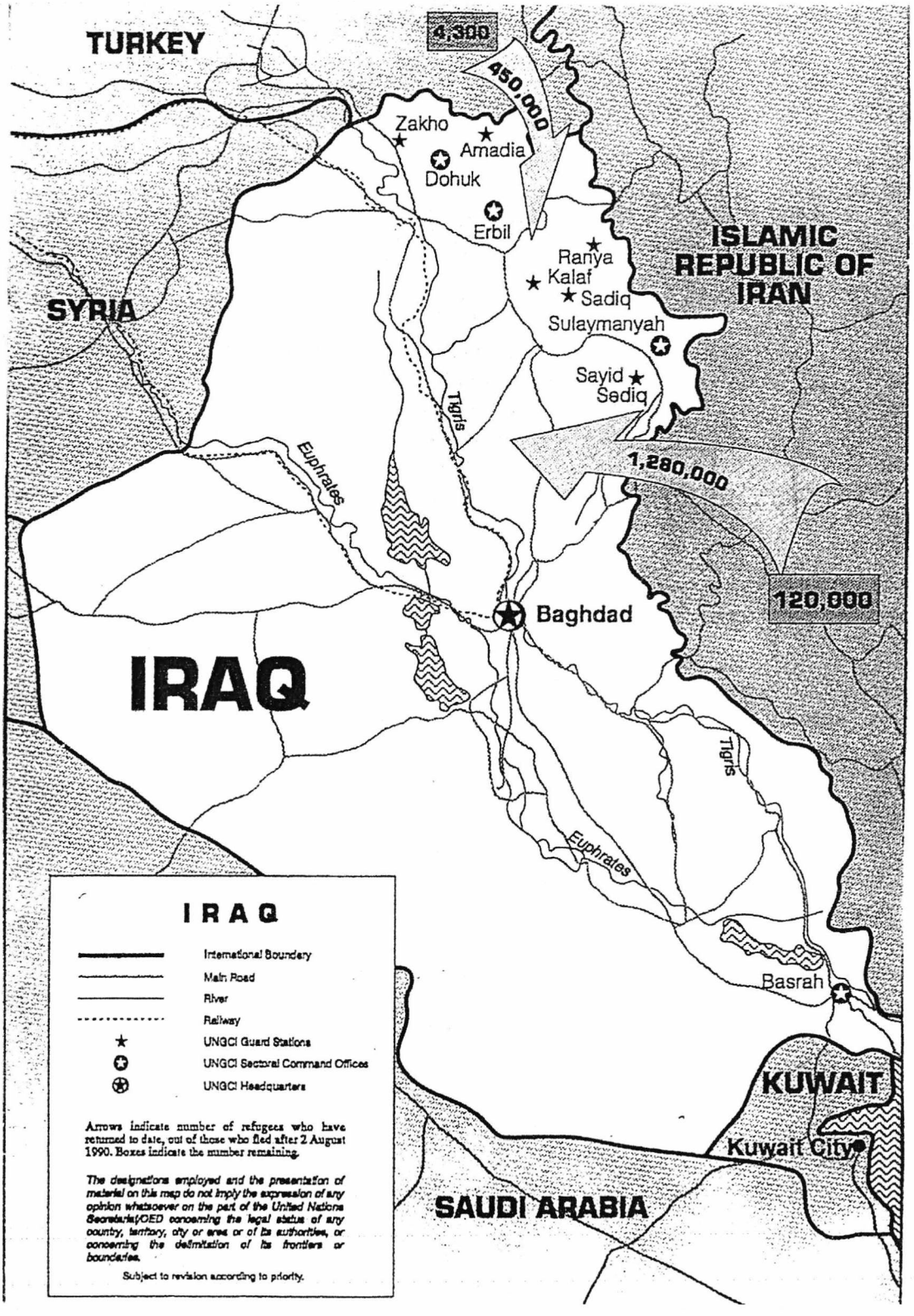


Appendix A.4 Map: Adopted by Marc Weller *Iraq and Kuwait: The Hostilities and their Aftermath,* (Cambridge, Grotius Publications limited, 1993).

Appendix A. 5

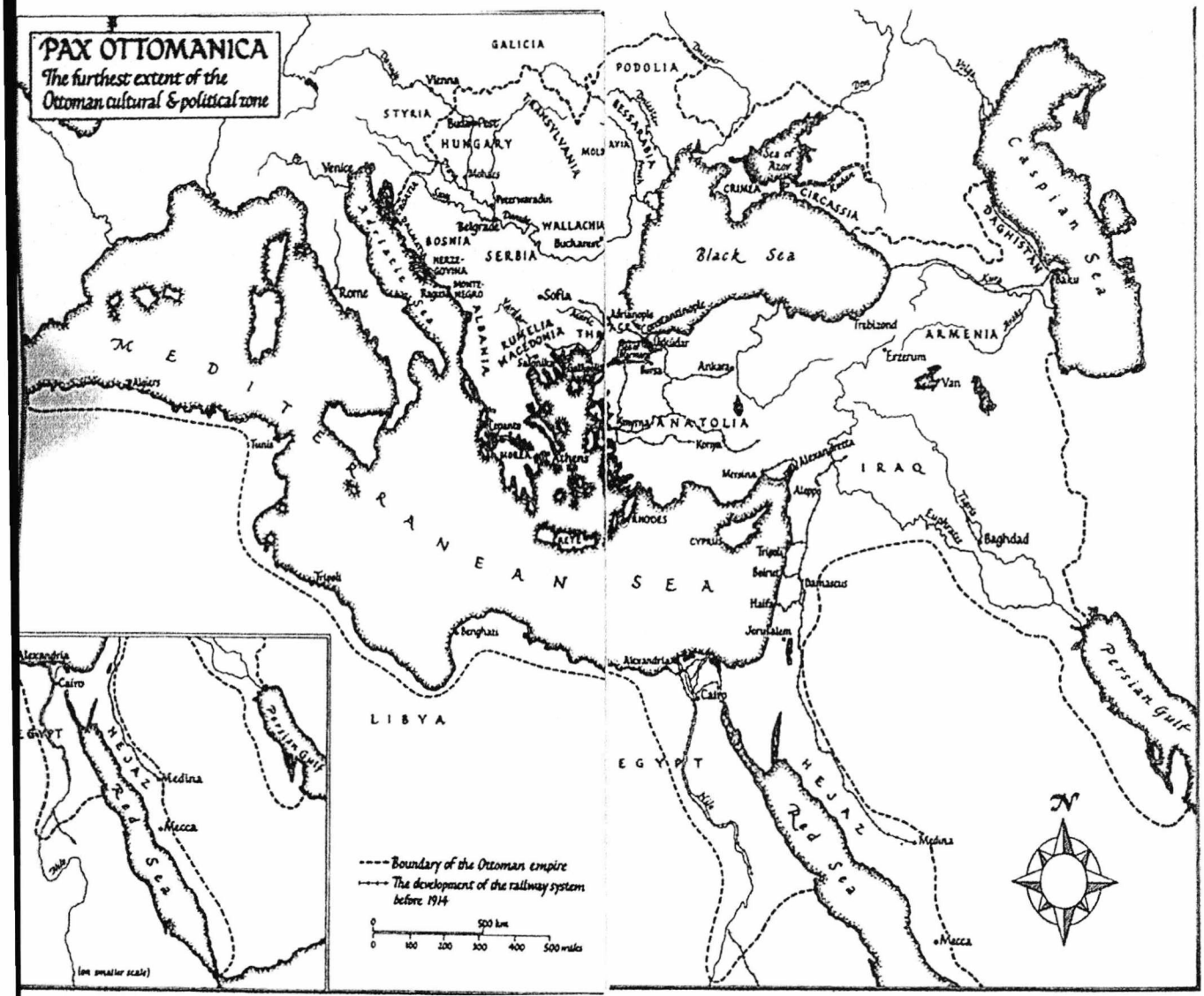


Appendix A.5 Map: The Sykes-Picot Agreement 1916, adopted by David McDowall, *A Modern History of the Kurds*, 1st ed., (London, New York, I. B .Tauris, 1997) p. 116.



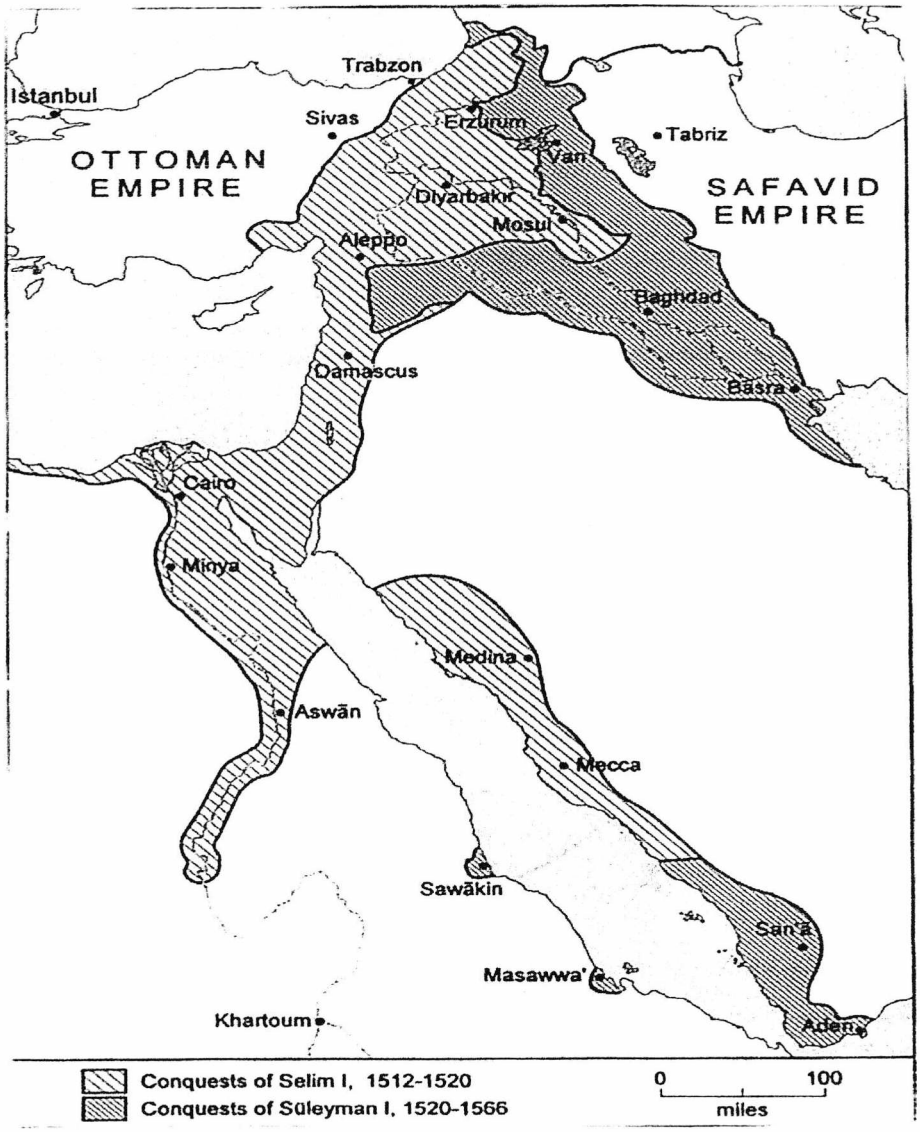
Appendix A.6 Map: UN Repatriation Efforts in Northern Iraq, adopted by Marc Weller *Iraq and Kuwait: The Hostilities and their Aftermath,* (Cambridge, Grotius Publications limited, 1993).

Appendix A.7

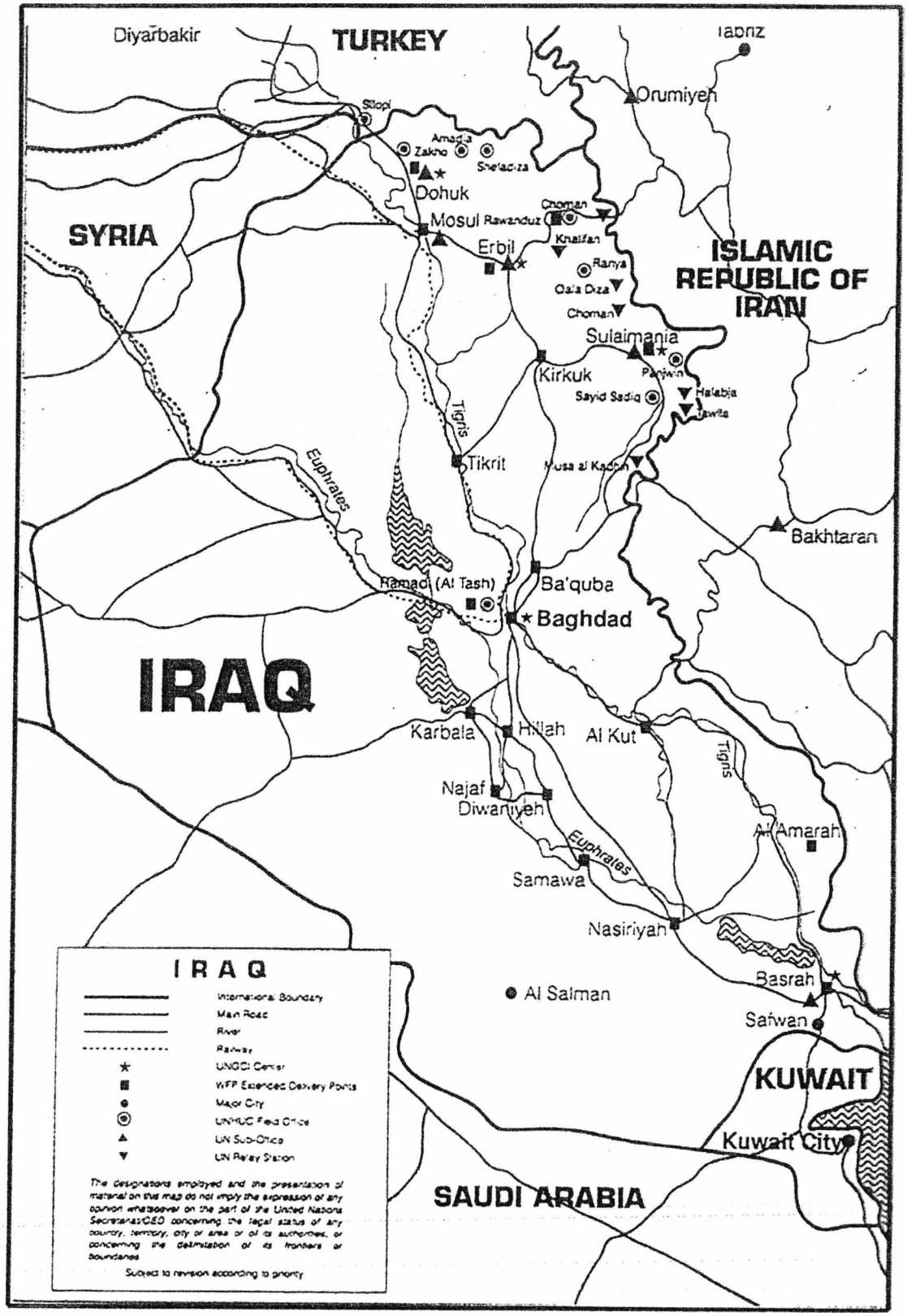


Appendix A.7 Map: The above map, indicating that Iraq and Kuwait were a part of the Ottoman Turks empire.

Appendix A.8

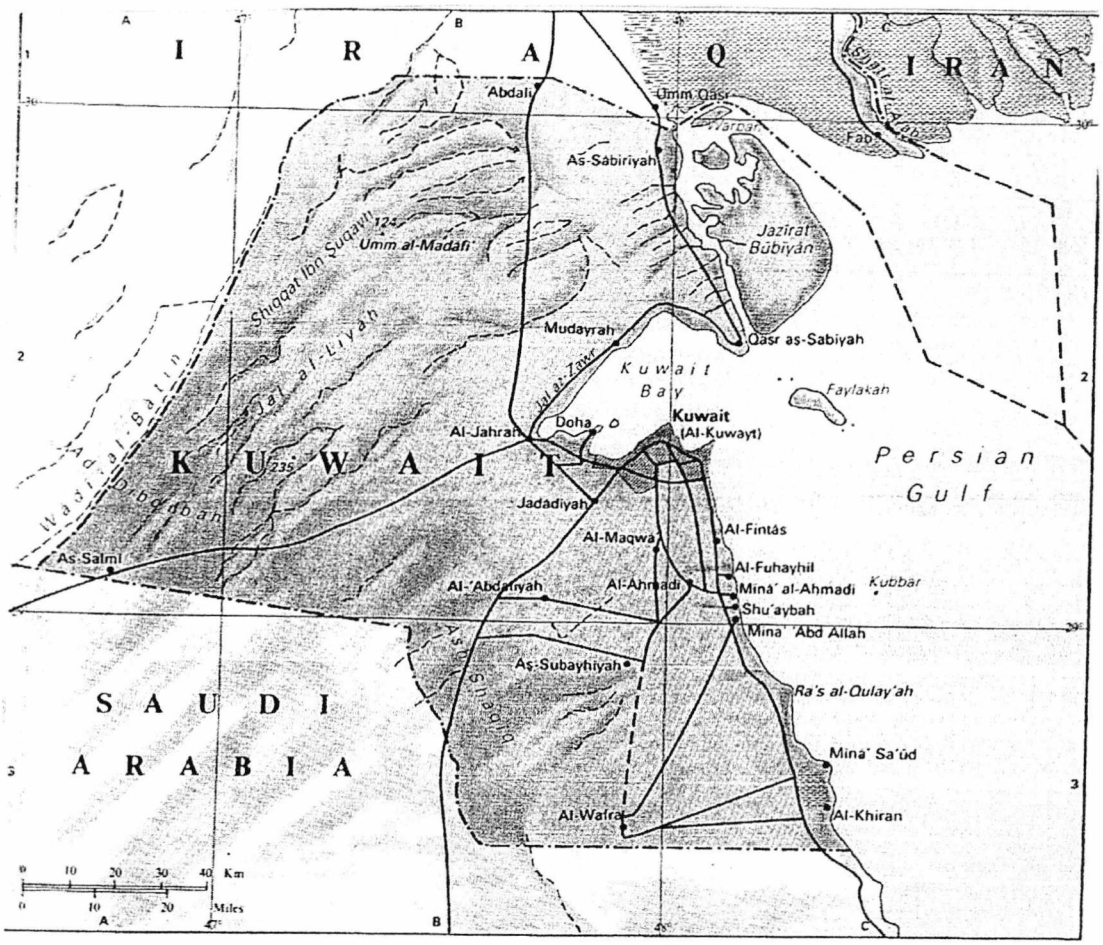


Appendix A.8 Map: The above map, (the conquests of Selim and Suleyman) indicating that Kuwait was a part of Iraq during the Ottoman Turks empire, adopted by Justin McCarthy, The Ottoman Turks: An Introductory History to 1923, (London and New York, Longman, 1997).



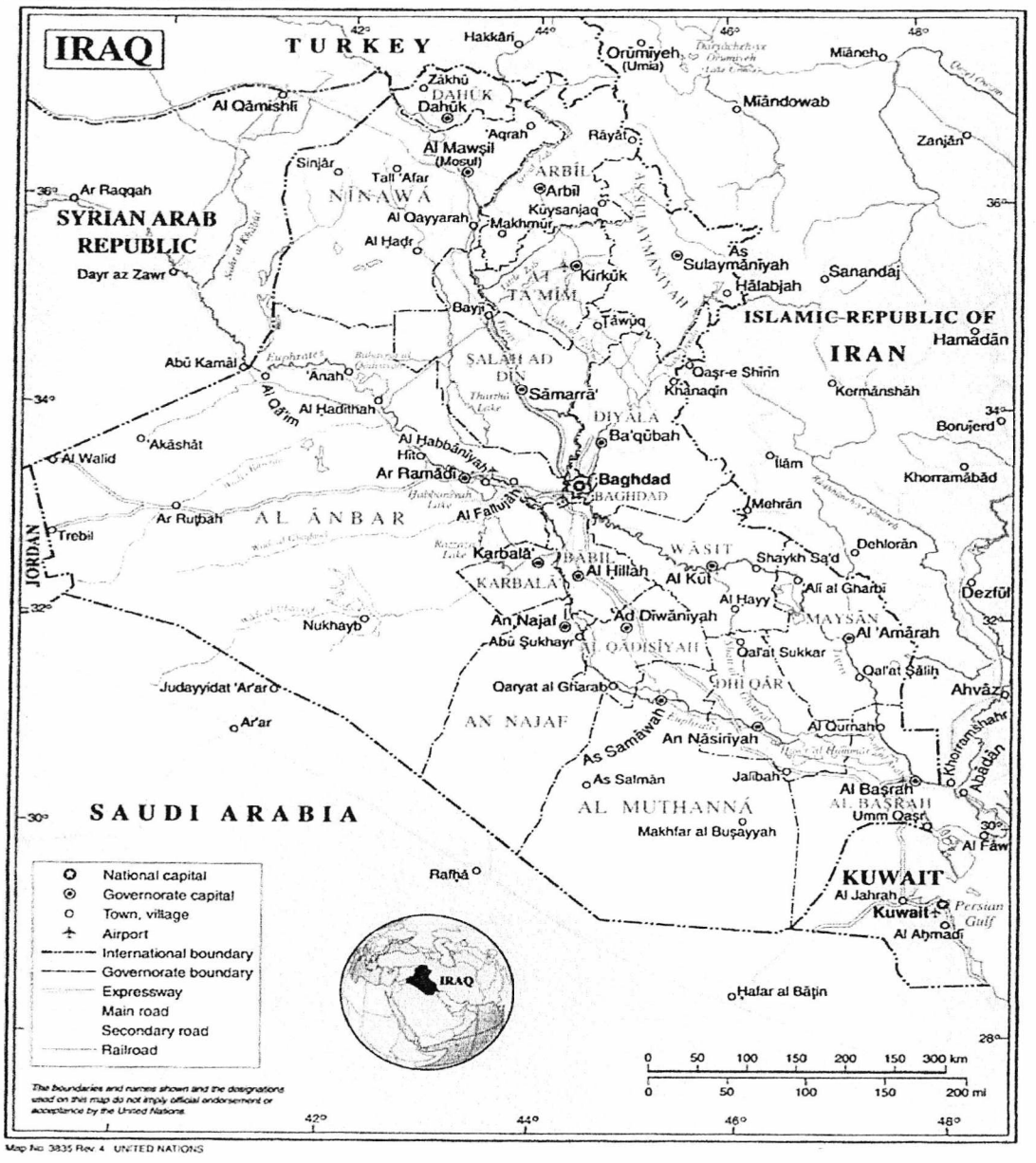
Appendix A.9 Map: UN humanitarian deployment within Iraq, adopted by Marc Welle *Iraq and Kuwait: The Hostilities and their Aftermath,* (Cambridge, Grotius Publication Limited, 1993)754.

Appendix A.10



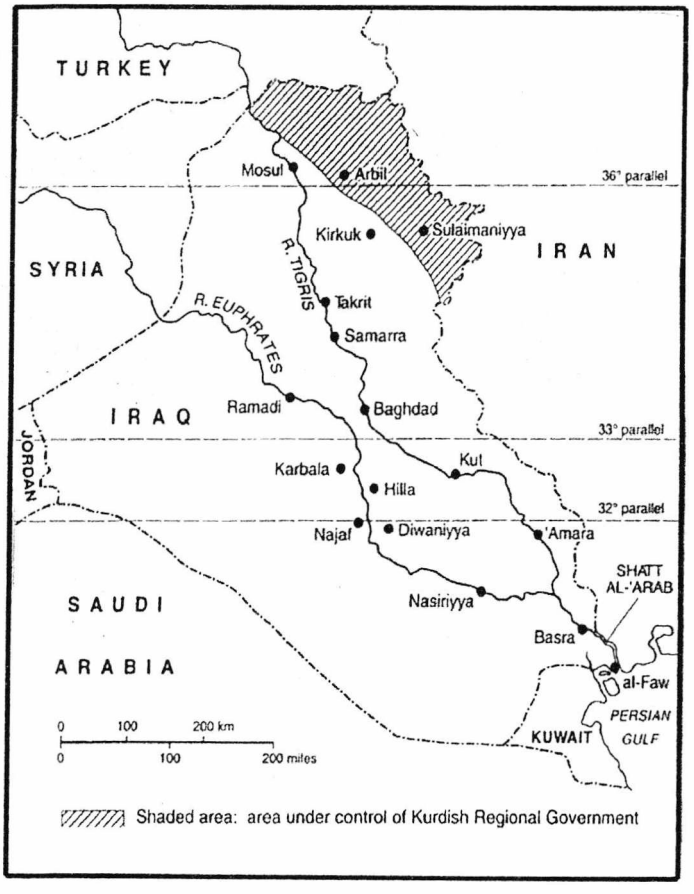
Appendix A.10 Map: Kuwait adopted by Moshe Brawer, ed., Atlas of the Middle East (New York, Macmillan Publishers Co, 1988).

Appendix A.11

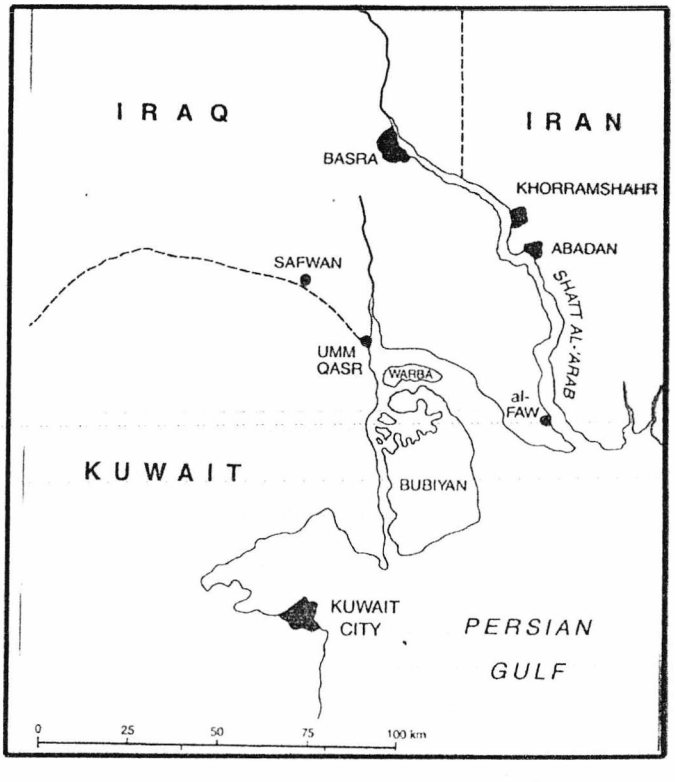


Appendix A.11 Map: Iraq and Kuwait adopted by Global Policy.org.

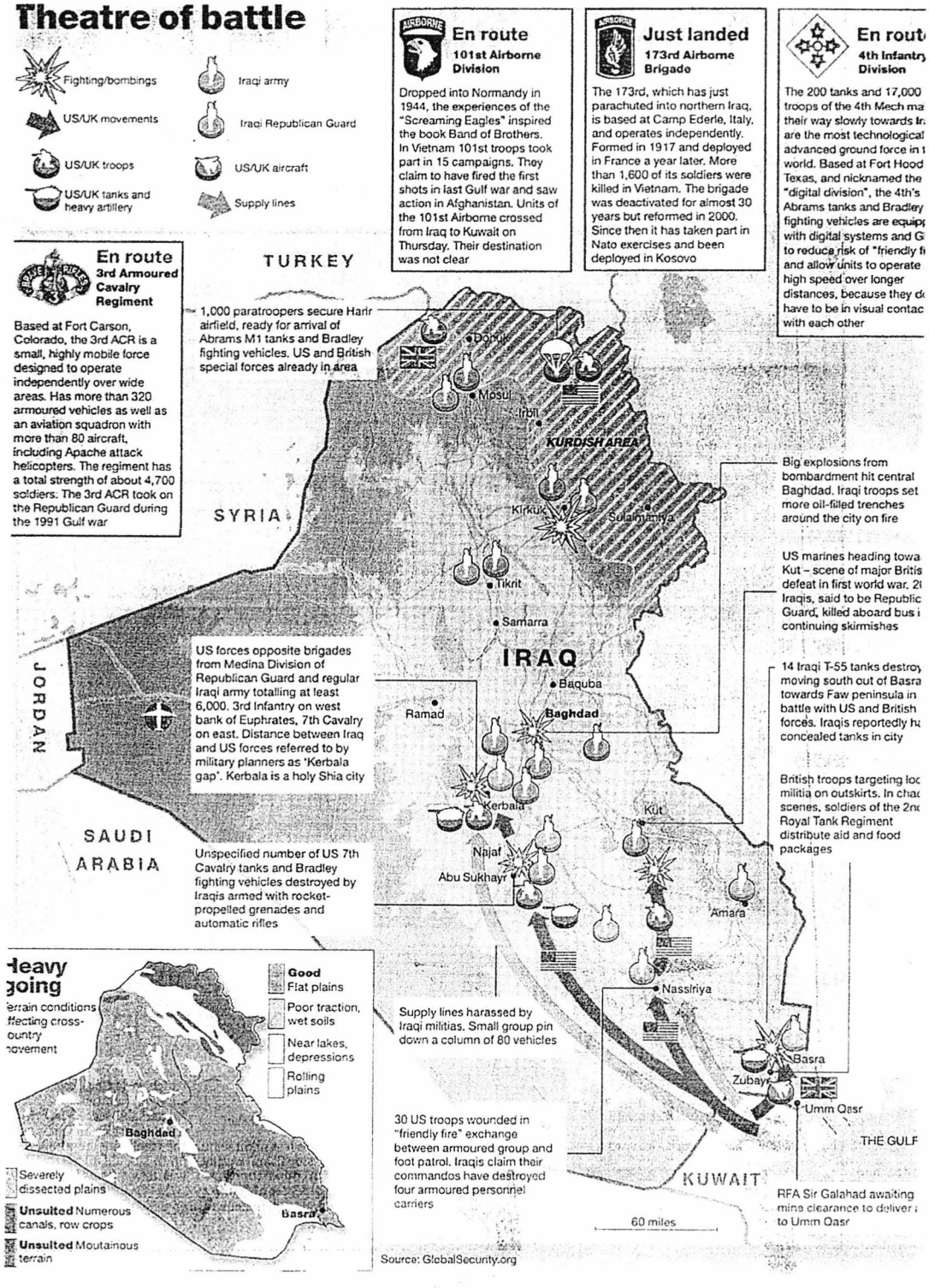
Appendix A.12 & A.13



Appendix A.12 Map: Iraq: principle towns, adopted by Charles Tripp, *A History of Iraq,* (Cambridge, Cambridge University Press, 2000).

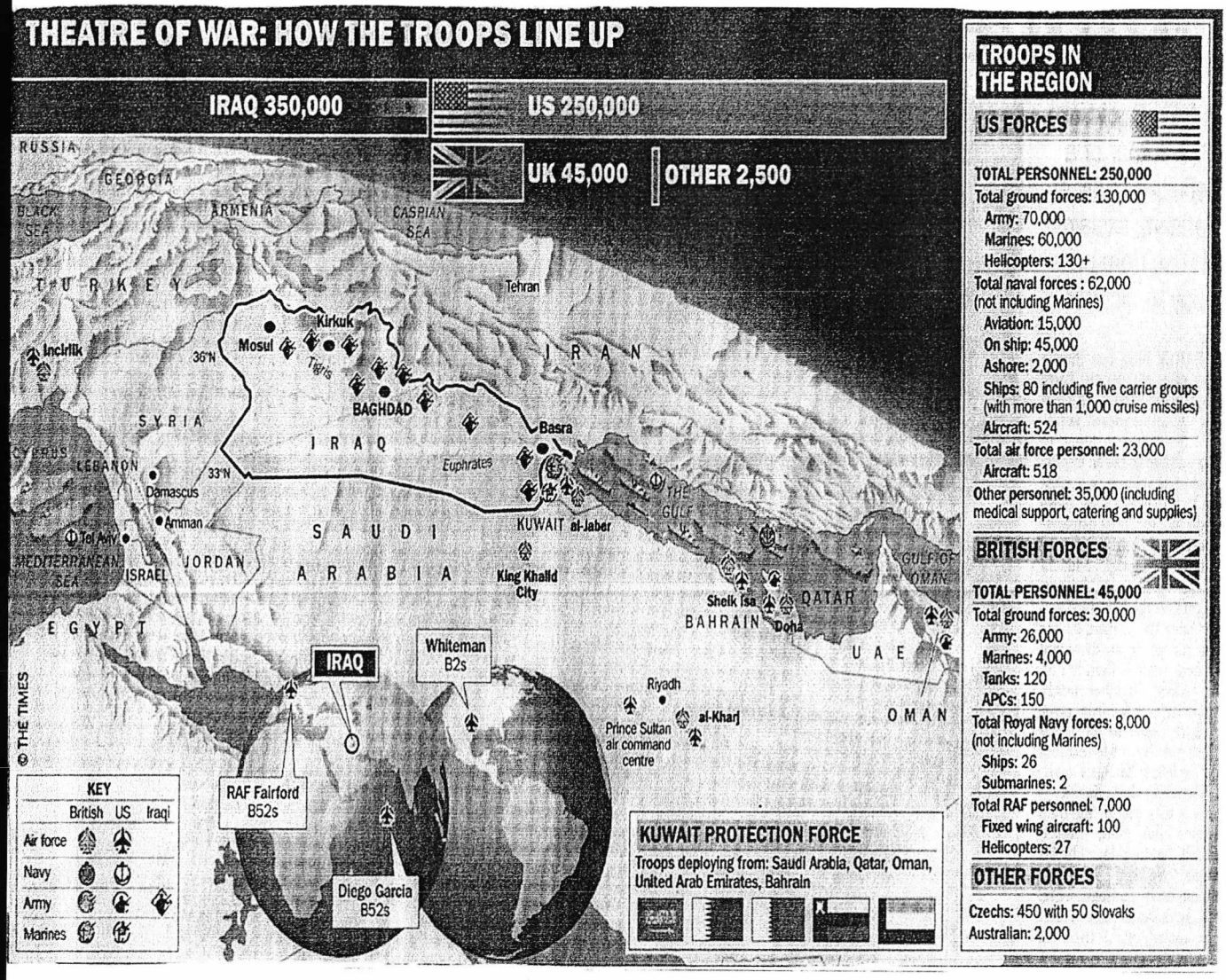


Appendix A.13 Map: Basra, Kuwait and the Shatt al-Arab, adopted by Charles Tripp, *A History of Iraq,* (Cambridge, Cambridge University Press, 2000).



Appendix A.14: Map adopted by The Guardian (28 March 2003) indicating that the US-UK's troops entered Iraq from Kuwait in violation of UNSC Resolution 687 (1991) and the UN Charter.

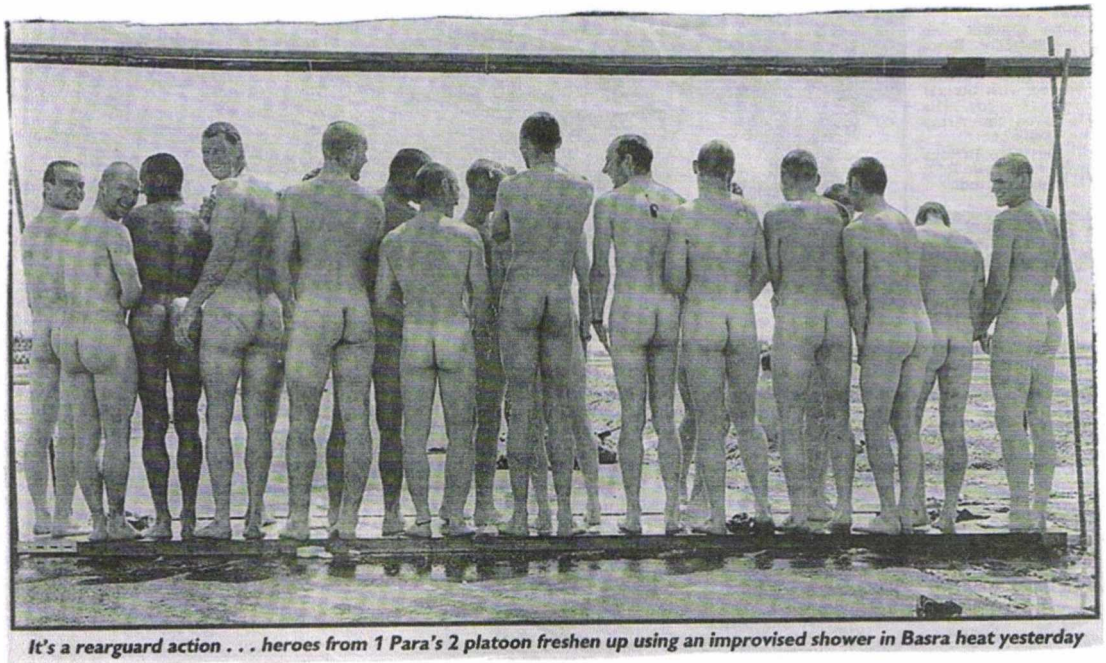
Appendix A.15



Appendix A.15 Map: Adopted by *The Times* (March 20, 2003) indicating that US-UK's troops deployed from Kuwait, Bahrain, Qatar, Saudi Arabia, United Arab Emirates and Oman in violation of Islamic international law.

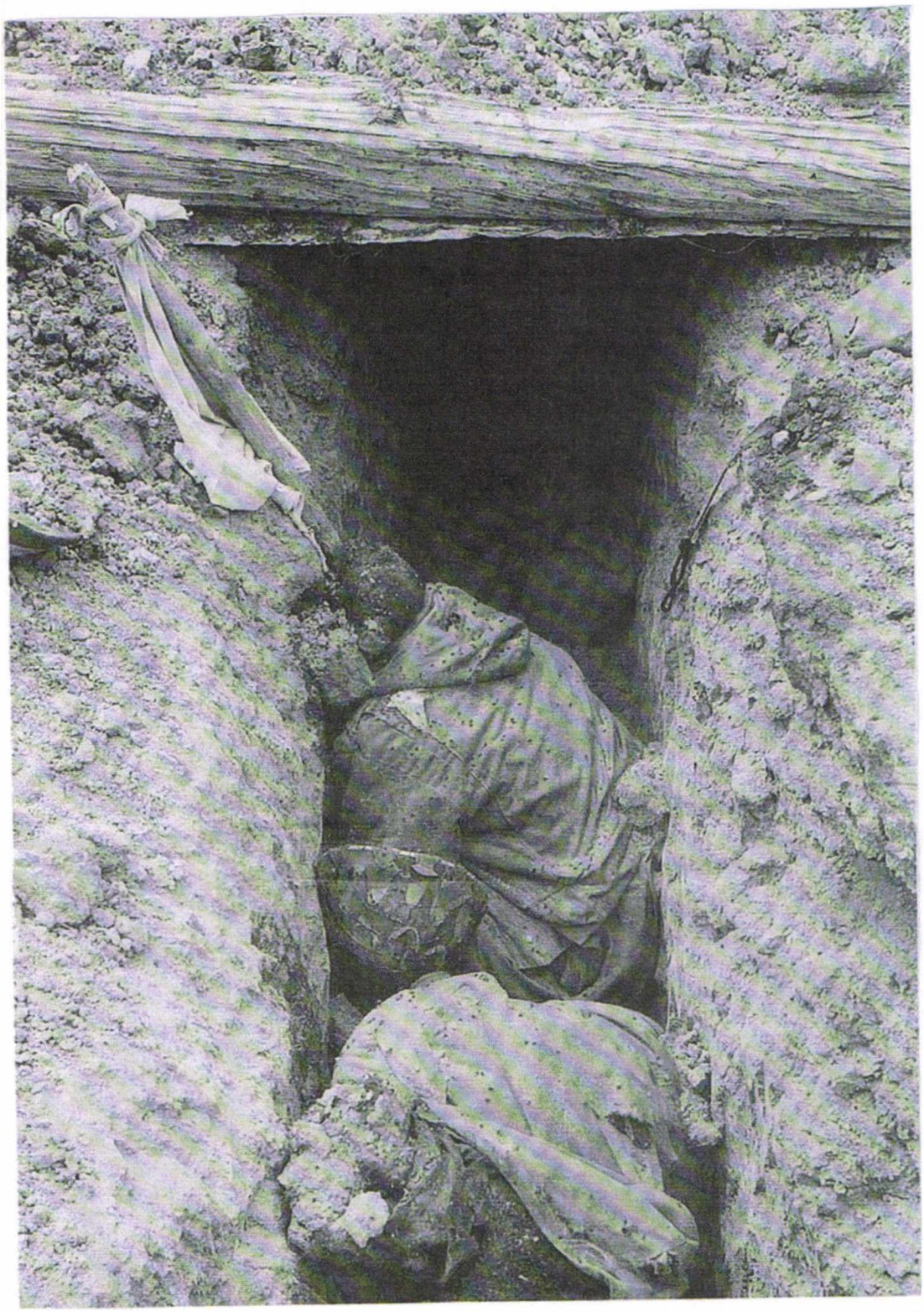
Appendix B.1: Adopted by *Daily Mirror* (24 March 2003) indicating the American flag up over Umm Qasr port shows that this war was for occupation of Iraq not liberation of its people.

Appendix B.2



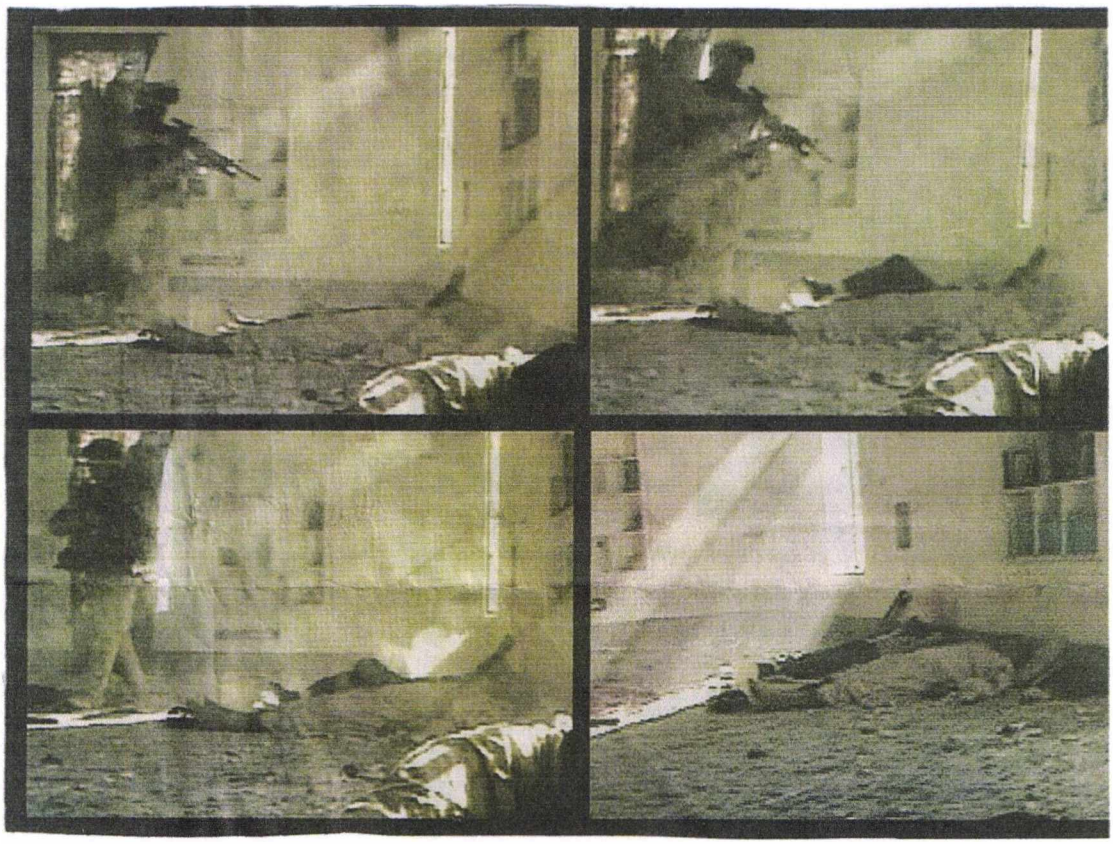
It's a rearguard action . . . heroes from 1 Para's 2 platoon freshen up using an improvised shower in Basra heat yesterday

Appendix B.2: Adopted by *The Sun* (8 April 2003) indicating how the British troops by taking showers in Basra after invading a Muslim country jeopardizes Muslims values.



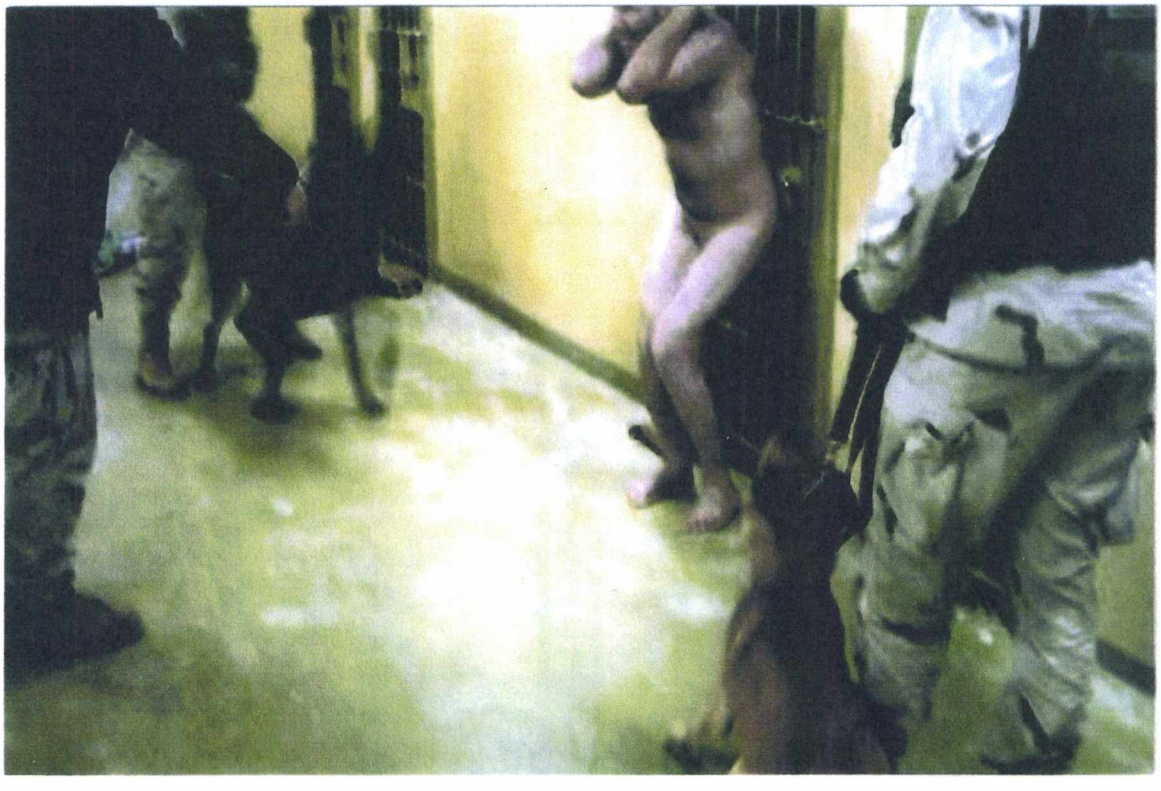
Appendix B.3: Bodies of Iraqi soldiers in Southern Iraq shows that their white flag couldn't save them in violation of the Geneva Convention 1.

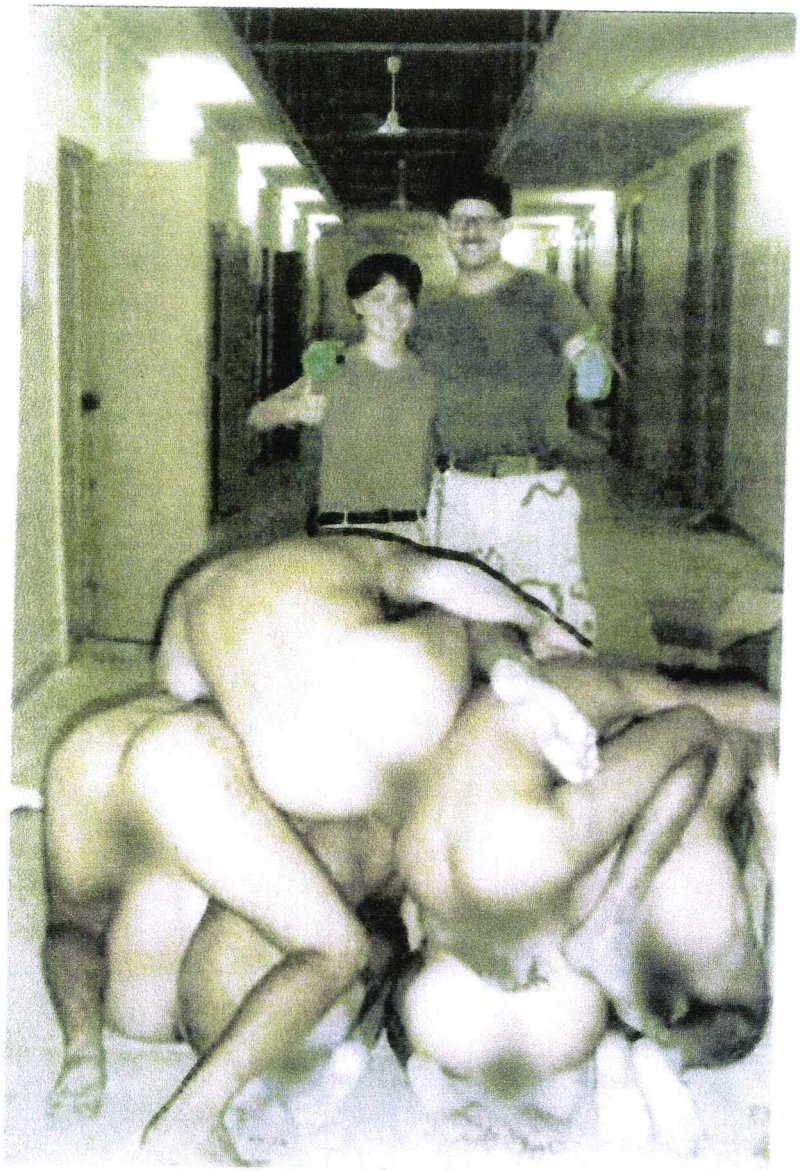
Appendix B.4: Ail Ismail Abbas, 12 years old, one of an international symbol of the horror wreaked by war on Iraq.

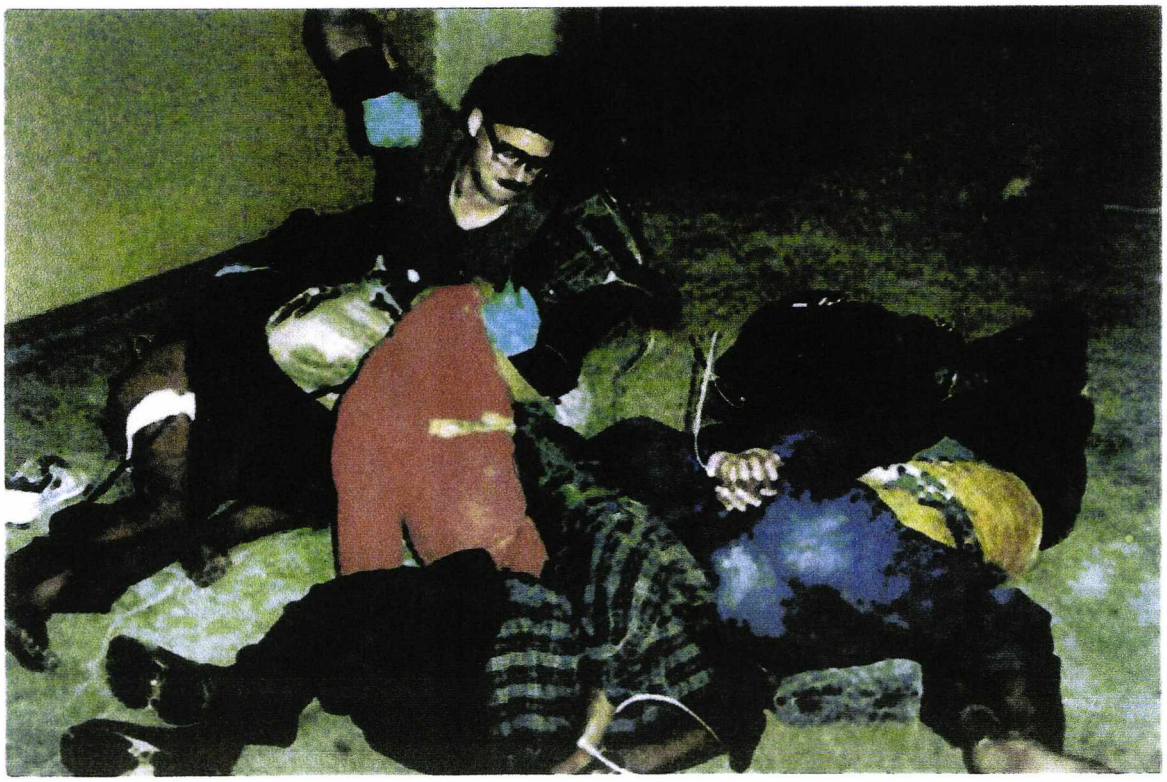


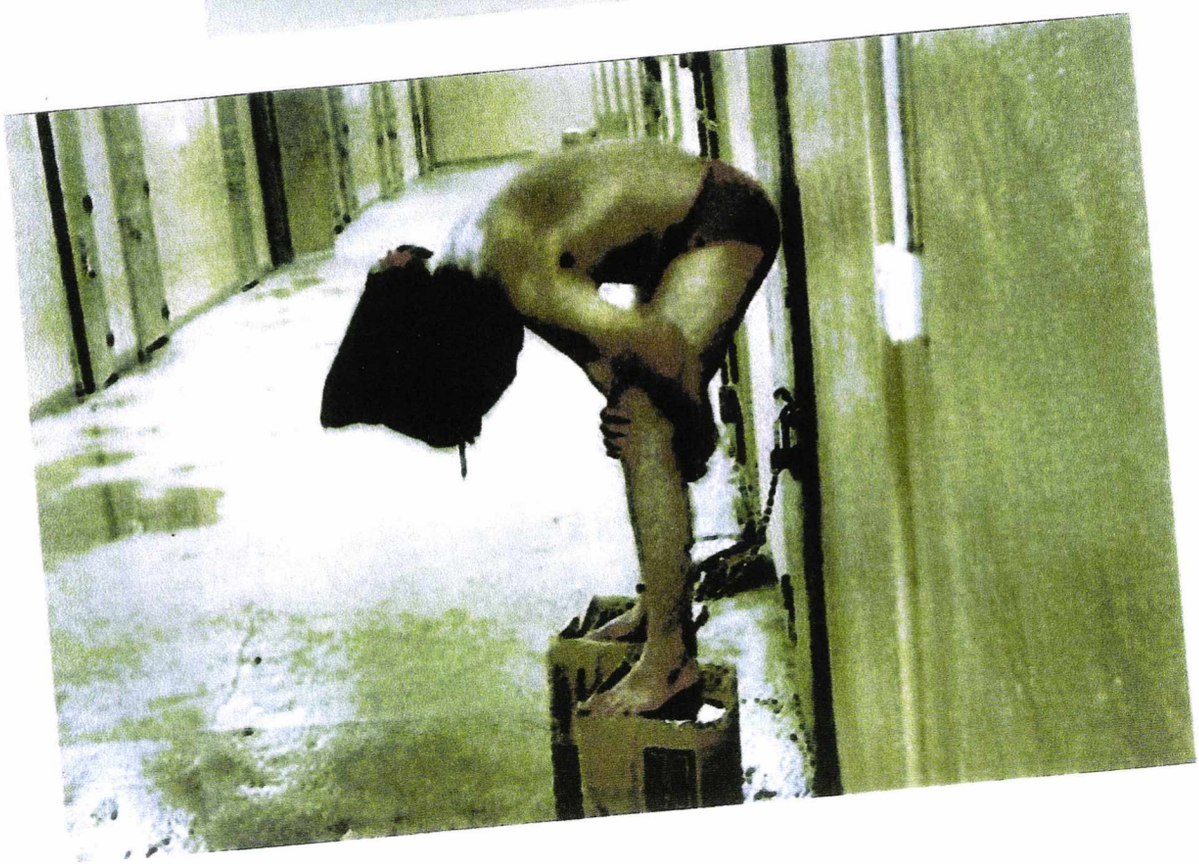
Appendix B.5 A footage shows a US marine shooting an unarmed and injured Iraqi in a mosque in Falluja in violation of the Geneva Convention 1, photo by NBC correspondent Kevin Sites in *The Guardian* (11 November 2004).

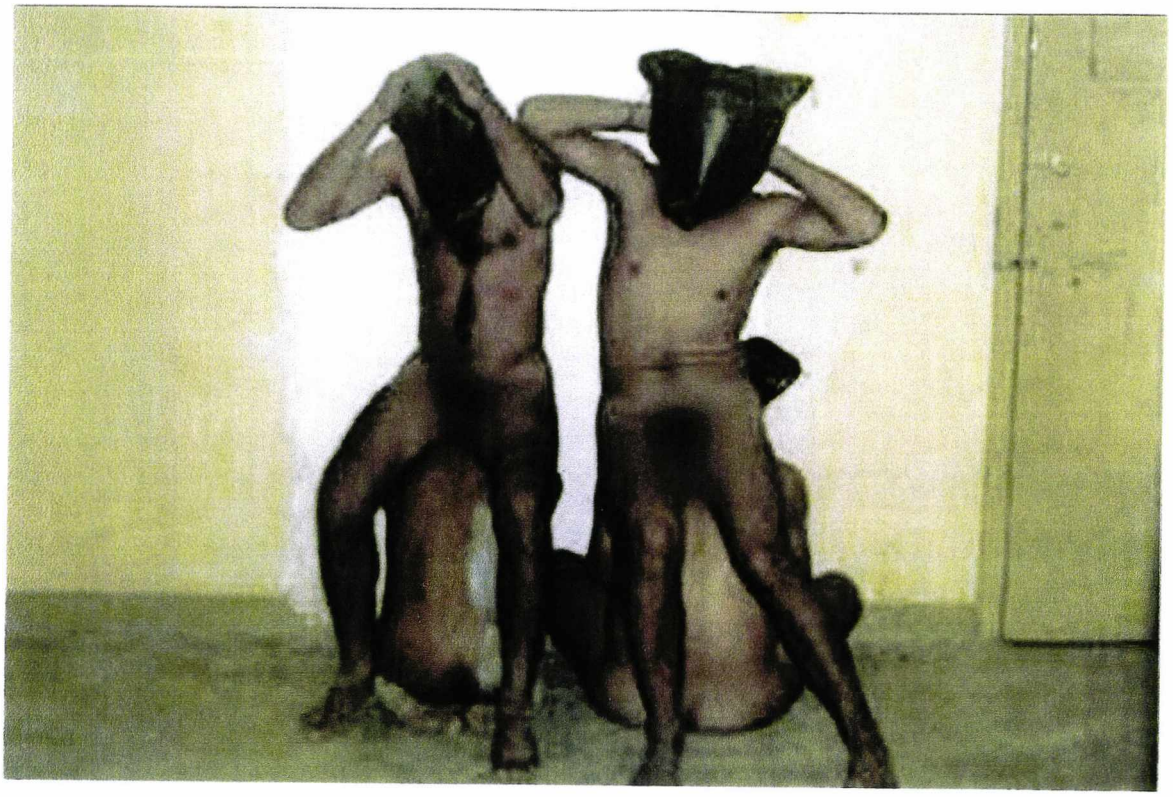
The images that shocked the world: Photographs taken by US personnel at Abu Ghraib prison released by the US CBS news network showing numerous incidents of systemic, sadistic, blatant, and wanton criminal abuses were inflicted on several Iraqi detainees.

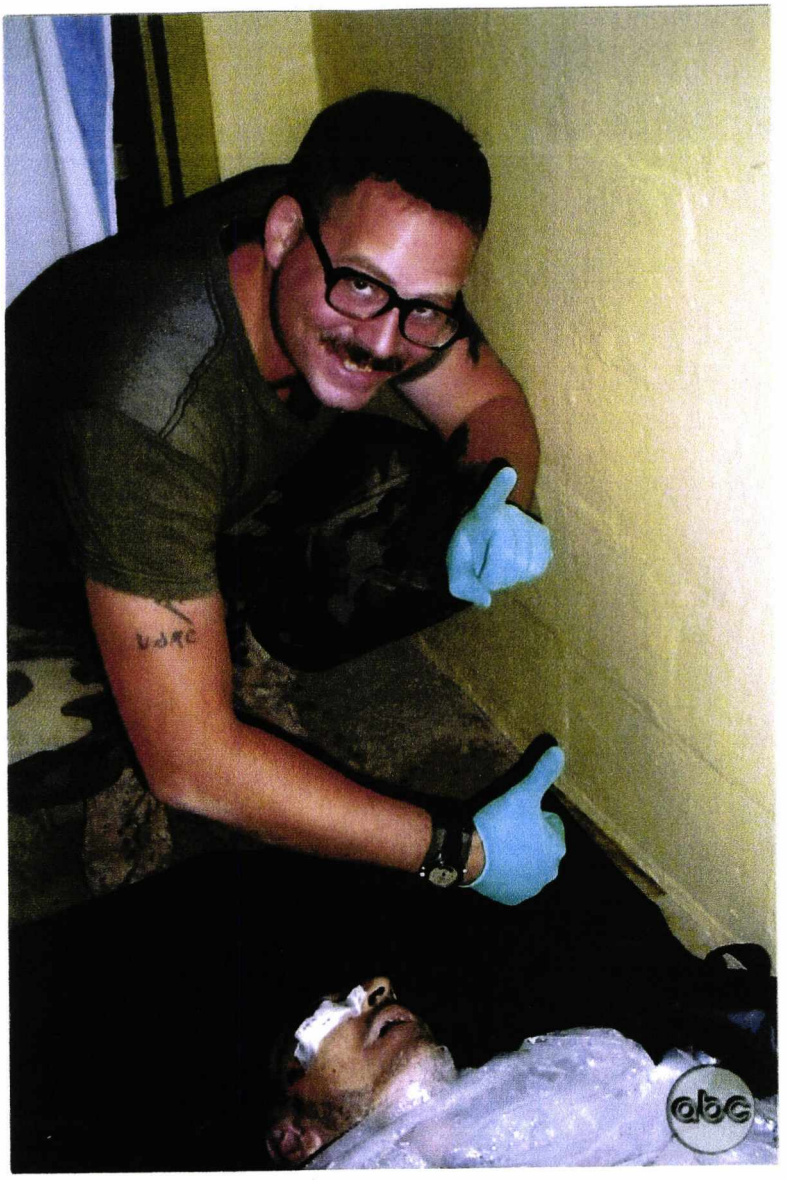






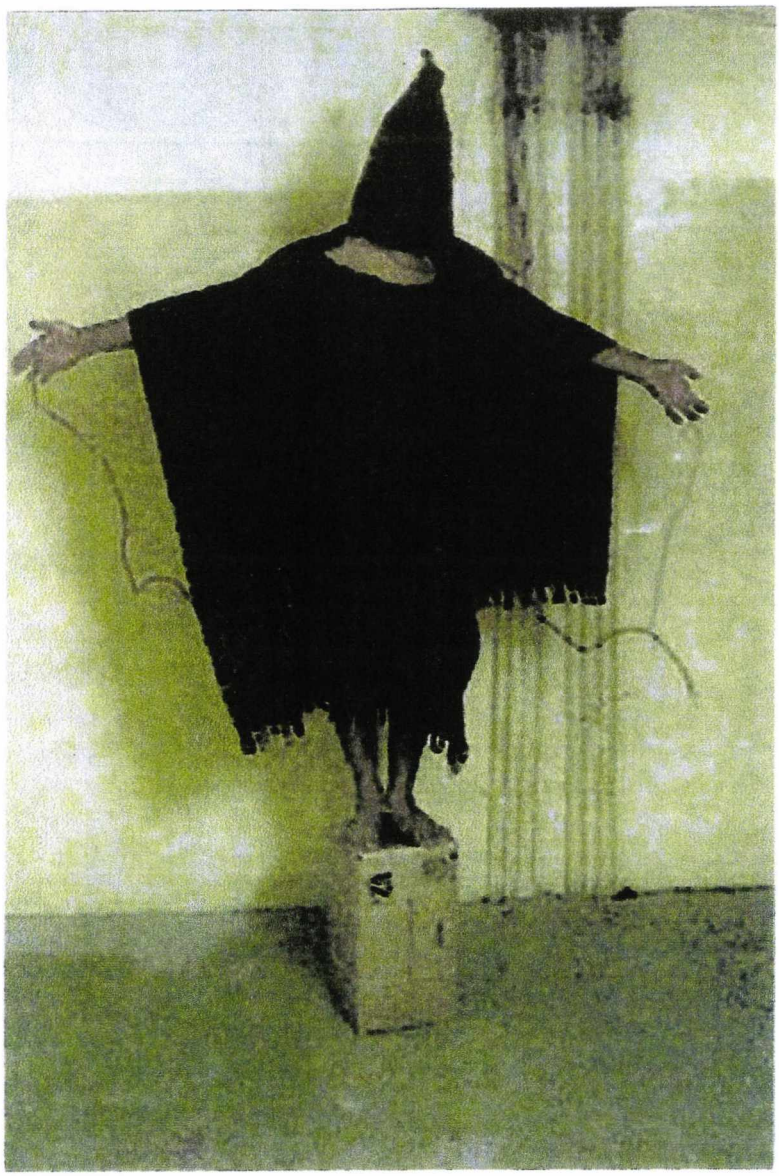





abc

525

526



Appendix B. 7

The above pictures shows that nothing has been done by the American soldiers to stop the looting of Iraqi museums, libraries, archives, archaeological sites and the Iraqi Central Bank.

Appendix B. 8

Targeting Iraqi civilians: An Iraqi old man wounded during attacks on Basra in March 2003, shows the reality of Iraq occupation. In *Daily Mirror,* 24 March 2003. Photo: AP/Nabil.

C-1

January 26, 1998

The Honorable William J. Clinton
President of the United States
Washington, DC

Dear Mr. President:

We are writing you because we are convinced that current American policy toward Iraq is not succeeding, and that we may soon face a threat in the Middle East more serious than any we have known since the end of the Cold War. In your upcoming State of the Union Address, you have an opportunity to chart a clear and determined course for meeting this threat. We urge you to seize that opportunity, and to enunciate a new strategy that would secure the interests of the U.S. and our friends and allies around the world. That strategy should aim, above all, at the removal of Saddam Hussein's regime from power. We stand ready to offer our full support in this difficult but necessary endeavor.

The policy of "containment" of Saddam Hussein has been steadily eroding over the past several months. As recent events have demonstrated, we can no longer depend on our partners in the Gulf War coalition to continue to uphold the sanctions or to punish Saddam when he blocks or evades UN inspections. Our ability to ensure that Saddam Hussein is not producing weapons of mass destruction, therefore, has substantially diminished. Even if full inspections were eventually to resume, which now seems highly unlikely, experience has shown that it is difficult if not impossible to monitor Iraq's chemical and biological weapons production. The lengthy period during which the inspectors will have been unable to enter many Iraqi facilities has made it even less likely that they will be able to uncover all of Saddam's secrets. As a result, in the not-too-distant future we will be unable to determine with any reasonable level of confidence whether Iraq does or does not possess such weapons.

Such uncertainty will, by itself, have a seriously destabilizing effect on the entire Middle East. It hardly needs to be added that if Saddam does acquire the capability to deliver weapons of mass destruction, as he is almost certain to do if we continue along the present course, the safety of American troops in the region, of our friends and allies like Israel and the moderate Arab states, and a significant portion of the world's supply of oil will all be put at hazard. As you have rightly declared, Mr. President, the security of the world in the first part of the 21st century will be determined largely by how we handle this threat.

Given the magnitude of the threat, the current policy, which depends for its success upon the steadfastness of our coalition partners and upon the cooperation of Saddam Hussein, is dangerously inadequate. The only acceptable strategy is one that eliminates the possibility that Iraq will be able to use or threaten to use weapons of mass destruction. In the near term, this means a willingness to undertake military action as diplomacy is clearly failing. In the long term, it means removing Saddam Hussein and his regime from power. That now needs to become the aim of American foreign policy.

531

We urge you to articulate this aim, and to turn your Administration's attention to implementing a strategy for removing Saddam's regime from power. This will require a full complement of diplomatic, political and military efforts. Although we are fully aware of the dangers and difficulties in implementing this policy, we believe the dangers of failing to do so are far greater. We believe the U.S. has the authority under existing UN resolutions to take the necessary steps, including military steps, to protect our vital interests in the Gulf. In any case, American policy cannot continue to be crippled by a misguided insistence on unanimity in the UN Security Council.

We urge you to act decisively. If you act now to end the threat of weapons of mass destruction against the U.S. or its allies, you will be acting in the most fundamental national security interests of the country. If we accept a course of weakness and drift, we put our interests and our future at risk.

Sincerely,

Elliott Abrams Richard L. Armitage William J. Bennett

Jeffrey Bergner John Bolton Paula Dobriansky

Francis Fukuyama Robert Kagan Zalmay Khalilzad

William Kristol Richard Perle Peter W. Rodman

Donald Rumsfeld William Schneider, Jr. Vin Weber

Paul Wolfowitz R. James Woolsey Robert B. Zoellick

BACK TO TOP | HOME | CONTACT US

CONFIDENTIAL

RECORD OF CONVERSATION: MR DOWNER AND BHP BILLITON

O.LH24367 1620 20.05.2003 CLA LIMIT DISTRIBUTION SENSITIVE

TO.
PP CANBERRA/ FOREIGN MIN ABROAD/

RP.
PP BAGHDAD/ BANDAR SERI BEGAWAN/ CAIRO/
PP KUALA LUMPUR/ MOSCOW/ PARIS EMB/
PP ROME/ TEHRAN/ UN NEW YORK/
PP WASHINGTON/

FM. LONDON/ FA

C O N F I D E N T I A L

RECORD OF CONVERSATION: MR DOWNER AND BHP BILLITON

*** THE FOLLOWING CONTAINS SENSITIVE INFORMATION ***

START OF SUMMARY

CABLE GIVES RECORD OF CONVERSATION WHICH TOOK PLACE IN LONDON ON 19 MAY BETWEEN THE MINISTER FOR FOREIGN AFFAIRS AND TRADE, BHP BILLITON EXECUTIVES AND SIR MALCOLM RIFKIND (MIDDLE EAST CONSULTANT) RELATING TO THE HALFAYAH OILFIELD IN IRAQ.

END OF SUMMARY

RECORD OF CONVERSATION BETWEEN:

MINISTER FOR FOREIGN AFFAIRS AND BHP BILLITON

ON: 19 MAY 2003

AT: STOKE LODGE LONDON

OFFICERS PRESENT:

SIR MALCOLM RIFKIND, MIDDLE EAST CONSULTANT
MR DAVID WALKER, PRESIDENT, UK, NORTH AFRICA AND MIDDLE EAST DEVELOPMENT AND OPERATIONS
MR TOM HARLEY, VICE PRESIDENT, MERGERS, ACQUISITIONS AND DIVESTMENTS
MR DAVID REGAN, TEAM LEADER, INTERNATIONAL BUSINESS DEVELOPMENT, NORTH AFRICA AND MIDDLE EAST

HE MR MICHAEL L'ESTRANGE, HIGH COMMISSIONER
MR JOSHUA FRYDENBERG, SENIOR ADVISER
MR BILL PATERSON, FAS, IRAQ TASK FORCE
MS MELISSA HITCHMAN, FIRST SECRETARY

MAIN SUBJECTS: BHP BILLITON RIGHTS TO HALFAYAH OILFIELD IRAQ

REPORT PREPARED: BY MELISSA HITCHMAN

REPORT CLEARED BY: JOSHUA FRYDENBERG

MR REGAN GAVE A PRESENTATION OF BHP BILLITON'S INTEREST IN THE HALFAYAH OILFIELD IN IRAQ. HALFAYAH IS ONE OF FIVE STRATEGIC, UNDEVELOPED OILFIELDS SITUATED IN SOUTHERN IRAQ. IT CONTAINS NEARLY FIVE BILLION BARRELS OF RECOVERABLE OIL AND IS EQUIVALENT IN SIZE TO THE ORIGINAL OIL RESERVES DISCOVERED IN BASS STRAIT. THE DEVELOPMENT OF THE FIELD WOULD COMPRISE AN INVESTMENT OF AROUND US$2 BILLION, WITH PRODUCTION COMMENCING AT 50,000 BARRELS OF OIL PER DAY ESCALATING TO 250,000 LONG TERM.

2. (IRAQ'S TOTAL OIL PRODUCTION BEFORE THE WAR WAS 2 MILLION BARRELS PER DAY, WHICH MR REGAN JUDGED COULD BE INCREASED TO 6 MILLION PER DAY IF GREENFIELD SITES SUCH AS HALFAYAH WERE EXPLOITED: 70 PER CENT OF THE COUNTRY REMAINED UNEXPLORED. IRAQ HAD EXTENSIVE GAS RESERVES ALSO, WHICH EVENTUALLY COULD BE DELIVERED TO EUROPE THROUGH TURKEY).

3. MR REGAN SAID THAT, IN THE MID TO LATE 1990S, NEGOTIATIONS WERE HELD BETWEEN THE MINISTRY OF OIL IN BAGHDAD AND A NUMBER OF WESTERN COMPANIES WHO WERE INVITED TO AGREE PLANS FOR THE DEVELOPMENT OF THE FIVE STRATEGIC OILFIELDS. NEGOTIATIONS WERE CONCLUDED BETWEEN LUKOIL OF RUSSIA FOR WEST QURNA, TOTAL AND ELF (NOW TOTALFINAELF) OF FRANCE FOR MAJNOON AND NAHR UMR, ENI OF ITALY FOR NASSIRIYAH (WITH COMPETITION FOR REPSOL OF SPAIN), AND BHP FOR HALFAYAH.

4. MR REGAN EMPHASISED THAT, ALTHOUGH THE TECHNICAL DETAILS AND COMMERCIAL DOCUMENTATION OF THE DEVELOPMENT PLAN FOR HALFAYAH WERE SUBSTANTIALLY AGREED WITH THE IRAQI AUTHORITIES IN 1996/7, THE AGREEMENTS WERE NOT EXECUTED. THIS WAS DUE TO THE EXISTENCE OF THE SANCTIONS REGIME AND, REGAN CLAIMED, WITH THE AGREEMENT OF THE AUSTRALIAN GOVERNMENT. IN ADDITION TO HALFAYAH, BHP CONSIDERED OTHER FOLLOW-UP OPPORTUNITIES INCLUDING LONG TERM EXPLORATION AND DEVELOPMENT PROJECTS SUCH AS EXPLORATION BLOCK 6 IN THE WESTERN DESERT.

5. MR HARLEY ADDED THAT IN SEPTEMBER 2000 BHP TRANSFERRED RIGHTS IN HALFAYAH TO A JOINT VENTURE LED BY TIGRIS PETROLEUM, HEADED BY BHP EXECUTIVES WHO WERE RESPONSIBLE FOR THE ORIGINAL NEGOTIATIONS ON HALFAYAH. TIGRIS WAS RESPONSIBLE FOR MAINTAINING RELATIONSHIPS WITH IRAQ BY WORKING ON OIL-FOR-FOOD RELATED PROJECTS UNTIL A NORMAL POLITICAL SITUATION COULD BE ESTABLISHED IN IRAQ. THIS ARRANGEMENT WAS JUDGED BY ALL PARTIES TO GIVE AUSTRALIA THE MAXIMUM CHANCE OF SECURING THE HALFAYAH FIELD INVESTMENT.

6. MR HARLEY REVEALED THAT THE TIGRIS/BHP CONSORTIUM WAS IN DISCUSSIONS WITH BRITISH DUTCH (SHELL) ON THE LONG TERM DEVELOPMENT

OF HALFAYAH. IT HAD RECENTLY SIGNED A THREE MONTH CONTRACT WITH THE COMPANY TO EXPLORE A FEASIBILITY STUDY. MR HARLEY COMMENTED THAT BRITISH DUTCH WOULD ADD POLITICAL, TECHNICAL AND FINANCIAL SUPPORT TO THE CONSORTIUM. BHP BILLITON AND BRITISH DUTCH WOULD LIKELY TAKE A FORTY PER CENT INTEREST, WITH TIGRIS A MINORITY (POSSIBLY TEN PER CENT) INTEREST.

7. MR REGAN OBSERVED THERE WERE A NUMBER OF ADVANTAGES TO IRAQ IN THE PROPOSAL. BEING A GREENFIELD PROJECT, IT IS NOT ENCUMBERED BY ANY EXISTING PRODUCTION, INFRASTRUCTURE AND PERSONNEL ISSUES. IT PRESENTS THE OPPORTUNITY TO UTILISE AN ALREADY NEGOTIATED MASTER DEVELOPMENT PLAN AND COMMERCIAL ARRANGEMENT WHICH GIVES THE PROJECT AT LEAST A TWO YEAR HEAD START OVER OTHER UNDEVELOPED FIELDS. THIS HAS THE POTENTIAL TO YIELD EARLY PRODUCTION AND REVENUES. THE CONSORTIUM HAS ACCESS TO TECHNICAL DATA FROM BHP BILLITON, THE ADVANTAGE OF ANOTHER MULTINATIONAL FROM A COALITION COUNTRY, AND AN ESTABLISHED RELATIONSHIP THROUGH TIGRIS WITH THE IRAQI MINISTRY OF OIL.

8. SIR MALCOLM EMPHASISED THAT IT WAS CRITICAL TO REGISTER THE BHP BILLITON/BRITISH DUTCH/TIGRIS INTEREST EARLY WITH THE US ADMINISTRATION. ALTHOUGH NO PROGRESS COULD BE MADE IN TERMS OF SIGNING CONTRACTS UNTIL AN IRAQI GOVERNMENT HAD BEEN FORMED IN SEVERAL MONTHS' TIME, HE WAS CERTAIN THAT THE US WOULD SEEK TO PROTECT ITS COMMERCIAL INTEREST IN IRAQ. THIS COULD TAKE THE FORM OF EXISTING CONSORTIA BEING ENCOURAGED TO TAKE ON BOARD US PARTNERS. THE FRENCH, FOR EXAMPLE, WERE ALREADY IN NEGOTIATIONS WITH CHEVRON. SIR MALCOLM ADDED THAT THE BHP BILLITON/BRITISH DUTCH/TIGRIS BID WAS UNIQUE IN THAT IT COMBINED AN ESTABLISHED GREENFIELDS INVESTMENT ENTIRELY FINANCED BY FOREIGN INVESTMENT WITHOUT THE DIFFICULTIES A RUSSIAN OR FRENCH BID COULD PRESENT TO THE US ADMINISTRATION. IT WAS A GOOD CLAIM AND REQUIRED LOBBYING - INCLUDING FROM THE AUSTRALIAN GOVERNMENT - IN WASHINGTON.

9. BHP BILLITON AND TIGRIS HAD BRIEFED THE PRIME MINISTER'S OFFICE (MR SINODINOS), DFAT, DEFENCE AND AFFA. IT HAD ONLY JUST STARTED LOBBYING IN THE UK BUT INTENDED TO APPROACH DOWNING STREET AND THE DTI. THE FCO HAD ADVISED, ALSO ON 19 MAY IN A MEETING WITH SIR MALCOLM, THAT US ADMINISTRATORS IN IRAQ WERE ALREADY REHABILITATING EXISTING OILFIELDS. THE US IS REPORTED TO HAVE TOLD THE UK "NOT TO BEHAVE LIKE THE ENGLISH" BUT RATHER TELL THE ADMINISTRATION IF IT HAS PARTICULAR INTERESTS. MR REGAN SAID THE CONSORTIUM WOULD TRAVEL TO WASHINGTON NEXT WEEK TO BRIEF THE AUSTRALIAN EMBASSY (DHOM BAXTER) AND STATE DEPARTMENT. SIR MALCOLM WOULD BE SEEKING AN APPOINTMENT WITH VICE PRESIDENT CHENEY WHEN THE OPPORTUNITY AROSE. MR REGAN ADDED THAT THE KEY CONTACTS IN BAGHDAD WERE MR PHILIP J CARROLL (CHAIR OF THE ADVISORY COMMITTEE TO THE MINISTRY OF OIL AND FORMERLY HEAD OF SHELL IN THE US) AND MR THAMIR GHADHBAN (CEO OF MINISTRY OF OIL). MR CARROLL WAS ASSISTED BY MR FADHIL OTHMAN, AN IRAQI EXILE WITH PREVIOUS EXPERIENCE IN SOMO (THE IRAQI STATE OIL MARKETING ORGANISATION). MR REGAN ADDED THAT MR GHADHBAN HAD REMARKED TO THE

CONSORTIUM THAT ITS NAME WAS NOT BEING MENTIONED BY US ADMINISTRATORS AS A BIDDER. HE ASSESSED THAT MR CARROLL WAS THE MOST ABLE TO INFLUENCE PENTAGON PLANNERS ON THE GROUND IN IRAQ OF THE CONSORTIUM'S CLAIMS.

10. MR DOWNER SAID HE WOULD BE HAPPY TO TALK TO THE US ABOUT THE HALFAYAH BID. HOWEVER, THE CONSORTIUM NEEDED TO APPRECIATE THAT THE FIRST PRIORITY WAS TO ESTABLISH SERVICES (WATER, SEWERAGE, FOOD DISTRIBUTION) AND RESTORE SECURITY TO BAGHDAD. EXISTING OILFIELDS WERE PUMPING, STORAGE TANKS WERE NEARING CAPACITY, AND A FRESH UN SECURITY COUNCIL RESOLUTION WAS NECESSARY TO SELL THE OIL AND OBTAIN REVENUES FOR THE POTENTIAL IRAQI GOVERNMENT. ONCE THE SANCTIONS REGIME IS LIFTED, EXISTING OILFIELDS CAN BE DEVELOPED THROUGH THE IMPORTATION OF TECHNOLOGY. THE COALITION WAS MOVING AS FAST AS IT REASONABLY COULD TO ESTABLISH THE INTERIM IRAQI AUTHORITY (IIA). THIS COULD SLIP PAST LATE MAY/EARLY JUNE. THE QUESTION OF NEW OILFIELDS WOULD BE A VERY SENSITIVE ONE. IT PLAYED INTO SENSITIVITIES OVER THE WAR. THE COALITION HAD BEEN CLEAR THERE WOULD NOT BE BLOOD FOR OIL. THE AUSTRALIAN GOVERNMENT SAID SINCERELY THAT IT HAD NOT JOINED COALITION FORCES ON THE BASIS OF OIL. WISE JUDGEMENT SUGGESTED IT WAS THE IRAQIS THEMSELVES WHO NEEDED TO BE AWARDING OIL CONTRACTS.

11. THAT SAID, MR DOWNER AGREED HE WOULD RAISE THE MATTER BOTH IN WASHINGTON AND IN BAGHDAD WITH PAUL BREMER. HE WOULD ALSO HAVE IT RAISED WITH THE OIL MINISTRY IN BAGHDAD. HE DID NOT EXPECT THEM TO OBJECT TO THE CONSORTIUM'S CLAIM. NO DOUBT THOSE CHARGED WITH THE ISSUE IN WASHINGTON HAD BEEN SCRUTINISING COMMERCIAL INTERESTS IN THE OILFIELDS. IT WAS THEREFORE WORTH REGISTERING THE BHP BILLITON/BRITISH DUTCH/TIGRIS BID. MR DOWNER SAID HE BELIEVED THE US ADMINISTRATION WOULD BE CAUTIOUS.

12. MR WALKER GAVE A PRESENTATION ON BHP BILLITON'S OTHER GLOBAL INTERESTS (INCLUDING AN UNSUCCESSFUL US$20 MILLION INVESTMENT IN IRAN, ALGERIA, EGYPT, AND BRUNEI/MALAYSIA). HE THANKED MR DOWNER FOR THE ASSISTANCE OF THE AUSTRALIAN GOVERNMENT - THROUGH DFAT AND AUSTRADE - IN THESE MARKETS.

XC.

CM. HITCHMAN
LIMITED DISTRIBUTION TO THE FOLLOWING ADDRESSES

ACTION:	DR.A.CALVERT (DFAT)	
INFO:	PRIME MINISTER	MIN FOREIGN AFFAIRS
	MINISTER FOR TRADE	DR.P.SHERGOLD(DPMC)
	MR C R JONES (ONA)	+++
ACTION:	MS.V.OWEN(MAB)	
	IRAQ TASK FORCE	
INFO:	DR.A.CALVERT(SEC)	MR.P.GREY(D/S)
	DR.G.RABY(D/S)	MR.P.O'SULLIVAN(D/S)
	MR.P.VARGHESE(D/S)	FOREIGN MINISTER'S OFFICE

RECORD OF CONVERSATION: MR DOWNER AND BHP BILLITON

MS.Z.MCCARTHY(EXB) MR.R.WELLS(PMD)
MR.R.HILLMAN(TDD) MR.B.GOSPER(OTN)
MR.I.KEMISH(PCD) MR.B.HAMMER(PMB)
MR.B.DAVIS(DG-AUSAID)

ACTION: ; ;
INFO: ; ; ; ; ; ; ; ; ; ; ;

C-3

The Secret Downing Street Memo

July 23, 2002

SECRET AND STRICTLY PERSONAL - UK EYES ONLY

DAVID MANNING
From: Matthew Rycroft
Date: 23 July 2002
S 195 /02

cc: Defence Secretary, Foreign Secretary, Attorney-General, Sir Richard Wilson, John Scarlett, Francis Richards, CDS, C, Jonathan Powell, Sally Morgan, Alastair Campbell

IRAQ: PRIME MINISTER'S MEETING, 23 JULY

Copy addressees and you met the Prime Minister on 23 July to discuss Iraq.

This record is extremely sensitive. No further copies should be made. It should be shown only to those with a genuine need to know its contents.

John Scarlett summarised the intelligence and latest JIC assessment. Saddam's regime was tough and based on extreme fear. The only way to overthrow it was likely to be by massive military action. Saddam was worried and expected an attack, probably by air and land, but he was not convinced that it would be immediate or overwhelming. His regime expected their neighbours to line up with the US. Saddam knew that regular army morale was poor. Real support for Saddam among the public was probably narrowly based.

C reported on his recent talks in Washington. There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime's record. There was little discussion in Washington of the aftermath after military action.

CDS said that military planners would brief CENTCOM on 1-2 August, Rumsfeld on 3 August and Bush on 4 August.

The two broad US options were:

(a) Generated Start. A slow build-up of 250,000 US troops, a short (72 hour) air campaign, then a move up to Baghdad from the south. Lead time of 90 days (30 days preparation plus 60 days deployment to Kuwait).

(b) Running Start. Use forces already in theatre (3 x 6,000), continuous air campaign, initiated by an Iraqi casus belli. Total lead time of 60 days with the air campaign beginning even earlier. A hazardous option.

The US saw the UK (and Kuwait) as essential, with basing in Diego Garcia and Cyprus critical for either option. Turkey and other Gulf states were also important, but less vital. The three main options for UK involvement were:

(i) Basing in Diego Garcia and Cyprus, plus three SF squadrons.

(ii) As above, with maritime and air assets in addition.

(iii) As above, plus a land contribution of up to 40,000, perhaps with a discrete role in Northern Iraq entering from Turkey, tying down two Iraqi divisions.

The Defence Secretary said that the US had already begun "spikes of activity" to put pressure on the regime. No decisions had been taken, but he thought the most likely timing in US minds for military action to begin was January, with the timeline beginning 30 days before the US Congressional elections.

The Foreign Secretary said he would discuss this with Colin Powell this week. It seemed clear that Bush had made up his mind to take military action, even if the timing was not yet decided. But the case was thin. Saddam was not threatening his neighbours, and his WMD capability was less than that of Libya, North Korea or Iran. We should work up a plan for an ultimatum to Saddam to allow back in the UN weapons inspectors. This would also help with the legal justification for the use of force.

The Attorney-General said that the desire for regime change was not a legal base for military action. There were three possible legal bases: self-defence, humanitarian intervention, or UNSC authorisation. The first and second could not be the base in this case. Relying on UNSCR 1205 of three years ago would be difficult. The situation might of course change.

The Prime Minister said that it would make a big difference politically and legally if Saddam refused to allow in the UN inspectors. Regime change and WMD were linked in the sense that it was the regime that was producing the WMD. There were different strategies for dealing with Libya and Iran. If the political context were right, people would support regime change. The two key issues were whether the military plan worked and whether we had the political strategy to give the military plan the space to work.

On the first, CDS said that we did not know yet if the US battleplan was workable. The military were continuing to ask lots of questions.

For instance, what were the consequences, if Saddam used WMD on day one, or if Baghdad did not collapse and urban warfighting began? You said that Saddam could also use his WMD on Kuwait. Or on Israel, added the Defence Secretary.

The Foreign Secretary thought the US would not go ahead with a military plan unless convinced that it was a winning strategy. On this, US and UK interests converged. But on the political strategy, there could be US/UK differences. Despite US resistance, we should explore discreetly the ultimatum. Saddam would continue to play hard-ball with the UN.

John Scarlett assessed that Saddam would allow the inspectors back in only when he thought the threat of military action was real.

The Defence Secretary said that if the Prime Minister wanted UK military involvement, he would need to decide this early. He cautioned that many in the US did not think it worth going down the ultimatum route. It would be important for the Prime Minister to set out the political context to Bush.

Conclusions:

(a) We should work on the assumption that the UK would take part in any military action. But we needed a fuller picture of US planning before we could take any firm decisions. CDS should tell the US military that we were considering a range of options.

(b) The Prime Minister would revert on the question of whether funds could be spent in preparation for this operation.

(c) CDS would send the Prime Minister full details of the proposed military campaign and possible UK contributions by the end of the week.

(d) The Foreign Secretary would send the Prime Minister the background on the UN inspectors, and discreetly work up the ultimatum to Saddam.

He would also send the Prime Minister advice on the positions of countries in the region especially Turkey, and of the key EU member states.

(e) John Scarlett would send the Prime Minister a full intelligence update.

(f) We must not ignore the legal issues: the Attorney-General would consider legal advice with FCO/MOD legal advisers.

(I have written separately to commission this follow-up work.)

MATTHEW RYCROFT

More Documents Related to the Iraq Crisis
More Information on the Threat of US War Against Iraq
More Information on Iraq

C-4

PROJECT FOR THE
NEW AMERICAN CENTURY

DEFENSE AND NATIONAL SECURITY
NATO / EUROPE
IRAQ / MIDDLE EAST
EAST ASIA
BALKANS / CAUCASUS
GLOBAL ISSUES
PUBLICATIONS / REPORTS
LETTERS/STATEMENTS

SEARCH
HOME

Statement on Post-War Iraq

Although some of us have disagreed with the administration's handling of Iraq policy and others of us have agreed with it, we all join in supporting the military intervention in Iraq. The aim of UNSC Resolution 1441 was to give the Iraqi government a "final opportunity" to comply with all UN resolutions going back 12 years. The Iraqi government has demonstrably not complied. It is now time to act to remove Saddam Hussein and his regime from power.

The removal of the present Iraqi regime from power will lay the foundation for achieving three vital goals: disarming Iraq of all its weapons of mass destruction stocks and production capabilities; establishing a peaceful, stable, democratic government in Iraq; and contributing to the democratic development of the wider Middle East.

To enhance the prospects of success, American efforts in the weeks, months, and years ahead must be guided by the following principles:

- Regime change is not an end in itself but a means to an end - the establishment of a peaceful, stable, united, prosperous, and democratic Iraq free of all weapons of mass destruction. We must help build an Iraq that is governed by a pluralistic system representative of all Iraqis and that is fully committed to upholding the rule of law, the rights of all its citizens, and the betterment of all its people. The Iraqi people committed to a democratic future must be integrally involved in this process in order for it to succeed. Such an Iraq will be a force for regional stability rather than conflict and participate in the democratic development of the region.

- The process of disarming, stabilizing, rebuilding, reforming, preserving the unity of, and ultimately democratizing Iraq will require a significant investment of American leadership, time, energy, and resources, as well as important assistance from American allies and the international community. Everyone - those who have joined our coalition, those who have stood aside, those who opposed military action, and, most of all, the Iraqi people and their neighbors - must understand that we are committed to the rebuilding of Iraq and will provide the necessary resources and will remain for as long as it takes. Any early fixation on exit strategies and departure deadlines will undercut American credibility and greatly diminish the prospects for success.

- The United States military will necessarily bear much of the initial burden of maintaining stability in Iraq, securing its territorial integrity, finding and destroying weapons of mass destruction, and supporting efforts to deliver humanitarian assistance to those most in need. For the next year or more, U.S and coalition troops will have to comprise the bulk of the total international military presence in Iraq. But as the security situation permits, authority should transfer to civilian agencies, and to representatives of the Iraqi people themselves. Much of the long-term security presence, as well as the resources for reconstruction, will have to come from our allies in Europe and elsewhere - suggesting the importance of involving the NATO Alliance and other international institutions

early in any planning and implementation of the post-conflict stage.

- American leadership - and the long-term commitment of American resources and energies - is essential, therefore, but the extraordinary demands of the effort make international support, cooperation, and participation a requirement for success. And just as a stable, peaceful and democratic Iraq is in the region's and the world's interest, it is important that the American-led stabilization and rebuilding effort gain the support and full involvement of key international organizations in the work of rebuilding Iraq.

The successful disarming, rebuilding, and democratic reform of Iraq can contribute decisively to the democratization of the wider Middle East. This is an objective of overriding strategic importance to the United States, as it is to the rest of the international community - and its achievement will require an investment and commitment commensurate with that. We offer our full support to the President and Congress to accomplish these vitally important goals.

Ronald Asmus **Max Boot** **Frank Carlucci** **Eliot Cohen**

Ivo H. Daalder **Thomas Donnelly** **Peter Galbraith** **Jeffrey Gedmin**

Robert S. Gelbard **Reuel Marc Gerecht** **Charles Hill** **Martin S. Indyk**

Bruce P. Jackson **Robert Kagan** **Craig Kennedy** **William Kristol**

Tod Lindberg **Will Marshall** **Joshua Muravchik** **Danielle Pletka**

Dennis Ross **Randy Scheunemann** **Gary Schmitt** **Walter Slocombe**

James B. Steinberg **R. James Woolsey**

BACK TO TOP | HOME | CONTACT US

C-5

Second Statement on Post-War Iraq

We write in strong support of efforts by Prime Minister Tony Blair to "get America and Europe working again together as partners and not as rivals." While some seem determined to create an ever deeper divide between the United States and Europe, and others seem indifferent to the long-term survival of the transatlantic partnership, we believe it is essential, even in the midst of war, to begin building a new era of transatlantic cooperation.

The place to begin is post-war Iraq. There should be no question of our common determination to help the Iraqi people establish a peaceful, stable, united, prosperous, and democratic Iraq free of weapons of mass destruction. We must help build an Iraq that is governed by a pluralistic system representative of all Iraqis and fully committed to the rule of law, the rights of all its citizens, and the betterment of all its people. Such an Iraq will be a force for regional stability rather than conflict and participate in the democratic development of the region.

The Iraqi people committed to a democratic future must be fully involved in this process in order for it to succeed. Consistent with security requirements, our goal should be to progressively transfer authority as soon as possible to enable Iraqis to control their own destiny. Millions of Iraqis are untainted by service to the Ba'athist dictatorship and are committed to the establishment of democratic institutions. It is these Iraqis - not Americans, Europeans or international bureaucrats - who should make political and economic decisions on behalf of Iraq.

Building a stable, peaceful and democratic Iraq is an immense task. It must be a cooperative effort that involves international organizations - UN relief agencies, the World Bank, the International Monetary Fund, and other appropriate bodies - that can contribute the talent and resources necessary for success. It is therefore essential that these organizations be involved in planning now to ensure timely allocation of resources.

Of particular concern, the effort to rebuild Iraq should strengthen, not weaken transatlantic ties. The most important transatlantic institution is NATO, and the Alliance should assume a prominent role in post-war Iraq. Given NATO's capabilities and expertise, it should become integrally involved as soon as possible in the post-war effort. In particular, NATO should actively support efforts to secure and destroy all of Iraq's weapons of mass destruction stockpiles and production facilities (a task that should unite the United States, Canada and all European allies committed to peace and non-proliferation), ensure peace and stability are maintained in postwar Iraq, and assist in the rebuilding of Iraq's infrastructure and the delivery of humanitarian relief. The Atlantic Alliance has pledged to confront the new threats of the 21st century. No current challenge is more important than that of building a peaceful, unified and democratic Iraq without weapons of mass destruction on NATO's own borders.

Administration of post-war Iraq should from the beginning include not only Americans but officials from those countries committed to our goals in Iraq. Bringing different nationalities into the administrative organization is important because it allows us to draw on the expertise others have

543

acquired from their own previous peacekeeping and reconstruction efforts. It will also facilitate closer and more effective ties between the security forces in post-war Iraq and those charged with administrating the political and economic rebuilding of Iraq.

International support and participation in the post-Iraq effort would be much easier to achieve if the UN Security Council were to endorse such efforts. The United States should therefore seek passage of a Security Council resolution that endorses the establishment of a civilian administration in Iraq, authorizes the participation of UN relief and reconstruction agencies, welcomes the deployment of a security and stabilization force by NATO allies, and lifts all economic sanctions imposed following Iraq's invasion of Kuwait a decade ago.

Gordon Adams **Ron Asmus** **Max Boot**

Frank Carlucci **Eliot Cohen** **Ivo H. Daalder**

James Dobbins **Thomas Donnelly** **Lee Feinstein**

Peter Galbraith **Jeffrey Gedmin** **Robert S. Gelbard**

Reuel Marc Gerecht **Philip Gordon** **Charles Hill**

Martin S. Indyk **Bruce P. Jackson** **Robert Kagan**

Craig Kennedy **William Kristol** **Tod Lindberg**

James Lindsay **Will Marshall** **Christopher Makins**

Joshua Muravchik **Michael O'Hanlon** **Danielle Pletka**

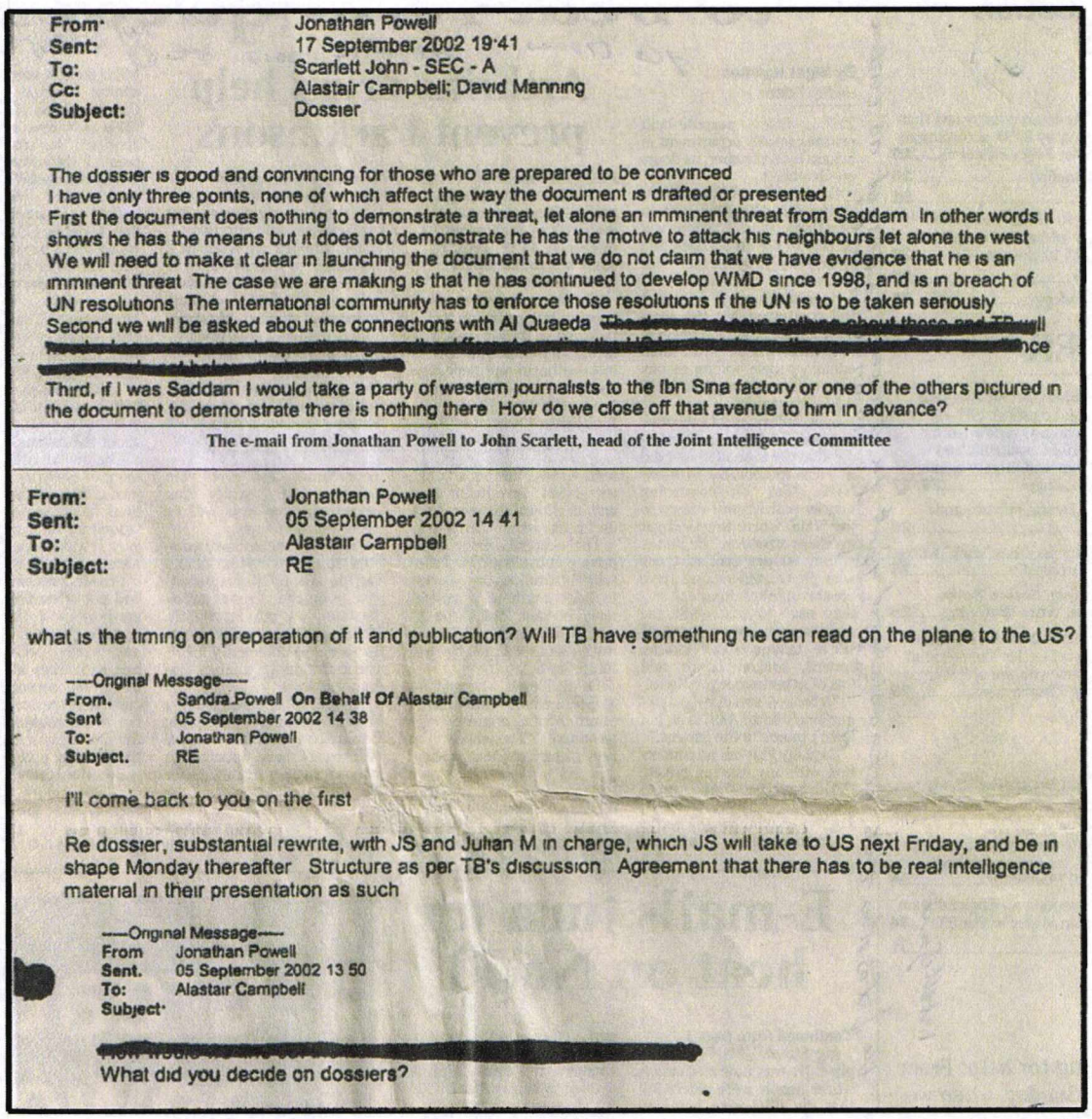
Dennis Ross **Randy Scheunemann** **Gary Schmitt**

Helmut Sonnenfeldt **James B. Steinberg**

BACK TO TOP | HOME | CONTACT US

S44

Appendix C.6



From: Jonathan Powell
Sent: 17 September 2002 19:41
To: Scarlett John - SEC - A
Cc: Alastair Campbell; David Manning
Subject: Dossier

The dossier is good and convincing for those who are prepared to be convinced
I have only three points, none of which affect the way the document is drafted or presented
First the document does nothing to demonstrate a threat, let alone an imminent threat from Saddam In other words it shows he has the means but it does not demonstrate he has the motive to attack his neighbours let alone the west We will need to make it clear in launching the document that we do not claim that we have evidence that he is an imminent threat The case we are making is that he has continued to develop WMD since 1998, and is in breach of UN resolutions The international community has to enforce those resolutions if the UN is to be taken seriously
Second we will be asked about the connections with Al Quaeda [redacted]
[redacted]
Third, if I was Saddam I would take a party of western journalists to the Ibn Sina factory or one of the others pictured in the document to demonstrate there is nothing there How do we close off that avenue to him in advance?

The e-mail from Jonathan Powell to John Scarlett, head of the Joint Intelligence Committee

From: Jonathan Powell
Sent: 05 September 2002 14 41
To: Alastair Campbell
Subject: RE

what is the timing on preparation of it and publication? Will TB have something he can read on the plane to the US?

-----Original Message-----
From. Sandra.Powell On Behalf Of Alastair Campbell
Sent 05 September 2002 14 38
To: Jonathan Powell
Subject. RE

I'll come back to you on the first

Re dossier, substantial rewrite, with JS and Julian M in charge, which JS will take to US next Friday, and be in shape Monday thereafter Structure as per TB's discussion Agreement that there has to be real intelligence material in their presentation as such

-----Original Message-----
From Jonathan Powell
Sent. 05 September 2002 13 50
To: Alastair Campbell
Subject

[redacted]
What did you decide on dossiers?

Appendix C.7: E-mail disclosed at Hutton Inquiry sent seven days before the British Government discuses it shows that the intelligent dossier acknowledge that the document contain no evidence of Iraq being an 'imminent threats' in *The Times* 19 August 2003, No. 67845 at 1. The phrase 'substantial rewrite' shows how they had agreed to come up with a new version to show the urgently.

C-7

May 29, 1998

The Honorable Newt Gingrich
Speaker of the House
U.S. House of Representatives
H-232 Capitol Building
Washington, DC 20515-6501

The Honorable Trent Lott
Senate Majority Leader
United States Senate
S-208 Capitol Building
Washington, DC 20510-7010

Dear Mr. Speaker and Senator Lott:

On January 26, we sent a letter to President Clinton expressing our concern that the U.S. policy of "containment" of Saddam Hussein was failing. The result, we argued, would be that the vital interests of the United States and its allies in the Middle East would soon be facing a threat as severe as any we had known since the end of the Cold War. We recommended a substantial change in the direction of U.S. policy: Instead of further, futile efforts to "contain" Saddam, we argued that the only way to protect the United States and its allies from the threat of weapons of mass destruction was to put in place policies that would lead to the removal of Saddam and his regime from power. The administration has not only rejected this advice but, as we warned, has begun to abandon its own policy of containment.

In February, the Clinton Administration embraced the agreement reached between the UN Secretary Koffi Annan and the Iraqi government on February 23. At the time of the agreement, the administration declared that Saddam had "reversed" himself and agreed to permit the UN inspectors full, unfettered, and unlimited access to all sites in Iraq. The administration also declared that the new organizational arrangements worked out by Mr. Annan and the Iraqis would not hamper in any way the free operation of UNSCOM. Finally, the administration stated that, should Iraq return to a posture of defiance, the international community would be united in support of a swift and punishing military action.

According to the UN weapons inspectors, Iraq has yet to provide a complete account of its programs for developing weapons of mass destruction and has continued to obstruct investigations. Sites opened to the inspectors after the agreement had "undergone extensive evacuation," according to the most recent UNSCOM report. UN weapons inspector Charles Duelfer has also pointed to significant problems in the new reporting arrangements worked out by Annan and the Iraqis, warning that these may have "important implications for the authority of UNSCOM and its chief inspectors." And, in the wake of these "Potemkin Village" inspections, the Iraqi government is now insisting that the inspections process be brought to an end and sanctions lifted - going so far as to threaten the U.S. and its allies should its demands not be met.

546

In the face of this new challenge from Saddam, however, the President's public response has been only to say that he is "encouraged" by Iraq's compliance with the UN inspections and to begin reducing U.S. military forces in the Gulf region. Unwilling either to adopt policies that would remove Saddam or sustain the credibility of its own policy of containment, the administration has placed us on a path that will inevitably free Saddam Hussein from all effective constraints. Even if the administration is able to block Security Council efforts to lift sanctions on Iraq this year, the massive expansion of the so-called "oil for food" program will have the effect of overturning the sanctions regime. It is now safe to predict that, in a year's time, absent a sharp change in U.S. policy, Saddam will be effectively liberated from constraints that have bound him since the end of the Gulf War seven years ago.

The American people need to be made aware of the consequences of this capitulation to Saddam:

> -- We will have suffered an incalculable blow to American leadership and credibility; -- We will have sustained a significant defeat in our worldwide efforts to limit the spread of weapons of mass destruction. Other nations seeking to arm themselves with such weapons will have learned that the U.S. lacks the resolve to resist their efforts;
>
> -- The administration will have unnecessarily put at risk U.S. troops in the Persian Gulf, who will be vulnerable to attack by biological, chemical, and nuclear weapons under Saddam Hussein's control; -- Our friends and allies in the Middle East and Europe will soon be subject to forms of intimidation by an Iraqi government bent on dominating the Middle East and its oil reserves; and
>
> -- As a consequence of the administration's failure, those nations living under the threat of Saddam's weapons of mass destruction can be expected to adopt policies of accommodation toward Saddam. This could well make Saddam the driving force of Middle East politics, including on such important matters as the Middle East peace process.

Mr. Speaker and Mr. Lott, during the most recent phase of this crisis, you both took strong stands, stating that the goal of U.S. policy should be to bring down Saddam and his regime. And, at the time of the Annan deal, Senator Lott, you pointed out its debilitating weakness and correctly reminded both your colleagues and the nation that "We cannot afford peace at any price."

Now that the administration has failed to provide sound leadership, we believe it is imperative that Congress take what steps it can to correct U.S. policy toward Iraq. That responsibility is especially pressing when presidential leadership is lacking or when the administration is pursuing a policy fundamentally at odds with vital American security interests. This is now the case. To Congress's credit, it has passed legislation providing money to help Iraq's democratic opposition and to establish a "Radio Free Iraq." But more needs to be done, and Congress should do whatever is constitutionally appropriate to establish a sound policy toward Iraq.

U.S. policy should have as its explicit goal removing Saddam Hussein's regime from power and establishing a peaceful and democratic Iraq in its place. We recognize that this goal will not be achieved easily. But the alternative is to leave the initiative to Saddam, who will continue to strengthen his position at home and in the region. Only the U.S. can lead the way in demonstrating that his rule is not legitimate and that time is not

on the side of his regime. To accomplish Saddam's removal, the following political and military measures should be undertaken:

-- We should take whatever steps are necessary to challenge Saddam Hussein's claim to be Iraq's legitimate ruler, including indicting him as a war criminal;

-- We should help establish and support (with economic, political, and military means) a provisional, representative, and free government of Iraq in areas of Iraq not under Saddam's control;

-- We should use U.S. and allied military power to provide protection for liberated areas in northern and southern Iraq; and -- We should establish and maintain a strong U.S. military presence in the region, and be prepared to use that force to protect our vital interests in the Gulf - and, if necessary, to help remove Saddam from power

Although the Clinton Administration's handling of the crisis with Iraq has left Saddam Hussein in a stronger position that when the crisis began, the reality is that his regime remains vulnerable to the exercise of American political and military power. There is reason to believe, moreover, that the citizens of Iraq are eager for an alternative to Saddam, and that his grip on power is not firm. This will be much more the case once it is made clear that the U.S. is determined to help remove Saddam from power, and that an acceptable alternative to his rule exists. In short, Saddam's continued rule in Iraq is neither inevitable nor likely if we pursue the policy outlined above in a serious and sustained fashion. If we continue along the present course, however, Saddam will be stronger at home, he will become even more powerful in the region, and we will face the prospect of having to confront him at some later point when the costs to us, our armed forces, and our allies will be even higher. Mr. Speaker and Senator Lott, Congress should adopt the measures necessary to avoid this impending defeat of vital U.S. interests.

Sincerely,

Elliot Abrams William J. Bennett Jeffrey Bergner

John R. Bolton Paula Dobriansky Francis Fukuyama Robert Kagan

Zalmay Khalilzad William Kristol Richard Perle Peter Rodman

Donald Rumsfeld William Schneider, Jr. Vin Weber Paul Wolfowitz

R. James Woolsey Robert B. Zoellick

BACK TO TOP | HOME | CONTACT US

548

TIMES ONLINE
April 29, 2003

Coalition responsibilities and prevention of looting in Iraq

FROM MR KEVIN CHAMBERLAIN

Sir, Professor Lord Renfrew of Kaimsthorn (letter, April 24) says that it would be interesting to learn how the Government and the US State Department view the responsibilities of an occupying power under the Geneva Conventions and whether they feel those responsibilities have been fulfilled.

Article 53 of Additional Protocol I to the Geneva Conventions prohibits:

any acts of hostility directed against the historic monuments, works of art and places of worship which constitute the cultural or spiritual heritage of peoples.

However, this provision is directed primarily at the Armed Forces of a high contracting party. However deplorable may have been the looting of the Iraqi National Museum in Baghdad, it is difficult to see how this would constitute a violation of Article 53, unless it can be shown that the coalition forces deliberately encouraged the looting as an act of hostility, as opposed to merely failing to take steps to prevent it.

On the other hand, an occupying force does have an obligation under general international law to maintain law and order in the territory that it occupies. In particular, Article 43 of the 1907 Hague Regulations requires an occupant:

to take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

In addition, Article 4 (3) of the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict obliges the contracting parties:

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.

Although the US and the UK are not parties to this convention (Iraq is a party), the obligation to prevent the looting and pillage of cultural property must be regarded as an aspect of the general obligation of an occupying force to maintain law and order in the territory that it occupies.

By making no apparent effort to prevent the widespread looting, not just of museums but of hospitals public utilities and private property, the British and US forces bear a heavy responsibility, the more so since such looting was clearly foreseeable.

Yours faithfully,

KEVIN CHAMBERLAIN
(Deputy Legal Adviser, Foreign and Commonwealth Office, 1990-99).
Fairfield, Warren Drive,
Kingswood, Surrey KT20 6PY.
chamberlain.fairfield@virgin.net
April 24.

United Nations S/RES/1441 (2002)

Security Council

Distr.: General
8 November 2002

Resolution 1441 (2002)

Adopted by the Security Council at its 4644th meeting, on 8 November 2002

The Security Council,

Recalling all its previous relevant resolutions, in particular its resolutions 661 (1990) of 6 August 1990, 678 (1990) of 29 November 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 707 (1991) of 15 August 1991, 715 (1991) of 11 October 1991, 986 (1995) of 14 April 1995, and 1284 (1999) of 17 December 1999, and all the relevant statements of its President,

Recalling also its resolution 1382 (2001) of 29 November 2001 and its intention to implement it fully,

Recognizing the threat Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,

Recalling that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area,

Further recalling that its resolution 687 (1991) imposed obligations on Iraq as a necessary step for achievement of its stated objective of restoring international peace and security in the area,

Deploring the fact that Iraq has not provided an accurate, full, final, and complete disclosure, as required by resolution 687 (1991), of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles with a range greater than one hundred and fifty kilometres, and of all holdings of such weapons, their components and production facilities and locations, as well as all other nuclear programmes, including any which it claims are for purposes not related to nuclear-weapons-usable material,

Deploring further that Iraq repeatedly obstructed immediate, unconditional, and unrestricted access to sites designated by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), failed to cooperate fully and unconditionally with UNSCOM and IAEA weapons

02-68226 (E)
0268226

inspectors, as required by resolution 687 (1991), and ultimately ceased all cooperation with UNSCOM and the IAEA in 1998,

Deploring the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missiles, in spite of the Council's repeated demands that Iraq provide immediate, unconditional, and unrestricted access to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), established in resolution 1284 (1999) as the successor organization to UNSCOM, and the IAEA, and regretting the consequent prolonging of the crisis in the region and the suffering of the Iraqi people,

Deploring also that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991) with regard to terrorism, pursuant to resolution 688 (1991) to end repression of its civilian population and to provide access by international humanitarian organizations to all those in need of assistance in Iraq, and pursuant to resolutions 686 (1991), 687 (1991), and 1284 (1999) to return or cooperate in accounting for Kuwaiti and third country nationals wrongfully detained by Iraq, or to return Kuwaiti property wrongfully seized by Iraq,

Recalling that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein,

Determined to ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions and recalling that the resolutions of the Council constitute the governing standard of Iraqi compliance,

Recalling that the effective operation of UNMOVIC, as the successor organization to the Special Commission, and the IAEA is essential for the implementation of resolution 687 (1991) and other relevant resolutions,

Noting that the letter dated 16 September 2002 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General is a necessary first step toward rectifying Iraq's continued failure to comply with relevant Council resolutions,

Noting further the letter dated 8 October 2002 from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq laying out the practical arrangements, as a follow-up to their meeting in Vienna, that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA, and expressing the gravest concern at the continued failure by the Government of Iraq to provide confirmation of the arrangements as laid out in that letter,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq, Kuwait, and the neighbouring States,

Commending the Secretary-General and members of the League of Arab States and its Secretary-General for their efforts in this regard,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter of the United Nations,

552

1. *Decides* that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq's failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991);

2. *Decides*, while acknowledging paragraph 1 above, to afford Iraq, by this resolution, a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council; and accordingly decides to set up an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions of the Council;

3. *Decides* that, in order to begin to comply with its disarmament obligations, in addition to submitting the required biannual declarations, the Government of Iraq shall provide to UNMOVIC, the IAEA, and the Council, not later than 30 days from the date of this resolution, a currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, including any holdings and precise locations of such weapons, components, sub-components, stocks of agents, and related material and equipment, the locations and work of its research, development and production facilities, as well as all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material;

4. *Decides* that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq's obligations and will be reported to the Council for assessment in accordance with paragraphs 11 and 12 below;

5. *Decides* that Iraq shall provide UNMOVIC and the IAEA immediate, unimpeded, unconditional, and unrestricted access to any and all, including underground, areas, facilities, buildings, equipment, records, and means of transport which they wish to inspect, as well as immediate, unimpeded, unrestricted, and private access to all officials and other persons whom UNMOVIC or the IAEA wish to interview in the mode or location of UNMOVIC's or the IAEA's choice pursuant to any aspect of their mandates; further decides that UNMOVIC and the IAEA may at their discretion conduct interviews inside or outside of Iraq, may facilitate the travel of those interviewed and family members outside of Iraq, and that, at the sole discretion of UNMOVIC and the IAEA, such interviews may occur without the presence of observers from the Iraqi Government; and instructs UNMOVIC and requests the IAEA to resume inspections no later than 45 days following adoption of this resolution and to update the Council 60 days thereafter;

6. *Endorses* the 8 October 2002 letter from the Executive Chairman of UNMOVIC and the Director-General of the IAEA to General Al-Saadi of the Government of Iraq, which is annexed hereto, and decides that the contents of the letter shall be binding upon Iraq;

7. *Decides* further that, in view of the prolonged interruption by Iraq of the presence of UNMOVIC and the IAEA and in order for them to accomplish the tasks

553

set forth in this resolution and all previous relevant resolutions and notwithstanding prior understandings, the Council hereby establishes the following revised or additional authorities, which shall be binding upon Iraq, to facilitate their work in Iraq:

- UNMOVIC and the IAEA shall determine the composition of their inspection teams and ensure that these teams are composed of the most qualified and experienced experts available;
- All UNMOVIC and IAEA personnel shall enjoy the privileges and immunities, corresponding to those of experts on mission, provided in the Convention on Privileges and Immunities of the United Nations and the Agreement on the Privileges and Immunities of the IAEA;
- UNMOVIC and the IAEA shall have unrestricted rights of entry into and out of Iraq, the right to free, unrestricted, and immediate movement to and from inspection sites, and the right to inspect any sites and buildings, including immediate, unimpeded, unconditional, and unrestricted access to Presidential Sites equal to that at other sites, notwithstanding the provisions of resolution 1154 (1998) of 2 March 1998;
- UNMOVIC and the IAEA shall have the right to be provided by Iraq the names of all personnel currently and formerly associated with Iraq's chemical, biological, nuclear, and ballistic missile programmes and the associated research, development, and production facilities;
- Security of UNMOVIC and IAEA facilities shall be ensured by sufficient United Nations security guards;
- UNMOVIC and the IAEA shall have the right to declare, for the purposes of freezing a site to be inspected, exclusion zones, including surrounding areas and transit corridors, in which Iraq will suspend ground and aerial movement so that nothing is changed in or taken out of a site being inspected;
- UNMOVIC and the IAEA shall have the free and unrestricted use and landing of fixed- and rotary-winged aircraft, including manned and unmanned reconnaissance vehicles;
- UNMOVIC and the IAEA shall have the right at their sole discretion verifiably to remove, destroy, or render harmless all prohibited weapons, subsystems, components, records, materials, and other related items, and the right to impound or close any facilities or equipment for the production thereof; and
- UNMOVIC and the IAEA shall have the right to free import and use of equipment or materials for inspections and to seize and export any equipment, materials, or documents taken during inspections, without search of UNMOVIC or IAEA personnel or official or personal baggage;

8. *Decides* further that Iraq shall not take or threaten hostile acts directed against any representative or personnel of the United Nations or the IAEA or of any Member State taking action to uphold any Council resolution;

9. *Requests* the Secretary-General immediately to notify Iraq of this resolution, which is binding on Iraq; demands that Iraq confirm within seven days of that notification its intention to comply fully with this resolution; and demands

further that Iraq cooperate immediately, unconditionally, and actively with UNMOVIC and the IAEA;

10. *Requests* all Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates, including by providing any information related to prohibited programmes or other aspects of their mandates, including on Iraqi attempts since 1998 to acquire prohibited items, and by recommending sites to be inspected, persons to be interviewed, conditions of such interviews, and data to be collected, the results of which shall be reported to the Council by UNMOVIC and the IAEA;

11. *Directs* the Executive Chairman of UNMOVIC and the Director-General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution;

12. *Decides* to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;

13. *Recalls*, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations;

14. *Decides* to remain seized of the matter.

Annex

Text of Blix/El-Baradei letter

United Nations Monitoring, Verification and Inspection Commission

The Executive Chairman

International Atomic Energy Agency

The Director General

8 October 2002

Dear General Al-Saadi,

During our recent meeting in Vienna, we discussed practical arrangements that are prerequisites for the resumption of inspections in Iraq by UNMOVIC and the IAEA. As you recall, at the end of our meeting in Vienna we agreed on a statement which listed some of the principal results achieved, particularly Iraq's acceptance of all the rights of inspection provided for in all of the relevant Security Council resolutions. This acceptance was stated to be without any conditions attached.

During our 3 October 2002 briefing to the Security Council, members of the Council suggested that we prepare a written document on all of the conclusions we reached in Vienna. This letter lists those conclusions and seeks your confirmation thereof. We shall report accordingly to the Security Council.

In the statement at the end of the meeting, it was clarified that UNMOVIC and the IAEA will be granted immediate, unconditional and unrestricted access to sites, including what was termed "sensitive sites" in the past. As we noted, however, eight presidential sites have been the subject of special procedures under a Memorandum of Understanding of 1998. Should these sites be subject, as all other sites, to immediate, unconditional and unrestricted access, UNMOVIC and the IAEA would conduct inspections there with the same professionalism.

H.E. General Amir H. Al-Saadi
Advisor
Presidential Office
Baghdad
Iraq

We confirm our understanding that UNMOVIC and the IAEA have the right to determine the number of inspectors required for access to any particular site. This determination will be made on the basis of the size and complexity of the site being inspected. We also confirm that Iraq will be informed of the designation of additional sites, i.e. sites not declared by Iraq or previously inspected by either UNSCOM or the IAEA, through a Notification of Inspection (NIS) provided upon arrival of the inspectors at such sites.

Iraq will ensure that no proscribed material, equipment, records or other relevant items will be destroyed except in the presence of UNMOVIC and/or IAEA inspectors, as appropriate, and at their request.

UNMOVIC and the IAEA may conduct interviews with any person in Iraq whom they believe may have information relevant to their mandate. Iraq will facilitate such interviews. It is for UNMOVIC and the IAEA to choose the mode and location for interviews.

The National Monitoring Directorate (NMD) will, as in the past, serve as the Iraqi counterpart for the inspectors. The Baghdad Ongoing Monitoring and Verification Centre (BOMVIC) will be maintained on the same premises and under the same conditions as was the former Baghdad Monitoring and Verification Centre. The NMD will make available services as before, cost free, for the refurbishment of the premises.

The NMD will provide free of cost: (a) escorts to facilitate access to sites to be inspected and communication with personnel to be interviewed; (b) a hotline for BOMVIC which will be staffed by an English speaking person on a 24 hour a day/seven days a week basis; (c) support in terms of personnel and ground transportation within the country, as requested; and (d) assistance in the movement of materials and equipment at inspectors' request (construction, excavation equipment, etc.). NMD will also ensure that escorts are available in the event of inspections outside normal working hours, including at night and on holidays.

Regional UNMOVIC/IAEA offices may be established, for example, in Basra and Mosul, for the use of their inspectors. For this purpose, Iraq will provide, without cost, adequate office buildings, staff accommodation, and appropriate escort personnel.

UNMOVIC and the IAEA may use any type of voice or data transmission, including satellite and/or inland networks, with or without encryption capability. UNMOVIC and the IAEA may also install equipment in the field with the capability for transmission of data directly to the BOMVIC, New York and Vienna (e.g. sensors, surveillance cameras). This will be facilitated by Iraq and there will be no interference by Iraq with UNMOVIC or IAEA communications.

Iraq will provide, without cost, physical protection of all surveillance equipment, and construct antennae for remote transmission of data, at the request of UNMOVIC and the IAEA. Upon request by UNMOVIC through the NMD, Iraq will allocate frequencies for communications equipment.

Iraq will provide security for all UNMOVIC and IAEA personnel. Secure and suitable accommodations will be designated at normal rates by Iraq for these personnel. For their part, UNMOVIC and the IAEA will require that their staff not stay at any accommodation other than those identified in consultation with Iraq.

On the use of fixed-wing aircraft for transport of personnel and equipment and for inspection purposes, it was clarified that aircraft used by UNMOVIC and IAEA staff arriving in Baghdad may land at Saddam International Airport. The points of departure of incoming aircraft will be decided by UNMOVIC. The Rasheed airbase will continue to be used for UNMOVIC and IAEA helicopter operations. UNMOVIC and Iraq will establish air liaison offices at the airbase. At both Saddam International Airport and Rasheed airbase, Iraq will provide the necessary support premises and facilities. Aircraft fuel will be provided by Iraq, as before, free of charge.

557

On the wider issue of air operations in Iraq, both fixed-wing and rotary, Iraq will guarantee the safety of air operations in its air space outside the no-fly zones. With regard to air operations in the no-fly zones, Iraq will take all steps within its control to ensure the safety of such operations.

Helicopter flights may be used, as needed, during inspections and for technical activities, such as gamma detection, without limitation in all parts of Iraq and without any area excluded. Helicopters may also be used for medical evacuation.

On the question of aerial imagery, UNMOVIC may wish to resume the use of U-2 or Mirage overflights. The relevant practical arrangements would be similar to those implemented in the past.

As before, visas for all arriving staff will be issued at the point of entry on the basis of the UN Laissez-Passer or UN Certificate; no other entry or exit formalities will be required. The aircraft passenger manifest will be provided one hour in advance of the arrival of the aircraft in Baghdad. There will be no searching of UNMOVIC or IAEA personnel or of official or personal baggage. UNMOVIC and the IAEA will ensure that their personnel respect the laws of Iraq restricting the export of certain items, for example, those related to Iraq's national cultural heritage. UNMOVIC and the IAEA may bring into, and remove from, Iraq all of the items and materials they require, including satellite phones and other equipment. With respect to samples, UNMOVIC and IAEA will, where feasible, split samples so that Iraq may receive a portion while another portion is kept for reference purposes. Where appropriate, the organizations will send the samples to more than one laboratory for analysis.

We would appreciate your confirmation of the above as a correct reflection of our talks in Vienna.

Naturally, we may need other practical arrangements when proceeding with inspections. We would expect in such matters, as with the above, Iraq's co-operation in all respect.

Yours sincerely,

(*Signed*)
Hans Blix
Executive Chairman
United Nations Monitoring,
Verification and Inspection Commission

(*Signed*)
Mohamed **ElBaradei**
Director General
International Atomic Energy Agency

C/10

RESOLUTION 687 (1991)

Adopted by the Security Council at its 2981st meeting, on 3 April 1991

The Security Council,

Recalling its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990, 678 (1990) of 29 November 1990 and 686 (1991) of 2 March 1991,

Welcoming the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate Government,

Affirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq, and noting the intention expressed by the Member States cooperating with Kuwait under paragraph 2 of resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible consistent with paragraph 8 of resolution 686 (1991),

Reaffirming the need to be assured of Iraq's peaceful intentions in the light of its unlawful invasion and occupation of Kuwait,

Taking note of the letter sent by the Minister for Foreign Affairs of Iraq on 27 February 1991 and those sent pursuant to resolution 686 (1991),

Noting that Iraq and Kuwait, as independent sovereign States, signed at Baghdad on 4 October 1963 "Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters", thereby recognizing formally the boundary between Iraq and Kuwait and the allocation of islands, which were registered with the United Nations in accordance with Article 102 of the Charter of the United Nations and in which Iraq recognized the independence and complete sovereignty of the State of Kuwait within its borders as specified and accepted in the letter of the Prime Minister of Iraq dated 21 July 1932, and as accepted by the Ruler of Kuwait in his letter dated 10 August 1932,

Conscious of the need for demarcation of the said boundary,

Conscious also of the statements by Iraq threatening to use weapons in violation of its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and of its prior use of chemical weapons and affirming that grave consequences would follow any further use by Iraq of such weapons,

Recalling that Iraq has subscribed to the Declaration adopted by all States participating in the Conference of States Parties to the 1925 Geneva Protocol and Other Interested States, held in Paris from 7 to 11 January 1989,

establishing the objective of universal elimination of chemical and biological weapons,

Recalling also that Iraq has signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972,

Noting the importance of Iraq ratifying this Convention,

Noting moreover the importance of all States adhering to this Convention and encouraging its forthcoming Review Conference to reinforce the authority, efficiency and universal scope of the convention,

Stressing the importance of an early conclusion by the Conference on Disarmament of its work on a Convention on the Universal Prohibition of Chemical Weapons and of universal adherence thereto,

Aware of the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq,

Concerned by the reports in the hands of Member States that Iraq has attempted to acquire materials for a nuclear-weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968,

Recalling the objective of the establishment of a nuclear-weapons-free zone in the region of the Middle East,

Conscious of the threat that all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons,

Conscious also of the objective of achieving balanced and comprehensive control of armaments in the region,

Conscious further of the importance of achieving the objectives noted above using all available means, including a dialogue among the States of the region,

Noting that resolution 686 (1991) marked the lifting of the measures imposed by resolution 661 (1990) in so far as they applied to Kuwait,

Noting that despite the progress being made in fulfilling the obligations of resolution 686 (1991), many Kuwaiti and third country nationals are still not accounted for and property remains unreturned,

Recalling the International Convention against the Taking of Hostages, opened for signature at New York on 18 December 1979, which categorizes all acts of taking hostages as manifestations of international terrorism,

Deploring threats made by Iraq during the recent conflict to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq,

Taking note with grave concern of the reports of the Secretary-General of 20 March 1991 and 28 March 1991, and conscious of the necessity to meet urgently the humanitarian needs in Kuwait and Iraq,

Bearing in mind its objective of restoring international peace and security in the area as set out in recent resolutions of the Security Council,

Conscious of the need to take the following measures acting under Chapter VII of the Charter,

1. Affirms all thirteen resolutions noted above, except as expressly changed below to achieve the goals of this resolution, including a formal cease-fire;

A

2. Demands that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the "Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters", signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations and published by the United Nations in document 7063, United Nations, Treaty Series, 1964;

3. Calls upon the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material, including the map transmitted by Security Council document S/22412 and to report back to the Security Council within one month;

4. Decides to guarantee the inviolability of the above-mentioned international boundary and to take as appropriate all necessary measures to that end in accordance with the Charter of the United Nations;

B

5. Requests the Secretary-General, after consulting with Iraq and Kuwait, to submit within three days to the Security Council for its approval a plan for the immediate deployment of a United Nations observer unit to monitor the Khor Abdullah and a demilitarized zone, which is hereby established, extending ten kilometres into Iraq and five kilometres into Kuwait from the boundary referred to in the "Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters" of 4 October 1963; to deter violations of the boundary through its presence in and surveillance of the demilitarized zone; to observe any hostile or potentially hostile action mounted from the territory of one State to the other; and for the Secretary-General to report regularly to the Security Council on the operations of the unit, and immediately if there are serious violations of the zone or potential threats to peace;

6. Notes that as soon as the Secretary-General notifies the Security Council of the completion of the deployment of the United Nations observer unit, the conditions will be established for the Member States

cooperating with Kuwait in accordance with resolution 678 (1990) to bring their military presence in Iraq to an end consistent with resolution 686 (1991);

C

7. Invites Iraq to reaffirm unconditionally its obligations under the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and to ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972;

8. Decides that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of:

   (a) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;

   (b) All ballistic missiles with a range greater than 150 kilometres and related major parts, and repair and production facilities;

9. Decides, for the implementation of paragraph 8 above, the following:

   (a) Iraq shall submit to the Secretary-General, within fifteen days of the adoption of the present resolution, a declaration of the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below;

   (b) The Secretary-General, in consultation with the appropriate Governments and, where appropriate, with the Director-General of the World Health Organization, within forty-five days of the passage of the present resolution, shall develop, and submit to the Council for approval, a plan calling for the completion of the following acts within forty-five days of such approval:

      (i) The forming of a Special Commission, which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the Special Commission itself;

      (ii) The yielding by Iraq of possession to the Special Commission for destruction, removal or rendering harmless, taking into account the requirements of public safety, of all items specified under paragraph 8 (a) above, including items at the additional locations designated by the Special Commission under paragraph 9 (b) (i) above and the destruction by Iraq, under the supervision of the Special Commission,of all its

missile capabilities, including launchers, as specified under paragraph 8 (b) above

(iii) The provision by the Special Commission of the assistance and cooperation to the Director-General of the International Atomic Energy Agency required in paragraphs 12 and 13 below;

10. Decides that Iraq shall unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9 above and requests the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with this paragraph, to be submitted to the Security Council for approval within one hundred and twenty days of the passage of this resolution;

11. Invites Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968;

12. Decides that Iraq shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapons-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director-General of the International Atomic Energy Agency within fifteen days of the adoption of the present resolution a declaration of the locations, amounts, and types of all items specified above; to place all of its nuclear-weapons-usable materials under the exclusive control, for custody and removal, of the International Atomic Energy Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9 (b) above; to accept, in accordance with the arrangements provided for in paragraph 13 below, urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above; and to accept the plan discussed in paragraph 13 below for the future ongoing monitoring and verification of its compliance with these undertakings;

13. Requests the Director-General of the International Atomic Energy Agency, through the Secretary-General, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General in paragraph 9 (b) above, to carry out immediate on-site inspection of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission; to develop a plan for submission to the Security Council within forty-five days calling for the destruction, removal, or rendering harmless as appropriate of all items listed in paragraph 12 above; to carry out the plan within forty-five days following approval

by the Security Council; and to develop a plan, taking into account the rights and obligations of Iraq under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12 above, including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections to confirm that Agency safeguards cover all relevant nuclear activities in Iraq, to be submitted to the Security Council for approval within one hundred and twenty days of the passage of the present resolution;

14. Takes note that the actions to be taken by Iraq in paragraphs 8, 9, 10, 11, 12 and 13 of the present resolution represent steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons;

D

15. Requests the Secretary-General to report to the Security Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact;

E

16. Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait;

17. Decides that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. Decides also to create a fund to pay compensation for claims that fall within paragraph 16 above and to establish a Commission that will administer the fund;

19. Directs the Secretary-General to develop and present to the Security Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the fund to meet the requirement for the payment of claims established in accordance with paragraph 18 above and for a programme to implement the decisions in paragraphs 16, 17 and 18 above, including: administration of the fund; mechanisms for determining the appropriate level of Iraq's contribution to the fund based on a percentage of the value of the exports of petroleum and petroleum products from Iraq not to exceed a figure to be

suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy; arrangements for ensuring that payments are made to the fund; the process by which funds will be allocated and claims paid; appropriate procedures for evaluating losses, listing claims and verifying their validity and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16 above; and the composition of the Commission designated above;

F

20. Decides, effective immediately, that the prohibitions against the sale or supply to Iraq of commodities or products, other than medicine and health supplies, and prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall not apply to foodstuffs notified to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait or, with the approval of that Committee, under the simplified and accelerated "no-objection" procedure, to materials and supplies for essential civilian needs as identified in the report of the Secretary-General dated 20 March 1991, and in any further findings of humanitarian need by the Committee;

21. Decides that the Security Council shall review the provisions of paragraph 20 above every sixty days in the light of the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Security Council, for the purpose of determining whether to reduce or lift the prohibitions referred to therein;

22. Decides that upon the approval by the Security Council of the programme called for in paragraph 19 above and upon Council agreement that Iraq has completed all actions contemplated in paragraphs 8, 9, 10, 11, 12 and 13 above, the prohibitions against the import of commodities and products originating in Iraq and the prohibitions against financial transactions related thereto contained in resolution 661 (1990) shall have no further force or effect;

23. Decides that, pending action by the Security Council under paragraph 22 above, the Security Council Committee established by resolution 661 (1990) shall be empowered to approve, when required to assure adequate financial resources on the part of Iraq to carry out the activities under paragraph 20 above, exceptions to the prohibition against the import of commodities and products originating in Iraq;

24. Decides that, in accordance with resolution 661 (1990) and subsequent related resolutions and until a further decision is taken by the Security

Council, all States shall continue to prevent the sale or supply, or the promotion or facilitation of such sale or supply, to Iraq by their nationals, or from their territories or using their flag vessels or aircraft, of:

(a) Arms and related materiel of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production, for such equipment;

(b) Items specified and defined in paragraphs 8 and 12 above not otherwise covered above;

(c) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in subparagraphs (a) and (b) above;

(d) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in subparagraphs (a) and (b) above;

25. Calls upon all States and international organizations to act strictly in accordance with paragraph 24 above, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;

26. Requests the Secretary-General, in consultation with appropriate Governments, to develop within sixty days, for the approval of the Security Council, guidelines to facilitate full international implementation of paragraphs 24 and 25 above and paragraph 27 below, and to make them available to all States and to establish a procedure for updating these guidelines periodically;

27. Calls upon all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Security Council under paragraph 26 above as may be necessary to ensure compliance with the terms of paragraph 24 above, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance;

28. Agrees to review its decisions in paragraphs 22, 23, 24 and 25 above, except for the items specified and defined in paragraphs 8 and 12 above, on a regular basis and in any case one hundred and twenty days following passage of the present resolution, taking into account Iraq's compliance with the resolution and general progress towards the control of armaments in the region;

29. Decides that all States, including Iraq, shall take the necessary measures to ensure that no claim shall lie at the instance of the Government of Iraq, or of any person or body in Iraq, or of any person claiming through

or for the benefit of any such person or body, in connection with any contract or other transaction where its performance was affected by reason of the measures taken by the Security Council in resolution 661 (1990) and related resolutions;

G

30. Decides that, in furtherance of its commitment to facilitate the repatriation of all Kuwaiti and third country nationals, Iraq shall extend all necessary cooperation to the International Committee of the Red Cross, providing lists of such persons, facilitating the access of the International Committee of the Red Cross to all such persons wherever located or detained and facilitating the search by the International Committee of the Red Cross for those Kuwaiti and third country nationals still unaccounted for;

31. Invites the International Committee of the Red Cross to keep the Secretary-General apprised as appropriate of all activities undertaken in connection with facilitating the repatriation or return of all Kuwaiti and third country nationals or their remains present in Iraq on or after 2 August 1990;

H

32. Requires Iraq to inform the Security Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism;

I

33. Declares that, upon official notification by Iraq to the Secretary-General and to the Security Council of its acceptance of the provisions above, a formal cease-fire is effective between Iraq and Kuwait and the Member States cooperating with Kuwait in accordance with resolution 678 (1990);

34. Decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area.

C-11

RESOLUTION 678 (1990)

Adopted by the Security Council at its 2963rd meeting on 29 November 1990

The Security Council,

Recalling, and reaffirming its resolutions 660 (1990) of 2 August (1990), 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of of 29 October 1990 and 677 (1990) of 28 November 1990.

Noting that, despite all efforts by the United Nations, Iraq refuses to comply with its obligation to implement resolution 660 (1990) and the above-mentioned subsequent relevant resolutions, in flagrant contempt of the Security Council,

Mindful of its duties and responsibilities under the Charter of the United Nations for the maintenance and preservation of internationalnd peace and security,

Determined to secure full compliance with its decisions,

Acting under Chapter VII of the Charter,

1. Demands that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;
2. Authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;
3. Requests all States to provide appropriate support for the actions undertaken in pursuance of paragraph 2 of the present resolution;
4. Requests the States concerned to keep the Security Council regularly informed on the progress of actions undertaken pursuant to paragraphs 2 and 3 of the present resolution;
5. Decides to remain seized of the matter.