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The United Nations Charter and Military Interventionism: The case of Iraq, 2003

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DECLARATION

This research has not been previously accepted for any degree and is not being currently considered for any other degree at any other university.

I declare that this Dissertation contains my own work except where specifically acknowledged.

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Abstract

The United Nations Charter clearly forbids the use of force by one state against the territorial integrity of another state. The only two exceptions are self-defense or actions authorized by the United Nations Security Council. The 2003 intervention of Iraq by Coalition forces tests the resolve of the Charter and the United Nations system as a whole. The need to assess the legality and the effect of the Coalition's intervention became a matter of interest to international relations scholars. This study uses the Just War Theory to make this assessment, with particular emphasis on the somewhat neglected *jus in bello* and *jus post bellum* elements. This study argues that the intervention by Coalition forces did not meet the requirements of a justified intervention as set out in the Just War Theory. This study has also found that the main reason for unlawful interventions is the existence of the veto in the SC. To limit unsanctioned interventions the veto should be scrapped and there should be an attitude change within the Security Council, they should not view the democratization of the SC as an enemy, they should view it as an opportunity to save the UN system.

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Chapter 1: Introduction

The United Nations (UN) was formed in 1945 with the primary objective of promoting peace and security in the world. In this light there were provisions the organization's Charter which prohibited the use of force by states on each other. Articles 2(4), 42 and 51 prohibit states from using force against the territorial integrity or political independence of any state, there are two exceptions to this rule; first is self-defense, when armed attacks happens against a member of the United Nations and second, if the UN Security Council (UNSC) approves the use of force in order to restore or maintain international peace and security (Franck, 2003:214).

This study seeks to trace the historical development of the doctrine of humanitarian intervention to understand the norms which have shaped it to what it is today. The paper will argue that international norms have changed and when international norms change state behavior must follow. The intervention in Iraq by Coalition forces led by the United States of America has led to a widespread debate about its legality. To judge the legality of the intervention this study will use the just war theory, which is the principal theory which seeks to give reasons for going to war and the legality of war.

This study will particularly focus on the conduct of the coalition forces during and after the intervention to judge the legality of the intervention i.e. whether it complied with international norms and standards. It will look at whether the Coalition forces respected the Geneva Conventions and other human rights treaties during the invasion and occupation. It also seeks to find if there Coalition had a viable post-conflict plan for Iraq. This study will argue the chief reason why states and in particular the United States evade the Security Council is because of the fear that they cannot secure a resolution because of the veto. This

study will propose the reform of the Security Council to be more representative and democratic as a way to ensure there are no unauthorized interventions.

This study will further argue that the United Nations should make sure that it has international early warning systems in place so that they can detect potential conflict before it becomes a full-blown war which might undermine international peace and security. The study will further argue that Chapter VII of the Charter should be brought to life to punish those who contravene the rules of the Charter especially crimes of aggression. The limitations of this study are that, it won't get firsthand accounts from those who were decision makers in the invasion of Iraq and most documents which deal with the intervention are still classified.

Chapter 2: Literature Review

2.1. *General Overview*

The turn of the 21st century has seen some of the most atrocious civil wars in the history of mankind such as the conflicts in Rwanda, Bosnia, Sierra Leone and Liberia (Bellamy, 2006: 1999). Some of these wars are government sponsored massacres against their own people/noncombatants. Millions of noncombatants were killed in the civil wars which ravaged the world in the 1990's, with more than 800,000 Rwandans killed in the now notorious Rwandan Genocide. The problem of civil wars was more commonplace in sub-Saharan Africa where state collapse and warlordism claimed more than 5 million lives in Sudan, Burundi and the Democratic Republic of Congo (DRC) (Bellamy, 2009: 1). Europe was not spared by this wave of violence with the war in Yugoslavia claiming a quarter of a million lives (Holzarafe& Keohane, 2003: 5).

This raised some key questions on when outsiders are allowed to come to the rescue of defenseless civilians. It is against this backdrop that there has been a wide debate on the concept of humanitarian intervention, including its definition and at what specific point it is required in a state. Ramsbotham and Woodhouse (1996:8) describe humanitarian intervention as a forcible intervention whose sole purpose is to prevent or halt serious violation of fundamental human rights, particularly threats to human life regardless of a person's nationality. Bowett (1958:317) explains humanitarian intervention as dictatorial interference in the affairs of another state for the purpose of maintaining or altering the actual condition of things. Furthermore, it is defined in Article 2(7) of the UN Charter as the act of intervening by one state on matters which essentially fall within the domestic jurisdiction of other states.

With these definitions, it becomes apparent that humanitarian intervention involves a forcible interference in matters which exclusively fall within a domestic jurisdiction.

This means that sovereignty of another state is violated; Sovereignty is usually defined as legal independence of all other states or international organs. As Rostow writes:

“The formal structure of the international state system is built on the principle that each state is autonomous and independent, and has the right in its internal affairs to be free from acts of coercion committed or assisted by other states, this rule is basic to the possibility of international law” (Rostow, 1971:242).

Sovereignty is twofold, there is internal sovereignty which is the ability or authority of a state to make laws and carry them out, external sovereignty means that all states are equal and cannot impose things such as policies on other states. The fundamental problem regarding humanitarian intervention lies in its inherent breach of the principle of sovereignty, and the question is ultimately which of the two principles that must prevail. This means that intervention by invitation from the target state must be excluded from the definition, because that is not really in conflict with the target state's sovereignty (Grimstad, 2001:5). Embedded in the definition of humanitarian intervention is the use of force, so any sort of action which seeks to influence change of behavior (embargos, sanctions) which falls short of force does not amount to humanitarian intervention. Another major element of humanitarian intervention is violation of human rights on a large scale, according to Donnelly human rights are those rights one has simply because one is a human being, Furthermore, a concept of gross human rights violations must embrace notions such as, genocide, crimes against humanity and general humanitarian law. The noted scholar Lauterpacht famously stated that the right to intervene arises when: State renders itself guilty of cruelties against and

persecution of its nationals in such a way as to deny their fundamental rights and to *shock the conscience of mankind*.

Studies have further shown that, humanitarian intervention can also take the form of humanitarian assistance/relief to victims of natural or political disasters not necessarily in warzones and not necessarily connected with explicit violations of human rights. In its classical form humanitarian assistance/relief is concerned with short term solutions to issues such as hunger reduction, disaster relief and refugee assistance (Fixdal & Smith, 1998: 285). Humanitarian assistance has maximum international acceptance compared to forceful humanitarian intervention because at the heart of it are genuine concerns for the welfare of human beings (Bellamy, 2009: 15). Most of the humanitarian organizations, especially non-governmental organizations, have the moral authority because they subscribe to the principles of neutrality, universality and impartiality (Hinnebusch, 2007: 9).

While natural disasters do not generally arouse resistance from the host government, manmade disasters especially where there are human rights violations are governments become defensive. Human rights and sovereignty come into conflict when a government or state fails or is unwilling to protect its people's civil liberties (Hinnebusch, 2007: 11). The tension between the state and human rights is embedded in the UN Charter itself. These tensions play themselves in three ways firstly the UN Charter seeks to eliminate war as an instrument of policy and that is evident in Article 2 (4), at the same time Article 2 (7) assures states of sovereignty in domestic matters and lastly the UN Charter stresses the importance and the universality of human rights. The tension is that human rights fall under the domestic matters of any given state and if other countries use force to try and protect the rights of

civilians they are contravening Article 2 (7), this is what I call the “Unholy Trinity” in humanitarian law.

These tensions have meant that for a long time the debate has been about, under what circumstances can sovereignty be suspended or overruled in favor of human rights. To understand the debate about intervention and the politics of it one must first give a historical development of humanitarian intervention.

2.2. Historical Development of Humanitarian Intervention:

The end of the Cold War opened up space for states to intervene militarily and they have in fact intervened to protect citizens other than their own from both manmade and natural disasters. Recent events to enforce a no-fly zone over Libya and the intervention by French forces in the Ivory Coast after a conflict erupted over a disputed election results are both instances where the military intervention has been primarily humanitarian. These interventions have however raised alarms from certain commentators arguing that their primary purpose was pursuing interests of the intervening states. Finnemore (1996:154) argues that this assertion can no longer be sustained because recent patterns of humanitarian interventions do not explicitly show any economic or geostrategic interest from the intervening states. She cites the intervention in Somalia as perhaps the clearest example of military action carried out without any apparent strategic interest. She also makes note of the fact that the state which did have geostrategic interest (China) carried little burden of the intervention.

For Finnemore (1996:154) we can no longer reduce humanitarian intervention to the politics of interests since it has been proven that sometimes states do intervene for purely humanitarian purposes. She argues that “the pattern of intervention cannot be understood

apart from the changing normative context in which it occurs, the normative context is important because it shapes conceptions of interests” (Finnemore, 1996:154). This is the change of norms which this section of the study seeks to trace.

In the early stages of our western culture, Greek philosophers began arguing that there existed a universal law of nature, which everybody was obliged to obey and all positive laws had to conform to. Aristotle (384-322 BC) made important assumptions about this natural law; one part of what is politically just is natural, and the other part legal. What is natural is what has the same validity everywhere alike (Grimstad, 2001:7). They saw the natural law as built into the very structure of the universe, directing the actions of all rational beings, and it was conceivable *a priori*. The law of nature is therefore universal and applies to all human beings alike (Grimstad, 2001:7). The law of nature is the philosophical foundation of several basic moral and legal principles. In that it treated every human equally, it was the origin of inherently human rights. Because it constituted the rational basis of political society, it was the foundation on which theories of the social contract and state sovereignty were based in the Enlightenment era. It is therefore also the earliest and most fundamental source of ideas concerning humanitarian intervention, and has been used as a basis for claims to such a right ever since.

The Peace of Westphalia of 1648, which ended the Thirty Years War inaugurated the modern European state system and established the nation-state as the principal actor in international law (Brownline, 1963:20). The main aim of this treaty was to ensure the independence of each state and that no state should intervene in the domestic affairs of another state. The strict rule of sovereignty meant that the 19th century was dominated by an unrestricted right of war and the recognition of conquests (Brownline, 1963:52). In 1860, Phillimore (1985:77) wrote that:

War is the exercise of the international right of action, to which, from the nature of the thing and the absence of any common superior tribunal, nations are compelled to have recourse, in order to assert and vindicate their rights. War was however only regarded as a last option when peaceful measures were not successful in solving a conflict and increasing efforts were made to restrict the resort to warfare.

Increasing efforts were made to restrict the resort to warfare, in 1878, the World Peace Conference in Paris declared by resolution that: *la guerre offensive est un brigandage International*, branding offensive warfare as international banditry. State practices did not reflect this shift towards a more pacifistic regime immediately, but during the course of the 19th century, offensive war became increasingly difficult under the pressure of world opinion. What evolved instead was a doctrine of a right to self-preservation of the nation-state. Out of this doctrine evolved a practice of lesser measures of armed force, which did not amount to war such as self-defense reprisal and pacific blockade. (Grimstad, 2001:15). This practice developed to include interventions carried out on humanitarian grounds.

“In October 1827 European powers intervened in Greece to protect Greek Christians from the occupying Turks. The London Treaty, which formally authorized the intervention, stated that it was undertaken by sentiments of humanity” (Grimstad, 2001: 16). Russia took great interest in the protection of the Greek Christians since it saw itself as a protector of Orthodox Christians under Turkish rule. France threatened the use of force when the Turks had massacred Christians and sold their women to slavery (Finnemore, 1996: 162). One can draw a number of things from this intervention, one, humanitarian intervention could only be used

to save Christians, two, the intervention was carried out by 3 major powers in Europe, France, England and Russia and this multilateralism gave it credibility and three, people were involved in the call for humanitarian intervention to save the Christian Greeks which further gave it legitimacy.

Another instance where force had to be used in the name of humanitarian intervention was the 1860-1861 conflict in Lebanon/Syria. “In May 1860 a conflict between Druze and Maronite population broke out in Lebanon which is now Syria under the Ottoman rule” (Finnemore, 1996:164). The Maronites were massacred by the Druze and later the Turkish troops and this sparked outrage from the French popular press. The Maronites were basically citizens of France and were under French protection. On August 1860 the great powers of Europe signed a protocol authorizing a dispatch of 12 thousand soldiers to help stop the massacre. The political heads made it clear that the intervention was to stop the atrocities and stated that they have no strategic or political interest in the matter. The nature of the intervention symbolized this as troops were helping rebuild houses and farms in the villages and left as soon as the agreement was reached to include Christians in government (Finnemore, 1996:165). Again in this intervention Christians were the target, the great powers were involved in the signing of the declaration which authorized the interventions and another important factor is the duration of the intervention, the fact that the intervening forces left when the Maronites were no longer in danger shows that the intervention was basically a humanitarian one.

The Bulgarian Agitation of 1876-1879 was another episode of humanitarian intervention in the 19th Century. In May 1876 poorly armed Bulgarians were massacred by Ottoman troops,

the brutality of the massacre led to Britain initiating an inquiry and it found that those soldiers who had killed innocent unarmed people were decorated by the Ottoman regime rather than punished (Finnemore, 1996: 165). Despite the inquiry reports the British did not think that Bulgarian issues were of their concern, it was Russia who intervened citing the violation of the 1856 treaty which was signed after the Crimean Wars as authority for its intervention. The treaty was meant to protect the Christians under the Ottoman Empire and when it was violated Russia declared war and easily defeated Ottoman troops (Finnemore, 1996: 166). This case is different than the two preceding cases because the intervention was unilateral, however it was justified by the fact that Russia was saving Christians, treatment of Christians in these areas was described by a British investigator as the most heinous crimes that had stained the history of the century and the European public did support the intervention.

The Armenia conflict of 1894-1917 offers a different picture to the preceding cases. It goes to show that you did not have to be merely Christian to get protection but you had to be a particular kind of Christian. The Armenian Church was not in communion with the Orthodox Church and that meant that Armenian Christians were not “brothers” (Finnemore, 1996: 167). “Similarly, no non-Orthodox European state had ever offered protection or had historical ties as the French did with the Maronites, thus some of the justifications that were offered for intervention in other cases were lacking in the Armenian case” (Finnemore, 1996: 167) .

“The fact that the Armenians were Christians, albeit of a different kind, does seem to have had some influence on policy, the Treaty of Berlin explicitly bound the sultan to carry out internal political reforms to protect Armenians but the nature timing and monitoring of these revisions were left vague and were never enforced” (Finnemore, 1996: 167). The Congress of Berlin ignored an Armenian petition for an arrangement, similar to that set up in Lebanon following the Maronite massacres (a Christian governor under Ottoman rule). Gladstone took

up the matter in 1880 when he came back to power but dropped it when Bismarck voiced opposition. The wave of massacres against Armenians beginning in 1894 was far worse than any of the other atrocities examined here, in terms of both the number killed and the brutality of their executions. Nine hundred people were killed, and twenty-four villages burned in the Sassum massacres in August 1894 (Finnemore, 1996: 167). After this, the intensity increased, between fifty thousand and seventy thousand people were killed in 1895 and in 1896 the massacres moved into the capital, Constantinople, where six thousand Armenians were killed (Finnemore, 1996:168).

Despite the fact that these atrocities were known throughout Europe no one was willing to intervene, which shows that you have to be a particular kind of Christian to get humanitarian assistance. From the above four above cases we also learn that intervention is not a 20th Century Phenomenon, we also learn that it was primarily invoked to protect Orthodox Christians, also intervention could both be multilateral as was the case in Greece 1821-1827 or unilateral as was the case in the Russian intervention in Bulgaria 1876-1878. Another interesting case to note here is the US action against Cuba in 1898 which has also been cited as a case of humanitarian intervention. “President McKinley said in a speech to the Congress that the purpose of the intervention was .in the cause of humanity and to put an end to the barbarities, bloodshed, starvation and horrible miseries now existing there” (Brownline, 1963:25).

In the begging of the 21st Century it became common international knowledge that unilateral interventions were prohibited. This was mainly informed by the presence of the League of Nations which was entrusted with the power to authorize collective use of force. “In the 1920s, the enforcement system of the League worked quite well, and several treaties were signed that renounced war altogether. The Draft Treaty of Mutual Assistance of 1923 and the

Geneva Protocol of 1925 both labeled aggressive war as an international crime” (Sornarajah, 1981:45). “The Briand-Kellogg Pact of 1928 went a step further, by declaring in art 1 that:

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” (GTRW, 1928: Article 1).

The League of Nations fell apart in the early 1930s when the Germany and Italy embarked on world domination. This however did not affect the customary rule that unilateral intervention was still unlawful in the international system. The failure of the League of Nations led to the formation of the United Nations in 1945 after the conclusion of the Second World War. The main mandate of the UN was to make sure that it does not repeat the failures of the League of Nations by ensuring that there is international peace and security. The UN Charter Article 2(4), 42 and 51 prohibits the use of force against the territorial integrity of another state, the only two exceptions to these rules are self defense and actions authorized by the Security Council to maintain or restore international peace and security (Franck, 2003:214).

There has been however a few instances where states have ignored the rules set out in the charter and have unilaterally used force against another state. In 1971 India invaded East Pakistan after the Pakistani forces had massacred separatist groups. This conflict claimed more than a million lives and more than 8 million Pakistanis fearing persecution fled to India. Pakistan had been under military rule by West Pakistani officials since partition, when the first free elections were held in November 1970 the Awami League won 167 out of 169 parliamentary seats reserved for East Pakistan in the National Assembly (Finnemore, 1996: 177). The Awami League had not urged political independence for the East during the

elections, but it did run on a list of demands concerning one-person-one-vote political representation and increased economic autonomy for the east. The government in West Pakistan viewed the Awami electoral victory as a threat, in the wake of these electoral results the government in Islamabad decided to postpone the convening of the new National Assembly indefinitely and in March 1971 the West Pakistani army started indiscriminately killing unarmed civilians, raping women, burning homes, and looting or destroying property (Finnemore, 1996: 177).

The fact of the incidence were confirmed by the UN Secretary-General, India invaded and quickly defeated East Pakistani forces which ultimately led to the formation of Bangladesh. India argued that it had to act since it faced a threat from the millions of people flocking into her soil in fear of persecution. India also surreptitiously argued that the invasion was necessary to stop the genocide and gross human right abuses however, “States as diverse as Argentina, Tunisia, China, Saudi Arabia, and the U.S. all responded to India's claims by arguing that principles of sovereignty and non-interference should take precedence and that India had no right to meddle in what they all viewed as an "internal matter"(Finnemore, 1996:178). In response to the rejection of her claims, India retracted her humanitarian justifications, choosing instead to rely on self-defense to justify her actions” (Finnemore, 1996:178).

India’s representative to the UN argued that there was no alternative, arguing that the UN system seemed paralyzed and did not take any action to prevent or end the genocidal human rights abuse (Franck, 2003: 217). The Security Council was convened to call for an immediate halt to the Indian intervention in East Pakistan, 11 states voted for the resolution but Russia and Poland opposed it which led to the collapse of the resolution. However the General assembly was able to pass essentially the same resolution by a staggering 104 votes

to 1 with 10 abstentions, despite this Bangladesh was welcomed as a member of the UN 3 years later. There is little doubt that the intervention by India was necessary and had India not intervened the situation could have been much worse, however members of the UN did not want to tolerate this action. This was partly because of the power politics at the time, with Russia backing India and China backing Pakistan. The third world countries who are naturally allies of India also condemned India's actions, for them allowing countries with great military might to be judge and jury on humanitarian issues was a direct threat since they were generally weaker countries.

Also India also failed to convince the international community that it had clean hands and was helping to end atrocities. Pakistan is a longstanding enemy of India and the weakening of Pakistan plays to the favor of India and also Pakistan had bombed an Indian airport in 1970 so this was payback time as far as other UN members were concerned hence they denounced India's military action against Pakistan.

Another case of unilateral intervention happened in 1978 when Vietnam invaded Cambodia to get rid of the infamous Khmer Rouge. Billed as the most murderous government of its time, in less than three years of effective government, as much as one-sixth of Cambodia's six million people may have died at their hands (Grimstad, 2001: 36). Vietnam was a very unpopular nation in the international system and part of that had to do with its history with the USA. The Vietnam government claimed that its invasion of Cambodia was in self defense against the armed border incursions by the Khmer Rouge forces. "However, Hanoi seemed to realize that this excuse was hardly credible, even if credible, that would be seen as wildly disproportionate to the threat posed by Cambodian incursions" (Franck, 2003:217-18).

The Vietnamese government changed their defense and gave it a humanitarian tone, arguing that their actions were in support of a popular uprising which had turned Cambodia to a “living hell”. This further heightened the fear from third world countries that this precedence would allow for states to determine individually on the human rights record of another state, for them this could not be allowed to happen. Even France argued that this sort of action sets a very dangerous precedent (Franck, 2003: 218). Even Bangladesh who had benefited from a unilateral intervention of India in Pakistan stated its fears of the precedent being set by the Vietnam’s invasion of Cambodia. Just as in the case of India’s invasion of Pakistan, the motives of the Vietnamese took centre stage. The Vietnamese did not show any signs of moving out of Cambodia until 1988 at that time their stay had become an occupation and this rose more than a few eyebrows in the United Nations especially from small countries like, Malaysia, Gabon, Singapore and New Zealand.

Moreover the Vietnamese government did not have a great record of human rights itself. And when they ousted Pol-Pot they made Phnom Penh as the leader of the country a man who had severed as a deputy of the murderous Khmer Rouge. Because of this lack of lack of humanitarian value in the intervention many states chose to give priority to the rules as they are set out in the Charter. So in this instance states chose to apply the rule of non-interference with no appeal to moral values.

However, this was not the case in the in 1978 when Tanzania invaded Uganda. On the 11th of April 1979, forces from the Ugandan National Liberation Front invaded Kampala and installed an interim government, with large support from Tanzanian troops. That was the end of eight years of vicious dictatorship by President Idi Amin (Grimstad, 2001:38). Under his regime as many as three hundred thousand people had been killed, many after suffering extensive torture. The Tanzanian foreign minister described this as .a tremendous victory for

the people of Uganda and a singular triumph for freedom, justice and human dignity (Grimstad, 2001: 38). The difference, in this instance was that there was no reason to suspect ulterior motives or strategic designs behind the invasion, which was secretly applauded by the UN (Franck, 2003: 219).

Although Uganda (backed by Libya) tried to protest against the invasion to the Secretary-General and the Security Council but they failed to get the body to even meet to discuss the matter. There are a number of reasons why the UN chose to tacitly endorse the intervention by Tanzania, firstly Idi Amin was universally notorious for his butchery of his people and Julius Nyerere on the other hand was respected especially in Africa. There were also wild jubilations within Uganda when the invasion was complete which gave Tanzania's actions internal justification. Tanzanian government officials did not give their invasion a humanitarian tag because they feared that this would set a bad precedent for future interventions. They argued that they were acting in self-defense against armored attacks in its boarder by Ugandan forces even though their occupation of Uganda could not possibly be justified by that provocation. One cannot escape the fact that the Tanzanian intervention in Uganda did have an element of a humanitarian intervention regardless of the Tanzanian diplomats underplaying it as one. The UN responded with muted satisfaction to the intervention which gave it some legitimacy.

There were two other instances in Africa where the UN chose to ignore apparent violation of Article 2(4) of the charter in favor of the protection of human rights. In September 1979 France participated in the overthrow of Emperor Bokassa of the Central African Empire (Franck, 2003: 220). France initially denied any involvement in the coup and was able to speedily negotiate acceptance of the new regime in Africa. Though they never claimed that their intervention had a humanitarian purpose, everyone in the UN knew all too well about

the human rights abuses which were taking place under Bokassa. A high level commission of inquiry sanctioned by the Organization of African Unity (OAU) had found that Bokassa had order the killing of a hundred of school children. In this instance the silence of the UN can be understood.

The second African case where the UN chose to ignore the violation of Article 2(4) of the charter in favor of the protection of human rights is The Economic Community of West African States Monitoring Group (ECOMOG) intervention in the Liberian and Sierra Leone civil wars between 1989 and 1999. These conflicts had claimed hundreds of thousands of lives before the first ECOMOG force was deployed in 1990 (Franck, 2003:221). Just like the French in Central African Empire, ECOMOG had not followed the rules as laid down in article 2(4) of the Charter. They also did not follow Article 53 which only allows regional forces to intervene with the blessing of the Security Council. However, six months after the intervention, the Security Council commended the action of ECOMOG to secure a peaceful settlement of the dispute (Byers and Chesterman, 2003:187).

That statement still did not authorize the military action taken by ECOMOG, two years down the line the Council imposed an arms embargo to the fighting factions and cautiously entrusted ECOMOG with the implementation of this embargo. Still this did not authorize the armed intervention which was now entering its third year. It is only when a peace agreement was reached in 1993 that the Security Council agreed to the presence of ECOMOG along UN forces in Liberia thereby retroactively giving the ECOMOG intervention legitimacy.

In 1997 ECOMOG intervened again now in Sierra Leone, a democratically elected president invited ECOMOG to help fight the insurgents, he was however overthrown in a coup by the Sierra Leone military. Again like in the Liberian case the Security Council commended the

role of ECOMOG but did not mention the use of force. In 1997 when the Council authorized an arms embargo it only recommended but did not authorize armed intervention (Byers and Chesterman, 2003:190). However, the Council did retroactively legitimize the armed intervention by ECOMOG by authorizing a token of Observer Missions of their own. Formal authorization was never given to ECOMOG but in 1999 the Council authorized UNASMIL to assist ECOMOG further giving legitimacy to the armed intervention.

The last case to look at is probably the most famous/notorious intervention in the 20th Century and a reason for this is that it took place in Europe. The crisis began in 1989 when the government of Serbia stripped Kosovo's autonomous provincial status. The government also revoked the official status of the Albanian language spoken by 90% of the population (Franck, 2003:224). After 9 years these tensions turned into violence the Security Council Condemned Serbia's use of force and called for the restoration of Kosovo's autonomy (Franck, 2003:224). The Security Council's pleas fell to deaf ears, by September 1998; Yugoslav forces had burned to ashes 300 Kosovo villages and displaced more than 300 thousand people.

The Council condemned the "genocide" but could not reach an agreement on a collective military measure due to opposition from Russia and China. " In mid-March 1999, after Yugoslavia had rejected a compromise agreement proposed by a Five-Power Contact Group at Rambouillet, NATO launched air strikes" (Kosovo Report, 2000: 45). By that time 600 thousand Kosovars had fled into neighboring countries and a further 850 thousand were internally displaced (Kosovo Report, 200: 45). India argued that even if unauthorized military action was undertaken on pure humanitarian grounds to halt a human rights violation that does not justify unprovoked military aggression. The Slovenians were quickly on the

defensive reminding India of its intervention in East Pakistan under the similar circumstances.

Russia proposed a resolution to end NATO's intervention in Kosovo calling it a flagrant violation of the Charter (Franck, 2003:224). This proposal was however impressively defeated by a majority of 3 to 12. Countries as diverse as Argentina, Bahrain, Brazil, France, Gabon, Gambia, Malaysia, the UK, US, Netherlands and Slovenia voted against the proposed resolution. All these states agreed with the British ambassador's view that the intervention by NATO was an exception to the rule and was aimed at halting an overwhelming humanitarian disaster. "In May, Yugoslavia agreed a cease-fire primarily brokered by Russian Prime Minister Viktor Chernomyrdin, the Council immediately adopted Resolution 1244 of 10 June to approve the terms of the cease-fire" (Franck, 2003:225).

These terms included the withdrawal of all Yugoslav forces and administration from Kosovo they were to be replaced by NATO forces and Russian and UN administrators. Even in the case of NATO's intervention one can see the traces of the retrospective endorsement seen in the preceding ECOMOG cases. The resounding defeat of Russia's proposed resolution and its role as a central player in the implementation of the settlement ending conflict point to its ratification of the mission. The Chinese ambassador was however not impressed by the Security Council's actions arguing that the Council has chosen to elevate human rights over sovereignty and promoting hegemonism under the pretext of human rights (Franck, 2003:225).

The above has looked at the evolution of humanitarian intervention from its birth through the law of nature to the 19th Century and also in the 20th Century. One can draw a number of conclusions or lessons from the evolution of the doctrine of humanitarian intervention. In the

19th Century it became apparent that the doctrine of humanitarian intervention could only be used to defend only those the intervening country has ties with and most of the times those ties were religious. Intervention in the 19th Century was exclusively used to protect Orthodox Christians against persecution from the Ottoman Empire. Even though multilateral interventions were common as was the case in the Greek War of Independence in 1821-1827, where Russia, France and Britain all intervened. However, in 1876-1878 Russia did intervene alone in the Bulgarian Agitation which showed that even though multilateral interventions were preferable countries could still go it alone without any consequences as long as they were saving Orthodox Christians.

The illegalization of slave trade and the expansion of humanity and sovereignty meant that humanitarian intervention could no longer be used to protect Christians only but all humanity which was facing reprisals. In the Beginning of the 21st Century the rule of non-intervention was the norm since the League of Nations was entrusted with the responsibility to authorize the use of force. The League of Nations fell when fascism engulfed Europe but after Hitler's forces were defeated the UN was formed and like the League of Nations its aim was to ensure international peace and security and the UN Charter made note that no country should intervene in the domestic affairs of another country. This rule has been tested by India in Pakistan, Vietnam in Cambodia, France in Central Africa Empire, Tanzania in Uganda, ECOMOG in Liberia and Sierra Leone and NATO in Kosovo.

What is apparent from these cases is that there has been no consistency from the UN which makes it difficult to understand the dominant norm. In the case of India and Vietnam the UN condemned the intervention even though there were gross human right abuses these states had to use the justification of self defense to justify their action. But in the Tanzanian and France case the UN seemed to agree these interventions were correct on humanitarian

grounds even though the respective countries did not invoke that defense. So what seems to be at determining factor is whether the intervening country has interests in the country where the intervention takes place. Tanzania had no geo-strategic interest in Uganda and France did not seem to have that interest in the CAE. On the other hand India and Pakistan are old foes and the weakening of Pakistan played to India's favor and the same can be said for Vietnam with Cambodia.

With the ECOMOG case, the UN seemed quite willing to ignore ECOMOG's repeated violation of article 53. ECOMOG used force even though it was not sanctioned by the Security Council but the Council later ratified the intervention as legitimate. This may have been caused by the fact that human rights abuses were rife and well publicized in both the Liberian and Sierra Leone civil wars. This is clearly a move toward the prioritization of human right compared to sovereignty. The same happened when NATO intervened in Kosovo without the Security Council approval, the mission was later ratified through practice rather than textually. From these cases we see a move from pure non-interference to the prioritization of human rights. It seems that states are now taking the law into their own hands because they fear that if they refer matters to the Security Council they will be stalled by the veto.

Nothing better explains the change of norms of intervention than the Responsibility to Protect (R2P). As has been shown above, recent Security Council actions show that the protection of human rights has been made a priority. The Council has had human rights conventions in mind whenever they have been confronted by the issue of humanitarian intervention. The Charter's ban on humanitarian intervention not authorized by the Security Council does not mean that governments or states have the right to treat their citizens as they wish. Almost all the members of the UN are signatories to conventions promoting the protection of human

rights. However, this does not give any international actor the right to intervene if the host nation fails to protect its citizen or if they are in fact the ones subjecting their citizens to human right abuses. The UN can however decide that a situation is a threat to international peace and security using Chapter VII then an intervention can be authorized given that the required majority is met and there is no veto from the P5.

This shows that there is no enforcement mechanism in place to make sure that the rights are protected and even if they are abused by the host government no nation or group of nations has the right to intervene it is only the Security Council that can authorize such an intervention. Even the Genocide Convention which binds its signatories to prevent and punish crimes of genocide does not allow signatories to engage in unauthorized intervention instead it states that a competent organ of the UN is entrusted with authorizing such interventions. This again proves that international human rights conventions do not allow for unauthorized intervention, they entrust the responsibility with the Security Council (Holzarafe and Keohane, 2007: 32-33).

Addressing the KFOR troops on the 22nd of June 1999 President Clinton stated: “Never forget if we can do this here, and if we can then say to the people of the world, whether you live in Africa, or Central Europe, or any other place, if somebody comes after innocent civilians and tries to kill them en masse because of their race, their ethnic background, or their religion, and it’s within our power to stop it, we will stop it” (Doyle, 2006:7). Annan also ushered the same rallying cry that intervention where there has been gross human rights violations should be allowed: “Our job is to intervene to prevent conflict where we can, to put a stop to it when it has broken out, or – when neither of those things is possible – at least to contain it and prevent it from spreading.” Kofi Annan (Annan, 1999).

Both the above speeches form the basis of the groundbreaking responsibility to protect. The international community had made a mess of handling humanitarian crises in the 1990s with the conflicts in Bosnia, Rwanda and Kosovo claiming an unprecedented number of lives and subjecting people to gross human rights abuses there need to be a change to make sure that the mistakes of the past which shock the human conscience are never repeated again. There is still widespread disagreement about whether there is a right of intervention, how and when it should be exercised and under whose authority (Evans and Sahnoun, 2002: 99). To come up with the master plan the government of Canada established the International Commission on Intervention and State Sovereignty (ICISS) in September 2000. In December 2001 a document called the Responsibility to Protect was published.

This report argued among other things that few things have done more harm to the shared ideal that all people are created equal than the inability of the international community to act to prevent heinous crimes against humanity, gross human rights abuses and genocide (Evans and Sahnoun, 2002:100). Staunch proponents of sovereignty have dismissed intervention for humanitarian purposes. Evans and Sahnoun (2002:101) argue that this argument should be turned on its head, the issue reframed not as argument about the right to intervene but the responsibility to protect. This responsibility is owed by all sovereign states to their citizens, however if the state is unwilling or incapable of protecting its citizens from human rights abuses or if the state is the perpetrator then the responsibility to protect falls to the international community.

Responsibility to Protect is a recently developed concept in international relations, It aims to provide a legal and ethical basis for humanitarian intervention, the intervention by external actors preferably the international community through the UN in a state that is unwilling or unable to fight genocide, massive killings and other massive human rights violations (Mehta,

2009:2). The concept places a moral pressure on states to protect the human rights of people in countries other than their own. “If a particular state is unwilling or unable to carry out its responsibility to prevent such abuses, that responsibility must be transferred to the international community, which will solve problems primarily via peaceful means (such as diplomatic pressure, dialogue, even sanctions), an expression of universal morality or, as a last resort, through the use of military force” (Mehta, 2009:2).

For Romeo (2003), changing the terminology from the much dreaded intervention to protection, this move helps approach the issue from the point of view of those in need of protection and it also implies that the primary responsibility to protect rests with the host nation. The responsibility to protect has an additional advantage because it is not only the responsibility to react but the responsibility to prevent and rebuild (Evans and Sahnoun, 2002:101). The Responsibility to Protect has been further aided by the fact that the concept of human security has grown in influence over the years, which means that states are no longer preoccupied with state security alone but also the protection of their citizenry against threats to life, dignity and their livelihoods domestic or foreign. This shows the changer in norms from the 1946 state-centric view to an evolving view which emphasizes sovereignty as responsibility.

For Evans and Sahnoun (2002:102), sovereignty as a responsibility has become the minimum content for international citizenship, this is the case even though this new principle cannot be said to be customary international law as yet. It is however an emerging norm, this is evident in the fact that the 2005 World Leaders Summit endorsed the responsibility to protect. The responsibility to protect was subsequently accepted by the Security Council, establishing the principle that sovereignty of a state is not untouchable and that the Security Council should

be ready to act when states either commit or fail to prevent genocide or crimes against humanity on their territories, it is a moral rather than a legal obligation (Mehta, 2009:2).

The responsibility to protect sets some standards that have to be met before an intervention can be undertaken. Firstly it must be noted that military action is the last resort which should only be considered once political, economic and judicial steps have failed. The responsibility to protect has been branded by its critics as Western imperialism (Damrosch, 2003:10). This criterion is designed to prevent exploitation of the responsibility to protect by the stronger nations. The first requirement is that there should be a just cause. This means that for an intervention to be authorized civilians must be face with eminent threat. “The first is large-scale loss of life, actual or anticipated, with genocidal intent or not which is the product of deliberate state action, neglect, inability to act or state failure” (Evans and Sahnoun, 2002:103).

The second is large scale ethnic cleansing which might be carried out in different forms which include but not limited to killings, rape, forced expulsions and acts of terror. The reason why the bar is set this high is that military intervention must be exceptional, an act of last resort (Feldman, 2004: 13). The same standard is to be applied in overwhelming natural catastrophes where the host nation is unable or unwilling to help its citizens. This means that the responsibility to protect can only be invoked to address serious matters. Matters which are of domestic concern like the legalization of gay marriage, freedom of the press racial discrimination (given that there is no extensive killing) and political oppression do not warrant military action.

Another requirement that has to be met for an intervention to be authorized is right intention. This means that the primary purpose of the intervention must be to end the human rights abuses (Garrett, 1999: 23). To make sure that an intervention has the right intention it has to be multilateral. When one state is allowed to intervene it might be distracted by its own narrow

national interests and forget to help the people who are the target of the intervention. This was certainly the case with the intervention of Vietnam in Cambodia where after the Vietnamese overthrow Pol-Pot they installed a man who had served as his deputy during the reign of terror which has claimed more than a million lives. However it must be noted that the international system is a landmine of interests it is difficult to find any state willing to spend money and risk the lives of its military personnel without having something to gain from the intervention.

When the right intention has been discovered the principle of last resort must be investigated. Military intervention can only be considered when all nonmilitary avenues have been explored and have all failed (Sriram, 2004: 12). This does not literally mean that all options must be exhausted since sometimes there is an urgency to act it means that reasonable efforts must be made to settle the matter peacefully. Another element which should be taken into account before embarking on military intervention is proportionality, the intensity and scale of the intervention should be at the minimum necessary to secure the objective (Evans and Sahnoun, 2002:105). The political system of the target country should not be altered more than is required to secure the mandate of the mission.

The principle of reasonable prospect also forms part of the requirements that have to be met before an armed intervention is embarked upon. There must be a reasonable chance of success in halting or averting the suffering that has justified the intervention and the cost of the action should not be worse than the effect of inaction (Evans and Sahnoun, 2002: 105). Also the intervention should not exacerbate the conflict. Finally and this is the most debated principle when it comes to the responsibility to protect, the right authority. According to proponents of the responsibility to protect the right to intervene rests solely with the United Nations more specifically the Security Council (MacFarlane, 2000: 114). However the Security Council might fail to act as has happened in the past, in that case the General

Assembly may consider the matter as an emergency under the “Uniting for Peace” procedure (Betts, 1994:24).

There has indeed been a change of norms in the international system from strict sovereignty to a human security-centred international system. What has not changed over the years is that fact that unilateral intervention whether for the purposed of extending hegemony or to save strangers is not accepted in the international system. For a mission to have legitimacy it has to be authorized by an appropriate and competent organ and that organ remains the United Nation more precisely the Security Council.

Chapter 3: Theoretical Framework:

Writing in 45 BC, Cicero (1961: x-xiv) argued that there are two ways of resolving a conflict/dispute; through discussion or physical force. Thus he concluded that:

Since the former is a characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves for discussion. The only excuse therefore for going to war is that we may live in peace unharmed, and when the victory is won we should spare those who have not been blood-thirsty and barbarous in their warfare (Ramsey, 1961: x-xiv).

What Cicero meant by his writing is that without ethical and legal constraints on both the decision to wage war and its conduct, war is nothing more than barbarism and logically indefensible. It is against this background that the Just War Theory is being used in this study as the main concern is an interrogation of the justifiability of the 2003 US-led war in Iraq. The just war theory provides such ethical and legal constraints on the decision to wage war. Wars are destructive and have economic, infrastructural and human cost. Therefore a decision on going to war should be guided by such moral and legal constraints. The just war tradition is divided into three sets of principles: *jus ad bellum*, which sets out the conditions under which an entity may resort to war; *jus in bello*, which prescribes how soldiers may fight in war; and (a more recent addition) *jus post bellum*, which delineates the rights and duties which belligerents have vis-à-vis one another once the war is over (Fabre, 2008: 963).

It is important to note that by “Just” the just war theory does not seek to justify war or attribute good to the act of war (Bellamy, 2006: 3). It does not seek to praise warriors but seeks to ascertain the conditions that would make the warriors work more or less blameworthy (Bellamy, 2006: 3). The literature on Just War is usually traced back to Saint Augustine of Hippo in the fifth century. The theme was revived in the twelfth century and

was made systematic by Saint Thomas Aquinas in the thirteenth century. For St. Augustine there are two principles which give insight to the ethics of war; the first is that war should be waged with the right intention and second war should be meant to right a wrong (Elshtain, 1992: 11). The key for Augustine was the inward disposition that drives one to wage war. For him, waging wars to expand kingdoms, enslave people or to steal or plunder was not justified; the only justified war is a war to maintain peace and justice (Bellamy, 2006: 28). For Augustine, if the war is authorized by the right people, soldiers and public officials cannot sin because they act with the intent of promoting the common good (Bellamy, 2006: 28). This means that wars can only be authorized by correct authority for them to be justified. Similarly, Cicero has also argued that “only the state has the right to wage war after the other party has been made aware of the declaration to wage war” (DeForrest, 1999: 5).

There are also non-religious contributors to the just war theory. Grotius is the most prominent. Grotius argued that the just war theory was necessary for protection of the sick and wounded in war, combatants and civilians alike. For Grotius, it is not necessary to prove just war theory by consulting with any of the established laws of the nations of Europe or their customs. Rather, those laws are known through the universal medium of the natural law; a law which transcends nations and their own particular legal codes, which is binding on all human societies in their interactions with each other (DeForrest, 1999: 5).

The use of just war theory to judge the morality and legality of war has been subjected to some criticisms over time. The most prominent criticism of the just war theory is that it is distinctly European and Christian therefore it is incapable of giving a universal framework for judging the morality of war (Elshtain, 1992: 13). It is true that the just war theory was constructed by a none-secular state, whereby the church sanctioned the use of force in the

service of the Machiavellian statecraft in return for the state's patronage and protection, this does not necessarily mean that the theory is not universally applicable (Bellamy, 2006: 4).

Donnelly (1989: 60) has also argued that it is unreasonable to claim that an idea existing in one part of the world cannot be applied in other parts of the world. The just war theory encompasses positive law and almost all the world's nations are party to UN Charter, Geneva Conventions and protocols governing the *Jus ad bellum* and *jus in bello* (Bellamy, 2006:5). Furthermore most of the world's religious traditions are not dissimilar to the just war tradition meaning there is an overlap around the basic ideas of the just war theory. The above passage proves that the just war theory is the appropriate theory to judge the morality of war. The just war theory is the appropriate theory to determine whether an intervention was justified and legal because it looks at all the aspects of the intervention from the period before a decision to intervention is made, to during the intervention and it also looks at the situation after the intervention (Elshtanin, 1992: 234). Its comprehensive nature makes it's the best theory to use in this research.

Chapter 4: Research Methodology

The aim of this research is to analyze how and why the 2003 US-led intervention in Iraq took place. This study finds a qualitative approach to research most appropriate since it is the commonly used method in the social sciences. This is because qualitative methods always seek to get a complete picture of events and it is useful where we know in advance the important variables (Terre Blanche et al, 2006: 272). Creswell (2003) argues that qualitative research seeks to understand human behavior and the rationale behind it. This is exactly what this study seeks to do; the study aims to offer an assessment of the reasons for and the nature of military intervention in Iraq 2003. The importance of qualitative approaches cannot be overemphasized in this type of study, because it seeks to maximize the range of specific information that can be obtained about the context of the study (Wickham, et al, 1997: 32). Generally qualitative methodology is associated with interpretive epistemology which refers to the form of data collected and analysis which seeks to gain meaning or understanding of the context (Likoti9, 2006: 25).

The study will employ document analysis for data collection. Mason (1996: 70) has usefully noted that documents can even be taken as a source of data in their own right; in effect they can be an alternative to questionnaires, interviews and observations. May (1997: 14) notes the criteria for evaluating and grading the quality of evidence available in documentary analysis namely, authenticity, credibility and representativeness. Authenticity refers to whether the evidence is genuine and from impeccable sources, credibility refers to whether the evidence is typical of its kind and representativeness refers to whether the documents consulted are representative of the totality of the relevant documents. Bryan (1989: 55) argues that if the three criteria are adhered to the strength of the research findings, validity and the possibility of generalization or extrapolation are increased. The documents to be used are reliable

primary and secondary materials. These include journal articles, books, newspaper articles and reports, NGO reports, UN treaties, government policy documents. To analyze the data I will compare the actions of the US-led coalition to the rules or principles enshrined in the UN Charter regarding interventions.

Chapter 5: *Coalition of the Willing and the Jus ad bellum:*

5.1 *The Origins of the Intervention*

Before we determine whether the US-led Coalition of the Willing's intervention in Iraq 2003 was legal or illegal we need to have get a comprehensive history of Iraq and the events which preceded the intervention and all the issues involved.

The Kurdish people have claimed their right to sovereignty since the late 19th century, but are divided between Iraq, Iran, Turkey and Syria, and have been victimized to some extent by all the states they reside in. In 1985, Saddam Hussein's Iraqi government started to methodically wipe out Kurdish villages and even used chemical weapons against some settlements, killing as many as 10 thousand Kurds (Stromseth, 1993:78). In the aftermath of the Persian Gulf War in February 1991, Kurdish rebels took advantage of the unstable political situation and made significant military advances this was however soon reversed (Abiew, 1999:147). Iraqi forces again started attacking Kurdish villages and massacred the civilian population on a large scale leaving 1.5 million people scattered around Iran and Turkey.

On 3rd of April 1991, the Security Council passed resolution 668, stating that the SC:

“Condemns the repression of the Iraqi civil population and Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression. The Council Appeals to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts”
(Grimstad, 2001:43).

This resolution even though it did not give authorization for forcible measures to be used to protect the Kurds, it was however hailed as a breakthrough since it was the first time that the Security Council had condemned a state for its treatment of its own people. That same month the USA, France and Britain announced their plans to invade Iraq and come to the rescue of the Kurds. Their mission was dubbed Operation Provide Comfort and its aim was to provide safe havens and establish a no-fly zone over Northern Iraq. UN Secretary General (SG), Perez de Cuellar argued that such an intervention was a violation of Iraq's sovereign right and if they wanted to go through with the mission they had to get the blessing of the Security Council (Wheeler, 2000:153). Despite the concerns of the Secretary-General they went ahead with their mission, on the 16th April about 8 thousand US, UK and French soldiers intervened to set up the proposed safe zones in order to get the Kurds safely down from the mountains and back to their homes (Grimstad, 2001:43).

In defense of the intervention President Bush argued that the intervention was a humanitarian one. The British Foreign Minister, Douglas Hurd, stated that:

We operate under international law, not every action that a British Government or an American Government or a French Government takes has to be underwritten by a specific provision in a UN resolution provided we comply with international law, and International law recognizes extreme humanitarian need.

After the intervention, however, the allied countries tried to make the UN take over ownership for the operation. This could not be done without Iraqi consent, and on 18 April, agreement was reached about a limited force of UN guards and the establishment of 100 civilian humanitarian aid centers around Iraq. This has made some commentators to claim

that Iraq agreed to the intervention and thus making it legal through consent (Wheeler, 2000:154).

The US and Iraq under Saddam Hussein have had a long and complex relationship. The USA backed Saddam's government in the war against Iran which ended inconclusively in 1988 (von Sponeck, 2005:4904). After the conclusion of the Gulf War Iraq was in turmoil financially, it was in bad need for extra oil revenues and was in heavily in debt to various creditors which included Kuwait (Baysil, 2007:1). In 1990 Iraq launched an attack on Kuwait claiming that it was historically a province of Iraq. The international community condemned this invasion most arguing that it was a violation of territorial integrity of Kuwait. The United Nations imposed sanctions on Iraq for its invasion of Kuwait. These sanctions froze government and personal accounts abroad, forbade foreign direct investment and blocked the overhaul of industries which included the oil sector which is Iraq's biggest industry (von Sponeck, 2005:4902). A US-led mission was authorized by the United Nations and it moved to expel Iraq from Kuwait in 1991. The relationship of Saddam's Iraq and the USA was dented forever after that.

Before the first Persian Gulf War, Iraq was known to have an active Weapons of Mass Destruction program which was focused on building nuclear warheads. (Baysil, 2007:1). As a condition of the cease-fire between Iraq and UN forces and for sanctions to be lifted, Iraq was required to end its WMD program and surrender long range ballistic missiles. Iraq had to give full access to UN inspectors to document the dismantling of their WMD program and to make sure that no weapons were being stockpiled in secrecy (Baysil, 2007: 2). After 1991 the

inspectors enjoyed undisturbed access to documents and facilities. But shortly afterward Iraq officials started to interfere with the inspections.

In 1994 Iraq mobilized what remained of its army to the Kuwait border in an apparent attempt to disrupt the inspection regime, the UN issued a warning and Iraq retreated (Mearsmer and Walt, 2003:55). When the Iraqi government continued to interfere with the inspections the US and Britain embarked on Operation Desert Fox which was a short bombing campaign directed against places believed to be housing WMD (Baysil, 2007: 2). The September 11 terrorist attacks on America proved to be a decisive moment for Saddam's reign in power. The US argued that Iraq's possession of WMD and its ties to terrorist groups was a direct threat to the US and its allies. The US feared that even though Iraq might not use the WMD themselves but they might pass them along to terrorist networks (Ikenberry, 2002:52). So for the Bush government the possession of WMD by a despotic and unfriendly government became a threat which had to be dealt with.

President Bush in 2002 included Iraq in a group of states he called the axis of evil; others in this group are Iran and North Korea. The Bush administration also highlighted Iraqi government's cruel treatment of its citizens and indicated that if Saddam was overthrown a new, democratic government would emerge (Baysil, 2007: 3). The USA doubted that the UNSC would authorize an intervention into Iraq but still prepared diplomatically and militarily for an invasion. In 2003 Collin Powell the then US Secretary of State gave a presentation to the Security Council showing what he called evidence that Iraq possessed WMD. This presentation left a lot to desire and the Security Council did not approve of the intervention. This did not deter the US from intervening, it formed what was called the Coalition of the Willing which were group of states which agreed to support the intervention, among these states was Britain, Italy, Poland and many others.

On the 20th of March 2003, the US-led Coalition officially began its war to oust the Ba'ath Party with a series of air strikes throughout the country (Baylis, 2007:4). Iraqi forces did not put up much of a fight most just surrendered when encountered with Coalition troops; some even threw away their uniforms and ran away (McCutcheon, 2006: 14). Those who did fight resorted to guerrilla tactics, blending with the citizens and staging surprise attacks on Coalition forces. On 9 April Coalition forces sacked Bagdad with many Iraqis celebrating the fall of the Ba'ath government with the fall of the stature of Saddam a sign of the end of an era.

5.2. Applying the Just ad Bellum Principles to the Iraq Intervention

For an intervention to be justified under the jus ad bellum it has to meet 6 characteristics, it has to have a just cause, rights intention, force used must be proportional to the objective of the mission, there must be reasonable chances of success, force must be used as the last resort after other non-violent options have been explored and there must be right authority. A just cause exists when danger has commenced or imminent, there is a just cause when protecting people against gross human right abuses, where there is a threat to international peace and security, when there is a need to preserve descent human existence and when acting in self defense against an imminent danger (Allen, 2001:23). In an international system where there is no central government to police aggression responding with force to a real or imminent threat of aggression is a sufficient just cause (Boyle, 1996: 37).

The US based its intervention in Iraq on 3 premises; firstly they argued that Iraq possessed WMD which was a direct threat to the US. They argued that rouge states like Iraq are a danger to the United States and its citizens and must be stopped at all cost. The second premise is linked to the first; they argued that Iraq had ties with terrorist organizations

especially the Al Qaeda. To a lesser extent the Bush Administration argued that Saddam had been killing and abusing human rights of his citizens for a long time and the mission was to save Iraqi people from mass slaughter (Hehir, 2001: 13). One has to investigate whether Iraq did pose a real or imminent danger to the US, whether Saddam's government had ties with terrorist organizations and whether the people of Iraq were in danger and needed external support to end their suffering.

There is no doubt that the terrorist attacks of September 11 changed rules about the interpretation of an imminent threat. Since terrorist organizations do not have citizens to protect deterrence does not apply to them. America believed that Iraq possessed WMD and those weapons would find their way to enemies of the US since Iraq had ties with terrorist organizations. To make his case that the threat from Iraq was imminent Bush's Administration invited members of Congress to briefing sessions. After the briefing session Senator Bob Graham states that there was no new evidence on the threat posed by Iraq (Washington Post, 5 September, 2002). Nancy Palosi who served in the intelligence committee argued that after the briefing there was no information which suggests that the threat from Iraq is imminent (Fisher, 2003:398). After a lengthy briefing by Secretary of Defense Rumsfeld, Senator John McCain dubbed the briefing a joke (Washington Post, 15 September 2002). The above accounts prove that the US intelligence community had no evidence that the threat was imminent.

With regards to the link of Iraq and terrorist organizations, the Bush Administration tried tirelessly to establish the link but their claims always fell short of convincing. In September 2002 President Bush argued that Iraq and Al Qaeda "work in concert" (Fisher, 2003:339). The following day he claimed that Iraq has a longstanding and continuing relationship with Al Qaeda, he further claimed there were Al Qaeda operatives being harbored in Iraq a

statement later refuted by his press secretary (Fisher, 2003:400). Senator Joe Biden (now US Deputy President) attended the briefing on the link between Iraq and Al Qaeda, after the briefing he stated that there was not enough evidence to substantiate the link (Washington Post, 27 September 2002).

On October 7, President Bush stated that Iraq was responsible for the training of Al Qaeda on bomb manufacturing and the use of poisonous chemical weapons and gases. The US intelligence also claimed that Iraqi intelligence officials met with Mohamed Atta in Prague a claim that was rejected by President Haclav Havel saying there was no evidence that meeting ever took place. This also shows that the US intelligence community could not link Saddam's Iraq with terrorist organizations but still the intervention was carried out. As far as saving Iraqis is concerned I am not of the view that there was an imminent danger of genocide or mass slaughter of the Iraqi people. It is true that Saddam's regime has a long history of human rights abuses which warranted punishment. However the scope of killing in 2003 was not that dire to warrant humanitarian intervention. The no-fly zone in Northern Iraq has protected the Kurds and by 2003 the level of killing had subsided. None of the pro intervention commentators argued that Saddam was planning an imminent mass slaughter of his people. This further proves that the US-led Coalition of the Willing did not have a just cause to intervene in Iraq.

The second requirement is the right intention, which means that the main reason for the intervention must be the ending of human suffering. Having established that Iraq possessed no WMD, that there was no link between the Saddam regime and Al Qaeda and that there was no imminent threat posed by Saddam and his government on the Iraqi citizens one cannot help but wonder what was the intention of the intervention. An intervention for purposes of domination and expanding influence is certainly unacceptable in the international

community. I am of the view that the US's intervention in Iraq was sponsored by its foreign policy which seeks to expand its power and the War on Terror is just the continuation of this strategy. The Gulf has a long history of wars fought for the control of oil resources; Iraq's invasion of Kuwait is the most recent.

The US has always seen Iraq as a rival in the Middle East and a potential hindrance to its implementation of the Global Strategy in the Middle East. So, one can argue that the intervention in Iraq was geo-political. There is no surprise there because "controlling debatably the most important Arab nation and its oil resources gives the United States significant power, not only in the region but beyond Europe, Central Asia and China" (Snauwaert, 2004:130). This point must not be seen as conspiracy theory rhetoric, because it is difficult to understand why the United States of America went out of its way (breaking international law along the way) to invade Iraq while there was next to no evidence that Iraq was in possession of WMD and had a relationship with terrorist networks.

The Bush Administration was hell bent on invading Iraq and overthrowing Saddam Hussein and his Ba'ath Party. This was highlighted by President Bush's interview on the 4th of April 2002 where he said "I made up my mind that Saddam has to go.... The policy of my government is that Saddam goes, the policy of my government is that Saddam will not be in power" (Fisher, 2003:393). Before that the United States Congress has passed the Iraq Liberation Act of 1998. The idea of one sovereign state enacting a law in its congress which decides the fate of another sovereign state is a clear insult to the UN system and all it stands for. The Iraq Liberation Act of 1998, started by recounting Iraq's invasion of Kuwait, the horrendous treatment of the Kurds in the North, the using of Chemical weapons against citizens and other human rights abuses.

This Act stated that it was the duty of the United States of America to remove the despotic Saddam Hussein from power and replace him with a democratic government. Needless to say a democratic government which subscribed to free market economic policies in the oil rich country would be advantageous to the United States. The same Act also authorized up to 97 million dollars in military supplies to opposition groups as part of the “transition to democracy” (Fisher, 2003:295). The above shows that the intention of the United from as early as 1998 has been to remove Saddam from power and replace him with a democratic government. This is a clear violation of the United Nations Charter since imposing a political system in another state is interfering with matters which fall within domestic jurisdiction. This proves that the US-led Coalition of the Willing did not have the right intention when they invaded Iraq in 2003.

The third characteristic which has to be met is the proportionality requirement, having established that there was not threat faced by the United States or its citizen from attack coming from Iraq, having conclusively shown that there was no link between Iraq and Al Qaeda or any terrorist group and also having shown that the Iraqi people were not under any immediate danger this means that whatever casualties which resulted from the conflict were unnecessary since a war without a just cause and intention is not war but murder. This means that hundreds of thousands lives (12000 being civilians) which have been lost since the invasion have been in vain, other options could have been explored since there was no risk to invade since no threat was imminent. One can safely conclude that the Coalition is guilty for the murder of those people who died because of this unnecessary invasion.

Another element which has to be met is the probability of success of the mission. This does not simply measure the military might of each state but looks at whether the intervention can create lasting peace. If we simply use the military might then it is apparent that the Coalition

forces would be likely to win which was testified by the fact that it took less than a month to capture the capital after an extensive military campaign. The Iraqi army had no air support since it had been paralyzed by the no-fly zone which was implemented and enforced by France, the United States and Britain. The Iraqi army was also poorly resourced and many of them were not motivated to fight the war. On the other hand the United States has the world's most efficient military; it has the most advanced conventional military technology, it spends billions of dollars in the military every year and accounts for more than 40% of all military expenditure in the world. On top of that it was backed by Britain who also has a very strong military.

On the grand scheme of things the invasion has not established the prospect for a peaceful international system. The pre-emptive strategy deployed by the United States is likely to cause a security dilemma in the international system. This strategy in a long run is likely to create a situation where other states have to arm themselves in self defense because they do not know when they will be unjustifiably linked to terrorism organizations or a plot to attack the United States and its allies. This has already begun especially in the states which have been branded the axis of evil by George W. Bush. Iran is currently being accused of developing nuclear weapons and is being linked to terrorist organizations. If Iran is indeed developing nuclear weapons that would be a logical response to protect itself from a potential pre-emptive strike from the United States.

The possible possession of nuclear weapons by North Korea might be one of the few reasons why the United States has not invaded the country which it considers as a rouge state. In the long run the doctrine of pre-emptive strike might lead to nuclear proliferation especially in those countries which are branded the enemy of the United States of America. With American being the judge and jury on who is a threat and who is friendly, this leaves a lot of

loopholes which might create fear in other states in the system. This aggressive strategy by the United States might increase international terrorism than decrease it, it is being seen being arrogant and having no respect for rules this might motivate terrorist organizations to attack and it certainly makes recruitment easier since this strategy makes the United States look exactly as it is branded by terrorist organizations. This shows that even though the US-led Coalition swept through Iraq with ease the legacy of that intervention might be a threat to international peace and security in the future.

Another characteristic that has to be met before the intervention is the last resort principle. Other methods short of military intervention must have been explored before recourse to armed conflict. This does not mean that all option must be exhausted before armed intervention is carried out; it simply means that there must be proof that they have been tried and failed or was likely to fail. Also, where a threat is imminent and delaying the intervention would result in mass murder then there is no need to explore other options. However, as it has been shown there was no imminent danger either against the Iraqi citizens or the American public therefore an armed intervention was not justified. Nonetheless it is useful to determine whether the armed invasion was the last resort.

There was no mass killing happening in Iraq in 2003, but Saddam had been abusing human rights throughout his reign. So if the United States and its allies wanted to correct the mistakes of the past they should have advocated for criminal prosecution for Saddam and his affiliates. The International Criminal Court could have played a major role in this process, like it did with Charles Taylor of Liberia and Slobodan Milosevic of Yugoslavia. There is no guarantee that this could have worked but if they really had the interests of justice at heart they would have explored it since there was time and no imminent threat. Perusing justice would have

laid a better foundation for Iraq in the post-Saddam era; it would bring back belief in the Iraqi community in the rule of law.

Having the stigma of criminal charges hanging against you as a leader might decrease your popularity, especially serious crimes like crimes against humanity and genocide (Roth, 2005:8). This might have led to Saddam Hussein's removal or it could have made him change his style of leadership by decreasing human rights abuses. If the United States devoted half as much time pushing for a trial for Saddam and his cronies the Iraqi situation would have been resolved without much bloodshed. This move might even have been popular in the Security Council and the international community as a whole.

Since there was no imminent threat from Iraq the United States should have waited for the inspections regime to come up with reports before it invaded? However, the United States was pessimistic that the Security Council will not authorize regime change in Iraq. This pessimism was not unfounded since China, Russia and France together with the UN chief WMD inspector Hans Blix consistently tried to avoid the invasion of Iraq (Baylis, 2007:3).

The right authority requirement is twofold in the case of Iraq. Firstly with regards to the claim that Iraq possesses WMD and had ties to terrorist groups, that decision to wage war rests with the US Congress and the Bush Administration had no problems securing it. Secondly with regards to the abuse of human rights by Saddam and his government the right to intervene in that instance rests with the Security Council. The Security Council would have to determine if the human rights abuses were a threat to international peace and security as they had done in 1991 in resolution 688. The United States did try to secure a resolution allowing for an invasion in Iraq, Powell's presentation where he presented "evidence" that Iraq possessed WMD did not manage to convince members of the Security Council. Added to

that, key allies of the United States in the form of France, Germany and Turkey did not agree to the invasion. Turkey went as far as refusing to allow the US from launching its missiles on its home soil against Iraq.

This proves that this was an unpopular intervention but the US continued with it anyway. This means that the invasion of Iraq by the Coalition was illegal. Out of the 6 requirements of *jus ad bellum* the US-invasion does not even meet one. However one must not that sometimes it is difficult to satisfy all the requirements, in that case the just cause, intention and right authority must be present. Even with this lesser standard the US-led Coalition did not satisfy conditions required to wage a war.

Chapter 6: The Coalition's Conduct during the Intervention:

The analysis of many commentators and scholars has tended to focus on the *jus ad bellum* when analyzing the legality of the Coalition of the Willing's intervention in Iraq. They have not adequately covered the importance of determining the legality of the conduct of the Coalition forces during the intervention and occupation of Iraq. The importance of fighting according to recognized international rules cannot be understated. This chapter seeks to determine whether the Coalition did follow the established rules of combat. *Jus in bello* has its underpinnings on the doctrine of double effect which was coined by Saint Augustine, what the doctrine entails is that action has intended consequence and unintended consequences. According to this doctrine the unintended negative effects are excusable if and only if (1) the desired end is good in itself, (2) only the good effect is intended, (3) the good effect must not be produced by the evil effect and (4) the good effect must outweigh the evil effect (Ramsey, 1961: 43 & 48-9).

Walzer criticizes the double effect theory for being too lenient, for him not intending the death of civilians is not enough to excuse the death of civilians (Walzer, 1977: 156). So for Walzer and I agree with him intent should be replaced by foreseeability. *Jus in bello* regulates the kind of weapons that can be used during combat, those weapon which are prohibited by the international conventions such as nuclear, chemical and biological weapons are not allowed. There is a distinction between combatants and non-combatants. Only combatants may be targeted, it is wrong to intend the deaths of non-combatants. There should be proportionality between the force and resources used and the desired outcome. Also prisoners of war should be treated with dignity since once captured they are no longer a threat to the security of the captors.

It suffices to say that the Coalition forces and the Iraqi forces did not use weapons which are prohibited by international law since the conflict was fought with conventional weaponry. Regarding the proportionality requirement the war was costly to America in both finance and soldiers' lives and it ravaged the Iraq nation. According to a study by the Eisenhower Research Project (2011: 2), 4,457 US troops were killed in the Iraqi war. Saddam Hussein's regime in Iraq was brutal and that can never be disputed but it had not reached dire levels that it would need an intervention, the brutality of Hussein was evident in the use of biological weapons against the Kurds in the north and against Iran but by the time of the intervention (2003) the regime's brutality had ebbed. The war in Iraq claimed 125,000 civilian, 10,000 insurgent, 9,922 security forces, 144 journalist, 1,537 US contractors and 318 allies' lives (Eisenhower Research Project, 2011: 5). In total the war claimed more than 151,471 lives, more than 218462 wounded and millions displaced. As noted above even though Saddam's regime had been brutal by the time of the intervention it the brutality had subsided so this much human loss and suffering is not justified. Looking at it more people have been killed in Sudan than those who died under Saddam but no intervention was undertaken which goes to show that the US was primarily interested in fulfilling its policy to displace Saddam. The war has cost the US and Iraq billions of Dollars which for a war that was not supposed to be in the first place that has been too much of a cost.

The main focus of the study is civilian casualties and the treatment of Prisoners of War (POW). If there is anything the NATO bombardment of Yugoslavia in 1999 has taught us is that there is great value in distinguishing between civilian populations and belligerents. Roughly a quarter of civilian deaths in Yugoslavia were caused by clustered bombs in populated areas conducted by NATO forces (Roth, 2003:11). The principle of discrimination is very important in an effort to save innocent lives. As noted above civilian casualties might

happen collaterally and that is expected but the principle of foreseeability must be used. “Discrimination in the context of *jus in bello* is not meant in a negative context a la racial discrimination, but simply in the manner of distinguishing between groups on the basis of some characteristic that separates one from another” (Cook 2004, 33). During conflict and times of war characteristics usually boils down to the basic question of whether an individual falls under the combatant or non-combatant status. Discrimination forbids purposefully targeting non-combatants (Courtney 2002, 126).

According to Cook (2004:33), A combatant is someone actively engaged in hostile actions against an opposing force or is a member of the opponent group’s uniformed armed forces. A combatant loses his or her immunity from direct attack because of a choice, a choice to actively engage in hostile acts. As noted in preceding chapters the Iraqi forces sometimes employed guerrilla tactics against the Coalition forces. “In guerrilla warfare and the modern war on terrorism, the question of discrimination becomes very difficult to differentiate, in these kinds of conflicts aggressors go to great lengths to disguise their combatant status by blending in with the non-combatant population, they do not wear uniforms or insignias to openly identify them to friend and foe alike, in these cases one must exercise every available targeting option in order to insure that only correct and viable targets are engaged” (Holmes, 2011:50).

However it does not seem as though the Coalition forces took these precautionary measures to spare the lives of civilians. There were widespread claims that Coalition forces mistreated and even murdered Iraqi whom they believed were spies loyal to the Ba’ath Party (Baylis, 2007:7). “According to a Human Rights Watch report of December 2003, Coalition efforts to bomb leadership targets were an abysmal failure” (Roth, 2003:11). The record of 0 successes

in 50 targets reflects a targeting method that was indiscriminate and allowing bombs to be dropped when there was belief that a leader was somewhere in the community thus resulting in loss of innocent lives. Using the reasonable foreseeability test it is clear that when you drop a bomb without knowing exactly where the target is you may cause civilian deaths. The casualty count of more than 120 thousand also shows that the methods employed did not properly discriminate between the armed sections of society and non-combatants. On this count the Coalition failed to live up to its international law duties to protect non-combatants.

The treatment of Prisoners of War has been an issue of international concern for a very long time, this issue got even more attention after the Second World War. The issue of treatment of POW is covered by the Geneva Conventions. The Geneva Conventions provide a framework designed to safeguard the rights of soldiers, Civilians and prisoners in the time of war (Hersh, 2004:2). The Geneva Convention is one of the most rectified international treaty in the international system, with more than 194 states in total including the United States of America. Countries that are found to be contravening the Geneva Conventions can be held accountable for war crimes. Common Article 3 of the Geneva Conventions illegalizes torture, cruel, inhuman and degrading punishment. It also protect Prisoners of War against the infringement of their human dignity by their captors.

“At the April 2004 argument in Hamdi, Justice John Paul Stevens asked Deputy Solicitor General Paul D. Clement: "But do you think there is anything in the law that curtails the method of interrogation that may be employed?" "I think that the United States is signatory to conventions that prohibit torture and that sort of thing," Clement replied. "And the United States is going to honor its treaty obligations," he added; yet he saw no "basis for bringing a private cause of action against the United States” (Amann, 2005:2090). Clement reaffirmed the administration's assurance to stand by its obligations under the Convention Against

Torture-including prevention of "acts of cruel, inhuman or degrading treatment or punishment.

In late April 2004, the United States media began to report on alleged torture of Iraqi prisoners under their custody. Pictures which emerged from the notorious Abu Gharib prison shock the world. "The pictures show Americans, men and women, in military uniforms, posing with naked Iraqi prisoners, there are shots of the prisoners stuffed in a pyramid, and in most of the pictures the Americans are laughing, posing, pointing, or giving the camera thumbs up" (Amann, 2005:2091). Brigadier General Mark Kimmitt, deputy director of operations for the U.S.-led coalition in Iraq, said of the photos: "what would I tell the people of Iraq?" "This is wrong. This is reprehensible, but this is not representative of the 150,000 soldiers that are over here.' I'd say the same thing to the American people: 'don't judge your Army based on the actions of a few.'" (Amann, 2005:2091). Public outcry spread as the images, and more like them, appeared and reappeared in newspapers and magazines, on television, and on websites throughout the world. President George W. Bush quickly registered his "deep disgust"; Secretary of Defense Donald H. Rumsfeld called the conduct "totally unacceptable and un-American" (Amann, 2005:2091).

"An army report found that "numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees" at Abu Ghraib; among these were incidents of kicking, punching, and other physical abuse, coerced masturbation and other sexual humiliation, forced nudity, and the use of unmuzzled dogs as weapons of intimidation" (Taguba Report, May 27, 2004). Among other things the prisoners were forced into performing sexual act on each other which was against their personal and religious views. Other methods included sensory deprivation, hooding, and forced nudity; removal of religious items; "use of stress positions (like standing), for a maximum of four hours";

playing on "phobias to induce stress"; and claiming that the interrogator came "from a country with a reputation for harsh treatment." The most severe techniques included the "use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family," "use of mild, non-injurious physical contact," and "use of a wet towel and dripping water to induce the misperception of suffocation (Amann, 2005:2093).

Even though the military, Secretary of Defence and President Bush publicly denounced the act it is difficult to believe that these were selected incidents. The Global War on Terror brought a new dimension to interrogation techniques. Puar (2004) argues that what happened in Abu Ghraib was the implementation of the US policy on its fight against terrorism rather than an act of a few wicked soldiers. She argues that the US knew very well that if they take pictures of Muslim man naked and having sexual relations with each other (which is a taboo in the religious Muslim world) would embarrass the man. US policy was to blackmail these men by saying if they refuse to spy for them these pictures will be released to their friends and families. This type of punishment clearly contravenes the Geneva Conventions.

Even though the US did try those who were responsible, convicted them and gave they dishonourable discharges, I am of the view that the US knew about what was going on in Abu Ghraib, the marines were not punished for doing what they did because they were merely carrying out a US policy but they were punished for being sloppy and caught. The Coalitions action during the intervention did not subscribe to the set rules. The shocking torture in Abu Ghraib and the lack of properly coordinated targeted killings which spared civilian lives proves that the US did not satisfy the conditions of justice in war. Also, this justifies the claims by terror organisations that the United States and the West are immoral; it provided

these organisations with a recruitment tool. This certainly undermines international peace and stability.

Chapter 7: The Coalitions Conduct after the Intervention

The *jus post bellum* is a more recent addition to the just war theory. It seeks to determine the conduct of the intervening state/s after the conclusion of armed hostilities. Since it is a new addition scholars have not adequately explored it and this chapter seeks to explore the conduct of the Coalition at the end of the Iraq intervention. To judge whether the *jus post bellum* requirements are met is difficult because some wars end with surrender, some with an armistice, some end with the victors occupying the territory of the vanquished, some without a foreign occupation (Williams and Caldwell, 2006:315). Some wars end with regime change, some without, some are followed by continued resistance or unconventional war, and some are followed by a complete cessation of violence (Williams and Caldwell, 2006:315).

Some end with the commitment of international organizations to build peace, some end without international interest (Williams and Caldwell, 2006:315). Each of these conditions bears on the question of how justice is to be done in the aftermath of war; of course, it is not only the situation that exists after the war that affects the quest for a just peace, much that happened during the war will be significant(Williams and Caldwell, 2006:315). Were non-combatants generally spared or not? Were economic assets farms, factories, and infrastructure generally destroyed or preserved? Were populations displaced? Were atrocities committed? Were limits the laws of armed conflict observed? (Williams and Caldwell, 2006:315).

There are two elements of *jus post bellum* which must be met, one Just Cause for Termination — A state must terminate war if there has been a reasonable vindication of the

rights that were violated in the first place, and if the aggressor is willing to negotiate the terms of surrender (including a formal apology, compensations, war crimes trials, and perhaps rehabilitation). 2, there must be a right intention which means the members of the losing faction should not be subjected to acts of revenge. In the case of a humanitarian intervention the first and second requirements largely rest on whether the interveners have a post war plan. This chapter is going to investigate whether the Coalition did have a post war plan for Iraq.

Standing on the deck of the aircraft carrier USS Abraham Lincoln with a banner in the background which read “mission accomplished”, President Bush announced to the whole world that combat missions in Iraq had come to an end. This statement meant that armed hostilities against pro-government forces were over and it was time to prepare for peace. Formal occupation of Iraq by the Coalition was very short with the Coalition Provisional Authority dissolving itself only a year after it was formed. Formal powers were then transferred to the Iraqi Interim Government. Now the all important question comes up, did the Coalition have a game plan for post-conflict Iraq? This study argues that no; it did not have a plan.

According to Diamond (2005:27), the Coalition did not have a post-war plan for Iraq. Former US Ambassador to Croatia Peter Galbraith concurs with Diamond, attributing the fiasco in Iraq to the shortcomings of Bush as a leader (Galbraith, 2006:32). He argues that the Bush Administration never settled bitter policy disputes and allowed competing elements to pursue totally opposed policies at the same time. Thomas Rich, a military correspondent of the Washington Post argued that the emphasis on military planning by the Bush Administration

was at the expense of developing a grand strategy for post-war rule (Ricks:2005). Top military leaders also criticized the absence of a post-invasion plan, arguing that even though proper planning was present for combat operations (evidenced is the ease with which Coalition forces took Bagdad), there was not enough planning for peace (Taras, 2006:35). American policy makers thought that Iraqi people would welcome their help and everything would fall into place almost magically, the events which followed after the conclusion of hostilities proved them totally wrong.

According to Jehl and Sanger (2004) in January 2003 the National Intelligence Council, predicted that an American-led invasion would increase support for political Islam and would likely result in a divided society prone to violence and instability. They further argued that the invasion would likely result in domestic groups fighting with each other for the control of the new Iraqi state. They argued that the violence at worst would lead to a civil war in Iraq. For some reasons the Bush Administration decided to ignore this warning and invaded without a plan and has been pointed above, the results were catastrophic. The Iraqi state was raved by the war, law and order broke down, there was widespread looting, civil services like, school, fire fighters, hospitals and the armed forces shut down.

The lack of a post-invasion plan meant that religious tensions which had been kept at bay by the secular Ba'ath Party erupted. This immediately led to low intensity warfare between these groups. Had the US-led Coalition made plans for the containment of these differences they would have been kept at a minimum if not completely prevented. When the Coalition Provisional Authority dissolved and gave power to the interim government cracks were

visible from the word go, the interim government was unstable and weak because of the infighting of those with political interests and leadership aspirations, this made the interim government heavily reliant of US support for survival.

The 2005 elections and the subsequent adoption of the new constitution did not help the situation; it became clear that the transition to democracy would not be an easy one. The Coalition faced a challenge that very few of them spoke Arabic or knew anything about Iraq (Baysil, 2007:7). This meant that they had to rely on interpreters to communicate with Iraqis and the downside of that is that some of them were spies for pro Ba'ath Party military groups and it undermined their efforts, also, those who gave translation services were braded spies of the Americans and they were killed by insurgents (Baysil, 2007:11). Had there been proper post-war plan all these would have been prevented.

Americas plan to weed out all those who have been associated with the Ba'ath government in the military and in the police services was also not an informed one. This led to some people being disgruntled and deciding to join the insurgency because they had no other way to support their families and their only skill was war. A better plan would have been to only root out those who were in senior positions and those directly responsible for war crimes and integrate the rest to the new army and the police force. This would have been a better way to ensure there is reconciliation, otherwise those rooted out because of their association with the Ba'ath Party saw their exclusion as revenge and the rules of *jus post bellum* are against revenge against the losing side.

The lack of planning for a post-invasion period also meant that there was no plan to demilitarize the society. Even though the security sector reform did take place the civilians still remained heavily militarized. These weapons have been used by the insurgency which has transformed into sectarian militias; these militias carry out revenge killings among other crimes. This has meant that the Iraqi civilians have suffered a great deal and inter-communal violence has become common place. Had there been a grand plan to demilitarize the citizenry after the declaration of victory by Coalition force this would have provided some level of comfort for the Iraqi population but the absence of such plan has meant that they still live in fear and their rights are still being abused maybe more so than in the time of Saddam Hussein.

In 2006-2008 the sectarian violence was at its peak which led to others to consider it a civil war. This led to close to 5 million Iraqis to flee their homes with more than half of them fleeing to neighboring countries. This sort of situation is clearly a threat to international peace and security as was the case with India and East Pakistan in 1971. The American forces officially return home in December 2011 after widespread appeal from American citizen for their return. Sectarian violence is still rampant to this day, with more than 200 Iraqis killed in sectarian violence this month alone (May 2013), (The Independent, May 27 2013). One can safely conclude that the lack of a grand post-invasion plan by the US and its allies for Iraq meant that they did not satisfy the *post bellum* requirements. As noted above for a mission to satisfy the *jus post bellum* it should correct the wrongs which started the war in the first place, this invasion didn't because even today Iraqi citizens are still living in fear and their human rights are still being abused and according to the UN 40% of the Iraqi middle class has fled and is unwilling to come back because of fear of reprisals.

Chapter 8: Recommendations

This study has found that the US-led Coalition did not meet the requirements set out in the just war tradition and have contravened international law. It has argued that the Coalition failed to meet all the three aspect of the just war tradition thus making it an unjustifiable war. As David Ignatius (2003), eloquently put it, the only coherent rational for the war in Iraq is that it toppled a dictator. This section seeks to find ways that can be used to prevent unlawful interventions and punishment for those who contravene the laws.

What has become apparent in previous chapters in the fact that powerful countries have often intervened in the domestic affairs of other countries with the hope that the Security Council will endorse their mission retroactively. This has been done mainly where the intervening county believes the resolution to authorize the intervention will be blocked by a veto from one of the P5. This was the case with the United States in 2003, the United States could not get the resolution they went behind the Security Council's back so to speak but unfortunately their mission has received widespread distain. My argument here is that if the Security Council is democratized and the veto removed there will be no need for countries to go behind the Security Council's back because of the fear of the veto.

“The Security Council is without a doubt the most powerful organ of the United Nations, the Charter has given it primary responsibility for the maintenance of global peace and security and its decisions are binding for all Member States, its limited geographical balance combined with five exclusive permanent seats that have veto powers, however, makes the Security Council less representative than desired by many Member States especially emerging ‘middle’ powers – and they are increasingly calling for a restructuring of the Council” (von Freiesleben, 2008). The political landscape is significantly different to the one

which prevailed when the UN Charter was signed, it must move with the times or it will fall into irrelevance.

The democratization of the Security Council can bestow to it legitimacy and authority which it currently lacks. The debate on Security Council reform is an old one which has usually been met with resistance by the permanent members. Permanent members seem disinterested in activities which will weaken their hold to power in the United Nations. My argument here is that there should be an attitude change from the permanent members. They should stop seeing change as an enemy but as a sign of progress and relevance of the Security Council. The veto should be sacrificed for the benefit of the United Nations system, because the frequency with which powerful countries abuse their power to invade smaller/weaker countries is slowly eradicating the relevance of the United Nations especially the Security Council.

The democratization of the Security Council would be useful since the UN System seem to promote democratic values, so leading by example might lead to those countries which are not democratic to follow suit. And as the democratic peace theory has taught us, democracies do not fight each other, so this move might be the right thing to do to ensure international peace and stability. A Security Council system which ensures proportional regional representation which rotates every 3 or 4 years could be a great thing for the UN since it will allow fresh ideas from all over the world and that might help its cause in ensuring international peace and stability. The United States which is the sole superpower should be leading this debate because it is widely seen as the model of democracy, it should see this as an opportunity to consolidate its power and redeem itself rather than see it as a threat to its

hegemony. The removal of the veto would benefit the Council a great deal because a lot of human lives have been lost because of failure to act from the permanent members.

When the Security Council reform has been agreed upon and adopted the next step should be to make the minimum requirements which must be met for an intervention to take place and there must be punishment dished out to those who do not stick to these minimum requirements. I think with the veto gone every country would gladly go to the Security Council to request an authorization and it would be decided on facts and votes if the intervention can be authorized without the hindrance of the veto. I think since there is a general agreement that there is an emerging norm in the international system which is the responsibility to protect, those norms should be used as the yardstick before an intervention is authorized. These norms are that there should be a right intention, just cause and right authority. To add to that criterion, the means used in the intervention should also respect human rights and there should be a proper plan for the post-conflict era.

For these rules to be respected there should be some punitive actions taken against those who break them just like in domestic legal systems. The punishment will be a reminder to those strong nations who invade weaker ones that might is not always right. A democratic Security Council acting under Chapter VII should decide the appropriate punishment for a country which breaches the rules. The High Level Panel on Threats, Challenges and Change must work hard in determining areas of potential conflict which might undermine international peace and stability in that way conflicts could be solved before they become full scale wars. An early warning system would make a world of difference and would make a world a secure

place. For these efforts to succeed the Security Council permanent members must have a change of attitude and see the democratization of the Council as an opportunity for peace and not as ceding their powers.

Chapter 9: Conclusion

The invasion of Iraq by Coalition forces in 2003 has left the international system in disarray. The ability of the powerful countries to evade established international rules and norms which guide the use of force in the international system has dealt a fatal blow to the United Nations system. The immortal voice of Sun Tzu has resurfaced as the strong do what they like and the weak suffer what they must. Without seeking to be sensationalist this is a dangerous path which might lead the United Nations to suffer the same fate as its predecessor the League of Nations. This norm should be curtailed to ensure that the original mandate of the United Nations as stated in the Charter is maintained.

This study has traced the development of the doctrine of intervention from natural law philosophers through the 19th century, the 20th century to the present. Over the years the doctrine as international norms evolved. This study has found that absolute sovereignty is no longer the predominant norm in the international system as sovereignty is slowly being defined as responsibility. This study has also found that the invasion by US-led Coalition of the Willing was unlawful since it did not follow the just war tradition which is embedded in the UN Charter. The study suggests that there must be a move away from only using the *jus ad bellum* to determine the legality of the intervention. The *jus in bello* and *jus post bellum* are equally important in judging the legality and morality of interventions. It has argued that the United States-led Coalition did not have a grand plan for post-invasion which has facilitated violence in Iraq which still persists to this day.

This study has found that the chief cause of unauthorized unilateral interventions is the fear that taking the matter to the Security Council will prove fruitless because it will be blocked by the veto. This means the veto is the real enemy to international peace and stability. The

study suggests that the democratization of the Security Council to represent all continents would ensure international peace and stability and would allow the Security Council to regain its authority and legitimacy. The study also suggests that there should be punishment for those who contravene international laws especially with regards to the use of force and Chapter VII rules are best placed to do this. The study further suggests that the High Level Panel on Threats, Challenges and Change should be more proactive in its approach to contain conflicts before they become full-blown wars.

The situation in Iraq remains serious, the reemergence of sectarian violence in the last few months points to the path of civil war. Iraq remains the victim of an unnecessary war and its affects are still being felt 10 years since Coalition forces laid siege to Iraq. The conflict in Syria has had spillover effects and has accelerated sectarian violence in Iraq. The future of Iraq remains a dim one and Iraqi people still remain the victims of an unnecessary and illegal war.

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Douglas Jehl and David E. Sanger, "Prewar Assessment on Iraq Saw Chance of Strong Divisions," *New York Times* (September 28, 2004). The National Intelligence Council is an independent group, made up of outside academics and long-time intelligence professionals. The C.I.A. describes it as the intelligence community's "center for midterm and long-term strategic thinking." Its main task is to

produce National Intelligence Estimates, the most formal reports outlining the consensus of intelligence agencies. But it also produces.

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