

An Illegal but Justified War

Leiden University College The Hague

Semester 1; Block 1; 1000-word Essay - Group B

Course: Global Challenges: Peace & Justice

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Deadline: Saturday 17 September 2016 23:59

Word count: 1099

“We must always take sides. Neutrality helps the oppressor, never the victim.
Silence encourages the tormentor, never the tormented.”

- Elie Wiesel (1928-2016)

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Saddam Hussein conducted the genocidal al-Anfal campaign against the Kurds in the 1980's, killing over 180.000 Kurdish civilians (Montgomery 2012). A report devised by the United Nations stated that the atrocities that were conducted by the Ba'ath regime of Saddam were "so grave and [...] of such a massive nature that since the Second World War few parallels can be found" (Hitchens 1992). 15 Years later the United States invaded Iraq in order to prevent Saddam from using Weapons of Mass Destruction and pose a substantial threat to the U.S. and the international community as a whole (Danju, Maasoglu and Maasoglu 2013). Nevertheless, critics argue that the invasion of Iraq was illegal and indeed, to a certain extent these legal arguments are valid; however, one argues that these legal complications do not imply that the invasion was not justified for a variety of reasons, such as to prevent intensification of grave human rights infringements – viz. the use of chemical weapons against the Kurds – and ceasing the Iraqi support for terrorist structures (Fisher and Biggar 2011).

In the process of analyzing the justification for the Iraq war, one utilized the seven essential principles of the Just War Theory¹. The focus of analyses is primarily on the first 5 principles which are embodied in Jus ad Bellum, as the major objective is to determine to what extent the invasion was justified according to the Just War Theory. For one argues that the laudable US objectives and military apparatus attempted to conduct the war in such a proportionate manner that it would cause minimal civilian casualties, although collateral damage may be intrinsic to conducting warfare (Royal 2002). Therefore, one argues that the two principles of Jus in Bello are sufficiently respected, and inferior over the Jus ad Bellum principles, which primarily contemplates the degree of justification.

The invasion of Iraq was conducted by the United States, and thus a legitimate authority which is authorized to utilize military force in order to restore injustices and protect fundamental human rights (Apeldoorn 2013). It must be noted that the terrorist attacks against the United States of September 11th

¹ Here, the seven fundamental principles of the Just War theory are: Legitimate Authority, Just Cause, Peaceful intention, Last Resort, Reasonable Hope of Success, Proportionality and discrimination of Noncombatant Immunity. The former 5 principles are embodied in the Jus ad Bellum (Justice on the way to war), while the latter two principles are embodied in Jus in bello (Justice in the midst of war) (Powers 2003)

dramatically changed the US foreign policy: essentially embodied in the worldwide War Against Terror declared by George W. Bush. This declaration provided two choices for the international community: either you backed the US and its commitment to combat worldwide terrorism, or you were a threat to the US and the Free World (Covarrubias, Watson and Lansford 2009).

From a realist viewpoint, the US classified Saddam Hussein as an extensive threat, not the least for supporting and providing headquarters to terrorist organizations and radical Palestinian groups within Iraq (Council of Foreign Relations 2005).

Here, it is vital to note that Saddam supported similar Islamic terrorist structures - aligned to Al-Qaeda - as those who had committed the 9/11 attacks (Zakheim 2011). Moreover, based on the aggressive and expansionist track record of the Iraqi regime – illustrated by the invasion of Kuwait and use of weapons of mass destruction (viz. nerve gas) against its own population – one was likely to assume that Saddam posed an extensive and unpredictable threat to the region and beyond. The Bush administration projected a similar line of argument, and consequently opted to take control of the situation before Saddam could utilize destructive weapons (i.e. Weapons of Mass Destruction) (Danju, Maasoglu and Maasoglu 2013).

As a result, critics argue that the fourth principle of ‘last resort’ is not completely exhausted, because the US did not succeed to continue its repeated reconciliatory efforts with the Iraqi regime. Considerably, one may raise the question why the US government should in principle negotiate – let alone make compromises and exhaust diplomacy – with a regime that does not possess any legitimate democratic authority, and rules its population through persecution (Royal 2002). Moreover, international sanctions have proven to unnecessarily intensify the suffering of the 22 million Iraqi people, and essentially empowered the anti-democratic and US-hostile policies of the regime (Khadduri 2000).

Therefore, one argues that the US attempted to protect itself from further terrorist attacks while simultaneously empowering peace in the Middle East by conducting a preventive mission. The objective here was to eliminate the support for terrorism and deter aggressive acts by the Iraqi regime (Nordenman 2013). It is crucial to note that that world of 21st century is more complex and multi-

dimensional than the era of Aquinas, who devised the foundation of the Just War Theory (Thistlethwaite 2002). Consequently, and especially after the September 11th attacks, one argues that the liberation of Iraq (viz. the US invasion) was sufficiently backed by the Just War Theory – provided that it was used as a guiding instrument rather than a simplistic checklist for justifying military action (Thistlethwaite 2002).

Contradictory, most critics base their arguments on the detailed legal implications and argue that the deviation from preemptive war to preventive war might consolidate a dangerous standard in the international state system (Powers 2003). However, they might fail to sufficiently take into account the tense contextual elements of emerging worldwide terrorism and grave human rights infringements after the September 11th attacks, and the primary role which the Iraqi regime fulfilled herein (Kirchner 2014). What is more, these complications according to the Just War Theory tends to be externalized by customary International Law, as it essentially indicates that a state should first be attacked, before it may take valid military action; this basically increases the vulnerability of peace-seeking states while simultaneously providing more leverage for potential perpetrators to conduct their crimes.

A frequently raised question is: ‘‘if not Iraq, who, and if not now, when?’’. The intensification of worldwide terrorism networks and the increase of anti- US doctrine in the Middle East, explains how the US took these threats seriously, and therefore took unilateral military action as the world superpower in the international community. Here, the realist approach of the US in the anarchic international state system may have empowered the justification to deviate from certain Just War principles, and deal decisively with a ruthless and aggressive regime (Danju, Maasoglu and Maasoglu 2013).

Arguably, the US has an obligation to stay at the forefront in the fight against terrorism and therefore anticipate upon supposed threats. Hereby, the Just War Theory provides guidelines to assess the degree of justification for military action, although the process of deliberation cannot be simplified to such an extent that vital contextual factors and fundamental human rights are depreciated.

Bibliography

- Apeldoorn, Laurens van. *Just War Theory*. The Hague: Brill | Nijhoff, 2013.
- Council of Foreign Relations . *Terrorism Havens: Iraq* . 1 December 2005. <http://www.cfr.org/iraq/terrorism-havens-iraq/p9513> (accessed September 15, 2016).
- Covarrubias, Jack, Robert P. Watson, and Tom Lansford. *America's War on Terror*. Farnham: Routledge, 2009.
- Danju, Ipek, Yasar Maasoglu, and Nahide Maasoglu. "The Reasons Behind U.S. Invasion of Iraq ." *Procedia - Social and Behavioral Sciences* , 2013: 683-684.
- Fisher, David, and Nigel Biggar. "Was Iraq an unjust war? A debate on the Iraq war and reflections on Libya." *International Affairs*, 2011: 692.
- Hitchens, Christopher. "Struggle of the Kurds." *Official Journal of the National Geographic Society Washington D. C.*, 1 August 1992: 46.
- Khadduri, Walid. "U.N. Sanctions on Iraq: 10 Years later." *Middle East Policy*, October 2000: 157.
- Kirchner, Magdalena. "'A good investment?' State sponsorship of terrorism as an instrument of Iraqi foreign policy (1979–1991)." *Cambridge Review of International Affairs* , 2014 : 522-524.
- Montgomery, Bruce P. "Saddam Hussein's Records of Atrocity: Seizure, Removal, and Restitution." *The American Archivist*, 2012: 327.
- Nordenman, Magnus. "The End of the War on Terror and the Future of the War on Terrorism ." *Mediterranean Quarterly* , 2013 : 7-10.
- Powers, Gerald. *Would an Invasion of Iraq be a "just war"?* . Special Report , Washington : United States Institute of Peace, 2003.
- Royal, Robert. *Just War and Iraq* . Special Report , Washington : United States Institute of Peace , 2002.
- Thistlethwaite, Susan Brooks. *Just War and a Post-Modern World* . Special Report , Washington : United States Institute of Peace , 2002.
- Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, 2006.
- Zakheim, Dov. S. "What 9/11 Has Whrought ." *Middle East Quarterly* , 2011: 3-13.