The Dhaka University Studies, Part-F Vol. XVI (1) : 1—18, June 2005

IRAQ WAR 2003 AND THE APPLICATION OF JUS AD BELLUM & JUS IN BELLO

Nakib Muhammad Nasrullah

Introduction

The US led war in Iraq in 2003 is the supreme concern of the present International Community in terms of its legality and in the consideration of resulting humanitarian consequence. In the event the global trend towards peace and security is advancing, the biggest super power United States of America is resorting to arbitrary action against several states in violation of international law, sometime, under the cover of combating terrorism, sometime under another pretext. Following II September, 2001, the United States of America conducted both air and land attack against Taliban Government in Afghanistan, accusing them of their involvement in that saddest ever incident, later the recent US invasion in Iraq is a glaring example of their arbitrary action. Many attempts have been made to justify their attack and occupation in Iraq.

The invasion of Iraq by the armed forces of United State of America was first undertaken under the cover of "disarming Iraq from weapons of Mass-Destruction (WMD), but in course of the invasion the reason for the invasion was changed to "liberation of Iraq from oppressive government of Saddam Hussain." The Bush administration in order to legitimize the said attack announced it as a preventive war in coalition with other states describing as the 'coalition of willing'. The Bush Doctrine of Preventive war which was published in the National Security Strategy in September 2002 contemplates attacking a state in the absence of a specific evidence of a pending attack. This doctrine marks a departure form the prohibition of the use of force under international law.[1] On the other hand the attack failed to gain the approval of Security Council under Chapter VII of the UN. Therefore, many international lawyers believe that attack was illegal and amounted to a war of aggression. The permitted attack is limited to the exercise of right of self-defence as per Art. 51 of the UN Charter.

Apart from the question as to the legality of the war itself, a number of breaches of international humanitarian laws have already been reported

---

1. Duncan, E J, Currie, Preventive war and International Law after Iraq,at http/ www.globelaw/com/Iraq

following the occupation including failure to prevent looting, allowing break down of law and order situation in Bagdad, failure to provide humanitarian assistance and shooting of civilian during protest.

This paper Primarily attempts to address the application of Jus ad bellum in US invasion over Iraq, that is the legal justification of use of force against Iraq by the US, Secondly it addresses the application of Jus in bello in the same, that is, how far the consequences of war are in violation of the laws and customs of war, in particular, the obligations of belligerent occupants of attacked territories.

Methodology : In accomplishing this work relevant international legal instruments, lawyers and experts' opinions, articles of books and research journals, media's reports will be reviewed and duly examined. The whole work will be mainly divided in two parts, part one will be on the legality of Iraq war and second part will be on the determination of the legality of invaders' or belligerent activities during the conflict and their obligations in occupied territories. Every chapter will consist of as many issues as needed.

Part – I

Legality of Use of force against Iraq

The Use of force in International Law

The United Nations Charter provides the framework for the use of force in international law. Almost all states are parties to this Charter including United States, United Kingdom. The Charter emphasizes that peace is the fundamental aim of the United Nations and is to be preserved at all possible situations. The preamble expresses a determination to save succeeding generations from the scourge of war, to practise tolerance and live together in peace with one another as good neighbours, to unite strength to maintain international peace and security and to ensure that armed force shall not be used, save in the common interest. Article I of the Charter sets out the United Nations purposes, the first of which is:

> To maintain international peace and security; to that end; to take effective collective measure for the prevention and removale of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace and to bring about peaceful means, and in conformity with the principle of justice and international Law, adjustment or settlement of international

> disputes or situations which might lead to a breach of the peace. The other provisions of the Charter must be interpreted in accordance with this aim.[2]

About the proscription of use of force against a state the Charter goes on to set out a fundamental principle. Art 2 (4) says, "all members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations. Article 2(4) has been described as a peremptory norm of international law from which state can not derogate.[3] The effect of Article 2 (4) is that the use of force can only be justified as expressly provided under the Charter and only in situations where it is consistent with the UN purposes.

Under the UN Charter, there are only two circumstances in which the use of force is permissible: collective or individual self-defence against an actual or imminent armed attack; and when the Security Council has directed or authorized use of force to maintain or restore international peace and security.

Laws relating to use of force in self-defence

Article 51 of the UN Charter recognizes the inherent right of self-defence. It states:

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

The word 'if an armed attack occurs' is the triggering condition for the exercise of self-defence. The development of the law particularly in the light of more recent state practice, in the 150 years since the Caroline incident suggests that action, even if it involves the use of armed force

---

2. See the 1969 Vienna Convention on Law of the Treaties, Article 31, which provides that a treaty must be interpreted in accordance with its object and purposes, including its preamble.
3. Nicaragua v United states, (1986) ICJ Reports 14, at para 190.

and the violation of another states' territory, can be justified under international law where[4]

(a) an armed attack is launched, or is immediately threatened against a state's territory or forces;

(b) there is an urgent necessity for defensive action against that attack;

(c) there is no practicable alternative to action in self-defence and in particular another state or other authority which has the legal powers to stop or prevent the infringement does not control, use them to that effect;

(d) the action taken by way of self-defence is limited to what is necessary to stop or prevent infringement, i.e.. to the needs of defence.

The application of the basic law regarding self-defence to prevent U.S confrontation with Iraq is straightforward. Iraq has not attacked any state, nor is there any showing whatever that an attack by Iraq is imminent. Therefore, the provision of self-defence under Art. 51 of the UN Charter does not justify the use of force against Iraq by the United State or any state.

Is there a right of anticipatory self-defence in International Law?

Beyond the literal meaning of the language of Article 51, some authorities interpret this article to permit anticipatory self-defence in response to an imminent attack. There is no basis in international law for such an expansion of the concept of self-defence as advocated in the Bush administration's September 2002 National Security Strategy to authorize pre-emptive' – really preventive strikes against states based on potential threats arising from possession or development of chemical, biological or nuclear weapons and links to terrorism.[5]

Article 51 of the Charter is silent about whether self-defense includes the pre-emptive use of force, in addition , the use of force in response to an attack. In order to answer the question, other conventional sources of international law must be used, including state practice and the works of learned writers on international law. The conventional sources of law as provided in Article 38 (I) of the statute of International Court of Justice have not left no basis for anticipatory self-defence – Secondly state practice is ambiguous; but tends to suggest that the anticipatory use of

---

4. Lawyer's statement on the use ofUN Charter and the use of the force against Iraq – http//www. wslfnfeb. org.

5. Lawyer's Statement on the U.N. Charter and the use of force against Iraq, http//www.wsufweb.org

force is not generally considered lawful, or only in very circumstances. There are numerous examples of states claiming to have used force in anticipatory self-defence, and being condemned by the international community. Examples of state practice are given by Professor Antonio Cassese, former president of the International Criminal Tribunal for the Former Yugoslavia,[6] One particular relevant example is the international reaction to an Israeli bombing attack on Iraqi nuclear reactor :

"When the Israeli attack on the Iraqi nuclear reactor was discussed in the Security Council, the USA was the only State which indicated that it shared the Israeli concept of self-defence. In addition, although it voted for the Security Council (SC) Resolution (Resolution 487/1991), condemning Israel, it pointed out after the vote that its attitude was only motivated by other consideration, namely Israel's failure to exhaust peaceful means for the resolution of the dispute. All other members of the SC expressed their disagreement with the Israeli view, by unreservedly voting in favour of operation of paragraph I of the Resolution, whereby the SC strongly condemns the military attack by Israel is clear violation of the Charter of the UN and the norms of international conduct. Egypt and Mexico expressly refuted the doctrine of anticipatory self-defence".

International Jurists-views with regard to anticipatory self-defence:

1. Oppenheim States that

   'While anticipatory action in self-defence is normally unlawful, it is not necessarily unlawful in all circumstance, the matter depending on the fact of the situation including in particular the seriousness of the threat and the degree to which pre-emptive actions really necessary and is the only way of avoiding that serious threat; the requirement of necessity and proportionality are probably even more pressing in relation to anticipatory self-defence than they are in other circumstance.[7]

2. Detter states that it must be emphasized that anticipatory self-defence falls under the prohibition of force in Article 2 (4) of the Charter entailing a presumption that it is illegal. A mere threat of attack thus does not warrant military action.[8]

---

6. International Law, Oxford 2001, at 309-31.
7. R Jennings QC and A Walts QC (eds) Oppenheim's International Law : Ninth Edition 1991 pp. 41-42
8. Detter, TheLaw of War, Second Edition, Cambridge, 2000, p. 86.

3. Casses considers that in the case of anticipatory self-defence, it is more judicious to consider such action as legally prohibited while admitted knowing that there may be cases where breaches of the prohibition may be justified on moral or political grounds.[9]
4. As for anticipatory self-defence Danial Webster's statement regarding the Caroline affair of 1837 is plausible. He said that self-defence is justified only when the necessity for action is'instant', 'overwhelming' and leaving 'no choice of means' and 'no moment for deliberation'.[10]

In the light of the above discussion it is clear that pre-emptive use of force by the US is not justified. Because imminent attack may be pre-empted,[11] but there is no evidence, even international community is not in support of this fact that Iraq would have attacked the US, if such an action was not taken earlier.

Professor Marjoria Cohn of Thomas Jeffersson School of Law viewed that a pre-emptive invasion of Iraq would also violate the UN Charter, which is a treaty and part of the supreme law of the US under Article 6, clause 2 of the constitution. It requires the US to settle all disputes by peaceful means and not to use military force in the absence of an armed attack. The U.N. Charter empowers only the Security Council to authorize the use of force, unless a member state is acting in individual or collective self-defence. Iraq has not attacked the US or any other country in the past eleven years. None of Iraq's neighbors have appealed to the Security Council to protect them from an imminent attack by Iraq, because they don't feel threatened.[12]

In support of pre-emptive action in self-defence it is said that since the terrorist attacks on the twin towers and the pentagon, the case for pre-emptive action against saddam's Iraq is even more compelling. When dealing with rogue states which support, harbor and encourage much terrorism, it has been plausibly suggested, the test of imminence and necessity require reassessment and revision. The oft-cited Caroline formula regarding self-defence enunciated in 1842 by the US Secretary

---

9. Cases SC, International Law, Oxford, 2001, p. 311.
10. Letter from Daniel Webster, Secretary of State to Lord Ashbarton, August 6, 1842 reprinted in 2 John Banet Moure, A Digest of International Law (1906) 409, 412.
11. Though the UN Charter is silent about it.
12. Professor Marjorie Cohn ,Invading Iraq would violate US and International Law,JURIST,September 2002.

of State Daniel Webstar in correspondence with Britain may be inapplicable in a context such as Saddam's Iraq. To require that the "necessity" of self-defence be shown to be instant, overwhelming, leaving no choice of means and no moment for deliberation" makes sense when dealing with a state able and willing to suppress terrorist threats to other states. But as Abraham So far has cogently argued:[13]

'Saddam is a major part of the problem. And on the basis of his past aggressive words and deeds the conclusion that he is not likely to be deterred by measures short of war appears more reasonable.

The truth is far from the fact that is desired by the US and other allies terming Saddam as terrorist and a threat to others. There is no claim or publicly disclosed evidence that Iraq is supplying weapons of mass destruction to terrorists. The US government still supplied no such credible evidence that Iraq carried out terrorist attack on II September 2001. It appears that these attacks were carried out by Al-Qaida, an international terrorist organization with supported funds supplied from a number of countries and with particularly close links to the Taliban regime in Afganistan. Further, even it could be shown that Iraq has funded or otherwise assisted Al-Qa'ida, this does not necessarily justify the use of force in self-defence. According to the ICJ in the Nicaragua case:

"In the case of individual Self-defence the exercise of this right is subject to the state concerned having been the victim of an armed attack. Reliance on collective self-defence, of course does not remove the need for this. The Court does not believe that the concept 'armed attack' include not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support."[14]

There is no proof that Iraq has provided `weapons or logistic or other support to Al-Qa'ida. Mere support would not amount to an armed attack unless Iraqi involvement in September II terrorist attacks could meet the higher standard setout in the Nicaragua case. It is not considered that the attacks of September II in themselves justify the use of force against Iraq.

Security Council's authorized use of force

There is only one legal basis for the use of force other than self-defence, that is the Security Council's directed or authorized use of force to

---

13. Wall Street Journal, Iraq and International Law, January 30, 2003.
14. ICJ Reprt, 1984, Para-195.

restore or maintain international peace and security pursuant to its responsibilities under chapter VII of the UN Charter. Article 42 of the Charter provides;

> Should the Security Council considers that measures [not involving the use of force] provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, seas or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations.

It was under chapter VII that in 1990 the Security Council by Resolution 678 authorized all "necessary means" to eject Iraq from Kuwait and to restore international peace and security in the areas. Following the formal cease-fire recorded by Resolution 687 in 1991, there has been no Security Council Resolution that has clearly and specifically authorized the use of force to enforce the terms of the cease-fire including ending Iraq's missile and chemical, biological and nuclear weapons programmes. Such a resolution is required for renewed use of force. It is the Security Council that has assumed the responsibility regarding Iraq, and it must be the Security Council that decides unambiguously and specifically that force is required for enforcement of its requirements. There has been no resolution in this time passed by SC with regard to any armed action against Iraq. Even, Bush administration's announcement of preventive war failed to obtain the approval of SC.

Past Security Council's Resolution authorizing use of force employed language universally understood to do so, regarding Korea in 1950 (Prior to General Assembly action, Security Council Resolution 83 recommended that UN Member Sates provide " such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area") and Kuwait, Somalia, Haiti, Rowanda and Bosnia 1990, ("all necessary means or" all measure necessary"). In all these instances, the Security Council responded to actual invasion, large-scale violence, or humanitarian emergency, not to potential threats.

The International Court of Justice, in the Namibia Advisory Opinion (1971) ICJ Reports 15, 53 stated that 'The language of a resolution of the Security Council should be carefully analyzed - - - having regard to the terms of the resolution to be interpreted, the discussion leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences. This has been described as one of the very few authoritative guides to the interpretation of Security

Council Resolution'[15] One does not consider that the current resolutions implicitly allow the use of force. The wording of the Gulf War Resolutions shows that, when the Security Council intends to authorize the use of force, it does so in clear terms. Resolution 687 referred to the use of "all necessary means" phrasing does not appear in any subsequent resolution in relation to Iraq.

American Claims that Iraq has been in material breach of its obligation under the Resolution 687 as it is evidenced in 1991 by the Council's deploring Iraq's failure to comply with its commitment with regard to terrorism and this justifies the use of force against Iraq. In the rebuttal of this, it is said, any claim that 'material breach' of cease fire obligation by Iraq justifies use of force by the United State is unavailing. The Gulf War was a Security Council's authorized action, not a state versus state conflict; accordingly it is for the Security Council to determine whether there has been a material breach and whether such breach requires renewed use of force.

Despite the US claims over the years that Resolution subsequent to Resolution 687that is,1154, has provided the basis for the US use of force against Iraq, the Bush administration is now seeking a new resolution authorizing use of force should Iraq continue to fail to comply with Security Council requirements. And thereby it is evident, the Bush Administration accepts that the existing resolutions do not authorize use of fore.

Invasion of Iraq and the US Law

Despite opposition by many prominent Republicans, Dick Chenney and George W. Bush are mounting an intensive public relations campaign to justify their pre-ordained invasion of Iraq. But if we examine, we find, it would violate the US Constitution itself. Article I, Section 8 of the Constitution of the US empowers Congress, not the President, to debate and decide to declare war on another country. The War Powers Resolution provides that the "Constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities or into situation where imminent involvement in hostilities is clearly indicated by the circumstance, are exercised only pursuant to (i) a declaration of war, (ii) specific statutory authorization, or (iii) a national emergency created by attack upon the United States, its territories, or possession or its armed force. Congress has not declared war on Iraq, no statute

15. Michael Byess," Terrorism, The use of force and International Law after II September, (2002) 51 ICLQ401, at 402

authorizes an invasion and Iraq has not attacked the United States, it territories, possessions.[16] President Bush's lawyers have concluded that he needs so new approval from Congress. They cite a 1991 Congressional Resolution authorizing the use of force in the Persian Gulf, and the September 14, 2001 Congressional Resolution authorizing the use of force against those responsible for September 11 attacks. Their contention to justify the war is quite misleading. These two Resolutions do not provide a basis to circumvent Congressional approval for attacking Iraq. The January 12, 1991 Persian Gulf Resolution authorized the use of force pursuant to UN Security Council Resolution 687, which was directed at ensuring the withdrawal of Iraq from Kuwait. That license ended on April 6, 1991 when Iraq formalized a cease-fire and notified the Security Council. The Sept. 14, 2001 Resolution authorized the use of armed force "against responsible for the September attacks on United State." There is no evidence that Iraq was responsible for September attacks.

A pre-emptive invasion of Iraq would also violate the United Nations Charter, which is a treaty and part of the Supreme Law of the United State under Art. 6, Clause 2 of the Constitution. It requires the United States to settle all disputes by peaceful means and not to use military force in the absence of an armed attack.[17]

About two pretexts of Invasion of Iraq by the US

The US and its Associates have tired to justify their armed attack in Iraq under the coverage of 'Disarming Iraq from Weapons of Mass Destruction and liberation of Iraq from the oppressive government of Saddam Hussain. The initial reason for the invasion of disarming Iraq from WMD is not valid, because at present many nation states possess and develop weapons of mass destruction and unless possession and development of WMD is declared a criminal act under International law, which is applicable to all nation states in equal measure, it is not just to use possession and development of WMD by one nation state as a reason for military action against it, which all other nation states are allowed to possess and develop WMD.

More over the claim by Chenney and Bush that Iraq has developed WMD is spurious. Scott Ritter, who spent seven years in Iraq with UNSCOM Weapons inspection teams, has said, "There is absolutely no reason to

---

16. Professor Marjorie Cohn, Invading Iraq would violate US and International Law, JURIST Sept. 2002..
17. Professor Marjorie Cohn,Invading Iraq would violate US and International Law, JURIST, Sept.2,2202

believe that Iraq could have meaningfully reconstituted any elements of its WMD capabilities." Ritter, a twelve year Marine Corps veteran who served under General Norman Schwarkopf in the Gulf War maintains that Iraquis never succeeded in developing their chemical and biological agents to enable them to be sprayed over a large area. It is undisputed that Iraq has not developed nuclear capabilities.[18]

According to Hans Blix, the former chief UN Weapons inspector, not a single item of banned weapons has been found in the 11 months that have followed the declared end of hostilities.[19]

It is also a widely circulated matter in the present world that all weapons inspection teams under UN or Private Organizations, Intelligent Agencies have failed till today to trace out any stock or existence of WMD in Iraq.

The Justification of "Liberating Iraq from the oppressive of Saddam Hussain" needs to be legally examined. It is true that government of Saddam was oppressive. It is also true that at present there are no workable legal means of removing oppressive governments. So, given these two facts, is it justifiable for a nation state to remove an oppressive government of another country and if it is, what is the legal status of the parties in such a case? There are no clearly established principles of international law for such cases. The legality of it is important and has practical consequence. So under the said cover, invasion of Iraq by the US is legally unacceptable.

2nd Part

The Iraq War in 2003 and the Application of Jus in bello

Under this part the consequences of Iraq war 2003 will be examined in the light of Jus in bello, that, is, in the context of humanitarian law. The war in Iraq has raised a number of important issues of international humanitarian laws. The US force engaged in number of practices that may have violated international humanitarian law, such as indiscriminate military attack, bombing on civilian properties, failure to prevent looting, maintaining law and order and protecting agricultural property, failure to ensure food and medical supplies, ill-treatment with the prisoners of

---

18. Professor Marjore Cohn, Invading Iraq would violate US andInternational Law, September 2, 2002.
19. Common Dreams Newso Center, Published on Friday, March 5, 2004 by the Independent / UK.

war, attacks on broad cast stations, military attacks on government buildings indiscriminately.

Indiscriminate attack

According to the Hague Convention 1907 and Additional Protocol 1, 1977 the attack must be limited to military objects and civilian population can never be the target of attack. The cluster munitions strikes of the US may have violated the provision of the indiscriminate attack beyond the permitted target, for not distinguishing between combatant and civilians. Cluster munitions are weapons, delivered from the air or ground that disperse dozens and often hundreds of sub-munitions over a large area, thereby increasing the radius of destructive effect over a target. The US decapitation attacks is a violation of International Humanitarial Law (IHL) because their targeting method could not distinguish between combatants and civilians. Furthermore, all 50 'decapitation' strikes failed to kill the targeted leaders, but killed dozens of civilians. The continued resort to these strikes despite their complete of success and the significant civilian losses they caused can be seen as failure to take "all feasible precautions" required by IHL.[20]

Looting, Maintenance of order and culture property

In failing to prevent the looting that has occurred of the Baghdad Museum, the US occupying force breached the Hague Convention for the protection of cultural property in the Event of Armed Conflict which requires that the parties undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any act of vandalism directed against cultural property. The Hague Regulations provide that the occupying power shall take all the measures in its power to restore and ensure as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in the force in the country. The reality was that the US forces, except the oil ministry and oil fields, didn't protect any thing or prevent any pillage, theft or misappropriation, even some time they encouraged the people in doing so.

Ensuring food and Medical Supplies

Article 55 of the Fourth Geneva Convention provides that to the fullest extent of the means available to it the occupying power has the duty of

---

20. Human Rights Watch, Background on international humanitarian Law, War Crimes and the War in Iraq.

ensuring food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate." According to the Article 56 of the said Convention the occupying power has the duty of ensuring and maintaining ,with the cooperation of national and local authorities, the medical and hospital establishment and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemic. Medical personnel of all categories shall be allowed to carry out their duties. The above said obligations were not met by the occupying forces, which are indicated in different ways. The president of the International Committee of the Red Cross (ICRC) Jakob Kellenbarges statement that United States as an occupying power has every clear rights and duties under international law, and latter his call for fulfilling its duty to ensure security is clear indication of the violation of humanitarian laws in the occupied territories.[21]

The President of Medicines Sans frontiers, Morten Rostrup said that the coalition has failed to meet its responsibility under international humanitarian law to ensure that the health and well being of the Iraqi people is being provided for.[22] A number of NGOs made a joint statement on 2 May 2003, calling on the United Nations to have a central role, saying the situation is critical, saying that "Already under sever strain and under resourced before the war began, hospitals, water plants and sewage system have been crippled by the conflict and looting. Hospitals are overwhelmed, diarrhea is endemic and the death toll is mounting. Medical and water staff are working for free, but can not continue for long. Rubbish including medical waste is pilling up. Clean water is scarce and disease like typhoid are being reported in Southern Iraq."[23]

Preservation of Property

The occupying powers are bound by the Hague Regulation with respect to dealing with Iraq's oil resources.

---

21. AFP 6 May 2003, ICRC Chief urges US to restore law and order in Iraq. at http.//www.relufweb.int/w/rwb
22. MSF Press Release 2 May 2003, "US fails to fulfill obligation to support health system in Iraq" http.//www.reliefweb.int/w/rwb, .
23. Catholic Agency for Overseas Development 2 May 2003, Joint Agency Statement on Iraq, http.//www.reliefweb.int/w/rwb.

Article 55 of the Hague Regulation requires that the occupying state shall be regarded only as administrator and usufructuary of public building, real estate, forests, and agricultural estates belonging to the hostile state and situated in the occupied country. It must safeguard the capital of these properties and administer them in accordance with rules of usufruct. It must safeguard the oil wells, and may only use the revenue for the purpose of the occupation.[24]

Destruction of oil well might violate the rule that warring states must protect the national environment. Article 55 of the Additional Protocol 1 states, "Care shall be taken in warfare to protect the national environment against widespread, long-term and sever damage. This protection includes a prohibition of the use of methods, or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

In the Iraq war numerous oil stations and refineries have been burnt and destroyed.

Attacks on broadcast station

Military attacks on civilian TV Radio Station by the US force to stop the Saddam Hossain propaganda was a violation of humanitarian law. Civilian TV and Radio station are legitimate targets only if they meet the criteria for a legitimate military objective, the fact that the US prisoners of war were displayed on Iraqi television does not make the station a legitimate target.

Civilian Causalities initiated by the coalition forces

A number of incidents have been reported to have been initiated by the coalition force involving civilian causalities, including bombing of Syria bus[25] use of cluster bombs on bosra[26] destruction of electricity supplies leading to disruption of civilian water supply, attacks on Iraqi Television

---

24. See R. Dobie Langenkamp, what happens to the oil, International law and the occupation of Iraq, January 13, 2003 at http, www energy / Uh.edu / documents / behind.

25. 24 March 2003, CNN.

26. Rosbalt, 24 March 2003, "Iraq Claims US and Britnin dropped cluster bambs on Bosra," at http / www,rosbaltnews.com / w003 / 03 / 04.

Station,[27] on Al-Jazzeera[28] and on the Palestine hotel[29] on markets at Al-shaab[30] on civilian at Nassiriya and Hilla, on a van at Najaf,[31] shooting at ambulances[32] and shooting on protestor. In addition there have been reports of a failure to restore water, electricity and other humanitarian needs[33] and encouragement, toleration and failure to stop looting, including of nuclear installations.[34]

In the war of Iraq violation of humanitarian laws not only caused by US and other coalition forces, but also caused by the Saddam's army..This violation mainly involves the deliberate use of civilian shield and the taking of hostage. The use of civilians including a state's own citizens as human shield to protect military objects from attack is a violation of international humanitarian law amounting to a war crime. The forcible use of civilian or other non-combatants as human shields also violates the prohibition on the taking of hostage.[35]

Therefore, it is evident form the above discussion that the US force during conflict against Saddam regime in conducting hostilities, didn't comply with the laws of war and also didn't perform the duties of belligerent in the occupied territory.

Present status of the US and coalition forces in Iraq

It is a common question to every body what is the present status of US and other coalition force in Iraq? Are they having status of occupying power and under what ground they are combating the Islami militants? With the formation of a new interim government in Iraq the occupation of Iraq has ended. As per United Nation's Resolution 1511, the interim government will exercise Iraq sovereignty.[36] The over staying of the US and other forces is pursuant to an expected request by the Iraqi

---

27. AP 25 March 2003.
28. Al Jazzier 16 April 2003.
29. International Federation of Journalist, 8 April 2003.
30. CNN 26 March 2003
31. Gurdian 1 April 2003.
32. Al Jazzera 10 April 2003,
33. See ICRC, 9 April, "Humanitarian situation has dramatically warsened", Hltp//electronicitrag/plnet/new/607.
34. BBC, 6 May 2003, "Looking at Iraq nuclear sites" hlttp://news.bloc.co.uk.
35. Geneva IV, art 34.
36. See SC Res. 1511. 4 UN Doc. S/RFS/1511 (2003).

Government. The exchange of letter between Iraq's new prime Minister Iyad Allawi and the US Secretary of state Colin Powel broadly outlines the relationship between Iraqi and US led multi-national force after the occupation of Iraq ends. The letter has been included as annexes to a US British Draft Resolution in the SC that endorses the handover of sovereignty and authorizes the multinational force to remain in Iraq to help provide security. Allawi told the UN Security Council that his government will retain sole control of the country's armed force and work in "full partnership" with the multi-national force to coordinate joint military operations and security policy through a variety of new bodies. Powell said the US led troops will coordinate with Iraqi Security force at all levels. Both Allawi and Powell stressed the importance of the US led force in helping to fight those opposed to Iraq's political transition. So it appears clear to us the continued presence of the US and other forces are at the request of Interim Iraqi government. Given the question surrounding the legitimacy of any Iraqi government, what would be the legal status of such a request?

Internvention by invitation essentially involves the consent by an inviting state to justify action that would, absent such consent, violate the UN Charters' prohibition on the use of force. Only where the inviting government is recognized as embodying the sovereign rights of the state with an invitation there from provide a legal basis in and of itself, for military action according to the terms of the invitation.

On June 30, the sovereignty exercised by the interim Iraqi government will not be complete in the Westphalia Sense[37] Since the government will not, at the time of its creation, effectively control the territory of Iraq. In the era prior to the adoption of the UN Charter, the degree of territorial control would have determined the legality of any invitation issuing from a government. Since the adoption of the Charter, however, in situation involving civil war where government legitimacy is not challenged ,the government representing the state at UN has been deemed to possess sufficient external legitimacy to legally invite foreign military international.[38] This construction may be inferred form the Judgment of the ICJ in its well-known Military and Para-military Activities

37. See Stephen D Krasner, Problematic Sovereignty,in Problematic sovereignty! Contested Ruels and Political Possibilities 1.II.

38. Christopher J. Le Mon, Legality of a Request by the Interim Iraqi Government for the continued Presence of Limited state Military Forces, ASIL Insights, June 2004.

case, where the court distinguished between permissible intervention at the request of the UN-recognized government and impermissible in a situation of struggle for control of the country.[39] Perhaps recognizing this, Security Council Resolution 1511 referred to the exercise of Iraq's sovereignty, determining that the Iraqi Governing Council "embodies the sovereignty of the state of Iraq during transitional period until an internationally recognized, representative government is established and assumes the responsibility of coalition Authority, In view of the above discussion , it may be concluded the US led coalition force are not at the moment occupying forces. But the ongoing war is not termed as an international conflict, rather internal or civil war the US forces are bound to comply with common Art. 3of the Four Geneva Convention. Additionally, they will abide by the customary principles of war. The intervention by invitation will not be permissible in civil war of Iraq on the basis of customary principle of non-intervention in the internal armed conflict.

Conclusion

In the all above discussion the war in Iraq 2003 has been looked at critically in two perspectives, one in the perspective of the legality of this war launched by the United States of America under existing International Law, two, in determination of violation of International Humanitarian Law. For justification of the War, particularly the provision of UN Charter on the prohibition of use of force and its extent and purpose and limitations have been examined critically with an impartial look and the conclusion is that the US invasion over Iraq is unequivocally illegal. The two permissible way of use of force can not be applicable in the justification of war in Iraq. Firstly the prerequisite of force in self-defence was clearly absent as no armed attack occurred against US. Secondly the plea of pre-emptive self-defence has been rejected strongly as there was no evidence supplied by the US upon the imminent attack by Iraq and there were many ways available except armed attack. The Attorney General of the US attempts to legitimize the war to base it on Resolution 1441 was opposed by world public opinion. A Report issued by the New York-based Center for Economic and Social Rights, cites a range of authoritative legal sources to dismiss this argument. According to Professor Thomas Frank, a leading authority on the use of force, the use of old resolutions to support military action today makes a complete mockery of entire

39. See Military and Paramilitary Activities (Nicur.V.US). 1986 ICJ 14.

system of International Law. It is the height of hierocracy for the US and UK to base war on Resolution 1441 when are fully aware, the France, Russia and China approved that resolution on explicit written condition that it could not be used by individual state to justify military action. Said CEC (Centre for Economic and Social Right) Executive Director Roger Normed, who recently returned from a fact-finding mission, "This war violates every legal principle governing the resort to force. It clearly has little to do with disarmament democracy, human rights, or even Saddam Hussain, and everything to do with oil and power".

The report warns that an illegal war in Iraq would threaten the pillars of collective security established after world war II to protect civilians from recurrence of that unprecedented carnage. "This is an attack on the very institution of International Law and the United Nations, " Said Phillip Alston, Professor of Law and Director of Human Rights and Global Justice. "It opens the door for every country to take the law into its own hands and launch pre-emptive military strikes without any universally binding restraints."[40]

From the second perspective, it can be evidently said, that US led force committed huge breaches of humanitarian laws during and even today. As to the means and methods of the warfare, they violated the principles of Hague Regulations and Additional Protocol I by using arms and munitions unable to be limited to the military objects and by causing tremendous civilian causalities, by resorting to reprisal. In the Second phase of their presence after a nominal tutular interim government in combating the terror, they are still resorting to indiscriminate violence, killing wounded. All these violation amount to war crimes.

At the end it is concluded in the application of Jus ad bellum the US invasion of Iraq comes out to be proved illegal and in the light of Jus in bello, they have committed a huge number violations of humanitarian Law.

---

40. Report, CESR, 19 March 2003,