

THE IRAQ WAR: RELATIONSHIP BETWEEN LEGAL AND MORAL RULES AND COLLECTIVE SECURITY

Written for POL S 261

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ABSTRACT This essay explores the complex relationship between legal and moral rules, and their impact on collective security, using the U.S-Iraq war as a case study. The paper argues that broken moral and legal rules, such as human rights violations and defiance of UN resolutions, led to concern for collective security, and ultimately, the necessity for conflict. The paper proposes that the basis for the war was humanitarian intervention, which is consistent with the purpose of the UN under these conditions. The essay also considers the role of occupying forces in maintaining stability and emphasizes the importance of adhering to international laws and regulations in promoting peace and security. The essay highlights Iraq's failure to comply with resolutions which stipulated that Iraq must cooperate with the destruction of all chemical and biological weapons and end the repression of Iraqi citizens, creating grave concerns for the international community's peace and security. Overall, the paper highlights the close interplay between legal and moral rules, and their impact on collective security, underscoring the need for humanitarian intervention and stability.

INTRODUCTION

Our world is defined by shades of gray, as clear answers in an interconnected world are always subject to interpretation. One of the most pressing shades of gray is the relationship between moral and legal rules, and collective security. This paper will focus on the U.S-Iraq war as a case example to examine how broken moral and legal rules lead to concern for collective security. However, this paper does not condone the methods employed during the Iraq war, but rather seeks to propose an alternative answer to the war's commencement: humanitarian intervention and concern for international peace and security. Furthermore, theoretically based upon institutional strength and war, occupying forces should provide a means for stability in a precarious political climate. While neither an act of self-defense nor endorsed by the UN Security Council, conflict was necessary as enforcement for collective security because of the multitude of broken moral rules, broken legal rules and the proliferation of weapons of mass destruction.

MORAL RULES

The United Nations have two principal rules in order to sanction a war. The first, determining if there has been a breach of peace (Article 39), and secondly, that previous UN sanctions or resolutions have proven ineffective (Article 41). If both requirements are met then "it may take such action by air, sea, or land forces" to "maintain or restore international peace and security" (Article 42) (Article 39)(United Nations 1945). To apply this to the US-Iraq war we will first examine a "breach of peace." A breach of peace as defined by the UN can include intra-state conflicts, which entail a "global threat to international peace and security through..., systematic and widespread attacks directed against civilians" (Department of Political and Peacebuilding Affairs 2020, 10). Iraq under Saddam Hussein's rule between 1979-2003 committed a number of atrocities against civilians including but not limited to, torture chambers, medical amputations as punishment, state-sanctioned killings, and systematic rape (U.S Congress House Committee on International Relations 2004, 1).

Saddam Hussein gave credence to these claims in 1990 when he introduced article 111 to the Iraqi Penal code, which sanctioned honor killings by removing punishment for men who killed a female relative in order to restore honor (Office of International Women's Issues, 2003). This directly contributed to the murder of over four thousand Iraqi women (Office of International Women's Issues, 2003). In addition, Saddam Hussein in the 1990s decreed prostitution to be punishable by death, specifically beheading. There was little to no investigation into claims of prostitution and women accused were beheaded after which their head was displayed outside the victims' home for several days (U.S Congress House, Committee on International Relations., 2004). These human rights violations contradict *jus cogens*, which are norms recognized by the international community and from which no deviation is permitted. However, international *jus cogens* is still in its infancy in terms of specific content, as dependent on the theoretical perspective adopted, the content and function can be described in different terms, suggesting that currently there is no univocal definition (Lagerwall, 2017). Thus the adoption of regional *jus cogens* that require "a minimum set of common irreplaceable values" can provide insight, since they are highly specific to the region or culture (Hasmath 2012, 5). The document pertaining to international *jus cogens* is the universal declaration of human rights (UDHR) which is written with a western bias. This calls for a separate declaration of human rights by Islamic states, regional *jus cogens*, as Islam is considered an irreplaceable value. Western bias in UDHR can be delineated in article 3, "Everyone has the right to life, liberty and security" which can be viewed as overly individualistic and greatly influenced by Jean-Jacques Rousseau (United Nations 1945; Gunn 2020, 153). Other examples such as article 16.1, "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family" are incompatible with classical Shari'a regulations such as "a Muslim man may marry a Christian or Jewish woman but no other unbeliever; a Muslim woman may not marry a non-Muslim under any

circumstances" (United Nations 1945; Gunn 2020; Leeman 2009, 755). The Shari'a restrictions on interfaith marriage and the UDHR's emphasis on individualistic western concepts demonstrate the necessity of a separate declaration, in which regional *jus cogens* is respected. The League of Arab States' (LAS) 1994 Arab Charter on Human Rights was based on the Qur'an and the Sunnah, as Allah "is the Law Giver and the Source of all human rights" (Hasmath 2012, 11). The Qur'an and Sunnah (way of the prophet Mohammed) is crucial in documents pertaining to practice and rule because "Muslims also adhere to a spiritual covenant of obedience made to God in pre-eternity,... Islam signals the covenant through adherence to certain practices and rules known as the *sharī'a* as a manifest form of obedience" (Moosa 2021, 30). Moosa illustrates that adherence to *sharī'a* is essential to maintaining the spiritual covenant with God, thus the word of God elucidated by the Qur'an and the prophet Mohammed must be included in the formulation of rules (2021). Though despite the distinction of regional *jus cogen*, Iraq was involved in the LAS' declaration of 1994, which still states "the State parties shall protect every person in their territory from physical or psychological torture, or from cruel, inhuman, degrading treatment" (Article 13) and "the accused is presumed innocent until proven guilty in a lawful trial where defence rights are guaranteed" (Article 4) (League of Arab States 1994). Both article 4 and article 13 were broken by Iraq demonstrating that no matter which *jus cogen* is accepted, Iraq still violated moral and ethical rules.

LEGAL RULES

Now that it is established that Iraq breached the peace regarding broken moral rules, how does one enforce this infraction? According to article 41 of the UN charter, implementing non-conflict resolutions (legal rules) is the next step. Between 1990-1999 the UNSC passed 16 resolutions, including Iraq ending the repression of Iraqi citizens (UNSCR 688) and fully cooperating with UN inspectors regarding chemical and mass destruction weapons

(UNSCR 687, 715) (White House Archives 2003). Throughout 1990-1999, Iraq broke all 16 resolutions, demonstrating disregard for resolutions and sanctions. Regarding the former, UNSCR 688, Iraq showed no intention of following the resolution as on August 31st, 1996, more than 5 years after the implementation of resolution 688, Iraq invaded the northern Kurdish controlled city of Irbil (CIR 1996). Irbil was a crucial distribution city for humanitarian aid, thus the invasion froze the implementation of resolution 986, which permitted Iraq to sell 2 billion dollars' worth of oil to purchase humanitarian goods for civilian needs (CIR 1996, 2078). Resolution 986 was meant to function as a mechanism to ensure relief for suffering Iraqis while denying the benefits to Saddam Hussein and his regime, but the invasion of Irbil created concern that humanitarian supplies could not get to those in need, further worsening the humanitarian conditions in the region (CIR 1996, 2077). In addition, repression of the Shi'a population in the southern region of Iraq had worsened as Hussein's government engineering programs had drained 80% of southern marshes between 1991-1997, leaving only 7% remaining by 2003 (Richardson 2004). These programs were aimed at destroying southern marshes essential for the way of life of citizens in this region, specifically the Shi'a population (CIR 1996, 2078-2079). The invasion of Irbil proliferated the repression of Iraqi citizens specifically against ethnic or religious minorities, demonstrating that humanitarian conditions in the region have worsened rather than improved since the implementation of resolution 688.

WEAPONS OF MASS DESTRUCTION

Additionally, resolution 687 and subsequently 715, stated Iraq must unconditionally accept the declaration of weapons of mass destruction programs and their subsequent elimination and cooperation in the destruction of all chemical and biological weapons (White House Archives 2003). Yet by February 1992, the United Nations security council expressed grave

concern over Iraq's failure to acknowledge these obligations, reiterating that it is the United Nations Special commissions (UNSCOM) discretion alone to determine which items are to be destroyed under resolution 687 (UNSC 1994). By March 1992, Iraq declared the existence of previously undeclared ballistic missiles (89) and other chemical weapons, but stated they were all destroyed previously in 1991 (UNSC 1994). This not only broke resolution 687, but created grave concern for what Iraq has still not declared or may be hiding. The concern was heightened in July 1992 when Iraq refused inspection of agricultural sites, again breaching resolution 687, and in October 1992, when Iraq made a statement seemingly threatening United Nations inspectors, which breached resolution 715 (UNSC 1994). By 1994 Iraq threatened to stop all cooperation and begins deploying troops in the direction of Kuwait, creating more concerns for secrecy and a threat to international peace and security (UNSC 1994). The enforcement of these resolutions becomes difficult as the United Nations are hoping that the government creating these problems will willingly stop. For Iraq, the long-term consequences of breaking legal rules will cause their demise, but their short-term goal of accumulating power will advance quickly by skirting the law. The pressure between legal rules and economic growth are factors that affected Iraq's compliance as state goals clash with legal rules. The continual defiance of UNSC resolutions by Iraq demonstrated the difficulty of enforcing legal rules from an outside governing body and created grave concern for peace and security regarding military utilization and secrecy around weapons programs.

COLLECTIVE SECURITY

It is now established that Iraq broke moral and legal rules, but does Iraq pose a significant risk to collective security? Weapons of mass destruction are taboo. There is a distinction between conventional weapons and uncivilized means, which has become understood as a set of norms bolstered by political and moral

obligations to be a “civilized” member of international society. Though the taboo is not universal, some state’s relationship with the utilization of such weapons is much more volatile than others (Tannenwald 1999). For instance, Iraq after resolution 687 was obligated to allow the inspection of sites deemed to be related to the proliferation or research of weapons of mass destruction (WMD); however, the continual dodging and inconsistencies in Iraq’s WMD program caused concern that Iraq could quickly resurrect the production of WMD (United States Department of State 1998). Furthermore, The International Institute for Strategic Studies (IISS) concluded in 2002 that Iraq could assemble nuclear weapons within months of obtaining fissile materials which national programs had made “significant” advances for the production of enriched uranium (The British Government, 2002). This was deeply concerning to collective security since Iraq had deployed chemical weapons such as mustard gas, tabun, sarin and VX between 1983-1987, killing approximately 20,000 Iranians (The British Government 2002). These chemical agents affect the nervous system by creating muscle spasms or paralysis, and even death with the use of VX (where as little as 10 mg could cause rapid death) (The British Government 2002, 12-13). By 1991 UN documents showed that Iraq possessed over 3558.9 tonnes of chemical components including 3.9 tonnes of VX (The British Government 2002). According to the UN declaration of 1992, the proliferation of weapons of mass destruction constitutes a threat to international peace and security (Oosthuizen and Wilmshurst 2004). This is deeply concerning because if Iraq is willing to use horrific chemical agents, what is to stop them from using taboo weapons such as nuclear weapons when they are procured? As delineated previously, the inconsistency in statements about these weapons such as March of 1992’s declaration of previously undisclosed weapons, and the unwillingness to have certain sites examined such as agricultural sites in July of 1992 demonstrated that Iraq posed a significant danger to collective security, with their future actions unpredictable (UNSC, 1994). This

unpredictability enhanced concern for collective security especially when considering the reports from the IISS suggesting nuclear capabilities were close to completion (The British Government 2002, 5). Thus, broken moral and legal rules created uncertainty for future action, and the possibility of the proliferation or creation of weapons of mass destruction meant that Iraq posed a significant danger to collective security.

HUMANITARIAN INTERVENTION

As previously stated, we have determined a breach of peace with broken moral rules, ineffective resolutions which defied legal rules, and a threat to international peace and security, thus the question remains, why did the UN not sanction this war? The main argument that refutes my claims is that rather than the factors this paper attributes to the Iraq war, some claim it was a war of aggression or retaliation. The Nuremberg charter specifies that aggressive wars are a state crime in which the individuals and the state involved are responsible for criminal liability of international law (Kramer et al. 2005). These claims are not unfounded as just 2 years before the war in Iraq, an unforgettable moment had occurred, the terrorist attacks of 9/11. While the attacks were not directly attributable to Iraq, the United States suspected the Iraqi government of harboring an instrumental leader in the attacks and leader of terrorist group Al-Qaeda, Bin Laden. Since the attack was not directly tied to Iraq nor could collusion between Al-Qaeda and the Iraqi government be proven, the use of article 51 of the UN charter, which allows attacks based on self-defense, cannot be justified entirely (Kramer et al. 2005). While Kramer’s claims of an aggressive war not being justifiable has legitimacy, the paper brushes over the basis of humanitarian intervention, claiming that it was not the goal of the United States nor directly specified in the UN charter. While Kramer’s first claim is speculative at best, his second claim can be argued. The UN charter article 1 outlines the purposes of the UN, specifically section 3, which states “to achieve international co-operation in ... humanitarian character, and in promoting and

encouraging respect for human rights.” This is complemented by article 2 (4) which stipulates “all members shall refrain in their international relations from the threat or use of force ... in any manner inconsistent with the Purposes of the United Nations” (United Nations 1945). These sections are directly linked, since the purpose of the United Nations is the promotion or protection of human rights, and therefore a war of humanitarian intervention is consistent with the purpose of the UN.

While previous paragraphs have outlined how the conflict was justified in order to retain collective security, some scholars would disagree, suggesting that the conflict did more harm than good. While some scholars may pin the continuation of the conflict in Iraq on U.S. intervention, this paper proposes an alternative answer. If and when Saddam Hussein was removed from power, with or without US interference, it would create instability in institutions and an unstable political climate, producing a void in which war manifests (Mansfield and Snyder 2002). As Mansfield and Snyder suggest, countries going through democratic transitions have a gap between political participation and the capability of institutions, which can cause conflict for power (2002, 318). These weak institutions open up possibilities to avoid full public accountability and for extremism to grow, thus powerful groups will attempt to keep institutions weak and unstable for their own benefit (Mansfield and Snyder 2002, 301). In the case of Iraq where the transition was from authoritarian to a semi-democracy or anocracy, war or conflict is especially likely to occur (Mansfield and Snyder 2002, 318). Powerful groups like Al-

Qaeda thrive in situations of instability, because as nationalism grows so does extremism which provides a ripe opportunity for recruitment (Mansfield and Snyder, 2002). As opposing forces grow, U.S. forces can actually reduce the conflict since repression and civil war are likely to ensue if Iraq cannot regain stability (Byman 2003). This evidence suggests that security is the biggest barrier contesting Iraq’s democratic transition and the “United States and other occupying powers can provide this security if they... deploy considerable forces to Iraq for years” (Byman 2003, 49). Based on these statistics and the findings of Byman, it can be concluded that the continuation of conflict was inevitable after the removal of Saddam Hussein, and by consequence the U.S. provides a means for security and stability in Iraq.

CONCLUSION

To conclude, broken moral rules such as human rights violations, and broken legal rules such as the defiance of UNSC resolutions, (which entailed the proliferation of weapons of mass destruction), constituted grounds for concern for collective security and, in turn, conflict in Iraq. While alternative opinions exist around the legality and the consequences of the U.S-Iraq war, the application of theory, data, and United Nations documents create a convincing case that the conflict was justified and necessary. The relationship between legal and moral rules, and collective security are tightly knit because when these rules are neglected, it creates concern for international peace and security and therefore justification for conflict.

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