

# Iraq Invasion: A “Just War” or Just a War?

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## Iraq Invasion: A “Just War” or Just a War?

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### **2003 Iraq Invasion: A “Just War” or Just a War? *An Evaluation of US Conduct Within the Framework of Just War Theory***

#### **Chapter 1: Introduction and Notes on Research**

This chapter will commence the thesis by providing a brief introduction that examines the problem statement and hypothesis. It will also discuss the research questions and the methodology used in the thesis. Furthermore, the chapter will introduce the main theory used in the justification of the research that will be elaborated upon in ensuing chapters. It will also state the significance of the research to the field of International Relations. It will conclude by examining the study's limitations and by presenting the chapter structure that will build up the core argument of the research. The chapter intends to familiarize the reader with the historical context of the core issue the thesis examines.

##### *1.0 Introduction*

In March 2003, the US attacked Iraq for the second time in just over 12 years. As Jeffrey Record points out in *Dark Victory*, the war was cheap in American blood; short and militarily decisive.[1] Yet the latter developments of the invasion sparked many a debate about the moral reasoning behind it, and in fact made the invasion a benchmark of what not to do before, during and after a military campaign. Post-invasion Iraq presented a telling story of wasted prospects for better opportunities.

The US invaded Iraq under the pretext of uncovering Iraq's Weapons of Mass Destruction (WMDs), making Iraq comply with UN resolutions and saving Iraqis from decades old tyranny of Saddam Hussein.[2] Less than a year later, with the US's inability to discover any WMDs, all three justifications presented by the US were proven wrong amidst a backdrop of rising violence, breakdown of political and economic reconstruction and intensifying sectarian divisions. Iraq therefore proved the need to consolidate peace rather than merely win wars.

The invasion thus became a litmus test of Right and Wrong War with an abundance of opinions coming its way, both in favour of and against it. The scale of the invasion coupled with the chaos and instability Iraq suffers today call for the need to defend arguments regarding the illegality and immorality of the invasion, for it was as proven time and again a campaign only of destruction with no appreciation for construction in it.

Amongst the extensive interpretations of the invasion, the Just War assessment occupied a prime position as a framework of evaluation that discusses implications of an offensive according to moral standards. Despite Just War thinkers trying to defend the Iraq invasion based on Just War criteria, the thesis believes that the invasion clashed with the esteemed and longstanding standards set forth by the Just War theory and considers any attempt to defend it as a misinterpretation of the concept of Just War.

The research therefore aims to discuss the political realities of the invasion, taking into consideration the prudence of the decision to wage war and the pre- and post-war situations in Iraq as politically unsatisfying conditions, and expects to unearth the follies of the deceptive justifications the US administration presented to validate their decision

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to wage war. The Iraq invasion will thus be analyzed in terms of the Just War theory, critically evaluating all three phases of the invasion, i.e. pre-, during and post-invasion scenarios.

The topic of the dissertation “2003 Iraq Invasion: A *Just War* or just a war?” is a modified version of a title of an article that appeared on *The New York Times* on 9 March 2003 by former US president Jimmy Carter. The original title of the article was “Just War—or a Just War?”[3] which encapsulated the whole discussion woven around the lack of justness of the Iraq invasion in a single sentence. The title therefore aptly captures and hints the course the thesis is about to take.

## 1.0.1. Background History of Iraq

Any discussion of the 2003 invasion of Iraq will be incomplete without a mention of the pre-war situation of the country. An account of said situation is important since it is significant in making the final assessment of whether Iraq today is better off than her pre-invasion counterpart, an essential criterion of the Just War theory – i.e. to make dawn a just peace and make consequences of action better than those of inaction. It would also be useful in understanding how the US came to invade and occupy Iraq, i.e. how Iraq was made prone to external intervention due to her internal circumstances.

Iraq, a Middle Eastern country bordering Jordan, Kuwait, Saudi Arabia, Syria, Turkey and Iran, has a proud history that boasts roots dating back to the dawn of human civilization. In ancient times it was called Mesopotamia, and had an advanced system of ruling characterized by city-states that were gradually integrated into empires. The existence of the great rivers of Tigris and Euphrates enhanced Mesopotamia’s prosperity thereby turning it into a hub of civilization. As Thabit Abdullah states in his book *Dictatorship, Imperialism & Chaos*:

Attracted by the great agricultural wealth of the land, or perhaps because of its central location, the country witnessed periodic waves of mass migrations. Whether peaceful or through violent conquests, these migrations constantly injected new social and cultural norms which were destabilizing but also brought about a sense of dynamism and progressive change to Iraqi society. For these reasons, Iraq remained, throughout its long history, a land inhabited by a highly heterogeneous population brought together by the two rivers.[4]

Iraq was thus a grand terrain of an illustrious civilization which practiced mutual co-existence centuries before the Western world even came into existence.

In 636 CE, Iraq fell under Arab Islamic rule and witnessed a continuous changing of dynasties up to the mid-sixteenth century, and was torn by constant warfare and divisions. During the sixteenth century Ottoman and Safavid Empires reunified the Middle East. While Safavids from the Shi’i branch of Islam ruled most parts of Iraq from 1508-1534 and 1623-1638, the Ottomans who were Sunni were able to rule only three provinces, namely Mosul, Baghdad and Basra.[5] Their rule was shadowed by endless fighting with the Shi’i clan, an ancient occurrence that has found resonance in modern Iraq in the form of sectarian violence that at one time even led to a deadly insurgency.

During World War I, with the defeat of the Ottomans, the modern state of Iraq was formed and was subsequently occupied by the British. Inapt economic and social reforms introduced by the British made the Iraqis rebel against British rule in 1920, which made the British alter their policy towards Iraq by way of establishing an independent Iraqi state tied to Britain through treaties that served the best interests of Britain.[6] Then in 1921, Iraq became a constitutional monarchy with the crowning of Faisal, son of Sharif Hussein of Mecca.[7] Though being able to achieve socio-economic development, the monarchy pathetically failed to ensure social cohesion and fight divisions within Iraq, amongst which the Kurdish issue and the Sunni- Shi’i rivalry topped the list. Over the years different rulers of this royal line were able to gain more power and abuse it. Apart from internal antagonisms, the monarchy was also accused of corruption and oppression. As a result, following the end of World War II, a public frustration erupted into a revolution that called for reform, and in 1958, a military coup toppled the monarchy.

The new military regime under General Qasim was Republican in form and introduced a new reformist agenda that erased even the slightest traces of the old regime. Despite being instrumental in introducing an array of popular

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reforms, Qasim, like any other ruler with a massive power concentration, showed signs of becoming a dictator. His continuous opposition to the UK and US, coupled with his rejection of Pan-Arabism that sought to establish a regional identity for Arab states, more or less isolated him in the international arena.

Qasim was thrown out of power by his long time ally Colonel Arif through a military coup in 1963 with the help of the Baath party that was founded in Syria in 1944 and was receiving growing momentum by the time. Arif was only able to rule the country for five years and, in 1968, the Baath party came into power.

The Baath party primarily had a Shi'i base and drove the country into totalitarianism. In the following years Iraq was defined by the complete destruction of the old monarchy, antipathy towards foreign capitalists, rising oil prices, promoting the Baath party ideology via school curriculum, and arbitrary detention and execution of political opponents. Throughout 1970s the Baath party was able to gradually secure support and to strengthen its power base in Iraq. In 1979, Vice President Saddam Hussein became the country's ruler after the resignation of President al-Bakr.

### 1.0.2. *Saddam's Iraq and the US*

Saddam Hussein assumed office in a context where distaste towards the US in the Middle East was being more freely expressed, especially after the overthrowing of the Pahlavi monarchy in Iran, the pillar of the US in the Middle East. Immediately after coming into power, Hussein invaded Iran in 1980 due to a border dispute, providing the US with an opportunity to intervene.

The US, seeing the wisdom in fuelling the fire, supported Iraq and backed all her decisions, even to the extent of defending Iraq for her use of chemical weapons against Iran at the UN. US-Iraq diplomatic ties that were strained after the 1967 war with Israel were re-established and the US was the only country to vote against a 1986 Security Council Resolution that condemned Iraq's use of mustard gas against Iranian troops. The US unashamedly supported Hussein even in the 1988 Anfal genocide in which 50,000-186,000 Kurds were killed.[8] The US, seeking a path into the Middle East, viewed the Iran-Iraq war as a perfect opportunity to become a stakeholder in the issue and thus get a hold, however insignificant, on the region. The US's strategic designs therefore sought to encourage Iraq and Iran to be pre-occupied with a war that was beneficial to neither of the two rivals, but served to further the US's own interests. Iraq was the ideal place for a US military installation given the instability of the country rendered by the war.[9] The US only needed a reasonable excuse to intervene!

It was only natural for Iraq to expect aid from her ally the US for reconstruction efforts following the war. But, giving a rude shock, the US refused. Since US's client states such as Saudi Arabia and Kuwait hiked their oil production following the ending of the war, oil prices started declining and the US felt little need to depend on Iraq anymore. Added to this was the fact that the American fantasy of an ever-grateful Hussein requesting America to set up a military installation in the strategically very important Iraq did not materialize.

Iraq was gravely hit by this action both because her principal means of income rested on oil production and she counted on the US to have her back. Hussein naturally turned against the US, which was no big loss to the latter now that Iraq did not serve any vital US interests. Adding insult to injury, Kuwait started drilling Rumaila oil fields on the Kuwait-Iraq border, deliberately provoking Iraq. Hussein decided to invade Kuwait, the worst decision in retrospect he ever made, which led to decades-long sanctions and political isolation for Iraq in the years to come. While some assert that Kuwait's actions were encouraged by the US who was waiting for an opportunity to intervene in Iraq, there is little evidence in support of this argument. Notwithstanding the credibility of said argument, the Iraq-Kuwait war provided legitimate grounds for the US to attack Iraq.

The US misled the Hussein regime by responding to the war in mild tones that did not at any point even remotely indicate any inclination towards military intervention. However, the US gave Iraq an unpleasant surprise by suddenly invading Iraq along with a coalition with the express consent of the UN. The UN Security Council Resolution 661 that demanded immediate Iraqi evacuation from Kuwait and imposition of sanctions for non-compliance was thus the result. The invasion, famously termed as Operation Desert Storm, was characterized by merciless attacks of the US

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on retreating Iraqi soldiers[10] and immense destruction of Iraq’s infrastructure.

Further manipulating Security Council Resolution 688 that called for ceasing of repression of Iraqi minorities, the US, forging an act along with the UK, imposed a no-fly-zone in the North and South of the country as a gesture to make Iraq comply with said resolution. The no-fly-zones became bomb zones with US and UK regularly bombarding the areas that cost hundreds of civilian lives.

Added to that was the sanctions regime,[11] which was famously coined as Iraq’s silent genocide, which crushed Iraq’s economy in huge volumes, made Iraq’s oil go into a UN controlled account, thus making Iraq have no say whatsoever over her own resources, and finally cutting down on food and medical supplies that caused 5000 excess deaths of children per month.[12]

Therefore, it is clear that the US policy in pre-invasion Iraq was definitely not a positive one. Hussein’s dictatorship coupled with US extremism in punishing a country for not submitting to US imperialism thus became the ideal ground of torture for a population that was already weary from internal turmoil and divisions.

The US quite ironically wanted to make Iraq, a land whose situation the US was largely responsible for, a better place in 2003 when Iraq in all actuality, as proven by the International Atomic Energy Agency (IAEA) experts, was showing positive gestures of compliance to international law and order after years of non-compliance.

Why then did the US decide to invade Iraq? Was it to show her might in world politics? Was it to pamper her bruised ego so rendered by Iraqi non-compliance? Or was it for reasons unknown? The thesis shall explore answers to these questions and present an account of a process of destruction of a country and its people in a paradoxical act where the intended hero became the villain.

## 1.1 Problem Statement

After suffering a decade of sanctions and an even longer period of tyranny and oppression, Iraq was victimized yet again by the US led invasion in 2003 which was launched under the pretext of doing good to Iraq. Yet the invasion turned out to be an even worse fiasco that left Iraq in rumbles and scraps.

The tragedy of Iraq spurred an array of concerns from the Just War perspective, giving rise to many an interpretation of the theory, which at times were flawed. Just war theorists had no unanimity in justifying the case, and while some thinkers justified the military campaign, others disagreed using the same criteria, making the justness of Iraq war a much contested subject.

‘*Is the Iraq war a Just War or was it just a war?*’ thus becomes an interesting problem to investigate. An examination of the United States’ conduct in the Iraq war within the framework of the Just War theory will be treated as the central issue under this investigation.

## 1.2 Hypothesis

The US invasion of Iraq was not a Just War.

## 1.3 Research Questions

The central research problem in the dissertation will be whether the Iraq war was a Just War. In order to examine this problem, the research seeks to investigate the following key research questions.

1. What is Just War?
2. Was the US decision for the 2003 Iraq invasion in accordance with Just War principles?
3. Can the United States intervention in Iraq be justified under International Humanitarian Law?
4. Was the US exit strategy from Iraq ethical?

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5. Should the Just War theory be revised?

## 1.4 Theoretical Approach

The dissertation aims to use the Just War theory as its main analytical perspective that sets the tone for the research. This theory guides the discussion on the issue of the justifiability of the Iraq invasion which is the central issue under investigation. The theory will be discussed at length in Chapter 2.

## 1.5 Methodology

The central argument of the thesis will be woven around a case study, i.e. the invasion of Iraq in 2003 by the US-led forces. It therefore requires examples to justify any stance that might be assumed. In probing into the issue, examples will be drawn from a range of secondary data including books, web sources, journal articles and reports.

The aforesaid sources will provide information on the invasion and incidents related to it that could be used to verify or refute the hypothesis. Since the thesis does not expect to present figures of the human and material losses of the invasion and aims solely to analyze the prudence of certain decisions and behaviour pertaining to it, it will only take into consideration certain contested issues during, before and after the invasion as presented by said sources. The research will therefore be a qualitative one that investigates certain issues of relevance within the framework of the Just War theory instead of presenting tables, charts and figures of the invasion statistics that are abundantly available on the web.

While books will be used as a major source of information for the entire thesis, they will act as the chief information provider specifically for the section on *jus ad bellum*.

Use of web sources including online journal articles and reports will be frequent all throughout the thesis since articles containing insights on the issue under investigation are bounteous on the web.

Due to practical hardships in interviewing persons directly involved in the invasion, reports that contain the ground realities, including those by Human Rights Watch, will be used in the research in order to enable clearer comprehension of the argument.

## 1.6 Significance of Research

This research will add to the growing body of literature on the Just War tradition by analyzing all three criteria of the Just War theory in relation to the invasion of Iraq, a scope rarely covered seeing as the *jus post bellum* criterion is often neglected by scholars.

The thesis will also enhance understanding of all three criteria of the Just War theory including *jus post bellum*, the latest addition to the theory that has not been given much attention.

It will also make a significant contribution to the Just War theory by identifying loopholes in its application, and suggesting remedies for a better and more fool-proof practical use of it.

As a whole, the findings of the research will act as an evaluation of a practical example of how the Just War theory has been misinterpreted and aims to call for a revision of the theory to avoid recurrences of similar mishaps.

## 1.7 Limitations

Area- Iraq and USA

Time – 2003-2011

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## Focus- Just War Theory

The research will be conducted subject to a number of limitations. Firstly, it will only examine the US conduct within the Just War framework in relation to the Iraq invasion and will exclude the actions of coalition troops and Iraqis, which are also equally important from the Just War perspective.

Secondly, the period under investigation will be limited to eight years starting from 2003 and ending in 2011. An in-depth analysis of the historical factors that triggered the animosity between the US and Iraq will thus not be included. The thesis will only provide a succinct description of such factors.

Finally, the findings of the thesis would only reflect Just War perspectives, leaving behind other important approaches to the invasion such as Realism and Imperialism.

## 1.8 Chapter Structure

The outline of the thesis will progress in three steps. First it will assess the applicability of Just War norms in the US's decision to wage war emphasizing the challenges the theory has encountered in its practical application. Following this will be the second phase of analysis in which the invasion period from 19<sup>th</sup> March-01<sup>st</sup> May 2003 will be critically evaluated according to International Humanitarian Law (IHL) provisions that reflect *jus in bello* norms of the Just War theory. Finally an account of the post-invasion period from 2003 to 2011 will be given within the framework of the last remaining criterion of the Just War theory to complete the analysis by giving a concise yet all-encompassing description of the theory's applicability in the invasion.

Chapter 2, laying the foundation for the argument to proceed, will examine the main theories and concepts that will be used in the thesis. It will focus mainly on the Just War theory as the central theoretical framework of the research and will present an in-depth analysis of it. Furthermore it will expound concepts such as the pre-emptive strike doctrine and War on Terror. It would also discuss the impact neo-conservatives had on shaping Bush's foreign policy that warranted the Iraq invasion.

The core argument of the thesis will begin in Chapter 3 by providing an account of the application of *jus ad bellum* in the Iraq invasion. The chapter will elaborate on how and why said criterion has been violated by the US during the invasion of Iraq.

Chapter 4 will explain the Humanitarian Law aspect of the invasion specifically when hostilities had actually begun. It will analyze the manner in which the US has conducted herself during Operation Iraqi Freedom, juxtaposing two polarized arguments, and will come to a conclusion about whether or not the US conduct violated the criterion of *jus in bello*.

Chapter 5 will document and critically assess specific instances in which the US conduct amounted to violations of the theory during the post-invasion phase, and will examine how the US failed to play the role of a responsible occupying power, thus contributing to the violation of all three components of the theory.

In drawing a conclusion, chapter 6 will review the initial hypothesis and assess the wisdom of the military operation according to Just War criteria. It would also lay down the limitations of the research and make suggestions for a more sound and valid application of the theory in the current global system.

## Chapter 2: Theories and Concepts

This chapter will begin by providing a brief introduction to the invasion[13] of Iraq in 2003 by the Bush Administration, popularly known as the second Gulf war. It will produce a brief account of the chronology of events leading up to the invasion and offer a brief follow-up of the post-invasion phase. The chapter's main purpose is to familiarize the main concepts and theories that will be applied in building up the argument of the thesis i.e. the justness of the Iraq War. Just War theory shall be introduced as the main theoretical framework to judge the decisions and actions taken in the

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invasion. The doctrine of Pre-emptive Strike and the concept of War on Terror that will be incorporated in the thesis too will be discussed at length in the chapter in order to better understand the argument.

## *2.0 A Brief History of the 2003 Iraq Invasion*

Iraq provides a classic example of a failing state after invasion and years of military occupation by a distant foreign power who according to their interests determined the fate of a people who are culturally and politically different to them. After almost nine years of occupation, with a rising death toll and increasing incidence of violence, Iraq today faces more problems than her pre-invasion self did. With the ill-planned withdrawal of US forces in December 2011, Iraq is on her way to a chaotic and unstable state of governance with many internal challenges coming her way. It is therefore important to shed light on the 2003 invasion of Iraq by US led forces under the pretext of saving her from the decades-old brutal tyranny of Saddam Hussein and curbing the proliferation of WMD.

Under the iron-clad dictatorship of Saddam Hussein from 1979 to 2003, the Iraqis faced absolute oppression which manifested in the crushing of opposition and using brute force and state propaganda by Hussein to secure his power. Apart from these coldblooded policies, the regime was also defined by aggression to foreign powers.[14] The Iran-Iraq war bears testimony to his aggressive nature in handling foreign powers. Iraq then went on to invade Kuwait on 2<sup>nd</sup> August 1990. Having invaded and occupied Kuwait, violating the prescriptions of international law, Hussein was not hesitant to further display his contempt to said law by breaching international terms and conditions (including weapons inspection and ending the production of WMDs) agreed to at the end of the war that marked the defeat of Iraq by an international coalition in early 1990s. Owing to his disregard of international laws and conventions, the country had to face numerous sanctions that caused relentless human suffering until the end of his rule in 2003. In 2003, Hussein's rule came to an end with him being ousted by a US led coalition.

The invasion took place against a backdrop of Iraqi compliance with the demands of the weapons inspectors[15] after a long period of non-cooperation that could have actually provoked the US-led West. Despite positive gestures shown by Iraq towards the weapons inspection programmes, the US decided to invade Iraq and remove Saddam Hussein from power. Since an in-depth analysis of the actual reasons behind the invasion is beyond the scope of this chapter, this will only provide a brief account of the chronology of events leading up to the 2003 Iraq invasion and the post-invasion situation of Iraq. The reasons for the invasion will be dealt in detail in subsequent chapters.

Though no direct link was established between Iraq and the Al-Qaeda, following the 9/11 attacks, Iraq was included in the US's agenda of War on Terror as an enemy state. War on Terror will be given special emphasis and elaborated in subsequent paragraphs as an important landmark of the invasion of Iraq. President Bush, placing Iraq, Iran and North Korea on an Axis of Evil, sought justification to invade Iraq. The Bush administration sought the assistance of the UN Security Council to authorize an attack on Iraq since they claimed to have intelligence on Iraq's WMD proliferation but failed to get the Council's endorsement. Having failed that, US formed a coalition with willing states and invaded Iraq on 19<sup>th</sup> March 2003 despite heavy opposition from most of the UN member states. About 300,000 US and British troops were involved in the invasion.[16] By April 3<sup>rd</sup> the same year, troops were able to capture Baghdad International Airport and, within a few days, the whole of Baghdad[17] and by 1<sup>st</sup> May 2003, President Bush declared the US victorious.[18] Soon after the declaration, Iraq steeped into violence against both American soldiers and Iraqis who supported them. Though the US found it easy to emerge victorious in the early phase, the situation soon turned out to be chaotic. Due to sloppy security arrangements, violence soon took to the streets and prowling became the norm. The National Museum of Baghdad was ransacked with some invaluable relics gone missing.

Meanwhile in the political sphere, Saddam's supporters of the Baath party were prohibited from being part of the new government. In December 2003 Saddam was found in a hideout.[19] In 2004 a temporary constitution was passed and in 2005 a national assembly was elected. This was a time when US troops were becoming distasteful to the Iraqis, especially among pro-Saddam factions due to which uprisings occurred against the troops. In 2005 Saddam went on trial for crimes against humanity, ironically against a backdrop in which Iraqi prisoners were abused by American soldiers.

2006 is significant in the history of the Iraq invasion since it witnessed both the election of a new Iraqi Prime Minister

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and the execution of its former ruler, Saddam Hussein. In 2007 the US sent additional troops with the aim of reconciling rival groups within Iraq who contributed to growing violence each day. In 2008 the Iraqi government called for the withdrawal of US troops, to which the newly-elected US president Barak Obama responded positively. By December 2011, the last brigade of US soldiers left Iraq, ending their eight-year long presence.

Though US ended her presence in Iraq in late 2011, the current situation of Iraq poses a very important question. With a rising death toll, surging violence, political commotion and escalation of terrorist activities especially Al-Qaeda attacks, has the proclaimed US mission, which was to save the Iraqis from the iron grip of a brutal dictator and to establish a peace loving democracy, been actually accomplished? Iraq today finds herself arguably in a more difficult situation than her pre-invasion self did. ‘Did the invasion in 2003 do justice to the Iraqis?’ thus becomes an interesting question to answer. The thesis intends to provide an answer to the question in the succeeding chapters. In shaping an answer to the question, it is important to review and assess the actions taken by the US before, during and after the war in order to evaluate its conduct and gains. In the process, the morality of war will be questioned in terms of the Just War Theory. Following is a brief introduction to the Just War theory that will be used as the principal theory of the thesis.

## 2.1 Just War Theory

Just War theory is the theory of permissible war that advocates just criteria for the launching of, conduct in and ending of war. It has a long historical tradition that dates back to medieval times. The traditional focus of the theory was predominantly on two spheres namely

- i. *Jus ad bellum*– Justice in going to war and
- ii. *Jus in bello*– Justice in the conduct of war.

There is however a recent development that concentrates on just peace which relates to the ending of war and returning from war to peace. This addition to the just war tradition is known as *Jus post bellum* or justice in the termination of war.

The Just War theory is important in analyzing a war situation since it occupies a middle ground between Pacifism and Political Realism, the two most commonly used theories that discuss the morality of war.[20] While Pacifism views resorting to war as an immoral act and does not justify war under any circumstances, Political Realism holds the view that “war lies beyond and is unconstrained by morality.”[21] Just War theory, which occupies the middle ground between the two extremes, discusses the idea of an acceptable war in which war is not always viewed as an immoral act and holds that subject to certain moral restraints on the conduct of war, it can be justified.

After 9/11, the Just War theory became a central issue of discussion and acquired a multiplicity of dimensions resulting from various interpretations. Proponents of the Bush administration’s decision to wage war against Iraq and Afghanistan defended it as ethical decision-making while opponents viewed it as an utter violation of ethically-accepted norms of waging war, and held the view that it undermines the just criteria set forth by historical traditions of thought pertaining to war. Theory of Just War hence began to dominate the intellectual discourse on war. It is therefore important to shed light on the historical evolution of the theory to identify its essence that has sustained through the great many debates that have taken place over the centuries.

### 2.1.1. Historical Evolution of the Just War Theory

The Just War theory has evolved over many centuries and stands today as a significant criterion to determine the morality of warfare. The origins of the theory as some believe date back to the classical Greek and Roman periods and are also enshrined in Christian traditions. While some claim that Aristotle’s and Cicero’s teachings reflect the essence of the Just War theory, a visible development of the theory took place as a result of St. Augustine’s teachings. In the 5<sup>th</sup> Century A.D. he laid the foundation for the theory as a means of merging traditional pacifist sentiments of Christianity with a desire of militarily defending the Holy Roman Empire from impending ruffians. To



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achieve this end, St. Augustine provided a limited justification for war.

Following the example set by him, the idea was developed and progressed by thinkers such as St. Thomas Aquinas, Vitoria, Suárez, Hugo Grotius and Immanuel Kant until the 18<sup>th</sup> century. From there on until the mid twentieth century, no significant improvement took place in the theory.

The 20<sup>th</sup> century was marked by events of great significance that included two world wars. As Nicholas Rengger correctly points out, the development of the Just War theory in the twentieth century was context specific and was generated by events in the political arena.[22] Stating his position, he provides an ideal example that bears testimony to the context specific development of the theory:

Thus, during the Second World War, for example, there was a debate in Britain about the legitimacy of the bombing campaign against Germany. Many, particularly in the churches, had severe doubts about this policy, especially the campaign against German cities. Led by the Anglican Bishop George Bell of Chichester, the opponents of the campaign lodged serious sets of objection against it, basing them quite explicitly on criteria developed in the just war tradition.[23]

Michael Walzer's seminal work *Just and Unjust Wars*, which was written as a result of the debate over the Vietnam War, was the next most important work that rekindled interest in the Just War theory. Later in the 1980s, the Just War theory was re-discussed by American Catholic Bishops due to the proliferation of nuclear weapons. Their fear of a nuclear war made them question the morality and ethics of war. With the turn of events after 9/11, Just War, or perhaps the absence of it, began to dominate both intellectual and political discourses.

The theory therefore has enjoyed a continuous process of revision and development over the centuries. The classical version of the theory which focused more on justice, moral rights and obligations has today grown into a more legally-focused version with an emphasis on principles drawn from law. Today, the international agreements augmented by the theory are understood more within a legal framework than in moral language. The legal outlook poses severe problems to the development of the theory since law concentrates more on what is right to do during war rather than concentrating on the very decision to wage war. Consequently the theory is seen as diminishing in its value since its only being used in retrospect rather than being used as the criterion to evaluate all decisions pertaining to war, i.e. before, during and after a war. This new development undermines the whole essence of the theory which only permits justifiable wars. At present, the theory is used as a justification to any war under vague interpretations. This is partly due to its intricate nature which aims concurrently to limit waging war and to counter violations of justice. The final chapter of the thesis will concentrate on the loopholes of the theory and suggest remedies needed for better practical application of it. Focus will now be shifted to the three main criteria of the Just War theory.[24]

## 2.1.2. *Jus ad bellum*

*Jus ad bellum* simply denotes the rules that govern the decision to resort to armed conflict. To elaborate more on it, it provides criteria that justify going to war and determines whether or not to wage war. *Jus ad bellum* is usually directed towards the leaders since they are the authorities that take decisions regarding war. There are six recognized criteria of *jus ad bellum*. Following is a brief description of them.

1) Just Cause- Use of force could only be justified if it aims to correct a severe public harm that involves defense against unjust aggression or intervention to stop massive violations of human rights. Rights of both states and individual citizens are taken into consideration here. A state could resort to war if its territorial boundaries are violated and its sovereignty is in question by the aggression of an outside force. On the other hand, if a state does not guarantee the fundamental rights of its own citizens, humanitarian intervention by an external authority is permissible. Just cause is perhaps the most contested realm of the theory since the invasion of Iraq. The tradition is clearly divided with regard to the justifiability of anticipated aggression, the pretext under which the US invaded Iraq. Does the mere threat of an event that has not yet happened qualify as a just cause? Answers will be provided to this question in the succeeding chapters.

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- 2) Legitimate Authority and Public Declaration- Insists that waging war or a decision to go to war should be instigated only by a competent authority that has been empowered to do so. The authority should follow correct procedures and the decision should be made public with the aims being clearly outlined.
- 3) Right Intention- War should only be waged for the sake of the just cause and nothing else. The authorities must make sure not to let clandestine motives obscure the decision. Therefore the authorities must make sure that the just cause is not exploited by hidden intentions such as commercial gains or acquiring land.
- 4) Probability of Success- The idea here is that if the war is unpromising, it is wrong to expose both combatants and non-combatants to violence when there is only a slim chance of having a constructive impact on the status quo.
- 5) Proportionality- Suggests that the good a war will bring about has to outweigh the total suffering it inflicts.
- 6) Last Resort- Most commonly accepted idea behind last resort is that force should be used after exhausting all possible peaceful alternatives such as diplomatic negotiations and economic sanctions. But as Jeff McMahan points out, it is more of a ‘requirement of necessity,’[25] which implies that the war must, in the circumstances, be necessary for the achievement of the just cause.

It is important to note that the assumptions set forth by *jus ad bellum* are questionable and there is no universal consensus on the interpretation of the principles. Different states not only use different interpretations in waging war, but also at times even violate them. The problem with the interpretation that paved way for violations of the theory during the Iraq invasion will be discussed in detail in succeeding chapters.

### 2.1.3. *Jus in bello*

*Jus in bello* refers to justice in the conduct of war and is usually targeted at the military commanders who have the responsibility in executing an order to wage war. It has two aspects, internal and external. Internal refers to the rules a state must adhere to with regard to its own citizens, while external implies the conduct of a state when dealing with its enemy. *Jus in bello* principles are important since they advocate justice in the conduct of war even if the war was fought for an unjust cause breaching *jus ad bellum*. Therefore the theory aims to limit injustice to the maximum possible extent. External *jus in bello* has six conditions that need to be satisfied for a war to be just. Following is a brief account of those.

- 1) Discrimination and Non-Combatant Immunity- Suggests that war must be directed only towards those who are engaged in military action. In other words, towards combatants using weapons that are not prohibited. It is therefore not permissible to attack non-combatants as they should not be caught in situations they are not responsible for. But collateral civilian casualties are allowable since it is not humanly possible to fight a war with zero casualties.
- 2) No Atrocious Weapons- International laws prohibit the use of dreadful weapons such as chemical and biological that cause great human suffering.
- 3) Proportionality- Use of force should be in proportion to the end expected to meet and not more than that. This prevents the innocent from being further harmed.
- 4) Humane Treatment to POWs (Prisoners of War) – Surrendered enemy soldiers must be treated well since they no longer pose a threat of harm. Geneva Convention III spells out laws pertaining to such military personnel.
- 5) No Reprisals- Violation of *jus in bello* such as the use of banned weapons in retaliation is, as mentioned previously, prohibited by the Just War theory. Since reprisal only escalates violence, the theory leaves no space for it.
- 6) No Means *Mala in se*. – Prohibition to use unethical means such as treason, soldiers disguising like civilians, use of prohibited weapons and other evil acts such as mass rape campaigns and genocide.

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Internal *jus in bello* involves the protection of human rights of a state's own population against forced conscription, violation of fundamental rights through emergency regulations, etc. *Jus in bello* principles are enshrined in International Humanitarian Law which aims to strike a balance between standards of humanity and military necessity. Therefore the application of *jus in bello* invariably involves reference to International Humanitarian Law which is the law of war/ armed conflict. Chapter 4 will bring into light the Humanitarian Law context of the Iraq invasion when discussing its *jus in bello* aspect. Focus will now be shifted to the most recent development of the theory, an important aspect that has been historically neglected, i.e. *jus post bellum* or justice in the termination of a war which is essential for just peace.

### 2.1.4. *Jus post bellum*

International law does not provide sufficient guidelines for the course of action that should be taken once hostilities come to an end. This lack of regulation carries with itself the possibility of winners' imposing their ideas of justice forcibly on the losers. The traditional Just War theory too had a vacuum in addressing post-conflict resolution which recently was rectified. However, some believe Immanuel Kant's idea of a perpetual peace suggested post-conflict justice in which he recognized the need for *jus post bellum* though not explicitly expressed it.

After a long lapse of nearly two hundred years, in 1994 Professor Michael Schuck addressed the issue of *jus post bellum* in a reflection upon the 1991 Persian Gulf War.[26] Since then, the idea has gradually progressed. Despite its long absence, the idea today is gaining momentum due to the Iraq and Afghan invasions by US-led forces. *Jus post bellum* too consists of six rules that are explained briefly below.

- 1) Just Cause for Termination- In terminating a war, a reasonable vindication of rights that have been violated should take place. Since these violations are what triggered the just war, it is important to show that with the ending of the war, the problem has been rectified and the situation is better than what it was. It then becomes the correct reason to terminate the war. Revenge against the loser is thus not acceptable.
- 2) Proportionality, Public Declaration and Authority- Terms of peace should be made public by a competent authority and the terms should be accepted by a legitimate authority. Also, to avoid unconditional surrender, terms of the peace agreement should be proportional to the rights that were initially violated.
- 3) Discrimination- A proper distinction has to be made with regard to leaders, military personnel and civilians of the defeated country. Retaliatory measures should not be taken against the losers. This therefore disqualifies socio-economic sanctions as part of the punishment.
- 4) Punishment- Firstly leaders from the aggressive country and secondly all soldiers who committed war crimes (if any) should be held responsible and should be tried for their crimes. This may include one's own soldiers. Hence punishments should be carried out with objectivity.
- 5) Compensation- Financial compensation may be given subject to proportionality and discrimination. It is also the responsibility of the victor to make sure that resources are adequate and not exploited in order that the loser may begin reconstruction.
- 6) Rehabilitation- The victor may necessitate changes in the aggressor's institutions such as demilitarization, human rights education, etc. However, reforms should only aim at creating a just society and should be relative to the scale of decadence of the aggressor.

*Jus post bellum* thus advocates an ethical exit strategy as opposed to a purely military one.

According to just war theorists, a war becomes just if and only if all criteria of the just war theory are met. But the interpretation of certain just war criteria are problematic since some leaders exploit them to their own advantage, thus undermining the whole essence of the theory. Though in general the theory advocates inflicting minimal suffering and providing greater justice, Just War principles are essentially indistinct and complex. Therefore it is necessary in a war

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to make assessments at each step along the way. It is also equally important for these assessments to be accurate, for these essentially concern the well being of another. Yet the accuracy of these assessments is subject to dispute. The issue of interpretation within the Just War theory that has set the stage for a wide array of debates concerning the intervention in Iraq will be clearly analyzed in ensuing chapters.

## *2.2 Changing US Security Paradigms: War on Terror, Pre-emptive Strike and the Rise of Neo-Conservatives*

September 11, 2001, had a profound impact on the US's foreign policy, causing perhaps the most deeply felt and significant change in its history since the ending of World War II. It provided US foreign policy makers with an incentive to formulate the kind of foreign policy that would not be taken lightly by the outer world. This new direction adopted by the US was marked with some interesting features, namely first-strike or the pre-emptive strike doctrine and the war on terror. The remainder of the chapter will shed light on the dynamics of the US foreign policy that invented the war on terror and converted it to a war of terror, which was directly responsible for the 2003 Iraq invasion.

The terrorist attacks of 9/11 were central in pushing the Bush administration toward America's second war with Iraq, a highly disputed move not only within international but also domestic legal circles. The move was based on a doctrine introduced in the National Security Strategy of 2002 by the Bush Administration known as the concept of pre-emptive self defence. Pre-emptive strike was a central element of Bush's larger framework of the War on Terror, which challenged the subsisting security norms, political theories and international law. Bush's policies were mainly influenced by neo-conservative undertones of officials who advised his administration. Following is a brief introduction to Bush's security strategies and ideologies that played the central role in the invasion of Iraq.

### *2.2.1. Global War on Terror and the Changing World Order*

The Al-Qaeda attacks of 9/11 changed the course of 21<sup>st</sup> century history in an unprecedented way with the US waging war against so-called rogue regimes and replacing the Cold War with her War on Terror after a mere decade of relative tranquility that managed to not see major states of the world at each other's throats. War on Terror brought with it an essential change in the prevailing world order: the shift from an arguably multi-polar[27] world to a uni-polar one, with the US as the leading hegemonic power. Soon after the attacks, the Bush administration changed its foreign policy with the War on Terror adopted as its key operating principle, which effectively served to increase anxiety among members of the sovereign world regarding US conduct and made them more cautious than ever in their dealings with the US. The natural result was that the US, because she was feared by other countries, became the sole hegemonic power. The War on Terror left the world with no other option but to become silent spectators of blatant violations of state sovereignty, UN resolutions, and international law and order, the foundations laid by civilized nations for a just and harmonious world.

The new turn in US foreign policy was primarily characterized by attacks against rogue regimes that, according to the US, posed a direct threat to world peace. The Bush administration adopted new measures that included the first strike strategy, which enabled the US to militarily respond to terrorism and states that sponsored terrorism. After its initial Afghan invasion in 2001 to defeat the Taliban (who allegedly assisted Osama Bin Laden and kept him in hiding), the US extended her aggressive foreign policy to include regimes that reportedly had WMDs and regimes that reportedly supported the Al-Qaeda. This decision in particular made Iraq fall prey to the US's Global War on Terror. The prudence of this decision will be discussed in ensuing chapters.

### *2.2.2. Rise of the Neo-Conservatives*

The September 2002 National Security Strategy of the United States of America (NSS) clearly demonstrated the neo-conservative underpinnings of President Bush's security and foreign policy inclinations. As Jeffrey Record points out, neo-conservative strategies included regime change in rogue states, aggressive promotion of democracy, viewing American military supremacy as a given and, most importantly, a departure from traditional US foreign policy norms, i.e. to launch preventive wars to protect national interests.[28] Every action taken in the name of foreign policy by the administration thus assumed US primacy in the post-Cold War world:[29] that had policy outcomes of immense

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proportion, especially with regard to US's Middle Eastern policy. Therefore, in actual terms, President Bush's foreign policy aimed at globalizing American morals[30] in a hostile manner, an act that was fiercely endorsed by the neo-conservatives to the apprehension of many.

Neo-conservatives mainly consisted of officials from the Department of Defense and the Vice President's Office. They are more famously known as the Vulcans. As Chris J. Dolan points out in *Striking First*, “The vulcans ... are the most active proponents of expanding the war on terrorism to include the use of force against states.”[31] For neo-conservatives who embraced a Reaganite policy in external affairs that hailed nationalism and interventionism with little tolerance for the rise of a new rival, 9/11 provided the ideal opportunity to promote major increases in defense spending and embark on a journey of elimination of potential rivals.

Before 9/11 the Bush administration did not have a clearly defined foreign policy, but this changed overnight with the turn of events. The vulcans viewed this as the perfect opportunity to push their neo-conservative ideas through to the executive and have a hand in determining the course of events that were to unfold following the catastrophe. The Bush administration had the ideal combination of officials to set the ideas in motion. Vice President Dick Cheney, Secretary of Defense Donald Rumsfeld and Deputy Defense Secretary Paul Wolfowitz were all officials who were involved in the first Gulf War in the early 1990s under George Bush Sr., and thus naturally carried an inclination to end the unfinished job of Iraq by placing it within the larger agenda of War on Terror. The neo-conservative imprint on Bush's decision in invading Iraq will be brought into light in setting the tone for the argument for *jus ad bellum*.

### 2.2.3. Axis of Evil Speech and Iraq's Destiny

The Axis of Evil Speech at the 2002 State of the Union address is what actually brought Iraq into the heart of the wider discussion on countering enemy regimes. Until then it was an untold priority. The speech made Iraq the governing matter of the US foreign policy, thus excluding countries that had the actual potential to turn nuclear.

The speech placed Iran, Iraq and North Korea on an axis of evil that, according to Bush, posed a serious threat to world peace. According to the administration, these countries sponsored terrorism and sought nuclear weapons, and therefore the US was morally obliged to check them for the greater good of the world.

Interesting here is that even though North Korea confirmed its nuclear programme, the administration did not take prompt measures to counter her. Instead, the sole concentration was on Iraq despite the fact that there was a glaring lack of evidence to justify an attack. For Bush, Iraq had something to hide from the civilized world,[32] which was even worse than the actual threats posed by Iran and North Korea. And so, US-led forces marched in to Iraq in early 2003 with only a whim of the world's most powerful man to back the move. The flawed decision will be elaborated on and explained in Chapter 3 when building up the argument for *Jus ad bellum*.

### 2.2.4. Pre-emption and Preventive Wars: New Dimensions of Use-of-Force

The 2002 National Security Strategy (NSS) brought with itself a key change in the realm of US security policy which played an important role in the administration's justification of the Iraq invasion – the articulation of the doctrine of pre-emption to justify a first strike as a means of guaranteeing world peace and stability. For the first time ever, the term ‘first strike’ was used with such aggression that the administration did not particularly bother to paint the blatant falsehoods used to justify it as anything else.

The first strike doctrine therefore became an idiom for the US's pre-eminence in 21<sup>st</sup> century world politics, giving the US an opportunity to act on her own initiative irrespective of what international law had to say. The doctrine re-evaluated deterrence and containment as obsolete principles. Commenting on how the conventional idea of deterrence will not work against terrorists, Deputy Defense Secretary Paul Wolfowitz stated the following:

Containment and deterrence goes back to an era when the only use of force we worried about was one in which the use of force could be directly associated with a country, and that country had an address. The whole thing that terrorists introduce is that you not only do not see the threat coming but you do not know where it came from.[33]

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Therefore, the administration employed pre-emptive war as its latest strategy to fight terrorists and their allies. It is important to bear in mind that a distinction lies between pre-emptive and preventive strikes. While a pre-emptive strike is launched in anticipation of an imminent threat, a preventive strike is launched to destroy a potential danger of an enemy even if the danger is not imminent[34]. Hence, preventive war is usually connected with aggression and is not usually endorsed by the international community. However the UN charter does not permit any kind of first attack unless approved by the Security Council.

In 2003, renewing the doctrine of pre-emption, the Bush administration invaded Iraq on the grounds that Iraq posed an imminent threat to world peace since she accommodated a sizeable reserve of WMDs. The move was not endorsed by the Security Council. Later it was learnt that the threat was merely a perceived one as opposed to a real threat. Therefore, even though the attacks were officially categorized under pre-emption, in reality they turned out to be preventive measures.

The move therefore posed serious questions to international law and to the efficacy of the Security Council. Article 2, Section 4 of the UN charter, which restricts use of force against the territorial sovereignty of a state, was thus blatantly ignored by US-led forces. The only slim remaining chance was to justify it under Article 51 of the charter that permits a member to attack either collectively or individually if an armed attack occurs against her. This is viewed as a legitimate exercise of the right of self defence. Since there was no physical attack against the US, this ground too proved to be frail in building up an argument for the US.

The first strike doctrine will be placed as the central argument in building the case for *jus ad bellum* in Chapter 3.

## 2.3 Conclusion

In conclusion, this chapter has presented and explained the recurrent theories and concepts of the thesis so as to provide the reader with a basic understanding of the course of the thesis. Just War theory was explored as the main theory to be used in the thesis while War on Terror, Pre-emptive and Preventive strikes, and the formulation of Bush's foreign policy were given attention as essential concepts that would complement the major focus of the study. The theories and concepts shall be subject to further scrutiny in ensuing chapters in formulating a stance either for or against the US invasion of Iraq as the case maybe. The main intention of the chapter was to set the tone for the argument that will unfold in subsequent chapters. Chapter 3 will be an examination of *jus ad bellum* in relation to the Iraq invasion.

## Chapter 3: Iraq and the Right to War

The central argument of the thesis will be constructed in Chapter 3. The chapter will review and assess the prudence of the decision to invade Iraq based on the justifications presented by the US. In its attempt to draw a conclusion, it would explore insights into the *jus ad bellum* criteria that lay down the circumstances under which the use of military force can be justified. This will be followed by Chapters 4 and 5 that would present accounts of the remaining two sections of the Just War theory, namely *jus in bello* and *jus post bellum*, with regard to the invasion of Iraq.

### 3.0 Iraq: Threat Inflation and False Assumptions

As with any other war, in Iraq too truth was the first casualty. The 2003 Iraq invasion was thus the product of a chain of bogus assumptions, uncouth willingness to use force, deception and a depiction of an inflated threat. Following is a brief account of the debate over using force in Iraq.

The Bush administration placing Iraq on an axis of evil in his 2002 State of the Union address as a country posing a serious threat to world peace provided three prime justifications for the Iraq invasion: 1) curbing the proliferation of Iraq's WMD programme which carried with itself the possibility of aiding terrorism; 2) holding Iraq accountable for its violations of international law and the charter of the United Nations; and 3) protecting innocent Iraqis from humanitarian abuses committed by Saddam Hussein's regime.[35] In assessing the justness of the cause that triggered the invasion of Iraq, it is important to shed light on the declared war aims and to observe whether they have

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been realized since their attainment lays the foundation for a just war.

The most contested argument for just cause was presented as a means to justify pre-emptive strike which is, put simply, to curb the proliferation of Iraq’s WMDs and to halt the possibility of making them available to terrorists, specifically Al-Qaeda. Yet post-invasion evidence suggested a failure in coalition intelligence in identifying a justifiable threat to launch the invasion, thus undervaluing the whole essence of the Just War theory by violating the criterion of Just Cause. The main declared reason that warranted a military campaign in Iraq therefore proved to be a baseless and outrageous edifice of US imagination. The forces were not able to find any WMDs nor could they establish a clear connection between Iraq and Al-Qaeda.

In 2005, the 9/11 Commission reported that while Saddam’s Iraq and Al-Qaeda might have had contacts, “we have seen no evidence that these ... ever developed into a collaborative operational relationship. Nor have we seen evidence indicating that Iraq cooperated with Al Qaeda in developing or carrying out attacks against the United States.”[36]

Moreover, in evaluating the justness of the attack against Iraq, one should not forget the case of North Korea, which actually had a nuclear weapons programme and consistently resisted compliance with international supervision of its nuclear programme and posed a serious threat to South Korea and Japan. Despite having glaring evidence of posing an actual threat to world peace (imminent or otherwise), North Korea was ignored and the US chose Iraq to launch the offensive. This took place against a backdrop of the International Atomic Energy Agency (IAEA) publicly declaring that its inspectors could not find any evidence that Iraq had revived its nuclear weapons programme since the elimination of it in the 1990s. Can then the attack be justified as a pre-emptive means of self-defense?

The just war tradition is clearly divided on the acceptability of pre-emption as a criterion of just cause. Morally speaking, pre-emption is neither right nor wrong, but is extremely difficult to justify given the complexity of the nature of the danger present. According to some just war thinkers, if the danger is clear and is actually present, then it qualifies as a just cause for it needs immediate remedial action to reduce the suffering it might inflict. But opponents of this idea argue that perceived dangers do not qualify as just cause since, in retrospect, they might be proven entirely works of active imagination.

In retrospect, Operation Iraqi Freedom in 2003 did not meet the necessary criteria that qualify pre-emption as just cause. Even though the Bush administration was successful in making a powerful argument to portray Iraq as a danger, it failed to prove that the danger was present and imminent to justify a pre-emptive strike. While the proliferation of WMDs indeed poses a great threat to world peace and so should be a just cause for pre-emption, in this particular case the US did not possess sufficient intelligence to presume that Iraq actually possessed WMDs, let alone pose a threat. Disregard of IAEA evidence that came from inspectors who worked on the field few months before the invasion coupled with the US’s ability to discover neither WMDs nor a connection between Al-Qaeda and the Baathist regime as shown by the 9/11 Commission’s report in 2005 thus made the US’s main argument for the invasion null and void, making the invasion an unwarranted violation of Iraq’s sovereignty.

The attack turned out to be a preventive measure that was directed towards an enemy who did not pose an imminent danger but had the potential to turn dangerous. This therefore became an act of aggression which is usually looked down upon by the civilized world as a violation of territorial integrity and political sovereignty of a free nation.

The second argument presented by the Bush administration to justify the cause that prompted the invasion was the enforcement of international law. This argument is closely connected with both just cause and legitimate authority. The latter will be elaborated in subsequent paragraphs.

At a UN speech in 2002, the Bush administration presented yet another justification for the use of force against Iraq that stated enforcement of international law and punishment for non-compliance with existing agreements and international law as a cause for the Iraq invasion. The argument rather evidently carried with itself heavy political overtones rather than a moral justification. After twelve long years of Iraq’s non-compliance with international law, a US administration all of a sudden felt the need to punish Iraq. While the early writings of the just war tradition paid

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serious attention to the violation of a truce, contemporary literature on just war speaks little of it. James Turner Johnson, in *The War to Oust Saddam Hussein*, states:

Although not included in contemporary conventional listings of the just war criteria, the historical just war tradition took the obligations incurred in truces with deep seriousness. Deliberate entry into a truce with intent to break its terms was understood as an act of deception inherently opposed to the aim of establishing a just and peaceful post war order, which, in the end, is what the just use of force is all about. In terms of the law of war, deliberate breaking of the terms of a truce reopened the conflict again at the point of which the truce was made and gave the belligerent who was wronged the rights he had up to the point when the truce was signed.[37]

Therefore, continuous Iraqi violations of UN resolutions that included the imposition of a no-fly zone intended to prevent humanitarian abuses, resolutions for disarmament and weapons inspections, and violations of the 1991 treaty at the conclusion of the Kuwait invasion all collectively provided a justification for the US to invade Iraq and to ensure compliance with international law. The Security Council Resolution 1441 on 8<sup>th</sup> November 2002 repeated the demand on Iraq to co-operate with UN weapons inspections.

But the cause for alarm is as to why the US all of a sudden felt the need to rectify Iraq, whose twelve years of obstinate disregard of international law presented better instances where US involvement was actually needed? Some argue that the attack should have come right after the first violation of the 1991 truce or when Iraq expelled UN weapons inspectors in 1998. The move could have been justified then. But the US decided to take action after twelve long years – that, too, only after her ego was rather embarrassingly bruised by Al-Qaeda.

Quite ironically, the attacks took place against a positive backdrop of Iraqi compliance with UN resolutions after years of non-compliance. Iffat Idris Malik, capturing well the ironical situation, states:

In 2002 talks began again between the UN and Iraq about the resumption of weapons inspections ... On 8 November 2002 the UN Security Council unanimously passed resolution 1441 calling on Iraq to reinstate weapons inspectors. On 13 November Saddam Hussain sent a letter to Kofi Annan accepting the UN resolution. Two weeks later, weapons inspectors resumed their search in Iraq.

Despite Iraqi compliance with the demands of the weapons inspectors- including destroying its Al-Samoud missiles, Washington ‘ran out of patience’ with the regime by March 2003. A last minute offer to Saddam Hussain to leave Iraq was refused, leading to US war against Iraq.[38]

Therefore, the second claim too is invalidated due to an obvious lack of bona fide on the US’s part in launching the offensive. Added to that is the question as to whether the US had the right to enforce law on behalf of the UN without the latter’s explicit consent? The question will be answered under the criterion of legitimate authority.

The third argument presented by the US in defending her decision to invade Iraq was based on humanitarian grounds. The US’s assertion that Iraq’s need for a regime change was a result of none other than the evil behaviour of the Hussein regime with regard to its own subjects, morally speaking, is a commendable argument. In order to be qualified as a humanitarian intervention, however, there are certain tests that need to be passed, amongst which the necessity to stop ongoing mass slaughter tops the list. Yet as Kenneth Roth correctly points out, “Brutal as Saddam Hussein’s reign was, killing by his security forces in March 2003 was not of the exceptional and dire magnitude that would justify humanitarian intervention.”[39] Especially in light of the fact that during previous instances such as the 1988 Anfal genocide, where 100,000 Kurds were slaughtered by the Iraqi government, in which humanitarian intervention could have been justified, the US chose to remain silent and, in fact, to back Hussein, and chose 2003 to be the year for a military invasion to do justice to suffering Iraqis. Can this sudden sympathy towards Iraqis be a just cause for the 2003 invasion? Providing an answer to this question Roth states, “‘Better late than never’ is not a justification for the bloodshed that so often is inherent in humanitarian intervention. Military action on humanitarian grounds should be countenanced only to stop mass murder, not to make up for past inaction, despicable as a regime may be.” [40]



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Furthermore, the driving force behind a humanitarian intervention should be a humanitarian purpose. In the case of the 2003 invasion, humanitarian grounds occupied only an infinitesimal space of the broader framework of arguments presented for the justification of military action, thus undermining a basic premise in the justification of a humanitarian intervention.

Added to this, post-invasion, evidence suggested that the harm the invasion caused the Iraqis outweighed the good it could have done. If the despotism of Hussein was a nightmare to most Iraqis, the civil war period that followed the invasion was a real horror. A deadly insurgency characterized by car bombings and assassinations that ravaged Iraq roughly through 2006 to 2008 made the country's situation further deteriorate despite the presence of coalition troops, the so-called liberators of Iraqis. The situation today is far from satisfactory, owing to the abusive nature of the current government which is highly selective in the application of human rights. With a high prevalence of unfair trials and torture in detention[41], Iraq today is heading towards yet another tyranny, the only difference being that this time it is happening under a different regime.

Therefore, the failure to assess whether the invasion could meet the criteria set forth by humanitarian standards disqualifies the 2003 Iraq invasion as a humanitarian intervention, thus quashing all three claims presented by the US for a just cause.

Why then did the US administration decide to invade Iraq? The answer to this is entirely speculative and not within the scope of the research, yet an interesting question to explore. While some believe that the administration's decision was a gesture to reaffirm US primacy in the world by punishing Iraq, who bruised US's ego in the 1990 Gulf War by disrespecting the conditions laid by the truce, others believe it was chiefly due to the oil factor. Whatever the actual reason behind the invasion, be it a son avenging his father's defied authority or an exploitative US eyeing Iraq's oil reserves, these would disqualify even more drastically if considered under Just Cause criteria.

### 3.1 *Who's War and Who Decides?*

It is important to bear in mind that the violation of even a single principle of just war excludes any action from being just. Therefore, for a war to be a just war, just war theorists suggest that all criteria set forth by the tradition have to be fulfilled. In the case of the 2003 Iraq invasion, as clearly pointed out in the preceding discussion, the US failed to meet the criterion of just cause, thus making the 2003 invasion immoral. Yet it is also important to shed light on the remaining *jus ad bellum* criteria to observe whether any further violation has occurred.

The legitimacy of the authority that launched the Iraq invasion was a much-disputed subject that spurred many a debate. As Dei Gloriam points out, the case for legitimate authority can be assessed on three accounts, i.e. basis of self defense, common morality and self-determination.[42]

Article 51 of the UN Charter permits retaliation for self defense if an armed attack occurs against a member. Such retaliations do not require the endorsement of the UN Security Council. In the case of the 2003 Iraq invasion, this principle of self defense does not hold ground in building up an argument for the US since no armed attack occurred against her. But in the event of the presence of an imminent threat, legitimate right can be exercised subject to the consent of the Security Council. The 2003 Iraq invasion can be partially justified under this criterion because the US presented a persuasive argument of an imminent threat posed by Iraq to the US's security. But as pointed out in the preceding discussion, lack of evidence for the case of said threat effectively nullified the argument for self defense. Even if a threat was present, the argument is still flawed since the US failed to get Security Council authorization prior to launching the attack. Therefore, the invasion became an unjustified expression of arrogance on the part of the Coalition of the Willing.

Common morality is grounded on international law and humanitarian sentiments. As discussed above, one argument presented by the US to justify the invasion was the need to enforce international law. Though there was a need to make Iraq comply with existing international law, the US had no right to take unilateral action against violations of UN sanctions. It was the UN that had the legitimate right to take such action.

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Also, any humanitarian intervention under the existing international system is stipulated as a collective action under the UN or any other internationally-authorized body such as NATO (North Atlantic Treaty Organization) that too after much deliberation and consent from the Security Council. The 2003 military campaign was not backed by such legitimate authority, but rather was initiated purely based on the whims of the US. ‘The Coalition of the Willing’ thus became an illegitimate authority that, due to some mysterious reason, burdened itself with the responsibility of enforcing international law and carrying out a humanitarian intervention which was not actually needed (as pointed out before, gross violations of fundamental rights that warrant an intervention did not take place in Iraq at the time of the invasion).

With regard to self-determination, the right is vested in the hands of Iraqis to fight for their own freedom against the tyranny of Hussein. Any forcefully imposed democracy is therefore inconsistent with this argument, as with the case of Iraq in 2003. The US planned, attacked and imposed their system on Iraqis, who were ultimately deprived of the power to decide their own fate. Therefore, the legitimacy of US actions is questioned against a backdrop of the absence of self-governing rules for the Iraqis.

Though the US was able to fulfill the criterion for public declaration by publicly communicating its desire to invade Iraq and by asking Hussein and his sons to step down from power within 48 hours on 19<sup>th</sup> March 2003, given the absence of legitimate right to declare war against Iraq, this action has next to no significance.

### 3.2 *Better Rather than Worse*[43]

Any military campaign should make things better rather than worse for the subjects concerned. This is the argument of proportionality. It therefore aims to limit the damage of war. For the principle of proportionality to be maintained, the case for threats has to be validated.

On principle, the grave risks related to WMDs justify an invasion to curb their proliferation. In reality, however, the US failed to meet the requirement of proportionality due to the high probability of deaths expected during the invasion and the low possibility of Iraq passing its imaginary WMDs to terrorists. Furthermore, the post-invasion occupation of Iraq up to 2011, coupled with regime change, was not proportionate to the professed threat of WMDs in 2003. The proportional measure would have been removing weapons. Dei Gloriam quoting Fiala states, “Also, if the Iraq weapons were a threat, the proportionate response would be to destroy them and not an invasion, occupation and subsequent *reengineering of the Iraqi constitution*.”[44]

The humanitarian argument too fails the test of proportionality since the invasion did not make conditions better for Iraqis. It in fact served to make the situation worse. Given the absence of the required magnitude of Human Rights violations that warrant a humanitarian intervention, any military measure taken in the name of rectifying a perceived Human Rights violation as with the case of Iraq is disproportionate to the actual prevalent conditions.

### 3.3 *Iraq and the Prospects of Success*

The 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) states that in justifying any military intervention, an important criterion is to assess whether the consequences of action are not worse than that of inaction.[45] Was this the case in Iraq?

While some believe that hope for success in a military intervention should be purely in terms of military success that excludes nation building efforts from its domain, the thesis holds the view that success should denote more than military victory since the ultimate goal of any war is not to leave a nation in ruins, but rather to re-build it to stand as testimony to the positive influence of the war. In the current case it therefore refers to both the post-invasion situation of Iraq and that of the military victory. Although the military pre-eminence of the coalition forces was an indisputable factor, and the forces therefore were able to achieve their immediate aim of toppling the Hussein regime within a very short span of time, the success the thesis concentrates on runs deeper.

‘Is the post-invasion Iraq a better and safer place than its pre-invasion counterpart?’ thus becomes an interesting

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question to answer. In Iraq the answer is a pathetic ‘No’. As is repeatedly pointed out in the course of the thesis, Iraq today is characterized by intense sectarian violence, civil disorder, escalating regime abuses and even the potential to resort to a civil war not unlike that between 2006 and 2008. The deteriorating conditions in Iraq that at times even claimed the lives of coalition members in suicide bomb attacks depict a wretched picture of coalition planning, or rather the lack of it, in making Iraq a better place than what it was. The coalition was thus unsuccessful in success since their actions are evidently yielding worse results than would have been the case if there was inaction.

### *3.4 Exhausting the Exhaustible: Iraq and the Case for Last Resort*

Within a context of all justifications for a just cause presented by the US proven false, the moral debate over the use of force in Iraq, during latter stages, shifted its attention from pre-emption to last resort to assess whether the US was left with no other option but to invade. While it is hard to establish a prudential test for last resort, in theory it suggests the exhaustion of all reasonable options prior to launching a military intervention. In the case of Iraq, the options would have been diplomatic negotiations, extended sanctions and further UN inspections.

The question is whether these options were all exhausted prior to the invasion. While some argue that UN weapons inspections should have been given more time, some say Iraq was seriously testing the patience of the peace-loving world. So for them, more time meant giving extra time for Iraq to disobey the rules set by the civilized world.

The thesis holds the view that UN weapons inspections should have been given more time due to the fact that UN weapons inspector Hans Blix asked for a few more months of continued weapons inspections as Iraq had been showing positive signs of compliance, not the least of which is agreeing to destroy her Al-Samoud missiles. Despite having this reasonable alternative at hand, the US chose to invade Iraq, at a point even disregarding peace offers made by Iraq.[46] Therefore it is only rational to conclude that the US failed to uphold the moral standard of last resort as prescribed by the just war theory.

### *3.5 Right Intention in an Act of False Assumptions*

Right Intention of *jus ad bellum* criteria refers to an ethical strategy in launching war that should be devoid of ulterior motives and of which the sole expected aim has to be the achievement of the just cause. Right Intention includes as its main aim the establishment of just peace. Any military intervention devoid of this aim becomes an exercise of destruction and the criterion aspires to avoid such occurrences.

The 2003 Iraq invasion is a classic example of exceeding the limits set to war by the principle of Right Intention. The Coalition of the Willing failed to stop short of occupation and regime change that were not needed in the attainment of the main declared reason that warranted the invasion, i.e. curbing the proliferation of WMDs. The reasonable action here would have been to disarm the regime. This was ignored by the US-led forces. Instead, as per the US’s wishes, occupation and subsequent regime change occurred, which effectively invalidated the case for self-defense.

Iraq’s compliance with UN weapons inspections regime, coupled with the absence of evidence of an actual threat that warranted a humanitarian intervention, rendered the remaining two claims for a just cause null and void. Right Intention is out of the question in the absence of a just cause since the former advocates limiting the war to the pursuit and securing of the Just Cause. Hence it would be reasonable to argue that the US waged a war of great human and material cost either to defend a cause that was not in existence or, more plausibly, to serve an ulterior motive the nature of which can only be speculated.

### *3.6 Points to Ponder*

The point of departure of this chapter would be the remark that US conduct in the 2003 Iraq invasion had violated all norms set forth by *jus ad bellum*, thus calling for a serious revision of the theory that would not warrant outrageous interpretations of the criteria. Careful scrutiny of the chapter makes it clear that theories and moral prescriptions alone are woefully inadequate in setting moral standards that should be met when launching a war. Such measures would leave space for the repetition of appalling cases such as Iraq. Therefore these standards should be spelt in

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legal language to make them enforceable and, in case of violations, punishable. Since punishment is a phenomenon humans fear, states in the future would make sure to prudently weigh their military decisions before acting upon them, if and when violations of moral standards are to occur.

However, an argument could be built for the US with regard to the right to self-defense. Said right can, according to existing requirements, be exercised only when the threat is imminent. It might be possible that Iraq, bonded as it is with the Al-Qaeda by Islamic brotherhood and a war of Jihad against the US, coupled with her aggressive and even obstinate conduct in the past, spawned concern in the high offices of Washington as a looming potential threat. Given the broader context of 9/11 and the unprecedented fear and anxiety created in the collective mindset of the US following the incident, the question arises as to whether a proximate threat qualifies as an imminent threat that demands exercising the right to self-defense? This then calls for an innovation to the requirement of imminent threat by extending it to include potential threats that justify an anticipatory war. However, it is important to observe here that in order to justify US conduct even under one criterion, a revision of Just Cause is necessary. US conduct under existing moral standards, then, simply cannot be justified.

Another important recurrent point of the chapter is that of the violation of political sovereignty and territorial integrity of weaker states by their mighty and powerful counterparts while the international community meekly submits to the power of the mighty state. Can one state alone dictate terms to the whole community of nations merely because she assumes she is politically, economically and militarily supreme? What then does the ‘sovereign equality’ of states as affirmed in the UN Charter mean?

Another interesting interpretation suggested by the literature on the US decision to invade Iraq is that despite a glaring lack of evidence to justify the right to go to war with Iraq, the US still felt confident and decided to invade Iraq since the decision was not based on intelligence information but rather on US arrogance in assuming supremacy in world politics. This decision in particular had heavy neo-conservative undertones for most officials in Bush’s war cabinet were neo-conservatives. For them, threat assessment was irrelevant as long as they were provided with an opportunity to display American supremacy either politically, economically or militarily. Iraq provided them with an ideal environment for said showcasing. Officials from the Department of Defense and the Vice President’s Office, including Vice President Dick Cheney, Secretary of Defense Donald Rumsfeld and Deputy Defense Secretary Paul Wolfowitz, were all hardcore neo-conservatives who were also involved in the first Gulf War in 1990. Theirs was a hurt ego that needed to be pampered by concluding the unfinished business in Iraq.

As James Mann points out in *Rise of the Vulcans*, the invasion served the neo-conservatives with five main purposes, all of which accounted to a reinstatement of US primacy.[47] First, their belief in the supremacy of US military power, which they wanted to display since the defeat at the Vietnam War, was restored. Next, America as a force of righteousness was paraded at least according to them. Third, their sanguine belief that US capabilities were not declining in a globalized world was reaffirmed. Fourth, the reluctance of neo-conservatives to carry out any peace attempt, such as entering an agreement or negotiation, was evident by their endorsement of the military invasion that displayed the American superior mentality of being able to survive alone with no allies due to the sheer power they possess. And finally, quoting Mann:

The war in Iraq served as a demonstration of the Vulcans’ commitment to the strategy Paul Wolfowitz’s Pentagon staff had drafted at the end of the cold war: America would build up its military power to such an extent that it would be fruitless and financially crippling for any other country to hope to compete with it.[48]

The neo-conservatives were thus able to reassure US primacy in the current international order at the cost of undermining ethical criteria set by the civilized world to govern itself. They did what moralists wouldn’t dare do!

The chapter also presents the ineffectiveness of international organizations such as the UN in halting unjustified unilateral invasions, such as the 2003 Iraq invasion, and therefore recommends strengthening them to face down violations of international law. Also, an interesting phenomenon is how global political supremacy of a particular state helps her get away with grave crimes committed, specifically in this instance the crime of aggression. It is the responsibility of each state to respect existing international law as a source that sets forth the standards of common

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morality to all states, which the US failed to do.

Finally, and most importantly, it should be understood that the magnitude of the Iraq invasion has given the US enormous clout to shape the world’s perception regarding her powers. Therefore any attempt to justify the decision to invade Iraq under the pretext of the just war theory would be a misuse of the theory for it has, as proven in the preceding discussion, violated the criteria of *jus ad bellum*, and hence would naturally spark off debates with regard to the equal applicability of the theory.

## 3.7 Conclusion

In conclusion, it can be said that the chapter presented an account of US behaviour in the 2003 Iraq invasion within the criteria of *jus ad bellum* and carefully assessed whether the US has been able to meet the said criteria. A careful evaluation has made it clear that the criteria of *jus ad bellum* have been violated by the US in the 2003 Iraq invasion. In drawing a conclusion, the chapter also suggests remedial action for a better and more effective application of *jus ad bellum* to avoid future occurrences of this nature.

## Chapter 4: Iraq and the Law of War

This chapter will be an examination of the applicability of International Humanitarian Law (IHL), also known as the Law of War or Law of Armed Conflict, in the 2003 Iraq invasion. Since *jus in bello* criteria are enshrined in International Humanitarian Law, any assessment of it with regard to the Iraq invasion will be invariably linked to International Humanitarian Law. Taking a different approach from the previous chapter, this will take into account two contesting arguments presented by Schmitt and Human Rights Watch on the application of IHL with regard to US conduct during the invasion, and the more logical of the two will be used as the basis to build the case for this chapter. The scope of the chapter would be from the point the attacks were launched on 19<sup>th</sup> March 2003 to Bush’s 1<sup>st</sup> May announcement that major combat operations in Iraq have ended. Any incident of significance that took place afterwards would be discussed in Chapter 5 under *jus post bellum* or post-invasion justice in Iraq.

### 4.0 What is International Humanitarian Law?

International Humanitarian Law (IHL) traditionally known as *jus in bello*:

Is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.[49]

It therefore spells binding rules for conflicts between states, states and non-state belligerents, and civil war combatants. It is important to note that IHL is clearly independent from determining the legality of use of force, i.e. principles covered by *jus ad bellum*. Hence it addresses issues strictly within the scope of an armed conflict irrespective of whether or not the use of force is legal. Its application is equal to all parties to an armed conflict, and aims to minimize the suffering caused by war by protecting and assisting its victims in a maximum possible way.

The two principal branches of IHL are Hague Law and Geneva Law. While Hague Law involves regulation of weaponry and the selection of military targets, Geneva Law deals with the humanitarian facet of a war comprising mainly of treatment of Prisoners of War (POWs), detainees, civilians and humanitarian aid workers.

Therefore it is correct to say IHL generally covers two broad areas namely:

- Protection of those who are not, or no longer, taking part in fighting and,
- Restrictions on the means of warfare – in particular weapons– and the methods of warfare, such as military tactics.[50]

A major part of IHL is contained in the four Geneva Conventions of 1949 and the two additional protocols of 1977

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relating to the protection of victims of armed conflict.[51] Today many provisions of IHL are recognized as customary law and therefore have the status of general rules by which all states are bound. The six conditions of *jus in bello* as spelt in Chapter 2 are enshrined in laws pertaining to the two areas covered by IHL.

IHL applies only when an armed conflict has begun and is binding on all parties to the conflict regardless of who started it. Given the changing face of conflicts, IHL identifies two main types of conflicts i.e. International and Non-International armed conflicts:

- International Armed Conflicts- Refers to conflicts in which at least two states are parties. Such conflicts are governed by the laws set forth in the four Geneva Conventions and Additional Protocol I.
- Non-International Armed Conflicts- Conflicts restricted to the territory of a single state, fought between either: 1) regular armed forces and groups of armed dissidents, or 2) between different armed groups. Article 3, which is common to all four Geneva Conventions, and Additional Protocol II set the standards that should be maintained in non-international armed conflicts.

The commencement of hostilities in Iraq on 19<sup>th</sup> March 2003 automatically involved IHL in the conflict now that war had actually begun. Significant moral issues were raised about the nature of the invasion especially in terms of just war criteria. Following is a brief account of just war concerns starting from 19<sup>th</sup> March 2003 to the 1<sup>st</sup> May declaration of President Bush that major combat operations in Iraq have ended.

## 4.1 Applicability of IHL in the 2003 Iraq Invasion

IHL issues in the conduct of hostilities in the 2003 Iraq invasion captured significant international attention. Starting from the aerial bombardment of 19<sup>th</sup> March 2003 characterized by precision-guided attacks, to the point where the Iraqi capital Baghdad was captured after 21 days of major combat operations, which are commonly referred to as Operation Iraqi Freedom, and the subsequent proclamation of President Bush on 1<sup>st</sup> May 2003 that major combat operations have ended, pose interesting questions about the application of IHL principles.

According to Michael Schmitt, “The war in Iraq thrust international law into the global spotlight as has no conflict since Vietnam”.[52] While *jus ad bellum* principles were analyzed, interpreted, debated and discussed by hundreds of academics and activists thousands of times, *jus in bello* seemingly received less attention, a fact demonstrated by the dearth of literature available on the topic. Therefore the focus of this chapter would be the *jus in bello* component, i.e. issues pertaining to the applicability of IHL in the Iraq invasion, with specific reference to US conduct, with an aim of giving fresh insights to the issue and contributing to the existing body of knowledge on the subject. Violations of IHL by Iraqi forces, though important in the development of international law, will not be discussed in the chapter since the central focus of the thesis is on US conduct in the 2003 Iraq invasion.

The thesis shall consider the situation in Iraq from 19<sup>th</sup> March to 1<sup>st</sup> May 2003 as an international armed conflict that involved the coalition states and Iraq. As such, the laws applicable to said situation would be the four Geneva Conventions and Customary International Humanitarian Law hereinafter referred to as CIHL. Since neither Iraq nor the US is a party to the Additional Protocol I to the Geneva Conventions, the conflict will not be analyzed in terms of the provisions in it that are not considered CIHL. There are also other conventions such as the 1907 Fourth Hague Convention and the 1933 Chemical Weapons Convention that are not applicable to this context since in those cases either of the two parties to this conflict has not ratified them. Yet both US and Iraqi conduct were conditioned by CIHL that is operative even if certain conventions are not ratified by the warring parties. For instance as Schmitt further states, “... Article 1 (2) of Additional Protocol I provides that ‘[in] cases not covered by this protocol or other international agreements, civilians and combatant remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience’.”[53] Therefore, with regard to the applicable laws, it is correct to conclude that hostilities in Iraq between March 19<sup>th</sup> and May 1<sup>st</sup> 2003 were mainly governed by the four Geneva Conventions and CIHL. Also, provisions of the Additional Protocol I that act as CIHL too will be applied in analyzing the case. US conduct will thus be evaluated within the parameters set forth by said laws. Consequently any violation of said laws will amount to a violation of *jus in bello*, while upholding said laws will amount to a just conduct of US forces within the framework of

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the Just War theory.

## 4.2 Case for Decapitation

Decapitation simply means the direct, intentional targeting of the leadership of an enemy organization, and is closely linked to discrimination and non-combatant immunity, a principal consideration of IHL. Militarily speaking, decapitation offers numerous benefits that include limiting collateral damage<sup>[54]</sup>, making a military unit ineffective, thereby shortening the conflict, and, above all, making a military victory less troublesome. Politically speaking, it is of utmost importance since it ensures a minimal probability of relapsing to violence in a post-war scenario. However, it also carries certain disadvantages such as the possibility of collapsing into chaos as a result of the loss of leadership and the almost inevitable lessening of a sense of order.

From a just war and IHL perspective, decapitation is a moral option available to achieve speedy just peace. It falls in line with both the principles of discrimination and proportionality. It not only targets exclusively those who are directly responsible for the creation of hostilities, but also invariably excludes non-combatants thereby adhering to the rule of discrimination. Targeting only the leadership results in minimum human cost and a regime change results in maximum positive change, thereby maintaining proportionality.

At a superficial level, decapitation strikes against Saddam Hussein by the coalition forces thus can be viewed as a just action that does not entail violations of any moral standard. But from an IHL standpoint, there are certain distinctions that should be made between military and non-military objects and objectives. It is therefore important to shed light on certain IHL requirements before concluding any assessment on the decapitation strategy employed by the US led coalition forces.

First, it is important to assess whether the targets served any military objective.<sup>[55]</sup> As per an IHL requirement, it is of vital importance to distinguish between combatants and non-combatants and to make sure not to target non-combatants. Non-combatants will be deprived of the protection afforded to them only if they directly participate in hostilities. Article 51 of Additional Protocol I which is regarded as CIHL states the following:

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.<sup>[56]</sup>

According to Article 50 of Additional Protocol I, he who does not fall within the category of combatants, as per the definitions of Article 4 of Geneva Convention III and Article 43 of Additional Protocol I, is recognized as a civilian and should not be targeted under any circumstance. The Combatant category includes members of armed forces, militia and volunteer corps, etc.

In the case of Iraq, Saddam Hussein and his two sons who were ordered to be attacked – though they did not directly take part in hostilities and were in a hideout – occupied positions within the military, and as such can be recognized as combatants since membership alone qualifies them as combatants because their functioning aided military operations carried out by Iraqi forces.

The next important criterion is to assess whether they were a military objective. Since abating the Iraqi militia and government occupied a central place in the agenda of Operation Iraqi Freedom, targeting Hussein and his sons can be justified.

Once the military objective becomes legitimate, it is important to decide on the means that would be employed in achieving the objective. Under IHL's principle of discrimination, the attacks must be directed only at a specific military objective and should not cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof which could be excessive in relation to the anticipated military advantage. This is a principle enshrined in CIHL as well.

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This is where the Iraq case becomes tricky. Elaborating on the complexity of the issue Schmitt quotes Human Rights Watch:

Targeting based on satellite phone-derived geo-coordinates turned a precision weapon into a potentially indiscriminate weapon. According to the manufacturer, Thuraya’s GPS system is accurate only within a one-hundred-meter (328-foot) radius. Thus the United States could not determine from where a call was originating to a degree of accuracy greater than one-hundred meters radius; a caller could have been anywhere within a 31,400-square-meter area. This begs the question, how did CENTCOM know where to direct the strike if the target area was so large? In essence, imprecise target coordinates were used to program precision-guided munitions.[57]

Though Schmitt’s interpretation is that IHL simply warrants attack on an enemy location if there is proof that said location serves a military objective for the enemy, the thesis believes otherwise. Whatever position legal provisions assume, the Just War stance is consonant with that of Human Rights Watch. Given the amount of civilian casualties sustained due to the air strikes that were targeted at the Iraqi leadership, the US strategy was clearly proven flawed. Furthermore it was only in December 2003 that the forces were able to track down Saddam Hussein in a hideout. Added to this a number of other attacks carried out with the intention of tracking down top Iraqi leaders too proved to cause staggering incidental loss to civilian life. One such instance is the bombing of a building in Al-Tuwaisi, Basra, in an attempt to kill Lieutenant General Ali Hassan al-Majid, known as “Chemical Ali”, causing heavy losses to both civilian life and property since the building was situated in a densely populated area. The strikes took place in early April and al-Majid was actually captured only as late as August.[58] Therefore the alarming inaccuracy of air strikes carried out to eliminate the Iraqi leadership resulted in large-scale incidental loss of civilian life and property, which made the collateral effects outweigh the intended effects, thereby making the case for decapitation unfair and immoral according to the Just War perspective.

### *4.3 Use of Weaponry*

From both IHL and Just War perspectives, the use of weaponry in an armed conflict is instrumental in determining the justifiability of the conflict. While it should be noted that the usage of weaponry of the US forces was generally satisfactory in terms of IHL standards, there were a few instances that came under heavy criticism which demands attention.

The case of cluster munitions tops the list of controversies. By nature, cluster munitions destroy indiscriminately, and therefore calls for the banning of them are increasing by the day. Yet the current body of IHL does not classify cluster munitions as illegal weapons. As Schmitt states “... IHL question is not whether cluster munitions have been used, but how.”[59] In providing an answer to the question, Human Rights Watch and Schmitt take two views. While Schmitt believes that the use of cluster munitions by coalition forces does not violate any IHL requirement due to the fact that those were precision-guided and were aimed at military objects, Human Rights Watch holds the view that the forces acted in a way that violated IHL in certain instances since the use of cluster munitions during certain air strikes were indiscriminate and disproportionate, thus violating a fundamental IHL principle that prohibits attacks “which employ a method or means of combat which cannot be directed at a specific military objective.”[60] Also, most of the leaders who were targeted were captured only in late 2003. Therefore the “shock and awe” air attacks carried out by US-led coalition forces in densely populated areas using cluster munitions could reasonably be considered a violation of IHL.

However, it should also be noted that most US attacks on densely populated locations were launched under unavoidable circumstances because US conduct illustrates the fact that the coalition forces were constantly making effort to minimize the human cost of the war. For example, the US air strike of Baghdad date grove was carried out during midnight despite ample opportunity to strike during day and make a more hugely felt impact.

Ground war, in contrast, painted a dismal picture of coalition behaviour. According to Human Rights Watch, ground launched cluster munitions deployed by coalition forces were one of the most major threats to civilians due to the heavy number of civilian casualties they caused. Stating the point Human Rights Watch reports:

Unlike Coalition air forces, American and British ground forces used cluster munitions extensively in populated areas.



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Human Rights Watch found evidence of ground-launched submunitions (known as grenades) in residential neighborhoods across the country, including in Basra, al-Hilla, Karbala', al-Najaf, and Baghdad. A military list of duds reported after the war shows that the use of these weapons was widespread along the battle route to Baghdad, including in and around other populated areas. While these strikes were directed at Iraqi military targets, the weapons' inaccuracy, broad footprints, and large numbers of submunitions caused hundreds of civilian casualties.[61]

Major cities including al-Hilla, al-Najaf, Karbala, Baghdad, and Basra suffered hundreds of civilian casualties due to the liberal use of cluster munitions. Though the coalition forces tried to limit the harm, the very choice of using these in residential areas made them responsible for violations of IHL.

### *4.4 Non-Combatants, Human Shields and Civilian Participation in Conflict*

Protecting non-combatants is a fundamental objective of a Just War. It also occupies a principal position in IHL because the main function of IHL is to ensure minimal damage to life and property. It also became an increasing concern for US forces in the Iraq theatre due to the dangerous and tricky urban combat sites they had to handle.

While it is important to bear in mind that civilian casualties are unavoidable in a war, the IHL requirement is to limit both the number of non-combatants affected as well as the suffering inflicted upon them. It therefore regulates the methods employed in waging a war in a way that minimizes harm to the said subjects. IHL has a list of protected persons including civilians, medical and religious personnel, women and children, etc. As per IHL requirements, a civilian shall be protected as long as he/she does not directly take part in hostilities. The increasingly creative – and even destructive – methods and standards of warfare that will be explained in succeeding paragraphs have blurred the lines between combatants and civilians, making the protection of non-combatants a very challenging task indeed.

In Iraq, the attacks on civilian telecommunications on charges of 'dual use' (serving both civilian and military purposes) became an explosive issue. As per a pre-planned military agenda, coalition forces attacked Iraqi media facilities, an action that came under heavy criticism. But the question here is whether those were military objects. According to Human Rights Watch, the facilities under attack did not render direct assistance to Iraqi armed forces. But Schmitt, presenting a counter argument, disagrees with the stance of Human Rights Watch. According to him, "... a civilian objective can become a military objective not only by present use for military purposes, but also through 'purpose', i.e., intended future use." [62] To prove his assertion, Schmitt quotes a senior US Central Command Official: "[w]e felt pretty comfortable that [Iraqi TV] was one of the means Iraqi intelligence used to signal its elements outside the country... would tell forces where to go and to take certain actions." [63] If this proved right, the action of attacking thus meets the requirement of location (Nature, Location, Purpose, and Use that defines a military objective (NLPU)) of Article 52 of Additional Protocol I that qualifies a facility as a military objective. According to Human Rights Watch, the belief proved wrong, thus violating IHL norms.

However, more pressing problems were related to targeting Baath party buildings that were not directly linked to any military objective under the NLPU test. Since targeting a regime is not morally permitted by both IHL and the Just War theory, such attacks accounted to violations of both legal and moral standards.

Another important issue was that of targeting involuntary human shields in order to achieve military victory. Most opponents of the invasion called for holding the US accountable for war crimes due to this phenomenon. Involuntary human shields play a very important role in the evaluation of proportionality. To cite an example from Schmitt, in one reported case a US helicopter had attacked a group of Iraqi militiamen who had used a civilian family as their shield.[64] The attack killed the militiamen along with the civilians. Does this fail the test of proportionality? Article 51 (8) of Additional Protocol I, providing an answer, states that under no circumstance will civilians lose their protection as protected persons. It is actually this protection that makes combatants use civilians as shields. Though the coalition forces were caught up in a tricky situation in dealing with human shields, it is correct to conclude that, as per existing IHL norms, the forces can be held accountable for violations of IHL.

Targeting medical facilities by the coalition forces relates a different story since the facilities under attack had

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become military objectives at the time of the attacks. Examples include the al-Nasiriyya Surgical Hospital used by Fedayeen for military purposes and the Baghdad Red Crescent Maternity Hospital occupied by Mukhabarat.[65]

The distinction between combatants and non-combatants grew even hazier due to Iraqi combatants being dressed in civilian clothing. Nevertheless, the obligation of US forces to seek to avoid non-combatant casualties remained the same. However, during the invasion, satisfactory examples have not been produced to hold coalition forces responsible for violations of IHL in their treatment towards Iraqis who feigned surrender or attacked coalition troops in civilian clothing.

Human Rights Watch reports that the cause for violations of IHL norms on the part of US forces were mainly due to their lack of understanding of the existing body of knowledge on IHL, and therefore there is a need for better guidance in order to avoid incidental losses of civilian life. [66]

### 4.5 Conclusion

The military victory in Operation Iraqi Freedom was extremely rapid and astoundingly low in terms of the number of American deaths reported. Yet it was a controversial military exercise from a number of perspectives. The US-led coalition came under heavy criticism due to their conduct during the operation. This chapter scrutinized the conduct of hostilities by the US forces during the military operation with regard to their compliance of IHL. It took into consideration certain contentious issues pertaining to US conduct during armed hostilities and arrived at the following conclusions.

The US-led forces have often tried to comply with applicable IHL provisions. Yet there are instances in which IHL violations have occurred. With the changing nature of conflicts and the introduction of ever more creative methods to warfare, certain provisions of IHL are compelled to widen their horizons or risk being parochial and obsolete. One such instance is the blurring of the distinction between civilians and combatants which presented the coalition forces with an unprecedented experience. However, research by Human Rights Watch suggests that the conduct of US forces with regard to Iraqi combatants in civilian clothing is satisfactory and fulfills IHL requirements, for there is no reported case of significance that asserts the fact that US troops performed immoral acts concerning Iraqi combatants who feigned surrender or attacked while in civilian clothing.

Notwithstanding the assessment of Human Rights Watch, widespread use of cluster munitions by coalition forces was severely criticized since they were used in residential areas causing indiscriminate incidental loss of civilian life and property. In fact, it is the use of ground cluster munitions that accounted for the most number of civilian deaths during Operation Iraqi Freedom. This violated the principle of proportionality, a cardinal principle of IHL.

Furthermore, precision-guided air strikes repeatedly proved to be inaccurate calculations – if not outright wild guesses – since these strikes were not able to kill a single targeted individual but caused many a civilian death. This called for the need of exercising extreme caution in the execution of an attack.

Attacks on media installations too bore testimony to the fact that more caution and planning is required prior to launching an attack which might at the end demonstrate poor judgment due to the number of casualties caused despite not being able to achieve the expected end.

In conclusion, it could be said that US troops generally complied with IHL regulations. Nevertheless certain instances prove that their behaviour amounted to violations of IHL, thus making certain aspects of the operation an unjust war. As mentioned in previous chapters, violation of even a single principle of the Just War theory renders a war immoral or unjust. Therefore it is correct to conclude that US conduct during the 2003 Iraq invasion was unjust under the *ius in bello* component as well, since certain violations of Just War criteria have occurred during the conduct of hostilities.

## Chapter 5: Iraq and the Endgame

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The chapter would present an analysis of the newest and latest component of the Just War theory, i.e. *jus post bellum*, with regard to the 2003 Iraq invasion. In drawing a conclusion, it would assess whether the US had been able to play a responsible role as an occupying power in Iraq and whether Iraq today is better than her pre-invasion counterpart. The chapter will begin its assessment from the point where the previous chapter concluded, i.e. from the 01<sup>st</sup> May 2003 Proclamation of President Bush that ‘major combat operations in Iraq have ended’ to the point where the last brigade of US troops evacuated Iraq on 18<sup>th</sup> December 2011.

## 5.0 Post-invasion Iraq: An Overview

After a prolonged contested occupation of eight years, the last brigade of US soldiers left Iraq on 18<sup>th</sup> December 2011. However, the US left behind a country battered by sectarian violence, political uncertainty, political oppression and mounting tension. The US exit from post-invasion Iraq therefore posed serious concerns from the perspective of Just War. ‘Was it a game well played?’ thus becomes an interesting question to answer. Following is a brief account of post-invasion Iraq presented to provide an answer to the question.[67]

In March 2003, the US army arrived in Baghdad and within 21 days captured the Iraqi capital after a string of air strikes and ground attacks. On 9<sup>th</sup> April 2003, US marines razed a statue of Saddam Hussein in Baghdad in an attempt to sham a demonstration of Iraqi delight. After a brief period of relative calm, the country broke into chaos and looting became the norm. Looting even included ransacking the Iraqi national museum that had over 10000 years’ old artifacts. On 1<sup>st</sup> May, dressed in a flight suit, President Bush declared that “major combat operations in Iraq have ended.”

Then begins the period under investigation of the current chapter. In June of the same year, US Secretary of Defense Donald Rumsfeld declared that US forces continued to be killed even after the conclusion of major combat operations, mainly by the remaining members of the Baathist regime. In July, a governing council appointed by the US convened for the first time, and later in the month, Saddam’s two sons were killed in a gun battle.

August 2003 marked the intensification of the insurgency that began soon after the fall of Baghdad with the killing of the UN Envoy Sergio Vieira de Mello by a suicide bomber. In December 2003, Saddam Hussein was captured in Tikrit. In 2004, the insurgency grew into huge proportions marked by a series of suicide attacks and increased fighting between US troops and insurgents, including the US-led offensive in Falluja. In June the same year, the sovereign power of Iraq was handed over to an interim government by the US against a background of allegations hurling at US forces regarding the abuse and mistreatment of Iraqi prisoners.

2005 was marked with increased Iraqi participation in elections albeit the country was ridden with violence. In January 2005, 8 million voted to elect a Transitional National Assembly. In April 2005, Jalal Talabani was sworn in as president. In August, Shia and Kurdish negotiators endorsed a draft constitution while their Sunni counterparts looked down upon it. In October, the constitution was approved, and in December the Iraqis elected their first ever full-term government since the occupation.

2006 witnessed a rapidly declining Iraq, so rendered by escalating sectarian violence. In 2006, the UN reported that an average of more than 100 civilians were killed per day in Iraq. Three years after his capturing, in December 2006, Saddam Hussein was executed.

In 2007, President Bush announced a new Iraq strategy that proposed to dispatch more US troops to bring the situation in Iraq under control. This was followed by a series of deadly bomb attacks that claimed the lives of thousands of civilians. In the same year, issues regarding the transparency of private military companies posed new challenges to the development of IHL.

In 2008, the Iraqi government entered into a security pact with the US, whereby the latter agreed to withdraw her troops from Iraq by the end of 2011. In 2009, the withdrawal of the US troops began and in 2010 the last combat group of the US left Iraq. By the end of 2011, despite surging violence and political uncertainty, the US completely removed her presence from Iraq, leaving the country in tatters.

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The answer for the question is thus clear: The game in Iraq was definitely not well played. Therefore justice after war has today become a burning apprehension for many just war theorists, especially after the Iraq debacle. The chapter would illustrate how the US failed to fulfill her obligations towards Iraq as both an occupying power and as a responsible player in world politics in ending the Iraq war in a constructive manner, respecting human rights and the rights of Iraqis to enjoy a just peace.

### 5.1 US Strategy for Post-invasion Iraq

How can civic unrest of a defeated country be handled? What strategies should be implemented for post-war reconciliation? How can a country be made stable after a war? What means should be carried out to deal with internal divides of the loser? What should be the post-war role of an occupying power in rebuilding and reconstructing a conquered territory?[68] The US was faced with a multitude of questions concerning her role in post-invasion Iraq. Did she succeed in providing those with satisfactory answers?

According to the Just War theory, ending of a war must be the dawn of an era in which the unjust reasons that triggered the war shall be corrected. To put simply, in terminating a war, the just cause that spurred the war must be achieved and the injustices at the root of the war must be remedied. Therefore, any occupation subsequent to an invasion should be just, respecting law and order that will ultimately result in an ethical exit.

The US policy in post-invasion Iraq portrayed neither of the said characteristics. It, in fact, had no strategy whatsoever to deal with post-invasion Iraq. The US, in the gush of passion to prove her might, avenge her bruised ego or simply, as claimed, annihilate WMDs from Iraq for the sake of all humanity, probably overlooked the entire question of post-invasion Iraq. As Ivo Daalder and James Lindsay point out in *America Unbound*:

The Administration's belief that the American postwar role in Iraq would be brief rested on two key assumptions. The first was that Iraq's physical and administrative infrastructure would be largely intact after the war... The second assumption undergirding the planning for a post-Saddam Iraq was that an American presence would be welcomed as it had been in France in 1944.[69]

Both assumptions proved to be wrong. The US's idea of thwarting the Iraq militia and holding the institutions as those were did not work. The unexpected resistance from factions within Iraq that paved the way for a deadly insurgency smashed every dream the US had of an administratively sound Iraq who could see to her own reconstruction. The hasty, almost rushed, invasion and the subsequent hurried declaration of ending of combat operations proved that the US clearly had no plan to stay in Iraq. Her plan was only to attack Iraq and eliminate Saddam Hussein for reasons only known to the masterminds of the administration who planned the invasion. Thus the US pathetically failed to understand that regime change alone is insufficient and that it is also important to ensure that war had served to create a situation better than what was. The naivety of US's conception of Iraq being able to function on her own after the collapse of her government, however dreadful it was, only left Iraq in a power vacuum with no strong leader to fill it up. Since the events that unfolded after the war were not foreseen, a strategy to tackle them too was non-existent.

Nevertheless, the US's role in post-invasion Iraq was a major and direct one. Having ground forces deployed in Iraq, along with the establishment of the Coalition Provisional Authority (CPA) by the US and the UK that exercised the powers of a temporary government, the US was legally entrusted with the responsibilities of an occupying power. Though occupying powers are naturally inclined to deny their status as a means of avoiding obligations said status entails, once a situation factually amounts to an occupation, i.e. exercise of full or partial authority over a territory belonging to the enemy by a hostile force regardless of whether it was met by armed opposition as per Common Article 2 Paragraph 2 to the 4 Geneva Conventions, the occupying power has to comply with the law of occupation.[70] As such, the US had to fulfill a range of obligations pertaining *inter alia* to maintaining public order, treatment of Prisoners Of War (POWs) and establishing democracy. Her actual performance, however, was as would be proven in the subsequent discussion far from satisfactory.

As of 30<sup>th</sup> June 2004, with the handing of power over to an Iraqi Interim Government, a question arose as to whether

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the occupation has ended. The US was ever so willing to relinquish the burden of responsibilities an occupying power was saddled with. Hence, legally ending her occupation, the US transferred all powers to the puppet Interim Government in 2004. Even though legal provisions relieved the US of the responsibility of rebuilding Iraq now that an interim government was in place, the US was morally obliged to assist in reconstruction efforts because she started the war. Therefore, the thesis will focus on the period following 2004 to 2011 until the last brigade of US troops left Iraqi soil.

The US occupation in Iraq was painted in grim tones that hinted abuses of an occupying power responsible for grave crimes, little thought to reconstruction and rebuilding, inadequate strategy to control rising sectarian violence, a rising death toll and a broad-brush approach to democracy. Following is a brief account of the major failures of the US during her occupation of Iraq that paved way for an even more wobbly country whose volatile and vulnerable nature was definitely worse than her pre-invasion counterpart.

### 5.2 Battle of Fallujah

The Battle of Fallujah was a turning point of the US occupation in Iraq. Lamentably, the battle was a sign of the US's nonchalant attitude towards the responsibility to protect the Iraqis as an occupying nation. The battle bears testimony to US intolerance to resistance, a legitimate right – i.e. the right to self-determination – Iraqis were entitled to as subjects of occupation. Arbitrary firing by US troops in April 2003 resulted in a preventable massacre of civilians who were involved in a peaceful demonstration against the US occupation that in turn spurred the wider battle. Interesting here is that Fallujah, a city that was never a Baath party stronghold, became the landscape that fatefully mocked the US's commitment towards democracy, the hallmark of the American political system: the US, who entered Iraq under the excuse of making her the model democracy of the Middle East, crushed the dream of peace-loving Arabs and Iraqis of a stable and democratic post-conflict Iraq by ruthlessly attacking a peaceful demonstration, a move that was definitely uncalled for. The US, instead of punishing the ones who were actually responsible for the chaos, thus chose to indiscriminately punish innocent subjects of her occupation, thereby committing grave violations of both IHL and *jus post bellum* principles pertaining to punishment.

Fallujah was hence taken to allude to resistance, and the city later developed muscle and grew into a strong hub of combat which ultimately resulted in the US withdrawal from the city under the lame excuse of handing the power over to Iraqi authorities. In March 2004, adding fuel to the torrid crisis, four civilian mercenaries connected to a private US-based security company named Blackwater were attacked by Iraqi fighters and their bodies were maimed, resulting in the worst decision ever to be taken by occupation authorities. Capturing well the situation, Walden Bello comments:

In what will certainly go down as one of the worst decisions of the occupation authorities, a posse of two thousand troops from the First Marine Expeditionary Force encircled Falluja on April 4, to search out and punish the Iraqis involved in the incident. Earlier, on April 1, Brigadier Mark Kimmit, deputy director of operations in Iraq, promised “an overwhelming response,” saying, “We will pacify that city.”[71]

Fallujah, making a motto of its residents come true, ultimately became the ‘graveyard of the Americans’ not only militarily but also politically.[72] In April a large number of US troops were killed in fighting in Fallujah, and eventually the resistance gained momentum, spreading to a large number of Iraqi cities. The US army, drained and spent, started firing indiscriminately violating basic principles of IHL that led to the deaths of mainly women and children who were non-combatants. The act ignited acid responses that resulted in a surge of irregular guerilla warfare and caught the US army in a quandary as to how and when to attack.

The US, reluctant to risk her already tarnished reputation, was finally compelled to enter into a ceasefire agreement and hand over power to the Fallujah Protective Army. Late 2004 witnessed an intensification of fighting between the guerillas and the US army, drawing many more Iraqis to the struggle and making approximately 55 cities no-go zones for the US.[73]

As Bello further points out, at the heart of the problem were blunders made by US administrative officials, among

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whom Paul Bremer, the US proconsul, topped the list. He made three huge political gaffes:[74] (1) removing bureaucrats from Saddam's Baath party; (2) disbanding the Iraqi army; and (3) making the handing over of power indefinite and a case to be decided by the occupation authorities. While arbitrarily depriving roughly about thirty thousand bureaucrats of their jobs merely due to their previous political affiliation without proper trial is a violation of the fundamental democratic right to freely decide one's political stance, it is also a violation of the *jus post bellum* criterion of discrimination, which advocates making a proper distinction between ones who are and are not responsible for previous atrocities committed in the defeated country. This type of indiscriminate punishment is not only a political blunder, but also an immoral act that may ultimately result in chaos as proven in Iraq. It is only natural for various factions of the victim nation to join mass protests, be it peaceful or guerilla, as an act of vengeance against arbitrary decisions taken by an alien power.

Also, disbanding the Iraqi militia threw a quarter of a million armed Iraqis to the streets with no work but looting to pass their time; that in turn provided a great source of man power to the guerillas.[75] These developments, coupled with the unwelcome reception of Americans in Iraq, acted as a heavy counter-force against the exploitative occupying power of the US. The US's idea of indiscriminately punishing the Iraqis thus not only violated *ajus post bellum* principle – that of punishing only those who were actually responsible for a previous misdeed – but also served to block the collective mindset of Iraq from accommodating a favourable attitude towards the US and checked the so-called US primacy in world politics.

The US thus pathetically failed to recognize the spirit of resistance that was inherent in an occupied population bonded by nationalism and common Islamic fraternity. The former submissive subjects of Hussein thus became a force strong enough to defame the world's sole super power.

### 5.3 Abu Ghraib Torture

Photographic evidence of abuse of Iraqi prisoners by the US troops that were leaked in May 2004 became the first enormous shock that made public support to the invasion drastically drop in the succeeding years. According to the Taguba report compiled by Major General Antonio Taguba, appointed to investigate the conduct of the U.S. 800<sup>th</sup> Military Police (MP) Brigade that was responsible for Abu Ghraib Confinement Facility[76], sadistic and gratuitous criminal abuses were inflicted on several detainees by the US guards that included punching, slapping, and kicking detainees, a male MP guard having non-consensual intercourse with a female detainee, placing a dog chain or strap around a naked detainee's neck and having a female soldier pose for a picture and sodomizing a detainee with a chemical light and perhaps a broom stick.[77] The report shocked many Americans and bore testimony to the US's violations of Geneva Conventions on the treatment of Prisoners Of War (POWs) and the unjust conduct of the US as an occupying power.

The administration's managing of the scandal sparked further anger and bitterness in the public since it took great pains to veil the systemic failures of US occupation and tried to portray the treatment of prisoners as isolated incidents that did not rationalize public disdain. The Bush administration, in its attempts to cover up its disgraceful behaviour, punished only a few enlisted men and officers and did not bother to prosecute any of the high officials responsible.

Yet her enthusiasm in administrating justice to the Iraqis by prosecuting Saddam Hussein in a rush is not only morally wrong but also laughable in its hypocrisy. The US's notion of punishment thus seriously undermined the principle of punishment enshrined in *jus post bellum*, for it calls for indiscriminate punishment of all those who committed war crimes, including the victor where necessary.

### 5.4 Failures of Occupation

While Fallujah and Abu Ghraib became the most notorious examples of US abuses as an occupying power, the US's failures were not limited to these. It was also involved in other violations of basic duties of an occupying power. Following is a concise description of those.

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Sexual violence and abduction of women and girls by the US forces was a regular occurrence especially in Baghdad during the early days of the occupation. Irogbe quoting Ernesto Cienfuegos reports:

The American people and the rest of the world are generally not aware that the U.S. government has hired literally thousands of hired [mercenaries], many with notorious war crime records. A significant number of these are rapists, sodomites and murderers from South African and Serbia. These vile individuals work for [the so called] —Security Services under contract to the Pentagon. Most of these —Security Services are cronies of both Bush and Cheney and are owned by nefarious [individuals] who also have ties to the Burbank, California pornography industry.[78]

Added to this woe was that of rendition, i.e. the abduction and transfer of suspected terrorists to countries known for the practice of torture by the US military, specifically in this instance Guantanamo, Cuba. This violated the UN Convention against Torture, to which the US was a signatory party. The CIA (Central Intelligence Agency), which is believed to be the mastermind behind such abductions, has reportedly tortured detainees to extricate so-called valuable intelligence information. Capturing well the injustice, Consumers for Peace states:

In the latter part of 2003 and on into 2005, it was common for U.S. troops to invade homes, hold children, the elderly, and women at gunpoint while homes are searched. Iraqi men were assaulted and insulted in front of their families before being handcuffed and led away. Some military commanders encouraged regular and broad sweeps of villages and towns, detaining any men of military age. It was not uncommon for such searches to be conducted every day.[79]

Hence it is clear that most of the abductees were actually innocent civilians. They were famously known as ‘ghost detainees’ whose whereabouts once abducted were not known to the outside world. This was in fact a violation of the Geneva Conventions that seek to protect the rights of people under arrest or detention. Such malpractices not only tarnished the image of the US abroad, but also generated deeper animosity about the occupation in the collective mindset of Iraq. Ironically, the US was committing these misdemeanors in a context where she should have, as a responsible occupying power, conducted rehabilitation in post-invasion Iraq. The US’s notion of rehabilitation and demilitarization apparently deviated from the commonly accepted definitions. Demilitarization, according to Americans, involved terrorizing Iraqis with false allegations and abducting whomever they suspected to be a terrorist. Therefore the US sadly failed to uphold yet another principle of *jus post bellum*, i.e. the principle of rehabilitation that necessitates a sound human rights education coupled with demilitarization. The US, driven as she was by misconceptions, thus contributed to the increasing militarization of Iraq that ultimately paved way for a bloody insurgency that spanned for almost two years.

### 5.5 Destruction of Property and Life

It is a fundamental duty of an occupying power to avoid destruction of life and property. Yet several NGOs and UN agencies accused the US of withholding food and water to Iraqi civilians, in particular children, as a war tactic.[80] Especially in the case of Fallujah, the US was not hesitant to destroy entire irrigation systems as well as acres of agricultural land, and to leave these unattended in the aftermath of fighting. Medical facilities too were destroyed as a result of continuous and indiscriminate attacks by the US forces, especially during 2004-2005. Examples include medical facilities in Fallujah, Haditha, Al-Qaim and Ramadi.[81]

All these instances amounted to grave violations of IHL norms, including the four Geneva Conventions, Additional Protocol I and CIHL. Further violations of both humanitarian and human rights laws were manifested in the rising death toll of civilians as a result of US firing. It was also reported in Fallujah that the US deliberately prevented the Iraqi Red Cross from attending to wounded civilians.[82] Such instances bear testimony to the US’s failure to respect life and dignity of Iraqis, an essential obligation of an occupying power.

Looting of Iraq’s treasures presented another failure on the part of the US. While Irogbe goes so far as to claim that the US endorsed and even encouraged the lootings “in order to wipe the slate clean as a prelude to the rebirth of the country based on a neo-capitalist secular democracy,”[83] the thesis believes that the US was responsible only to the extent that she quietly watched the lootings amidst the chaos she herself created in Iraq. However, for the artifacts that mysteriously appeared in New York museums soon after the invasion, the US has to take sole responsibility.

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Revealing the irresponsible nature of the US, Donald Rumsfeld, as quoted by Irogbe, was not hesitant to state “democracy is messy”; looting was “part of the price” to pay for liberation of Iraq and was a result of “pent-up feelings” of oppression on the part of Iraqis.”[84] Thus, the US was responsible for the exploitation of Iraq’s valuable historical treasures, a violation of a basic obligation of a victor to safeguard the loser’s assets so that the loser can initiate a speedy reconstruction process as per the Just War theory.

Socio-economic insecurity that resulted due to the collapse of water and electricity supplies, health services and other infrastructure facilities as a result of US attacks against resistance groups worsened the situation for Iraqis. The influx of IDPs (Internally Displaced Persons) and the psychological trauma inherent to them only added to the already murky situation. Rising incidence of deaths and kidnappings by the US soldiers further smeared the US’s human rights record. In an attempt to issue heavily felt and effective responses to increasing resistance, the US military specifically targeted urban centers such as Fallujah and Baghdad, adding to the number of crimes it committed. Such deliberate targeting of civilian populated areas is, as is commonly known, a violation of IHL.

Post-war US conduct thus served to create a generation of Iraqis hostile to US values. Iraq agreed to pay \$ 400 million as compensation for the harassments Americans supposedly suffered at the hands of Hussein. The deal was absurd in light of the fact that compensation was not given for the blatant atrocities carried out in Iraq by the US troops. What actually should have happened was that the victor compensated the loser. It happened the other way around. The controversial deal angered most Iraqis since they considered themselves to be abused by both Hussein and the occupying US authority.[85]

Nevertheless, it is also important to mention here that USAID, however minor, played a role in Iraq’s reconstruction and rebuilding efforts. The limited scope of said role was owing to America’s belief that Iraq will be able to function smoothly once hostilities come to an end, notwithstanding the destruction caused by the US. In fact, USAID was only willing to invest \$ 1.7 billion for rebuilding efforts in Iraq, an amount woefully inadequate to make up for the destruction. Daalder and Lindsay, quoting USAID administrator Andrew Natsios, state, “We have no plan for any further-on funding for this.”[86] Their idea was that reconstruction in Iraq would be far simpler than any ordinary peacekeeping mission. Further stating the point they quote Richard Armitage: “Iraq was a state and is a state... It’s not a failed state like Afghanistan, it’s not a new state like East Timor, and it’s not a non-state like Kosovo.”[87]

Thus it is evident that the US was only interested in destruction and not construction. She attacked a sovereign state on entirely mythical grounds, eliminated the ruler of that state on charges of Human Rights abuses that paled beside those committed by her own troops, and left said state seriously compromised in terms of economy, political stability and security. In other words, the US ruined Iraq.

### *5.6 Democratization and the Role of the US*

Democratization played a crucial role in post-conflict justice for Iraq. Having failed to meet the just cause for termination of hostilities, i.e. not being able to trace any WMDs in Iraq, the US was saddled with a minimum obligation of keeping up to her promise of democratizing Iraq and making the place a better one for Iraqis who were oppressed for decades. Attainment of this particular goal would have enabled the US to have a decent exit from Iraq.

The US strategy to democratize Iraq, as was the case with the other strategies she had for the country, was far from agreeable mainly because she had no clearly defined strategy. Initially the US held the view that democracy for Iraq means liberation. Yet post-invasion violence suggested otherwise. Hilary Charlesworth, presenting the idea of the US about Iraq’s post-invasion violence within the broader context of democracy, quotes Donald Rumsfeld: “Stuff happens and it’s untidy, and freedom’s untidy, and free people are free to make mistakes and commit crimes and do bad things.”[88] This logic is fatally flawed. For one thing, if free people enjoy absolute freedom, why does America have a legal system that punishes criminals? Also, if democracy allows people to go about killing off each other without suffering punishment for that, is tyranny actually not a better option because it regulates people’s behaviour to some extent? Saddam Hussein was punished for the ‘crimes’ he committed. Was it because he committed those crimes as a tyrant and not a democratic leader? Had Hussein committed the same crimes as a ‘free’ individual of a democratic system, would his life have been spared simply because he was ‘free’ to do what he was doing? If that is



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the case, the Iraq war was an effort spent in vain. The US could have politely asked Hussein to simply change his ideology and continue doing ‘bad things’ and Hussein would gladly have obliged.

Later as though realizing her mistake, the US tried to bring forth positive change via holding elections, separating powers and defining aspects of free market. Yet again her understanding proved flawed since the US forcibly introduced her model of democracy to Iraq without consultation with the Iraqis. The Coalition Provisional Authority (CPA) was thus introduced as an institute for democracy in an undemocratic way. However, US expectations of Iraq’s meek submission and wholehearted reception of American democracy, as with the case of Germany and Japan after World War II, were smashed by the continuous resistance to and rejection of US models by the Iraqis, and the US was compelled to hand over power to an Interim Government in 2004.

Then, in 2005, a new government was elected after adopting a new constitution. The new government was no better than Hussein’s government. Its reign was ridden with political turmoil, uncertainty, growing sectarian violence and a bloody insurgency. Demonstrating political instability and chaos in Iraq, the 2010 elections became inconclusive, taking more than nine months for the government to be approved. The US, until her final withdrawal in 2011, became a silent observer of all the chaos she had created.

### *5.7 Surge and the US*

President Bush’s Iraq strategy experienced a new twist towards the end of 2006, probably the bloodiest year in post-invasion Iraq’s history, marked by a sweeping surge of forces present in Iraq to control anarchy and civil war in the country. A clash between Sunni and Shi’i militias led to the bloody insurgency that cost thousands of lives between 2004 and 2008. The Bush administration, disregarding the proposals of the Iraq Study Group (ISG) to reduce American presence on the ground, instead opted to increase the number in order to bring the situation under control. This is probably the only commendable act the US was able to do in fulfilling her responsibilities towards Iraq. Instead of abandoning an Iraq torn by her very hands, the US decided to stay behind and protect the country, displaying for once the function of a conscience behind the Bush administration. As Aymenn Jawad Al-Tamimi points out, “As the surge progressed, observers everywhere began to note the decline in violence across Iraq. An almost universal consensus drew a direct cause-and-effect relationship between the surge and the dramatic decrease in levels of violence.”[89]

### *5.8 The Obama Administration and Iraq*

The Obama administration was swift to adopt a hands-off approach with regard to Iraq. Upon assuming office, Obama promptly began setting dates for the withdrawal of US troops as stipulated by the US-Iraq Status of Forces agreement signed in 2008 by his predecessor President George W. Bush and the Iraq government. Keeping up to his election pledge of discontinuing flawed policies of his precursors, Obama evacuated US troops from Iraq completely by 18th December 2011 even prior to the expiration of the agreement on 31st December 2011, an act following which serious questions were raised regarding the US’s success in Iraq from a multitude of perspectives including those of Just War and Humanitarian Law.

### *5.9 Conclusion*

The chapter assessed the US’s role in post-invasion Iraq as an irresponsible and manipulative occupying power that made little contribution to stabilizing Iraq’s deteriorating status. It presented clear examples of how and why the US failed in fulfilling her obligations as a victor. By the very decision to invade Iraq, the US was made liable to fulfill long term obligations and responsibilities towards that country because victory was obviously in her mind. If her evaluation had no note on such obligations, according to the Just War theory, it would have been more prudent for the US to not have invaded Iraq in the first place and risk being questioned by the international community regarding blatant violations of international law.

The US conduct in the post-invasion phase pathetically fell behind these expectations, thus making the invasion ethically unjustified. All the credibility the US gained by removing Hussein from power corroded by the US’s inability

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to substantiate her claims for a just cause to terminate. She could not find any WMDs nor could she make Iraq a better one for the Iraqis. It almost seems as though the US had one of her moments and decided to go to war with a random nation just so she had something to do in her free time! The thousands of lives a war was inevitably going to claim were all probably reduced to numbers and viewed in terms of profit and loss. However, the question remains as to what the gains of the US were. In other words, why was the Iraq war fought in the first place?

The US's failure to stabilize Iraq by imposing her military and democratic models on the country is a good lesson about the wisdom of employing prudential assessments prior to launching invasions. The US, as some assert, finally did nothing but babysitting an insurgency. She pushed Iraq from a bad dilemma to a worse one.

As observed in the chapter the US failed all tests set forth by the *jus post bellum* component: 1) could not terminate the war for a just cause; 2) violated the principle of discrimination by continuously targeting civilians and suspected terrorists who later turned out to be innocent civilians, and also by depriving Baath party bureaucrats and members of the Iraqi militia of their jobs merely because of their affiliation to the defeated dictator with no proper investigations; 3) did not compensate war-torn Iraq but rather got compensation from her; 4) instead of rehabilitating, militarized the country and paved way for increasing kidnappings for extortion and instead of imparting a sound education of human rights continued to violate the rights of Iraqis; 5) punished Iraqis indiscriminately based on mere suspicions, and mistreated Iraqi detainees while ignoring the crimes committed by her own troops; and, finally, 6) there was no discussion whatsoever regarding the principle of proportionality and authority in which the terms of peace are clearly spelt out and handed over to a competent authority of the defeated nation. The US did this only when she was pressurized to do so and when she felt that the situation was spinning out of control. Added to that, there were no clear terms of peace. Her sole concentration was on avenging Hussein who continuously dared to challenge US hegemony, and she lacked anything of substance pertaining to peace for Iraqis in her agenda.

It is therefore correct to conclude that the US created and abandoned a vulnerable Iraq characterized by internal turmoil and engulfed in rising sectarian violence, political instability, potential civil war and political corruption, a situation definitely worse than her pre-invasion counterpart. Despite the joy demonstrated by Iraqis regarding the US exit, Iraq today is ridden with conflicts too powerful for her to control, conflicts which bear the invisible, yet unfailingly understood, tag 'Made in US'.

## Chapter 6: Conclusion

This thesis has tested the hypothesis that the US invasion of Iraq was not a Just War. In drawing a conclusion, this chapter reviews the initial hypothesis in relation to the key findings of the thesis and explores whether the research questions have been answered. While the argument of the thesis is not novel per se, it distinguishes itself from other available literature on the topic due to the fact that it integrates all three aspects of the Just War theory in evaluating US conduct in Iraq, a rare phenomenon.

The thesis set out to determine how and why the invasion of Iraq in 2003 by the US-led forces was unjust. The aim of it was to come to a conclusion regarding the behaviour exclusively of the US, and not of other coalition members and Iraq. In its investigation, it aimed to provide insights into instances where violations of moral standards have occurred and what changes should be introduced to the Just War theory to avoid repetition of such violations in future.

Since the moral justification of any military campaign is more persuasive than tactical or political justifications, the thesis chose to investigate the ethical and legal implications of the 2003 Iraq invasion with special emphasis on the bona fides of the decision to wage war, conduct during the war and the manner in which hostilities were concluded. The thesis therefore comprises of three parts, namely *jus ad bellum*, *jus in bello* and *jus post bellum* with regard to the US conduct in the 2003 Iraq invasion.

Chapter one set the tone to the thesis by giving a brief introduction to the problem under investigation and the historical context within which the thesis is to unfold, presenting the hypothesis and problem statement, stating the research questions and significance of the study in relation to the Just War theory, and finally by presenting the structure of the thesis.

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Chapter two presented the recurrent theories and ideas of the thesis, thereby providing an answer to the first research question, i.e. ‘What is Just War?’, and articulated the premise on which the central argument will be built. It introduced the Just War theory as the main framework of the thesis and elaborated on the role of neo-conservatives in shaping Bush’s foreign policy, concepts of War on Terror, and pre-emptive strike, all of which played a major role in triggering the invasion.

Chapters three, four and five were dedicated to the analysis of the central argument of the thesis, which is that the 2003 invasion of Iraq cannot be justified under the Just War theory. The three chapters linked by this focal argument carefully evaluated the US’s conduct throughout pre, during and post invasion periods and arrived at the following conclusions.

The second research question of whether the US decision to invade Iraq was in accordance with the moral standards prescribed by the Just War theory was answered by Chapter 3, which stated that the US had deliberately violated all norms set forth by the *jus ad bellum* criteria of the theory, thus making the decision to wage war immoral. A thorough scrutiny of the reasons for and outcomes of the Iraq invasion made it clear that neither could the US substantiate her claims to wage war by finding any WMDs, nor could she justify her decision from an international law perspective since Iraq was actually showing positive gestures of compliance at the time of the invasion. The third argument, namely saving Iraqis from the abusive dictatorship of Saddam Hussein, too was invalidated since Human Rights abuses of a magnitude that warrants humanitarian intervention were not taking place in Iraq when the decision to attack was made.

The case for legitimate authority too proved frail since it was the UN that should have taken the decision. A slim chance of making the US the rightful authority based on self-defense did not hold ground either since the US had no imminent threat present. An actual attack by Iraq at the time of the offensive was absent as well.

The argument on proportionality was crushed by the fact that the US’s proposed measures to counter the bad conditions in Iraq were disproportionate to the actual prevailing threats, as was obvious before and proven after the invasion. In other words, the US gave medication for pneumonia when what Iraq actually had was a mere cold. It can be reasonably argued, then, that in her quest to produce a decent reason that sufficiently justified the decision to attack Iraq, the US’s active imagination had amplified the real situation. As has been repeatedly pointed out in the course of the chapter, the US avoided exhausting the option of giving Iraq more time during which diplomatic negotiations or UN sanctions might have had effect and attacked her, thus violating the criterion of last resort. Needless to say, in a situation where the cause itself is unjust, the intentions too were not right, thus making the argument for the legitimate use of force null.

Presenting the two opposing points of view of Schmitt and Human Rights Watch, Chapter four explored the next dimension of the theory, *jus in bello*, in the context of the invasion. While Schmitt’s arguments stood as justifications of the US conduct during the invasion, Human Rights Watch produced certain instances in which the US forces had violated IHL, which automatically amounts to violations of *jus in bello* principles because they are enshrined in IHL. The chapter weighed both pros and cons of the two arguments and came to the following conclusions:

- The US conduct during the brief invasion phase was generally satisfactory;
- Yet certain violations of IHL norms had occurred, thus automatically violating the principles of *jus in bello*;
- Violations included deliberate attacking of human shields thus causing incidental loss to life that is excessive to the anticipated military advantage, widespread use of cluster munitions in residential areas that caused serious damage to life and property thus violating the principle of proportionality, not being vigilant enough in carrying out air strikes causing many a death, and lack of planning that caused great life and property damages by attacking installations that later proved to have served civil purposes;
- The violation of even a single Just War principle amounts to violation of the whole theory. The US conduct which violated most principles set forth by the theory during the invasion phase thus has defied the Just War theory completely.

Chapter five expanded on the last remaining criterion of and the latest addition to the theory, *jus post bellum*, and

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applied it to post-invasion Iraq. It painted a most dismal picture of the US and led to the conclusion that US commitment to *jus post bellum* lacked sincerity as much or even more than her commitment to the other two components of the theory. The US left Iraq in a condition decidedly worse than what was found before the invasion.

Just peace which is the sole justifiable manner for a country to end an invasion, was marred in Iraq due to rising death tolls, sectarian violence, political instability, corruption and lurching leadership, resulting from lack of enthusiasm and resources deployed on the part of the US. Neither could the US accord power to a competent body of authority in Iraq nor could she compensate the Iraqis for the destruction caused by the military operations, thereby contributing to rising civic unrest. Instead of assuring continued security amidst chaos, except for during the surge, the US was hasty to leave Iraq, thus risking the already compromised security of the country whose vulnerable borders and internal divisions rendered her dangerously prone to collapse into anarchy. The chapter has carefully evaluated how all six criteria of *jus post bellum* were thus violated by the US and how she could not pass the test of a responsible occupying power, and thereby failed to satisfy the standards set forth by the final remaining criterion of Just War as well.

In sum, the findings of the three chapters have been able to validate the hypothesis that the Iraq war was not a just war and have solved the problem statement by providing it with a satisfactory answer, i.e. the 2003 invasion of Iraq by the US is unjust beyond any reasonable doubt. There is not a single instance in which the US's actions can be defended, thus making the invasion completely immoral.

The main argument of the thesis was based along the lines of Just War theory with an intention of assessing the validity of the theory in the current global system. The thesis aimed to evaluate the Iraq invasion within the framework of the theory for the mere reason that the magnitude of the invasion and the inappropriate usage of the theory in justifying it sparked many a debate about the validity of the theory and the indiscriminate application of it. Can what is morally unjust be made just for the US due to her political, social and economic superiority?

Evidence from the research suggests that the US was not able to make a sound case to justify her actions according to the Just War theory despite some thinkers such as Schmitt trying to paint a positive picture of the US actions employing the same criteria. An implication of the research is that the theory has been misinterpreted in cases where the invasion has been justified.

The thesis makes a contribution to the current literature by bringing together all three criteria of the just war theory, and adds substantial logical arguments to the general understanding of the unjustness of the Iraq invasion, which is an infrequent study since most literature on the applicability of the theory in the Iraq invasion discuss only *jus ad bellum* and *jus in bello* principles in relation to the invasion and seldom discusses *jus post bellum*. The reason behind it might probably be the novelty of the concept and the lack of legal backing it has due to said novelty. Nevertheless, the thesis has considered all three components and presented a complete and concise analysis of it.

A limitation of the research is that it did not go deep into legal details but concentrated more on the moral standing of the subject. Yet an analysis coupled with more legal language especially with regard to *jus post bellum* would have been useful for an all-encompassing understanding of the subject. Furthermore the study excluded the actions of Iraq and coalition partners, an important aspect with regard to the application of the theory.

The findings of the thesis suggest that a serious revision of the Just War theory is due in order to keep up with the changing realities of warfare and to adjust itself in accordance to those to ensure states abide by the moral standards set forth by the theory. As pointed out in the course of the thesis, more work needs to be done to determine whether a potential threat qualifies as a just cause for an invasion. Such examinations could set new, yet morally correct, standards to the pre-emptive use of military force. The idea of humanitarian intervention too should be reviewed and reassessed to make states, especially powerful ones, more responsible about intervening in the affairs of another state under the pretext of protecting human rights. Also important is to conduct further legal research to develop legal criteria that would hold violators of *jus post bellum* accountable for their crimes and punish them accordingly.

In drawing a conclusion, the thesis recommends several policy alternatives for the practical use of military force:

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- In making a decision to wage war countries should prudently weigh the said decision after extensive discussion with the internal departments, general public and the international community, and verify that intelligence information is accurate. If any of the above mentioned parties dissent, the decision has to be reconsidered.
- The international community should act as an effective check against state aggression towards another state. In the event that war is declared on one state by another, the international community and especially international organizations such as the UN should ensure that the invader has complied by all laws pertaining to the use of force. In case even a single law has not been substantiated with reasonable evidence to justify the decision, the international community should swiftly take collective action against the invader by politically isolating her, imposing sanctions, etc., irrespective of her political clout.
- IHL application should be more rigorous and indiscriminate. Grey areas of IHL such as the use of human shields should be clearly argued out and strict laws should be imposed in order to restrain unethical conduct during war.
- *Jus post bellum* should be placed on par with the other two criteria of Just War and be accorded equal legal weight in order that destruction may necessarily entail construction, and thereby senseless vandalism will be effectively curbed.
- Clear and rational arguments should be made along each step, i.e. in going to war, during war and after war in order to avoid any immoral act.

If the said amendments are made and the Just War theory is legalized by prescribing punishments for violations, and due international recognition is accorded to it, it will have a greater and more decisive impact on the conduct of hostilities worldwide, regulating them in such a way that would ensure minimal incidental loss of civilian life and make morality of war the actual standard of legality.

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[5] *Ibid.*, 7.

[6] *Ibid.*, 12.

[7] *Ibid.*, 13.

[8] Research Unit for Political Economy, *Behind the Invasion of Iraq* (New York: Monthly Review Press, 2003), 33.

[9] *Ibid.*, 35.

[10] *Ibid.*, 41.

[11] A decade of economic sanctions imposed on Iraq as punishment for waging the Kuwait invasion and not abiding by the UN resolutions.

[12] Research Unit for Political Economy, *Behind the Invasion of Iraq*, 46.

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therefore be considered a naked act of violation of sovereignty of Iraq which has slim or no chances of justification and so qualifies the case as one of invasion.

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[53] Ibid., 77.

[54] Unintended damage, injuries, or deaths caused by an action, especially unintended civilian casualties caused by a military operation. While collateral damage is permitted in any military action such damages should not be excessive in relation to the concrete and direct military advantage anticipated.

[55] Ibid., 81.

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