

The Iraq War Case

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Overview of the war and criticisms

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- **United Nations Security Council Resolution 687** - all Iraq long range missiles, nuclear, biological and chemical weapons were to be destroyed
- **2001** - Bush accused Iraq of starting to develop weapons of mass destruction
- **5:34am in Baghdad on March 20th 2003** - officially the war began
- **December 2003** - capture of Saddam Hussein
- **2005** - 1st election of a new Iraqi government and the ratification of the Iraqi constitution

Non-state entities and the threat of terrorism



- Non-state entities are all entities different from states
- Often impact legal values
 - Examples are - international organisations, NGOs, multi-national corporations, terrorist groups
 - Inadequacies in regulating these entities

International law of self-defence

The United Nations Charter

Article 51 of the UN Charter

- Inherent right of individual or collective self-defence of Member States
- Member may notify Security Council of self-defence measures
- Until SC has made decisions on measures to maintain international peace and security, measures may be taken
- Not lawfully to maintain peace and security

Article 51 (The Caroline Principles)

- Member states not to use force against another

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The threat of Terrorism

- Was there any threat?
- Claim by US and UK of actual threat - no evidence of active nuclear, chemical or biological programs found on invasion

Did Security Council authorise force?

- Iraq's failure to comply with Res 678
- Res 1441 and 1441
- No actual direct authorisation of force



A revision of international law?

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Main Areas of Review:

1. Self-defence does not encompass mere reactive forms of warfare and military aggression
2. The law of self-defence is largely obsolete
3. The threshold required to engage the law of self-defence needs to be 'heightened', particularly in response to non-state entities



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Questions

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Bibliography

Books

David Collier, *India: Terrorism* (Oxford University Press, 1991) 1-43

David Collier, *India: Terrorism* (Oxford University Press, 1991) 1-43

David Collier, *India: Terrorism* (Oxford University Press, 1991) 1-43

Case

Self-defence and Military Action in and against Nicaragua (Request of the United States of America to the ICJ) (1984) ICJ Reports 11

Journal articles

Andrew G. Cooper, *Self-defence against terrorism in the post-9/11 world* (2004) 10 *Georgetown Journal of International Law* 101

Pragati Gopin, *Prevention of Terrorism: The UN Model Approach to Terrorist Action and International Self-Defence* (2005) 8 *International Journal of International Law* 101

Jeffrey J. Gold, *Law School students: The Legal Basis for US Military Action in the International Arena* (2002) 10 *Georgetown Journal*

Jonathan D. Sauter, *The Use of Force in International Law - A Case Study: The Invasion of Iraq* (2003) 32 *Georgetown Journal of International Law* 101

Michael W. Schar, *Responding to Attacks by Non-State Actors: The Ambiguous Requirement of Self-Defence* (2004) *International Journal of Law and Politics* 101

Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (1996) 101

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Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (1996) 101

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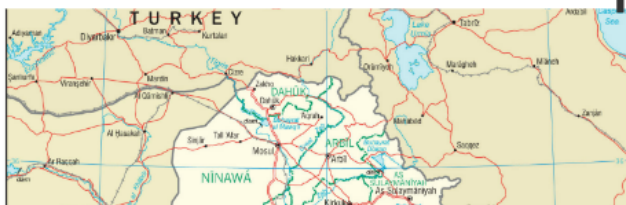
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- Often impact legal values
- Examples are international organizations

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- Examples are - international organisations, NGOs, multi-national corporations, terrorist groups
- Inadequacies is regulating these entities

International law of self-defence

The United Nations Charter

Article 51 of the UN Charter:

- Inherent right of individual or collective self-defence of Member states
- Member must notify Security Council of self-defence measures
- Once SC has made decision on measures for peace and security these directions must be followed
- SC has authority to maintain peace and security

Article 2(4) ("The Caroline Principle"):

- Member states not to use force against another

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The threat of Terrorism

Was there any threat?

- Claim by US and UK of actual threat - no evidence of active nuclear, chemical or biological programs found on invasion

Did Security Council authorise force?

- Iraq's failure to comply with Res 678
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- No actual direct authorisation of force



A revision of international law?

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Main Areas of Review:

1. 'Self-defence' does not encompass many modern forms of warfare and military aggression
2. The law of self-defence is largely state-centric
3. The threshold required to engage the law of self defence needs to be clarified, particularly in response to non-state entities



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Questions

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Bibliography

Books:

Bruce Hoffman, *Inside Terrorism* (Columbia University Press, 1998) 1-43.

Donald Rothwell, Stuart Kaye, Afshin Akhtarkhavari & Ruth Davis, *International Law: Cases and Materials with Australian Perspectives* (Cambridge University Press, 2nd Ed, 2014) 713-748.

Cases:

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Reports 14.

Journal articles:

Andrew Garwood-Gowers, 'Self-defence against terrorism in the post 9/11 world' (2004) 4 QUTLJJ, 1-18.

Fergus Green, 'Fragmentation In Two Dimensions: The ICJ's Flawed Approach to Non-State Actors and International Legal Personality' (2008) 9 Melbourne Journal of International Law 1031.

Jeffery Bleich, 'Law School Oration: The Legal Basis for US Military Action in the International Realm' (2011) 16 Deakin Law Review.

Justine Dearsley, 'The Use of Force in International Law – A Case Study: The Invasion of Iraq, 2003' (2003) 9 Canterbury Law Review, 121-151.

Michael Brent, 'Responding to Attacks by Non-State Actors: The Attribution Requirement of Self-Defence' (2009) Australian International Law Journal 16, 133-159.

Natalia Ochoa-Ruiz & Esther Salamanca-Aguado, 'Exploring the Limits of International Law relating to the Use of Force in Self-defence' (2005), 16(3) The European Journal of International Law, 499-524

Natalino Ronzitti, 'The Expanding Law of Self-Defence' (2006), 11 Journal of Conflict and Security Law, 343-359.

Niaz A. Shah, 'Self-defence, Anticipatory Self-defence and Pre-emption: International Law's Response to Terrorism' (2007) 12(1) Journal of Conflict & Security Law, 95-126.

Noura Erakat, 'New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self Defence' (2014) 56(1) Arizona Law Review.

United Nations Materials

Charter of the United Nations art 39, 41, 42, 51.

SC Res 687 UN SCOR, 2981 mtg, UN Doc S/RES/687 (3 April 1991).

United States of America Legislation

Iraq Liberation Act 1998 112 Pub.L. 105-338 (1998).