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A. Historical Development

1 In 1991 the States co-operating with Kuwait successfully responded to the Iraqi invasion and → *annexation* of Kuwait (→ *Iraq-Kuwait War [1990-91]*). The use of armed force had been authorized by United Nations Security Council Resolution 678 (1990) of 29 November 1990 ('UNSC Resolution 678'; → *Use of Force, Prohibition of*). After the suspension of combat operations (→ *Suspension of Hostilities*) the UN Security Council, in Resolution 687 (1991) of 3 April 1991 ('UNSC Resolution 687'), inter alia decided that Iraq 'shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision' of → *weapons of mass destruction* and of long-range delivery systems. On 5 April 1991, the UNSC, in UNSC Resolution 688 (1991) of 5 April 1991 (SCOR 46th Year 31) demanded that 'Iraq immediately end' the repression of the 'Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas'. Shortly afterwards the US, the UK, and France conducted 'Operation Provide Comfort' with a view to protecting the Kurds in Northern Iraq. Moreover, the US and the UK, in order to protect the Kurdish and Shiite minorities (→ *Minorities, International Protection*), established and enforced no-fly zones in Northern and Southern Iraq (→ *Iraq, Non-Fly Zones*). Military operations against Iraqi targets were continued in the years following; eg in 1998 the US and the UK undertook 'Operation Desert Fox' in response to Iraqi violations of UNSC Resolution 687 (Murphy (1999) 471-79).

2 Iraq did not comply with its obligations under UNSC Resolution 687 but repeatedly obstructed access to sites designated by the UN Special Commission ('UNSCOM') and the → *International Atomic Energy Agency (IAEA)*, and failed to co-operate fully and unconditionally with UNSCOM (later with the UN Monitoring, Verification and Inspection Commission ('UNMOVIC')) and IAEA weapons inspectors. The US and the UK were prepared to respond militarily and pressed for a UNSC resolution explicitly authorizing the use of force against Iraq. The majority of the UNSC's members, however, refused to take that step in the autumn of 2002. Instead, the UNSC adopted UNSC Resolution 1441 (2002) of 8 November 2002 ('UNSC Resolution 1441'). In the preamble the UNSC recalled (1) 'that its resolution 678 (1991) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) ... and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area', and (2) 'that in its resolution 687 (1991) the Council declared that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution' (UNSCRes 660 (1990) [2 August 1990] SCOR 45th Year 19). In the operative part of UNSC Resolution 1441 the UNSC inter alia decided (1) 'that Iraq has been and remains in material breach of its obligations under relevant resolutions, including resolution 687 (1991)' and (2) 'to afford Iraq, by this resolution, a final opportunity to comply with its → *disarmament* obligations under relevant resolutions' of the UNSC. Within the UNSC there was unanimous agreement that UNSC Resolution 1441 contained

[N]o 'hidden triggers' and no 'automaticity' with respect to the use of force. If there is a further Iraqi breach, reported to the Council by UNMOVIC, the IAEA or a Member State, the matter will return to the Council for discussion as required in paragraph 12. (UNSC Verbatim Record [8 November 2002]).

3 On 5 February 2003, US Secretary of State Powell presented intelligence information to the UNSC on continued violations of Iraq's disarmament obligations. He arrived at the conclusion that 'Iraq still posed a threat and still remained in material breach' (UN Press Release 7658). Other members of the UNSC did not consider the information presented sufficient but believed that it 'required further and serious study' (Minister of Foreign

Affairs of the Russian Federation Ivanov, *ibid*). Accordingly, the UNSC did not adopt a resolution authorizing the use of force against Iraq.

4 On 17 March 2003, US President Bush issued the following → *ultimatum*:

Intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised. This regime has already used weapons of mass destruction against Iraq's neighbors and against Iraq's people... In the case of Iraq, the Security Council did act, in the early 1990s. Under Resolutions 678 and 687—both still in effect—the United States and our allies are authorized to use force in ridding Iraq of weapons of mass destruction. This is not a question of authority, it is a question of will... Saddam Hussein and his sons must leave Iraq within 48 hours. Their refusal to do so will result in military conflict, commenced at a time of our choosing ...

5 In the early hours of 20 March 2003 the US, the UK, and their allies began conducting air operations against Iraq (→ *Air Warfare*). In their respective letters of 20 March 2003 addressed to the President of the Security Council the US and the UK justified the attack against Iraq as follows:

The action follows a long history of non-cooperation by Iraq with the United Nations Special Commission (UNSCOM), the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA) and numerous findings by the Security Council that Iraq has failed to comply with the disarmament obligations imposed on it by the Council, including in resolutions 678 (1990), 687 (1991) and 1441 (2002). In its resolution 1441 (2002), the Council reiterated that Iraq's possession of weapons of mass destruction constitutes a threat to international peace and security; that Iraq has failed, in clear violation of its obligations, to disarm; and that in consequence Iraq is in material breach of the conditions for the ceasefire at the end of hostilities in 1991 laid down by the Council in its resolution 687 (1991). Military action was undertaken only when it became apparent that there was no other way of achieving compliance by Iraq.

The objective of the action is to secure compliance by Iraq with its disarmament obligations as laid down by the Council. All military action will be limited to the minimum measures necessary to secure this objective.

6 The Iraqi armed forces were rapidly defeated by the Coalition. On 1 May 2003, President Bush announced the end of 'major' military operations in Iraq. Coalition forces took control of Iraq's territory and, on 9 April 2003, they established the 'Coalition Provisional Authority' ('CPA'). In their letter of 8 May 2003 addressed to the President of the UNSC the Permanent Representatives of the US and the UK gave the following explanation:

In order to meet these objectives and obligations in the post-conflict period in Iraq, the United States, the United Kingdom and Coalition partners, acting under existing command and control arrangements through the Commander of Coalition Forces, have created the Coalition Provisional Authority, which includes the Office of Reconstruction and Humanitarian Assistance, to exercise powers of government temporarily, and, as necessary, especially to provide security, to allow the delivery of humanitarian aid, and to eliminate weapons of mass destruction.

7 On 22 May 2003, the UNSC, in UNSC Resolution 1483 (2003) of 22 May 2003 ('UNSC Resolution 1483'), recognized 'the specific authorities, responsibilities, and obligations under applicable international law of these States as occupying powers under unified command (the "Authority")' and called upon

the Authority, consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future.

Further elements concerning the administration of occupied Iraq were contained in UNSC Resolution 1511 (2003) of 16 October 2003 (SCOR [1 August 2003–31 July 2004]) 1511] and UNSC Resolution 1546 (2004) of 8 June 2004 (SCOR [1 August 2003–31 July 2004] 60; 'UNSC Resolution 1546'; → *Iraq, Occupation after 2003*).

8 A first step towards a re-transfer of governmental functions to Iraq was the establishment of the Iraqi Interim Governing Council on 13 July 2003. In UNSC Resolution 1546, the UNSC endorsed the formation of a sovereign Interim Government for Iraq and welcomed the end of occupation from 30 June 2004. While coalition forces continued to be deployed in Iraq with the consent of the Iraqi (Interim) Government, the invasion and occupation of Iraq was terminated on 1 July 2004 (→ *Occupation, Military, Termination of*).

B. Legality of the Invasion

9 The invasion of Iraq raises a variety of questions not only with a view to the *ius ad bellum* but also to the *ius in bello* (→ *Humanitarian Law, International*). The latter relate to the use of methods and means of warfare, especially with regard to the 'shock and awe' approach, the selection of → *military objectives*, the protection of the civilian population and of civilian objects (→ *Civilian Population in Armed Conflict*), and the treatment of → *prisoners of war* and of detainees (see Dinstein 'Jus In Bello Issues Arising in the Hostilities in Iraq 2003' (2004) 1–14; Heintschel von Heinegg 272–94). Moreover, it has triggered an interesting discussion on the rights and obligations of an occupying power both, under the *ius in bello* and the *ius ad bellum* (Wolfrum 8–25; see generally Dinstein *Legislation Under Article 43 of the Hague Regulations: Belligerent Occupation and Peacebuilding* (2004)). While the latter issue will have to be dealt with briefly, the focus of the present entry is laid on the legality of the invasion under the *ius ad bellum*.

1. Humanitarian Intervention or Counter-Terrorism?

10 President Bush, in his ultimatum of 17 March 2003, emphasized that Saddam Hussein had used chemical weapons against the Iraqi population. Apart from that, the US President linked the Iraqi regime to → *terrorism*:

The regime has a history of reckless aggression in the Middle East. It has a deep hatred of America and our friends. And it has aided, trained and harbored terrorists, including operatives of al Qaeda. The danger is clear: using chemical, biological or, one day, nuclear weapons, obtained with the help of Iraq, the terrorists could fulfil their stated ambitions and kill thousands or hundreds of thousands of innocent people in our country, or any other.

11 Similarly, US Secretary of State Powell in his statement of 5 February 2003 said:

Iraq and terrorism went back decades. Baghdad trained Palestine Liberation Front members in small arms and explosives, and Saddam used the Arab Liberation Front to funnel money to the families of Palestinian suicide bombers. It was no secret that Saddam's own intelligence service was involved in dozens of attacks or attempted assassinations in the 1990s. There was, however, the potentially more sinister nexus between Iraq and the Al Qaeda network. Iraq today harboured a deadly terrorist network headed by Abu Musab Al-Zarqawi, an associate of Usama Bin Laden. After the Taliban had been ousted from Afghanistan, the Zarqawi network helped establish another poison and explosive training centre in north-eastern Iraq.

12 Of course, the establishment and enforcement of the no-fly zones as well as 'Operation Provide Comfort' were predominantly justified by reference to humanitarian necessities (Gray (2002) 9). However, the protection of the Kurdish population in Northern Iraq and of the Shiites in Southern Iraq was of no relevance for the justification of the invasion of Iraq in 2003 (Lowe 865). Apart from that, the legality of a → *humanitarian intervention* is still an unsettled matter. The same holds true with regard to Iraq's alleged involvement in terrorist activities. While the US and its allies would probably have had a convincing legal argument had that involvement been proven, and had it been intensive, neither the US nor the UK relied on that argument in their respective letters of 20 March 2003 to the President of the UN Security Council. Hence, the attack against and the invasion of Iraq can be justified neither by humanitarian intervention nor by some form of counter-terrorism operation whatever its legal basis may be.

2. Individual or Collective Self-Defence?

13 In the letter of 20 March 2003 the Permanent Representative of the US *inter alia* stated:

The actions that coalition forces are undertaking are an appropriate response. They are necessary steps to defend the United States and the international community from the threat posed by Iraq and to restore international peace and security in the area.

14 At first glance, that part of the letter could be understood as a reference to the right of individual → *self-defence* (→ *Self-Defence, Pre-emptive*). However, the context reveals that the threat posed by Iraq, according to the US view, was not an imminent → *armed attack* on the US or on its allies but Iraq's continued violations of its disarmament obligations under the relevant UNSC resolutions. Accordingly, that part of the letter is rather a political than a legal argument in justification of the attack against Iraq (Bothe 260; Hofmann 29–34). It is not to be considered a fulfilment of the obligation under Art. 51 UN Charter to immediately report to the UNSC measures taken in the exercise of the right of self-defence.

15 However, according to a position in the literature, the 'Coalition acted on the basis of the right of collective self-defence with which it was directly vested by Article 51 of the Charter and by customary international law' (Dinstein (2005) 300). This position starts from the premise that the attack against Iraq in 1991 was not a military enforcement measure under Chapter VII UN Charter (→ *Collective Security*) but an exercise of the right of collective self-defence (→ *Self-Defence, Collective*). The → *ceasefire* agreement of 1991 had not been concluded between Iraq and the UN but between Iraq and the Coalition, i.e. the States co-operating with Kuwait. That agreement had not terminated the armed conflict and the exercise of the right of collective self-defence but merely suspended it. Consequently, in 2003

[T]he determination of the existence of an Iraqi 'material breach' need not have been made by the Security Council. By right, this determination could have been made by the Coalition itself... [S]ince the Coalition chose to bring the matter before the Security Council ... the Coalition was constrained to give [the] inspection regime a chance of success. Like Resolution 678, ... Resolution 1441 did not leave the Coalition the option of recommencing hostilities immediately. Despite the determination of the existence of a 'material breach' of the ceasefire terms, the Coalition had to await new UN inspectors'; reports. However, when a number of reports were in, it plainly emerged that there were still unresolved issues and that Iraq had failed to meet all the demands (made by the UN inspectors) with a view to putting an end to its 'material breach'. Whereupon the freedom of action of the Coalition was regained. (Dinstein (2005) 299).

16 In 1991 and in the aftermath of 'Operation Desert Storm' there was a division of opinions whether the UNSC, with UNSC Resolution 678, had merely given its blessing to the exercise of the right of collective self-defence by Kuwait and its allies or whether, by authorizing the use of 'all necessary means', the use of force against Iraq was justified not under the right of self-defence but under Chapter VII UN Charter. Today, there is widespread agreement that whenever the UNSC authorizes Member States to conduct military operations against a State or some other entity this authorization constitutes a justification of the use of force in accordance with Chapter VII UN Charter. Therefore, the premise of the position referred to may well be doubted. There are, however, two further arguments that cast doubt upon the self-defence approach. First, the exercise of the right of self-defence is dependent upon immediacy, necessity, and → *proportionality* (Dinstein (2005) 237-244). At least the first requirement does not seem to be fulfilled if self-defence measures are resumed 12 years after the armed attack that had triggered the right of collective self-defence. Second, the violation of a ceasefire agreement is an argument relevant under the *ius in bello*, not under the *ius ad bellum*. In times of an international armed conflict a ceasefire agreement merely suspends armed hostilities that may be resumed in case of a violation by the other side or by mere lapse of time (→ *Armed Conflict, International*). Under the *ius ad bellum*, however, a ceasefire agreement is of relevance only insofar as it has been made use of by the UNSC for Chapter VII UN Charter purposes. A breach of a ceasefire agreement as such will hardly amount to an imminent armed attack. Therefore, the said position mingles *ius ad bellum* with *ius in bello* issues. Finally, it should be emphasized that neither the US nor the UK relied upon the right of collective self-defence they undoubtedly enjoyed in 1991.

3. Authorization under Chapter VII UN Charter?

17 In the case of → *Kosovo* in 1999, eight NATO States, despite the lack of an authorization by the UNSC, resorted to the use of force in order to save lives. In addition to humanitarian considerations, the Kosovo campaign was justified with the fact that the UNSC was 'stalemated' and unable to discharge its primary responsibility for international peace and security. However, in the case of Iraq, the US and the UK did not advance the argument of a 'stalemated' UNSC or of humanitarian intervention. Rather, according to their conduct, they strongly believed in the necessity of an explicit authorization by the UNSC. Accordingly, a legal justification of the invasion of Iraq beyond the UN Charter's provisions was irrelevant in that case. Moreover, in view of the fact that the UNSC remained actively seized with the matter it is doubtful whether there indeed was a stalemate within the UNSC. The division of opinion merely resulted in the US and the UK finding themselves in the minority.

(a) Implicit or Explicit Authorization

18 After adoption of UNSC Resolution 1441 there was general agreement among the members of the UNSC that they had not authorized the use of force against Iraq. Accordingly, the determination as such of a 'material breach' by Iraq of its obligations under relevant UNSC resolutions, especially UNSC Resolution 687, may not be interpreted as an authorization of the use of force. UNSC Resolution 1441, therefore, did not provide for an explicit or implicit authorization to use armed force against Iraq. That was emphasized in the joint statement issued by China, France, and the Russian Federation on 8 November 2002 (UNSC [8 November 2002] UN Doc S/2002/1236).

19 Still, it has remained an unresolved matter whether a further resolution explicitly authorizing the use of force had been indispensable. In view of an inspections update presented to the UNSC by the Executive Chairman of UNMOVIC on 27 January 2003 (UNSC [27 January 2003] UN Doc S/2003/95 Enclosure), in which Mr Blix noted 'some problems' and 'some recent disturbing incidents and harassment' by Iraq, eight European chiefs of government (Spain, Portugal, Italy, UK, Czech Republic, Hungary, Poland, and Denmark), in their joint letter of 30 January 2003, declared:

Resolution 1441 is Saddam Hussein's last chance to disarm using peaceful means.

The opportunity to avoid greater confrontation rests with him. Sadly, this week the UN weapons inspectors have confirmed that his long-established pattern of deception, denial and non-compliance is continuing. ('Europe and America Must Stand United' The Times [London United Kingdom 30 January 2003])

20 Seemingly, the lack of an explicit or implicit authorization in UNSC Resolution 1441 was not considered an obstacle for basing the use of force against Iraq on UN Resolution 678. Accordingly, the UK Attorney General, in his advice of 7 March 2003, arrived at the conclusion that 'a reasonable case can be made that resolution 1441 is capable in principle of reviving the authorisation in 678 without a further resolution' (United Kingdom Attorney General 'Attorney General's Advice on the Iraq War: Iraq: Resolution 1441' 776).

21 Eventually, the US and the UK, in their letters of 20 March 2003, claimed that the 'actions being taken are authorized under existing Council resolutions, including its resolutions 678 (1990) and 687 (1991)'. According to their position a 'material breach' of the obligations under UNSC Resolution 687 'removes the basis of the ceasefire and revives the authority to use force under resolution 678 (1990)' (ibid). That position was shared by those States joining the US-led coalition, inter alia by Australia (B Campbell and C Moraitis 'Memorandum of Advice to the Commonwealth Government on the Use of Force against Iraq' (2003) 4 Melbourne Journal of International Law 178), Italy, and Japan.

22 Other States, however, re-emphasized their position according to which the attack against Iraq lacked a legal basis; eg President Chirac of France, on 18 March 2003, declared: 'The United States has just issued an ultimatum to Iraq. Whether ... it's a matter of the necessary disarmament of Iraq or of the desirable change of regime in that country, there is no justification for a unilateral decision to resort to war'. The same position was taken by the German Chancellor Schröder. President Putin of the Russian Federation, on 19 March 2003, stressed that 'military actions are taking place contrary to the world public opinion, contrary to the principles and norms of international law and the Charter of the UN'. In its statement of 21 March 2003, the Foreign Affairs Committee of China's National People's Congress 'strongly appealed' to the 'relevant countries to comply with the will of the international community, stop military actions and promptly return to the track of seeking a political solution'. In a press release of 20 March 2003 the Indian Ministry of External Affairs stated: [r]ecent weeks have seen serious divergence of opinion among

members of the UN Security Council on action in respect of Iraq's compliance with Resolution 1441. It is a matter of grave concern that continuing differences within the Security Council prevented a harmonization of the positions of its members, resulting in seriously impairing the authority of the UN system. The military action begun today thus lacks justification'.

23 The US and UK claim has also been rejected by a strong position in the literature according to which UNSC Resolution 1441 'does not indicate that the authorization to the 1991 States acting in coalition with Kuwait could possibly be revived' (Lowe 865). UNSC Resolution 686 (1991) of 2 March 1991 (SCOR 46th Year 8) and UNSC Resolution 687, according to that position, rather suggest that the authorization of the use of force in UNSC Resolution 678 'was given only for the duration of the military operation to expel Iraq from Kuwait and that it is for the Security Council to decide what, if any, further action is to be taken against Iraq' (Lowe 865; see also Hofmann 20-34; Bothe 263-271).

24 It may, however, not be left out of consideration that the UNSC, in UNSC Resolution 1441, expressly mentioned both UNSC Resolution 678 and UNSC Resolution 687. With regard to the latter, the UNSC recalled 'that a ceasefire would be based on acceptance by Iraq of the provisions of that resolution'. Accordingly, it may be concluded that the suspension of the use of force authorized by UNSC Resolution 678 was made dependent upon Iraq's compliance with UNSC Resolution 687. The express reference in UNSC Resolution 1441 and in other UNSC resolutions could be taken as evidence for the continuing validity of UNSC Resolution 678. Then there would be no necessity of arguing their possible 'revival'. It may be added that there was unanimity with regard to the continuing validity of UNSC Resolution 687. If one shares the view that the ceasefire had been agreed upon by the 1991 Coalition on the one side and Iraq on the other side, any violation of the ceasefire agreement would bring into operation the authorization of the use of force (even though it became apparent later that Iraq did not have in its arsenals weapons of mass destruction). In fact, in 1991 not only the US and the UK but also France justified their military actions in and against Iraq with Iraq's violations of UNSC Resolution 687. Later US and British military operations that were also justified by reference to UNSC Resolution 678 (Murphy (1999) 471-79) did not meet strong protests by other UNSC members.

25 However, the reference to UNSC Resolution 678 does not necessarily imply that the authorization of the use of force continued to be operative. It could also be considered an indication that the UNSC was prepared to take similar measures like those in 1990 if Iraq continued to be in violation of its obligations (Bothe 264).

(b) Subsequent Endorsement by the UN Security Council?

26 Finally, the question was discussed whether the Security Council might have endorsed the use of force against Iraq by subsequent resolutions. In UNSC Resolution 1483 the UNSC recognized 'the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command'. This part, however, may not be interpreted as a subsequent authorization of the use of force. Rather, the UNSC merely took notice of the factual situation that had been brought about by the successful military operation against Iraq. The 'authorities' the UNSC referred to are those under the *ius in bello*, especially the law of belligerent occupation as laid down in the 1907 Hague Regulations and in the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.

4. Evaluation

27 The US and the UK claim of having acted under UNSC Resolution 678 cannot be rejected from the outset as being without any basis in international law. There are good reasons to conclude that the UNSC did not intend to limit the authorization of the use of force to the expulsion of Iraq from Kuwait. Again, it must be recalled that France, in 1991, shared that view and participated in military operations against Iraq in response to the latter's violations of the ceasefire resolution. It must also be recalled that, as stated in the US letter of 20 March 2003 addressed to the President of the UNSC, UNSC Resolution 678 had been

[T]he basis for coalition use of force in the past and has been accepted by the Council, as evidenced, for example, by the Secretary-General's public announcement in January 1993 following Iraq's material breach of resolution 687 (1991) that coalition forces had received a mandate from the Council to use force according to resolution 678 (1990).

28 'Operation Desert Fox' seems to be a further example of the UNSC's consent to the US position. Of course, in 2002 and 2003, the majority of the UNSC favoured a different interpretation and emphasized the necessity of a further resolution explicitly authorizing the use of force in response to Iraq's continuing violations of UNSC Resolution 687 and subsequent resolutions. In this context the question arises whether such a change in the policy of members of the UNSC can have an impact on the continuing legal validity of an interpretation that they used to share in the past or that they did not clearly reject.

29 It is, however, of equal importance that the US and especially the UK had endeavoured to persuade the UNSC to adopt a second resolution explicitly authorizing the use of force against Iraq, and that they failed to secure one. Probably, it would have been easier for the US and the UK to justify their actions had they consistently taken the position that there was no need for a second resolution. The UNSC—in view of its primary responsibility and its wide margin of discretion with regard to the measures it considers necessary to maintain and restore international peace and security—may evaluate each situation on its own merits. Obviously, the majority of its members were convinced that, despite the continued validity of UNSC Resolution 687, the authorization of the use of force by UNSC Resolution 678 was of no relevance in 2003. Therefore, the fact that some of the UNSC's members were less than consistent in their political attitude may be deplored. Still, the majority clearly indicated that they were unwilling to directly or indirectly consent to the use of force against a Member State. That is a rather strong argument in favour of those rejecting the US and UK positions. Thus, the invasion of Iraq lacked legal justification.

C. Impact on Public International Law

30 As early as the air attacks against Iraq had commenced there was a widespread fear that the invasion of Iraq indicated a return to power policy in disregard of the UN system of collective security and of public international law (see, inter alia, the contributions to the *Agora* in Damrosch and Oxman). While it is true that the invasion was of doubtful or at least disputed legality and that during the occupation period there were violations of rules and principles of international law that can hardly be justified, those fears have proven to be unfounded. Rather, in sum, the invasion of Iraq has had a positive impact on public international law.

1. Ius Ad Bellum and the UN System of Collective Security

31 The mere fact that the US and the UK, although without success, had initially pressed for an explicit authorization of the use of force by the UNSC is sufficient evidence that, despite their military and economic power, they neither ignored nor considered irrelevant the UN system of collective security (Wood 3-5). The same holds true with regard to their efforts to justify the military operations against Iraq by reference to existing UNSC resolutions. Some may not find comfort in these findings because ultimately the two States and their allies did what they were determined to do from the beginning. However, most Coalition members, including the UK and the US, have learnt the lesson that the use of armed force which can neither be based on a sufficiently certain authorization or other undisputed legal basis will impede, if not make impossible, the achievement of the political aims pursued. There is, therefore, a good chance of a more cautious and sober approach in the future. Military operations alone will never suffice to achieve political aims. They must be supplemented by political and economic measures whose success depends upon international co-operation (→ *Co-operation, International Law of*).

32 On the other hand, there were members of the UNSC merely objecting to the US and the UK without advancing another course of action. There even was a principal objection to any use of force against Iraq. This, however, does not necessarily mean that the UN system was or is flawed or that a 'stalemated' UNSC was unable to respond to obvious and continuing breaches by a Member State. It merely gives evidence of a division of opinion and of the fact that the US and the UK were in the minority on that occasion (Lowe 867). It is true, however, that members of the UNSC ought to be prepared to make use of the full spectrum of the means available to the UNSC, including if necessary the use of force. They must be willing to discharge the UNSC's primary responsibility for the maintenance of international peace and security if the UN system of collective security is to survive.

33 Moreover, the activities of the UNSC during and after the occupation period have proven that the UN system of collective security is well alive and functional. It may be less than perfect. Still, much of the progress in the restructuring of Iraq is owed to the UN, its organs and other bodies. This certainly has also contributed to the organization's credibility.

2. Further Aspects

34 Finally, it is important to emphasize that the UNSC has in a very effective manner contributed to a strengthening of the *ius in bello*. It may be recalled that, initially, especially the US had claimed to be a liberator rather than an occupier. It was due to UNSC Resolution 1483 that the Coalition quickly abandoned that position and accepted its obligations under the 1907 Hague Convention IV and the Geneva Convention IV. The fact that the UNSC went beyond the *ius in bello* by modifying the rights and duties of the occupying powers and by adapting them to the necessities of the situation in Iraq (Wolfrum 16-20) is without prejudice to that finding. In view of its general acceptance by the Coalition and by the → *international community* it is but a further piece of evidence of the powers the UNSC disposes of for the purposes of restoring and maintaining international peace and security.

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