

USAWC STRATEGY RESEARCH PROJECT

**OPERATION IRAQI FREEDOM – AN UNJUST WAR**

by

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## ABSTRACT

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This paper will examine Operation Iraqi Freedom using Just War Theory. The justice of going to war (*jus ad bellum*) will be analyzed while the discussion of law during war (*jus in bello*) will be left for another time. Within Just War tradition there is a broad range of views, with no single list of criteria being universally accepted. The just war criteria used in this paper, extracted from the writings by Martin L. Cook, serve as a first step all nations should use when morally evaluating the justification for going to war.

The Just War Criteria outlined below are interdependent. The criteria relate and overlap with one another; therefore they must be taken together. The criteria cannot be separated and judged independently. There is no majority whereby satisfying four of the seven criteria morally passes some test. This is a moral set of criteria that taken together must withstand the highest levels of scrutiny.

Just cause is the first and foremost primary criterion of just war theory. Without a morally acceptable reason to go to war all other criteria become moot. Just intent must be kept within the context of the just cause. Legitimate authority is the law a nation uses to limit the number of governmental leaders who may authorize the use of force.

Public declaration, proportionality, and reasonable hope of success tie just cause, legitimate authority and just intent together. The public must support the decision of the legitimate authority in their just cause. The aggressor must be notified that you intend to redress the situation. The force used to redress the situation needs to be proportional to the just cause and there needs to be a reasonable prospect of victory.

The last resort criterion is the final moral argument that binds together all of the just war criteria. All avenues to a peaceful negotiation must have been tried and all reasonable diplomatic means to rectify the situation need to have been explored. These are the tenets that will be applied to morally evaluate whether the United States is justified in conducting a regime changing war against the government of Iraq.



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## OPERATION IRAQI FREEDOM – AN UNJUST WAR

[W]e will disrupt and destroy . . . the threat before it reaches our border . . . we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists.

—President George W. Bush

### INTRODUCTION

This paper will examine Operation Iraqi Freedom using Just War Theory. The justice of going to war (*jus ad bellum*) will be analyzed while the discussion of law during war (*jus in bello*) will be left for another time. Within Just War tradition there is a broad range of views, with no single list of criteria being universally accepted. The just war criteria used in this paper, extracted from the writings by Martin L. Cook, serve as a first step all nations should use when morally evaluating the justification for going to war.

### JUST WAR TENETS APPLIED AGAINST OPERATION IRAQI FREEDOM

The Just War Criteria outlined below are interdependent. The criteria relate and overlap with one another; therefore they must be taken together. The criteria cannot be separated and judged independently. There is no majority whereby satisfying four of the seven criteria morally passes some test. This is a moral set of criteria that taken together must withstand the highest levels of scrutiny.

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The last resort criterion is the final moral argument that binds together all of the just war criteria. All avenues to a peaceful negotiation must have been tried and all reasonable diplomatic means to rectify the situation need to have been explored. These are the tenets that will be applied to morally evaluate whether the United States is justified in conducting a regime changing war against the government of Iraq.

## JUST CAUSE

Just Cause “Asks for a legitimate and morally weighty reason to go to war.”<sup>1</sup> Throughout history, the most common reasons were the right to self-defense, the reclaiming of lost territory, and the punishment of aggressors. Some consider the defense of the innocent as a just cause though this is a less accepted cause in the international community.

What was the just cause for the United States to attack Iraq? The Bush administration makes the broad case based on the right to self-defense. The administration attempts to strengthen its case by stating that a state does not have to wait to be attacked before it can defend itself. This concept is not new and is already internationally recognized.

The most troubling of the several causes put forward by the Bush administration is its argument for preemptive or preventive use of force. International law recognizes that preemptive use of force is sometimes morally permissible, but only in the exceptional case where there is an imminent threat. The Bush administration has taken the concept of preemptive use of force as an option to be used in exceptional cases and turned it into a new doctrine about the legitimacy of the unilateral use of preventive war to deal not just with imminent threats, but with merely potential or gathering dangers.

In his 2002 State of the Union speech, President Bush labeled North Korea, Iran and Iraq as an “axis of evil” that threatens world peace and “pose a grave and growing danger.”<sup>2</sup> In his 1 June 2002 West Point graduation speech, Bush took the first steps in laying out his vision for national security by calling upon all Americans “to be ready for preemptive action when necessary to defend our liberty and to defend our lives.”<sup>3</sup> Just prior to the release of the United States National Security Strategy (NSS), Bush addressed the United Nations General Assembly and laid out several steps that Iraq must adhere to in order to come into compliance with all previous Security Council resolutions dealing with Iraqi disarmament.<sup>4</sup> In this same speech came the first indications of regime change. “The Security Council resolutions will be enforced—the just demands of peace and security will be met—or action will be unavoidable. And a regime that has lost its legitimacy will also lose its power.”<sup>5</sup> Ending his speech, Bush inferred that the United States was prepared to act alone. “We cannot stand by and do nothing while danger gathers. We must stand up for our security, . . . By heritage and by choice, the United States of America will make that stand. And, delegates to the United Nations, you have the power to make that stand, as well.”<sup>6</sup>

In each of these speeches the President is building his case for a preventive war against Iraq using potential and gathering dangers as the argument for direct action against Iraq. Five days after addressing the U.N., the President released his National Security Strategy in which

he stated his intentions to prosecute preventive wars to protect against perceived and real threats directed at the United States or its allies.

We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends . . . The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.<sup>7</sup>

In Cincinnati, Ohio Bush reiterated his conditions given before the U.N. General Assembly for Iraq to disarm. He also addressed for the first time regime change and the fact that “the longer we wait the stronger and bolder Saddam Hussein will become.”<sup>8</sup> Bush has now expanded beyond those steps that he laid out before the United Nations General Assembly and has added regime change to his case for his preventive war against Iraq.

Preventive war is based on the supposition that war is inevitable so it is better to fight it now rather than at a later date when either the cost becomes too great or the perceived enemy will have grown too strong. The argument for preventive war suggests that the overall loss of life and destruction of property would be less if a threatened country were to strike earlier rather than waiting for a threatening country to fully develop its capabilities. Going to war because of a perceived threat that might emerge in the future constitutes aggression. Preventive wars are fought to maintain the balance of power. For these very facts, international law does not recognize preventive war.

In his 2003 State of the Union speech, Bush stated that “some have said we must not act until the threat is imminent.”<sup>9</sup> If the administration had thought that the threat was imminent then preemption would be justified. If Iraq posed sufficient threat to our nation, then preemptive strikes would certainly be warranted. Preemption is nothing more than striking the first blow, attacking before being attacked. Knowing you are about to be attacked is an essential element to preemption. International law does recognize the basis for preemption though the bar is necessarily high to prevent indiscriminate use.

According to Michael Walzer “the line between legitimate and illegitimate first strikes is not going to be drawn at the point of imminent attack but at the point of sufficient threat.”<sup>10</sup> This means “a manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk.”<sup>11</sup>

On 7 November 2002, the U.N. Security Council passed resolution 1441 and included the term “serious consequences.” Language not included was any reference to Chapter VII of the

U.N. Charter. Failure to include this language meant that the Security Council was not prepared to include any use of force language because they did not feel that Iraq posed a sufficient threat.

As stated by the Minister for Foreign Affairs of France, Dominique de Villepin:

So, it is a demanding démarche, anchored in resolution 1441, that we must take together. If that path failed and led into a dead end, then France ruled out no option, including the use of force as a last resort, to ensure Iraqi compliance.<sup>12</sup>

Saddam Hussein had repeatedly violated successive S.C. Resolutions demanding that he disarm. But he did not directly endanger, or threaten serious risk to the territorial integrity or political independence of the United States. The Bush administration's argument for attacking Iraq, based on the right to self-defense, is not a just cause but rather an argument of prevention versus preemption. "If the cause is to destroy our enemies before they materially threaten us, then striking first would constitute [prevention,] and act of aggression."<sup>13</sup> The NSS makes the case that the nature of the threat has changed; it is no longer communism versus democracy. Today's world is filled with uncertainty. To prevent a future attack the United States may conduct a preemptive strike. "To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively."<sup>14</sup>

The reason the United States attacked Iraq is clearly stated in the NSS. "[To] stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends."<sup>15</sup> Iraq did not pose a sufficient threat to the United States. The United States prosecuted a preventive war, and did not have sufficient just cause to attack Iraq.

#### LEGITIMATE AUTHORITY

Legitimate authority "restricts the number of agents who may authorize the use of force."<sup>16</sup> This notion is firmly established in the sovereignty of states. Within our constitutional system the basis for legitimate authority is divided between the Congress and the President and is found in our Constitution.<sup>17</sup> Article 1 defines those powers granted to Congress while Article 2 defines those powers granted to the President.

Clearly there is a separation of powers when it comes to the use of the military. This country's history is founded on the separation of powers, to prevent any one branch of the government from wielding too much power. The founding fathers feared too much power in one branch of the government, specifically those powers granted to the President with respect to using the military.

In the federalists papers Alexander Hamilton wrote of this, comparing the Presidents' powers to the British king. "[T]he British king['s] [powers] extend to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature."<sup>18</sup>

It is clear that in crafting the Constitution great pain was taken to ensure that no one branch of the government controlled the military. Throughout the history of this country this separation of powers has been tested. It is necessary that this government with its separate branches of authority, struggles with, and strongly discusses amongst each other for control of those powers granted them by the Constitution, lest one branch becomes too strong. Whenever this government thinks of using force to implement its National Security Strategy, this nation needs and requires great debate. If this nation fails in regard to this, it will weaken itself and squander the lives of its citizens, an irreplaceable resource.

The President had already initiated deployment of forces into the Central Command theater of operations. After many public debates Congress passed Public Law 107-243 on 16 October 2002, which in part states:

The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to: (1) defend the national security of the United States against the continuing threat posed by Iraq; (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.<sup>19</sup>

Passage of this law compelled the United States, a member of the United Nations, to adhere to S.C Resolution 1441 which passed three weeks later on 7 November 2002.

The language of the S.C. resolution did not specifically mention the use of force. One of the issues facing the Security Council as it worked resolution 1441 was:

When should the Council authorize actions that might be taken if Iraq does not comply – before or after the inspections phase? Some nations, including the United States, seek a “consequences” authorization as part of a single resolution on inspections and Iraqi compliance while others prefer a two-stage process, with an authorization of force or its equivalence after inspections had been given a chance to work.<sup>20</sup>

The United States sought a consequence clause as part of a single resolution on inspections and Iraqi compliance while others preferred a two-stage process. The Security Council specifically left a consequence clause out when it passed S.C. Resolution 1441, preferring a two-stage process

Based on the wording of P. L. 107-243, Congress authorized the President not only to defend the national security of the United States against the continuing threat posed by Iraq but also to enforce all relevant United Nations Security Council resolutions regarding Iraq.

Congress specifically made reference to all relevant S.C. resolutions and even though S.C. resolution 1441 was passed two weeks after Congress passed P.L. 107-243, it is relevant. From a national perspective, legitimate authority would be recognized had Congress not made mention to enforcing all relevant U.N. Security Council resolutions regarding Iraq. Because of this reference, the United States did not have legitimate authority to conduct military action against Iraq.

#### JUST INTENT

“The just intent requirement serves to keep the war aims limited and within the context of the just cause used to authorize the war.”<sup>21</sup> Just intent is predicated on having a morally defensible just cause.

The Bush administration used as a pretext the WMD argument to gain international approval for military action. The administration envisioned a secure and stable Middle East. The theory put forward by the Bush administration is that removing Saddam from power and establishing a democratic state would stabilize the entire region. The intent of the Bush administration all along was regime change.

As early as 1998, during the Clinton administration, Donald Rumsfeld and Paul Wolfowitz, prominent members of current Bush administration, called on then President Clinton to take action against Iraq.

The only acceptable strategy is one that eliminates the possibility that Iraq will be able to use or threaten to use weapons of mass destruction. In the near term, this means a willingness to undertake military action as diplomacy is clearly failing. In the long term, it means removing Saddam Hussein and his regime from power. That now needs to become the aim of American foreign policy.<sup>22</sup>

Regime change was the intended purpose from the beginning. In his graduation speech at West Point, Bush implied as much when he stated: “Containment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies.”<sup>23</sup> Bush upped the ante in his 2002 State of the Union address when he labeled Iraq, Iran and North Korea as the Axis of Evil. On 28 Feb 2003 the President’s Press Secretary Ari Fleicher was asked:

In response to an earlier question, you said the President still hopes to avoid war, and that Saddam Hussein could avoid it by completely and totally disarming, and by going into exile. I’m wondering, are you -- is that now the standard? Previously, you’ve obviously said disarmament. But is it now the combination of disarmament and exile?<sup>24</sup>

Fleicher reiterated what President Bush had already stated in his Cincinnati speech. "I think the President made it perfectly plain yesterday in the Oval Office and he has said this repeatedly, it is disarmament and regime change."<sup>25</sup>

Fleicher was further asked: "So even though the United Nations would sign on to the first part of that, and not to the second, when the President thinks about launching military action, he's going to think about the combination?"<sup>26</sup> His reply: "The President has made that plain."<sup>27</sup>

The U.N. Charter addresses the use of force in Article 2(4): "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."<sup>28</sup> This article alone serves as the foundation for acceptability regarding one states preemptive use of force against another.

There are four exceptions to the use of force in Article 2(4). Two are relevant for this discussion:

1. Article 51 addresses individual and collective self-defense.
2. Chapter VII addresses enforcement actions authorized by the Security Council.<sup>29</sup>

Article 51 of the U.N. Charter states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations."<sup>30</sup> Chapter VII establishes a system of Security Council responses relating to the "maintenance of international peace that include enforcement short of the use of force, and actions including the use of force."<sup>31</sup>

This was demonstrated in S.C. Resolution 678 (29 November 1990) stating that it: "Authorizes member states co-operating with the Government of Kuwait, . . .to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore International peace and security in the area."<sup>32</sup>

S.C. Resolution 1441 found Iraq in "material breach" of prior resolutions, set up a new inspection regime, and warned of "serious consequences" if Iraq failed to disarm, but did not secure any mention to "use of force" or words to that effect. The purpose of this latest resolution was to give Iraq "which has been and remains in material breach, a final opportunity to comply with its disarmament obligations and to set up an enhanced inspection regime."<sup>33</sup> The U.N. intentionally excluded any mention of the use of force.

Just intent is to keep the war aims limited, within the context of the just cause, which is the legitimate and substantially grave reason to go to war by focusing on the original purpose of the just cause. "The general rule is that the purpose of the war is to restore the status quo ante bellum, the state of affairs that existed before the violation that provided the war's just cause."<sup>34</sup>



The intent of S.C. Resolution 1441 was to disarm Iraq, not to start another armed conflict. The intent of the words “serious consequences” was to serve notice to and give Iraq one last opportunity to comply with and to allow for U.N. inspectors to finish the job that had been halted by Iraq in 1998.

The intent of the Bush administration all along was regime change based on their just cause which was “[To] stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends.”<sup>35</sup> This supports the Bush administration’s theory that removing Saddam from power and establishing a democratic state would stabilize the entire region. Clearly regime change is well outside the bounds of what the U.N. intended and outside the bounds of the United States’ original just cause. Just intent is another matter that fails the test for the US actions against Iraq.

#### PUBLIC DECLARATION

Public declaration “has both a moral purpose and a legal one.”<sup>36</sup> The legal one is spoken to above under legitimate authority and refers to the issue of the Constitutional authority of Congress, not the President, to declare or authorize the nation to go to war. “The moral point is a requirement to deliver an ultimatum before initiation of hostilities.”<sup>37</sup> The ultimatum gives the enemy official notice that the nation is prepared to use military force unless the issue is resolved.

The announcements began with the 2002 State of the Union address when the President classified Iraq as being in the “Axis of Evil” which threatens world peace. President Bush, speaking to the General Assembly (12 September 2002) brought the case of Iraq to the front when he challenged the U.N. to take action against Iraq for failing to disarm. “We will work with the U.N. Security Council for the necessary resolutions. [But he warned that] we would act alone if the U.N. failed to cooperate.”<sup>38</sup> On 25 October 2002, the United States “formally proposed a resolution that implicitly authorized war against Iraq.”<sup>39</sup> The U.N. did not adopt the exact language that the United States wanted, instead passing S.C. resolution 1441 with language that found Iraq “in material breach of prior resolutions, set up a new inspections regime, and warned of serious consequences if Iraq again failed to disarm.”<sup>40</sup>

By late January 2003, the United States began to doubt Iraq’s cooperation and the effectiveness of the ongoing inspections. Secretary of State Colin Powell declared that the “inspections will not work.”<sup>41</sup> Powell returned to the U.N. on 24 February 2003 to secure a second resolution, one that would include reference to Chapter VII of the U.N. Charter that “Iraq

has failed to take the final opportunity afforded it in Resolution 1441.”<sup>42</sup> Finally, on 28 February 2003 in a public statement, President Bush’s press secretary announced “that the American goal was no longer simply Iraq’s disarmament but now included regime change.”<sup>43</sup>

If ever a case is to be made that the enemy was give public notice that a nation was prepared to use military force unless the issue was resolved, this is it. The requirement to give the enemy public notice that the issue serious enough to warrant the use of military force and that the nation is prepared to do so was completely laid out by the United States. It is evident that the public declaration criterion was met.

#### PROPORTIONALITY

“Proportionality is a common sense requirement that the damage done in the war should be worth it.”<sup>44</sup> Even if one has just cause, do the ends justify the costs? If all the other criteria for waging a just war were met, the cost of waging the war may be “so costly in lives and property damage that it is better to [reject the just cause] rather than to pay highly disproportionate [costs] to redress the issue.”<sup>45</sup>

The costs of waging war do not include lives lost; that criteria falls under the reasonable hope of success, though these two criteria are related. Proportionality deals with the costs of rebuilding a ravaged nation, treating the wounded, feeding the population, and restoring markets so that the country can become self-sustaining. This was the case after World War II when, after two years, the United States instituted the Marshall Plan.

This begs the question that if all other criteria for going to war were just and this was the final criterion then we would go to war only if the “anticipated benefits are greater than the anticipated costs?”<sup>46</sup> This principle is hard to measure, is ambiguous but is important for nations to consider when regime change is the intent because once you conquer a country that country becomes your burden, it becomes your responsibility to return it to prosperity. This criteria “remind[s] us not to go to war when the anticipated costs of doing so are obviously overwhelmingly greater than the benefits.”<sup>47</sup>

The proportionality criterion is based on pre-war assumptions. These assumptions are used to determine whether the war is worth it. Some of the assumptions used by the Bush administration were extremely inaccurate. The pitiful state of Iraqi’s infrastructure was grossly underestimated. Some planning factors such as what it would take to jump-start the economy were not publicized. The administration publicly admitted that the costs would not be addressed until a proper detailed inspection could be made.

The administration grossly underestimated what the costs would be and additionally made bad assumptions that once decisive operations were over that either the U.N. or NATO would step in and help. Given the poor planning, the Bush administration did not meet the proportionality criteria; the ends did not justify the predictable costs.

#### REASONABLE HOPE OF SUCCESS

“This requirement is necessary because the use of force inevitably entails loss of human life, civilian and military, it is a morally grave decision to use it.”<sup>48</sup> Going to war in self-defense or to aid an ally to reestablish a border, as in the 1991 Gulf War is one thing, regime change based on a perceived threat is an entirely different matter.

Perhaps the reasonable hope of success criteria should be used when the question is not if we are going to use force but when. “If despite your best efforts it is unlikely that you will succeed in reversing the cause that brings you to war, then you are causing death and destruction to no purpose.”<sup>49</sup> The further on question would be now what? Now that we have overthrown the government what do we do about the problem of stabilization and nation building? This clearly was not examined thoroughly.

War planning scenarios always include assumptions. It is clear that the assumption that once the Iraqi military had been defeated, the United States and its coalition forces would be recognized as liberators was wrong. There was also the assumption that the Iraqi Army and some of its police could be used immediately after ground operations ceased and would be used to stabilize the country. This proved false because the Iraqi Army for the most part melted back into society. The problem with the administration’s assumptions is that they looked at the best case, which is entirely opposite the criteria established for reasonable hope of success. Worst case planning needs to be used. Why? Because when you deal in loss of life, which invariably happens in war, it becomes paramount for the legitimate authorities to decide whether the use of force could prove to be so costly in lives that the cost does not justify going to war in the first place. This is closely linked to the criteria for proportionality because it deals with consequences. Despite their efforts, the Bush administration truly underestimated the extraordinarily large force required to conduct stability operations and the establishment of a new government.

Some would argue that this was poor military force planning. Once major combat operations cease it becomes a problem for all branches of the government, not just the Department of Defense, to conduct stability operations and to establish a new government.

Despite the military's best efforts it clearly did not have enough forces available to initiate Iraq's return to a prosperous and economically viable nation. While there were enough forces to conduct a regime change, there certainly were not enough military and other governmental agencies along with a coherent plan to conduct stability operations and to establish a new government. The reasonable hope for success criterion was not adequately thought out.

#### LAST RESORT

The last resort criteria, "stems too from a commitment to restrict the use of force to cases of sad necessity."<sup>50</sup> This criterion is based on reasonable people doing everything possible to forestall the introduction of military force to solve the problem. Diplomatic solutions should always be the preferred solution even when compromise between the parties leads to a less than perfect solution.

The United States petitioned the United Nations in their quest to secure international support. In his speech to the U.N. General Assembly, Bush emphasized that "the conduct of the Iraqi regime is a threat to the authority of the United Nations, and a threat to peace."<sup>51</sup> He then tried to coerce and compel the U.N. diplomats to act forcibly when he asked them "[a]re Security Council resolutions to be honored and enforced, or cast aside without consequence? Will the United Nations serve the purpose of its founding, or will it be irrelevant?"<sup>52</sup> In this same speech, Bush laid out the conditions. "If the Iraqi regime wishes peace, it will immediately and unconditionally forswear, disclose, and remove or destroy all weapons of mass destruction, long-range missiles, and all related material."<sup>53</sup>

As stated earlier, Bush lays out several steps that Iraq must adhere to in order to come into compliance with all previous Security Council resolutions. Nowhere does Bush mention regime change or ask the U.N. for use of force language. The Security Council grappled with language as it sought to craft the resolution.

When should the Council authorize actions that might be taken if Iraq does not comply, before or after the inspections phase? Some nations, including the United States, seek a "consequences" authorization as part of a single resolution on inspections and Iraqi compliance while others prefer a two-stage process, with an authorization of force or its equivalence after inspections had been given a chance to work.<sup>54</sup>

Based on President Bush's speech to the U.N. General Assembly, the United Kingdom of Great Britain and Northern Ireland and the United States of America proposed the draft language of resolution 1441 and they got what they asked for. In his closing comments to the U.N. Security Council on 5 February 2003 Secretary of State Powell said:

Resolution 1441 was not written to go to war, but to preserve the peace.” [He further stated] “The United States will not — and cannot — run that risk to the American people. Leaving Saddam Hussein in possession of weapons of mass destruction for a few more months or years is not an option. Not in a post-September 11 world.<sup>55</sup>

By the end of February 2003, the United States considered regime change in Iraq as the only viable option (see public declaration analysis). By taking this step, the United States had considerably changed the conditions and had begun to undermine the credibility of the United Nations.

By March 2003, a little over three months since passage of the latest S.C. resolution against Iraq, the inspectors reported that Iraq had begun cooperating with them, that progress had been made with the progressive destruction of Al Samoud 2 missiles and their equipment, and that prospects are opening up with the recent questioning of several scientists. Evidence of disarmament was being observed. The intent, the purpose of S.C. Resolution 1441 was finally being realized.

There are two significant issues here. The first has to do with whether or not the U.N. inspectors, given the conditions of the resolution, had been given enough time to conduct a thorough inspection program of Iraq.<sup>56</sup> The second issue has to do with the credibility of the United Nations itself. By insisting that regime change was now the overriding condition, the United States changed the entire dynamic on which S.C. Resolution was founded. The United States sought a second resolution that would include use of force language, but the United States never formally presented it to the Security Council because of the threatened vetoes by China and France.

All parties were not willing or ready to sign up for a resolution that included use of force language. The French and the Chinese, two voting members on the Security Council threatened to veto any resolution including that language. They insisted that the inspectors should be given more time.<sup>57</sup>

Dominique de Villepin of France stated it best:

For now, he continued, the inspections regime, as outlined in resolution 1441, should be strengthened since it had not been explored to the end, and the use of force could only be a final recourse. Why go to war if there still exists an unused space in resolution 1441. Given the choice between military intervention and an inspections regime that was inadequate for lack of cooperation on Iraq's part, the international community should choose to strengthen decisively the means of inspection.<sup>58</sup>

Frustrated in not securing a consequence clause to include the use of force the United States concluded that it had all the authority it needed. As a member of the U.N. it is incumbent

on the United States to abide by the decisions of the United Nations and the Security Council regardless of the outcome. This is the very reason why Iraq was in the position it is in. Since 1991, Iraq had failed to abide by numerous S.C. resolutions. It seems ironic that the United States was willing to undermine Security Council resolution 1441 because it did not get the outcome it wanted, yet since 1991 Saddam had been undermining various Security Council resolutions for exactly the same reason.

Most members of the U.N. wanted to give the inspectors more time. By insisting on regime change as the new overriding condition, the United States inhibited the U.N. inspection teams from completing their mission. The United States undermined and created a U.N. credibility issue, the very issue Bush insisted that Iraq had been doing since 1991. The Bush administration had already predetermined that regime change was the course of action, there were to be no more negotiations, no more resolutions, and no more time given to the U.N. inspectors. The last resort criterion was ignored by the Bush administration.

## **CONCLUSION**

The United States did not have just cause for invading Iraq with the intent of a regime change. The Bush administration's just cause rests on the argument of prevention, to prevent the spread of weapons of mass destruction. They tried to make a case for invading Iraq using as a pretext weapons of mass destruction when their intent all along was regime change. The Bush administration attempted to coerce the Security Council to sanction the use of force. Failing to secure the descriptive use of force language, the Bush administration concluded they had the authority anyway. It could be argued that with resolution language being intentionally vague, the language in any resolution is that which all can agree on, there is always room for interpretation. This is in effect what the Bush administration did; they interpreted the resolution to fit their thesis, effectively closing the door to any further diplomatic action. The United States prosecuted a preventive war.

Preventive war presupposes some standard against which [the] danger is to be measured. It does not exist, . . . it has nothing to do with the immediate security of boundaries. It exists in the mind's eye, in the idea of a balance of power.<sup>59</sup>

Preventive war thinking can turn out to be a self-fulfilling prophecy. "When we stipulate threatening acts, we are looking not only for indications of intent, but also for rights of response."<sup>60</sup> The Bush administration perceived a threat, not now but sometime in the future, and used that future threat to undermine the U.N. and S.C. resolution 1441.

By not allowing the U.N. to complete their mandate under S.C. Resolution 1441, by allowing shortsightedness to overtake diplomacy, the United States ceded the moral high ground and widespread political support it enjoyed after 9/11 by attacking Iraq.

WORD COUNT= 5,876

## ENDNOTES

<sup>1</sup> Martin L. Cook, "Ethical Issues in War: An Overview," Strategic Studies Institute, *U.S. Army War College Guide to Strategy*, Edited by Joseph R. Cerami and James F. Holcomb Jr., February 2001, 24.

States are justified in going to war to respond to aggression received. Such direct attacks on the territorial integrity and political sovereignty of an internationally recognized state provide the clear case of just cause, recognized in just war and in international law (for example, in the charter of the United Nations).

<sup>2</sup> George W. Bush, *State of the Union Address* (Washington, D.C.: The White House, 28 January 2003).

<sup>3</sup> George W. Bush, *President Bush Delivers Graduation Speech at West Point* (Washington, D.C.: The White House, 01 June 2002).

<sup>4</sup> George W. Bush, *President's Remarks at the United Nations General Assembly* (Washington, D.C.: The White House, 12 September 2002).

Our partnership of nations can meet the test before us, by making clear what we now expect of the Iraqi regime. If the Iraqi regime wishes peace, it will:

- immediately and unconditionally forswear, disclose, and remove or destroy all weapons of mass destruction, long-range missiles, and all related material

- immediately end all support for terrorism and act to suppress it, as all states are required to do by U.N. Security Council resolutions

- it will cease persecution of its civilian population, including Shi'a, Sunnis, Kurds, Turkomans, and others, again as required by Security Council resolutions

- it will release or account for all Gulf War personnel whose fate is still unknown. It will return the remains of any who are deceased, return stolen property, accept liability for losses resulting from the invasion of Kuwait, and fully cooperate with international efforts to resolve these issues, as required by Security Council resolutions

- it will immediately end all illicit trade outside the oil-for-food program. It will accept U.N. administration of funds from that program, to ensure that the money is used fairly and promptly for the benefit of the Iraqi people.

If all these steps are taken, it will signal a new openness and accountability in Iraq. And it could open the prospect of the United Nations helping to build a government that represents all Iraqis -- a government based on respect for human rights, economic liberty, and internationally supervised elections.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> George W. Bush, *The National Security Strategy of the United States of America* (Washington, D.C.: The White House, September 2002).

<sup>8</sup> George W. Bush, *President Bush Outlines Iraqi Threat* (Washington, D.C.: The White House, 7 October 2002).

<sup>9</sup> Bush, George W. *State of the Union Address* (Washington, D.C.: The White House, 29 January 2002).



<sup>10</sup> Michael Walzer, *Just and Unjust Wars*. Basic Books, 1977, 81.

<sup>11</sup> *Ibid.*, 81.

<sup>12</sup> U.N. Press Release SC/7658.

<sup>13</sup> Richard C. Anderson, MAJ., "Redefining Just War Criteria in the Post 9/11 World and the Moral Consequences of Preemptive Strikes," 24 January 2003.

<sup>14</sup> NSS, 15.

<sup>15</sup> *Ibid.*, 14.

<sup>16</sup> Cook, 25.

In the United States, there is the unresolved tension between the President as the Commander-in-Chief and the authority of Congress.

<sup>17</sup> *United States Constitution*.

Article 1 Section 1: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article 1 Section 7: The Congress has the sole power "to declare War, . . .to raise and support Armies, . . .to provide and maintain a Navy; . . .to make Rules for the Government and Regulation of the land and naval Forces; and to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.

Article 2, Section 2: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.

<sup>18</sup> The Federalist Papers, Federalist No. 69, *The Real Character of the Executive*.

<sup>19</sup> Public Law 107-243, 16 Oct 2002, *Authorization for use of military force against Iraq resolution of 2002*.

Section 3(a) and (c) of Public Law 107-243: The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to: (1) defend the national security of the United States against the continuing threat posed by Iraq; (2) enforce all relevant United Nations Security Council resolutions regarding Iraq. War Powers Resolution Requirements. (1) Specific Statutory Authorization. Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution. (2) Applicability of other requirements. Nothing in this joint resolution supersedes any requirement of the War Powers Resolution.

<sup>20</sup> Majorie Ann Browne, *CRS Report to Congress: "The United Nations Security Council – Its Role in the Iraq Crisis: A Brief Overview,"* available from <[HTTP://www.fas.org/man/crs/rs21323.pdf](http://www.fas.org/man/crs/rs21323.pdf)>; Internet; accessed 11 January 2004., 5.

<sup>21</sup> Cook, 25.

<sup>22</sup> Project for the New American Century, Letters, 26 January 1998, available from <<http://www.newamericancentury.org/iraqclintonletter.htm>>; Internet; accessed 13 June 2003.

<sup>23</sup> Bush, *President Bush Delivers Graduation Speech at West Point*.

<sup>24</sup> George W. Bush, *Press Briefing by Ari Fleischer* (Washington, D.C.: The White House, 28 February 2003).

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Charter of the United Nations*, (26 June 1945).

<sup>29</sup> Anthony Arend, and Robert J. Beck. *International Law & the Use of Force*. (Routledge, New York, 1993), 32.

<sup>30</sup> *Charter of the United Nations*, (26 June 1945).

Article 51: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security

<sup>31</sup> Browne, 2.

<sup>32</sup> United Nations Security Council Resolution 678.

<sup>33</sup> Browne, 4.

<sup>34</sup> Cook, 25.

<sup>35</sup> NSS, 14.

<sup>36</sup> Cook, 25.

<sup>37</sup> *Ibid.*, 25.

<sup>38</sup> Michael J. Glennon, "Why the Security Council Failed," available from <[HTTP://www.ciaonet.org/olj/fa/fa\\_mayjune03c.html](http://www.ciaonet.org/olj/fa/fa_mayjune03c.html)>; Internet; accessed 11 October 2003.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Cook, 26.

<sup>45</sup> Ibid.

<sup>46</sup> Andrew Valls, ed., *Ethics in International Affairs*. (Roman & Littlefield Publishers Inc., 2000), 24.

<sup>47</sup> Ibid., 24.

<sup>48</sup> Cook, 26.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Bush, *President's Remarks at the United Nations General Assembly*.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Browne, 5.

<sup>55</sup> Ibid.

<sup>56</sup> *United Nations Security Council Resolution 1441*.

<sup>57</sup> UN Press Release SC/7658.

<sup>58</sup> Ibid.

<sup>59</sup> Cook, 76.

<sup>60</sup> Ibid., 77 and 79.

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