

The Legitimacy of the Occupation of Iraq and the International Responsibility Resultion from It

Irak İşgalinin Meşruiyeti ve Bundan Kaynaklanan Uluslararası Sorumluluk

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Abstract

The occupation of Iraq raises many responses in legal and political domains, as the prohibition of occupation is explicitly Stated in international law, particularly with the adoption of the United Nations Charter in 1945. Article 2(3) of the Charter mandates the peaceful resolution of disputes among Member States, while Article 2(4) forbids Member States from threatening or employing force against the territorial integrity or political independence of any State, or by any means that contravene the objectives of the United Nations. The U.S-led international coalition invaded Iraq in 2003. To justify this action, the American administration embraced the doctrine of preventive war. This article seeks to examine the legitimacy of the occupation of Iraq in accordance with public international law and to delineate the responsibilities of the coalition countries should the occupation be deemed illegal. The study will elucidate the political, economic, and social conditions that precipitated the invasion of Iraq, employing an analytical methodology through the examination of legal texts and reports to derive logical conclusions. Ultimately, the study will contribute provide a comprehensive and detailed understanding of the occupation of Iraq, its legitimacy, and the international responsibility resulting from it.

Keywords: Iraq Occupation, International Legitimacy, International Responsibility.

Öz

Irak'ın işgali, hem hukuki hem de siyasi alanlarda çeşitli tepkilere yol açmıştır; zira işgal yasağı, özellikle 1945 yılında kabul edilen Birleşmiş Milletler Antlaşması'yla birlikte, uluslararası hukukta açıkça belirtilmiştir. Antlaşma'nın 2. maddesinin 3. fıkrası, Üye Devletler arasında ortaya çıkan anlaşmazlıkların barışçıl yollarla çözülmesini zorunlu kılarken, 2. maddenin 4. fıkrası ise Üye Devletlerin başka bir devletin toprak bütünlüğüne ya da siyasi bağımsızlığına karşı güç kullanmalarını veya tehditte bulunmalarını ya da Birleşmiş Milletler'in amaçlarıyla bağdaşmayan herhangi bir şekilde davranmalarını açıkça yasaklamaktadır. 2003 yılında ABD öncülüğündeki uluslararası koalisyon güçleri Irak'ı işgal etmiştir. Bu askeri müdahaleyi meşrulaştırmak adına, Amerikan yönetimi "önleyici savaş doktrini"ni benimsemiştir. Bu makale, Irak işgalinin uluslararası kamu hukuku çerçevesinde meşruiyetini incelemeyi ve işgalin hukuka aykırı olarak değerlendirilmesi durumunda koalisyon ülkelerinin uluslararası sorumluluklarını ortaya koymayı amaçlamaktadır. Çalışma, Irak'ın işgaline zemin hazırlayan siyasi, ekonomik ve toplumsal koşulları açıklığa kavuşturmayı hedeflemektedir; bu amaçla, hukuki metinler ve raporlar üzerinden yürütülen analitik bir yöntem kullanılarak mantıklı sonuçlara ulaşılmaktadır. Nihai olarak bu çalışma, Irak'ın işgaline dair meşruiyet tartışmalarına ve buna bağlı uluslararası sorumluluklara ilişkin kapsamlı ve ayrıntılı bir bakış açısı sunmayı hedeflemektedir.

Anahtar Kelimeler: Irak'ın İşgali, Uluslararası Meşruiyet, Uluslararası Sorumluluk.

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1. Introduction

Following the conclusion of World War I, the militarily dominant countries sought to establish an international organization designed to address the disputes that emerged among them in order to avert the resort to warfare. The League of Nations was established in 1919, an organization dedicated to the preservation of world peace and security. Nonetheless, the non-binding nature of the organization's decisions significantly undermined the League of Nations, ultimately leading to its dissolution with the outbreak of war among its members. In the aftermath of devastating wars that resulted in millions of fatalities, militarily potent countries began to earnestly contemplate the establishment of an international organization focused exclusively on global peace and security. Consequently, other international conferences occurred, culminating in the San Francisco Conference in the United States (U.S), which resulted in the establishment of the United Nations (UN) in 1945. The organization seeks to enhance international peace and security while improving the economic and social conditions of States to foster a society characterized by security, health, well-being, and compassion.

One of the principles enshrined in the Charter of the UN is sovereignty, which stipulates that each state has the right to autonomously exercise its internal and foreign competencies in accordance with its political system, free from external interference. A crucial element in maintaining sovereignty is the safeguarding of a state's terrestrial, maritime, and aerial boundaries; any infringement against this sovereignty poses a risk to world peace and security. Article 2(4) of the UN Charter underlines the imperative to abstain from the threat or use of force against the territorial integrity and political independence of states. The Charter forbids Member States from threatening or using force against one another, whereas Article 2(2) emphasizes the need to peacefully resolve disagreements (United Nations Charter, 1945). Dispute resolution procedures differ; they can be diplomatic, including negotiation, good offices, mediation, investigation, and conciliation, or political, as outlined in Articles 12-15 of the League of Nations and Articles 33, 34, 35 (Covenant of the League of Nations, 1919), and 99 of the UN Charter (United Nations Charter, 1945). States may also utilize arbitration or judicial resolution to settle conflicts.

Iraq, as a member of the international community, possesses political and economic influence, along with social connections within the region, and shares similar attributes with other states. Its sovereignty is recognized under international law and it holds the political authority that enable it to engage with other States. Following the entry of British forces into Baghdad in 1918, Iraq experienced the establishment of local administrations to oversee its internal matters under the supervision of the United Kingdom as the mandatory authority over Iraq (Doge, 2003, p. 1-5). Over time, and specifically after Iraq gained its political independence in 1932 (Ijeel, 2022, p. 792), the Iraqi political arena began to witness the emergence of various political parties. Among the most prominent were the Iraqi Communist Party, founded in 1934 (Batatu, p. 61–85), and the Arab Socialist Ba'ath Party, which was established in Iraq in 1952 (Naji, p. 36) and continued to dominate the country's political life until the fall of its regime in 2003

The U.S and the United Kingdom assert that Iraq posed a threat to global security, alleging that it possesses weapons of mass destruction that could be deployed against any country at any time and that the Iraqi regime is affiliated with the terrorist organization Al-Qaida, providing training and armaments, with the potential to supply them with weapons of mass destruction. The Iraqi regime was deemed a dictatorship accountable for the deaths of thousands of its own citizens and those of neighboring nations (Kaya & Acer, 2003, p. 115). Consequently, these countries adopted a belligerent posture towards Iraq, which intensified

during Iraq's invasion of Kuwait in 1991. From 1991 to 2003, the relationship between Iraq and the major powers deteriorated, marked by the bombing of Iraq following the invasion of Kuwait, the imposition of stringent economic measures (sanctions), the bombing of Iraqi facilities during Operation Desert Fox in 1998, and ultimately, the occupation of Iraq in 2003.

The UN Charter forbids the use of force, but Article 51 permits states to use the right of self-defense under the principle of "self-defence." To use this privilege, there must be a genuine armed assault or an imminent threat of attack (United Nations Charter, 1945). At that time, Iraq had not engaged in any genuine aggression, nor did it possess an imminent plan to attack the coalition countries in general, or the U.S specifically. In contrast, the U.S later embraced the doctrine of preventive war — a concept that emerged prominently in international discourse toward the end of the 20th century — which allows a state to launch military action against a potential future threat or aggressor.

The 2003 occupation of Iraq raises fundamental legal questions about its compliance with international law, particularly in light of the principle of sovereignty, the prohibition on the use of force, and the international responsibility of states. This article aims to analyze this issue by examining the legal foundations upon which the occupation was based, its legitimacy under international law, and determining the legal responsibility arising therefrom.

To achieve this goal, the article will examine the validity of claims that Iraq possessed weapons of mass destruction and supported the terrorist organization al-Qaeda. Additionally, the article will analyze the claim that the occupying powers maintained regarding the liberation of Iraq from the dictatorial regime.

The article examines the legal aspects of the occupation by utilizing essential legal concepts and theories that constitute the analytical framework to evaluate the legitimacy of the Iraq occupation and its related responsibilities. The principles include the principle of sovereignty and non-intervention, the prohibition of the use of force in international law, the doctrine of preventive war, and the international responsibility of states for unlawful activities. The article utilizes international reports and prior literature in English, Arabic, and Turkish pertinent to the study topic, thereby situating the legal issue within its academic framework and finally fulfilling the article objectives.

2. Iraq Before 2003

Following the end of Ottoman control in the Arab region and the arrival of foreign forces between 1914 and 1918, these powers sought to establish Arab states modeled after Western systems. During this period, public resentment grew toward the occupation and the failure of the newly formed governments to meet the people's needs. Many citizens were deprived of a life marked by freedom and dignity. As a result, new concepts evolved, such as fighting the occupation, rejecting pro-Western Arab politicians, and constructing a unified and powerful Arab state. It is worth noting that Israel's presence in the region played an important role in the emergence of these ideas, which evolved over time and resulted in the formation of parties in the Arab world after World War II, such as the Communist Party and the Baath Party (Devlin, 1991, p. 1396), which were considered traditional enemies in the region until the Baath Party gained control of Iraq and Syria.

In 1946, Michel Aflaq and Salah al-Bitar established Syria's Baath Party (Devlin, p. 1397-1398). It attempted to attain Arab unity, and it should be highlighted that Arab unity does not only mean spiritual unity but also material unity by uniting Arab countries into a single state and government. It should be mentioned that this plan was briefly realized between Egypt and Syria through the founding of the United

Arab Republic in 1958, but it failed in 1961 (Kazak, 2024, p. 242-245). The Baath Party's second purpose was to gain freedom by fighting and eliminating the occupation of Arab countries. The third goal is to achieve socialism, which the Baath Party defined as economic, social, and political socialism, as Michel Aflaq argued that this socialism must be compatible with the specificities of Arab society and the Baath Party's idea of nationalism (Aflaq, 1978, p. 29-31). The Baath Party seized power in Syria in 1963 and has maintained its reign until 2024. The party engaged in the political process in Iraq in 1963 and successfully executed a coup in 1968, which allowed it to assume complete control over the country's governance. This initiated a new era that persisted for 40 years until the regime's collapse in 2003.

The Baath Party's policy in Iraq was predicated on the utilization of racism across multiple domains. It allocated governmental jobs to specific groups while excluding others, thereby facilitating the perpetuation of their governance throughout that era. The Baath Party's persecution in Iraq severely restricted religious freedom, limiting religious practices and imposing severe punishments on those who defied these restrictions, in contradiction to the party's tenets (Al-Alawi, 1990, p. 47). This element significantly influenced the regime's collapse and the temporary prohibition of the Baath Party. The Baath Party was characterized as a nationalist entity focused on safeguarding the Arab nation and advocating for its rights while neglecting the rights of other ethnic groups in Iraq, such as the Kurds and Turkmen, who faced significant persecution during the Baathist regime, including suppression of their native language, killings, denial of rights, and intimidation (For more about the case of Kurdish and Turkmen in Iraq look at; (Kurubaş, 2003, p. 36-52; Hasan, 2003, p. 58-75; Al-Emami, 2004). This indicates that the regime failed to uphold the principle of national unity. Reports from numerous organizations, including the 2002 study by the U.S Office of Democracy, Human Rights, and Labor, demonstrated that the former administration employed executions, intimidation, imprisonment, and rape to subjugate the culturally and intellectually affluent Iraqi populace (US. Department of State, 2003). At the legal level, the Revolutionary Command Council enacted numerous laws that enabled operations against regime adversaries, including Resolution 666 of 1980, which revoked Iraqi citizenship from the Faili Kurds under the pretext of disloyalty to the regime (Iraq Revolutionary Command Council, 1980). Additionally, special courts interpreted legal texts in alignment with the government's perspective, resulting in a loss of judicial independence. The actions perpetrated by the Baathist regime domestically can be characterized as acts of genocide and crimes against humanity, substantiated by numerous incidents in Iraq, including the execution of thousands and their interment in mass graves, as well as the Anfal campaign against the Kurds, which employed internationally prohibited chemical agents, resulting in numerous casualties across various age demographics (Human Rights Watch, 1993). It is essential to highlight another massacre perpetrated by the Baathist dictatorship, specifically the Dujail battle, during which the regime committed analogous crimes against people (Judgment of the Dujail Trial, 2025). Furthermore, it is important to acknowledge that the sexual violence perpetrated by the regime against civilians has been substantiated by reports from the Institute for the Investigation of International Crimes (IICI, 2024).

The Baath Party's agenda encompassed not only the oppression of its inhabitants but also the infliction of suffering on neighboring countries through unjustified wars that yielded no advantage for Iraq. The Iraq-Iran war, a significant conflict for Iraq, resulted in the deaths of one million Iraqis, many of whom were unwilling participants in the hostilities. The beginnings of the Iran-Iraq war can be traced to boundary disputes that date back to the period of the Ottoman and Safavid empires. The boundary dispute between Iraq and Iran persisted until the establishment of the nationalist Baathist regime in 1968 and the emergence of the Iranian nationalist-Islamic regime. The ideological divergence between the two governments and the

persistence of boundary disputes, both in Iraq and the Arabian Gulf, culminated in an eight-year war (Halhol, 2010, p. 149-151). The war's impact was profound on both sides in various respects, notably the humanitarian component, resulting in millions of soldiers and civilians being slain or captured. Economically, the war's expenses surpassed 500 billion dollars, not to mention its enduring economic repercussions (Alnasrawi, 1986, p. 896). Moreover, the obstruction of oil distribution through the Arabian Gulf jeopardizes the security and economies of other nations, particularly following the bombardment of Iranian ports and oil-carrying vessels belonging to Arab Gulf countries.

After the end of the Iran-Iraq war and after years of bloodshed, poverty and sorrow, the Baathist regime did not stop harming its people. In 1990, the dictatorship intended to invade Kuwait under dubious pretexts, resulting in a breach of international law that led to the displacement of thousands of Kuwaiti civilians and the incineration of oil fields. Consequently, the U.S and Western nations formed a coalition to free Kuwait and safeguard Saudi territories. The coalition forces successfully liberated Kuwait and pursued the Iraqi forces, bombarding them, resulting in casualties among both personnel and equipment. Furthermore, the UN Security Council enacted Resolution 661 in 1990 (United Nations Security Council, 1990), which imposed economic measures detrimental to the Iraqi populace across various dimensions, resulting in the deaths of 576,000 Iraqi children (Crossette, 1995). These measures have engendered novel political and social circumstances. They have created social inequality and wage disparities. The sanctions had the most significant effect on young people who commenced their education in 1990 (Graham-Brown, 2000, p. 8-13). Upon examining the realities of the generation (1990–1999), economic measures have impacted infrastructure, including schools and hospitals, and caused shortages of food and medicine. The American Friendship Association demonstrated in a paper that lifting the economic sanctions will result in a scenario where a return to pre-sanction normalcy is unattainable (Reliefweb, 1999). Indeed, this transpired in Iraq.

When reviewing Iraq's relations with other neighboring countries during that period, it is found that they were marred by some tension, which in turn contributed to Iraq becoming more isolated from the international community. At the inception of the Iraqi state, the monarchy sought to enhance relations with Republic of Türkiye . King Faisal I of Iraq visited Türkiye and met with Turkish President Mustafa Kemal Atatürk in 1931 (Saygı, 2017, p. 211). Over time, relations between the two parties evolved, culminating in the establishment of a military alliance in 1956 known as the Baghdad Pact (Serbest, 2016, p. 402-414), which was headquartered in Baghdad, which included Britain, Pakistan, and Iran. Following the collapse of the monarchy in Iraq, Turkish-Iraqi ties began to decline, culminating in heightened tensions during the Baathist dictatorship from 1979 to 2003. The Baathist regime's dependence on the principle of coercion in its interactions with foreign nations was the underlying cause of this situation. It even downed an aircraft belonging to the Turkish Armed Forces, despite an agreement permitting entry into Iraqi land within a distance of 10 kilometers (TBMM, 2012, p. 893-895; Hürriyet, 2012).

Concerning Saudi-Iraqi relations during the Baathist administration, despite ideological disparities—given that the Baathist regime is nationalist and the Saudi regime is Islamic—the initial interactions between the two entities were notable. The notable relationship between the two parties stems from the Islamic Revolution's success in Iran and Saudi Arabia's apprehension regarding the revolution's potential spread into its territory, which led the Saudi regime to support Iraq during its conflict with Iran (Rakipoğlu, 2017, p. 118). Saudi Arabia aided Iraq by terminating diplomatic relations with Iran and supplying Iraq with billions of dollars, along with media assistance during the conflict. These relations rapidly deteriorated to their nadir following the Baathist regime's incursion into Kuwait and the Khafji area of Saudi Arabia. During these

events, Saudi Arabia permitted coalition forces to deploy within its territory to liberate Al-Kuwait (El-Bayati, 2018, p. 8-16).

The disparities were not solely concentrated on countries ideologically distinct from Iraq; the regime at that time also diverged from the Baathist regime in Syria, despite their ideological alignment. Over time, disparities between the two regimes became apparent as their philosophies diverged, the contest for leadership of the Arab nation intensified, mutual distrust escalated, and political ambitions culminated in personal animosity between the regime leaders. The disparities intensified with the execution of several members of the Baath Party (Iraq branch) by the Baathist administration, who were accused of treachery against the party and collaborating with Hafez Al-Assad (Orhan, 2003, 173-179 & Al-Obaidi, 2015).

The actions of the Baath regime in Iraq, both domestically and internationally, have raised significant responses from the global community due to its transgressions of created international law, its disregard for diplomatic protocols in addressing disputes, and its dependence on coercive measures to achieve resolution and project an image of triumph. The activities of the Baath regime compelled foreign organizations to assess its transgressions (Salah & Abd Aun, 2022, p. 22-23). A report by the Special Rapporteur on Human Rights, Dershtewell, indicates that the ruling regime in Iraq has effectively nullified civil rights, including the rights to life, liberty, bodily integrity, freedom of thought, expression, association, and assembly, while also undermining political participation rights (United Nations, 1992). The activities of the Baathist administration progressively undermined the country, resulting in its military and economic deterioration, ultimately culminating in its conquest in 2003.

3. Justifications Used by the Coalition Countries to Occupy Iraq

The 2003 invasion of Iraq was carried out by a coalition of countries known as the "Coalition of the Willing." This group was led by the U.S and the United Kingdom, and also included nations such as Australia, Poland, and Spain, along with others that supported the intervention either militarily or politically. The coalition countries, particularly the U.S and the United Kingdom, employed several rationales to justify the occupation of Iraq. These justifications can be encapsulated in three principal assertions.

First, the coalition claimed that Iraq had weapons of mass destruction. This claim has been promoted at the UN, international conferences, and the media, where Iraq was claimed to pose a threat to international security due to its potential program to develop chemical and biological weapons.

Second, there were alleged links between the Baathist regime and the Al-Qaida terrorist organization, posing a threat to international security. This argument was presented to justify military intervention, as the Iraqi regime was portrayed as supporting terrorism and posing a threat to international stability.

Thirdly, the claim asserted that the aim of the intervention was to save the Iraqi people from the dictatorship of Saddam Hussein's regime. The Baathist regime in Iraq has been portrayed as a repressive regime that violates human rights on a massive basis, justifying military intervention with the aim of liberating the Iraqi people and improving the human rights situation in the country.

These arguments were extensively promoted in the international community, which contributed to shaping world public opinion and eventually led to the decision to occupy Iraq (Kaya & Acer, 2003, p. 115-116). In the next chapter, it will analyze these justifications in detail and examine the legality of the occupation based on these claims.

3.1. Iraq's Possession of Weapons of Mass Destruction

The ownership of weapons of mass destruction by a specific state is highly perilous, as their human impact transcends natural consequences, resulting in significant devastation. A nuclear strike on a location on Earth renders life in that area unfeasible for an extended period. Numerous instances demonstrate the catastrophic consequences of nuclear technology. For example, during the final stages of World War II in 1945, the U.S dropped atomic bombs on the Japanese cities of Hiroshima and Nagasaki, resulting in the deaths of over 100,000 civilians and long-term radiation effects (Douple et al., 2011, p. 122-131). Decades later, in 1986, the Chernobyl disaster occurred in Soviet Ukraine during the late Cold War period, leading to thousands of fatalities and widespread environmental contamination. These events exemplify the severe and lasting harm associated with nuclear energy and weaponry (UNSCEAR, n.d.).

In light of the devastation wrought by weapons of mass destruction, the international community has sought to curtail the manufacturing and proliferation of these weapons to the greatest extent possible. According to this, numerous international accords have been established, notably the Treaty on the Non-Proliferation of Nuclear Weapons in 1970 (United Nations, 1970), the Chemical Weapons Convention in 1997 (Organisation for the Prohibition Weapons, 1997), and the Biological Weapons Convention in 1975 (United Nations, 1975). In addition, some resolutions were issued by the General Assembly aiming to eliminate the use of nuclear weapons, including General Assembly Resolution No. 68/32, which decided to hold a conference to review developments in the field of nuclear disarmament (United Nations General Assembly, 2013). Notwithstanding these global initiatives to eradicate weapons of mass destruction, numerous states disregard them and persist in the production and assessment of such armaments.

The primary justification for the U.S. occupation of Iraq was the country's possession of weapons of mass destruction, which posed a threat to both the region and the global community. To ascertain the authenticity of these assertions, this section examines Iraq's association with weapons of mass destruction from the inception of the former regime until 2003. Following the establishment and stabilization of the Iraqi state, the regime initiated a preliminary phase for the scientific and technological advancement of Iraq by signing an agreement with the U.S in 1956 to supply a small experimental reactor for scientific purposes, along with a nuclear library for research, as part of the "Atoms for Peace" program endorsed by President Eisenhower in 1953 (Ramadan, 2023). The collapse of the monarchy in Iraq in 1958 and the formation of a nationalist republic resulted in the project's failure.

Following the creation of the republican system, former President General Abdul Karim Qasim collaborated with the Soviet Union to construct a modest nuclear research facility for only medical and scientific objectives, known as the "Tammuz/Atomic Furnace/Osirak" reactor. Iraq commenced the construction of a substantial nuclear power facility in collaboration with France in 1979, and the initial phases were finalized. During that period, the regime sought to establish collaboration with European nations, such as Italy, to acquire advanced equipment to expedite the project's completion (Sabah Nahi, 2023). However, American and Israeli pressure created numerous impediments to this initiative. The issue was exacerbated by Israeli apprehensions about the potential existence of a nuclear-armed Iraq, as Iraq's acquisition of nuclear weapons was perceived as a threat to Israeli security (Chibchab, 2023, p. 200-202, 206-207). In 1981, Israel swiftly attacked the Iraqi nuclear reactor with aircraft without prior warning, resulting in the cessation of the Iraqi nuclear program (Al-Qatrani, 2025, p. 231-233). Israel's actions elicited global condemnation, notably the U.S disapproval and Security Council resolution 487/1981, which unequivocally denounced Israel's actions as inconsistent with the principles of the UN Charter. On September 25, 1981, the Atomic Energy Organization dismissed the credentials of the Israeli delegation (Al-Attiyah, 2015, p. 19).

Despite the destruction of Iraq's nuclear reactor, allegations persist that Iraq maintained a nuclear program that jeopardizes international peace and security. Subsequent to the Iran-Iraq conflict, particularly during the invasion of Kuwait in 1990-1991, a substantial and systematic campaign was initiated, alleging that Iraq possessed weapons of mass destruction, encompassing biological and chemical weapons. The allegations corroborated the previous government's deployment of chemical weapons against the Kurds in northern Iraq in 1988 (Parry & Townsley, 2024).

Multiple intelligence assessments were released alleging that the old regime possessed weapons of mass destruction. The assessment from the U.S intelligence agency claims that Iraq is pursuing weapons of mass destruction to dominate Arab countries and has created Scud missiles equipped with chemical warheads. The investigation indicated that Iraq was planning to deploy chemical weapons in the event of conflict with the U.S during the invasion of Kuwait in 1990-1991. The assessment indicated that Iraq had the potential to develop nuclear weapon technologies within a few months. It also affirmed the potential for equipping his missiles with chemical and biological warheads (Richelson, 2004). The 1992 CIA assessment indicated that the previous regime was strategizing a biological assault against Israel (Richelson, 2004). Reports released by the CIA on 30 July 1999, 27 July 1999, and 10 October 2000 claimed that Iraq had established agreements with the Republic of Niger for uranium procurement, detailing the transportation of uranium, reciprocal visits between the parties, and the protocols governing this activity (Richelson, 2004).

In addition to the CIA reports, the UK's Intelligence and Security Committee of Parliament, during the tenure of former Prime Minister Tony Blair, prepared a 66-page report on Iraq's weapons of mass destruction and their associated risks. This report was submitted to the British Parliament as part of the government's effort to gain support for taking action against Iraq. The report categorized the development of Iraq's weapons of mass destruction program into three distinct phases, beginning in August 1990 and ending in 2002. The intelligence assessments summarized in the report indicated that Iraq possessed chemical weapons and had the capability to manufacture them, as well as biological weapons and the capacity for their production during the first Gulf War (1990–1991). Iraq did not possess a nuclear weapon; however, it was pursuing the development of a nuclear program. In the second section of the report, covering the period starting in 1998, it was noted that Iraq had agreed to disarm its weapons of mass destruction; however, the regime under Saddam Hussein sought to retain them as a means of ensuring its survival. As a result, the dictatorship employed concealment and deception, and the dismantling of weapon manufacturing facilities was not fully verified. UN inspectors reported the discovery of evidence related to chemical and biological weapons programs, a nuclear program, and ballistic missile development. These programs were subsequently dismantled, although inconsistencies remained in Iraq's official declarations. The report further stated that Iraq continued to conceal elements of its chemical and biological weapons programs and maintained efforts to develop weapons of mass destruction, albeit at a slower pace due to the presence of UN inspections (Intelligence and Security Committee, 2003).

In December 1998, in response to claims that Iraq had weapons of mass destruction, the U.S and the United Kingdom initiated air strikes in an operation termed Operation Desert Fox, targeting 35 locations, 13 of which were suspected to house chemical and biological weapons, while the remaining sites were associated with the Baath Party as the headquarters of the “National Guard militia.” The operation was devised based on the documents acquired by UN inspectors during their tenure in Iraq (Arkin, 1999). Despite Operation Desert Fox targeting critical locations in Iraq, as well as non-essential sites like certain presidential palaces and water tanks, along with the destruction of advanced Scud missiles (Al-Ani, 2020), the U.S and the United Kingdom maintained their assertion that Iraq possessed weapons of mass destruction. It is important

to note that this military campaign has led to civilian casualties, many of whom have been killed during these operations. The third phase mentioned in the United Kingdom intelligence report, spanning from 1999 to 2000, subsequent to Operation Desert Fox, asserted that Iraq persists in advancing its chemical and biological weapons capabilities, even utilizing these hazardous substances as warheads in Scud missiles or Al Hussein missiles (the local designation for the Scud missile in Iraq). The report emphasized that Iraq possesses the requisite capacity and mechanisms to regulate the release of chemical and biological materials, and that at this stage, Iraq lacks nuclear capability, instead maintaining a nuclear program aimed at its development and the identification of necessary materials (Intelligence and Security Committee, 2003).

Notwithstanding the considerable limitations imposed on Iraq during that period regarding ground inspections by the Commissions (UNSCOM and UNMOVIC) , aerial surveillance, and airstrikes on critical sites, the UN maintained its belief that Iraq possessed weapons of WMD program. Consequently, it adopted resolution 1441 (2002), which acknowledged the threat to international peace and security posed by Iraq's non-compliance with Council resolutions and the proliferation of weapons of mass destruction and long-range missiles. Furthermore, the resolution confirmed that Iraq failed to deliver a comprehensive, precise, and conclusive revelation of weapons of mass destruction and long-range missiles and did not assist the committee responsible for evaluating the sites designated for inspection. This resolution indicates that Iraq not only manufactured weapons of mass destruction but also deployed them, as evidenced by the inclusion of the term deployment. Nevertheless, the resolution failed to specify to whom it allocated them and whether the recipient utilized these weapons (United Nations Security Council, 2002). However, reports from the U.S and the United Kingdom expressed concern about the transfer of these weapons to extremist groups (Tomak & Ataç, 2023, p. 161; Intelligence and Security Committee, 2003, p. 3). Consequently, the Security Council persisted in adopting resolutions regarding Iraq's weapons of mass destruction program both during and subsequent to the occupation of Iraq.

At the political level, U.S officials, notably former President George W. Bush, have repeatedly asserted that Iraq possessed weapons of mass destruction, which they claimed posed a significant and escalating threat to global security (Bush, 2002). Former U.S Secretary of State Colin Powell presented to the UN Security Council, citing American, international, and technical sources that corroborated Iraq's possession of weapons of WMD. Iraq is attempting to obscure this category of weaponry (Bureau of Public Affairs, 2004). Iraq was accused of owning weapons of mass destruction not only by American politicians, but also by British politicians. Tony Blair asserted that Iraq's weapons of mass destruction program was active, detailed and growing continuously (The Guardian, 2002). Other politicians have stated that Iraq has been trying to develop its capabilities in this area.

The media propaganda employed by Western politicians regarding Iraq significantly undermined the country's foreign standing, as numerous individuals, particularly in the U.S, accepted assertions that Iraq possessed weapons of mass destruction. A survey indicated that 73% of American citizens supported military intervention in Iraq (Kohut, 2002). This political and public sentiment has spurred a military operation in Iraq. It is worth noting that the U.S was planning to use nuclear weapons if the Iraqi regime used them (Bundy, 1990, p. 84).

3.2. The Iraqi Regime's Support for Terrorism

Terrorism and American apprehensions profoundly influenced the circumstances in Iraq. The U.S' apprehension of potential terrorist activities impacting their territory significantly influenced the decision to

invade Iraq (Yacoub, 2024, p. 576-577). This propaganda commenced immediately following the September 11 attacks in New York, during which the terrorist organization al-Qaeda perpetrated the massacre of thousands of American people. Subsequently, it was disclosed that the terrorist organization al-Qaeda had perpetrated this crime. The rumors of the former Iraqi regime's connection to the terrorist organization al-Qaeda originated from this point (Fidan, 2004, p. 40). These assertions were disseminated through prominent media and the public (Şen, 2003, p. 117), ultimately receiving official endorsement from American leaders before the occupation. Subsequent to the events of September 11, the government of the U.S established a committee to investigate the details of this crime. This committee generated a 585-page study elucidating al-Qaeda, its leadership, its geographical presence, and more information regarding this terrorist group. Despite the investigators of the September 11 incidents determining that no connection existed between Iraq and al-Qaeda (The 9/11 Commission Report, 2004, p. 1-423), the former U.S Vice President maintains that such a relationship exists and provides various pieces of evidence, including a meeting between Iraqi intelligence and Osama bin Laden in Sudan (CNN, 2004).

The U.S allegations primarily centered on the former regime's purported attempts to assassinate the U.S president and the Emir of Kuwait during his visit, the Iraqi regime's backing of the People's Mojahedin Organization of Iran, and the designation of clandestine locations for terrorist training as outlined in the allegations (George W. Bush White House Archives, 2002). The day before the commencement of the Iraq invasion, the former U.S president delivered his 'State of the Union' address, a pivotal speech outlining the reasons that led to the invasion of Iraq. One of the main reasons highlighted was the previous regime's support for the terrorist organization al-Qaeda, as the regime had trained and harbored terrorist groups, including al-Qaeda. The president also mentioned the potential use of weapons of mass destruction by terrorists to kill thousands of American citizens or those of other nations, with assistance from the Iraqi regime. The U.S president indicated that terrorism would diminish the moment Saddam Hussein is stripped of his weapons (The Guardian, 2003).

The report delivered by the former U.S Secretary of State at the UN on February 5, 2003, should not be disregarded, as it elaborated on the founder of the terrorist organization al-Qaeda in Iraq, Al-Zarqawi—of Jordanian nationality— and his entry into Iraq under the guise of seeking medical treatment. The study indicated the potential collaboration between the terrorist organization and the Iraqi state, noting that the latter dispatched a team to Afghanistan with the purpose of training militants. The research indicated that the Iraqi embassy in Pakistan had contributed to fortifying the connections between al-Qaeda and the Iraqi administration. The U.S Secretary of State emphasized that some perceive the Iraqi regime as a secular dictatorship, while al-Qaeda is viewed as a religious regime, suggesting an absence of interdependence between the two entities. Nevertheless, the former foreign minister argued that the two regimes converge when fueled by hatred and ambition, which might unite them (Bureau of Public Affairs, 2004).

Consequently, the Iraqi regime is said to have established intimate ties with the terrorist organization al-Qaeda, providing support and training to it. Furthermore, concerns arose regarding the feasibility of supplying this organization with weapons of mass destruction intended to annihilate anyone who opposed the terrorist ideology of al-Qaeda.

3.3. Liberating the Iraqi People From the Dictatorial Regime

From the onset of the colonial period in the late 19th century until the conclusion of the Second World War in 1945, colonial powers asserted that their objective in entering the territories of weaker states was to liberate and develop them, so elevating them to the status of developed nations, thereby ensuring the security

and prosperity of their populations. Consequently, under the League of Nations, established in 1920, the mandate system was created and categorized into three sections (A, B, and C) based on the level of development of the populations. Iraq was first classified as a Class A mandate in 1920 and subsequently succeeded in abolishing the mandate following intense political and public opposition, culminating in its formal independence in 1932.

Following World War II (1939–1945), the global power equilibrium shifted, with the emergence of the United States of America as a dominant force, championing the principle of democracy since its inception in the late 18th century (1776). The U.S promoted democratic ideals in various parts of the world, with early efforts dating back to 1848. Regarding democracy, the U.S wanted to be a model to be emulated, even making democracy a vital issue for American national security. The U.S wanted to be a "beacon on the hill" to be emulated by states (Fowler, 2015, p. 228).

U.S has often said that the objective of occupying Iraq is to liberate the nation and establish a democratic society. In his renowned 'State of the Union' address, U.S President George W. Bush asserted that the objective of the U.S was to assist the Iraqi populace in establishing a new, prosperous, and liberated Iraq. He emphasized that there will be an end to wars, chemical production facilities, executions of dissenters, sites of torture, and sexual violence, asserting that the tyrant will resign and that the day of their emancipation is imminent (Bush, 2003). As for the British position, it stressed that the purpose of this operation is to liberate the Iraqi people and that it is not an occupier or an enemy (Alpay, 2020, p. 5).

4. Legitimacy and Occupation

Legitimacy refers to the conformity of actions with the legal provisions in force at a given time and place. The term "law" encompasses not only legislation enacted by the government but also the prevalent social norms that have acquired binding force in a given society. Legitimacy is not a novel concept; rather, it is as old as political philosophy itself (Beetham, 2016, p. 538). Legitimacy encompasses various interpretations; nonetheless, this article will concentrate exclusively on its legal definition. The term legitimacy originates from Latin and denotes adherence to law or legislation, referring to the conformity of an act, practice, or legal endorsement (Mulligan, 2006, p. 356).

The examination of the history of legitimacy reveals that it has undergone various historical phases before arriving at its contemporary understanding. Historically, legitimacy referred to legitimate birth, establishing the right to inheritance and ownership, making it crucial for royal families to ensure succession from father to son. With the advent of modernity, concepts of legitimacy began to evolve. Philosophers like Thomas Hobbes and John Locke sought to shift legitimacy from dynastic origins to foundations based on consent and choice. Locke refuted the notion that legitimacy might stem from the divine prerogative of monarchs, asserting instead that legitimacy arises from the consent of the governed (Mulligan, 2006, p. 361). In contemporary society, legitimacy remains a crucial issue in politics and law, as it determines the extent to which political systems and legal frameworks are recognized by both people and the international community. The contemporary comprehension of legitimacy signifies a transition from dynastic concepts to intricate ideas of consent, representation, and justice. Currently, legitimacy holds paramount significance in both political and legal spheres, transcending the internal structures of states to encompass international interactions. The criteria of legality are crucial in governing interactions and settling conflicts between states, while the principles of legitimacy have been incorporated into numerous international accords, notably the Covenant of the League of Nations.

The preamble of the Charter asserts that the principles of international law constitute the fundamental standard of conduct among nations, advocating for justice and rigorous adherence to all treaty obligations in the organized interactions of nations. Article 10 also addressed the maintenance of geographical integrity and the political sovereignty of states. Article 12 delineates mechanisms for the resolution of international disputes, ensuring adherence to legality and compliance with international law, through arbitration, the International Court of Justice, or referral to the Council of the League of Nations. To ensure adherence to international law, Article 16 delineates various sanctions that may be imposed on a state breaching the Covenant. States are obligated to terminate commercial and financial relations with the transgressing state, to prohibit any interactions between their nationals and those of the violating state, and to obstruct all financial, commercial, or personal engagements between nationals of the violating state and nationals of any other state, regardless of their membership in the Association (United Nations Charter, 1945).

Charter of the UN parallels the Charter of the League of Nations, as the preamble underscores the necessity of honoring responsibilities derived from treaties and other sources of international law, including established international customs and judicial decisions. To uphold international peace and security, the UN organization shall implement effective collaborative measures to avert and eradicate threats to peace, suppress acts of aggression and other violations of peace, and employ peaceful methods, in alignment with the principles of justice and international law, to resolve international disputes that could result in a breach of peace or to settle them. The Charter delineates the right to self-determination as stated in Article 1, paragraph 2; the advancement of human rights as affirmed in Article 1, paragraph 3, and further emphasized in Article 55; and the peaceful settlement of disputes as outlined in Article 2, paragraph 3. In addition, the Charter includes numerous other measures that safeguard international legitimacy against any transgressions (United Nations, 1945; Al-Attayah, 2015, p. 338).

The Charter of the United Nations effectively established significant procedures for conflict resolution, including diplomatic methods such as negotiation, good offices, mediation, investigation, and conciliation, as outlined in Article 33. The second approach involves political methods, but it is worth noting that both the Charters of the League of Nations and the United Nations allowed states the freedom to choose the resolution mechanisms they deem appropriate, without imposing any specific method (Al-Attayah, 2015, p. 338; United Nations Charter, 1945).

The third technique is arbitration, a viable mechanism for dispute resolution that significantly contributes to resolving conflicts. The fourth approach is judicial settlement; in the event of a conflict, one may seek recourse to international tribunals, such as the International Court of Justice, which is regarded as the preeminent international tribunal for settling various issues. These methods are expressly recognized in Article 33 of the Charter of the United Nations, which lists arbitration and judicial settlement among the peaceful means of dispute resolution that parties to a conflict are encouraged to pursue (United Nations Charter, 1945).

The newly established international organization underscored the principles of equality and political autonomy, as well as the necessity of resolving conflicts through peaceful methods, thereby fostering global peace and the prosperity of nations. To attain this ambitious objective, states have enshrined it in the UN Charter and have also entered into many bilateral and collective agreements that affirm this, some of which will be examined. Included among these accords is the renowned The Briand-Kellogg Pact of Paris, which aimed to resolve conflicts through peaceful means and avert disagreements between nations. Fifteen

countries, including prominent powers like the U.S, the United Kingdom, and France, have signed it. The Briand-Kellogg Pact, signed in 1928, represents a significant advancement in ensuring maximum security and arms control by forbidding offensive combat and establishing a framework for arbitration and punishment. Nonetheless, the Charter faced criticism for the insufficiency of certain provisions in accurately delineating the necessary meanings. For instance, what occurs if a nation employs military force without designating it as war? Or if its actions do not constitute a state of war? Some contend that, while war was a significant strategy for resolving conflicts, the accord that forbade this approach did not enforce sanctions on violators. In general, the Charter was a simple idea and ideology to criminalize war, and it did not prevent the continuation of war. For example, Japan used military force against China in 1931 (Fowler, 2015, p. 335-36). Despite its inadequacy, the charter represents a significant advancement in the formal documentation of the illegality of war within the context of an international agreement.

The newly established international system is founded on the principles of sovereignty and equality, which have been explicitly affirmed by prior agreements, alongside numerous other accords that reinforce this principle. Included among these agreements is the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN," established during the 25th session, which emphasized the necessity of promoting international peace and security and enhancing amicable relations liberty, fairness, equality, respect for fundamental human rights, and the reinforcement of the rule of law among nations. This proclamation was not confined to governing the interactions of states on Earth but also encompassed their ties in outer space, so precluding any potential for international conflict on land, sea, or in the air. It has embraced the international principle that outer space, including the moon and celestial bodies, is not subject to ownership, regardless of claims of sovereignty, appropriation, utilization, occupation, or any other rationale, indicating that states cannot devise a method in the future to assert ownership over outer space (United Nations General Assembly, 1970).

The international community has established the necessary frameworks to develop international relations and resolve disputes between countries through peaceful means, leaving war as a narrow and final option, which occurs in cases of self defense. This is when a state defends itself in the event of an armed attack. The relationship between legitimacy and the right of self-defense is a close one. States often invoke their right to self-defense, as established under international law-particularly the United Nations Charter-in order to protect themselves when deciding to resort to the use of force, aiming to avoid incurring international responsibility (Erkiner, 2008, p. 186-187; Gökçe, 2024, p. 78-81), as countries that resort to war justify their actions by claiming legitimate defense in order to legitimize their actions. According to the UN Charter in Article 51, member states are allowed to defend themselves if an attack is by an armed force, but the concept of armed force has given rise to controversy, as the Charter does not specify what constitutes an act of armed force (Hancılar, 2004, p. 39-40). However, after the General Assembly's decision 3314/14 on December 14, 1974 (United Nations General Assembly, 1974), defining aggression, the international community was able to identify the actions that constitute the use of armed force (Karadağ, 2016, p. 175-176).

- (a) *The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,*
- (b) *Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;*
- (c) *The blockade of the ports or coasts of a State by the armed forces of another State;*

- (d) *An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;*
- (e) *The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;*
- (f) *The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;*
- (g) *The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.*

It is worth noting that for an act to be considered aggression, and for the affected state to have the right to exercise the right of self-defense, the aggressor state must actually employ armed force (Nimah, Jaafar, & Abd Ali, 2017, p. 44). Furthermore, in cases of armed aggression, the state's response must be immediate, proportional, and subject to the oversight of the Security Council (Al-Hasani, 2021, p. 115). Concerning the American occupation of Iraq, the U.S has been unable to invoke the doctrine of legitimate defense to justify its military action against Iraq, as legitimate defense necessitates armed action against others, requires a direct response from the aggrieved nation, and mandates that the response be proportionate. At that time, the Iraqi regime had not committed any act of military aggression against the United States or its allies. Consequently, the U.S has adopted the theory of “preventive war” which lacks formal recognition in international law (Al-Hasani, 2021, p. 117). The theory of preventive war is characterized as a strategy aimed at mitigating threats that jeopardize national security, predicated on the mere potential of imminent danger from another nation. The war in Iraq represents the first time the George W. Bush administration has acted on the basis of a doctrine of preventive war (Sapiro, 2003, p. 599). This theory has led to controversy within the legal community, with some writers supporting its legitimacy while others reject it. This article will not address the legitimacy of war based on the theory of preventive war; however, if this theory were to be considered legitimate "hypothetically" a question arises: Does Iraq pose an immediate or future threat to the U.S? To answer this question, it is necessary to validate the American claims regarding Iraq's possession of weapons of mass destruction, its support for terrorism, and to analyze the legality of the American claim to liberate Iraq from the dictatorial regime.

4.1. The Validity of the Occupation's Justifications

4.1.1. Iraq's Possession of Weapons of Mass Destruction

The primary justification put forth by the occupying countries is that Iraq possesses weapons of mass destruction that threatened global security. Despite numerous efforts to discover these weapons through UN inspection teams, intelligence and political initiatives, and additional pressure tactics on the regime—including bombings of critical Iraqi infrastructure and the imposition of sanctions—no such weapons were found. In the timeframe preceding and succeeding the war, numerous official reports and political declarations affirmed the absence of weapons of mass destruction in Iraq. A notable report was released by Hans Blix, Director of the UN Monitoring, Verification, and Inspection Commission (UNMOVIC), on February 14, 2003; in it he stated that there was no evidence of Iraq possessing weapons of mass destruction and that only a limited number of chemical munitions were discovered (Richelson, 2004). Mohamed El-Baradei, the former director of the International Atomic Energy Agency, issued a report analogous to the

Hans Blix report on the same date, confirming that inspections encompassed 38 examinations at 19 locations, which involved the collection of water, air, and sediment samples. El-Baradei ultimately concluded that there was no evidence indicating that Iraq possessed nuclear weapons or engaged in activities related to nuclear weapons (Richelson, 2004).

Following the occupation, coalition forces entered Iraq equipped with comprehensive military, technological, and intelligence resources, enabling them to readily identify weapons of mass destruction. Nevertheless, destiny dictated that events did not unfold as the invading powers intended, as the U.S-led international coalition forces failed to uncover any evidence of weapons of mass destruction while asserting they had compelling proof that Iraq possessed such armaments. Consequently, numerous reports emerged that criticized the performance of the intelligence services. One such report was produced by the British House of Commons Intelligence and Security Committee after the occupation. It aimed to assess whether the intelligence used by the British government to justify the invasion was reliable, properly evaluated, and accurately represented in official statements (Richelson, 2004). Jane Harman, the first deputy chair of the House Permanent Intelligence Committee, characterized the intelligence service's assessments regarding Iraq's possession of chemical and biological weapons and its nuclear program reconstruction as profoundly defective (Richelson, 2004).

Confronted with the U.S embarrassing predicament, it proactively established a Commission led by David Kay to investigate these weapons. The study released by David Kay was deemed the authoritative document affirming that Iraq lacks weapons of mass destruction. On October 2, 2003, Kay presented an unclassified summary to congressional committees, informing attendees that the survey group had not yet located stockpiles of weapons; however, it was impossible to ascertain definitively whether such stocks did not exist or if they existed prior to the war and were subsequently transferred. In his report, Kay cited several findings from the survey group. These included a clandestine network of laboratories and bunkers controlled by Iraqi intelligence, containing equipment suitable for chemical and biological weapons research. Additionally, reference strains of biological organisms were found hidden in a scientist's residence. Documents and equipment related to uranium enrichment were discovered in scientists' homes. Lastly, there was evidence of a covert capability to produce useful propellant fuel for prohibited Scud missiles (Richelson, 2004). On January 28, 2004, David Kay testified before the Senate Armed Services Committee, asserting that he and others were mistaken on chemical and biological weapons, a misjudgment also shared by Germany and France (Richelson, 2004).

American and British officials have begun to acknowledge that Iraq lacks weapons of mass destruction. Former U.S President George W. Bush stated on the renowned television network ABC that the intelligence regarding Saddam Hussein's alleged possession of nuclear weapons constituted one of the most regrettable errors in presidential history (ABC News, 2008). Having been the initial individual to verify Iraq's possession of weapons of mass destruction, he concedes that such weapons are nonexistent in Iraq. Similarly, former British Prime Minister Tony Blair has altered his position following the occupation; he conveyed his sorrow and remorse, apologizing for the decision to engage in war, which he deemed the most challenging, significant, and distressing choice of his life, while maintaining his support for the ousting of the former regime's president (The Guardian, 2016). Former U.S Secretary of State, who presented physical evidence, including materials and photographs, to the UN regarding Iraq's possession of weapons of mass destruction, stated that the information was inaccurate and deemed the occupation painful (DeYoung & Ryan, 2021).

It can be concluded that the evidence given by the U.S and the United Kingdom claiming that Iraq possessed weapons of mass destruction was not true. Numerous reports from the UN and investigators have confirmed the inaccuracy of the intelligence, reinforced by the admission of war officials.

4.1.2. The Iraqi Regime's Support for the Terrorist Organization Al-Qaeda

One of the important allegations that led Western public opinion to support the occupation of Iraq was the accusation that Iraq supported the terrorist organization al-Qaeda in general, particularly in the events of September 11, where the Iraqi regime was allegedly involved. However, upon examination and scrutiny, this claim turned out to be untrue and irrelevant in several respects.

First, the former Iraqi regime was an ideological regime based on the idea of nationalism and the unification of the Arab nation, and the regime had engaged many activities that opposed the provisions of Islamic law, and therefore there is no possibility of rapprochement between the Baathist and religious regimes. This study might concur with former U.S Secretary of State Colin Powell that terrorism and the Baathist regime converge at the points of hatred and ambition, which have caused and continue to cause the deaths of millions around the world, especially in Iraq, but in the end there is no intellectual coherence or cooperation between al-Qaeda and the former Iraqi regime or other religious actors.

Secondly, following the events of September 11, the U.S president established a committee to ascertain accountability for these occurrences. Upon finalizing its report, the Commission demonstrated that there was no evidence linking Iraq to these assaults and failed to present clear and definitive evidence of Iraq's affiliation with al-Qaeda as a whole (National Commission on Terrorist Attacks Upon the U.S, 2004).

Thirdly, the Iraqi government has often asserted that it has no affiliation with the terrorist organization al-Qaeda. Notwithstanding this, a former intelligence official from the Iraqi regime (post-regime collapse) asserted that there was an inclination to collaborate with al-Qaeda against the Americans and that the intelligence had dispatched an envoy to the terrorist Osama bin Laden who declined to cooperate, deeming Saddam Hussein an infidel (non-Muslim), thus preventing any collaboration until the regime's downfall (Abdullah, 2022).

Chairman Porter J. of the Congressional Standing Committee on Intelligence, along with deputies Goose and Jane Harman, condemned the intelligence community's performance concerning data on weapons of mass destruction and the regime's links to Al-Qaida. It contended that the absence of detailed information regarding the regime's strategies and intentions, as well as its nuclear and chemical arsenals and support for terrorist organizations, seemingly hindered the intelligence community's capacity to furnish more accurate assessments to policymakers from 1998 to 2003.

The conclusion is that the accusations against the former regime of supporting al-Qaeda are untrue, and this has been fully proven after the occupation, as the ideology of the Baath Party differs from the ideology of Islamic organizations, and it was apostasy by the leader of al-Qaeda, Osama bin Laden.

4.1.3. Liberation of the Iraq From the Dictatorial Regime

One of the reasons that the U.S has justified to the occupation of Iraq is to liberate Iraq from the dictatorial regime and to establish a democratic system in Iraq as an example to the world. The U.S has implemented numerous measures towards this objective, including the 1998 Iraq Liberation Act to support efforts to eliminate the dictatorship, the invasion of Iraq, and the regime's overthrow. This reasoning contradicts numerous known principles of international law. The international system is built on equality, justice, and peace, and these principles are enshrined in the UN Charter, in Article 2(1), which emphasizes the equality

of sovereignty among states. Therefore, it can be inferred from the text of the article that there is no distinction between a large or small state, rich or poor. The sovereignty enjoyed by the U.S is the same as that enjoyed by Iraq (United Nations Charter, 1945). Thus, intervention or determining the form or actions of the Iraqi regime in accordance with the political orientation of the U.S constitutes a clear violation of the principle of sovereignty. To maintain global peace, sovereignty must not be infringed; hence, any form of military intervention disrupts international harmony.

One of the most important principles on which international law is based is the principle of non-intervention in the internal affairs of states, as stipulated in Article 2(4) of the UN Charter, which prohibits states from using force against the territorial integrity of the political independence of any country (United Nations Charter, 1945). Indeed, the UN has prevented itself from intervening and has not allowed member states to bring questions concerning the internal affairs of states to it following Article 2(7) (United Nations Charter, 1945). The principle of non-intervention in the internal affairs of states was confirmed in the judgment of the International Court of Justice in the 1986 Nicaragua vs United States case. The Court affirmed that the support of rebels in Nicaragua by the United States was a violation of international law. The Court affirmed that interference in the internal affairs of another state, by supporting armed groups, is a violation of the principles of sovereignty and non-intervention (International Court of Justice, 1986). Thus, the Court has recognized the doctrine of the illegality of interference in internal affairs, whether it concerns interference under the concept of democracy, humanitarian intervention, or the protection of other legal rights (Al-Hasani, 2021, p. 190). An important principle enshrined by international law is the principle of self-determination, which has allowed the Non-Self-Governing Territories to become independent and to choose the form of government they deem suitable. This principle is set up in Article 1(2) of the Charter of the UN and Article 1 of the International Covenant on Civil and Political Rights (United Nations, 1966). It should be noted that the principle of democracy is a constitutional principle of domestic law and not a principle of international law (Al-Hasani, 2021, p. 191). Thus states are not entitled to rely on the principles of domestic law to justify their intervention in other countries. Moreover, the principles of equality, sovereignty, non-interference, and the right to self-determination do not permit any state in the world to interfere in the internal affairs of other states and decide their destiny at will.

4.2. The Legal Position on the Occupation of Iraq

To legitimize the occupation, U.S officials put forward various arguments. At times, they invoked self-defense as a rationale for war; at other times, they relied on the theory of preventive war. On another occasion, they cited Security Council Resolution 1441 as justification for the occupation.

Self-defense, according to international law, requires an armed attack by one state against another. In other words, there must be a specific and immediate threat, along with the exhaustion of peaceful alternatives (Damrosh & Oxman, 2003, p. 553). At that time, Iraq did not pose an imminent threat to the U.S, particularly as all its military installations had been bombed during Operation Desert Fox. Moreover, there was a significant disparity in military strength between the U.S and Iraq specifically, as well as between the coalition forces and Iraq generally. Consequently, U.S officials abandoned the self-defense claim due to the lack of a legal basis for invoking it in the case of Iraq.

The U.S second legal argument claimed that the military operation was based on Security Council Resolution 1441, which affirmed Iraq's non-compliance with inspection committees responsible for identifying and dismantling its weapons of mass destruction. However, a close examination of the text of

Resolution 1441 reveals that it neither authorizes the use of force against Iraq, nor grants any state or entity the authority to take unilateral measures to enforce Iraq's compliance with Resolution 687 (1991) (Al-Hasani, 2021, 193). Had the coalition nations been confident in the legality of the Iraq invasion, they would have sought and secured a Security Council resolution explicitly endorsing it, rather than proceeding unilaterally. Their justifications are misleading, selective, legally unfounded, and ultimately untenable (Kramer & Michalowski, 2005, p. 450).

The third legal justification invoked by the U.S was the doctrine of preventive warfare. This approach was initially applied in Iraq, based on the premise that Iraq, due to its capabilities, posed a potential threat to the U.S. This doctrine has sparked diverse reactions in international legal discourse. Some advocates argue that it is unreasonable for a state to wait for an attack if it perceives its security interests to be at risk. Supporters of this perspective argue that the UN Charter should be interpreted flexibly, allowing adaptation to evolving circumstances without exceeding the Charter's fundamental objectives (Damrosh & Oxman, 2003, p. 603). The traditional school of thought rejects the concept of preventive war as a legitimate self-defense strategy, emphasizing the necessity of an immediate and unequivocal attack or threat, leaving no room for deliberation (Reichberg, 2007, p. 32). Consequently, this school of thought adheres to the traditional concept of lawful defense and strictly defines its parameters. However, both international and domestic law require that self-defense be a response to an actual or imminent armed attack, with the reaction being immediate and occurring within a reasonable timeframe. The doctrine of preventive war has no basis in international law; therefore, its application constitutes an act beyond the bounds of legitimacy.

The preceding analysis indicates that the U.S-led coalition lacked a legal justification for its assault on Iraq, as Iraq did not present an imminent threat to the U.S or the global community, nor did it pose any prospective threat following the dismantlement of its weapons and military apparatus.

Consequently, claims that Iraq possessed weapons of mass destruction and had connections to the terrorist organization Al-Qaida were entirely baseless. The assertion of rescuing Iraq from its authoritarian regime lacks substantiation in international law, as it is meddling in domestic affairs under international legal principles. Consequently, the U.S-led coalition has international accountability for the occupation of Iraq. The aforementioned indicates that the U.S-led coalition's occupation of Iraq constitutes a crime of aggression (Kramer & Michalowski, 2005, p. 6).

5. International Responsibility and Occupation

The development of the international community has led to the adoption of more principles that restrict the will of states to respect the rights and freedoms of individuals and groups. International responsibility is a legal relationship that arises between the wrongdoing state and the injured state, or between the wrongdoing state and each injured state individually, in cases where multiple states are affected (Crawford, 2013, p. 49). This responsibility is triggered when a state commits an internationally wrongful act in violation of international law (Kavak, 2021, p. 7). This principle is affirmed in Article 1 of the 2001 Draft Articles on the Responsibility of States, which clearly states that "Every internationally wrongful act of a State entails the international responsibility of that State" (ARSIWA, Art. 1).

The Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001 play a major role in providing the foundational principles by which international responsibility can be determined. Prepared by the International Law Commission of the United Nations, the draft represents a comprehensive legal framework outlining the core concepts of state responsibility (Pirim, 2013, p. 147). Its aim is to clarify when a state is considered to have breached its international obligations and what the legal consequences of such a

breach are (Pirim, 2013, p. 150–155). The articles set out essential principles such as the attribution of conduct to the state and the legal consequences, including the obligation to provide compensation or to restore the situation to what it was before the wrongful act (ARSIWA, Art. 4–8, 34–37).

Historically, before the establishment of modern international law in the late 19th and early 20th centuries, there was no such thing as occupation or the law of occupation. Rulers merely annexed territory as they conquered it and incorporated it within their own borders (Hensel, 2008, p. 264). The international community did not recognize international responsibility, a natural consequence of the absence of international law as it is understood today. At that time, the concept of international responsibility as we understand it now was inconceivable.

In general, liability has been defined in domestic law as the obligation of individuals who contravene the provisions of the law or their contractual obligations to assume responsibility and pay compensation to the injured party. Responsibility in international law has four meanings: the first is the duty to perform an act or refrain from it; the second is a general obligation to act or abstain without specific direction; the third is accountability or inquiry into behavior, whether it involves wrongdoing or not; and the fourth is a set of secondary obligations arising from fundamental violations. The fourth meaning is the common meaning in the legal milieu in general (Besson, 2017, p. 5).

Traditional jurisprudence posits that international liability is confined to states, as it is improbable to arise among other subjects of international law. This notion arises from the conventional jurisprudential view that only states are subjects of international law, which has subsequently shaped the definition of public international law. Contemporary jurisprudence asserts that international responsibility constitutes a legal link among subjects of public international law, thereby enabling its occurrence between states and international organizations (Jassim, 2019, p. 317). For instance, the International Court of Justice, in its advisory judgment regarding the assassination of UN Delegate Count Bernadotte in Palestine, held Israel internationally accountable for the act (International Court of Justice, 1949). Consequently, international responsibility encompasses not merely a connection between states but also includes all matters of international law.

The traditional form of international responsibility is that subjects of international law incur civil liability, and the state thus makes compensation. However, liability may also be criminal, considering the 1998 Rome Statute. If the agents of a state commit one of the international crimes provided for in the Statute “genocide, crime against humanity, war crimes, and crimes of aggression,” this means that individuals can be prosecuted and incur criminal responsibility in international law. A person may also be criminally and civilly liable at the same time, as demonstrated in the case of Ahmed al-Fiqi al-Mahdi, who was sentenced to 9 years in prison in addition to being charged with compensation of €2.7 million to individuals and groups in Timbuktu as a result of committing a war crime in Mali (International Criminal Court, 2025). The difference between international civil responsibility and international criminal responsibility lies in the fact that, in the first case, compensation is owed by the state in its legal personality, while in the second case, criminal responsibility is attributed to the individual. It is inconceivable for criminal responsibility to be attributed to the state in its legal personality. For criminal responsibility to arise, a breach of a rule of international humanitarian law must occur, and the rule must be customary; if it is a treaty, the conditions set by the treaty must be met. Additionally, the violation must be serious (Al-Rubaie, 2019, p. 14).

To determine the basis of international responsibility, three theories have emerged: The first theory is the theory of wrongful acts. According to this theory, for a state to be held responsible, a fault must occur,

whether that fault is deliberate, due to negligence, recklessness, or lack of precaution. The theory of wrongful acts applies when the state's obligation is to exercise care rather than to achieve a specific result (Al-Sheikha, 2001, p. 19). The second theory is the theory of reparation, which views liability on an objective basis, namely internationally wrongful conduct attributable to the state. The basis of responsibility here is conduct contrary to international law, irrespective of proof of fault or damage (Jassim, 2019, p. 319). The third theory is the theory of dual responsibility, which holds that a state bears responsibility even if the act is lawful, and this act creates an exceptional danger leading to damage. The reason for embracing this theory is technological advances that the world has seen, such as nuclear activity or going to space exploration (Al-Rubaie, 2019, p. 70).

The prevailing view in the international legal community is that an internationally wrongful act serves as the primary basis for international responsibility (Crawfor, 2013, p. 49-51; Maftai, 2015, p. 43-52; Erkiner, 2008, p. 9-11; Ben Yahi & Rasheed, 2024, p. 81). However, the theory of wrongful acts may be applied in situations where the state's obligation is to exercise due care rather than to achieve a specific result. Similarly, the theory of dual responsibility applies when harm arises from actions that are not inherently unlawful. Consequently, relying on any single theory in isolation is inadequate; rather, all theories must be applied collectively and complementarily (Al-Rubaie, 2019, p. 72). The components of international responsibility closely resemble those of domestic law, necessitating three fundamental elements: a tort (wrongful act), harm, and a causal nexus between the tort and the damage. If all these factors are established, it can be asserted that international responsibility exists with respect to the state that has violated its obligations.

Despite the importance of sovereignty within the international community and the efforts of states to uphold it, the U.S-led international coalition violated Iraq's sovereignty through occupation, contravening Article 2(4) of the Charter, which states:

“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.” (United Nations Charter, 1945)

The principle of non-intervention in the internal affairs of states is fundamental to public international law. Although the UN is the primary international organization responsible for maintaining international peace and security, Article 2/7 explicitly prohibits even the UN from interfering in the internal affairs of states:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” (United Nations Charter, 1945)

The International Court of Justice has reiterated these principles in numerous cases, including: *Colombia v. Nicaragua* (2012). The disputes concerned to maritime boundaries; however, the Court emphasized the principle of non-intervention while discussing the basis of sovereign rights in territorial waters and exclusive economic zones, highlighting the importance of national sovereignty and the prohibition of interference in the maritime affairs of other states (International Court of Justice, 2012).

Occupying forces entering another state's territory must adhere to the laws of war, uphold human rights to the fullest extent, and refrain from mistreating civilians. A fundamental legal question arises as to whether the occupying power may suspend or alter the domestic laws of the occupied territory. The development of international law in this area can be traced through four major stages.

The first stage is embodied in the Lieber Code of 1863 (General Orders No. 100, U.S. War Department), which laid the foundation for modern military law. It stipulated that the civil and penal laws of the invaded territory should remain in effect unless explicitly suspended or modified by the occupying authority. This marked an early recognition of the legal autonomy of the occupied population.

The second stage is represented by the Hague Regulations of 1907, particularly Articles 42–56 of the Annex to Hague Convention IV, which conceptualized occupation as a temporary situation in which the occupier functions as an administrator. Under this framework, the occupying power was expected to respect the existing laws and institutions of the territory, limiting its ability to implement sweeping legal or structural changes (Hague Convention IV, 1907).

The third stage came with the Fourth Geneva Convention of 1949, which remains the cornerstone of humanitarian protection in occupied territories. While reaffirming the obligation to preserve the legal order of the occupied territory, Article 64 permits the occupying power to introduce legal modifications if existing laws pose a threat to its security or interfere with the application of the Convention. This stage reflects a balance between preserving legal continuity and allowing limited adaptations when necessary (Geneva Convention IV, 1949, Arts. 64–77).

The fourth stage involves the evolving role of the United Nations, particularly through Security Council and General Assembly resolutions, which have increasingly influenced the governance of occupied territories in recent decades. Although no specific UN treaty governs occupation, international practice has emphasized civilian protection, self-determination, and oversight—especially in long-term or complex occupations such as those in Palestine, Iraq, and Kosovo. The UN’s normative influence complements the existing legal framework and reflects a broader shift toward international accountability (Hensel, 2008, p. 264–268).

In the case of Iraq, the U.S regards itself as the occupying power in Iraq and therefore bears the duties associated with that status (Zwanenburg, 2004, p. 751–752). The U.S established administration led by Paul Bremer amended certain judgments of the previous regime that infringed upon human rights, including those pertaining to executions for dissent, forced deportations, and discrimination.

However, the provisions of criminal and civil legislation, along with the operation of the judiciary, persisted. Notwithstanding the unequivocal and obligatory provisions of the international humanitarian law treaties, numerous reports have corroborated that U.S.-led coalition forces perpetrated various legal infractions during and after the conflict. The crimes committed by the occupying forces that contravene international humanitarian law and human rights law are a direct result of their inadequate preparation prior to the decision to occupy.

The forces were ill-equipped for entry into Iraq, lacking knowledge of its culture, geography, and prevailing religious beliefs within Iraq (Hover, 2012, p. 341).

One of the most significant reports is Amnesty International’s 2023 report titled *Iraq: Twenty Years On, Still No Justice for War Crimes by US-Led Coalition*, which clearly documents significant violations of international humanitarian law from 2003 to 2011. The crimes included indiscriminate attacks resulting in civilian casualties, secret detentions, covert transfers of detainees, enforced disappearances, torture, and other forms of cruel, inhuman, or degrading treatment. Former detainees reported similar credible allegations of various abuses in detention facilities, including sleep deprivation, enforced nudity, insufficient food and water, simulated executions, and threats of sexual violence (Amnesty International, 2023).

The report released by Human Rights Watch indicated that nearly 500,000 individuals have died, millions have been displaced, and numerous civilians have suffered violations at the hands of all factions involved in the conflict. Shortly after the commencement of military operations, evidence emerged of violations of the laws of war by the coalition. Coalition forces, comprising the U.S and UK, deployed thousands of indiscriminate cluster munitions in populated areas and carried out indiscriminate bombings that resulted in civilian casualties. U.S forces at Abu Ghraib and other detention facilities engaged in torture, including sexual abuse and humiliation, unjustly executed demonstrators, and employed military contractors responsible for the deaths and injuries of several individuals. British forces have been accused of mistreating numerous Iraqi detainees, including torture and extrajudicial killings (Sanbir, 2023.).

The report released by the International Criminal Investigation Institute confirmed that foreign forces in detention facilities perpetrated sexual assault in all its forms against both male and female detainees, committed by soldiers of both genders (IICI, 2023).

The preceding analysis indicates that the U.S-led international coalition countries have committed acts that could constitute international crimes, as they represent a blatant violation of the Hague Convention and the Geneva Conventions. Notwithstanding this, the accused remain at large, and exceedingly few efforts have been undertaken to initiate investigations and prosecutions regarding these allegations.

6. Conclusion

Iraq possesses considerable historical, geographical, and economic significance, rendering it a central location of conflict across several eras. The developments in Iraq culminated in the Ba'ath Party's ascension to power in 1969, during which it employed coercion as a governing strategy. The interval from 1969 to 2003 was characterized by both internal and external pressures. Iraq's ties with its neighbors were characterized by conflicts and warfare; nevertheless, the most significant confrontation was between Iraq and the U.S, together with its allies. Amid persistent discord between Iraq and the U.S, along with the wider Western coalition, the U.S. and its allies charged the former Iraqi regime with possessing weapons of mass destruction, endorsing the terrorist organization al-Qaeda, and functioning as a dictatorship that subjugated its populace. In light of these charges, the U.S and its allies opted to invade Iraq, contravening the UN Charter, namely Article 2(4), which unequivocally forbids the threat or use of force against the territorial integrity or political independence of any state. The invasion incited much discourse within the legal world concerning its illegitimacy, as Iraq did not constitute a threat to the U.S or its allies. Moreover, the assertions regarding Iraq's ownership of weapons of mass destruction and its purported backing for al-Qaeda were never corroborated. Consequently, there was no legal foundation for using the principle of self-defense or the doctrine of preemptive war, which the U.S used as justification for the 2003 invasion. The third justification for rescuing Iraq from dictatorship is fundamentally flawed, as it lacks a basis in international law and represents meddling in the internal affairs of a sovereign nation. During the occupation, U.S and coalition forces perpetrated several abuses that may constitute crimes against humanity. Consequently, issues of international responsibility emerged on two fronts: first, the legal responsibility for the occupation of Iraq; and second, the accountability for the crimes perpetrated by coalition forces under U.S command.

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