

Legality of America's Military Action Against Terrorism in Iraq from the Perspective of International Law

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Abstract: This paper mainly studies the legality of military action against terrorism under international law. It takes the anti-terrorism action of America in Iraq in 2003 as a case (Iraq war). It judges its legality and necessity by linking the action with legislations such as International Humanitarian Law and the (Third) Geneva Convention relative to the Treatment of Prisoners of War (of August 12, 1949). In the early stage of the article, the author traces the origin and defines the word 'terrorism' while introducing the counterterrorism acts enacted by the United Kingdom between 2000 and 2015 by summarizing the viewpoints of the reference. The author concludes that under the assumption that Iraq does meet the condition of conviction, some military actions of the United States violate international law and go beyond the necessary scope of anti-terrorism.

Keywords: terrorism, anti-terrorism, legality, human rights

1. Introduction

As one of the most typical and vicious terrorist attacks in history, the September 11 attack has kept people under the shadow of terrorism during that period. Countries led by America, including the United Kingdom, Australia, Denmark, and Poland, have launched a counterterrorism war against countries (Iraq, Afghanistan, etc.) that host terrorist organizations, especially al-Qaeda. Despite the arrest and fall of several senior members of al-Qaeda during the war and the effectiveness of counterterrorism operations have been remarkable, the tortured economy and people caused by the war in Iraq and the difficulty of recovery after the war cannot be ignored. This article will cover the following:

Defining the word 'terrorism' from various aspects, specifically from the aspect of older and newer ideas and from the perspective the observers are on.

A brief introduction of anti-terrorism legislation enacted in the United Kingdom between 2000 and 2015.

An introduction to the Iraq War.

Analyze the legality of America's military action from two viewpoints:

From the perspective of limiting terrorism, this paper will first judge whether Iraq meets the conditions for conviction according to the Acts. If so, then the author will analyze whether the United States executed Iraq following the requirements of this Act.

From the perspective of limiting anti-terrorism, this paper will discuss whether the military action of America complies with the legal provisions and whether it exceeds the scope of the legal provisions.

2. Defining terrorism

Terrorism has always been seen as the symbol of evil, rebellion, violence, ferocity, and inhumanity. To retrace the origin of the term 'terrorism,' although some people proposed that it was used in 1160 [1], people widely date the use of the word 'terrorism' to the 1790s, when a group of rebels used this word while portraying their actions during the period of French Revolution [2]. The Oxford English Dictionary first used 'terrorism' in 1795. It defines this word as Government by intimidation as carried out by the party in power in France between 1789 and 1794. Generally, it is a policy intended to cause terror in those against whom it is adopted.

In recent years, there has been a great variety of definitions of 'terrorism,' It can be categorized based on older and newer ideas and the side that the observer is on [3]. During the reign of Adolf Hitler, fascist dictatorships were established, leading to a stampede of Nationalsozialismus. The Brown Book describes how febrile and ruthless Nazis used fire to liquidate their political antagonist, the communists, and spawned a social panic [4]. Ordinarily, terrorist activities cause extreme trepidation in the public by ghastly and violent acts, resulting in disordered social order. Thereby, people initially used this word to describe Government's behavior since some philosophers believed that governments are capable of terrorism [5].

However, in the late nineteenth century, the definition of terrorism transformed from a government behavior into violence aimed at the Government to influence or topple existing policies or regimes. These violent actions targeted not only dignitaries but also civilians, such as Tsars and innocent people in the September 11 attacks [6]. Hence, the Vice-President's Task Force on combating terrorism ('the Bush committee') in 1968 advanced a relatively exact and compendious definition founded on the newer idea: unlawful use or threat of violence against persons or property to further political or social objectives; usually intended to coerce a government, individuals or groups to modify their behavior or politics [7].

On the other hand, not all people consider terrorism an evil proposition. From the perspective of victims, terrorism and terrorist activities are undoubtedly nightmares. George Walker Bush, the president of America during the September 11 attack, spoke on the night of the incident:

'Today, our fellow citizens, our way of life, our very freedom came under attack in a series of deliberate and deadly terrorist acts. The victims were in airplanes or in their offices, secretaries, businessmen and women, military and federal workers, moms and dads, friends and neighbors. Thousands of lives were suddenly ended by evil, despicable Act of terror. The pictures of airplanes flying into buildings, fires burning, huge structures collapsing, have filled us with disbelief, terrible sadness, and a quiet, unyielding anger' [8].

On behalf of the victim, President Bush relates the rampage by terrorists to the miserable situation of the locale and expresses the sorrow and indignation for thousands of casualties. Thus, the victims deem that terrorism is inhuman, detestable, and even should be extirpated.

However, people who support terrorism believe that 'one man's terrorist is another man's freedom fighter' [9]. In the September 11 attack, those maniacs maintained disapproval of the United States's policy against the Middle East and were desperate to recapture 'justice' through suicide acts. The British Broadcasting Corporation (BBC) and the Le Monde in French both point out that the crux lies in America's Middle East policy. Accordingly, the conservative supporter believes terrorism is 'conduct for a good aim but in a bad way' [10]. Whereas those radical proponents are result orientation, claiming that 'Nothing is morally lawful or unlawful in itself.' The rightness or wrongness

is determined solely by the consequences. The actions of terrorists are considered good if the consequences are good, while a bad ends may be seen as actions with malevolent purpose [11].

3. Anti-terrorism Acts enacted by the United Kingdom between 2000 and 2015

To discipline the terrorists and prevent further terrorist actions, various nations introduced counter-terror law, and the author will introduce the laws enacted by the United Kingdom between 2000 and 2015 [12].

The Terrorism Act 2000 (TA 2000) has two features. Firstly, it redefined the word 'terrorism'. This new definition not only retains the existing characteristic of terrorism in the PTA 1974 (which is severe violence against somebody that creates grievous physical, mental, and property damage) but also incorporates religious, racial, and ideology as the causation of terrorism. Secondly, the TA 2000 expanded police power, especially stop and search powers. Although this relieves the difficulty of identifying suspects in trouble areas, some dissenting voices of abusing power emerged since the colored race is more likely (five to seven times) to be stopped by police.

The Anti-Terrorism, Crime, and Security Act of 2001 (ATCSA) was passed following the September 11 attack in America. The act change and increase the types of terrorist attack and lead to a significant effect on society as the law encroach on citizen's liberty and human rights, including 'indefinite detention without charge or trial of foreign nationals' for the purpose of avoiding potential terrorist attacks after the banishment of the suspect and contravening part of the Human Rights Act of 1998.

After the 7/7 London bombings, the Government of the UK introduced the Terrorism Act of 2006 (TA 2006). This Act was modified from the TA 2000 Act and added several new offenses, such as inciting or encouraging terrorism, the possession of terrorist publications, etc. Unlike the previous two acts, TA 2006 emphasizes that anyone who compliments, encourages, propagandizes terrorism, or trains the essential skills for terror acts may be criminally charged. The Act has also been criticized because restricting remarks contradicts democratic ideals and implicated the defender of freedom.

Passports, as a transit tool between countries, began to be used as sanctions against terrorists in The Counterterrorism and Security Act 2015. The Act ensures sufficient time for police to investigate the terrorists and avoid the flow of them to the Islamic State by shortening the time for law enforcement to gain the power to seize the passport. The Act of 2015 is more strictly regulated and prevents abuse of power through creating checks and balances, such as obtaining interception authorization from senior officials.

4. The introduction of the Iraq War

The Iraq War, also called the Second Persian Gulf War, happened in March 2003. Following the September 11 attack, the president of America, George W. Bush, launched a nine-year military campaign against Iraq owing to Saddam Hussein's regime supporting terrorists, concealing mass destructive weapons, and the Government trampling human rights [13]. Ironically, the military action ended with no mass destructive weapons found and no evidence of a 'cooperative operating relationship' between the Government and al Qaeda. Although the primary purpose of this war was anti-terrorism, it brought indelible impacts to the Iraqis. The air attack from American troops caused enormous losses in Iraq's oil industry and water and electricity resources. Over 300,000 Iraqi civilians were killed, and 4.8 million people became refugees [14]. According to the report, the U.S. military detained more than 20,000 Iraqi prisoners and maltreated them in multifarious ways. The most famous of these was ABU Ghraib Prison, where internment the Ba'th Party members under Saddam Hussein, people suspected of participating in the Ba'th Party's activities, retired military personnel and police officers, people charged as supporting Saddam Hussein's regime, and people doubted of

attacking the American troops. They suffered insulting treatment, including not being allowed to sleep, being sexually affronted and photographed, being forced to crawl by extremities, etc. In early May 2004, U.S. military officials admitted that some of the torture violated the Geneva Convention III Relative To The Treatment Of Prisoners Of War Of August 12, 1949, and twelve American soldiers who were involved in the ABU Ghraib Prison event were convicted[15].

5. Does the military action fulfill the international law?

‘Since 1963, the international community has elaborated 19 international legal instruments to prevent terrorist acts. Those instruments were developed under the auspices of the United Nations and the International Atomic Energy Agency (IAEA), and are open to participation by all Member States.’

— *the United Nations website [16]*

The analysis will mainly be divided into two sections, namely, whether it satisfies the limiting of terrorism and the limiting of counterterrorism. The logic of the analysis of terrorism below of whether Iraq should receive military sanction from America is first to determine if the action of Iraq conforms to the conditions of conviction under various legislations and regulations. If the conditions are met, the author will discuss to what extent the U.S. military action follows international law and whether it exceeds the necessity of counterterrorism. In the following, the author acquiesces to the extent that the Iraqi Government is aiding terrorist organizations in order to analyze whether the United States is acting beyond the necessary limits. Otherwise, America’s military action would be completely unjustified based on the results this paper has mentioned before.

To begin with, The International Convention For The Suppression Of The Financing Of Terrorism [17] regarding the financing of terrorism. The regulation covers a call for the criminally, civilly, or administratively accountability of those who directly or indirectly finance terrorists, identify the source and destination of funds by removing the secrecy of the sponsor’s funds, and norm the jurisdiction of States that suffer the terrorist acts.

To analyze whether the Iraq government meets the prerequisite of conviction. Firstly, the offense note in this convention is financed to cause civilian casualties or force a government to take action (a summary of article 2, paragraph 1, subparagraph (a) or (b)) [18]. Consistent with the criminalization of financing terrorism in the statute, the plane hijacking by terrorists in the September 11 attack wreaked the death of over 2000 American citizens [19]. The 'backer,' the Iraqi Government, meets the condition for this crime, so the party of this regulation has the right to counteract the Iraqi Government and hold it accountable.

Furthermore, does the military action of America exceed the necessity regulated in this Act? Article 7, paragraph 1 indicates that necessary measures may be taken by the parties in specific situations: the offense is committed in the territory of that State or by a national of that State. Although the terror acts were committed in America, the offense of financing terrorists is neither perpetrated in the territory of America nor committed by Americans. Hence, the military action did not satisfy paragraph 1.

Article 7, paragraph 2 has broader limitations on the jurisdiction of States Parties, precisely the following five:

(a) The offense was directed towards or resulted in the carrying out of an offense referred to in Article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;

(b) The offense was directed towards or resulted in the carrying out of an offense referred to in Article 2, paragraph 1, subparagraph (a) or (b) against a State or government facility of that State abroad, including diplomatic or consular premises of that State;

(c) The offense was directed towards or resulted in an offense referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;

(d) The offense is committed by a stateless person who has his or her habitual residence in the territory of that State;

(e) The offense is committed on board an aircraft operated by the Government of that State. [20]

The al-Qaeda, supported by Saddam Hussein's regime, attacked the Twin Towers and the Pentagon due to dissatisfaction with the U.S. policy in the Middle East. The crimes covered by Article 2, paragraph 1, cannot be regarded as the original purpose of Al Qaeda and, therefore, do not satisfy Article 7, paragraph 2 (a). In the author's opinion, the Iraq government fulfills Article 3, which is forcing the United States to act on its Middle East policy through terrorist acts. To conclude, in response to the restraint of the jurisdiction of States parties in this regulation, the United States meets some conditions that permit its jurisdiction over such crimes, and the jurisdiction of the military action against Iraq is justified and lawful.

Concealing mass destructive weapons was another charge faced by Iraq. The military action against Iraq was based on the U.N. Security Council Resolution 1441 (2002). In the first half of the resolution, Iraq is accused of failing to observe the Security Council's control on mass destructive weapons, obstructing access to designated sites by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), refusing to cooperate with these organization, and failing to comply with its commitments pursuant with terrorism. The remaining part was to announce the actions that needed to be taken against Iraq. For example, the Security Council requires Iraq to submit a declaration related to chemical, biological, and nuclear programs and materials. It provides unlimited and unrestricted access for UNMOVIC and IAEA to any area [21].

Article 2 states that a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council, and Article 13 states that 'the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations' [22]. Chapter VII of the UN Charter outlined a range of 'serious consequences': Article 42 indicates that it is necessary to take force action (such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations) when measures not involving armed force are proved inadequate. Furthermore, the agreement 'shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states following their respective constitutional processes' [23]. However, some people argued that this invasion lacked UNSC authorization and that paltry evidence supported that the United Nations should escalate the non-armed action to military action. Consequently, while America complied with the U.N. Security Council Resolution 1441 (2002), it also subjected Iraq to severe consequences that it should not suffered. Hence, its actions were legal but beyond the legal necessity.

The following content will only analyze the limiting of counterterrorism, which was the behavior of the United States. The author will argue whether the military action of America complies with international law regarding the sanctioned party and judge the necessity of the action.

The International Humanitarian Law aims at limiting the methods of warfare and providing protection to people who are not involved in the hostilities, such as prisoners of war, to ensure they receive humane treatment. The law also detailed these treatments to prisoners, which involved the supply of basic needs and medical care and the right to communicate with their families [24]. Chapter 1, part A of the International Humanitarian Law indicates that a State which attempts to use force against another State to achieve its ends contravenes international law and commits an aggressive act, even when it is apparently in the right [25].

Nevertheless, the only exception to this rule is when the action goes toward self-defense. Article 51 of the United Nations Charter outlines the conditions for a state's military action to be considered self-defense:

'Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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'[26].

Taking into account the severe physical and psychological impact of the September 11 attack on American citizens, the lasting physical damage to the victims, and the incalculable cost to the American economy and society, a self-defense response two years after the incident can be seen as an immediate response to the terrorist acts. America's counteroffensive, however, was beyond the limitation of repelling terrorists and protecting national interests. In the nine-year Iraq War, the United States greatly exceeded the necessity and proportionality of self-defense in terms of duration, number of people affected, money invested, and losses caused to the other side. What is interesting here is that 2,977 Americans died in the September 11 attack, 343 of whom were firefighters. Whereas in the Iraq War, the U.S. military has lost about 4,500 service members, and nearly 32,000 have been wounded [27]. This made the author baffled by the necessity of military action against terrorism. While America's self-defense should be solely aimed at the terrorists or at the country in which it is based (Iraq is one of al-Qaeda's strongholds), the Iraq War was launched not only because the Iraqi Government supported terrorists but also because of its illegal possession of mass destruction weapons. In the September 11 attack, the terrorists did not use mass destruction weapons. Thus, this motive was unrelated to self-defense.

Returning to the treatment of prisoners of war, the International Humanitarian Law mentioned the (Third) Geneva Convention relative to the Treatment of Prisoners of War (of August 12, 1949) [28]. Part II of the Geneva Convention regulated the general protection of prisoners of war. Both ART.13. and ART.14. unambiguously stated that the prisoners should always be humanely treated, and endangering their health, intimidation, and insult are strictly prohibited[29]. According to the Iraqi prisoners' tragic experiences and grievous injustice this paper mentioned in the introduction of the Iraq War, the military action by America seriously neglected the human rights and dignity of prisoners of war and disrespected their person and honor. Consequently, America violated the Third Geneva Convention regarding the Treatment of Prisoners of War and the International Humanitarian Law.

6. Conclusion

Based on the analysis above, the author generally believes that the U.S. military action is an immediate response to the fight against terrorism, which is consistent with international law. However, by considering details such as the reason for sending troops to Iraq was not only for counterterrorism; the duration was too long; the counterattack against Iraq was not proportional to the degree of terrorist attacks suffered by America; the health and dignity of prisoners of war were seriously violated, the author deems the United States did not meet, or greatly exceeded the requirements of the law on counterterrorism. Therefore, the author believes that this military action goes beyond the necessity of counterterrorism and that most of the actions are illegal. The most significant limitation of this analysis, however, is that it is based on the assumption that Iraq supports terrorism and illegally possesses mass destruction weapons, in which case the majority of parts of the America's military action would still be illegal. If, according to this introduction of the Iraq war, the consequence of the war was no evidence of the Iraqi Government colluding with al Qaeda and no mass destruction weapons found, it is conceivable that the United States military action will be completely unreasonable and illegal.

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