

Legitimacy and the US-led Invasion of Iraq

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CAMILLE MULCAIRE, OCT 17 2014

Lacking explicit UN Security Council authorisation, US-led coalition forces invaded Iraq in March 2003 “with the proclaimed objective of locating and disarming suspected Iraqi weapons of mass destruction” (Sheehan, 2014: 222). Notably, the events leading up to the US-led invasion can be most accurately portrayed as “a contest over legitimacy” (Fawn, 2006: 15). With widespread assertions that the invasion had also produced a “crisis of legitimacy” for the UN Security Council (Morris and Wheeler, 2007: 214) and the United States administration itself (Reus-Smit, 2007: 164), this episode clearly presents an intriguing case for the study of legitimacy. On this basis, this essay will argue that the ideational structure of legitimacy did in fact exert a degree of, albeit indirect, influence over the United States’ behaviour prior to and during its invasion of Iraq. Whilst the United States’ (henceforth US) overwhelming material power was not totally constrained by international society’s structures of legitimate norms, the forces of legitimacy at the very least ‘nudged’ the US in particular directions. In order to argue this case, this essay will firstly define the concept of legitimacy, coupled with an appreciation of the evident fact that legitimacy did not absolutely constrain the US. Next, this essay will assess the relative ‘compliance pull’ exerted by the UN Security Council, as a legitimate international institution, upon the US’ behaviour. Following this, this essay will examine the significance of the ‘legitimation strategy’ of legal justification employed by the US administration. This essay will then proceed to argue that, even as a ‘norm entrepreneur’ seeking to legitimise the norm of ‘regime change’, the US was still compelled to justify its actions according to a moral source of legitimacy. Next, this essay will examine the impact of legitimacy upon the US decision to seek the backing of a ‘democratic coalition of the willing’ for its invasion. Finally, this essay will argue that, whilst the existence of legitimate norms did not ultimately constrain the US from invading Iraq, its failure to secure legitimacy for its actions nevertheless imposed significant costs upon the US.

Legitimacy, as a “property of a rule or rule-making institution which itself exerts a pull towards compliance on those addressed normatively” (Franck, 1990: 16) is not an absolute structural constraint upon the behaviour of actors within international society. This fact was plainly illustrated during the Iraq War by the US’ radical deviation from legitimate, socially recognised international norms in pursuit of its security (and other material) interests in Iraq. The “determinacy” (Franck, 1990: 50-52) of these legitimate norms concerning the use of force was such that they were actually embodied in Articles 2(4), 24 and 51 of the universally endorsed, and therefore legitimate, UN Charter. Hence, through its unilateral use of force without explicit UN Security Council authorisation nor any credible claim to self-defence, the US plainly demonstrated that it was not absolutely bound by these legitimate norms’ “pull towards voluntary compliance” (Franck, 1990: 16). Since the vast majority of other states were, however, strongly socialised to these legitimate norms, the US’ conduct was widely deemed to be illegitimate, both on the UN Security Council and in wider international society (Tucker and Hendrickson, 2004: 18; Hurd, 2007: 198). This illegitimate conduct in itself is not particularly surprising since material means does, after all, dictate the “outer limits of feasible activity” for any state (Wendt, 1999: 111). Thus, the materially powerful US, having the ability to absorb the inherent costs of illegitimate conduct, is clearly not in an equal position to other states in its need for legitimacy (Keating, 2011: 41, 232). Nevertheless, as Hurd (2007: 209) observes, it would be misleading to treat the US’ as an agent, despite its overwhelming material power, as distinct from the ideational ‘structures’ of legitimate norms within international society. After all, legitimate “norms constrain even the most powerful actors” (Morris, Wheeler, Egerton and Keating, 2009: 4). The US-led invasion of Iraq is no exception to this rule: the existence of legitimate principles and norms within international society did, at least indirectly, still push the US in certain directions.

Given the prior statement that the US would “not hesitate to act alone” to protect its security interests (White House,

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2002: 6), it is telling that the US administration felt that it ought to take its case for invasion to the UN Security Council in the first place. In fact, the US administration showed a “willingness to incur significant costs in terms of time, policy compromise and side-payments” in attempting to secure UN Security Council authorisation for its military action (Lee, 2010: 152; Tucker and Hendrickson, 2004: 26; Voeten, 2005: 538). In this sense, the UN Security Council seems to have exerted some pull towards voluntary compliance, as an institution whose authority as a “legitimising machine” (Hurd, 2008: 219) for the use of military force was socially recognised (Reus-Smit, 2007: 159; Voeten, 2005: 528). However, the US administration itself had not in fact undergone the socialisation process of internalising the idea that UN Security Council authorisation was absolutely essential prior to using international force (Hurd, 2008: 124-125). This is evident both through the US’ eventual circumvention of the UN Security Council, combined with the prevailing neoconservative opinion within the US administration that the UN Security Council could be sidestepped on the basis of legitimisation at the domestic level. As US Under-Secretary of State for Arms Control and International Security John Bolton (2003: 1) put it, “our actions, taken consistently with Constitutional principles, require no separate, external validation to make them legitimate”. Nevertheless, the US still behaved as if the international legitimacy of UN Security Council approval for its use of force was important. Crucially, whilst this legitimate norm had not entered the US administration’s beliefs and interests (Hurd, 2008: 125), the US knew other states had internalised the idea that the Security Council was the only body that could “provide the unique legitimacy that one needs to act over Iraq” (Annan, 2002: 1). From a rational choice perspective, the US therefore understood that a lack of UN Security Council authorisation for its invasion would entail social costs, including a potential loss of its own legitimacy, since other states experienced such a strong pull towards complying with the Security Council’s authority. Thus, the existence of a legitimate norm concerning Security Council authorisation for the use of force still indirectly constrained the US (if only initially), even though the US administration had not itself internalised this legitimate norm.

One method through which the legitimacy of international norms and principles can also be measured is “the study of excuses” (Hurd, 1999: 391): whether actors, when apparently breaking rules, still feel compelled to justify their actions as being within the limits of the normatively acceptable (Franck, 2006: 95-96; Hurd, 1999: 391). On this basis, it is vital to appreciate that the US administration did not pursue a strategy of overtly violating legitimate international norms. Instead, the US felt bound to employ the ‘legitimisation strategy’ of justifying its actions as being in conformity with legitimate norms when ‘properly’ interpreted (Morris, Wheeler, Egerton and Keating, 2009: 2). Hence, despite pursuing an innovative strategy of (essentially) unilateral, preventive war that was deemed illegitimate by the use of force norms in international society, the US felt obliged to secure legitimacy for its behaviour through legal justification. In the absence of explicit UN Security Council authorisation for the use of force, this strategy of justification manifested itself in the US administration’s repeated assertions that they were in fact enforcing past UN Security Council Resolutions. US Secretary of State Colin Powell (2003: 1) unequivocally stated that “this war is being conducted under the authority of UN Resolution 1441 and earlier Resolutions 678 and 687” and as such was “a war that is being conducted with international authority”. This legitimisation strategy did of course entail a highly “creative interpretation” (Franck, 2003: 614) of these prior resolutions since they did not technically authorise the use of force, despite calling for Iraq’s disarmament. Nevertheless, this strategic use of legitimate norms or “rhetorical action” (Schimmelfennig, 2001: 65) importantly illustrated the US’ awareness that there did exist a legitimate norm within international society that the use of military force was dependent upon authorisation through UN Security Council Resolutions. Hence, whilst the US may not have deemed this legitimate norm appropriate, it knew other states certainly did, and that it risked incurring greater social costs if it simply proceeded without employing a legitimisation strategy of justification. The US was still therefore constrained, if only rhetorically, by the legitimacy that international society accords to UN Security Council Resolutions.

The US administration also significantly employed the legitimisation strategy of ‘innovation’ to the prevailing structure of legitimate norms (Morris, Wheeler, Egerton and Keating, 2009: 2). One prominent example of this was the promotion of the idea that force could be used legitimately, at least by the US, to bring about ‘regime change’ to ensure its long-term security interests. This attempted innovation struck both at the legitimate use of force norms embodied in the UN Charter and more fundamentally at the central tenets of the Westphalian system. However, whilst pursuing this innovation, it is essential to note that the US did not overtly violate legitimate international norms without justification. This is because the US administration knew that overtly violating the legitimate norms of state sovereignty and non-intervention, to which all other states were, naturally, strongly socialised, would risk

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antagonising other states, thus calling into question the legitimacy of its own hegemonic leadership within international society. Rather, the US was compelled to engage in “practices of legitimacy” (Clark, 2007: 21) in response to this indirect ideational constraint, appealing to a moral fount of legitimacy (Clark, 2007: 223). Hence, as a “norm entrepreneur” (Finnemore and Sikkink, 1998: 896) seeking to legitimise a currently illegitimate norm of regime change, the US was compelled to associate its actions with other legitimate, pre-existing moral norms based on humanitarian considerations. Specifically, this entailed promoting the idea that overthrowing Saddam Hussein and imposing a democratic regime in Iraq was legitimate because, in President Bush’s (2003: 1) words, “bringing stability and unity to a free Iraq” would liberate Iraqis from “the nightmare world that Saddam Hussein has chosen for them”. On this basis, President Bush stressed in the months leading up to the invasion, tellingly codenamed *Operation Iraqi Freedom*, that, whilst Iraqi disarmament was the focus, “liberty for the Iraqi people” was also “a great moral cause” (2002: 1). Moreover, the US administration actively highlighted the heinous domestic behaviour of the Hussein regime against its own population (Clark, 2007: 223). In line with this, the discovery of mass graves of Saddam’s victims during the invasion was strongly emphasised by the US in its appeal to a moral source of legitimacy (Fawn, 2006: 15). Ultimately, however, the US’ agency as a norm entrepreneur was not enough to shape the prevailing structure of legitimate norms according to its preference. International society was clearly unwilling to legitimise the norm of regime change. This failure at legitimisation did not, however, constrain the US, with its overwhelming material power enabling it to pursue its policy of regime change in Iraq. However, this misses the key point. Despite the US’ material predominance, it did not simply pursue a strategy of overt violation of legitimate international norms. Rather, the US was still bound by international society to draw upon a moral source of legitimacy in seeking to provide a plausible justification for its normatively innovative, self-interested behaviour.

The concept of legitimacy also helps to explain why the US sought the consensus of a ‘democratic coalition of the willing’ for its invasion of Iraq. Firstly, it is vital to note that the US certainly had the material capability to act unilaterally in pursuing its interests. As Kagan (2004: 82) points out, “militarily, it can and does go it virtually alone”, reflected in the fact that the US eventually contributed 85% of the troops for the war in Iraq (Zunes, 2006: 21). If anything, acting in coalition raised logistical issues concerning military interoperability, thus posing a potential hindrance to the effective coordination of operations. Hence, self-interested considerations of burden-sharing alone provide an inadequate explanation for the US’ decision to pursue its invasion somewhat multilaterally. More convincing explanation lies in the notion that the US administration, again from a rational choice perspective, valued the social benefits of legitimisation for its actions, but understood that unilateral action without the approval of a “social constituency of legitimation” (Reus-Smit, 2007: 164) could not possibly be deemed as rightful, and hence legitimate. This is simply because legitimacy, as an intersubjective social property rooted in consensus, must be socially bestowed and is therefore not an attribute that actors can simply claim for themselves (Clark, 2007; Finnemore, 2009; Morris and Wheeler, 2007; Reus-Smit, 2007). Therefore, with no prospect of UN Security Council authorisation, the US actively sought to enlist the support of other states, most prominently the UK, but also Poland and Australia, in attempting to legitimise its use of force. In this sense, the US sought to portray “democratic consensus...to be more important than general international consensus” (Clark, 2007: 186) by implying that a selected group of states with liberal democratic credentials would serve as an appropriate social constituency for legitimising its use of force (Morris and Wheeler, 2007: 22). Clearly, there was a significant disjuncture between the US’ selected social constituency of legitimation and its realm of political action (Reus-Smit, 2007: 164). Since US ambitions were global, the successful legitimisation of its actions would have necessitated international society’s consensual endorsement, i.e. at least UN Security Council approval. Even so, the very choice to pursue its interests somewhat multilaterally suggests that the US did value the, albeit minimal, stamp of legitimacy that would flow from a circumscribed social constituency of legitimation deeming its behaviour to be rightful. Given the fact that the US also had to provide these allies with various payoffs in exchange for their legitimising consensus (Weitsman, 2009: 1), this certainly provides an illustration of US policy being swayed by its desire for the social benefits that accrue from legitimacy.

It is also important that Washington’s eventual inability to legitimise its actions within wider international society resulted in the US having to shoulder significant costs for its illegitimate behaviour (Morris, Wheeler, Egerton and Keating, 2009: 16). This is precisely because “legitimacy constrains and enables” actors (Lee, 2010: 19). Had international society deemed US behaviour to be legitimate, its conduct would have been further enabled by allowing it to enlist the support of numerous other states to share the burdens of conflict. However, the vast majority of states

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were unwilling to legitimise the normative positions espoused by the US in relation to its conduct. This is precisely because these third-party states experienced such a strong pull towards compliance with the UN Security Council's legitimate authority and the legitimate norms concerning the use of force solely in self-defence. Consequently, the structures of legitimate norms within international society can be seen to have constrained the US by imposing significant material costs upon its illegitimate behaviour. Accordingly, the US experienced greater human, financial and political costs during the invasion than it might otherwise have had to bear (Morris, Wheeler, Egerton and Keating, 2009: 16). Lee (2010: 153) also observes that the "illegitimacy of the war directly affected the willingness of other states to contribute" in the post-war effort to rebuild Iraq as well. Subsequently, the US was left to shoulder a far greater proportion of the costs of "creating liberal institutions and rebuilding essential infrastructure" within Iraq (Lee, 2010: 153). In addition, the illegitimacy of the US' behaviour provoked significant antagonism from several states, particularly France, but also Germany and Russia. Whilst this can be portrayed as costly in a diplomatic sense, it is clear that the US has been able to absorb such diplomatic costs. There have also been assertions that the US' illegitimate conduct did "damage...to US standing as a responsible leader of international society" (Morris, Wheeler, Egerton and Keating, 2009: 16), although these social costs have been less clear. However, the aforementioned material costs for its illegitimate action were nevertheless very tangible.

In conclusion, the existence of legitimate norms and principles within international society did exert some, albeit indirect, influence over the US' behaviour leading up to and during its 2003 invasion of Iraq. As this essay has demonstrated, the US itself showed little sign of having itself internalised the legitimate norms concerning the use of force solely in self-defence and on the basis of UN Security Council authorisation. However, through the logic of consequences (rather than appropriateness), the very fact that these legitimate norms did exert a strong 'compliance pull' for the vast majority of other states ensured that the US' rhetoric and actual action were 'nudged' in particular directions. As Hurd (2008: 7) rightly asserts, once a legitimate norm is "widely shared in society, this belief changes the decision environment for all actors, even those who have not been socialized to the rule, because it affects everyone's expectations about the likely behaviour of other players." This effect was firstly reflected in the US decision to voluntarily expend diplomatic effort by taking its case for invasion to the UN Security Council. Further illustration of this influence lies in the US administration's attempt to legally justify its behaviour and also engage in the 'practices of legitimacy' by drawing on a moral source of legitimacy to legitimise its innovative behaviour in the eyes of other states. As the world's most powerful state, operating in the most pressing of security environments, the mere fact that the US was even swayed in these directions by the existence of legitimate norms within international society does suggest that "legitimacy can be a powerful ordering tool" (Hurd, 1999: 389). In addition, the US' decision to actively seek the backing of a 'democratic coalition of the willing' further suggests that it valued the social benefits that accrue from legitimacy, especially since the US did not require such consensus for the purposes of material burden sharing alone. Finally, whilst international society's legitimate norms did not ultimately constrain the US from undertaking its invasion, they did somewhat constrain the US by imposing significant material costs upon its illegitimate behaviour.

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