**International Law, Politics and Opposition to the Iraq War**

Robert Knox

**1. Introduction**

Perhaps no singular event captures the legacy of the 2003 Iraq War more than George Monbiot’s now forgotten attempt to ‘arrest’ John Bolton. In 2008 Monbiot had, alongside Bolton, been attending the Hay Literary Festival. During Bolton’s talk, Monbiot had asked ‘what distinguished [Bolton] from a Nazi war criminal’. Clearly unsatisfied with the reply, later in the day Monbiot attempted to take direct action in the form of a citizen’s arrest, but was ‘dragged away’ by security at the festival when he tried to approach Bolton.[[1]](#footnote-1)

Monbiot’s action neatly symbolises the contradiction between the depth of popular opposition to the war and the total conviction on the part the political establishment that it was right. Whilst two million people marched against the Iraq war, and polling suggested significant public opposition,[[2]](#footnote-2) this was hardly reflected in Parliament, with only 149 out of 659 MPs voting against military action.[[3]](#footnote-3) Arguably, Monbiot’s actions also encapsulate the *limits* of direct action when faced with organised state power. Two million people on the streets of London were ultimately unable to prevent the war from going ahead.

From the perspective of the international lawyer, there is a further important dimension to Monbiot’s action: he sought to ‘arrest’ Bolton for a violation of *international law*. Monbiot’s accusation did not simply pertain to the *jus in bello*, and the alleged war crimes of the Coalition in Iraq, but also concerned the very decision to go to war as a violation of the *jus ad bellum*. Monbiot chose to mount his attack on the war on the terrain of international legality, and Bolton defended himself on that same terrain, repeating the Bush administration’s argument that Saddam Hussein’s government had refused ‘to abide by Resolution 687’ and so ‘demonstrated it was time and time again not in compliance with the ceasefire resolution’.[[4]](#footnote-4)

It is this feature, more than any, that captures the peculiarity of the 2003 Iraq war, and one of its prime legacies, namely the juridification of opposition to – and defence of – the war. Whilst wars in the past have been denounced as immoral, imperialist, selfish and wasteful, very rarely have they been denounced as ‘illegal’. Yet the ‘illegality’ of the Iraq war was one of the central pillars of the campaign against the war, with those who supported the war accused of unilateralism, lawlessness and a disregard for the rules-based international order.

This motif of the ‘illegal war’ in Iraq continues to be deployed to this day and has provided the model for the criticisms of subsequent uses of military force, as well as for the international political behaviour of states more broadly. Donald Trump’s Presidential tenure – marked as it was by a withdrawal from various international legal institutions – was criticised in starkly similar terms,[[5]](#footnote-5) and the election of Joe Biden has been welcomed as a ‘return to normality’.[[6]](#footnote-6)

This article attempts to unpack the ‘illegal war’ motif and its wider legacy. It begins with the specific example of the British anti-war movement, noting its decision to centre the ‘illegal war’ motif and outlining the reasons for, and advantages of, this decision. However, the article goes on to argue that by centring international law, the form and practices of resistance to the Iraq War were shaped and limited. On a structural level, the ‘illegal war’ motif foreclosed a deeper critique of the political and economic forces driving the war and tended towards the legitimation of the international legal order. Alongside these structural issues, the article argues that the ‘illegal war’ motif was premised upon a particular set of conjunctural factors which both rendered it ‘effective’ and also significantly limited its possibilities in other conjunctures.

The article then tracks how the ‘illegal war’ motif was deployed in relation to subsequent military interventions, and, in so doing, broadens its attention to the wider global opposition to war, particularly those carried out by the US state. It argues that the changing legal, rhetorical and geopolitical features of later military interventions – particularly around the War on Terror and those interventions that followed in the wake of the ‘Arab Spring’ – significantly blunted the power of the ‘illegal war’ motif. In particular, the lack of the ‘legal nihilism’ of the Bush administration, the agreement of major powers on the need for intervention and the relative complexity of the subsequent legal arguments all meant the ‘illegal war’ motif could not have an explosive mobilising power. Absent this, the pitfalls of the motif increasingly came to the fore.

The article goes on to reflect on the broader rhetorical consequences the ‘illegal war’ motif has had in understanding configurations and shifts in imperial power, particularly in terms of the various tactics and strategies employed by the US state. Here, the ‘illegal war’ motif has tended to over-exaggerate the differences between various US administrations. The article concludes by reflecting on how international law might be invoked in anti-war mobilisations without fatally undercutting a structural critique of imperialism and militarism.

**2. An Illegal War?**

*2.1. Contestation and Juridification*

In his classic *Of War and Law* David Kennedy argues that there has long been a close interconnection between law and war. For Kennedy, this connection goes back at least as far as the original ‘founders’ of international law: from whose legal-moral vision a tradition of ‘just war’ emerged.[[7]](#footnote-7) However, this connection has changed form numerous times. A key element in these transformations was the distinction between law and politics, which served as the central foundation for the 19th century’s ‘sharp distinction between war and peace’ with sovereigns possessing ‘unrestrained authority’ in war time.[[8]](#footnote-8)

For Kennedy, the First World War, the Russian Revolution and – eventually – the Second World War each contributed to changing this situation decisively. In these events war exceeded the ‘rational’ dimensions it had hitherto assumed, shocking elites into calling for the regulation of the decision to go to war, embodied first in the League of Nations, and then in the United Nations. Yet, as we now know, this system floundered on the political and ideological conflicts of the Cold War, which paralysed the UN’s collective security system.[[9]](#footnote-9)

It was only after the end of the Cold War that international law became prominent in regulating the decision to use military force. This was particularly evident during the 1991 invasion of Iraq. Here, the use of military force had been unambiguously authorised by the Security Council in Resolution 678. More than this, legality assumed a central role in that intervention with the Coalition leaders ‘tout[ing] respect for law as a prime justification for the Gulf War’.[[10]](#footnote-10) Crucially, this was not simple rhetoric, the Gulf War saw ‘the largest ever per capita deployment of military lawyers to advise commanders and monitor conduct’.[[11]](#footnote-11) Similar considerations played out in the 1999 NATO intervention in Kosovo. This intervention was, of course, significantly more controversial than the first Gulf War, with the question of the intervention’s international legality playing an important role.[[12]](#footnote-12)

The 2003 invasion of Iraq magnified these processes immensely. As Kennedy notes, despite anguished cries from some lawyers that international law was being ignored, the ‘Bush and Blair administrations argued for the war in terms drawn straight from the UN Charter, and they issued elaborate legal opinions legitimating the invasion in precisely those terms’.[[13]](#footnote-13) What is particularly distinctive about the 2003 invasion is that – as Madelaine Chiam explores –international law appeared as an ‘autonomous justification’ that was ‘separate from other considerations such as morality or alliance’.[[14]](#footnote-14) As Charlotte Peevers argues, such legal arguments became a crucial ‘rhetorical strategy’ insofar as it would give then ‘a claim a claim to internationalized authority to discipline Iraq’.[[15]](#footnote-15) In this way, international legal arguments stepped beyond the halls of power and military planning rooms and became a constituent element of public debates about the war.

Supporters of the war advanced several public legal justifications for their intervention, including the ‘Bush Doctrine’ of pre-emptive self-defence[[16]](#footnote-16) and (speculative) claims of humanitarian intervention.[[17]](#footnote-17) Whilst these legal arguments played out in the public sphere, the majority of the debate hinged on the role that the United Nations Security Council should play in the use of military force. According to the Bush and Blair administrations, Security Council Resolution 1441, by declaring Iraq was in ‘material breach’ of its obligations under Resolution 687, had impliedly revived Resolution 678, which had explicitly authorised the 1991 use of force against Iraq. As such, military force could be deployed without any further Security Council Resolution. This was opposed by most other states in the ‘international community’ – and a majority of states within the Security Council – who argued that a second Resolution would be needed to authorise the use of military force.[[18]](#footnote-18) In a sense, the question came became one of who had the authority to interpret the Resolutions of the Security Council: were the US and UK able to do so, or was this an exclusive competence of the Security Council itself?

In the UK, the question of the need for a second Resolution became the centre of debates about the legality of the war. Within Parliament, the government argued that although they had sought to secure a second Resolution, intransigence from France and Russia meant that one could not be achieved. However, as then-Foreign Secretary Jack Straw argued, whilst it ‘would have been better if it had been possible to achieve a consensus in the United Nations for a second resolution … there is no question about the legality of the action’ which went ‘back to resolutions 678 and 687’.[[19]](#footnote-19) This was met by the then-backbencher – and important figure within the wider anti-war movement – Jeremy Corbyn’s retort that this represented ‘rejecting the road of peace and a legal solution to the problem’.[[20]](#footnote-20) In the full debate the next day, the government reiterated its position, and figures from all three major opposition parties – including Alex Salmond (then leader of the SNP group in the Commons)[[21]](#footnote-21) and Charles Kennedy (then leader of the Liberal Democrats)[[22]](#footnote-22) – argued the war could not go ahead without a second Resolution. Without such a second Resolution, the war would be illegal and so wrong.

These arguments were underpinned by a wider faith in the value of international law and multilateral decision-making. Robin Cook, upon resigning as Leader of the House of Commons, summed up this up well, arguing that the world was best protected ‘not by unilateral action, but by multilateral agreement and a world order governed by rules’.[[23]](#footnote-23) In this sentiment Cook was joined by a number of figures in both the popular[[24]](#footnote-24) and academic press, who feared that, since 9/11 the Bush administration had created a ‘lawless world’ in which power politics trumped international law.[[25]](#footnote-25)

The widespread controversy around the war meant that legal debates were not simply confined to ‘official’ politics. Lawyers featured heavily in both the print and broadcast media debating the legality of the war.[[26]](#footnote-26) Most importantly, however, the motif of Iraq as an ‘illegal war’ became central to the popular mobilisations against the war. Many of the voices in Parliament itself became leading voices in the anti-war movement, organising around the idea it would be illegal. As Peevers notes, in the runup to the war public opinion overwhelmingly insisted on the necessity for a second Resolution from the Security Council.[[27]](#footnote-27) In the years since, the anti-war movement has continually held up Iraq as an example of ‘illegal war’, and extended this description to other putative examples of illegality. Indeed, in his response to the Chilcot inquiry itself, Jeremy Corbyn – then Leader of the Labour Party and prominent figure in the anti-war movement – argued that the war ‘has long been regarded as illegal by the overwhelming weight of international legal opinion’.[[28]](#footnote-28)

*2.2. Tactical Legalism*

The distinctiveness of the 2003 Iraq therefore lies not simply in the renewed importance of the legal arguments, but how extensively they configured public debate about the war. If the 2003 invasion witnessed the birth of international law as an ‘autonomous justification’ for war, this ‘naming of “legality” or “illegality” took on a particular power’ in the context of public debate.[[29]](#footnote-29) In Britain, this ‘particular power’ was seized upon by the anti-war movement in its goal of creating mass mobilisations against the war. At the centre of this movement was the Stop the War Coalition, which had been assembled in the wake of the 9/11. The Stop the War Coalition – and the wider anti-war movement – was extremely heterogeneous. It was led by members of the radical left, trade unionists and the more traditional peace movement, yet it also had wider affiliations including the Liberal Democrats and the Scottish National Party.[[30]](#footnote-30) It incorporated many of the political figures named above, who served as prominent speakers at anti-war protests and rallies.

It cannot be denied that in the context of the Iraq war this embrace of legal argument was incredibly effective. Even though the Iraq war ultimately went ahead, the anti-war movement’s message managed to mobilise millions of people, delegitimised the war and damned a number of the governments and politicians associated with it.

Mobilising people in such numbers necessarily reached beyond more traditional radical and anti-war political constituencies, attracting people from a diverse range of demographics (age, class and education)[[31]](#footnote-31) and political constituencies, with a high percentage of first time protestors.[[32]](#footnote-32) The ‘illegal war’ motif represented a perfect way of creating and holding together such a coalition. Firstly, on a very basic level, the ‘illegal war’ motif had the appearance of being *depoliticised*. Insofar as one could argue that the war was ‘illegal’, opposing it did not entail any further political commitments. Under the umbrella of ‘illegality’ a number of competing political positions – liberal, radical and even conservative – could be held together without having to analyse or criticise the international system more broadly.

Secondly, the ‘illegal war’ motif was able to tap into the deeper ideological function that law and ‘the rule of law’ serve in liberal societies. One of the key elements of the ‘depoliticising’ nature of the law is that it claims to stand *above* particular political positions, providing a broader legitimating framework for human action.[[33]](#footnote-33) In this way, in liberal societies, law assumes an outsized role in providing an ‘independent’ form of legitimacy. Thus, appealing directly to the illegality of a particular issue represents a way of ‘transcending’ political disagreement.

These two overarching features of the ‘illegal war’ motif were buttressed by several specific conjunctural features of the build up to the war and the war itself. The first was the abrasive character of the Bush administration. Although the justifications for the war were framed in legal terms, key legal figures in the Bush administration – such as John Bolton and Richard Perle – were openly contemptuous of international law and the international legal order.[[34]](#footnote-34) Moreover, the Bush administration itself had taken an aggressively ‘unilateralist’ stance in light of the perceived inability of the UN to fight the threat of terrorism following the attacks of September 11th 2001.[[35]](#footnote-35) In the words of the 2002 National Security Strategy, whilst ‘the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone’.[[36]](#footnote-36) The result of this was that the Bush administration had pioneered, openly, a series of ‘innovative’ legal arguments: around ‘pre-emptive self-defence’, ‘enhanced interrogation’ and the detention of ‘unlawful combatants’ at Guantanamo Bay.[[37]](#footnote-37) Such arguments were, at best, rather unconvincing, to most states and international lawyers.

In part because of this conspicuous ‘legal nihilism’[[38]](#footnote-38) on the part of the Bush administration, there was also an unusually high degree of expert consensus on the illegality of the proposed legal justification for the invasion of Iraq. The main legal defenders of the war were those employed directly by advocates of the war – with the infamous case of Lord Goldsmith’s changing legal advice casting doubt upon even *their* commitment to the war – and those of a decidedly pro-interventionist persuasion. By contrast, a wide range of international lawyers insisted that the war would be illegal,[[39]](#footnote-39) and even government legal advisors felt the need to resign rather than argue for the war’s legality.[[40]](#footnote-40)

The sum total of these effects meant that the motif of the ‘illegal war’ was able to assume an unprecedented mobilising power. Law served as a way to unite diverse political constituencies without the need for a broader – and possibly alienating – political critique. This was achieved in part because of the wider legitimating power that ‘legality’ has in liberal, capitalist societies, over and above particular political alignments. At the same time, the conspicuous anti-legalism of the Bush administration, as well as the convergence of expert opinion over the illegality of the war, meant that it was more difficult to say this was a simple battle over the correct ‘interpretation’ of the law. Instead, the Bush administration – and its allies – could be cast as definitively opposed to the law, and to the ‘rules-based international order’ *tout court*.

**3. Critique, Structure, Conjuncture**

*3.1. From depoliticisation …*

As a tactical response to the particularities of the Iraq war, then, the motif of the ‘illegal war’ seemed to make a lot of sense. However, as Evgeny Pashukanis argued ‘[l]egality is not an empty sack that can be filled with a new class content’.[[41]](#footnote-41) As a social form, based in particular institutions, the law will always have an effect on the practices articulated within it. In this way, the choice to foreground legality could never be a politically ‘neutral’ one. By mobilising around the ‘illegal war’ motif, the anti-war movement necessarily – if not consciously – adopted a particular *practice* of resistance, associated with the form and limits of international law. Given (international) law’s structural connection with relations of exploitation and domination,[[42]](#footnote-42) this practice was one fraught with potential pitfalls.

In the case of the Iraq war these pitfalls played out twofold. Firstly, on a conjunctural level, the ‘illegal war’ motif was only able to mobilise a quite diffuse and conservative opposition to the war, which was not able to locate opposing the war within a wider anti-militarist or anti-imperialist politics. Secondly, on a structural level, the ‘illegal war model’ tended to legitimate the broader structures of international law.

The biggest risk of the ‘illegal war’ motif was its close focus on stopping the war as an immediate act. In framing the Iraq war as an illegal intervention which needed to be prevented, the war was exceptionalised as specific and distinct. This was useful in generating large crowds against the war, but it also made it very difficult to sustain momentum. Once the war had ‘started’ – and so the moment of illegality had taken place – continuing opposition became extremely difficult. A natural consequence of the ‘illegal war’ model was the centring of the Parliamentary vote on the invasion. Once that moment passed, and the *jus ad bellum* was ‘breached’, it became difficult to oppose the long slog of the occupation. Crucially, this meant that the deeper neoliberal transformations carried out under the occupation escaped broader scrutiny.[[43]](#footnote-43) This exceptionalism therefore also occluded the degree to which the invasion and occupation of Iraq can be located in the broader operations of global capitalism and neoliberalism.

This exceptionalism also played out in terms of the specific argument for the illegality of the Iraq war: namely, the question of the necessity for a second Resolution. As Craven, Marks, Simpson and Wilde noted – reflecting upon a letter they collectively authored criticising the war as illegal – ‘the necessity of a “second” Security Council resolution had become too much of a fixation’ and it was disturbing that ‘a single resolution should … make all the difference’.[[44]](#footnote-44) On an immediate level, the case for the anti-war movement was contingent simply upon the passing of a Security Council Resolution. This seemed to suggest that if the decision went the other way, the movement would be obliged to support the war.[[45]](#footnote-45)

On a deeper level, decisions of the Security Council are ultimately rooted in power politics. The major reason that there was never a second Resolution had very little to do with ethical, legal or moral considerations. Instead, it was rooted in a growing rivalry and divergence of interests between the US state and the Russian, Chinese and French states. Facing a challenge to its hegemonic role, the US had attempted to articulate a series of legal arguments with which to give it freedom to act whilst constraining its rivals.[[46]](#footnote-46)

By foregrounding the question of a second Resolution, opposition to the war ultimately subordinated itself to the motives of those powerful and entrenched states that make up the permanent five of the UN Security Council. In this sense, the ‘illegal war’ motif could not criticise imperialism or militarism *as such* in the context of the Iraq War, but rather had to ‘pick a side’ in a particular instance of inter-imperialist rivalry.[[47]](#footnote-47) At the same time, this meant that any anti-war opposition organised around the ‘illegal war’ motif would be contingent upon the continued existence of this particular configuration of rivalry.

This focus on Iraq as a singular issue of illegality also foreclosed a deeper inquiry into the nature of forces that drove the war. The logic of ‘picking a side’ in the context of a dispute between powerful states, necessarily meant some suspension of analysis of that situation. More importantly, the ‘illegal war’ motif entailed a close focus on Bush and Blair as authors of an illegal act with ‘very little attention paid to the forces that shaped these actors and their decisions’.[[48]](#footnote-48) The discourse around the war focused on the bad intentions and illegal conduct of state actors as opposed to the material context in which they were operating. In this way, the drive to war could ultimately be portrayed as the actions of a number of ‘bad apples’.[[49]](#footnote-49) Thus, baked into the ‘illegal war’ motif was a sense of ‘false contingency’[[50]](#footnote-50) which divorced the intervention from systemic logics that had generated it.[[51]](#footnote-51)

Taken in sum, these issues point to the fact that the ‘illegal war’ motif had a *depoliticising* effect. Rather than locate the war as the result of political-economic imperatives, and thus within a wider trajectory of US militarism and the imperialist system, the ‘illegal war’ motif exceptionalised Iraq. It was understood as an aberrant and specific moment, which needed to be addressed as such. This, of course, is the direct flipside to the *positive* power of ‘illegal war’ motif, it was able to mobilise such a wide opposition precisely because of this apparent depoliticisation.

However, this apparent depoliticisation had another important effect. Insofar as the mobilisation against the war rested on its illegality, it foregrounded the role of lawyers. The only way to cast the Bush and Blair administrations’ legal arguments as ridiculous and unconvincing was to rely on expert lawyers. By choosing to fight on this terrain, the role of political contestation was ceded to the ‘expertise’ of lawyers. Aside from the abovementioned problem – that all it would take is a second Resolution to render the war legal – this had the effect of channelling the movement in a more ‘elitist’ direction. Susan Marks is correct to note that international law clearly has ‘public-cultural dimensions’ involving a ‘mutually-determining relationship with the media’,[[52]](#footnote-52) however, we must also acknowledge that this mutually-determining relationship takes place in the context of law as a body of technical, inaccessible knowledge. As such, this exchange is one which relies on the expertise of a relatively elite body of specialists – lawyers and legal interpreters – to make and evaluate legal claims and act as ‘guardians of a set of rules unknowable to the lay person’.[[53]](#footnote-53)

The net result of the depoliticising nature of the ‘illegal war’ motif is important. On a conjunctural level, it is clear that this *was* able to mobilise large numbers of people. However, given the focus on spectacular events, and the lack of a deeper analysis of war, militarism and imperialism, this was not the basis for a durable political *movement*. This, perhaps, helps account for the ultimate ephermerality of the opposition to the Iraq war, and the inability to convert the millions of people on the street into a more wide ranging political intervention.

*3.2. … To legitimation*

In some respects using the language of ‘depoliticisation’ in relation to the ‘illegal war’ motif is misleading. As Carl Schmitt noted in *The Concept of the Political*,most attempts at ‘non-political and … antipolitical’ arguments ultimately ‘cannot escape the logic of the political’.[[54]](#footnote-54) The attempt to carve out a ‘neutral’ ‘non-political’ space is almost always in the service of naturalising a particular political settlement. This is very much at issue in the context of the ‘illegal war’ motif. Whilst the invocation of the law here might appear ‘depoliticised’, it implicitly supported a politics of the *status quo*.

The explicit narrative in the ‘illegal war’ motif, was that of a dangerous and unilateral United States making an exceptional break with the United Nations. This was clear from the focus on the second Resolution, and the discourse around the Bush administration breaking with the rules-based international order. On a very basic level, such a position was particularly dangerous to the anti-war movement. As previously noted, the paralysis of the UN is by no means a given, and over the course of the 1990s the Security Council authorised military interventions in Iraq, Somalia, Yugoslavia, Haiti, Rwanda, Albania, the Central African Republic and Sierra Leone.[[55]](#footnote-55) The ‘illegal war’ motif would have made it very difficult to oppose any of these interventions at the time, and limits the ability to criticise them in retrospect.

As previously noted, the form that this legal argument took meant insisting that it was the Security Council that had exclusive competence to interpret its own Resolutions. In foregrounding legality in this way, and conceptualising the United Nations as the repository of said legality, the illegal war motif also contributes to the *legitimation* of the UN. Insofar as the US is portrayed as irresponsible, unilateralist and even imperialist[[56]](#footnote-56) the UN, as the embodiment of legality, is portrayed as the *opposite* of these things.[[57]](#footnote-57) This crowds out the UN’s own deep history of entanglement with colonialism and imperialism, and the Security Council’s role in formally entrenching the power of some of the most highly-militarised advanced capitalist states.[[58]](#footnote-58) Indeed, it is worth noting in this respect that the Security Council ultimately ratified the US and UK’s presence in Iraq as an occupying force under Resolution 1483.

Crucially, such a position suggests that ‘multilateral’ interventions, as authorised by the Security Council, cannot themselves be imperialist or irresponsible. Yet, as China Miéville notes in respect of the 2004 intervention in Haiti:

Haiti should forcefully remind us that relatively uncontroversial ‘legality’ and multilateralism need stand in no opposition at all to strategies of murderous imperial control. If, indeed, that very legality helps mute criticism, as seems to have been the case here, one might go further, and suggest that multilateral UN-sanctioned imperialism is *more* of a threat to justice and emancipation than its unilateralist Rumsfeldian sibling. The only thing more oppressive than a lawless world might be a lawful one.[[59]](#footnote-59)

The ‘illegal war’ motif arguably also generates a more wholesale legitimation of the international legal order. In the *Advisory opinion on the Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice – in a highly fraught decision – found that it could not definitively forbid the use of nuclear weapons in extreme circumstances.[[60]](#footnote-60) The Court was agreed that it seemed exceptionally difficult to reconcile the use of nuclear weapons with the principles of international humanitarian law, particularly the distinction between combatants and non-combatants.[[61]](#footnote-61) However, a majority in the Court found that they nonetheless could not rule out that the use of nuclear weapons could be legal. The Court based this on the fact that such weapons might be used ‘in an extreme circumstance of self-defence, in which its [the state’s] very survival would be at stake’.[[62]](#footnote-62) For the majority, ‘survival’ was a ‘fundamental right’ of international law.[[63]](#footnote-63)

What is important in this judgment is not simply its conclusion, with which one assumes the anti-war movement would disagree. In rooting its judgment in the fundamental right of a *state* to survive, the Court illustrated that international law crucially has the interests and perspective of the state at its heart. Even if the Court had reached a different conclusion on the use of nuclear weapons, its reasoning represents a logic fundamentally opposed to that of the anti-war movement. For the Court, *prima facie* the use of nuclear weapons was a legitimate exercise of state power, and the question was simply whether or not anything in the law prohibited this. The use of state violence was understood as a general right – rooted in the state’s ‘fundamental right’ to survival – which could be subject to ‘reasonable’ legal limits.

Here the Court in microcosm represents a more general phenomenon. International law, its rules and its reasoning, are constructed from the perspective of the state. This perspective shapes the entire discursive field of international law. Nowhere is this clearer than in the law around the use of military force. The *jus ad bellum* presupposes the right of the state to use force in self-defence and the *jus in bello* is organised around the idea that civilian casualties are inevitable, and must simply not be more than is ‘militarily necessary’.[[64]](#footnote-64) Insofar as movements adopt the standpoint of international law, therefore, they are forced to ‘think’ like a bourgeois state. Movements must necessarily accept that states have a ‘right to defend themselves’, and accede to any ‘reasonable’ demands in respect of this right. In this way, the general use of state violence is rendered legitimate, and the terrain shifts to whether or not *in a particular instance* it would be ‘reasonable’ to use force. Yet the terrain of this reasonableness is one fundamentally organised around the state and its right to ‘exist’. In this way, it becomes very difficult to resist the logic of military violence, as states will always present their actions as responding to some kind of ‘existential threat’.

On both a conjunctural and structural level, therefore, the ‘illegal war’ motif was fraught with pitfalls. Although it was able to mobilise millions, it did so on a relatively depoliticised basis, presenting the war as a spectacular violation of the law. In so doing, it precluded a deeper analysis of the political-economic forces driving the war, whilst leaving the fortunes of the anti-war movement contingent upon a particular alignment of inter-imperialist rivalry. The deeper dangers of this were that the movement risked legitimating an institutional arrangement that was itself the product of imperialism and militarism. More than this, however, by adopting the language of international legality, the movement entered into a discursive field where it was forced to adopt the perspective of the bourgeois state.

**3. Anti-War Legacies**

In 1987, *Private Eye* dubbed Labour’s losing campaign a ‘brilliant election defeat’, for fulfilling a number of Labour’s objectives and projecting an image which boded well for the next election.[[65]](#footnote-65) Arguably, we can say the same of the mobilisations around the Iraq war. Whilst ultimately defeated, these mobilisations created some of the biggest demonstrations in history. It was logical, therefore, that the defining tactic of those mobilisations – the ‘illegal war’ motif – should be replicated; a ‘brilliant defeat’ can become a victory the next time around. It is likely for this reason that the ‘illegal war’ motif has been deployed repeatedly since the 2003 invasion. This was obviously true of later characterisations of the Iraq war, which have frequently revived the accusation of illegality, but the ‘illegal war’ motif has also been deployed in respect of drone strikes,[[66]](#footnote-66) the 2011 intervention in Libya,[[67]](#footnote-67) military strikes on Syria (and against ISIS)[[68]](#footnote-68) and the war in Yemen.[[69]](#footnote-69)

However, as previously noted, the success of the ‘illegal war’ motif, was ultimately premised on a very specific conjuncture. The legal nihilism of the Bush administration, the rivalry on the Security Council and the general consensus amongst international lawyers all lent the accusation of illegality a particular power. Absent these conditions, the pitfalls outlined above would be even more strongly felt, with defeat – and not even brilliant defeat – the most frequent outcome.

*The War on Terror*

The limitations of the ‘illegal war’ motif were already evident at the time of the Iraq war in relation to the wider War on Terror. Although Iraq was situated within the rhetorical narrative of the war on terror,[[70]](#footnote-70) its legal justification was a distinctive one. The major theatre of the War on Terror, the invasion of Afghanistan, necessarily proved much more difficult to criticise under the ‘illegal war’ motif. This stemmed in part from the Security Council’s endorsement of the ‘inherent right to self-defence’ against terrorism in a series of Resolutions,[[71]](#footnote-71) and the lack of any state-based opposition to the intervention.

More generally, bearing in mind the tendency of international law towards thinking like a reasonable bourgeois state, the legal language of self-defence was not amenable for mass political mobilisation. Following 9/11 no international legal argument would deny, in principle, a right of self-defence against terrorism. Any legal opposition would rest on technical questions about whether or not self-defence could be exercised against non-state actors, questions about imminence, or fine-grained issues of necessity and proportionality.[[72]](#footnote-72) None of these issues had a clear enough legal consensus that they could mobilise a population in the name of ‘legality’.

These initial features of the War on Terror were partially offset by the bullish legal nihilism of the Bush Administration. Crucially, the Obama Administration, for whom the War on Terror became a defining feature, learned the lessons of Iraq. In contrast to the Bush Administration, the Obama Administration carefully adopted the language of legalism. The Administration employed several prominent lawyers – including John O. Brennan, Jeh Johnson and Harold Koh – to repeatedly outline the legal case for the War on Terror.[[73]](#footnote-73) Their arguments centred on a reading of self-defence against terrorism, drawing almost directly on the arguments of the Bush Administration around self-defence.

In many respects, the Obama administration’s deployment of legality was a response to the use of the ‘illegal war’ motif. This was complimented by the changing nature of the use of military force. As is well-known, under the Obama administration the War on Terror was subsumed into a drone programme. Rather than the spectacle of a military invasion, or a demonstration of ‘shock and awe’, the drone war was instead a constant ‘low intensity’ conflict, with many involved likening it to ‘cutting the grass’[[74]](#footnote-74) or ‘mowing the lawn’.[[75]](#footnote-75) Such an approach to the use of military force was particularly difficult to criticise under the ‘illegal war’ motif; there was no moment of spectacular ‘illegality’ onto which the anti-war movement could seize. The only option was to deny the legal justifications of the War on Terror *tout court* (and thus deny the state its fundamental ‘right of existence’) or evaluate on a ‘case-by-case basis’ the legality of particular interventions. The latter was particularly difficult given the secrecy that surrounded the drone programme. Accordingly, at best the ‘illegal war’ motif’ served to channel anti-war opposition into elite contests of interpretation.

*Libya*

Although the War on Terror was not primarily organised around spectacular military interventions, the Obama administration did nonetheless deploy force in such a manner. The most prominent of these examples occurred in the wake of the ‘Arab Spring’, where violent repression of civil disobedience had led to militarisation and civil war.[[76]](#footnote-76) In the ensuing process, a number of political leaders allied to the US and Europe – including Hosni Mubarak in Egypt and Zine El Abidine Ben Ali in Tunisia – were toppled. The speed with which the initial events occurred left very little time for the major imperial powers to formulate a coherent response, with the opening responses being badly-judged calls for moderation, and ‘an orderly transition’.[[77]](#footnote-77)

The 2011 intervention in Libya represented an opportunity to reassert control over the revolutionary process.[[78]](#footnote-78) Led by the US, Britain and France, the Security Council first passed Resolution 1970, imposing an embargo designed to stop the flow of weapons and fighters to Libya. Whilst this was ostensibly focused on the Gaddafi government, it also meant that the opposition were denied military resources in their struggle against the government. In a sense, Resolution 1970 froze the advantage of the Gaddafi government, helping to create a mounting humanitarian catastrophe in the region. Given the power imbalance between the Gaddafi government and the rebels, the only plausible way to resolve the catastrophe lay in an ‘outside’ intervention. Accordingly, the Security Council, again led by the US, Britain and France, passed Resolution 1973. This Resolution imposed a ‘no-fly zone’ over Libyan territory and authorised Member States to ‘take all necessary measures’ (i.e. use military force) in the protection of civilians, in the Resolution ‘foreign occupation’ was explicitly ruled out.

Despite this seemingly limited mandate, over the course of several months (from March until October), NATO conducted large scale military assaults against the Gaddafi government forces – in cooperation with the Libyan opposition – and by 20th October 2011 Gaddafi had been captured and killed. Libya directly illustrates the immediate danger of using the Iraq war as model to emulate. In the case of Libya, the Security Council gave a clear mandate for the (limited) use of force. Given the prior emphasis on the legitimacy of the Security Council and the ‘rules-based international order’, criticising the US and its allies thus became incredibly difficult. Although there were plausible accusations that the NATO intervention had exceeded its mandate, such discussion once again could only translate into debates amongst lawyers on technical issues of competency and interpretation.[[79]](#footnote-79) The legitimacy that the Iraq mobilisations had lent to the international legal order had become a real problem, particularly after the International Criminal Court had opened an investigation into the situation in Libya in the midst of the conflict, further bolstering the lawful involvement of the ‘international community’ in the intervention.

In a crucial way Libya also demonstrates the perils of relying on a particular arrangement of inter-imperialist rivalry. Although the interests of the Russian and Chinese states continued to be somewhat at odds with those of the US, in the context of an unfolding Arab revolutionary process – which threatened to destabilise a strategically important region – all of the major powers had an interest in some form of stabilisation. The ‘illegal war’ motif, which had focused on the exclusive power of the Security Council to determine the meaning and scope of its Resolutions, was thus unable to criticise a situation of characterised by the apparent unanimity of the Security Council.

*Syria*

Libya was not the only state where the civil disobedience of the Arab Spring transformed into civil war. The most prominent example of this phenomenon is what happened to the Syrian Revolution. The violent crackdown of Bashar al-Assad led to the militarisation of the conflict when elements of the military defected to the side of the revolution. As is well known, the chaos of the civil war also proved a fertile breeding ground for the rise of two completely opposed forces – the democratic left-wing forces of Kurdish liberation (the YPG and the YPJ) and the organised terrorist forces of the Islamic State (IS).[[80]](#footnote-80) IS combined both territorial administration and control in Syria with the promotion of terrorist actions throughout the rest of the world, touching in particular upon some of the major world powers (France, Britain and the US).

The situation in Syria was, and remains, geopolitically confusing. One element, of course, was the repressive violence doled out by the Assad government against the opposition. In this, Assad was opposed by the US state and its allies, and supported by the Russian state, a traditional ally of the Baath Party in Syria.[[81]](#footnote-81) Alongside this was the war against IS, which itself involved a conflict between the Assad government and IS (with the Assad government frequently conflating IS with the opposition), conflicts between Kurdish forces and IS, andconflicts between the Syrian opposition and IS. All of the major imperialist states backed the fight against IS in principle, but this was refracted through their relationship to the Assad government and the opposition. Alongside these conflicts, there was also the position of Kurdish forces. Besides fighting against IS, the YPG and YPJ have both fought against and fought with the Syrian government forces and the opposition. More importantly, given their historic links with the PKK, the Kurdish forces have attracted the military attention of the Turkish state.

Such a situation of complex inter-imperialist rivalry was far removed from the relative simplification that occurred around the 2003 Iraq invasion, and generated a similarly complex set of legal questions. Chief amongst these was how to legitimate forms of intervention targeted at IS, which were able to balance the competing interests in supporting or undermining the Assad government. This was conducted in the shadow of the Libya intervention, where the Russian and Chinese states felt they had been misled in agreeing to only limited military intervention which had boiled over into a full scale ‘regime change’.

The product of these complex and competing interests was Security Council Resolution 2249. Resolution 2249 used some of the language of Chapter VII of the UN Charter, reaffirming that ‘terrorism … constitutes one of the most serious threats to international peace and security’. The resolution then called upon ‘Member States that have the capacity to do so to take all necessary measures … to prevent and suppress terrorist acts’ taking place in the territory of Syria and Iraq. Crucially, however, there was no specific mention of Chapter VII of the Charter, and specific reference was made to the fact that such actions must be ‘in compliance with international law, in particular with the United Nations Charter’.

The ambiguity of the Resolution meant it was not particularly amenable to the ‘illegal war’ motif, with both pro- and anti- war voices claiming the Resolution supported their position. Thus, in a vote on the UK launching airstrikes in Syria, Jeremy Corbyn argued that Resolution 2249 did ‘not give clear and unambiguous authorisation for UK bombing in Syria’ and ‘[t]o do so, it would have had to be passed under chapter 7 of the UN charter’.[[82]](#footnote-82) David Cameron, then-Prime Minister, responded by explicitly contrasting the potential airstrikes with the 2003 invasion of Iraq, noting:

This is not 2003. We must not use past mistakes as an excuse for indifference or inaction. Let us be clear: inaction does not amount to a strategy for our security or that of the Syrian people, but inaction is a choice. I believe that it is the wrong choice. We face a clear threat. We have listened to our allies. We have taken legal advice. We have a unanimous United Nations resolution. We have discussed our proposed actions extensively at meetings of the National Security Council and the Cabinet.[[83]](#footnote-83)

Once again, the threat was that political debate would translate into questions of technical legal interpretation. It was also almost impossible to cast any ‘side’ – apart from IS itself – as definitively ‘against’ the international legal order, with those on the side of the intervention very much appealing to international law and institutions.

Of course, it was not simply under the auspices of Resolution 2249 that intervention took place, the conflict with IS was also assimilated to the broader narrative of the war on terror, with self-defence (both individual and collective self-defence called for by the Iraq government) being repeatedly invoked. As previously noted, such legal arguments were particularly difficult to address via the ‘illegal war’ motif.

*Trump’s wars*

In theory, the election of Donald Trump might have reinvigorated the power of the ‘illegal war’ motif. A perennial liberal criticism of the Trump Presidency was that – even more so than the Bush administration – it had trampled over both domestic and international ‘norms’.[[84]](#footnote-84) Internationally, the Trump Presidency came under fire for its isolationist rhetoric, and its hostility to various international institutions and alliances: including the World Trade Organisation, NATO and the UN.[[85]](#footnote-85) This was compounded by the appointment of various former Bush officials, such as John Bolton, known for their hostility to international law and institutions.

In practice, however, there were not many opportunities to raise such criticisms against the Trump administration. Although erratic, the Trump administration did not launch a great number of new military interventions. In some respects, it followed from the lead of the Obama administration, continuing and expanding the drone programme using a similar set of legal arguments.[[86]](#footnote-86) Insofar as there were anti-war arguments and mobilisations against the Trump administration they were levelled against its continuation of intervention in Syria and military action taken against Iran.

In the context of Syria, the Trump administration again largely followed the lead of the Obama administration. The main focus was on supplying Kurdish forces with arms and air support and directly targeting alleged IS militants. Alongside this, there were a number of airstrikes launched directly against the forces of the Assad government. In 2017 and 2018 (in the latter case with the backing of the UK and France) the US government attacked Syrian government-controlled sites which it alleged were involved in chemical weapon attacks against the Syrian opposition. These strikes were given quite loose legal justifications. The Trump administration argued that this was, in part, an attempt to secure the enforcement of the Chemical Weapons Convention.[[87]](#footnote-87) By contrast, the UK’s legal position was to appeal to an emerging legal right of humanitarian intervention.[[88]](#footnote-88)

There was certainly pushback against these actions, numerous non-European and peripheral states – including Syria itself – denounced the actions as illegal and a violation of the UN Charter. This was the same tack taken by Jeremy Corbyn, who in a debate on the 2018 airstrikes (which occurred *after* the strikes had taken place) argued that the case for the strikes was ‘legally questionable’.[[89]](#footnote-89) It is telling, however, that this could not be framed in a particularly robust way, with much of the parliamentary debate then turning to the technicalities of whether and how a doctrine of ‘humanitarian intervention’ might apply. In such a circumstance the ‘illegal war’ motif was not really able to gain any wider mobilising power, and instead simply channelled other forms of political contestation into legal debates.

Whilst a *war* with Iran never happened, in January 2020, the US killed General Qasem Soleimani in a targeted drone strike. The day after the strike, US President Donald Trump Tweeted that ‘General Qassem Soleimani has killed or badly wounded thousands of Americans over an extended period of time, and was plotting to kill many more’.[[90]](#footnote-90) Trump’s impromptu legal justification was clearly invoking the rhetoric of the War on Terror, and this was matched – in a more measured tone – by Mike Pompeo, then US Secretary of State, who stated the US ‘had specific information on an imminent threat, and those threats from him included attacks on U.S. embassies’.[[91]](#footnote-91)

In this way, the normal argumentative patterns of the War on Terror fell into place, with the UK government reaffirming that states ‘have a right to take action such as this in self-defence and the US have been clear that Soleimani was plotting imminent attacks on American diplomats and military personnel’.[[92]](#footnote-92) By contrast, ‘Labour leader Jeremy Corbyn said the attack on Soleimani – which he branded an “assassination” – was almost certainly illegal’.[[93]](#footnote-93) Thus Corbyn’s opposition to the war was effectively channelled into once again reaffirming the centrality of the UN and international institutions, without a wider challenge to US imperialism.

*The fortunes of the anti-war movement*

Upon this brief survey, then, the use of the ‘illegal war’ motif was never able to achieve the mobilising power that it did in respect of the 2003 invasion of Iraq. In 2003, a specific conjunctural balance of inter-imperialist rivalries created a legal situation in which pursuing military intervention was able to be cast as opposition to the legal order *tout court*. Combined with the rhetorical legal nihilism of the Bush administration, this conjuncture was able to grant the ‘illegal war’ motif great power.

However, such a conjuncture did not obtain in the decades following the 2003 invasion. New alignments of inter-imperialist rivalry, and a more cautious legalism on the part of the Obama administration shifted the character of legal arguments. Military interventions were either justified through the language of self-defence or Security Council resolutions that could be plausibly construed to authorise force. Here, it became much more difficult to mount a public claim that a particular intervention was definitively illegal, let alone against the entire legal order. As such, hewing to the ‘illegal war’ motif has not had an explosive mobilising power, but rather has channelled political debates into issues of legal interpretation.

Absent this lack of mobilising power, the particular features of the ‘illegal war’ motif made themselves strongly felt. Insofar as states presented their claims as self-defence, international law’s viewpoint of the reasonable bourgeois state made it almost impossible to articulate a consistent anti-war politics. International law will always, as a *prima facie* matter, allow that a state might have the right to self-defence. The ‘illegal war’ motif could not be deployed to criticise the War on Terror *as a whole*, since it was premised on the ‘reasonable’ assumption that states have a right to defend themselves from terrorism. At the same time, the ‘illegal war’ motif’s appeal to the transcendental importance of international law and institutions made it very difficult to argue against those interventions – particularly in Libya and Syria – which, whilst perhaps legally ambiguous, could plausibly be presented as protecting the international legal order.

The price of the motif was not simply the legitimation of international legal institutions. In viewing the interventions since 2003 through its prism, the underlying dynamics driving those interventions were left unexamined. This most obvious manifestation in this has been the differential treatment of the Bush, Obama and Trump administrations. When Obama first won his election, his foreign policy – accompanied as it was by a rhetoric of legalism – was treated as a break with that of Bush within the wider conventional media. This was despite the fact that in practice much of the policy and even the concrete legal arguments put forward by the Obama administration were nearly identical. Under Trump, where there was something of a return to ‘unilateralism’, the use of the ‘illegal war’ motif meant not simply that a radical break was emphasised between Trump and Obama, but even between Trump and *Bush*.

What this has also meant is that the Biden Administration has been hailed as a much return to multilateralism.[[94]](#footnote-94) Yet here one should be careful, in the same speech that Biden announced US withdrawal from Afghanistan, he continued the War on Terror rhetoric of the preceding administrations, stating ‘[w]e have to track and disrupt terrorist networks and operations that spread far beyond Afghanistan since 9/11’. Biden went on to argue that it will be necessary to ‘shore up American competitiveness to meet the stiff competition we’re facing from an increasingly assertive China’.[[95]](#footnote-95) Even insofar as Biden has made a ‘multilateral turn’, therefore, he remains preoccupied with those issues of his predecessors.

Yet the illegal war motif is unable to capture this. A focus on ‘unilateralism’ and ‘lawlessness’ cannot account the fundamental unity of US foreign policy since 2003 – in which it has sought to secure the conditions for the continued accumulation of US capital in the face of challenges from imperial rivals and upheavals in the global periphery.[[96]](#footnote-96)Accordingly, each ‘return’ to normality becomes more difficult to understand and oppose.

**Conclusion: Strategy and Tactics?**

Iraq and its legacy leave us with something of a paradox. On the one hand, the ‘illegal war’ motif mobilised millions of people in a ‘brilliant defeat’. On the other, the limitations of that ‘brilliant defeat’ were clear at the time of the Iraq war, and became even more apparent in the years following. In the long run, the ‘illegal war’ motif left the anti-war movement less able to challenge militarism and channelled its politics away from a systematic examination of global capitalism.

In part, therefore, the usage of the ‘illegal war’ motif represents the tension between a transformative, structural political agenda and the seemingly ‘pragmatic’ manoeuvres taken to secure specific short-term objectives. In other words, the ‘illegal war’ motif touches upon the issue of the relationship between ‘strategy’ and ‘tactics’.[[97]](#footnote-97) For those who aim to radically transform the world, there will always be a tension: winning battles within the *status quo* necessarily involves using the institutions of the *status quo*. At the same time, the ‘“long term” is ultimately made up from an accumulation of short-term moments’.[[98]](#footnote-98) This means that longer-term structural objectives cannot simply be left ‘for later’, as this will mean they are never actualised; strategic objectives must inform one’s tactical engagements.

This, of course, cannot mean that international law has *no part* in the anti-war movement. However, such engagements with international law must attempt to undercut the logic of legal argument. Elsewhere, I have argued that in order to do this, we must adopt a position of ‘principled opportunism’, whereby legal arguments and objectives are not pursued on their own terms, but rather as part and parcel of a wider strategic project.[[99]](#footnote-99) This opportunism is *principled* because it recognises that ‘law should never be invoked as an independent consideration: an intervention should never be conducted directly in the name of legality’.[[100]](#footnote-100)

In this sense, the very strengths of the ‘illegal war’ motif during the Iraq war were ultimately its fatal weaknesses. In rooting the claims the wrongness of the war in its depoliticised illegality, the motif *necessarily* involved a wider legitimation of the international order. Such an embrace could never break with the limits and pitfalls of legal argument.

1. ‘Monbiot Fails to “arrest” Bolton’ (28 May 2008) <http://news.bbc.co.uk/1/hi/wales/7424785.stm> accessed 28 February 2020. [↑](#footnote-ref-1)
2. ‘Iraq, The Last Pre-War Polls’ (*Ipsos MORI*, 21 March 2003) <https://www.ipsos.com/ipsos-mori/en-uk/iraq-last-pre-war-polls> accessed 31 October 2019. [↑](#footnote-ref-2)
3. ‘The Public Whip — Iraq — Declaration of War - 18 Mar 2003 at 22:00’ <https://www.publicwhip.org.uk/division.php?date=2003-03-18&number=118&display=allpossible> accessed 28 February 2020. [↑](#footnote-ref-3)
4. ‘Monbiot Fails to “arrest” Bolton’ (n 1). [↑](#footnote-ref-4)
5. Harold Hongju Koh, ‘Is Trump’s Assault on International Law Working?’ (*OUP Blog*, 11 March 2019) <https://blog.oup.com/2019/03/trumps-international-law/> accessed 15 June 2021; Harold Hongju Koh, *The Trump Administration and International Law* (Oxford University Press 2018). [↑](#footnote-ref-5)
6. James Politi and Katrina Manson, ‘Biden Signals Return to Normality on First Day as President’ *Financial Times* (21 January 2021) <https://www.ft.com/content/833a4477-c23a-4c8f-93a4-e6c218097222> accessed 15 June 2021. [↑](#footnote-ref-6)
7. David Kennedy, *Of War and Law* (Princeton University Press 2006) 48. [↑](#footnote-ref-7)
8. ibid 64–65. [↑](#footnote-ref-8)
9. Mats R Berdal, ‘The Security Council, Peacekeeping and Internal Conflict after the Cold War Symposium: The United Nations, Regional Organizations, and Military Operations’ (1996) 7 Duke Journal of Comparative & International Law 71, 72–74. [↑](#footnote-ref-9)
10. Chris af Jochnick and Roger Normand, ‘The Legitimation of Violence: A Critical Analysis of the Gulf War’ (1994) 35 Harvard International Law Journal 387, 393. [↑](#footnote-ref-10)
11. ibid 395. [↑](#footnote-ref-11)
12. Both the *ICLQ* (Volume 49, Issue 4, October 2000)and *AJIL* (Volume 93, Issue 4, October 1999) devoted extensive special issues to the question (the former also being formal submissions to a House of Commons inquiry). [↑](#footnote-ref-12)
13. Kennedy (n 7) 40. [↑](#footnote-ref-13)
14. Madelaine Chiam, ‘International Law in Australian Public Debate 2003, 1965, 1916’ (The University of Melbourne 2017) 37 <https://minerva-access.unimelb.edu.au/handle/11343/128080>. [↑](#footnote-ref-14)
15. Charlotte Peevers, *The Politics of Justifying Force: The Suez Crisis, the Iraq War, and International Law* (Oxford University Press 2013) 144. [↑](#footnote-ref-15)
16. Abraham D Sofaer, ‘On the Necessity of Pre‐emption’ (2003) 14 European Journal of International Law 209. [↑](#footnote-ref-16)
17. Fernando R Tesón, ‘Ending Tyranny in Iraq’ (2005) 19 Ethics & International Affairs 1. [↑](#footnote-ref-17)
18. Marc Weller, *Iraq and the Use of Force in International Law* (Oxford University Press 2010) 132–189. [↑](#footnote-ref-18)
19. 17 March 2003, c708 [↑](#footnote-ref-19)
20. 17 March 2003, c712 [↑](#footnote-ref-20)
21. 17 March 2003, c820-821 [↑](#footnote-ref-21)
22. 17 March 2003, c780-785 [↑](#footnote-ref-22)
23. Robin Cook, ‘Why I Had to Leave the Cabinet’ *The Guardian* (18 March 2003) <https://www.theguardian.com/politics/2003/mar/18/foreignpolicy.labour1> accessed 20 October 2019. [↑](#footnote-ref-23)
24. Perry Anderson, ‘Casuistries of Peace and War’ *London Review of Books* (6 March 2003) 12; Charles Grant, ‘Powerless Europe’ <https://www.prospectmagazine.co.uk/magazine/powerlesseurope> accessed 20 October 2019; Jim Hoagl, ‘The Danger of Bush’s Unilateralism’ *Washington Post* (29 July 2001) <https://www.washingtonpost.com/archive/opinions/2001/07/29/the-danger-of-bushs-unilateralism/2013ac1d-6b8b-470b-a65d-3f934574f7b0/> accessed 20 October 2019; Simon Tisdall, ‘Don’t Count on the UN to Save Us from Going to War’ *The Guardian* (20 January 2003) <https://www.theguardian.com/world/2003/jan/20/iraq.foreignpolicy> accessed 20 October 2019; Sir John Weston, ‘A Question of UN Authority’ *The Guardian* (5 March 2003) <https://www.theguardian.com/world/2003/mar/05/iraq.politics1> accessed 20 October 2019. [↑](#footnote-ref-24)
25. Philippe Sands, *Lawless World* (Allen Lane 2005). [↑](#footnote-ref-25)
26. Peevers (n 15) 164. [↑](#footnote-ref-26)
27. ibid 175–178. [↑](#footnote-ref-27)
28. https://www.politicshome.com/news/uk/political-parties/labour-party/tony-blair/news/77030/jeremy-corbyn-apologises-iraq-war [↑](#footnote-ref-28)
29. Chiam (n 14) 38. [↑](#footnote-ref-29)
30. ‘UK’s “Biggest Peace Rally”’ (*the Guardian*, 15 February 2003) <http://www.theguardian.com/uk/2003/feb/15/politics.politicalnews> accessed 26 June 2021. [↑](#footnote-ref-30)
31. Stefaan Walgrave and Joris Verhulst, ‘Government Stance and Internal Diversity of Protest: A Comparative Study of Protest against the War in Iraq in Eight Countries’ (2009) 87 Social Forces 1355, 1367. [↑](#footnote-ref-31)
32. ibid 1369. [↑](#footnote-ref-32)
33. As Loughlin put it, liberalism claims to enclose politics ‘within the straitjacket of law’ (Martin Loughlin, *Sword and Scales: An Examination of the Relationship between Law and Politics* (Bloomsbury Publishing 2000) 5.). [↑](#footnote-ref-33)
34. China Miéville, ‘Multilateralism as Terror: International Law, Haiti and Imperialism’ (2008) 19 Finnish Yearbook of International Law 63, 65. [↑](#footnote-ref-34)
35. Robert Knox, ‘Civilizing Interventions? Race, War and International Law’ (2013) 26 Cambridge Review of International Affairs 111, 120. [↑](#footnote-ref-35)
36. https://georgewbush-whitehouse.archives.gov/nsc/nss/2002/nss3.html [↑](#footnote-ref-36)
37. Helen Duffy, *The War on Terror’ and the Framework of International Law* (2 edition, Cambridge University Press 2015). [↑](#footnote-ref-37)
38. Miéville (n 34) 65. [↑](#footnote-ref-38)
39. https://www.theguardian.com/politics/2003/mar/07/highereducation.iraq [↑](#footnote-ref-39)
40. ‘Wilmshurst Resignation Letter’ (24 March 2005) <http://news.bbc.co.uk/1/hi/uk\_politics/4377605.stm> accessed 20 October 2019. [↑](#footnote-ref-40)
41. Evgeny Bronislavovich Pashukanis, ‘Lenin and Problems of Law’ in Piers Beirne and Robert Sharlet (eds), *Pashukanis, Selected Writings on Marxism and Law* (Academic Press 1980) 144. [↑](#footnote-ref-41)
42. China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill 2005); Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press 2005); Robert Knox, ‘Valuing Race? Stretched Marxism and the Logic of Imperialism’ (2016) 4 London Review of International Law 81. [↑](#footnote-ref-42)
43. Kerry Rittich, ‘Occupied Iraq: Imperial Convergences?’ (2018) 31 Leiden Journal of International Law 479; Ntina Tzouvala, ‘Food for the Global Market: The Neoliberal Reconstruction of Agriculture in Occupied Iraq (2003–2004) and the Role of International Law’ (2017) 17 Global Jurist. [↑](#footnote-ref-43)
44. Matthew Craven and others, ‘We Are Teachers of International Law’ (2004) 17 Leiden journal of international law 363, 365. [↑](#footnote-ref-44)
45. Polly Toynbee, ‘If the UN Backs War, so Will We’ *The Guardian* (12 February 2003) <https://www.theguardian.com/world/2003/feb/12/iraq.foreignpolicy1> accessed 20 October 2019. [↑](#footnote-ref-45)
46. Knox, ‘Civilizing Interventions?’ (n 35). [↑](#footnote-ref-46)
47. Robert Knox, ‘Race, Racialisation and Rivalry in the International Legal Order’ in Alexander Anievas, Nivi Manchanda and Robbie Shilliam (eds), *Race and Racism in International Relations: Confronting the Global Colour Line* (Routledge 2014). [↑](#footnote-ref-47)
48. Robert Knox, ‘Marxism, International Law, and Political Strategy’ (2009) 22 Leiden Journal of International Law 413, 431. [↑](#footnote-ref-48)
49. Tor Krever, ‘International Criminal Law: An Ideology Critique’ (2013) 26 Leiden Journal of International Law 701, 721. [↑](#footnote-ref-49)
50. Susan Marks, ‘False Contingency’ (2009) 62 Current Legal Problems 1. [↑](#footnote-ref-50)
51. ibid 10. [↑](#footnote-ref-51)
52. Susan Marks, ‘International Judicial Activism and the Commodity-Form Theory of International Law’ (2007) 18 European Journal of International Law 199, 207. [↑](#footnote-ref-52)
53. Craven and others (n 44) 368. [↑](#footnote-ref-53)
54. Carl Schmitt, *The Concept of the Political* (University of Chicago Press 1996) 79. [↑](#footnote-ref-54)
55. Christine Gray, *International Law and the Use of Force* (Oxford University Press 2018) 341–361. [↑](#footnote-ref-55)
56. Michael Ignatieff, ‘THE AMERICAN EMPIRE; The Burden’ *The New York Times* (5 January 2003) <https://www.nytimes.com/2003/01/05/magazine/the-american-empire-the-burden.html> accessed 29 October 2019; John B Judis, *Folly of Empire, The: What George W Bush Could Learn from Theodore Roosevelt and Woodrow Wilson* (First Printing edition, James Bennett Pty Ltd 2004); Sebastian Mallaby, ‘The Reluctant Imperialist: Terrorism, Failed States, and the Case for American Empire’ (2002) 81 Foreign Affairs 2. [↑](#footnote-ref-56)
57. See Akbar Rasulov, ‘Writing About Empire: Remarks on the Logic of a Discourse’ (2010) 23 Leiden Journal of International Law 449. for a thorough dissection of this logic. [↑](#footnote-ref-57)
58. Lynn H Miller, ‘The Idea and the Reality of Collective Security’ (1999) 5 Global Governance 303, 310. [↑](#footnote-ref-58)
59. Miéville (n 34) 91. [↑](#footnote-ref-59)
60. *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion*,* ICJ Reports(1996)226 [↑](#footnote-ref-60)
61. Ibid 262 [↑](#footnote-ref-61)
62. Ibid 266 [↑](#footnote-ref-62)
63. Ibid 263 [↑](#footnote-ref-63)
64. Jochnick and Normand (n 10). [↑](#footnote-ref-64)
65. Peter Mandelson, ‘The Unstarted Revolution’ in Dennis Kavanagh (ed), *Philip Gould: An Unfinished Life* (Palgrave Macmillan UK 2012) 69 <https://doi.org/10.1007/978-1-137-29160-8\_5> accessed 28 October 2019. [↑](#footnote-ref-65)
66. ‘Is It Legal for the U.S. to Kill a 16-Year-Old U.S. Citizen with a Drone?’ (*Amnesty International USA*, 20 July 2012) <https://www.amnestyusa.org/is-it-legal-for-the-u-s-to-kill-a-16-year-old-u-s-citizen-with-a-drone/> accessed 29 October 2019. Ntina Tzouvala, ‘TWAIL and the “Unwilling or Unable” Doctrine: Continuities and Ruptures’ (2015) 109 AJIL Unbound 266. [↑](#footnote-ref-66)
67. Mark Curtis, ‘Britain Needs a Full Public Inquiry into Libya War’ (*Middle East Eye*) <https://www.middleeasteye.net/opinion/britain-needs-full-public-inquiry-libya-war> accessed 28 October 2019. [↑](#footnote-ref-67)
68. Marjorie Cohn, ‘Obama Declares Perpetual War’ (*Truthout*) <https://truthout.org/articles/obama-declares-perpetual-war/> accessed 28 October 2019. [↑](#footnote-ref-68)
69. ‘Yet Another Illegal War in the Middle East as US Directs Saudi Attack on Yemen’ <http://www.stopwar.org.uk/index.php/afghanistan-and-pakistan/972-are-war-and-occupation-the-only-safeguard-for-womens-rights-in-afghanistan> accessed 28 October 2019. [↑](#footnote-ref-69)
70. Antony Anghie, ‘The War on Terror and Iraq in Historical Perspective’ (2005) 43 Osgoode Hall Law Journal 45. [↑](#footnote-ref-70)
71. Resolutions 1368 and 1373. [↑](#footnote-ref-71)
72. These issues have given rise to a veritable cottage industry of legal scholarship on precisely such small distinctions, for a representative sample see: Michael Byers, ‘Terrorism, the Use of Force and International Law after 11 September’ (2002) 51 The International and Comparative Law Quarterly 401; Jonathan I Charney, ‘The Use of Force against Terrorism and International Law’ (2001) 95 The American Journal of International Law 835; Thomas M Franck, ‘Terrorism and the Right of Self-Defense’ (2001) 95 The American Journal of International Law 839; James Thuo Gathii, ‘Assessing Claims of a New Doctrine of Pre-Emptive War under the Doctrine of Sources’ (2005) 43 Osgoode Hall Law Journal 67; Sean D Murphy, ‘Terrorism and the Concept of Armed Attack in Article 51 of the U.N. Charter’ (2002) 43 Harvard International Law Journal 41; Kimberley N Trapp, ‘Back to Basics: Necessity, Proportionality, and the Right of Self-Defence Against Non-State Terrorist Actors’ (2007) 56 International & Comparative Law Quarterly 141; Kimberley N Trapp, *State Responsibility for International Terrorism* (Oxford University Press 2011). [↑](#footnote-ref-72)
73. Harold Koh, ‘The Obama Administration and International Law’ (*U.S. Department of State*, 25 March 2010) <//2009-2017.state.gov/s/l/releases/remarks/139119.htm> accessed 29 October 2019; John O Brennan, ‘Strengthening Our Security by Adhering to Our Values and Laws’ (*whitehouse.gov*, 16 September 2011) <https://obamawhitehouse.archives.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an> accessed 29 October 2019; Jeh Johnson, ‘Speech at Yale Law School’ (*Lawfare*, 22 February 2012) <https://www.lawfareblog.com/jeh-johnson-speech-yale-law-school> accessed 29 October 2019. [↑](#footnote-ref-73)
74. Ed Pilkington, ‘Life as a Drone Operator: “Ever Step on Ants and Never Give It Another Thought?”’ *The Guardian* (19 November 2015) <https://www.theguardian.com/world/2015/nov/18/life-as-a-drone-pilot-creech-air-force-base-nevada> accessed 9 October 2019. [↑](#footnote-ref-74)
75. Greg Miller, ‘Plan for Hunting Terrorists Signals U.S. Intends to Keep Adding Names to Kill Lists’ *Washington Post* (23 October 2012) <https://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408fbe6a4b\_story.html> accessed 9 October 2019. [↑](#footnote-ref-75)
76. Gilbert Achcar, *Morbid Symptoms: Relapse in the Arab Uprising* (Saqi Books 2016); Vijay Prashad, *Arab Spring, Libyan Winter* (AK Press 2012). [↑](#footnote-ref-76)
77. Mark Landler, ‘Clinton Calls for “Orderly Transition” in Egypt’ *The New York Times* (30 January 2011) <https://www.nytimes.com/2011/01/31/world/middleeast/31diplo.html> accessed 29 October 2019. [↑](#footnote-ref-77)
78. See Katherine Fallah and Ntina Tzouvala, ‘Deploying Race, Employing Force: “African Mercenaries” and the 2011 NATO Intervention in Libya’ (2021) 67 UCLA Law Review 1580. [↑](#footnote-ref-78)
79. Ian Traynor Richard Norton-Taylor, ‘Libya: “mission Creep” Claims as UK Sends in Military Advisers’ *The Guardian* (19 April 2011) <https://www.theguardian.com/world/2011/apr/19/libya-mission-creep-uk-advisers> accessed 29 October 2019. [↑](#footnote-ref-79)
80. H Akın Ünver, ‘Contested Geographies: How ISIS and YPG Rule “No-Go” Areas in Northern Syria’ in Özden Zeynep Oktav, Emel Parlar Dal and Ali Murat Kurşun (eds), *Violent Non-state Actors and the Syrian Civil War: The ISIS and YPG Cases* (Springer International Publishing 2018). [↑](#footnote-ref-80)
81. Roy Allison, ‘Russia and Syria: Explaining Alignment with a Regime in Crisis’ (2013) 89 International Affairs 795. [↑](#footnote-ref-81)
82. 2 December 2015, c343 [↑](#footnote-ref-82)
83. 2 December 2015, c339 [↑](#footnote-ref-83)
84. Koh, *The Trump Administration and International Law* (n 5); Stefan Talmon, ‘The United States under President Trump: Gravedigger of International Law’ (2019) 18 Chinese Journal of International Law 645. [↑](#footnote-ref-84)
85. Anne Applebaum, ‘Trump Hates the International Organizations That Are the Basis of U.S. Wealth, Prosperity and Military Power’ *Washington Post* (2 July 2018) <https://www.washingtonpost.com/news/global-opinions/wp/2018/07/02/trump-hates-the-international-organizations-that-are-the-basis-of-u-s-wealth-prosperity-and-military-power/> accessed 28 February 2020; Keith Johnson, ‘How Trump May Finally Kill the WTO’ *Foreign Policy* (9 December 2019) <https://foreignpolicy.com/2019/12/09/trump-may-kill-wto-finally-appellate-body-world-trade-organization/> accessed 1 March 2020; Ashley Parker, ‘Going It Alone: Trump Increasingly Relies on Unilateral Action to Wield Power’ *The Washington Post* (11 June 2018) <https://www.washingtonpost.com/politics/going-it-alone-trump-increasingly-relies-on-unilateral-action-to-wield-power/2018/06/11/6124866a-6a80-11e8-bbc5-dc9f3634fa0a\_story.html> accessed 1 March 2020; Philip Stephens, ‘Trump’s Angry Unilateralism Is a Cry of Pain’ (9 May 2019) <https://www.ft.com/content/7b9da60a-70b7-11e9-bf5c-6eeb837566c5> accessed 1 March 2020. [↑](#footnote-ref-85)
86. Gray (n 56) 4–6. [↑](#footnote-ref-86)
87. ‘Joined by Allies, President Trump Takes Action to End Syria’s Chemical Weapons Attacks’ (*The White House*, 14 April 2018) <https://www.whitehouse.gov/articles/joined-allies-president-trump-takes-action-end-syrias-chemical-weapons-attacks/> accessed 1 March 2020. [↑](#footnote-ref-87)
88. ‘Syria Action – UK Government Legal Position’ <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position> accessed 1 March 2020. [↑](#footnote-ref-88)
89. ‘Jeremy Corbyn Calls Syria Airstrikes Legally Questionable’ *The Guardian* (14 April 2018) <https://www.theguardian.com/politics/2018/apr/14/jeremy-corbyn-calls-syria-airstrikes-legally-questionable> accessed 1 March 2020. [↑](#footnote-ref-89)
90. https://twitter.com/realDonaldTrump/status/1213096351296299017 [↑](#footnote-ref-90)
91. ‘Pompeo Reasserts Soleimani Threat Was “Imminent”’ (*MSN*) <https://www.msn.com/en-us/tv/news/pompeo-reasserts-soleimani-threat-was-imminent/vp-BBYQ7nW> accessed 3 June 2020. [↑](#footnote-ref-91)
92. ‘Boris Johnson Warns Trump after Threat to Bomb Iran’s 52 Cultural Sites’ (*The Independent*, 6 January 2020) <https://www.independent.co.uk/news/uk/politics/iran-war-trump-boris-johnson-cultural-sites-soleimani-iraq-a9272076.html> accessed 3 June 2020. [↑](#footnote-ref-92)
93. ‘Boris Johnson Gives Strongest Backing yet to Trump over Killing of Iran Military Chief’ (*The Independent*, 8 January 2020) <https://www.independent.co.uk/news/uk/politics/iran-crisis-boris-johnson-trump-soleimani-corbyn-commons-quds-a9275336.html> accessed 3 June 2020. [↑](#footnote-ref-93)
94. Jose E Alvarez, ‘Biden’s International Law Restoration’ (2021) 53 New York Journal of International Law and Politics 523. ‘The Biden Administration and the Future of Multilateralism’ (*Council on Foreign Relations*) <https://www.cfr.org/blog/biden-administration-and-future-multilateralism> accessed 15 June 2021. [↑](#footnote-ref-94)
95. ‘Remarks by President Biden on the Way Forward in Afghanistan’ (*The White House*, 14 April 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/> accessed 16 June 2021. [↑](#footnote-ref-95)
96. Knox, ‘Race, Racialisation and Rivalry in the International Legal Order’ (n 47). [↑](#footnote-ref-96)
97. Robert Knox, ‘Strategy and Tactics’ (2010) 21 Finnish Yearbook of International Law 193. [↑](#footnote-ref-97)
98. Robert Knox, ‘What Is to Be Done (With Critical Legal Theory)?’ (2011) 22 Finnish Yearbook of International Law 31, 46. [↑](#footnote-ref-98)
99. Knox, ‘Strategy and Tactics’ (n 97) 227. [↑](#footnote-ref-99)
100. ibid 222. [↑](#footnote-ref-100)