

The Security Council and the Legitimacy of the Use of Force: Legal, Normative, and Social Aspects

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Abstract

As it is well-known, the Security Council bears the primary responsibility for the maintenance of international peace and security. According to the Charter of the United Nations, the Security Council determines the existence of any threat to the peace, breach of peace, or act of aggression and it decides what measures, involving the use of armed force, are to be employed to restore peace and security. This paper aims to explore the concept of legitimacy applied to the use of force in international relations and its evolution throughout the past two decades. In order to achieve this goal, the paper will first consider a complex definition of legitimate use of force focusing on its legal, normative and social dimensions. Second, the paper will analyse how these three dimensions are represented in the debates of the Security Council on the war in Iraq, one of the most controversial and debate-generating uses of force in recent years. This analysis will allow us to draw some conclusions on the changing foundations of legitimacy with regard to the use of force, as well as the dominant tensions surrounding it.

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1. Introduction

As is widely known, the United Nations Security Council (UNSC) holds responsibility for maintaining international peace and security. As defined by the United Nations Charter, the Security Council will decide on the existence of a threat to peace, a breach of peace or an act of aggression, and it will decide on the measures that need to be taken to restore international peace and security, including the use of force.

The objective of this paper is to explore the legitimacy of the use of force. The following pages defend a complex conception of legitimacy which allows us to understand the full meaning of legitimate use of force. In order to achieve the objective set out, this paper starts out from the conception of legitimacy formulated by David Beetham. According to this conception, legitimacy is a multidimensional concept comprising legal, normative and social aspects. This multidimensional concept considers the use of force to be legitimate when it is in line with that which is laid down in the UN Charter, which is to say, that it be used to maintain international peace and security and that it have UNSC authorisation.

To achieve the aforementioned objective, this paper sets out to analyse the arguments for and against the use of force from a series of UNSC debates which took place with reference to the Iraq War in 2003, one of the most controversial cases the UNSC has had to deal with and that which has generated most debate over recent years. A starting premise is the important connection between debate and legitimacy. As Andrew Hurrell has pointed out, “Legitimacy is about providing persuasive reasons as to why a course of action, a rule, or a political order is right and appropriate.”¹ In this paper, and for this purpose, debate is conceived of as a social process, that’s to say, not only does it reflect certain facts and events but that the action of debating itself brings with it an interpretation and a construction of these facts and events, of social relations and of the subjects which participate in them.²

Unlike resolutions, which are documents of consensus resulting from, in large part, the use of ambiguous language, the transcripts of the debates give us access to the dialectical exchanges between the members of the body considered as the legitimate authority to authorise the use of force. In specific terms, this paper is based on an analysis of the interventions of the five permanent members in five UNSC debates. Three of these took place prior to military operations (S/PV. 4701, 5 February 2003; S/PV. 4714, 7 March 2003; and S/PV. 4721, 19 March 2003), one during the

1 Hurrell, A. (2005) “Legitimacy and the use of force: can the circle be squared?”, *Review of International Studies*, 31, p. 24.

2 Martín Rojo, L., Pardo M. L., and Whittaker, R. (1998) “El análisis crítico del discurso: una mirada indisciplinada”, in Martín Rojo, L. and Whittaker, R.(eds.), *Poder-Decir o el poder de los discursos*, Madrid: Arrecife; Ediciones de la Universidad Autónoma de Madrid, p. 12.

operation (S/PV. 4726, 26 March 2003) and another after the formal declaration of the cessation of operations (S/PV. 4791, 22 July 2003). In establishing the start of military operations as the key moment, these debates were selected due to the intensity and vehemence they demonstrated.

The analysis of the arguments used by the proponents and opponents of the use of force in the case of Iraq leads to two final points. Firstly, the relevance of a multidimensional conception to capture the complexity of the legitimate use of force in international relations. The study of the UNSC debates shows how its members appeal to legal, normative and social arguments to support the legitimacy of their positions, be they in favour or against the use of force in Iraq. Secondly, applying Neta Crawford's conception of social change through discourse, we observe that it is possible to verify the challenge to, and the attempt to reformulate the basis of, the legitimate use of force on the part of the leaders of the coalition. According to Crawford, social change is a process that is articulated through a series of phases in discourse, the aim of which is to alter predominant ideas so as to reconstruct them and to then promote political and institutional change in line with these newly established ideas. The first phase is denormalisation, that's to say, the calling into question of dominant practices which are considered to be normal and correct. The second phase is delegitimation, in which arguments are used to alter perceptions of legitimacy associated with a certain practice with the aim of demonstrating that there is no connection between behaviour and the existing normative beliefs. The third phase deconstructs the existing discourse, thus allowing for the appearance and expression of new beliefs and arguments. Following this phase, a phase of reconstruction begins, which is based on creating the sensation that it is possible to adapt behaviour in line with new guidelines. Additionally, it is necessary to ensure that the interests of actors are reformulated in accordance with this new discourse. The final phase, institutionalisation, takes place when the new arguments have persuaded a sufficient number of people in order that the previously predominant practice now be considered alien, strange and illegitimate. Thus, by means of a new consensus, new normative standards are incorporated into the practices of international actors.³

This paper is structured in three parts. The first section analyses the multidimensional concept of legitimacy and its application to the use of force. The second part studies the way in which the three dimensions of the use of force appear in the discourse of the proponents and opponents of the use of force against Iraq in 2003. And finally, the third part examines the implications of the case study for the conception of the legitimate use of force and analyses the effects of social change on the norms that regulate the use of force.

³ Crawford, N. (2002) *Argument and Change in World Politics. Ethics, Decolonization, and Humanitarian Intervention*, Cambridge: Cambridge University Press.

2. Legitimacy of the use of force: a multidimensional approach

The approach to the legitimacy of the use of force set out in this paper takes as its base the model developed by David Beetham in his work *The Legitimation of Power*, in which he conceives legitimacy not as a quality that can be assigned but rather as a complex equilibrium between various components.⁴ David Beetham distances himself from the Weberian conception of legitimacy, which has had an immense influence ever since its formulation.⁵ Specifically, Beetham disputes the subjective-psychological element of the belief in legitimacy. In effect, Beetham emphasises the great confusion that derives from the acceptance of this interpretation within the social sciences, and he explains that the problem with the Weberian definition is twofold. Firstly, it distorts the relation between beliefs and legitimacy. Beetham argues that a power relationship is assumed as legitimate not simply because the parties subjected to it believe it to be so, rather because it is consistent with their belief system, which is to say that it can be justified in terms of their beliefs, values or normative expectations. What is important for the analysis of legitimacy is the existence or otherwise of discrepancies between rules and the values or beliefs that underlie them.⁶ Andrew Hurrell argues along similar lines in stating that “legitimacy is not simply what people tend to accept in the sociological sense; it is what people accept because of some normative understanding or process of persuasion. Justifying and reason-giving are fundamental.”⁷ Secondly, the Weberian definition of legitimacy does not take into account aspects that are unrelated to beliefs, such as the fact that power is exercised in accordance with legality, or that the consent of those affected by the exercise of power is expressed through different actions.

With the aim of getting beyond the Weberian conception of legitimacy, Beetham sets out a complex concept that seeks to respond to theoretical concerns arising from different disciplines.

4 Academic interest in legitimacy as a fundamental concept within International Relations theory is widespread, especially amongst constructivist authors. However, the concept has not generally been analysed in real depth. An honourable exception to this rule is the exhaustive study carried out by Ian Clark in his book *Legitimacy in International Society*, in which he posits that international legitimacy can not be reduced to any institution, norm or set of values, as it represents “a highly volatile balance between different elements that aim to capture it.” See *Legitimacy in International Society*, Oxford University Press, 2005, p. 159.

5 Weber distinguishes between power understood as “the probability of *imposing* one’s will” and domination as “the probability of *obedience* within a certain group for specific commands.” The key to creating this obedience resides in those who are dominated recognising the authority of those who dominate them. That is, the dominated must *believe* in the legitimacy of the dominant. Consequently, the nature of the reasons which lead to the obeying of a command will determine the type of legitimate domination generated. Weber thus presents three ideal types of legitimate domination: legitimate rational domination, based in legality as the principal source of legitimacy; legitimate traditional domination, in which tradition grants authority to those who have always exercised it; and legitimate charismatic domination, which rests on certain personal attributes of those who exercise domination. See Weber, M. (1944) *Economía y sociedad*. Fondo de Cultura Económica. (First pub. in German, 1922), p. 43.

6 Beetham, D. (1991) *The Legitimation of Power*, London: Macmillan, p. 12.

7 Hurrell, A. (2005) “Legitimacy and the use of force: can the circle be squared?”, *Review of International Studies*, 31, special issue, p. 16.

From law, legitimacy has been conceived as the equivalent of legality. From philosophy, legitimacy has been understood as the justifiability of rules in accordance with moral norms. Finally, for the social sciences, legitimacy has been interpreted following the Weberian model, that is as the belief in the appropriateness of the political system on the part of the relevant social actors. According to Beetham's analysis, legitimacy is not a quality that political systems either possess or lack, rather it is a set of criteria or dimensions that provide the basis for the conformity or cooperation of subjects within the power relation.⁸ It should be noted that these are general criteria which configure an approach to the study of legitimacy in different places and times. Needless to say, the analysis of multidimensional legitimacy must be carried out in accordance with the specific context of each case and it will thus be variable over time.⁹

The first dimension or criterion of legitimacy that Beetham studies is *conformity with the rules*, or legal validity. A source of authority will thus be legitimate when it adjusts its behaviour to the established rules. The existence of rules, be they codified or customary laws, is a fundamental social element, as it allows actors to create expectations about the behaviour of others. It is interesting to note that the more a law is appealed to as a source of legitimacy, the more necessary it becomes that this law be complied with in order for this legitimacy to be maintained. As Beetham sees it, this dimension alone is not enough to explain why a source of authority is legitimate. The criterion of legality cannot be sufficient in itself, as the fact that a certain set of rules and not others are used as the basis for the legitimate exercise of power resides in their normative content, which Beetham examines in his second dimension.

In his second dimension Beetham understands legitimacy as the *justifiability of the rules*, that is, rules must refer to a common scheme of beliefs or norms. Such justifiability can come from: a) the authority of the source from which the rules derive, this being either external to the society in which it exists – such as divine will, natural law or scientific doctrines – or internal, such as tradition or popular will; or b) the content of the rules is justified either by the principle of differentiation of capabilities between super- and subordinates or by appeal to the common interest shared by these two groups.¹⁰

In the third dimension, legitimacy is expressed through *consent*. What is important about this dimension is its form, that is, the action through which this consent is manifested, as it is these actions which confer legitimacy on those who govern. In this way subordinates express their consent within the power relationship or their voluntary agreement to limit their liberty in

8 Beetham (1991), p. 20.

9 Ibid., p. 21.

10 Ibid., p. 69 and following pages.

accordance with that which has been established by a superior.¹¹ There are various ways in which this consent can be granted, though, according to Beetham, in the modern world, given the widespread acceptance of the principle of popular sovereignty, political legitimation must be massive. A fundamental requirement is that everyone have the opportunity to express their consent and that this be conveyed by means of an electoral process or a political mobilisation to show popular support.

The application of Beetham's model to the study of the legitimacy of the use of force allows us to delimit three fundamental dimensions: the legal, normative and social. The analysis set forth in this paper integrates the concepts of legality, morality and authority into the study of the use of force with the aim of casting light on this key concept, whose full complexity is often difficult to grasp. The analysis reflects on the legitimate use of force, analysing the norms which regulate it, which are the values which these norms seek to protect, and who has the authority to authorise the use of force in international relations.

2.1. The legal dimension of the legitimate use of force

The legal dimension of the legitimate use of force is constituted by the legal framework applicable to this matter. According to this dimension, in order for the use of force to be legitimate in international relations it must comply with the rules that regulate its use. The UN Charter constitutes the normative framework in force with which to judge the use of force¹².

In the Preamble of the Charter the maintenance of international peace and security is established as the fundamental purpose of the organisation. With the aim of achieving this objective, the first chapter specifies a series of common aims and principles or guidelines for action. It is thus that the Charter sets down the maintenance of international peace and security as its fundamental purpose (Art. 1.1). The general prohibition of the use of force can be considered as the starting point for the Charter's system for the maintenance of international peace and security (Art. 2.4). According to Robert Kolb, the system created in the Charter contains two parts: the *preventive* part dedicated to the pacific resolution of disputes (Ch. VI) and economic and social cooperation (Ch. X); and a *repressive* part which regulates the coercive powers of the UNSC (Ch. VII).¹³

The maintenance of international peace and security falls fundamentally on the Security Council and the General Assembly. The UNSC is the organ which holds the primordial

¹¹ Ibid., p. 91.

¹² Casanovas y La Rosa, O. (2007) *El principio de prohibición del uso de la fuerza*, in, Díez de Velasco, M., "Instituciones de Derecho Internacional Público", Madrid: Tecnos, p. 1038.

¹³ Kolb, R. (2003) *Ius contra bellum. Le droit international relatif au maintien de la paix*, Brussels: Helbing & Lichtenhahn/Bruylant, p. 51.

responsibility for this and which has to carry out its duties in this respect in accordance with the aims and principles of the United Nations (Art. 24.2). This is thus established in Article 24.1 of the Charter, which justifies this responsibility being conferred on the UNSC in order to “ensure prompt and effective action.”¹⁴

The principal exceptions to the general prohibition of the use of force are the right to legitimate self-defence and the collective security system.¹⁵ The first of these exceptions is set out in Article 51, which establishes the characteristics of the right of legitimate self-defence (imminent, individual or collective), the enabling factor (armed attack) and the conditions under which it must be carried out (its provisional nature and subsidiarity with respect to the collective security system). To these, three additional conditions derived from general international law must be added, namely immediacy, necessity and proportionality.

An especially thorny issue is that of the pre-emptive or preventive use of this right. Pre-emptive use of force is aimed at stopping an imminent attack from a hostile State, whilst preventive use of force is designed to prevent a hostile State from creating the capabilities to attack.¹⁶ Although the pre-emptive use of force could be understood to fall within the legitimate right to self-defence, the case of preventive self-defence is more dubious. As Neta Crawford points out, a pre-emptive act comes dangerously close to being a preventive act if a series of conditions are not met.¹⁷ Firstly, the intervention must be limited to immediate risks to the lives and health of citizens, either within the States borders or abroad. Secondly, it is essential to have conclusive evidence that war is inevitable and probable in the immediate future – days or weeks – thus highlighting the key role of intelligence services. Thirdly, the intervention must be capable of reducing the threat, though at all

14 This balance was unsettled by the Korean War (1950). The argument put forward by the General Assembly, in the face of deadlock in the UNSC, was that if the General Assembly made use of its powers of recommendation then a possible military intervention could be understood as legitimate. Thus, on 3 November 1950 the General Assembly adopted Resolution 377(V), known as the “Uniting for Peace” resolution, in which it was resolved that, faced with a paralysed UNSC, the General Assembly could “make appropriate recommendations to Members for collective measures, *including in the case of a breach of the peace or act of aggression the use of armed force when necessary*, to maintain or restore international peace and security.” In practice, this resolution has been invoked on various occasions, such as the Suez Crisis (1956), Hungary (1956), Lebanon (1958), Congo (1960), Middle East (1967), Afghanistan (1980) and Palestine (1982). However, since the Korean War the General Assembly has never again taken coercive measures. See Cardona Llorens, J. (2003) *El mantenimiento de la paz y seguridad internacionales*, in Diez de Velasco, M., “Las organizaciones internacionales”, Madrid: Tecnos, p. 219.

15 Together with the exceptions mentioned, Ch. VIII of the Charter covers actions carried out by regional organisations that have competences to deal with international peace and security. Where coercive actions are concerned, Art. 53.1 establishes a relationship of subordination with regional organisations in two ways: firstly, the UNSC can use these organisations to apply coercive measures under its authority; and, secondly, the UNSC has to authorise the coercive measures it wishes to implement in terms of regional agreements or organisms. Furthermore, there are other exceptions to the prohibition of the use of force which are hotly disputed within the discipline. In this respect, of particular note are following cases: humanitarian intervention, the use of force within the framework of decolonisation on the part of national liberation movements, the use of force to protect nationals abroad and responses to uses of force which are distinct from an armed attack.

16 Espósito, C. (2005) *Uso de la fuerza y la responsabilidad de proteger. El debate sobre la reforma de la ONU*. Informe FRIDE. Document available at: <http://www.fride.org/File/ViewLinkFile.aspx?FileId=680>

17 Crawford, N. (2003) “The slippery slope to preventive war”. *Ethics & International Affairs* 1, pp. 30-36.

times respecting *ius in bello*, as it could otherwise be interpreted as an act of aggression. Finally, military force must be necessary.¹⁸

The second exception to the prohibition of the use of force is the collective security system laid out in Chapter VII of the UN Charter. The Security Council is responsible for determining the existence of threats to peace, breaches of peace or acts of aggression, which vary from vague *threats* through to specific *acts of aggression* (Art. 39). Once the situation has been categorised as one of these types, the UNSC has powers to make recommendations or take decisions to maintain or re-establish the peace. Furthermore, the UNSC can dictate provisional measures to prevent the situation from worsening, such as a ceasefire, the withdrawal of troops, a truce or an armistice, amongst others (Art. 40). If the aforementioned measures are not respected, the next step is to take measures that do not involve the use of armed force but which impact on the economic situation, transport and communications, or diplomatic relations (Art. 41). If these measures fail to bring about the desired effect, the UNSC “may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”(Art. 42).

It is important to stress that whilst the measures decreed within the remit of Article 41 must be compulsorily complied with by member States, the military measures of Article 42 are tied to the signing of special agreements through which the signatory States put at the disposal of the UNSC “armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security”(Art. 43). These agreements have never been signed, meaning that the system of collective security provided for in the Charter has never been implemented. The UNSC has thus created alternative channels of action, provided for in the Charter or otherwise, in order to carry out coercive measures. Firstly, the use of regional agreements or organisms in order to apply coercive measures under the UN’s authority (Art. 53). Secondly, the UNSC has authorised member States to use force in order to guarantee that embargoes be respected or to re-establish international peace and security. Thirdly, it has used the authorisation of peacekeeping operations and of multinational forces carrying out equivalent functions in order to enforce the terms of the resolution.¹⁹

18 On 5 August 2005, the UN Secretary-General cast light on this issue in the report *In larger freedom: towards development, security and human rights for all* by establishing that the response to imminent threats is covered by the right to legitimate defence (see paragraph 124). In the case of latent threats, the report establishes that “the Charter gives full authority to the Security Council to use military force, including preventively, to preserve international peace and security.”(See paragraph 125). Preventive use of force is thus reserved as a competence of the Security Council.

19 Cardona Llorens, J., (2005) “La “externalización”/ “privatización” del uso de la fuerza por las Naciones Unidas”, *Soberanía del Estado y Derecho Internacional. Homenaje al Profesor Juan Antonio Carrillo Salcedo*. Tomo I.

The authorisation of the use of force by the UNSC must fulfil five requisites in order to be legal.²⁰ Firstly, it is necessary that the UN pass a resolution authorising the coercive action of a multinational force. As Olivier Corten points out, UNSC authorisations resorting to the use of force can be explicit, when the specific measures are detailed in the text of the resolution itself, or implicit, when the resolution resorts to the habitual formula of “all necessary means.” It has been this second method of authorisation which has been the most used by the UNSC.²¹ A third and more controversial type of authorisation is the supposed authorisation, which refers to those cases in which authorisation is deduced from the behaviour of the UNSC. Secondly, the resolution passed must comply with the Charter, both in its form and its content. Thirdly, the military action must be in accordance with the UNSC resolution. Olivier Corten states that, in practice, the UNSC has resorted to the criterion of necessity, although prescribing the “use of all means necessary” does not represent the unconditional and unlimited right to use military force.²² The casuistry is highly varied, which makes classification difficult. Interpretation must thus be done on a case-by-case basis and the transcripts of the debates have to be reviewed in order to be certain that the use of force is understood to be within the resolution. Fourthly, both financing and the command of operations are independent of the UN. The cost of the operation is met by participating States, including voluntary contributions from other States which are unable or unwilling to get involved on the ground. The operations will be carried out by a multinational force, that is, an aggregation of national forces each operating under its own flag. Fifth, the UNSC has to keep control of the authorised action. In general terms, the UNSC uses means of control over the authorised action such as the obligatory submission of written reports from the States involved, the State commanding the operation or the Secretary-General.

2.2. The normative dimension of the legitimate use of force

The normative dimension of the legitimate use of force refers to the justification of the rules which govern the use of force on the basis of shared values or beliefs. The legitimacy of the juridical regime governing the use of force will, in normative terms, thus derive from common values which seek to protect the maintenance of international peace and security. Following the end

Universidad de Sevilla Ediciones, pp.317-342.

20 Corten, O. (2008) *Le droit contre la guerre. L'interdiction du recours à la force en Droit International Contemporain*. Paris: Editions Pedone; Lagrange, P. (2004) *Securité collective et exercice par le Conseil de Sécurité du système d'autorisation de la coercion*. Société Française pour le DI. Journée Francotunisienne “Les métamorphoses de la sécurité collective. Droit, pratique et enjeux stratégiques” Hammamet (Tunisia), 24-25 June.

21 During the Cold War the UNSC used the *recommendation* instead of authorisation (which is more commanding).

22 Corten, O. (2008) op. cit., p. 507.

of the bipolar logic of the Cold War, the interpretation of what constitutes a threat to international peace and security has been widened considerably. First, by incorporating humanitarian issues and, also, after the 9/11 attacks, by considering the proliferation of weapons of mass destruction and terrorism as new threats.

Following the fall of the Berlin Wall, the international panorama faced uncertainty over the course its reorganisation would take. In this context, George Bush, in a speech to Congress, referred to a new order that “is struggling to be born, a world quite different from the one we've known. A world where the rule of law supplants the rule of the jungle. A world in which nations recognize the shared responsibility for freedom and justice. A world where the strong respect the rights of the weak.”²³

In this context, in which the international order was being redefined, a new type of armed conflict – dubbed “new wars” by Mary Kaldor²⁴ and extensively covered by the global media – induced the need to act in the face of grave violations of human rights and pushed its way to the top of the international agenda. The justification for the use of military force was linked to this issue through the development of humanitarian intervention and peacekeeping and peacebuilding operations. The UN led multiple conflict-prevention initiatives, peacekeeping and peacebuilding operations, as well as post-conflict reconstruction programmes.²⁵ It became increasingly accepted that the international community had a legitimate interest in what was happening in different countries. Coupled with this interest would come an erosion of sovereignty – the guiding principle of the international order – which would go from being a right to something that “had to be earned.”

The proliferation during the 1990s of cases in which the use of force was justified on humanitarian grounds, in the main multilateral interventions and within the framework of peacekeeping operations, showed how the concept of a threat to international peace and security

23 Speech by George Bush to the US Congress, 11 September 1990. Document available at: <http://bushlibrary.tamu.edu/research/papers/1990/90091101.html>

24 According to Mary Kaldor, the principal differences between traditional armed conflicts and new wars can be summed up in three fundamental aspects. First, the objectives are linked to the political objectives of specific identity groups. Second, the conflict methods deployed in the new wars are inspired by guerrilla warfare carried out by irregular armed forces, mercenaries and paramilitaries with a decentralised operations system. Additionally, in line with identity politics, other identity groups are displaced or even annihilated through ethnic cleansing, amongst other methods. Third, these wars are financed by a “globalised” war economy which feeds off illegal trade, the seizing of humanitarian aid, and foreign support, be this from neighbouring countries or from diasporas. See Kaldor, M. (2001) *Las nuevas guerras. La violencia organizada en la era global*, Barcelona: Tusquets, p. 15-25. (First pub. in English 1999)

25 According to the *Human Security Report 2005*, the number of preventive diplomatic missions multiplied by six in the period 1990-2002; peace-promotion activities increased fourfold during the same period; peacebuilding activities promoted by governments through initiatives such as *contact groups*, and *Friends of the Secretary-General* grew by up to seven times in the period 1990-2003; economic sanctions experienced spectacular growth, becoming eleven times larger over the period 1989-2001; finally, between 1987 and 1999 UN peacekeeping operations quadrupled. See Human Security Centre (2005) *Human Security Report 2005: War and Peace in the 21st Century*. New York: Oxford University Press.

was widening and how these questions were being incorporated into the normative dimension of the legitimate use of force.²⁶ Although the majority of interventions involving the use of force on humanitarian grounds were carried out under the authorisation or supervision of the UN, the case of the NATO intervention in Kosovo in 1999, which took place without UNSC authorisation, had important repercussions, as it opened up a breach between legality and legitimacy.²⁷ In October 2000 the *Kosovo Report: Conflict, International Response, Lessons Learned* was published. It was produced by the International Independent Commission for Kosovo, whose principal conclusion was that the NATO military intervention in Kosovo was illegal, as it was not backed by UNSC authorisation, though it was legitimate, as diplomatic efforts at a solution had been exhausted and the two parts were locked into a conflict which would end in a humanitarian massacre and which would generate serious instability in the Balkans. As a consequence, the case of Kosovo set an important precedent, even though it was limited, as it could only be invoked in cases with the two following circumstances: that the UNSC had adopted Chapter VII measures, identifying the human-rights abuses carried out by a government as a threat to peace and security; and that the UNSC was deadlocked either by the threat or use of the veto.²⁸ As Itziar Ruiz-Giménez points out, this case demonstrates that humanitarian issues had penetrated the international normative structure and that they thus constituted justifications for the use of force. Thus, in the case of Kosovo, the question was no longer whether or not there was a humanitarian crisis nor whether or not this was a threat to peace and security, as in the UNSC debates there was already consensus that this was in fact the case. The divergence lay in the procedure to follow in order to respond to the crisis, as the NATO intervention was illegal. In order to be legitimate, any military intervention would have to be multilateral and approved by the UNSC.²⁹

With the end of the decade of the nineties characterised by the development of humanitarian interventions, the world would witness a reformulation of the dilemma over what the international community should do in the face of mass violations of human rights. Whilst in the nineties the view was that humanitarian intervention was a right from the point of view of the State, in the first decade of the twenty-first century the terms of analysis changed and the focus was placed on those suffering the effects of human rights abuses – the people that the State and the international community had a responsibility to protect. The year 2001 saw the publication of the report *The*

26 Especially noteworthy are the actions in the north of Iraq, Bosnia, Somalia, Haiti, Rwanda, Kosovo and East Timor.

27 Wheeler, N. (2000) *Unilateral Humanitarian Intervention and International Law*. Paper presented at the Annual Conference of the British International Studies Association, University of Bradford, 18-20 December.

28 Wheeler, N. (2002) *Saving Strangers. Humanitarian Intervention in International Society*, Oxford: Oxford University Press, p. 293.

29 Ruiz-Giménez, I. (2005) *La historia de la intervención humanitaria. El imperialismo altruista*, Madrid: La Catarata pp. 241-245.

Responsibility to Protect drawn up by the International Commission on Intervention and State Sovereignty. This document specified a new conception of State sovereignty, that which had been developing through the nineties: *responsible sovereignty*. Sovereignty had thus gone from being a right to being a right which involved being responsible in the face of suffering endured by a State's own citizens and by foreigners.

The principle of the responsibility to protect would be included within two important subsequent documents. In the report by Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, published in 2004 and drawn up at the request of the Secretary-General of the UN, Kofi Annan, a new vision of collective security for the twenty-first century was set out. Within this new approach, the authors of the report acknowledge that the responsibility to protect is a norm that is imposing itself and specify that the Security Council can exercise this norm "authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign governments have proved powerless or unwilling to prevent."³⁰ This document also includes a request for the individual permanent members of the UNSC to commit themselves to not using the right to veto in cases of genocide and large-scale abuses of human rights.³¹ In the same vein, the Secretary-General's Report of 2005, *In Larger Freedom*, states that "we must embrace the responsibility to protect and, when necessary, we must act on it."³² Both reports stress that, in cases where the use of force is necessary, the responsibility will fall exclusively on the Security Council.

The taking-on of the responsibility to protect aimed to create consensus around intervention for humanitarian reasons, proposing a series of requisites that must be met when carrying out a military intervention.³³ It was thought that by creating an explicit commitment for States to comply with a series of norms when using force it would be more difficult to resort to more dubious humanitarian reasons to justify an intervention. The adoption of this principle by the General Assembly in the formal declaration of the 2005 World Summit has contributed to establishing this norm, though its implementation continues to be conditioned by the acceptance of the permanent members of the Security Council.

Whilst the decade of the 1990s was characterised by the incorporation of humanitarian

30 UN General Assembly (2005) *In larger freedom: towards development, security and human rights for all*. Report of the Secretary-General, A/59/2005, paragraph 203.

31 UN General Assembly (2004) *A More Secure World: Our Shared Responsibility*, Report by the Secretary-General's High-Level Panel on Threats, Challenges and Change, A/59/565, p. 256.

32 UN General Assembly (2005), *op. cit.*, paragraph.135, p. 39.

33 These requisites are basically a reformulation of Just War Theory. See International Commission on Intervention and State Sovereignty (2001) *The Responsibility to Protect*, pp. XII and XIII. Document available at: <http://www.iciss.ca/report-en.asp>

justifications into the normative dimension of the legitimate use of force, the terrorist attacks of 11 September 2001 inaugurated a decade in which international terrorism and weapons of mass destruction would come to the forefront as the principal threats to international peace and security. Unlike the majority of humanitarian interventions of the nineties, the use of force in dealing with these new threats has shifted away from multilateralism and has become contextualised within the unilateral policy of the hegemonic power. In this line, the US has turned to international institutions when it has been to its benefit but, at the same time, it has had no qualms about distancing itself from these institutions when it has suited its interests to do so. The shock of the 9/11 attacks led to the creation of a new security framework which was couched in terms of a no-holds-barred war – preventive if necessary – against international terrorism, which was armed with weapons of mass destruction and backed by a series of countries which made up the “axis of evil”. This policy has been expressed both through the use on the part of the US of legal methods which allow it to control the security situation, such as legitimate defence in the case of Afghanistan³⁴, as well as through distancing itself from the framework for the use of force established by the UN, as in the case of the Iraq War of 2003.

2.3. The social dimension of the legitimate use of force

The social dimension of the legitimate use of force refers to the consent required for an action to be considered as legitimate. In order for the use of force to gain legitimacy, it must have authorisation from the Security Council, the institution entrusted with the authority to safeguard the maintenance of international peace and security.

As Vaughan Lowe, Adam Roberts, Jennifer Welsh and Dominik Zaum illustrate, the main sources of legitimacy for the UNSC are, on the one hand, that the aims which it seeks to protect are shared by the international community and, on the other hand, the fact that it acts in accordance with accepted principles, such as consensus, participation and cooperation. Although both elements are powerful in terms of ensuring the compliance of member States, the post-Cold War practices

³⁴ This case considers the invocation of legitimate defence against non-state actors responsible for terrorist attacks. According to Christine Gray, the implications of the military action waged on Afghanistan for the use of force in legitimate defence can be interpreted in different ways. From a restrictive point of view, there would need to be a repeat of the circumstances seen in the case of Afghanistan, namely, there would need to be a large-scale terrorist attack and a threat of global terrorism, and the response would have to be directed against the terrorist organisation within the State that had provided sanctuary for its operations; it would also be required that the UNSC had determined that the situation represented a threat to international peace and security and that the victim were acting in legitimate self-defence. Contrary to this vision, there is another far more worrying interpretation, which would view *Operation Enduring Freedom* as constituting a precedent and would take the view that States are free to act with no recourse to the UNSC in the face of terrorist attacks against their countrymen or territory, even where there has been no proven link between the State concerned and terrorist groups. (See Gray, C. (2008) *International Law and the Use of Force*, Oxford: Oxford University Press, pp. 208-209.)

within the UNSC have highlighted tensions at the core of the institution and have led to criticisms of its double standards when it comes to acting, its selectiveness, its slowness in taking decisions, its lack of representativeness, the political use of the right of veto, etc.³⁵ This has widened the perception that the UNSC is dominated by a few countries with the right of veto and who are thus in an unfair position of superiority. This vision, as David Caron argues, constitutes a challenge to the authority of the UNSC.³⁶ The UNSC has been accused both of overstretch, going beyond its functions and taking on the role of legislator, and of doing too little, as in the case of the international response to disasters such as Srebrenica, Rwanda or, more recently, Darfur.

With the aim of relieving these tensions, proposals have been put forward to strengthen the authority of the UNSC as the ultimate guarantor of international peace and security. The report by the Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, proposes changes that the UNSC will have to undergo if it is to increase its efficiency and credibility. Firstly, it proposes legitimacy criteria that the UNSC must bear in mind when authorising the use of force. According to the report, the UNSC must assess the *seriousness of the threat* in terms of harm to the State or human beings. In the case of real or imminent internal threats to the State, the UNSC must consider whether or not they meet with the defining circumstances of genocide, ethnic cleansing or serious breaches of international humanitarian law. Additionally, military action must have the *correct purpose*, that is, to end or avoid these threats and be the action of *last resort*. Finally, the use of force must be *proportional* in its means and its *consequences* must not be worse than those that would derive from inaction.³⁷

Secondly, the report deals with reform of the UNSC. The report acknowledges that following the end of the Cold War, although the UNSC has shown itself to be more than willing to act, its responses have not always been as systematic and effective as would be desirable, and that this has significantly damaged its credibility.³⁸ The authors stress the need for the five permanent members, who have greater responsibility and therefore the greatest privileges in decision-making capacity, to more fully commit themselves to the institution and to contribute to it in the corresponding degree. The reform of the UNSC has to take into account a series of principles. Firstly, the reform must ensure that there is greater participation in UNSC decision-making for those member States which contribute most in financial, military or diplomatic terms. Secondly, any

35 Lowe, V, Roberts, A., Welsh, J. and Zaum, D. (2008) "Introduction", in Lowe, V, Roberts, A., Welsh, J. and Zaum, D.(eds.), *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*, Oxford: Oxford University Press, p. 31.

36 Caron, D. (1993) "The Legitimacy of the Collective Authority of the Security Council", *The American Journal of International Law*, 87(4), pp. 552-588

37 Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, A/59/565, 2 December 2004, point 207.

38 Ibid., point 246.

reform must increase the representativeness of the organ, especially with respect to developing States. And thirdly, the reforms must not compromise the efficiency of the UNSC and they must aim to make it more democratic.³⁹ With these principles in mind, the report proposes two models of institutional reform which divide the UNSC into four great regions: Africa, Asia Pacific, Europe and America. Model A proposes the creation of six new permanent seats and three non-permanent rotating seats of a two-year duration. Model B would create a new membership category comprising eight temporary seats with a four-year duration which are renewable, as well as a new non-permanent seat with a two-year non-renewable mandate.⁴⁰ Regarding the controversial veto right, the report recognises that it is an anachronism whilst at the same time acknowledging the impossibility of eliminating it. The document includes two interesting ideas. The first is the request to the permanent members to abstain from using their right of veto in cases of genocide and serious violations of human rights. The second is a system whereby, prior to a vote being taken, the members of the UNSC would publicly indicate the way they intend to vote, even though they may actually end up voting differently when the vote actually takes place. It is thought that by exposing themselves to public scrutiny prior to voting, members would use the right to veto more responsibly.⁴¹

The World Summit of 2005 provided an opportunity to adapt the UN to the twenty-first century. Nevertheless the *Outcome Document of the World Summit* did not include important proposals that could serve to go further with the norms on the use of force, such as the request to not use the veto; consequently “it limited itself to repeating general principles established in the Charter, to reaffirming the validity of the Charter and of multilateralism, and to reiterating the primordial responsibility of the Security Council in the maintenance of peace.”⁴²

3. The legal, normative and social dimensions of the legitimate use of force in the debates on the Iraq War of 2003

Having analysed the three dimensions that make up the complex concept of legitimacy proposed by this paper, the objective of this section is to study how the legal, normative and social dimensions are reflected in five UNSC debates on the Iraq War of 2003, which is one of the most

39 Ibid., points 73 and 249.

40 Ibid., points 74-81 and 251-253.

41 Ibid., point 216.

42 Andrés Sáenz de Santa María, P. (2008) “Las normas relativas al uso de la fuerza: la seguridad colectiva y la legítima defensa en el contexto de la reforma de las Naciones Unidas”, in García Segura, C. and Rodrigo Hernández, A.J.(eds.), *La seguridad comprometida. Nuevos desafíos, amenazas y conflictos armados*, Madrid: Tecnos, p. 124.

controversial cases that has come up in recent years and which saw serious divisions in the UNSC.⁴³

3.1. The legal dimension of the legitimate use of force in the debates on the Iraq War of 2003

The arguments based in international law, either to justify or reject the use of force, played a key role in the debates. Those in favour of the use of force against Iraq, with the US and United Kingdom heading the pack, centred their juridical arguments on the need to respond to a violation of the Iraqi government's obligations to disarm over a period of twelve years. Specifically, they based their claim on the direct contravention of Resolution 1441(2002) by the Iraqi regime, which should face the "serious consequences" of its actions as set down by the resolution.⁴⁴ As the UNSC meetings advanced, the discourse became firmer. Those in favour of the use of force vehemently insisted on the need to back diplomacy "with a credible threat of force."⁴⁵ This situation created mistrust at the core of the UNSC and there were increasing accusations that the leaders of the coalition aimed to resort to the use of force automatically, which the supporters of the use of force categorically denied.⁴⁶

In all the sessions analysed a clear and inevitable need to act comes through. The declarations of the coalition leaders showed a lack of patience, which was incompatible with measures other than the use of force, such as inspections. In the final meeting of the UNSC prior to the intervention, the proponents of the use of force presented a panorama in which the use of force was the only option.⁴⁷ It is precisely the insistence of the representatives on the urgent need to act, to not wait any longer as the risk of hanging on could not be assumed, that has been interpreted as evidence that military power dominated the course of events. This implied a logic of impatient action that needed to be justified *a posteriori*. This explains why, after the war, a whole system was put in the place by the coalition to retroactively justify the facts that would support the military intervention.⁴⁸

43 S/PV. 4701, 5 February 2003; S/PV. 4714, 7 March 2003; S/PV. 4721, 19 March 2003; S/PV. 4726, 26 March 2003 and S/PV. 4791, 22 July 2003.

44 For Colin Powell, the US representative, this conclusion is "irrefutable and undeniable". (See S/PV. 4701, p. 8). Jack Straw, the United Kingdom representative, stated that "Saddam is defying every one of us, every nation here represented. He questions our resolve and is gambling that we will lose our nerve rather than enforce our will." (See S/PV. p.20)

45 S/PV. 4714, p. 28.

46 Jack Straw responded to rumours on the willingness of the UK and US to automatically use force, declaring "(...) the truth is that it is not being used automatically, it should not be used automatically, it will not be used automatically, and nothing to which my Government has ever put its name has ever suggested that that would be the case." (See S/PV. 4714, p. 28.)

47 The United States representative phrased it in the following way: "Under the current circumstances we have no choice but to set this work (the inspections) to one side for the time being." (See S/PV. 4721, p. 14.)

48 Rytovuori- Apunen, H. (2004) *World Community as a Reasoned Community? A retrospective analysis of the US diplomatic persuasion on the eve of the Iraq war*, in Jyrki Käkönen and Sanjay Chaturvedi (eds), 'Globalization':

After embarking on military action, the leaders of the coalition reaffirmed the decision they had taken, stressing that it had been an appropriate response, in line with international law, as well as being legitimate and multilateral.⁴⁹ It is interesting to note that in the debates the leaders of the coalition, aside from legally justifying the intervention, insisted that it had been a multilateral action in which numerous members of the UN had participated in order to play down the accusations that they had unilaterally resorted to the use of force.⁵⁰

The legal argumentation of the leaders of *Operation Iraqi Freedom* was based on the idea of the supposed authorisation of the use of force by the UNSC, that is, it was supposed that the authorisation of the use of force from a previous UNSC decision was still in force. In Resolution 1441(2002), approved unanimously by the UNSC in its 4644th session of 8 November 2002, it was decided that Iraq had seriously violated its obligation to disarm⁵¹ and that it would be granted a “final opportunity to comply with its disarmament obligations,” with a tougher weapons inspection regime established in order to achieve this.⁵² Additionally, Iraq was warned that falsehoods, omissions or non-compliance with the duties to report on arms programmes would constitute a new serious violation of the country’s obligations.⁵³ Point 5 established the reinforced obligations for Iraq with respect to the organisms responsible for the disarmament: the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA). Finally, in point 13 Iraq was warned that to continue infringing its obligations would expose the country to “serious consequences.”

Most experts in international law have concluded that the military intervention in Iraq was legally unjustifiable. The resolution to which the leaders of the coalition referred in order to justify the use of force, Resolution 687, did not contain an authorisation to enforce the Iraqi regime’s compliance with its disarmament obligations “using all necessary means.” Furthermore, Resolutions 1154 and 1441, which required Iraq’s compliance with its disarmament obligations, did

Spaces, Identities and (In)Securities. New Delhi: South Asian Publishers, pp. 18-49. Also published in Europe, *International Almanac*, Vol. IV, pp.137-158 (Tyumen, Western Siberia, September, 2004). pp. 18-49.

49 Jeremy Greenstock, the UK representative took advantage of the opportunity to clarify his commitment to international legality, stating that “any action which the United Kingdom has to take in this matter will be in accordance with international law and based on relevant resolutions of the Security Council.”(See S/PV. 4721, p. 20)

50 This was expressed by the US representative, John Negroponte, as follows: “The coalition response is legitimate and not unilateral. Resolution 687 (1991) imposed a series of obligations on Iraq that were the conditions of the ceasefire. It has long been recognized and understood that a material breach of those obligations removes the basis of the ceasefire and revives the authority to use force under Resolution 687 (1991). Resolution 1441 (2002) explicitly found Iraq in continuing material breach. In view of Iraq's additional material breaches, the basis for the existing ceasefire has been removed and the use of force is authorized under Resolution 678 (1990)”(See S/PV. 4726, p. 26.)

51 UNSC Resolution 1441(2002), point 1.

52 Ibid., point 2.

53 Ibid., point 4.

not contemplate the use of force.⁵⁴ The fact that the UNSC gave Iraq a final chance to meet its disarmament obligations in Resolution 1441(2002) can not be interpreted as a green light to unilateral intervention but rather as placing responsibility back in the hands of a strengthened inspections regime instituted by UNSC itself. What the UNSC thus intended with these resolutions was to reserve the right to take a decision that may involve the use of force, as it held sole responsibility for applying punishment in the case that the resolutions were not respected.⁵⁵

As has been noted, the debate within the UNSC was characterised by a polarisation between the leaders of the coalition and those members which opposed the use of force against Iraq. The opponents continually demonstrated their preference for using political channels, stressing that the use of force was the last resort and that they would not approve a resolution authorising the automatic use of force. Right from the first debate analysed, a strong emphasis was placed on the importance of acting together and on exercising collective responsibility in strict compliance with the UN Charter and with the UNSC resolutions.⁵⁶ Furthermore, they denied the accusations that Iraq was refusing to cooperate in the disarmament process and stressed that the pacific channel of inspections was bringing results.⁵⁷

One idea that the opponents of the use of force constantly stressed was that the resolution of this crisis would have important consequences in the resolution of future conflicts. There was a crucial choice to be made between the logic of force and the logic of peace, and for those opposed to the use of force, who, it should be noted, were conscious of the new climate of threats to international peace and security, it was vital to respond to the Iraq crisis within legality and to appeal to the value, function and capacity of the UN to resolve current and future crises.⁵⁸

In the final meeting before the start of military operations, the proponents of a pacific solution reaffirmed their position, reiterating that the use of force could only be used as the last resort and that none of the previous UNSC decisions authorised the right to the use of force against Iraq outside the framework of the United Nations Charter. One of the most critical members, the French representative Mr De La Sablière, called into question the appropriateness of a preventive action to resolve “the complexity of the world.” He also appealed to the responsibility of democracies to set an example by guiding their action in line with principles such as dialogue and

54 Conte, A. (2005) *Security in the 21st Century: The United Nations, Afghanistan and Iraq*. Aldershot: Ashgate.

55 Corten, O., op. cit., p. 657.

56 S/PV. 4701, p. 22, 26-27.

57 The French representative, Mr Galouzeau de Villepin, stated that “The method that we have chosen works. The information supplied by Baghdad has been verified by the inspectors and is leading to the elimination of banned ballistic equipment.”(See S/PV. 4714, p. 20).

58 S/PV. 4714, p. 18 and p. 22.

respect for others.⁵⁹ In this crucial moment, given the determination of the leaders of the coalition, the opponents to the use of force condemned what seemed to be the real intention behind *Operation Iraqi Freedom* – to overthrow the leader of a sovereign State by force – as an act that contravened the fundamental principles established in the Charter and which would have counterproductive effects for security, stability and development in the region and the rest of the world.⁶⁰

Once the military operations were under way, the criticisms became more incisive, openly judging the military operation to be illegal. The opponents to the use of force reiterated that, despite their efforts, the leaders of the coalition were not able to provide evidence of the supposed possession of weapons of mass destruction and of the relationship between the Iraqi regime and international terrorism. The accusations that Iraq constituted a threat to regional and international peace and security did thus not stand up to scrutiny.⁶¹

3.2. The normative dimension of the legitimate use of force in the debates on the Iraq War of 2003

The normative dimension of the legitimate use of force is linked to the values that the rules of the international community seek to protect, that is, the maintenance of international peace and security in the face of situations which put them under threat. In the debates studied, the principal threats to world security that were identified were the Iraqi regime's possession of weapons of mass destruction and its links to international terrorism. Indeed, the first UNSC session analysed was, to a large degree, dedicated to the presentation of evidence of these relations by the US Secretary of State, Colin Powell. In this context, and in line with the "war on terror", the US representative warned that, following the 9/11 attacks, he was not prepared to give Saddam Hussein the opportunity to use his weapons of mass destruction.⁶²

In the final debate prior to the commencement of military operations an interesting change takes place in the line of argument related to normative issues: the *humanitarian turn*. In this session the leaders of the coalition shifted their focus to the civilian population of Iraq. Both the United States representative, John Negroponte, and the British representative, Jeremy Greenstock, declared that their principal concern was to attend to the humanitarian needs of the Iraqi population.⁶³ Calling for resentment and division within the UNSC to be put to one side, they argued in favour of priorities such as the delivery of humanitarian aid, the lifting of sanctions against Iraq, the promotion of a reconstruction programme and that the profits from trade and oil be

59 S/PV. 4721, p. 6.

60 Ibid., p. 8; S/PV. 4726, pp.28-29.

61 S/PV. 4726, p. 28.

62 S/PV. 4701, p. 19

63 S/PV. 4721, p. 14.

allocated to the Iraqi people.⁶⁴ This line of argument continued to dominate once the military intervention was under way. The leaders of the coalition emphasised that they had taken the appropriate course of action and that it was the moment for the international community to unite in order to attend to the humanitarian needs of the Iraqi people.⁶⁵

In the UNSC session dedicated to the reconstruction of the country, the leaders of the coalition stressed the advances that had been made following the intervention, such as unlimited freedom of expression and a national political body which represented the diversity of the country. Therefore, with the oppressive structure of Saddam Hussein's regime dismantled, it was the moment for the international community to cooperate in order for Iraq to achieve the conditions necessary so as to be able to determine its own future.⁶⁶

The normative dimension of the arguments put forward by opponents of the use of force started out from the acknowledgement of the existence of new threats such as terrorism and weapons of mass destruction. However, they criticised the illegal and preventive use of force in order to deal with these threats on the grounds that it was counterproductive.⁶⁷ In view of the tension and fragmentation within the UNSC, the opponents to the use of force called for unity to confront this situation.⁶⁸ It is interesting to note that, at the session held on the eve of the commencement of operations, the French representative referred to the importance of the capacity to convince and persuade in a world in which the weak challenged the strong. He stressed that the action of the international community must be governed by principles such as respect for law, the defence of liberty and justice, and a spirit of dialogue and tolerance.⁶⁹

As has been noted above, once the intervention had begun, the leaders of the coalition focused their reasoning on humanitarian issues. Counter to this, the opponents of the use of force responded by emphasising the sovereignty and territorial integrity of Iraq, and they condemned the manoeuvres that led to the change of the political regime through the use of force and the disastrous consequences of this.⁷⁰ The UNSC members opposed to the intervention showed willingness to

64 Ibid., p. 20.

65 The United Kingdom representative called for the UNSC to show responsibility in order for Iraq to become a country "where people can enjoy their fundamental rights without fear of oppression, and where a representative Government provides effectively for its people and manages natural resources for the exclusive benefit of all the people of Iraq." (See S/PV. 4726, p. 27-28)

66 S/PV. 4791, p. 31.

67 S/PV. 4714, p. 21.

68 Mr Ivanov put it in the following terms: "We are all standing on the same side of the barricade. We all share common values. Only by acting in solidarity will we effectively face up to new global threats and challenges." (See S/PV. 4714, p. 19.)

69 S/PV. 4721, p. 7.

70 The Chinese representative, Mr Wang Yingfan, summed up these consequences as follows: "War is bound to bring about humanitarian disasters (...). War will also have a negative impact on safety, stability and development in the region and beyond." (See S/PV. 4726, p. 29.)

contribute to the aid efforts to help the Iraqi civil population within the framework of the UN and EU initiatives, whilst also expressing their scepticism towards the reconstruction initiatives controlled by the coalition leaders.⁷¹ For these members of the UNSC opposed to the use of force, reconstruction tasks could only be carried out by the UN due to its legitimacy, impartiality and capacities.⁷²

3.3. The social dimension of the legitimate use of force in the debates on the Iraq War of 2003

The social dimension of legitimacy refers to the consent required for an action to be considered legitimate, in this case, from the UNSC. The authority of the UNSC was questioned by the leaders of the coalition throughout the debates studied. These members of the UNSC warned of the risk that the UNSC was running in terms of its relevance and credibility if it continued to allow Iraq to behave in the way it was. Through the use of a powerful analogy with the League of Nations, the British representative added further pressure, stating “the League of Nations failed because it could not create actions from its words; it could not back diplomacy with the credible threat and where necessary the use of force; so small evils went unchecked, tyrants became emboldened, then greater evils were unleashed.”⁷³

The proponents of a military response stressed that UNSC members had the responsibility to take tough decisions and argued in favour of keeping up the pressure on the Iraqi regime, as otherwise it would be allowing it to continue to threatening the region and the world.⁷⁴ Constantly emphasising their commitment to the UN, the coalition leaders presented themselves as members of the international community truly committed to the fight against threats to international security. By way of highlighting the seriousness of this commitment, both the US and UK representatives referred to the tens of thousands of soldiers deployed in the zone and willing to give their lives for the UN.⁷⁵

During the session prior to the military intervention, the leaders of the coalition remained firm in their position. In their discourse they transmitted the urgent need to act conclusively and they called for collective military action, urging for divisions to be left aside.⁷⁶ This attitude was

71 To this effect, the Chinese delegate remarked, “we are in favour of an active and effective role for the United Nations in Iraq's political process and economic reconstruction.”(See S/PV. 4791, p. 14.)

72 S/PV. 4791, p. 16.

73 S/PV. 4701, p. 22.

74 S/PV. 4714, p. 17.

75 In the words of the UK representative: “the presence of more than 200,000 young men and women of the United States and of the United Kingdom, willing to put their lives on the line for the sake of this body, the United Nations.”(See S/PV. 4714, p. 28)

76 The US representative, John Negroponte, couched it in the following terms: “Considering a work programme at this time is quite simply out of touch with the reality that we confront. (...) Under current circumstances we have no

maintained once hostilities had got under way and the leaders of the coalition made it clear that the UNSC could not meet its responsibilities without taking difficult decisions. In other words, the supporters of the use of force went about trying to impose their interpretation of the norms regarding the use of force, establishing exactly what should be done by a legitimate authority aware of the circumstances.⁷⁷

In the debate dedicated to the reconstruction of the country after the finalisation of the military intervention, in an attempt to legitimate their action *a posteriori*, the coalition leaders emphasised how the situation for Iraqis had improved and how they had committed themselves to creating the conditions necessary to re-establish security in Iraq and to bring prosperity and democracy to the country.⁷⁸

With the proponents of the use of force calling the authority of the UNSC into question, the opponents stressed the need for the international community to be united in order to ensure its efficiency in responding to threats to international security. They also drew attention to the fact that UNSC decisions should be taken via deliberations involving all its members.⁷⁹ Those advocating pacific measures emphasised the legitimate authority of the UNSC deriving from “all the member States of the United Nations and from all peoples of all nations.”⁸⁰ In conjunction with this call for the management of this crisis to be recuperated by the organ that was legitimated to do so, the mass protests against the war that drew together millions of citizens around the world⁸¹ were brought up in the UNSC debate, though the only person who referred to global public opinion was the Chinese representative, who declared, “There is no reason for us to remain indifferent to these strong demands and protests.”⁸²

After the intervention was under way, the UNSC members opposed to the use of force rejected the coalition’s attempts to legitimate an action that was clearly illegal and to put the responsibility on the international community through the UN.⁸³ This rejection become even more vehement in the session dedicated to the reconstruction of Iraq. For opponents of the use of force,

choice but to set this work (the inspections) aside for the time being.”(See S/PV. 4721, p. 14)

77 S/PV. 4726, p. 24.

78 S/PV. 4791, p. 20.

79 As the Chinese representative advanced, “As for the next step to be taken, the Council should decide this through discussions among all members, based on the results of the inspections.”(See S/PV. 4701, p. 20.)

80 Ibid., p. 23.

81 According to the BBC, between six and eight million protestors marched against the war in sixty countries over the weekend 15-16 February 2003 in what were the largest demonstrations seen since the Vietnam War. According to the BBC’s estimates, the world saw massive protests against the war, with 1,300,000 protestors in Barcelona, a million in London, Rome and Baghdad, 600,000 in Madrid, 200,000 in Seville, San Francisco and Damascus, 100,000 in Sydney and New York, and 10,000 in Calcutta. See <http://news.bbc.co.uk/2/hi/europe/2765215.stm>

82 S/PV.4714, p. 23.

83 S/PV. 4726, p. 29.

Iraq's sovereignty had to be re-established under the supervision of the UN and the military occupation had to be terminated. Furthermore, although the coalition tried to justify their action by claiming that they had liberated the Iraqi people, the UNSC members against the use of force refused to take on the cost and responsibility of the country's reconstruction on the same terms as the occupying States.⁸⁴

As has been seen, the debate on the legitimacy of the use of force against Iraq included arguments based on the three dimensions of legitimacy. Both proponents and opponents of the use of force strove to argue and provide reasons as to the justification of their position, bringing in legal, normative and social issues. As analysis of the UNSC debates shows, in the sessions prior to the commencement of the intervention the discourse focused on the legality of such an act. For those backing the use of force, the Iraqi regime, with its reiterated non-compliance with its disarmament obligations, constituted a threat to international peace and security. This legal argument was rejected by those contrary to the use of force, as it implied the automatic use of force. China, France and Russia argued in favour of the peaceful route of inspections and unleashed harsh criticisms on the postures of the coalition leaders for moving away from the unity necessary to deal with this crisis, as well as future ones.

Aware that any attempt to legitimate the intervention on the basis of its legality would be vetoed when it came to the vote, the US and the United Kingdom changed tack. Although the suffering of the Iraqi people was mentioned in the final debate prior to the initiation of operations, it was when the war started that the focus switched to a humanitarian threat, with arguments on weapons of mass destruction and terrorism fading into the background. The proponents of the use of force thus justified the measures employed, firstly, to liberate the Iraqi civilian population from the harm they had suffered over a long period at the hands of a cruel regime and, secondly, to show the commitment of the coalition leaders to the principles of the UN, stressing the fact that Iraqis were starting to enjoy rights and liberties that had been denied to them over decades. As Alex Bellamy maintains, the intervention of 2003 in Iraq is the first time that a group of States has justified its actions by alluding to humanitarian results coming from acts motivated by non-humanitarian concerns.⁸⁵ The opponents of the use of force responded harshly to this humanitarian turn in the line of argument. Although they recognised that the Iraqi civilian population had suffered much deprivation over a long period, China, France and Russia argued that the real aim of the coalition leaders seemed to be to change the political regime through the use of force, in direct contravention

84 S/PV. 4791, p. 28.

85 Bellamy, A. (2004) "Motives, outcomes, intent and the legitimacy of humanitarian intervention", *Journal of Military Ethics*, 3(3), pp. 216-232.

of the principle of sovereignty and territorial integrity.

Finally, the social dimension of legitimacy was also very present in the debates studied. To this effect, whilst the US and United Kingdom warned that if the UNSC did not act quickly and convincingly it ran the risk of losing efficiency and credibility, the opponents to the use of force claimed that the UNSC was the legitimate authority to decide and called for unity within the organ, as the Iraq crisis was seen as a conflict that tested the UN's capacity of adaptation and response in the face of future challenges.

4. Final remarks

Having studied the way in which the different dimensions of the legitimacy of the use of force appear in the UNSC debates in the foregoing sections, this final section aims to reflect on the possible consequences of this. So, after analysing what was said, the task here is to analyse the role played by discourse in defining and shaping the actions that are taken, that's to say, to pay attention to the potential implications of the debating process.

An initial observation, in light of what we have seen, is the relevance of a multidimensional conception of legitimacy to analyse the legitimate use of force. In fact, studying the debates allows us to appreciate how both supporters and opponents of the use of force turn to arguments framed within the legal, normative and social dimensions of legitimacy to back up their positions. Unlike other cases, in which the permanent members of the UNSC are in agreement on the decision to take, when the core of the UNSC is divided members must endeavour to justify their positions beyond their own interests.⁸⁶ The key to persuading others of the legitimacy of the use of force resides in invoking lines of reasoning that are known to be accepted by the international community. As Ian Hurd argues, when all is said and done, it is the audience which accepts the legitimacy of norms "because it has been socialized to believe in these norms, it responds approvingly to actors that support them and penalizes those that do not."⁸⁷

As we have seen, the coalition leaders were very conscious of the legitimating power of UNSC authorisation, as the approval of legitimate authority makes a difference. One indication of this is that it has a determining influence when it comes to obtaining the adhesion of other member States to the military action. Ian Hurd highlights this when he explains that States such as Turkey and Canada were waiting to see whether the UNSC would approve the intervention before

86 Krisch, N. (2008) "The Security Council and the Great Powers," in Lowe, V., Roberts, A., Welsh, J., and Zaum, D., *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*, Oxford: Oxford University Press, pp. 140-141.

87 Hurd, I. (2007) "Breaking and Making Norms: American Revisionism and Crises of Legitimacy", *International Politics*, 44, p. 197.

positioning themselves.⁸⁸ Aside from allowing for the sharing of costs, the attempt to get UNSC authorisation also had other positive consequences, such as qualifying the criticisms aimed at the operation, both from national and international public opinion, as well as creating the impression that the use of force really was the last resort.⁸⁹

A second observation arising from the analysis is that the action of the leaders of the coalition could be interpreted as a challenge to the norms that regulate the use of force. The study of the lines of argument set out in the debates could lead to the conclusion that a new standard for interpreting the legitimate use of force is being instituted at the international level. Given that the world is facing new challenges, such as international terrorism and weapons of mass destruction, according to this new interpretation it would be necessary to adapt the norms that regulate the maintenance of international peace and security. A paradigmatic example is the *United States National Security Strategy* of 2002, in which it was established that the effective battle against terrorism had to be carried out with the help of friends and allies and that this battle should be especially focused on pariah States that brutalised their own populations, aimed to attain weapons of mass destruction, sponsored terrorism, rejected basic human rights and did not respect international law, as well as being guilty of hating the US. Additionally, it was proposed that the concept of “imminent threat” be adapted to the new capabilities and aims of adversaries, as it was argued that the greater the threat, the greater the risk of inaction and, therefore, the greater the need for anticipatory action for self-defence, “*even if uncertainty remains as to the time and place of the enemy’s attack.*”⁹⁰ The Iraq War constituted the perfect moment to assert this new conception of collective security.

In the UNSC debates selected for this paper we can appreciate the way in which the coalition leaders questioned the predominant practices, in this case the appropriateness of the pacific channel of weapons inspections under the prevailing circumstances. Furthermore, they stressed that if the UNSC were not capable of acting conclusively in the face of the Iraqi regime’s repeated incompliance with its international obligations, it would lose credibility and ran the risk of becoming irrelevant. Put simply, if the UNSC did not adopt the coalition leaders’ opinion on how the situation should be analysed and what the appropriate response was, then its authority would be seriously challenged. We can thus conclude that, through their discourse within the UNSC, the proponents of the use of force denormalised and delegitimated the system of collective security. It

88 Hurd, I. (2007) *After Anarchy. Legitimacy and Power in the United Nations Security Council*, Princeton: Princeton University Press, p. 192.

89 Bjola, C. (2009) *Legitimising the Use of Force in International Politics. Kosovo, Iraq and the ethics of intervention*, London: Routledge, p. 149.

90 *National Security Strategy of the United States of America* (2002) Document available at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/>

should be noted that every delegitimation process is coupled with a re-legitimation project to establish the new interpretation of norms.⁹¹ Hence we witnessed the coalition leaders presenting themselves as the principal defenders of new norms which were adapted to the international situation, emphasising on several occasions that they did not desire war and were committed to the embodying principles of the UN. Evidently, the reformulation of norms is not immediate, as it a difficult process due to the fact that it has to overcome the tendency to conserve, a resistance to change, and uncertainty. In order to triumph, the new model has to negotiate various obstacles, such as: inertia due to habit; institutional barriers; the confusion and lack of efficiency associated with change; and the positive identification with, and favourable opinion of, the old norms on the part of some actors.⁹²

The fact that the US and United Kingdom, as the leaders of the coalition formed to intervene militarily in Iraq, enacted the intervention outside the UN system led to the war being harshly criticised as an illegitimate and illegal use of force. On the one hand, this has affected the image and prestige of the States involved, increasing the costs of unilateral political action and, on the other hand, it has served to reinforce the norms which regulate the use of force.⁹³ This normative framework, in spite of all its faults, has shown itself to be highly adaptable to international relations that have changed vastly over the last sixty years. In the case of the Iraq War of 2003, the interpretation of the legitimacy of the use of force advanced by the leaders of the coalition was imposed. However, whilst the new interpretation may have *won out* on this occasion, it has not managed to *win over*.

91 Hurd, I. (2007) "Breaking and Making Norms: American Revisionism and Crises of Legitimacy", *International Politics*, 44, p. 196.

92 Crawford, N., *ibid.*, p. 111.

93 Hurd, I., *ibid.*, p. 192.