

Special Issue: The 2003 Iraq War: History, Legacy, Resistance

Introduction

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This special issue – *The 2003 Iraq War: History, Legacy, Resistance* – arises out of the Society of Legal Scholars Annual Seminar 2018 which was held in London for the fifteenth anniversary of the start of that war.¹ The aim of the seminar, organised jointly between SOAS University of London and the University of Sheffield, was to examine the continuing relevance, and resonance, of arguably the most controversial international conflict of the 21st Century thus far. The event sought to examine the international legal legacies of the 2003 Iraq War – a conflict which was juridified.

International law, Hilary Charlesworth famously argued, is a discipline of crisis,² exhibiting a tendency to rehash the same legal debates for each successive crisis whilst neglecting historical, social, political or economic context or comparison. The effect of this staccato analysis – perceiving the archipelago of events as simply individual islands – is, in Charlesworth’s view, to hinder intellectual and doctrinal progress.³ One reason for this relates to the framing of international crises. Charlesworth’s focus was the war in Kosovo and, for international lawyers, the word ‘Kosovo’ is ‘a synecdoche, a figure of speech in which the part stands for the whole’.⁴ This is problematic because ‘lawyers are not accustomed to unpacking the layers of meaning of the synecdoche and understanding the ideas and references contained within the thing mentioned. We stay glued to specific, climactic events and fail to see the larger picture.’⁵ In Kosovo, for example, the larger picture included both the problematic history of claims to intervention in the name of humanitarianism and the ‘international community’s’ on-going political, economic, social and military involvement in the Yugoslav region. The result of this mode of analysis is that each crisis is then approached as if self-contained and unique, before it gets forgotten.

The same crisis framing is apparent with respect to the treatment of the Iraq War at the time of its inception. By contrast with the international legal analysis generated then, this special issue revisits that war with the benefit of eighteen years of distance, to situate international law’s synecdochical characterisation of ‘Iraq’ within its broader pre-history and post-conflict legacy. The rationale for (re)examining this conflict at this juncture is thus part of an effort to disrupt precisely the phenomenon which Charlesworth identifies – the tendency within the field of international law to focus (fleetingly)

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² H Charlesworth, ‘International Law: A Discipline of Crisis’ (2002) 65(3) *Modern Law Review* 377.

³ *Ibid*, 384.

⁴ *Ibid*, 386.

⁵ *Ibid*.

on the acute to the neglect of the chronic. The aim, therefore, is to explore what studying the 2003 Iraq War, and resistance to it, in non-crisis mode, might do for understandings of international law. The focus of the analysis remains on an ‘incident’,⁶ since such events are the ‘raw material out of which international law could be made and remade’.⁷ For Fleur Johns, Richard Joyce and Sundhya Pahuja, events both disrupt international law in establishing new doctrines and are nevertheless contained by international law in being subsumed within its existing structure.⁸ The event here is ‘Iraq’ rather than Yemen or Syria (at the time of the seminar) or any other international event dominating the headlines today (Myanmar or Covid-19 at the time of writing) which might yet slip into international legal amnesia tomorrow. This special issue therefore seeks to understand how the 2003 Iraq War offered international law ‘the threat and promise of the new on the one hand, and the incorporation of what happens into a pre-existing, dominant narrative on the other’.⁹

In the first of the articles, Robert Knox returns to the period leading up to the war and to the role of the anti-war movement, which focused on the question of legality and framed the war as ‘illegal’. Knox’s article, ‘International Law, Politics and Opposition to the Iraq War’, questions the efficacy of opposing the war ‘on the terrain of international legality’¹⁰ in respect of the *jus ad bellum*. As Knox shows, recourse to international law to oppose the war had a depoliticising effect, serving to foreclose not only deeper questions about the economic and political forces driving the Iraq war but also other, more radical, forms of resistance to war. Conducting anti-warfare within the frame of the international legal order, and pitting a benign UN in opposition to a rogue US, served to legitimate modes of warfare. Modes that – though lawful – nonetheless entail large-scale militarised violence practised through the Security Council. This limitation of the anti-war movement – alongside its neglect of the Council’s own inter-imperial rivalry – became especially evident during subsequent conflicts when this juridified opposition was faced with other uses of force during the ‘Global War on Terror’ and in the post-Arab Spring. By centring the question of legality, opposition to wars whose (un)lawfulness was not so clear cut – as with the military interventions in Libya, Syria and Yemen – became more complex and difficult. Knox ends by calling attention to the need, within the anti-war movement, to align tactics and strategy.

Having considered the *jus ad bellum*, the next article examines the *jus in bello*. Matt Craven explores the law of occupation in ‘The Tyranny of Strangers: Transformative Occupations Old and New’. Craven argues that one legacy of the post-Iraq War scholarly literature is the idea that the 2003 conflict

⁶ See WM Reisman and AR Willard, *International Incidents: The Law that Counts in World Politics* (Princeton University Press 1988).

⁷ F Johns, R Joyce, and S Pahuja, ‘Introduction’ in F Johns, R Joyce, and S Pahuja (eds), *Events: The Force of International Law* (Routledge 2011), 2.

⁸ *Ibid.*

⁹ *Ibid.*, 16.

¹⁰ R Knox, ‘International Law, Politics and Opposition to the Iraq War’, this issue.

inaugurated a new form of occupation – the transformative occupation – with Iraq portrayed as exemplifying a shift in the legal terrain since 1945. Within this scholarship, belligerent occupation was treated as quite different from colonial occupation. For Craven, however, what is missing from this historiography is Iraq's particular history as an occupied territory. By examining the British occupation of Iraq (then Mesopotamia) between 1914 and 1924, Craven shows how the distinction between belligerent and colonial occupation is unsustainable. Indeed, Iraq's twentieth-century occupation was accompanied by transformation of the legal system and reform of public services, aiming not to maintain the status quo but to ensure the territory's economic, social and political development whilst also benefiting the occupying power – a situation with obvious parallels to twenty-first century occupation.

If Craven seeks to disrupt the legacy of the Iraq war by returning to its colonial pre-history, Gina Heathcote, in her article 'Maritime Demarcation in the Gulf after 2003', also challenges the 2003 invasion as the central focus of international lawyers. Heathcote examines the 2007 seizure of UK personnel in claimed Iraqi territorial waters by the Iranian Navy and the historical hydrographic mapping which underpinned the UK's claims to the illegality of that seizure. That claim relies on European technical mapping expertise which does not easily correspond to the changing geography of the sea, the changing geopolitics of the Gulf region in the periods before and after the 2003 invasion, nor to Islamic understandings of maritime law. In examining the UK's claim of unlawful conduct by Iran, Heathcote wonders how international lawyers might ask different questions of international legal history in ways that will serve to dislodge European knowledge-making.

My own contribution, 'War and Order: Rethinking Criminal Accountability for the Iraq War', considers, as one of the war's legacies, the calls to prosecute Western political leaders for the invasion and situates those calls within broader questions about international criminal law and its relationship to military force. Challenging the framing of international criminal law, and in particular the crime of aggression, as oppositional to war, the article examines the manner in which international criminal justice and warfare may, in fact, reinforce each other. Exploring how both have come to be justified using similar narrative techniques, and how those techniques played out during the Iraq War, I then relate this analysis to developments within the wider 'Global War on Terror' as a conflict fought simultaneously through both war and criminal law. The article concludes by considering whether, rather than turning to war or criminal law or both, international law might instead be used to engineer a broader project of social and economic justice.

In her review essay, 'Public Invocations of International Law as a Legacy of the Iraq War', the final piece of this special issue, Madelaine Chiam reflects on the meaning of the concept of legacy through a review of three texts – Charlotte Peevers's monograph, *The Politics of Justifying Force: the Suez*

Crisis, the Iraq War, and International Law;¹¹ Ayça Çubukçu's book, *For the Love of Humanity: The World Tribunal on Iraq*;¹² and the 2016 Report of the Iraq Inquiry chaired by Sir John Chilcot (the Chilcot Report).¹³ Chiam considers the manner in which these three texts examine international law as a public language and what the legacy of that might be. For Chiam, three factors which are relevant to the identification of legacies for international law – agency, temporality, and context – are examined in respect of each of the three texts. The article concludes by situating these works within current scholarly debates about international legal history, questioning the role of 'legacies' in light of the diverging methodological views of lawyers of international history and historians of international law.¹⁴

In toto, the articles within this special issue contextualise the 2003 Iraq War, moving both forwards and backwards in time¹⁵ and disrupting the idea that the war was an isolated incident unmoored from its historical conditions of possibility.

¹¹ C Peevers, *The Politics of Justifying Force: the Suez Crisis, the Iraq War, and International Law* (Oxford University Press 2013).

¹² A Çubukçu, *For the Love of Humanity: The World Tribunal on Iraq* (University of Pennsylvania Press 2018).

¹³ *Report of the Iraq Inquiry*, 6 July 2016, <http://www.iraqinquiry.org.uk/the-report/>, accessed 27 July 2021.

¹⁴ See further A Orford, *International Law and the Politics of History* (Cambridge University Press 2021).

¹⁵ Though the idea of linear time which moves backwards and forwards is also contingent, situated, knowledge. See eg KM Clarke, 'Refiguring the perpetrator: culpability, history and international criminal law's impunity gap' (2015) 19(5) *International Journal of Human Rights* 592.