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The War against Iraq: The Bush Administration's Commission of War Crimes under International Law

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INTRODUCTION

As I prepare this analysis of the “systematic” violations of humanitarian and international law by the U.S. and its allies in Iraq¹, George W. Bush who took state power by a legal *coup d'etat* through electoral fraud and legal trickery is presiding over the most right wing and undemocratic government in the history of the United States. From this power base, through subterfuge, lies and the reckless abandonment of the rule of law he and his cronies are threatening the survival of the world.

As will be discussed in this paper, the United State is committing war crimes and other serious violations of international law in Iraq as a matter of routine policy. The widely reported egregious incidents of torture are the tip of the iceberg, not isolated excesses by “a few bad apples” in the United States military. Torture is a logical consequence of an occupation based on the systematic denial of rights guaranteed to Iraqis under international law.

The laws of occupation derive from both human rights law, including the International Bill of Rights. Under well-established legal principles, Occupying powers are required, first and foremost, to end the occupation and, in the interim: 1) to protect civilians and their property; 2) to ensure the well being of the occupied population by respecting their human rights, including rights to life, health, food, education, and employment; and 3) to refrain from changing the country's legal and economic systems².

In a cynical *post facto* effort to build on the international consensus gathered to recognize the end of the World II struggle against fascism and Japanese Imperialism, Bush sought support from the European powers for his efforts to sanitize the invasion and occupation of Iraq. Bush, is quoted as comparing the invasion of Iraq to the World War II while acknowledging as if unimportant, “differences of opinion” about the U.S. invasion of Iraq and ignoring the world wide demonstrations in every continent against the invasion and occupation. Characterizing the U.S. troops as “guests” and not “occupiers”³, in a companion act of cynical opportunism, the Bush regime simultaneously tried to persuade France and other European opponents of the Iraq invasion and occupation to support a United Nations resolution on Iraq that would impose a duty on member nations to send troops to continue the occupation of Iraq. These efforts are particularly egregious, in light of the contemptuous flouting by the Bush administration of the authority of the United Nations and international law when it attacked and occupied Iraq in 2003.⁴

THE U.N. IRAQ SECURITY RESOLUTION 1546⁵

Finally, by coercion of some nations, and the fears of others, the Security Council voted on June 8

¹“Beyond Torture, U.S. Violations of Occupation Law in Iraq”, A Report of the Center for Economic and Social Rights, June, 2004.

²Richard A. Clark, *Against all Enemies: Inside America's War on Terror* (Free Press), March 2004.
<http://www.amazon.com/exec/obidos/tg/detail/>.

³Lindlaw, Scott, “Bush seeks New Iraq Cooperation in Europe”, Associated Press, June 5, 2004.

⁴Hoge, Warren “U.S. and Iraq Submit Plan to Security Council Session”, N.Y. Times June 7, 2004.

⁵Resolution 1546 was passed unanimously by the U.N. Security Council on June 8. It declares the end of the occupation of Iraq and endorses a “fully sovereign and independent” interim government to serve from June 30, 2004 until elections in 2005.

to unanimously favor an American and British resolution to end the formal occupation of Iraq on June 30 and transfer “full sovereignty” to an interim Iraqi government.⁶

Along with giving international legitimacy to the caretaker government and outlining the United Nations’ role in a post-June 30 Iraq, the measure authorizes an American-led multinational force, now over 175,000 troops, to use “all necessary measures” in “partnership” with Iraqi forces to bring peace⁷. The 15 to 0 vote on the measure, co-sponsored by the United States and Britain appeared to give Bush a major diplomatic win as he gathered with leaders of the Group of 8 industrialized powers for the summit meeting at Sea Island, GA.

This vote has enabled the United States to cite support for its Iraq initiative from Security Council members like France, Germany and Russia that had vigorously opposed American military action. While the resolution appears to provide an international stamp of approval on the American-lead military force in Iraq, the U.S. abandoned its efforts to attract more nations to contribute troops to the occupying force. There were indications, however, that countries who refused to join the multinational force might agree to a separate military force to protect the United Nations personnel called for in the U.S. resolution. A spokesman for Secretary General Kofi Annan, said that three or four nations that refused to send troops to Iraq had signaled their willingness to join a separate international force estimated to number 4,000 soldiers.

The most contested passages of the resolution empowered an American- lead multinational force to “take all necessary measures to contribute to the maintenance of security and stability in Iraq,” but in “security partnership” with the Iraqi interim government. Although France and Germany had pressed for language giving the Iraqis a veto over participation in the combat operations that they objected to, in the end, they settled for an expanded paragraph that honored the Iraqis’ right to take part in all security decisions “including policy on sensitive offensive operations.” The reference was to military operations like those in Falluja and Najif where Iraqi’s have refused to join allied troops in fighting.

The resolution states that the American-led multinational force is in Iraq at the request and with the consent of the Iraqi interim government, and it gives the government the right to order the force’s withdrawal. However, both Dr. Allawi and Foreign Minister Hoshyar Zebari also hand picked by the Bush regime, said they wanted the foreign troops to stay. Five out of every six foreign occupying soldiers are from the U.S. and an even higher percentage of U.S. soldiers are in the combat zones. Iraq will have only an advisory role on the U.S. forces military operations including decisions on whether to assault or bomb Iraqi cities⁸.

The resolution also calls for elections no later than Jan. 31, 2005, to choose a national assembly to draw up a permanent constitution that would mandate direct elections for a full-term government by Dec. 31, 2005. In the interim the U.S. and U.K. have brokered Security Council endorsement of their current policy leaving the United Nations to advise the Iraqis on the development of civil and social services, the coordination of relief and reconstruction efforts, and the “protection of human rights”.⁹

Notwithstanding current efforts to sanitize the evil imposed on the world by the Bush regime; it is no less an international outlaw than the apartheid regime was. This paper will detail the unremitting and systematic violations by the U.S. and its allies of the legal and human rights of the people of Iraq and elsewhere in the Middle East and its disastrous humanitarian consequences¹⁰.

As this paper will discuss in detail, not only do the invasion and occupation constitute blatant violations of international and humanitarian law but will discuss the intentions to initiate this

⁶NY Times “Security Council in a 15-0 vote, Backs Measure on Iraq Turnover”, June 9, 2004.

⁷Security Resolution 1546, June 8, 2004.

⁸NY Times, “The U.N. Go Ahead on Iraq”, June 10, 2004.

⁹*Idem*.

¹⁰Normand R. and Jochnick, C. “The Legitimization of Violence: A Critical Analysis of the Gulf War”, 35 Harvard International Law Journal 2 at 387 (Spring 1994).

lawless attack, formed by criminal conspiracies undertaken years before the administration of George W. Bush's father who sanctioned the illegal attacks on Iraq, and the invasion of Kuwait in 1990, long before the actual 2003 invasion.¹¹

THE CRIMINAL CONSPIRACIES THAT LEAD TO THE 2003 INVASION OF IRAQ

In November, 2002 before the March 2003 invasion of Iraq, a small group of right wing activists with close ties to hawks in the offices of Secretary of Defense Donald Rumsfeld, Vice President Dick Cheney, Paul Wolfowitz, and Republican Senator Trent Lott initiated a new campaign to rally public support for the invasion of Iraq. This "cabal of neoconservative ideologues and their corporate backers" were the architects of the invasion and occupation of Iraq.¹² They took advantage of Bush, who, with the "most simplistic view of the world of any President in memory", has made U.S. foreign policy a dangerous disaster.¹³

The euphemistically entitled "Committee for the Liberation of Iraq" set up offices on Capital Hill months before the invasion. It was headed by Randy Scheunemann, Lott's former National Security Advisor who previously worked in Rumsfeld's office as a consultant on Iraq policy. The Chairman of the Committee was Bruce P. Jackson, a former Vice-President of the Lockheed Martin Corporation which so richly benefited from the invasion. Jackson had chaired the Republican Party Platform's Subcommittee for National Security when Bush ran for President in 2001¹⁴ providing the ideological underpinnings for the empire building to be undertaken by the Bush administration in its search for the "new colonialism"¹⁵.

This Committee on Iraq is a spin off of the Project for a New American Century (PNAC) a group of neo-conservative Zionists and fundamentalists from the Christian right that publicly support George W. Bush's "War Against Terrorism" and the U.S. alignment with Israeli Prime Minister Ariel Sharon. The PNAC sent open letters to Bush signed by Scheunemann and Jackson, and by Richard Perle, Chairman of Rumsfeld's Defense Policy Board, Pearle protégé Frank Gaffrey who heads the Center for Security Policy and Former UN Ambassador Jeanne Kirkpatrick, and other Pearle cronies urging the invasion of Iraq¹⁶.

This group has longstanding links to the loose coalition of Iraqi dissidents (INC) headed by Ahmed Chalabi, once championed by Rumsfeld and Cheney and financially supported by the U.S., recently disowned by Bush in a press conference on June 1, 2004 in which he alleged that he barely knew him during a "Meet the Press" interview with Tim Russert. However, on February 13, 2004, Bush had described Chalabi as one of the good people with whom the United States work within Iraq because of his "firm commitment"¹⁷.

The antecedents of this longstanding strategy by rightwing activists can be traced back many years. For example, on July 7, 1996, the Institute for Advanced Strategic and Political Studies issued a paper by six "prominent opinion makers" laying out "a new vision for the U.S. Israeli partnership" that urged an end to "land-for-peace" concessions and to "focus on removing Saddam Hussein from power in Iraq."¹⁸

The "study group leader" preparing the report was the same Richard Perle, who as chairman of the

¹¹National Security Council, "The National Security Strategy of the United States of America", www.whitehouse.gov/nsc, September 17, 2002.

¹²Charley Reese, "Vote for a Man, Not a Puppet", Orlando (Fla) Sentinel, June 19, 2004.

¹³*Idem*.

¹⁴Lobe, Jim, "Committee for the Liberation of Iraq Sets up Shop", "Foreign Policy in Focus", www.fp.f.org, November 2002.

¹⁵Cirincione, Joseph, Director, Non-Proliferations Project, Carnegie Endowment for International Peace "The New American Colonialism", San Francisco Chronicle February 23, 2003.

¹⁶*Idem*, at 2.

¹⁷Mayer Jane, A Reporter at Large, "The Manipulator Ahmad Chalabi Pushed a Tainted Case for War Can He Survive the Occupation?" at 58, The New Yorker, June 7, 2004.

¹⁸Novak, Robert, "Playing Texas Poker, Bush Bets All on Iraq", Chicago Sun Times, March 6, 2003.

Pentagon's part-time Defense Policy Board publicly argued making regime for change in Baghdad a priority, since before 9/11. This group also included two current full-time administration officials: Douglas Feith, the Undersecretary for Policy at the "Iraq-First" Pentagon, and David Wurmser, a State Department senior adviser.

The alleged removal of weapons of mass destruction from Iraq was cited as the primary reason for Saddam's ouster in 2003. But the argument for "regime change by creating democratic Arab states throughout the Middle East" was detailed in a 1996 Report of the Institute for Advanced Strategic and Political Studies¹⁹. In Bush's speech at the end of February, 2003 to the American Enterprise Institute, he quoted from the Report and adopted Israeli Prime Minister Ariel Sharon's repeated and now discredited contention, that "the passing of Saddam Hussein's regime" will dry up financing of Palestinian suicide bombers.²⁰

In 1998, during the Clinton Administration, Scheunemann, the frontman for the PNC and the New Committee drafted the "Iraq Liberation Act" authorizing 98 million dollars for the INC, only a fraction of which was spent due to opposition from the Clinton State Department, the CIA and General Anthony Zinni, now retired, who then served as Commander of the Pentagon's Central Command. In 2002, as soon as Bush was elected his administration's Pentagon took control of the funds and began training various INC factions lead by the now discredited Chalabi²¹. PNAC sent a letter eight days after the September 11 attacks on New York and the Pentagon calling for Washington to carry the anti-terrorist campaign beyond Al Qaeda not only to Iraq, but also to Syria, Iran, Hezbollah in Lebanon and the Palestine Authority.

This Committee is the latest group organized by neo-conservatives and other right wingers over the past 25 years²². The first was the "Coalition for a Democratic Majority" and the "Committee on the Present Danger", creatures of the cold war, which campaigned against détente and arms treaties during the Carter administration. During the 1980's new groups were formed by the same people: the Committee for the Free World; ProdemCa (Friends of the Democratic Center in Central America) which supported Reagan administration policies of destabilization in Central America and the Institute for Religion and Democracy which campaigned against the liberation theology of the Roman Catholic church and the programs of mainstream Protestant Churches among others.²³

Dick Cheney defended the Bush administration's decision to go to war in Iraq as "perfectly justified", while criticizing a scathing and detailed report by the Carnegie Endowment for International Peace released on January 8, 2004, that cast doubt on most of the administration's pre-war claims, announced the day before.²⁴ The Carnegie Report claimed that the Bush administration misrepresented the threat of Iraq's alleged chemical, biological and nuclear weapons programs and the suspected terrorism connection. Despite persistent criticism about pre-war claims and the coalition's failure to find major stashes of chemical or biological weapons, Cheney said the intelligence reports about weapons of mass destruction left the Bush administration little choice. The Carnegie Endowment for International Peace further reported that although Iraq's weapons programs constituted a possible long-term threat that should not have been ignored. It said these programs did not "pose an immediate threat to the United States, to the region or to global security"²⁵

The Report's well documented conclusions include that:

- The extent of the threat of nuclear and chemical weapons was largely unknown at the time of the invasion.
- The uncertainties were even greater regarding biological weapons.

¹⁹*Idem.*

²⁰Novak, *Idem.*

²¹Novak, *Idem* and Mayer *Supra* at 59.

²²Novak, *Idem.*

²³Lobe, *Supra* at Fn 14.

²⁴Sprenglemeyer, Scripps Howard News Service, "Despite Report, Cheney says War was Justified", January 10, 2004.

²⁵The complete Carnegie Endowment for International Peace Report "WMD in Iraq Evidence and Implications", can be accessed at www.ceip.org/files/iraqreport, December 2003.

- “The dramatic shifts between prior intelligence assessments and the October 2002 national intelligence estimate...and other steps, suggest that the intelligence community appears to have been unduly influenced by policy-maker’s views in 2002.”
- “There was and is no solid evidence of a cooperative relationship between Saddam’s government and al-Qaida”²⁶.

Bluntly contradicting the Bush administrations, the Bipartisan Commission established by the U.S. Congress to investigate the September 11 attacks on the World Trade Center and the Pentagon reported on June 16, 2004 that there was no “credible evidence” that Saddam Hussein helped Al-Qaida target the United States. In fact, it reported that Hussein rejected Bin Laden’s approaches.²⁷

In an ironic turn of events the public mourning and deification of Ronald Reagan continues. It is not surprising that Reagan is Bush’s declared role model. The Reagan administration set an excellent example of state lawlessness for Bush. In fact, the Reagan administration was taken to the World Court in a challenge to U.S. support for the Contra death squads in an effort to depose the Sandinista Liberation Front. The World Court’s verdict meted out to the United States the harshest condemnation ever in the history of the World Court. The U.S. was found guilty of efforts to destabilize the government of Nicaragua and was fined and sanctioned. The U.S. still owes Nicaragua more than \$30,000 in fines and an additional 17 billion in damages. Reagan was capable of proclaiming the biggest lies without blinking an eyelash. He served as the perfect model for the lying Bush²⁸.

The eight years in which Reagan was in office constituted one of the most bloody eras in the history of the Western hemisphere, as Washington funneled money, weapons and other supplies to right wing death squads. The resultant death toll is estimated to include more than 70,000 political killings in El Salvador, more than 100,000 in Guatemala and 50,000 killed in the contra war in Nicaragua. In the usual effort to spin straw into gold, Reagan’s Washington called the forces carrying out the violence, “freedom fighters”. Bush and his cronies learned the art of deception very well from his mentor.

High on the Bush administration’s list of justifications for war against Iraq were President Saddam Hussein’s use of chemical weapons, nuclear and biological programs, and his contacts with international terrorists²⁹. What the administration did not acknowledge was that these offenses dated back to the period when Hussein was a valued, protected and financed ally of Washington³⁰. Thus, not surprisingly, the very same people instrumental in tilting U.S. policy toward Baghdad during the Reagan administration and the 1980-88 Iran-Iraq war were also the master minds of the 2003 Iraq invasion, including Defense secretary Donald H. Rumsfeld, whose December 1983 meeting with Hussein as a special presidential envoy paved the way then for normalization of U.S.-Iraqi relations. Declassified documents show that Rumsfeld traveled to Baghdad at a time when Iraq was using chemical weapons on an “almost daily” basis in defiance of international conventions. Others who designed U.S. policy in respect to Iraq then and now as discussed earlier include Vice President Cheney, Wolfowitz and Perle³¹.

U.S. involvement with Saddam Hussein in the years before his 1990 attack on Kuwait included large-scale intelligence sharing, supplies of cluster bombs through a Chilean front company, and facilitation of Iraq’s acquisition of chemical and biological precursors are under Bush but one aspect of the evil underside of U.S. foreign policy. U.S. foreign policy under Reagan was and continues to promote deals with dictators, human rights violations overlooked, and accommodations made with

²⁶The Full Report can be found at www.ceip.org.

²⁷The final Commission Report on 9/11 is due in July. Yen, Hope, “9/11 Panel says Iraq Rebuffed Bin Laden”, Associated Press, 6/14/04, CNN.com.

²⁸Carnegie Report, *Idem*.

²⁹Dobbs, Michael, “U.S. had Key Role in Iraq Buildup. Trade in Chemical Arms Despite Their Use on Iranians and Kurds”, Washington Post, December 30, 2002.

³⁰Dobbs, *Idem*.

³¹Dobbs, *Idem*.

arms proliferators, all on the principle that the “enemy of my enemy is my friend”³².

Throughout the 1980s, during the Cold War, Hussein’s Iraq was the sworn enemy of Iran, then still in the throes of an Islamic revolution. U.S. officials saw secular Baghdad as an ally against the Soviet Union, militant Shiite extremism and the fall of pro-American states such as Kuwait, Saudi Arabia, and even Jordan. It was the Middle East version of “domino theory” foreign policy in Southeast Asia. The U.S. made Hussein into a strategic partner. U.S. diplomats in Baghdad routinely referred to Iraqi forces as “the good guys,” in contrast to the Iranians, who were depicted as “the bad guys”³³.

A review of thousands of declassified government documents and interviews with former policymakers shows that U.S. intelligence and logistical support played a crucial role in shoring up Iraqi defenses against Iranian troops. During the alliances with Hussein under the administrations of Ronald Reagan and Daddy George H.W. Bush, the United States authorized the sale to Iraq of numerous items that had both military and civilian applications, including poisonous chemicals and deadly biological viruses, such as anthrax and bubonic plague³⁴.

According to a sworn court affidavit prepared by Howard Teicher, a former National Security Council official who worked on Iraq policy during Reagan’s administration in 1985, the United States “actively supported the Iraqi war effort by supplying the Iraqis with billions of dollars of credits, by providing military intelligence and advice to the Iraqis, and by closely monitoring third country arms sales to Iraq to make sure Iraq had the military weaponry required.” Teicher said in the affidavit that former CIA director William Casey used a Chilean company, Cardoen, to supply Iraq with cluster bombs that could be used to disrupt the Iranian human wave attacks³⁵.

Thus, when United Nations weapons inspectors were allowed into Iraq after the 1991 Gulf War, they compiled long lists of chemicals, missile components, and computers from American suppliers, including such household names as Union Carbide and Honeywell, which were being used for military purposes.

A 1994 investigation by the Senate Banking Committee reported that dozens of biological agents shipped to Iraq during the mid-‘80s under license from the Commerce Department, including various strains of anthrax were subsequently identified by the Pentagon as a key component of the Iraqi biological warfare program. The Commerce Department also approved the export of insecticides to Iraq, despite widespread suspicions that they were being used for chemical warfare³⁶.

The fact that Iraq was using U.S. supplied chemical weapons was hardly a secret. In February 1984, an Iraqi military spokesman effectively acknowledged their use by issuing a warning to Iran. “The invaders should know that for every harmful insect, there is an insecticide capable of annihilating it...and Iraq possesses this annihilation insecticide”.

In a horrifying act of hypocrisy in light of the U.S. role in supplying Hussein the chemical weapons he used “against his own people”, the Bush administration cited particularly the March 1988 attack on the Kurdish Village of Halabjah, as one of the bases for the 2003 invasion because Iraq presented a “grave and gathering danger” to the United States³⁷.

The Iraqis continued to use chemical weapons against the Iranians until the end of the Iraq-Iraq war. A U.S. air force intelligence officer, Rick Francona, reported finding widespread use of Iraqi nerve gas when he toured the Al Faw peninsula in southern Iraq in the summer of 1988, after its recapture by the Iraqi army. The battlefield was littered with atropine injectors used by panicky Iranian troops

³²Dobbs, *Idem*.

³³*Idem*.

³⁴Dobbs, *Idem*.

³⁵*Idem*.

³⁶Dobbs, *Idem*.

³⁷*Idem*.

as an antidote against Iraqi nerve gas attacks. In December 1988, Dow Chemical sold \$1.5 million of pesticides to Iraq, despite concerns that they could be used as chemical warfare agents. An Export-Import Bank official reported in a memorandum that he could find “no reason” to stop the sale, despite evidence that the pesticides were “highly toxic” to humans and would cause death “from asphyxiation”³⁸.

The U.S. policy of cultivating Hussein as a moderate and reasonable Arab leader continued right up until he invaded Kuwait in August 1990³⁹. The then U.S. ambassador to Baghdad, April Glaspie, met with Hussein on July 25, 1990, only a week before the Iraqi attack on Kuwait and assured him that Bush “wanted better and deeper relations,” according to an Iraqi transcript of the conversation⁴⁰.

WHY THE INVASION OF IRAQ

Since the reasons given by Bush and his cronies for the rush to war have been totally discredited and there were no WMDs, what were the real reasons for the rush to war against Iraq and Afghanistan⁴¹. It appears that the anti-war demonstrators demanding “No Blood for Oil” are right on target⁴².

Cheney’s Energy Task Force, in a May 2001 report, urged the White House to make “energy security a priority of our trade and foreign policy” and to encourage Persian Gulf countries to welcome foreign investment in their energy sectors. In August 2002, Cheney prepared the nation for war by warning a meeting of veterans that Saddam Hussein would seek to dominate the Middle East’s vast energy supplies, while duplicitously arguing that “there is no doubt that Saddam Hussein now has weapons of mass destruction”⁴³.

Before the invasion of Iraq, Secretary of Defense Rumsfeld denied that oil access motivated regime change in Iraq, which, he said, had “nothing to do with oil, literally nothing to do with oil”⁴⁴. Indeed to justify the invasion Rumsfeld, Bush, Secretary of State Colin Powell, and National Security Advisor Condoleezza Rice all invoked Hussein’s bogus weapons of mass destruction and his ties to Al Qaeda as imminent threats to the security of the United States, none of which materialized. Three days before the attack on Iraq, Cheney said, “we believe he [Hussein] has, in fact, reconstituted nuclear weapons”. That claim, and Bush’s Niger uranium statement in his State of the Union address were blatantly false⁴⁵.

When the U.S. – U.K. forces took control of Iraq, their first order of business was to secure the oil fields but not hospitals, prisons, schools and antiquities museums. Meanwhile, Kellogg Brown & Root, subsidiary of Halliburton, the world’s largest oil services company was awarded a controversial \$7 billion no-bid contract to rebuild Iraq’s oil field. Halliburton was headed by Cheney before he was elected for vice president⁴⁶.

In testimony before the House Government Reform Committee, Governor auditors testified about “reckless or poorly monitored spending by private contractor’s hired to support U.S. troop and “rebuild” Iraq⁴⁷. KBR, The Halliburton subsidiary has as of June, 2004 received \$4.5 billion for activities in Iraq and Kuwait. The Houston based company has also received more than \$3 billion to import fuel and repair oil fields. Examples of waste and overbilling by KBR cited in the audit

³⁸Francona, Rick “Ally to Adversary: an Eyewitness Account of Iraq’s Fall from Grace”, NY, NY 1999.

³⁹Francona, *Idem*.

⁴⁰*Idem*.

⁴¹Cohn, Marjorie “Why Iraq and Afghanistan? Cheney Tells All: It’s about Oil”, Counterpunch July 30, 2003.

⁴²Cohn, Marjorie, *Idem*.

⁴³Carnegie Endowment for International Peace, “WMD in Iraq: Evidence and Implications”, www.ceip.org, WMD.

⁴⁴Cohn, *Idem*.

⁴⁵Carnegie Report, *Supra*.

⁴⁶Eckholm, Erik, “Auditors Testify About Waste in Iraq Contracts”, NY Times, June 16, 2004.

⁴⁷Eckholm, *Idem*.

report involve fuel supplies, meals for troops and other supplies.⁴⁸

In a 1998 speech to the “Collateral Damage Conference” of the Cato Institute, Cheney made his imperial intentions clear when he said, “the good Lord didn’t see fit to put oil and gas only where there are democratically elected regimes friendly to the United States. Occasionally we have to operate in places where, all things considered, one would not normally choose to go. But, we go where the business is⁴⁹.”

Since April 2001, the public interest group Judicial Watch has sought public access to the proceedings of Cheney’s Energy Task Force meetings, under the Freedom of Information Act. Cheney has fought tenaciously to keep them secret. On July 17, 2003 however, Judicial Watch secured some of the documents from the task force, which map the administration’s true intentions: “a map of Iraq oilfields, pipelines, refineries and terminals, as well as two charts detailing Iraqi Oilfield Contracts”. The documents are dated March 2001, two years before Bush invaded Iraq⁵⁰.

The Bush administration’s October 2001 bombing of Afghanistan, which also never attacked the U.S., was also part of U.S. oil strategy. The U.S. and U.K. ousted the Taliban and secured Afghanistan for the construction of an oil pipeline from Turkmenistan, south through Afghanistan, to the Arabian Sea. Although Bush had never been critical of the Taliban’s human rights record when Unocal oil company was negotiating for the pipeline rights before September 11. After assuming control of Afghanistan, Bush installed Hamid Karzai, a formal Unocal official, as interim president of Afghanistan. The deceptively named “Operation Enduring Freedom” has granted oil corporations the freedom to exploit Afghanistan for profit, while the Afghans people continue to live in poverty⁵¹.

Similarly, “Operation Iraqi Freedom” has enabled U.S. corporations to exploit Iraq’s oil, while thousands of Iraqis continue to die, lose their jobs, and live without electricity, clean water and adequate nutrition. Iraqi men, women and children are dying while U.S. taxpayers foot the \$3.9 billion monthly bill. Oil has proven to be the most terrible weapon of mass destruction⁵².

CRIMES UNDER INTERNATIONAL LAW COMMITTED BY THE UNITED STATES DURING AND SINCE THE INVASION OF IRAQ

The United States has violated laws fundamental to a civilized world; laws that are designed to protect humanity from the barbarity of war. These laws prohibit war except under the most limited of circumstances; they severely restrict who can be killed, the types of weapons that can be used and the appropriate targets. A civilized nation is known by acceptance of these laws through its actions.

To act outside these laws is to become “*hostis humani generis*,” an enemy of all humankind. As slave traders and pirates were once “enemies of all mankind”. They could be brought to justice wherever found⁵³. Today such enemies include those countries and individuals who violate the fundamental laws that protect the peace and limit war⁵⁴. The Bush administration bears responsibility for the deaths of many tens of thousands in the Middle East and the Gulf regions. This conduct must be repudiated by the international community and the forces everywhere in the world that support the rule of law.

War crimes are violations by a country, its civilians, or its military personnel of the international laws of war. The laws of war are laws that must be obeyed by the United States, its officials and its military, and by the UN. They are contained in treaties that the U.S. has signed like the Geneva

⁴⁸Carnegie Report, *Supra*.

⁴⁹Cohn, *Supra*.

⁵⁰Cohn, *Idem*.

⁵¹Center for Economic and Social Rights, *The Human Costs of War in Iraq*, February 2003. www.cesr.org/humancost.pdf.

⁵²The Human Cost of War in Iraq, *Supra*.

⁵³Ratner, Michael, “War Crimes Not Self Defense, the Unlawful War Against Iraq, 11/22/02. www.zmag.org/sustainers/content/2002.

⁵⁴Clark, Ramsey, *A Report on United States War Crimes Against Iraq. A Report to the Commission of Inquiry for the International War Crimes Tribunal*, Maisonneuve Press, 1992.

Convention of 1949 on Prisoners of War. They are also reflected in customary international law which has developed over hundreds of years. All countries must obey them⁵⁵.

War crimes are divided into two broad categories. The first are called Crimes Against Peace. Crimes against peace include the planning, preparation, or initiation of a war of aggression. In other words, one country cannot settle a dispute by war as a matter of expediency; it must always, and in good faith, negotiate a settlement. The second category includes Crimes Against Humanity. These are violations of the rules as to the means and manner by which war must be conducted after it begins. These include prohibitions against killing of civilians, indiscriminate bombing, the use of certain types of weapons, killing of defenseless soldiers, ill treatment of POWs and attacks on non-military targets⁵⁶.

Any violations of these two sets of laws constitute war crimes. When the violations are done on purpose, they are grave breaches of law. Nazis and Japanese following World War II were hanged for such grave breaches⁵⁷.

The prohibition against war crimes are embodied in the Charter of the United Nations, the Nuremberg Charter, the law under which the Nazis were tried, and the Kellogg-Briand treaty. The Nuremberg Charter defines, (a) Crimes against peace:

Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

The United Nations Charter sets forth this prohibition on aggressive war and provides very rigorous rules so that the use of force can be voided. These rules have been flagrantly violated by the United States. Article 2(3) of the U.N. Charter requires that international disputes be settled by peaceful means so that international peace, security and justice are not endangered; Article 2(4) requires that force shall not be used in any manner that is inconsistent with the purposes of the U.N. and Article 33 requires that parties to a dispute shall first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies, or other peaceful means. Not until all such means are exhausted can force be used legally.

Read together these two basic fundamental rules make clear that a nation cannot plan and make war without exhausting every means of settlement, when there is a dispute. Even then, only the United Nations can authorize war. There is strong evidence, that the U.S. violated both of these basic laws not only in 2003 but also during the first Iraq war. Much of the evidence indicating the uses the United States employed to set up the first war with Iraq is contained in U.S. Rep. Gonzalez's impeachment resolution and brief in support presented to Congress and printed in full in the Congressional Record⁵⁸.

That resolution sets forth the facts, that as early as October 1989, the CIA representatives in Kuwait had agreed to take advantage of Iraq's deteriorating economic position to put pressure on Iraq to accede to Kuwait's demands with regard to the border dispute. U.S. representatives encouraged Kuwait to refuse to negotiate its differences with Iraq as required by the United Nations Charter. These differences included Kuwait's failure to abide by OPEC quotas, its pumping of Iraqi oil from the Rumaila oil field and its refusal to negotiate these and other matters with Iraq.

Meanwhile months prior to the Iraqi invasion of Kuwait in 1991, the United States administration prepared a plan and practiced elaborate computer war games pitting United States forces against Iraqi armored divisions. Even though in testimony before Congress prior to the invasion of Kuwait, Assistant Secretary Kelly spuriously assured Congress that the United States had no commitment to

⁵⁵Ratner, "War Crimes Not Self Defense", *Supra*.

⁵⁶Nomand and Jochnick, "The Legitimation of Violence", *Supra*.

⁵⁷Ratner, "War Crimes Not Self Defense", *Supra*.

⁵⁸Gonzalez Impeachment Resolution, H. Res. 86, February 21, 1991.

come to Kuwait's assistance in the event of war⁵⁹.

In the first Iraq war conducted by the United States, it rejected all efforts by Hussein to resolve the disputes. Daddy Bush was committed to force including the imposition of the embargo which is effectively a blockade and an act of war. Steps were taken to invade Iraq without negotiating first, also in violation of the U.N. Charter⁶⁰.

The U.N. was also not legally permitted to embargo food and limit the importation of medicine in Iraq. Neither the U.N. nor any country can take measures that intentionally or knowingly have the effect of starving and harming the civilian population. This is prohibited by every principal of international law. Even though it was well known that Iraq imported 60 to 70 percent of its food. As a direct result of the blockade reports from fact finding missions to Iraq at the end of the first war estimated that a million Iraqis had died because

of the lack of infant formula and adequate food and medicine. The infamous U.N. resolution that authorized all necessary means to remove Iraqi forces from Kuwait in 1991 was vague, stipulating that only "all necessary means" could be employed. Nowhere does it expressly authorize war. Certainly many other means were readily available for achieving the goals of the U.N. resolutions. All other means were never exhausted. From the U.S. standpoint, massively violent war was the first and only option. All other means had to be precluded at any cost⁶¹.

As discussed earlier, the illegal plot to invade Iraq simmered on the back burner throughout the Clinton administration and was revived by George Bush and his cronies as soon as he took office. One year after September 11, George W. Bush invoked that tragedy to announce his new national security strategy of "preemptive war." Alleging that Hussein had weapons of mass destruction and arguing without evidence that Hussein was likely to share them with al-Qaeda terrorists, Bush built his false case for waging war on Iraq and persuaded the American people that U.S. security required the invasion and subsequent occupation. Severely weakened by the first Gulf War, after 12 years of punishing sanctions, and intrusive weapons inspections, Hussein's military forces mounted little resistance to the U.S.-U.K.'s "almost biblical force" against the Iraqi people⁶².

Bush's "Preemption doctrine" under the deceptive slogan "Operation Iraqi Freedom" violates the Charter of the United Nations, which specifies that only the Security Council can sanction the use of force and it can only be used in self-defense. The invasion of Iraq in 2003 was not undertaken in self-defense and was never authorized by the Security Council which did not give the unambiguous authority for military action that the United States needed in order to be in compliance with the United Nations Charter, before its invasion of Iraq. Without that authority from the U.N., the use of force by the United States against Iraq, even with congressional approval was clearly illegal under international law⁶³.

Obtaining authority for war from the Security Council is not merely a legal nicety; it is a legal requirement under customary international law. The United States initiation of the war against Iraq without such approval is an international crime, a crime against peace--the waging of a war of aggression. The very crime the Nazis were convicted of at Nuremberg.

The Bush Administration, led by the same clique of officials including Cheney, Perle, Rumsfeld and Wolfowitz that conspired before George Bush's election to invade Iraq as their solution to political and economic problems lead the United States into the quagmire of Iraq.

By ignoring international organizations and international law, they put the world in jeopardy. Congress, by providing them with authority to attack, and failing to condition that authorization on support from the Security Council, the government of the United States became complicit in an

⁵⁹ *Idem*.

⁶⁰ Clark, Ramsey, *A Report on United States War Crimes Against Iraq..Supra*.

⁶¹ Clark, *Idem*.

⁶² Cohn, Marjorie, "How the Occupation of Iraq Imperils International Law", Counterpunch, 2003.

⁶³ Ratner, Michael, "War Crime Not Self-Defense, The Unlawful War Against Iraq", Passim, *Supra*.

international crime when war ensued without UN authority⁶⁴.

A country can unilaterally use force against another country only in self-defense or with UN Security Council approval. Article 2(4) and Article 51 of the Charter prohibit one nation from attacking another except in self-defense. None of the reasons given by the Bush Administration for attacking Iraq including getting rid of alleged weapons of mass destruction or overthrowing Saddam Hussein constitute self-defense under the UN Charter. Self-defense under the Charter can be employed only in response to the occurrence of an armed attack (“if an armed attack occurs”).

The language of the Iraq authorization given by Congress also does not meet the self-defense test. Employment of force to “defend the national security of the United States against the continuing threat posed by Iraq” is not a description of an armed or imminent attack on the U.S. The other basis for the congressional authorization, to “enforce all relevant United Nations resolutions regarding Iraq,” is also not the approval required by the UN. Any alleged Iraqi violations of past UN Resolutions did not give the U.S. the legal authority to attack Iraq even with congressional approval. It was the Security Council and not individual countries who had to determine whether Iraq breached its agreements and any remedy for the breach. The Bush administration, and a passive and cowardly Congress decided to ignore the prohibitions on the use of force contained in the UN Charter.

In a summer 2002 speech Bush announced the doctrine, that repudiated the essential legal principle that force could only be used in self-defense⁶⁵. In his 2002 State of the Union address he warned the “axis of evil” nations that the United States would not wait “while dangers gather,” and articulated a doctrine of pre-emptive strikes. He proclaimed that his administration had decided to use military force against any state it perceived to be hostile⁶⁶. This justification of an attack on Iraq was a public renunciation of the UN Charter’s norm that force cannot be used except in response to an attack by another nation⁶⁷.

Even during the 40-year cold war while both the Soviet Union and the United States violated the Charter’s prohibition on the use of force in defense of perceived national interests when the U.S. military instituted incursions against Cuba, the Dominican Republic, Nicaragua, Grenada, Libya, and Panama, both superpowers gave at least formal recognition of the proscription on the use of force except in self-defense.

Instead of sweeping justifications for its attacks on other countries that would have eviscerated the Charter’s norms, past U.S. administrations sought to expand the self-defense exception, stretching its parameters to the breaking point to justify what seemed clearly illegal, but not challenging its primary thrust or intent. Pre-emptive strikes must be distinguished from an earlier doctrine that was labeled “anticipatory self-defense” under which the United States and some other countries argued that they had the right under the UN Charter to attack a country that was planning an attack. This doctrine seemed to recognize the restrictions on the use of force embodied in the Charter that force could only be used in self-defense or as authorized by the Security Council under Article 51⁶⁸.

The Bush doctrine of pre-emptive strikes moves beyond the restrictions of the Charter by stating that force can be used even if there is no immediate threat. It has regressed the world to the situation that existed before the passage of the Charter in 1948. In the Pre-Charter world there were no legal constraints on the employment of force. Nations could use force when and where their imperial and colonial plans lead them.

When the Bush administration’s decided that pre-emptive strikes on other nations were legal, they even ignored the Reagan administration’s vote in the Security Council unanimously condemning

⁶⁴Ratner, *Idem*.

⁶⁵Ratner, *Idem*.

⁶⁶Ratner, *Idem*.

⁶⁷Center for Economic and Social Rights, *Tearing Up the Rules: The Illegality of Invading Iraq*, March 18, 2003, www.cesr.org/iraq/docs/TearinguptheRules.pdf.

⁶⁸Tearing up the Rules, *Supra*.

Israel's pre-emptive strike on Iraq's nuclear facility in 1981. After the end of the Cold War, the Clinton administration came close to breaking with the Charter's norms when NATO attacked Yugoslavia in response to the Kosovo crisis, but the administration declined to put forth a new doctrine of humanitarian military intervention, choosing to characterize Kosovo as an exceptional emergency.

The Bush administration and its Congress have abandoned the UN Charter's fundamental legal restraints in favor of a system in which the United States unilaterally decides which regimes warrant replacement by force. The consequences of this new doctrine have been terrifying. This exercise of unabashed imperial power has led to terror against the peoples of the world and the people of the U.S. War with Iraq without UN authorization represents a tragic day in the history of the United States, and could prove to be disastrous to world peace and security which the UN Charter was designed to preserve.

In 2003, in spite of the Bush administration's threats and bribes in its attempts to secure the passage of a resolution putting the U.N.'s imprimatur on an armed invasion of Iraq, this time the Security Council held firm, unlike 1990 in respect to Kuwait when U.N. member nations succumbed to extensive bribery by the United States⁶⁹.

In 2003, in the absence of U.N. authority Bush, patched together prior Council resolutions, none of which authorized force in Iraq, to justify his illegal war. Despite worldwide opposition to the invasion, the Security Council did not condemn it and despite the repeated violations of crimes against peace by the United States. In early 2003 the Security Council even legitimized the U.S. and the U.K. as the occupying "Authority" of Iraq by the passage of Resolution 1483 which provided for the appointment of a U.N. Special Representative to coordinate humanitarian assistance and reconstruction activities in Iraq in conjunction with "the Authority". The Special Representative functions in a secondary capacity while the "occupying power" maintains ultimate authority over the Occupation and the awarding of the lucrative reconstruction contracts. Kofi Annan appointed Sergio Vieira de Mello, the U.N. High Commissioner of Human Rights, as Special Representative. He was one of the 23 people killed in the bombing of the Baghdad U.N. headquarters in August, 2003⁷⁰.

CRIMES AGAINST HUMANITY

Crimes against humanity are the second category of international laws intended to protect both civilians and combatants during wartime. There is a long history of the prohibition of certain conduct once war has begun, so that the means and manner of waging war are not unlimited. While it is of primary importance to prevent war, once war has begun there are limits on the types of targets that can be attacked and the weapons that can be employed. Central to these laws of war is the desire to protect civilians, noncombatants, soldiers who are no longer fighting, and the resources and infrastructure necessary for their survival. Again, at Nuremberg, the Nazis were tried for crimes against humanity which included killings of the civilian population and the wanton destruction of cities, towns or villages and devastation not justified by military necessity⁷¹.

These laws are embodied in various treaties, including most importantly the Hague Convention of 1907, the Geneva Conventions of 1949, and Protocol I Additional to the Geneva Conventions. They all reflect a similar set of rules, violations of which are war crimes. They are built around two principles. First, military operations are to be directed at military objectives, civilian populations and civilian objects must not be targets. So, the massive bombing of Iraq by the U.S., which killed civilians and destroyed the energy systems and water supply is illegal. As are bombing

⁶⁹Ratner, Michael, "International Law and War Crimes", 1993.

⁷⁰Tearing up the Rules, *Supra*.

⁷¹Ratner, *Supra*.

targets which include Iraqi hospitals school, roads, railroads, and petroleum plants⁷².

The campaign of bombing civilian targets has been defended by Pentagon spokespersons in terms reminiscent of the Vietnam War as many parts of Iraq were declared “free fire zones” in which people remaining in such a zone, even when merely residential, are declared unilaterally by the U.S. as legitimate targets for destruction⁷³.

Another limit international law places on the conduct of war is the principle of proportionality. A nation can only use the amount of force against military targets necessary to achieve its’ objectives. Indeed, the entire conduct of the Iraq war, occupations and invasion in fact violates every conceivable notion of proportionality⁷⁴.

International law lays down rules for how civilian populations must be protected during wartime. Civilians cannot be intentionally attacked, but indiscriminate attacks are prohibited as well. Such attacks are defined as those that “employ a method of combat which cannot be directed at specific military objectives”.

There is also a special law protecting objects indispensable to the civilian population: the infrastructure of a country. This includes prohibitions on destroying food supplies, water and sewer systems, agriculture, power, medical services, transportation and similar essentials. These cannot be attacked even if there is some military goal, if the effect would be to leave civilians without the essentials for life. In fact, the U.S. government openly announced its goals of destroying the infrastructure of Iraq including water, food supplies the sewer system, electricity and transportation⁷⁵.

Attacks are also to be limited to strictly military objectives. These are defined as those that make an effective contribution to military action and whose destruction offer a definite military advantage. Civilian objects are not to be attacked. In case of doubt, such as a school, it should be presumed that it is not a military object.

Emulating Israeli tactics in the Occupied Palestinian Territories that have been widely condemned as war crimes, the U.S. has imposed collective punishment on Iraqi civilians. These tactics include demolishing civilian homes, ordering curfews in populated areas, preventing free movement through checkpoints and road closures, sealing off entire towns and villages, and using indiscriminate, overwhelming force in crowded urban areas. These unlawful practices mirror Israeli military tactics used in the occupied Palestinian territories. The New York Times reports that “Israeli defense experts briefed American commanders on their experience in guerrilla and urban warfare”; a euphemism for Israeli actions in Jenin, Gaza and elsewhere that have been widely condemned as collective punishment constituting war crimes. Considering the international and regional outrage at Israel’s routine commission of war crimes as an integral component of its occupation of Palestine, American reliance on these same tactics has grave and troubling consequences for the occupation of Iraq.⁷⁶

⁷² Center for Economic and Social Rights “*Tearing up the Rules: The Illegality of Invading Iraq*, March 18, 2003 www.cesr.org/iraq/docs.

⁷³ *Idem*.

⁷⁴ *Idem*.

⁷⁵ Center for Economic and Social Rights, *The Human Cost of War in Iraq* (Feb. 2003) www.cesr.org/humancosts.pdf.

⁷⁶ Legal Principles related to Collective Punishment

- “Collective penalties and likewise all measures of intimidation or of terrorism are prohibited” *Geneva Convention IV, Article 33*
- “Collective punishments... are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents” *Geneva Protocol 1, Article 75*
- “Everyone has the right to freedom of movement and residence within the borders of each State” *Universal Declaration of Human Rights, Article 13*
- “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” *International Covenant on Civil & Political Rights, Article 12*
- “Civilian objects shall not be the object of attack or of reprisals... In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.” *Geneva Protocol I, Article 52*.
- “Everyone has the right to... housing.” *Universal Declaration of Human Rights, Article 25*.

THE ROOTS OF ABU GHRAIB⁷⁷

The *Wall Street Journal* and *New York Times* revealed the existence of administration memos that detailed the series of classified legal briefs prepared for Defense Secretary Donald Rumsfeld, on January 9, 2002, August 2002 and March 2003. The first two in 2002, prepared by the Justice Department, explained why the administration argued that the Geneva Convention and American laws against torture did not apply to suspected terrorists. The second classified legal brief was prepared in March

2003 after Guantanamo Bay interrogators complained that they were not getting enough information from terror suspects for the “interrogation undertaken pursuant to (Bush’s) commander-in-chief authority”. This legal brief argued that since the president is protecting “national security”, any ban on torture, including that embodied in U.S. law did not apply and therefore, Bush and his administration were not bound by law or treaties prohibiting torture during the “war against terrorism”⁷⁸.

Pentagon representatives argued after the existence of the memos were revealed that Rumsfeld’s declaration that the “Geneva Conventions did not apply in Afghanistan” was not a sanction of illegal interrogation because “different rules applied in Iraq”. These memos which the administration has refused to release to a Congressional Committee clearly indicate that contrary to the Bush administration’s contention, that the brutal sadistic conduct seen throughout the world in photographs and videos is a result of a few bad actors and a few sadistic guards, it is actually a massive coverup of illegality by the U.S. government at the highest level⁷⁹.

President Bush initially claimed that the prison abuse scandal at Abu Ghraib was “disgraceful conduct by a few American troops” and had nothing to do with broader administration policy⁸⁰. The revelation that the March 2003 Pentagon memo issued by the Bush administration lawyers gave legal justifications for torture and specifically claimed that “President Bush was not bound by either an international treaty prohibiting torture or by a federal anti-torture law”⁸¹ have now forced the President to backtrack from previous denials of culpability. On June 8, 2004 the White House admitted for the first time that Bush did, in fact, “set broad guidelines”⁸² for interrogation in Iraq - a tacit admission that Bush himself “opened the door” to the torture tactics in the first place.

When the U.S. Senate demanded the full Pentagon memo from the Bush administration, the President refused, instead he sent Attorney General John Ashcroft to tell “lawmakers he won’t release or discuss”⁸³ the memo, even if he is cited for contempt of Congress. This is the same Ashcroft who “conveniently declassified”⁸⁴ internal Justice Department memos in an effort to slander 9/11 commissioner Jamie Gorelick. It is also the same Bush administration that leaked the classified name of a CIA officer⁸⁵ in an effort to intimidate a former ambassador who had debunked their false WMD claims⁸⁶.

The well-documented abuse of detained Iraqi prisoners—including murder, rape,

⁷⁷See extensive Articles in the New York Times and Wall Street Journal published during the weeks of June 2-10, 2004. www.nytimes.com; www.wsj.com and also three part series in “The New Yorker” by Seymour M. Hersh, detailing the administration’s policies of torture and maltreatment of prisoners taken in the wars against Iraq and Afghanistan, May-June 2004, esp. Hersh, Seymour M., Annals of National Security “*Torture at Abu Ghraib, American Soldiers Brutalized Iraqi Detainees, How far Up Does the Blame Go?*”, The New Yorker, May 10, 2004.

⁷⁸A copy of the 2003 classified U.S. memo can be accessed as a PDF file at www.ccr-ny.org.

⁷⁹“The Roots of Torture”, Newsweek, May 24, 2004.

⁸⁰Presidential Speech, White House Website, 5/24/04.

⁸¹“Lawyers Decided Bans on Torture Didn’t Bind Bush”, The New York Times, 6/08/04.

⁸²“Memo on Torture Draws Focus to Bush”, The Washington Post, 6/09/04.

⁸³“U.S.’s Ashcroft Won’t Release or Discuss Torture Memo (Update 2)”, Bloomberg.com, 6/08/04.

⁸⁴“Mr. Ashcroft’s Smear”, The Washington Post, 4/20/04.

⁸⁵“Mission to Niger”, townhall.com, 7/14/03.

⁸⁶“White House “warned over Iraq claim”, BBC News, 7/09/03.

sodomy, physical assault, and sexual humiliation⁸⁷ clearly falls within the standard legal definition of torture, despite repeated denials by top U.S. officials like Secretary of Defense Donald Rumsfeld⁸⁸. Evidence for systemic torture was long known and covered up by the Bush Administration until the public release of incriminating photos and videotapes. Reports by the ICRC, human rights groups, and the Pentagon itself demonstrate that these violations are systemic not only in Iraq, but wherever the U.S. has established detention centers for alleged terrorist suspects⁸⁹. These acts of torture and abuse, far from being aberrations, are an inevitable outcome of the policy decision by the U.S. government since 9/11 to employ torture as a method of interrogation⁹⁰, and to secretly transfer suspected terrorists to repressive countries in full knowledge that they will be brutally tortured⁹¹.

There is little prospect of accountability in the United States for crimes related to the occupation. The Bush Administration is seeking to avoid responsibility for the torture scandal by the prosecution of only low-level individuals in military courts⁹². Iraqis themselves are prevented from bringing any war crimes cases against U.S. forces since Paul Bremer provided blanket immunity to all occupation authorities and military forces by Coalition Provisional Authority (CPA) Order 17.

But even if no discreet evidence were ever found to link American officials to the torture of prisoners of war during interrogations, they could still find themselves in serious jeopardy under international law. Under the doctrine of **Command Responsibility**, officials can be held accountable for war crimes committed by their subordinates even if they did not order them so long as they had control over the perpetrators, had reason to know about the crimes, and did not stop them or punish them.

Ironically, the doctrine of command responsibility is the product of an American initiative, devised by Allied judges and prosecutors at the Nuremberg tribunals. It was more recently the legal principle employed in two other U.S. supported prosecutions: the International Tribunals for Yugoslavia and Rwanda established in the last decade by the United Nations Security Council at the United States' behest. These tribunals have held that political and military leaders can be found liable for war crimes committed by those under their "effective control" if they do nothing to prevent them.

This standard in international law which the United States and the United Nations have applied to the prosecution of former Yugoslavian president, Slobodan Milosevic must also bind Washington, even if it is found that the rulings of the Nuremberg and Hague tribunals don't directly bind the United States. The legal principles under which the International Tribunals for Yugoslavia and Rwanda were conducted were a direct result of support and approval of the United States. Their judgments will be difficult for American officials to disown.

⁸⁷ Maj. Gen. Antonio M. Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade* (the "Taguba Report" on Treatment of Prisoners in Abu Ghraib prison), February 2004 <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html>.

⁸⁸ Donald H. Rumsfeld, Defense Department Operational Update Briefing, May 4, 2004. Available at <http://www.defenselink.mil/transcripts/2004/tr20040504-secdef1423.html>.

⁸⁹ Amnesty International, *USA: Pattern of Brutality and Cruelty—War Crimes at Abu Ghraib*, May 7, 2004. <http://web.amnesty.org/library/index/ENGAMR510772004>. Human Rights Watch, "U.S.: Systemic Abuse of Afghan Prisoners," May 13, 2004. <http://hrw.org/english/docs/2004/05/13/afghan8577.htm>.

Amnesty International, "USA: Amnesty International calls for a commission of inquiry into 'war on terror' detentions," May 19, 2004. <http://web.amnesty.org/library/Index/ENGAMR510872004?open&of=ENGUSA>.

Center for Constitutional Rights, "CCR Charges in Lawsuit that Government Illegally Withheld Information On Torture of Detainees in U.S. Custody," June 2, 2004. <http://www.ccrny.org>. John Barry, Michael Hirsh and Michael Isikoff, "The Roots of Torture: The road to Abu Ghraib began after 9/11, when Washington wrote new rules to fight a new kind of war," *Newsweek*, May 24, 2004, Don Van Natta, Jr., "Questioning Terror Suspects in a Dark and Surreal World," *The New York Times*, March 8, 2003, Molly Moore, "Villagers Released by American Troops Say They Were Beaten, Kept in 'Cage'," *The Washington Post*, February 11, 2002.

⁹⁰ Jess Bravin, "Pentagon Report Set Framework For Use of Torture," *The Wall Street Journal*, June 7, 2004.

<http://www.commondreams.org/cgi-bin/print.cgi>. U.S. Air Force General Counsel Mary Walker et al., *U.S. Defense Department Working Group Report on Detainee Interrogations in the Global War on Terrorism*, March 6, 2003. Available at http://online.wsj.com/public/resources/documents/military_0604.pdf.

⁹¹ Dana Priest and Joe Stephens, "Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons Is Coming to Light," *Washington Post*, May 11, 2004. <http://www.washingtonpost.com/wpdyn/>; Reed Brody, "Prisoner abuse: What about the other Secret U.S. prisons?" *International Herald Tribune*, May 4, 2004, <http://hrw.org/english/docs/2004/05/04/usint8524.htm>.

⁹² Mark Danner, "The Logic of Torture," *The New York Review of Books*, May 27, 2004 <http://www.nybooks.com/articles>.

American courts have also accepted the doctrine of command responsibility. In July 2002, for example, a federal court in Miami found two retired Salvadoran generals liable for torture – even though neither man had committed or ordered the crimes in question. The jury held that they were nonetheless guilty, since as El Salvador’s Minister of Defense and Head of its National Guard at the time of torture, they knew (or should have known) about it and should have stopped it.

As discussed further, Secretary of Defense Donald Rumsfeld and other Pentagon officials told Congress in a dismissive way that they didn’t know and couldn’t have known about a “few instances “of sexual abuse in Iraq. But this claim is contradicted by the officer formerly in charge of Abu Ghraib, who said that her superiors were warned about the abuses months before they were exposed. The International Red Cross had also documented widespread abuses in Iraq in 2003 and brought to the attention of the White House in January, 2004.

Beginning in November, a small unit of interrogators at Abu Ghraib prison began reporting allegations of prisoner abuse, including the beatings of five blindfolded Iraqi generals, in internal documents sent to senior officers, according to interviews with military personnel who worked in the prison.

"We were reporting it long before this mess came out," said one of several military intelligence soldiers interviewed by the New York Times in Germany and the United States who asked not to be identified for fear they would jeopardize their careers⁹³. The interim Report to U.S. Central Command accused U.S. Military police at Abu Ghraib of “numerous incidents of sadistic, blatant and wanton criminal abuses” and “grave breaches of international law⁹⁴. Although, the international Red Cross reported that it had alerted American military commanders in the Coalition Authority in Iraq to abuses at Abu Ghraib in November, 2003⁹⁵, the disclosures that the military’s own interrogators had also alerted superiors to abuse back then in internal documents has not been previously disclosed.

Military intelligence personnel said the Detainee Assessment Unit sent two- to five-page memoranda for final approval to a three-member board that included Brig. Gen. Janis Karpinski, the commander of the 800th Military Police Battalion, and Maj. Gen. Barbara Fast, the top Army intelligence officer in Iraq. The sections in which the abuse was cited were generally only a paragraph or two in a larger document⁹⁶.

Most of the Abu Ghraib incidents were reported before January, 2004, military intelligence personnel reported. In one case a detainee told workers from the Detainee Assessment Branch that he was made to stand naked, holding books on his head, while a soldier poured cold water on him. Among the other incidents cited by military personnel: a man was shoved to the ground before a soldier stepped on his head; a man was forced to stand naked while a female interrogator made fun of his genitals and a woman was repeatedly kicked by a military police guard. The beating of the former generals, which had not previously been disclosed, is being examined by the Pentagon as part of its inquiry into abuses at Abu Ghraib, according to people knowledgeable about the investigation⁹⁷.

By mid-December, 2003 two separate reports of the beating of Generals had been made, one by the assessment branch and one by a military intelligence analyst. The analyst asked a former general at the end of an interrogation what had happened to his nose, which it was smashed and tilted to the left, and a gash on his chin had been stitched. The prisoner, in his 50's, told the story of the beating, which he said had occurred about a week earlier. His account closely matched that given independently to the Detainee Assessment Branch by another former general around the same time. Soldiers interviewed said they were not aware of any official prison abuse reporting system. It was

⁹³Elliott, Andrea, “Unit Says it Gave Earlier Warning of Abuse in Iraq”, NY Times, June 14, 2004.

⁹⁴CNN, Report on Abu Ghraib, 6/8/04.

⁹⁵Higgins, Alexander G. “Red Cross: Iraq Abuse Widespread Routine”, Associated Press, May 11, 2004.

⁹⁶Transcript, U.S. Senate Judicial Committee Hearings 6/8/04.

⁹⁷Judicial Hearings, *Idem*.

not until January, after the Criminal Investigations Division began an inquiry, that soldiers were given forms to file complaints of abuse directly to criminal investigators⁹⁸.

Clearly, these abuses are not isolated actions but are part of an explicit policy of coercive interrogations conducted around the globe and supported by the Justice Department and White House lawyers, who argued in 2002 and 2003 that the Geneva Conventions and other domestic and international bans on torture did not apply in Iraq⁹⁹. The adoption by the U.S. of torture as policy in the name of National Security has been called the “Pinochet Principle”¹⁰⁰.

If U.S. officials are not held legally accountable, the future damage abroad could be even more severe. Part of the terrible legacy of Abu Ghraib may be that other nations will choose to flout prisoner of war legal protections and practice with impunity the use of torture on prisoners of war. It will also expose U.S. troops to torture and other abuses as permissible modes of conduct during hostilities¹⁰¹.

On June 8, 2004 Massachusetts Senator Kennedy sharply questioned Attorney General John Ashcroft about these legal memoranda which concluded that “President Bush was not bound by international treaties prohibiting torture or by federal anti-torture law because he has the authority as commander in chief to approve any techniques needed to protect the nation’s security”. Senator Kennedy asked for their production. Ashcroft refused¹⁰².

The Justice Department 2003 memos also included a missing Annex of permissible interrogation techniques attached to the document that asserts that President, under his Commander in Chief powers, is exempt from laws in the United States that prohibit torture and is also exempt from the international torture convention which the U.S. ratified. Ashcroft also refused to produce the production of the Annex¹⁰³.

THE DENIAL OF SOVEREIGNTY TO THE PEOPLE OF IRAQ

Sovereignty has traditionally been awarded to a state that has a territory, a government, a population, and formal judicial autonomy. In the international legal arena, a sovereign state is entitled to territorial integrity, political independence, and exclusive jurisdiction and control within its territory¹⁰⁴. But the Bush administration has refused to state how much power the Iraqis will actually have over the more than 140,000 U.S. troops that now occupy their soil. Meanwhile the U.S. is insisting that U.S./U.K. troops will enjoy “immunity”, but not “sovereign immunity” from criminal or civil prosecution in Iraqi courts since the U.S. will not technically be sovereign over Iraq as of June 30. This immunity means impunity for the torture and all other crimes perpetrated against U.S. captives and the people of Iraq. “The purported June 30 transfer of sovereignty to Iraqi authorities is a form of political threat with no legal effects”¹⁰⁵.

Do we imagine this lawless administration will give the Iraqis complete authority to dismiss U.S. troops as the United States plans to build the largest CIA station in the world in Baghdad and locate permanent U.S. military bases in Iraq? The U.S. presence in a country with a U.S. friendly government will ensure greater receptivity to foreign investment and maintain U.S. hegemony over the strategically important Persian Gulf Region¹⁰⁶.

⁹⁸Elliot, Andrea, *Supra*.

⁹⁹Transcript U.S. Senate Judicial Committee Hearings 6/8/04.

¹⁰⁰Democracy Now, Radio Interview with Michael Ratner, President, Center for Constitutional Rights, June 9, 2004.

¹⁰¹Tepperman, Jonathan, D., “An American in the Hague?” NY Times, June 10, 2004.

¹⁰²See transcript of U.S. Senate Judicial Committee Hearings, 6/8/04.

¹⁰³*Idem*.

¹⁰⁴“Our government and our coalition will transfer full sovereignty – complete and full sovereignty” to the new Iraqi government, announced at Press Conference by George W. Bush on June 3, 2004.

¹⁰⁵Normand, Roger, “Purported Transfer of Sovereignty Condemned as Force, Despite U.N. Resolution”, June 30, 2004, www.cesr.org.

¹⁰⁶Cohen, Marjorie, “Giving Iraqis what is Rightly Theirs, Sovereignty” in Truth Out/ Perspective June 5, 2004.

As the U.S. election approaches, Bush keeps repeating the June 30 date for the “transfer of sovereignty” to Iraqis. He knows that by November, 2004, Americans, who are increasingly weary of troop casualties, no bridled violence, and a failing wartime economy, will demand a way out of the quagmire.

So Bush wants to have it both ways: transfer sovereignty, but keep 140,000 young Americans in Iraq to protect U.S. “interests.” The U.S. would, in the frank words of Marc Grossman, under Secretary of State for Political Affairs, “do our very best to consult with that interim government and take their views into account” about whether our troops would remain in Iraq. But, according to Grossman, American commanders will have “the right, and the obligation” to decide whether U.S. soldiers stay or go¹⁰⁷.

In April, Grossman also honestly described what the Iraqis will gain on June 30 as “limited sovereignty”. In the face of opposition from the United Nations, the Bush administration backed away from that term and began speaking of “complete and full sovereignty”¹⁰⁸.

After marginalizing U.N. special envoy Lakhdar Brahimi, Ambassador L. Paul Bremer, head of the Coalition Provisional Authority, engineered the selection of the new Iraqi Prime Minister Iyad Allawi, a man with close ties to the CIA. Allawi was one of those responsible for the false and inflammatory claim that Iraqi’s weapons of mass destruction could be deployed in 45 minutes.

In a moment of uncommon candor, Brahimi affectionately referred to Bremer as “the Dictator of Iraq”. After all, said Brahimi, Bremer “has the money. He has the signature. Nothing happens without his agreement in this country”. Notwithstanding, Bush maintains that he had “no role” in selection of the new Iraqi leaders. U.S. National Security Advisor Condoleezza Rice also said, “These are not America’s puppets”. Coalition spokesman Dan Senor agreed. “We have not been leaning on anybody to support one president over another”. These remarks are as false as when Donald Rumsfeld said on CBS News in November 2002, that the U.S. conflict in Iraq has “nothing to do with oil, literally nothing to do with oil”. The purported transfer of sovereignty from the occupiers to the Iraqi people on June 30 will be justified by the Bush administration as consensual. It should be noted that the “Consent Defense”, which contends that the conquered are not subjugated because they have accepted the conquest, is also used by the U.S. to rationalize its possession of Puerto Rico and its other post-colonial endeavors.

The United States and the United Kingdom imposed great pressure to achieve agreement on the Security Council resolution that would legitimize the new Iraqi government while protecting strategic U.S.-U.K. political, economic and military interests. The Council’s resolution includes rhetoric about “full sovereignty” for Iraq, just as its resolution also strong-armed by the U.S., ending the NATO bombing of Yugoslavia also recognized the sovereignty of Yugoslavia, a country that disappeared from the map shortly thereafter.

Meanwhile the United States will maintain the right to locate its military bases in the territory of Iraq, just as it retained exclusive control over the 38 U.S. bases on Okinawa after returning its sovereignty to Japan in 1972.

The people of Iraq have the right to self-determination. They have suffered an unlawful regime change that has killed thousands of them and destabilized their country. It is up to the people of Iraq – without the interference of foreigners- to determine their own form of government.

CONCLUSION

The Bush administration is committing war crimes and other serious violations of international law in Iraq as a matter of routine policy. As discussed in greater detail in this analysis, many war crimes and rights violations are being regularly committed by U.S. forces at the discretion of the Bush administration.

¹⁰⁷*Idem.*

¹⁰⁸Bush, George Announcement, June 3, 2004.

Torture is only the most publicized aspect of this illegality which includes unlawful killings, mass arrests, and collective punishment, destruction of the civilian infrastructure and outright theft and pillage in Iraq, the U.S. is violating almost every law intended to protect civilians living under foreign military occupation.

The Bush administration is misusing the war against terrorism to exempt itself from the Geneva Conventions and other legal norms, creating a climate of impunity in which ordinary soldiers feel free to torture and abuse Iraqis. Rather than scapegoat those caught on camera, the George W. Bush, Donald Rumsfeld, Dick Cheney and other responsible U.S. officials should be held accountable for war crimes resulting from their criminal policies which are so entrenched in U.S. policies towards Iraq that they will end only when the occupation itself is ended. This requires withdrawal of U.S. troops and an end to U.S. control over Iraqi's political, economic and military affairs.

The entire thrust of U.S. policy in Iraq stands in contradiction to the post-World War II legal order and particularly the legal framework governing occupation. The primary conclusion to be drawn is that the occupation itself is the root cause of systematic rights violations. They will not end until the occupation ends and Iraqis are allowed to exercise genuine self-determination. Full justice will not be done until all war criminals—U.S. as well as Iraqi—are put in the dock and held to account, and the U.S. is required to pay reparations for the illegal devastation inflicted on Iraqi society. These international law-based demands can be expressed as follows:

Stop the violations

End the occupation

Establish accountability

Pay reparations¹⁰⁹

In the United States the Movement to Impeach president Bush gains strength¹¹⁰. Last year, John Bonifaz and a coalition of U.S. soldiers, parents of soldiers and Congressman Conyers and five other members of Congress sued the president and Defense Secretary Donald Rumsfeld seeking to prevent them from waging an undeclared and illegal war.

Under international law, continued military occupation is incompatible with self-determination. For the Security Council to legitimize as sovereign an Iraqi government hand-picked by the U.S. as Washington sends more troops to occupy Iraq is another example of the U.N.'s inability to defend its own Charter against American pressure.

Michael Ratner in his excellent legal analysis of the U.S. invasion of Kuwait and Iraq in 1991 characterized U.S. efforts to build an empire and the resultant destruction of "all civilized code of conduct" as follows:

It is the attempt to create empires that produces war crimes because, as the Nazis also reminded us, empires are founded on a self-righteous and deep-rooted belief in racial superiority and God-given mission.

His words are even more prophetic in 2004¹¹¹.

POSTSCRIPT

I end this horrendous bill of particulars against the government of the United States and its criminal government with the following timely poetry. I include these verses, in hope that those of us throughout the world who vehemently oppose U.S. foreign policy and its illegalities on so many levels, will also remember that this U.S government is also victimizing the people of the United States as well. Millions of Americans are repudiating the Bush administration's adventures in Iraq.

¹⁰⁹Beyond Torture, U.S. Violation of Occupation Law, A Report by the Center for Economic and Social Justice, June, 2004.

¹¹⁰Attorney John Bonifaz is the author of the new book, "Warrior King: The Case for Impeaching George Bush", Nation Books Thundermouth, 2004 at Amazon.com.

¹¹¹Ratner, Michael, International Law and War Crimes www.thirdworldtraveller.com/international_war_.

These poems capture some of the pain, ugliness and torment of feelings in the United States about this horrible unjustifiable war. The first is written by a soldier stationed clearly against his will in Iraq.

An ordinary soldier from Minnesota wrote:
Outside the city, shivering with dread,
We're Falluja bound,
Can hear the explosions when I raise my head...
Foreign soldiers, invaders from another land;
When I look through the hatred in their eyes,
I almost understand.
R.P.G's mortars, and friends dead on the road,
My youth is gone,
Crushed from sensory overload.
Assaulted yesterday up an Iraqi street.
R.P.G. explosion, a screen,
Seared my face with the heat.
Dragged him through the blood-streaked dust and dirt,
His screams in my ears,
His blood type tagged to his shirt,
Covered with blood, he cried, Don't leave me alone, died in my arms;
Now I just want to go home.
Officers yelling, Get out of your holes!
We're Falluja bound;
Please pray for our souls¹¹².

A 16-year old from New York focuses like many others of all ages throughout the United States on the horrors of a war that defiles national honor. She demonstrates her understanding of the real reasons for the war: oil, power and hegemony.

Confusion, fear and lies;
What good can come when people die?
Red Blood split
On barren land
To complete an alchemical plan,
Red Blood to Black Gold,
Deviously poisoning, polluting, choking our Heart.
Men tortured, defiled, dishonored by the Brethren,
Captured on film, a permanent bruise
Not to be overlooked.
Truth and honor wither away;
They know and they do not belong.
Boundaries grow hazy
Accompanied by roles:
Who the victim? Who the villain? Both? Neither?
For what purpose and to what end?
Why fight a war
Paid with lives
Only to gain confusion, fear and lies?¹¹³

¹¹²Kristof, Nicholas D., "Poems of Blood and Anger", June 9, 2004.

¹¹³Kristof, Nicholas D., "*The Art of War*", June 12, 2004.

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