

## **War Crimes Committed by the United States in Iraq and Mechanisms for Accountability**

The report was prepared by Consumers for Peace ([www.consumersforpeace.org](http://www.consumersforpeace.org)) with the advice of Karen Parker, noted lawyer in human rights and humanitarian law. Ms. Parker is President of the San-Francisco-based Association of Humanitarian Lawyers ([www.humanlaw.org](http://www.humanlaw.org)) and Chief Delegate to the United Nations for the Los Angeles-based International Educational Development/Humanitarian Law Project (IED/AHL), an accredited non-governmental organization on the U.N. Secretary-General's list.

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## Forward

The violence of the Iraq War and the chaos that has come to Iraq, can be traced directly to the illegality of the invasion and occupation of that country and the illegality of the tactics and weapons being used to maintain the occupation. "U.S. War Crimes in Iraq and Mechanisms for Accountability" documents these violations and calls on us all to demand investigation and prosecution of violations of international law by military and civilian leaders.

This report was coincidentally released at the same time as the release of *"The Human Cost of the War in Iraq; a Mortality Study, 2002-2006"* by the Bloomberg School of Public Health, Johns Hopkins University, and the School of Medicine, Al Mustansiriya University, Baghdad, Iraq. The peer reviewed study was conducted in cooperation with the Center for International Studies, Massachusetts Institute of Technology.

<http://web.mit.edu/cis/human-cost-war-101106.pdf>

See also The Lancet's publication of the study's results: *"Mortality after the 2003 invasion of Iraq: a cross-sectional cluster sample survey"* on October 11, 2006:

<http://www.thelancet.com/webfiles/images/journals/lancet/s0140673606694919.pdf>

The study found that as of July, 2006, there have been 654 965 excess Iraqi deaths as a consequence of the war; of post-invasion deaths, 601 027 were due to violence, with gunfire continuing as the most common cause.

### **Endorsements of War Crimes Committed by the United State in Iraq and Mechanisms for Accountability:**

Howard Zinn, a historian, playwright, and social activist, is perhaps best known for *A People's History of the United States*, which presents American history through the eyes of those he feels are outside of the political and economic establishment. He writes:

This report on the war crimes of the current administration is an invaluable resource, with a meticulous presentation of the evidence and an astute examination of international law.

Dahr Jamail, noted independent journalist who spent more than eight months reporting from occupied Iraq, writes the following about the report:

"I cannot endorse strongly enough this report prepared by Karen Parker regarding U.S. war crimes in Iraq. Having witnessed much of what is so well documented in this report, it is a clear and encompassing indictment of the Bush Administration for the war crimes they are directly responsible for in Iraq. Until evidence such as this begins to see the light of day in a court of law and the perpetrators brought to justice, the world remains unsafe and unstable from an administration determined to rule the world. After witnessing what they are capable of in Iraq, I have no doubt these people will not stop in their quest for world domination. Instead, they must be stopped. And the only way to do that is bring the guilty to justice. This document will help achieve that goal."

Kathy Kelly, co-coordinator of Voices for Creative Non-Violence and three-time Noble Peace Prize nominee, has visited Iraq 28 times in the last 15 years. She writes:

“After spending four days in the fortified and secure Green Zone, in Iraq, during September ’06, former Secretary of State James Baker III assured that the investigative panel he led had not spent any time “wringing our hands over what mistakes might or might not have been created in the past.” (NYT, September 20, 2006). The “Consumers for Peace” report on war crimes committed in Iraq helps us understand our responsibility not to wring our hands but rather to demand accountability from elected representatives by delivering this report to them and to local media. How many people killed? How many families torn apart? How many homes destroyed? How many livelihoods gone? How many lives ruined? How many cities sacrificed? We bear responsibility to end the war in Iraq, insist on just reparations for suffering caused, and promote careful, legal scrutiny of the crimes committed. This report beckons all who read it to stop collaborating with illegal, immoral warmongers who recklessly afflict Iraq.”

Neil MacKay, multi-award winning Home Affairs and Investigations Editor of the Sunday Herald (Scotland), writes:

"What has happened in Iraq is a great sin and a great crime. The invasion and occupation have stained the concepts of democracy, freedom and liberty; and disgraced the good name of the people of both the United States of America and Great Britain. As a journalist who has investigated the roots of this war, and the on-going horror of what is happening in Iraq, I fully commend this report to readers. It is an important reminder of the blood which is on the hands of our leaders, and the shame that the governments of the UK and the USA have brought to the British and American people by perpetrating a criminal war in our name."

Ann Wright, 29 year US Army veteran who retired as a Colonel and US diplomat who resigned in March, 2003 in opposition to the war in Iraq commented on the War Crimes Report:

"While in the US Army at Ft Bragg, NC, I taught to US military officers and non-commissioned officers the responsibilities of military forces under the Geneva Convention and the Law of Land Warfare, as well as the obligations of an Occupying Power.

The War Crimes Report is an extraordinarily comprehensive and important presentation of international law that governs the conduct of nations and their military forces. The Report documents the blatant violations of international and domestic law by the Bush administration and US military forces including the use of illegal military tactics and illegal weapons.

Because of a huge media failure in the United States, many Americans do not realize how many times the Bush administration has violated international law. But, the rest of the

world knows very well the extent of these crimes.

As a retired military officer, I know that accountability is one of the foundation elements of the US military. The Bush administration has undercut the professionalism of our military forces by encouraging and condoning the violation of international and domestic war in treatment of detainees, torture and use of illegal tactics and weapons. For the sake of our own military we must demand accountability from civilian leaders, as well as our military forces. This report provides specific mechanisms for much-needed accountability of criminal behaviour by Bush administration policy makers and by US military forces."

Charles Jenks, human rights attorney (1981), Past President of Traprock Peace Center (1998-2005) and Chair of its Advisory Board, writes:

This war crimes report accurately and succinctly states the case that US officials in the Executive Branch and military have committed grievous war crimes in Iraq. Of course, this is not to say that US culpability stops at the Executive Branch and military. It was the US Congress that authorized the Bush Administration to go to war against Iraq and that has funded the war through every request made by the Executive Branch.

In addition to the fact that this was an illegal war to begin with, the war has been conducted in myriad ways that violate international humanitarian law, including the use of uranium munitions, chemical weapons (white phosphorus), cluster bombs, torture, the indiscriminate killing of civilians and laying waste to cities and the land.

No treatment of crimes, criminals or atrocities could completely describe the wrongs of this tragic conflict. This war crimes report strikes a balance. It manages to be concise at 37 pages, yet has sufficient scope, factual detail and exposition on the law to be useful in both considering the war crimes committed, and the grounds and theories of prosecution for those crimes. Further, it is a treasure trove of resources, with 120 notes and references.

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## 1. Introduction

The opening of the U.S./British invasion campaign against Iraq in March 2003<sup>1</sup> was one of intense aerial bombardment designed to create “shock and awe” among Iraqis. The goal was to terrorize the Iraqi people and intimidate the Iraq military. For the U.S. public, watching through their television screens, the opening of the war was little different than a video game. Military briefings illustrated the effectiveness of “precision bombs”. Later, as the land campaign got underway, military and media reports showed U.S. forces quickly moving north into central Iraq and meeting less resistance than had been anticipated.

From the outside, the war seemed quick and contained. However, even at this stage multiple breaches of international humanitarian law occurred. The precision bombs touted by the military often were not. Hundreds of civilians were killed, and massive amounts of civilian property were destroyed. Cluster bombs were dropped on urban areas, including residential neighborhoods. Munitions containing depleted uranium were used in bombs and artillery shells. Tanks fired into hotels and residential areas. The basic infrastructure of Iraq’s urban areas was, in many cases, destroyed or disrupted by the invading forces.

Less well known is how the subsequent U.S./British policies and military actions in Iraq, stretching from months into years, have included regular and serious breaches of international law.

This paper describes the multiple and overlapping breaches of international humanitarian law that have occurred during the U.S./British occupation of Iraq since 2003. Those infringements have occurred at many levels, from senior members of the Bush administration, to senior military leaders, to individual unit commanders, and to individual troops.

In responding to some of the most egregious violations of humanitarian law, the U.S. administration and military authorities have focused on those who are sometimes termed “a few bad apples.” This paper argues, however, that the choices made at more senior levels than the ranks of individual soldiers have created the context in which regular abuses of civilians in occupied Iraq are occurring. It is argued that: the failure to adequately rebuild the civilian and social infrastructure; the failure to provide civilians with appropriate security; and the choices of weapons and tactics often used in military operations all constitute war crimes. Regardless of the rationale for invading and occupying Iraq, the U.S. and British governments, their commanders and all their soldiers in the field are accountable for these grave breaches.

The paper begins with an overview of international humanitarian law as it applies to the initial invasion and then the subsequent occupation of Iraq by the U.S. and Britain. The opening is followed by an evaluation of the well-being of Iraqis under the occupation. Next the report gives a review of the weaponry and military tactics used during the invasion and occupation, and

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<sup>1</sup> The United Nations Charter Article 2 requires the peaceful resolution of disputes. Under the terms of Article 39-42, only the U.N. Security Council can determine if conditions warrant the use of force. In spite of the clear rules, and absent Security Council approval, the U.S. and the U.K. invaded Iraq in 2003, based on a rationale that generated suspicion months before the invasion.

points out examples of war crimes against Iraqi military personnel and civilians.<sup>2</sup> Finally, the report looks at possibilities for holding military officers and their superiors accountable for the orders they have given that may have resulted in war crimes.

### *A note on sources*

The primary sources used to document human rights abuses and war crimes by the U.S./Britain are of three kinds: reports by human rights groups, both of the United Nations (UN) and non-governmental organizations (NGOs); news reports by a broad spectrum of media; and official statements by the U.S./British administrations and military. It was only possible to prepare this report by closely reviewing this range of documentation and filtering through and comparing accounts of specific actions and situations. Both the U.S. and British governments and militaries have controlled a large portion of the flow of information. That control has distorted much of what the mainstream media provides to the public, although an occasional reporter is able to move beyond military control. Special attention is drawn to the Iraqi human rights groups and bloggers who have sustained a flow of information about conditions otherwise hidden from the U.S. media. Numbers in brackets ( ) refer to specific sources which are listed at the end of the paper. Footnotes are used to reference specific aspects of international humanitarian law and to clarify specific points.

## **2. Overview of international humanitarian law**

Modern humanitarian law has three branches:<sup>3</sup>

### *1. Law governing the conduct of combat*

Basic rules governing the conduct of combat prohibit attacks on undefended civilian population centers, dwellings or buildings. Buildings dedicated to religion, art schooling, medical care, or charitable purposes may not be attacked. Pillage, hostage-taking, “no survivors” orders and the use of tactics to terrorize the civilian population are prohibited. Military operations that target opposing military forces may not result in undue civilian casualties. Military operations cannot be carried out against facilities such as dams, nuclear facilities, or other installations that may create a danger to the civilian population. Indiscriminate methods or means of warfare are prohibited, as are reprisals directed at civilians. Starvation of civilians as a military tactic is

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<sup>2</sup> The abuses within prisons in or outside of Iraq are not covered here as they are well-documented elsewhere.

<sup>3</sup> The main instruments of humanitarian law include: The Hague Convention and Regulations of 1907; The Geneva Conventions I – IV of 1949; Protocols Additional I and II; and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (754 United Nations Treaty Series 73). Geneva Convention I addresses the rights of sick and wounded combatants in the field (on land); Geneva Convention II the rights of sick and wounded at sea; Geneva Convention III the rights of prisoners of war (POWs); and Geneva Convention IV, the rights of civilians. There are also many resolutions of the General Assembly, primarily relating to the protection of civilians in armed conflicts, that are also part of the law of armed conflict. There are a number of key cases decided by tribunals such as the International Court of Justice (i.e. Corfu channel case, Nicaragua case, Nuclear weapons case) that address both tactics and weapons and which form part of the humanitarian law. There are 8 major international treaties banning specific types of weapons, and a number of provisions in both The Hague Convention and the Geneva Convention that provides specific limitations on weapons and weapons use.

prohibited. Attacks against food sources and water are prohibited, as is preventing the civilian population from being provided with food, water and medical care necessary for survival. Methods and means of war that unduly effect the natural environment are prohibited.

## *2. Law governing treatment of persons affected by war*

Basic rules governing the protection of persons prohibits all attacks on military personnel who are not in combat because they are sick, wounded or prisoners of war. Civilians may not be targeted. Medical facilities or transport of any type may not be targeted. Medical personnel may not be targeted and may not be subject to criminal proceedings for carrying out medical duties. No civilian can be charged with criminal offenses for assisting or for having to care for a sick or wounded combatant. Children must be especially looked after, and child labor is prohibited. Religious buildings, schools and the like are also off limits for attacks. The parties to the conflict must search and care for both wounded and dead. The dead should be identified as soon as possible, and treated respectfully. Torture (including rape) and inhumane treatment are prohibited at all times.<sup>4</sup> Occupying powers are obliged to restore and maintain, as far as possible, public order and safety, and must also respect the fundamental human rights of the territory's inhabitants, including refugees and other non-citizens.

## *3. Law governing weaponry*

Basic rules governing weapons prohibit weapons that: (1) cannot be contained to the legal field of battle; (2) cannot be or are not deactivated when the war is over; (3) cause superfluous injury or undue suffering; or (4) cause undue harm to the natural environment. Specific weapons treaties forbid poisonous or other gases; bacteriological, biological, chemical or toxic weapons; nuclear weapons; indiscriminate or excessively injurious weapons, or weapons with undetectable fragments. Weapons not otherwise indiscriminant may not be used indiscriminately.<sup>5</sup>

The law governing the conduct of combat and weaponry is frequently referred to as "The Hague law" because the most important multilateral treaties relating to combat were drafted at conferences held in The Hague, the Netherlands. Humanitarian law governing treatment of victims of armed conflict is now referred to as "Geneva law" because of the important multilateral treaties drafted at similar conferences held in Geneva, Switzerland. Rules governing military occupation are considered by both The Hague and Geneva laws. Humanitarian law

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<sup>4</sup> There are a number of specific provisions relating to military occupations that will be discussed in more detail in the relevant sections of this paper.

<sup>5</sup> For general discussion of weapons see Yeung Sik Yuen, "Human rights and weapons of mass destruction, or with indiscriminate effects, or of a nature to cause superfluous injury or unnecessary suffering, UN Doc. E/CN.4/Sub.2/2002/38. This paper was prepared at the request of the UN expert human rights body, that in 1996 found a number of weapons, including those containing depleted uranium, illegal. UN. Sub-Commission on the Prevention of Discrimination and Protection of Minorities Res. 1996/16. The Sub-Commission, now renamed Sub-Commission on the Promotion and Protection of Human Rights, adopted a second resolution in 1997 (Res. 1997/36) following a report by the Secretary General on weapons. UN Doc. E/CN.4/1997/27 and Add. 1 & 2. The Yeung Sik Yuen test largely duplicates that set out by Karen Parker in "Memorandum on Weapons and the Laws and Customs of War", submitted by International Educational Development to the Secretary-General and heavily excerpted in his report at paras. 17-40 and accompanying footnotes.

governing weapons includes The Hague law, Geneva law, customary law and numerous specific treaties banning weapons. Humanitarian law is both customary and treaty-based.

The violations specifically determined in the Geneva Conventions to be grave breaches, and hence, automatically war crimes, include: willful killing, torture or inhumane treatment; willfully causing great suffering or serious injury to body or health of POWs or civilians; unlawful detention, deportation or transfer of a civilian; unlawful transfer of a POW; denying civilians or POWs of fair trial rights; hostage-taking; and wanton destruction of and appropriation of property.<sup>6</sup>

### 3. The on-going insurgency

Civilians in an occupied country have no obligation of loyalty towards the Occupying Power regardless of the motives of the invading forces. The only obligations they have relate to their civilian status: civilians are protected by applicable human rights law as well as by Geneva Convention IV relating to civilians and the provisions relating to civilians in Protocol Additional I. A civilian who takes up arms against the Occupying Power loses rights as a civilian, but takes on the rights and obligations of combatant forces. This is the situation of the classic *levee en masse*: the Geneva Conventions recognize the combatant status of persons who spontaneously take up arms on the approach of the enemy.<sup>7</sup>

This rule is augmented by the principle of self-determination: under the law of self-determination, a people have the right to resist, with force if necessary, an alien or foreign occupier.<sup>8</sup> The fact that some of the people resisting the U.S./British occupation of Iraq were not part of the pre-invasion Iraqi armed forces is not relevant, as persons who were civilians can take up arms as insurgents against any occupier.<sup>9</sup> As protected combatants they have the right to take up arms against the Occupying Power and cannot be criminally charged except for acts that violate the laws and customs of war. The reason for this rule is obvious: were civilians who spontaneously take up arms and organize themselves into defense forces to be considered “terrorists” instead of combatants, this would mean that persons under attack from a foreign or oppressive force would not be able to fight back and resist without being considered terrorist. The U.S. administration has generally succeeded in its political rhetoric on the issue: practically

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<sup>6</sup> The “grave breach” provisions relating to combatants in the field is Geneva Convention I, Article 50; relating to combatants at sea is Geneva Convention II, Article 51; relating to POWs is Geneva Convention III, Article 130; and relating to civilians is Article 147 of Geneva Convention IV.

<sup>7</sup> See, for example, Article 13 of Geneva Convention I. Civilians who have taken up arms on the approach of the enemy are entitled to POW status if captured: Geneva Convention III, Article 4.

<sup>8</sup> Article 1.4 of Protocol Additional I establishes a treaty basis for the customary right to resist foreign occupation. This article provides that Geneva Convention protections for people fighting “alien occupation...in the exercise of their right to self-determination, as enshrined in the Charter of the United Nations...” The right to self-determination is one of the most fundamental in the UN Charter and human rights treaties, being prominent in Article 1 of the Charter and Article 1 of the two major international human rights treaties.

<sup>9</sup> U.S. use of the term “insurgents” is used indiscriminately to cover almost all violent actions in which Iraqis are involved. It does not make distinctions between people who actively resist the occupation, those who are a part of organized militias or of death squads, or civilians caught in the wrong place at the wrong time. The U.S. also improperly equates “insurgents” with “terrorists.”

no U.S. politicians and very few scholars in NGOs in the U.S. have challenged the false labeling of the Iraq resistance as “terrorist.”<sup>10</sup>

The U.S. seeks to avoid application of the self-determination rules by claiming that Iraq is no longer an “occupied” county but rather a sovereign State with a government. In this regard there has been some lukewarm recognition of an “interim” Iraqi government since 2004, but this was more for practical reasons than for legal ones. For example, UN Security Council resolution 1546 of June 8, 2004, while seeming to recognize Iraq’s sovereignty, is notable for its contradictions and ambivalence. It records “that ...by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and that Iraq will reassert its full Sovereignty,” but then notes “the situation in Iraq continues to constitute a threat to international peace and security,” thus requiring that “the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq....”

Regardless of the intent of this resolution, the U.S. has not ceased either its military operations in or its military occupation of Iraq according to the terms of humanitarian law. U.S. military commanders acknowledge that they retain control in most areas. For example, Col. David R. Gray, commander of the Army’s 1st Brigade, 101st Airborne Division, said in April 2006, “We maintain over-all control in the Kirkuk province.” Similar statements by other U.S. military officers attest to the continued commitment of the military to its overall control over most of Iraq. Under the terms of Article 2 of each of the four Geneva Conventions of 1949, the Geneva Conventions continue to apply as long as there is partial or total foreign military control.

The hand-over of some administrative functions to civil servants does not relieve the Occupying Power of its obligations under humanitarian law or terminate the right of the Iraqi people to resist a foreign occupation: the right to self-determination stays in force until the Occupying Power cedes all power and ceases all military operations.<sup>11</sup> In any case, the continuous on-going clashes in Iraq demonstrate the limits of the Iraq “government” to fulfill its security and welfare responsibilities. At the same time, the U.S., by promoting that “government,” improperly seeks to limit its responsibilities as an Occupying Power while still retaining direct, if not sole, influence on the course of Iraq’s decision-making.

#### **4. Violations of basic duties of an occupying power**

As early as 2002, before the order was given to invade Iraq, Secretary of State Colin Powell is credited with warning the U.S. President, " 'You are going to be the proud owner of 25 million people.' 'You will own all their hopes, aspirations, and problems. You'll own it all.' Privately, Powell and Deputy Secretary of State Richard Armitage called this the Pottery Barn rule: You break it, you own it" (86, p. 150).

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<sup>10</sup> This rule, of course, does not mean that in the course of an insurgency, humanitarian law may not be violated. However, members of the insurgent forces have a right under armed conflict law to engage in military actions against foreign forces, persons acting under the authority of foreign forces, and persons engaged in military actions against them who are affiliated with the foreign-imposed power.

<sup>11</sup> Some former Occupying Powers have military bases in countries they no longer occupy, but if they use those bases to carry out renewed military operations, then they again become an Occupying Power.

Powell was warning not only of the political responsibilities of invading Iraq, but the international legal repercussions that follow an invasion. He foresaw that the U.S. as an occupying power would have major responsibilities spelled out in international agreements toward the Iraqi people.

At the point when the Iraqi national military forces surrendered or were subdued, the humanitarian law norms governing military occupation automatically came into force. They will stay in force, according to Article 2 of each of the four Geneva Conventions of 1949 (usually referred to as Common Article 2) as long as the U.S. has a military presence in Iraq and has objective authority over its presence there. Many of the rules for occupying forces are found in Articles 42-56 of the Hague Regulations and most of Geneva Convention IV: these rules address both the obligations imposed upon occupying powers as well as the numerous rights of occupied people.

A major obligation of occupying powers is that it must restore and maintain, as far as possible, public order and safety. An occupying power must also respect the fundamental human rights of the country's inhabitants, including refugees and other non-citizens. One duty under the concept of public safety is the fundamental duty of an Occupying Power to ensure the life, health and safety of the civilian population under its control. Because of this rule the U.S. is obligated:

- to ensure that basic human needs—food, water, health care —are available to all Iraqi people;
- to provide for the physical security of all Iraqi people; and
- to meet these responsibilities without using any military tactics or weapons prohibited by international law.

One area where the international agencies have been especially harsh in assessing U.S. violations as an Occupying Power relates to its obligation to provide adequate food and to not use food as a weapon of war. In Particular, Article 54 of Protocol Additional I provides: "It is...prohibited to attack, destroy, remove or render useless...objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works."<sup>12</sup> The United Nations Special Rapporteur on the right to food, Jean Ziegler (Switzerland), cites violations of Article 54 of Protocol Additional I in Tall Afar, Fallujah and a number of other locations in Iraq (87; 96). There have been numerous other UN and NGO reports of widespread withholding of food and water as well as rampant malnutrition of Iraqi civilians, in particular, the children. Further, there was serious damage done to the water installations and agricultural areas by the U.S. forces during the initial military actions and the ground invasion that has yet to be adequately repaired.

A second area where the U.S. has received widespread condemnation for violations is in the complete breakdown of Iraq's medical infrastructure, coupled by continued attacks on hospitals and other protected medical facilities and equipment. The UN expert human rights body was so shocked at the blatant disregard for the continued military operations against the medical infrastructure in Iraq that it issued Resolution 2005/ 2: Prohibition of military operations directed

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<sup>12</sup> This provision is considered so basic to humanitarian law that it is binding on all States, whether or not they have ratified Protocol Additional I.

at medical facilities, transport and personnel entitled to protection during armed conflict. Both the United Nations High Commissioner for Human Rights and the International Committee of the Red Cross issued strong condemnations following the attacks on Fallujah's medical infrastructure in November 2004 (88). Attacks on Fallujah's medical infrastructure was followed by attacks on hospitals in Haditha, Al-Qaim, Tall Afar, Ramadi, prompting a major campaign sponsored by the Brussels Tribunal and many other international groups (89). Because protection of hospitals and medical personnel was the original purpose of the Geneva Conventions, these attacks are also viewed as against the Geneva Conventions themselves.

In this light, under the terms of Geneva Convention IV, Articles 18 - 23, 55 and 56, and Protocol Additional I, Article 54, it is a serious violation of humanitarian law to carry out military operations against any medical facility, personnel, or vehicles; to deliberately deprive the civilian population of food; or otherwise unreasonably to prevent the delivery of humanitarian assistance, including food, water and necessary medical supplies, from reaching civilian populations in need. The wounded and sick must be collected and cared for. Impartial humanitarian agencies, such as the International Red Cross and Red Crescent Society (and national affiliates), must be given access to populations in need. The many serious breaches of these basic rules by the U.S. as an occupying power have been widely documented by UN investigators and NGOs.

Most attention has been placed on the high numbers of civilian casualties in violation of both humanitarian law and human rights laws rules regarding protection of the right to life. U.S./British forces have grossly failed to protect the lives of Iraqi civilians: well over 100,000 Iraqi civilians have likely been killed under the occupation. A highly credible report issued by *Lancet* provided that figure in 2004, yet conceded that civilian casualties due to U.S. military operations in Fallujah in 2004 were not part of that result (28). Casualties as a result of the two assaults on Fallujah clearly pushed that figure considerably higher, as have two further years of occupation. Along with the blatant disregard of the right to life of civilians while carrying out military operations, the U.S. forces are clearly failing adequately to identify and document those killed. U.S. military commanders have even said that they were not in the "body count" business, when under numerous provisions of the Geneva Conventions (for example, Article 16 of Geneva Convention IV) they are obligated to account for civilian deaths. As in Fallujah, the U.S. left the dead for days in many other locations, making identification even more difficult. Even worse, the U.S. forces have not tried to find the wounded and care for them as required, and many wounded are left to die.<sup>13</sup> In some situations, such as in Fallujah, the U.S. actively prevented the Iraqi Red Cross from tending to the wounded. Concern is growing that the U.S. is obliterating the Geneva Conventions because of its abject disregard for the life and dignity of Iraqi civilians.

#### *Socio-economic insecurity*

History demonstrates that economic conditions worsen for the majority of people under colonial rule. The occupation of Iraq presents parallel conditions to colonialism. For many people in Iraq, the occupation has brought a worsening of economic conditions. Even when compared to

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<sup>13</sup> Article 16 of Geneva Convention IV requires military forces to search for and aid wounded civilians if allowed by "military considerations." In only a very few circumstances can the U.S. abandonment of wounded civilians be supported by arguments of military necessity. One of the U.S. soldiers that has refused to be redeployed spoke of his horror that the U.S. convoys were passing wounded civilians by when there were no military considerations at all.

conditions in the 1990s and in the first years of the 21<sup>st</sup> century when Iraq was under a UN boycott, living conditions worsened in the months and years following the U.S./British invasion. The lack of water, regular electricity supplies, health services and other infrastructure services has been widely reported. Less often noted is the deepening poverty that has affected thousands of people. Thousands of houses have been destroyed and their occupants displaced, often onto the street or into abandoned buildings.

The economic security of the family has steadily worsened since 2003. Although data and surveys are scanty, numerous sources describe widespread unemployment and underemployment in the post-invasion period. Unemployment at the end of 2004 was said to range between 20 and 40 percent of the working age population. For young people and women the rates were higher, as was the case in some areas (56). Many women are only working in domestic services such as housekeeping, cleaning and chores, and they are poorly paid. Survival strategies—such as prostitution and begging—are readily apparent. Over 40 percent of Iraqi people had a poor standard of living, as of early 2005 (56).

The failure to repair, improve, equip medical centers and to protect medical staff all contributed to increased deaths among Iraqi civilians during the occupation.

A study sponsored by the Australian government, the UN Development Program (UNDP) and the International Monetary Fund (IMF) found that 20 percent of Iraq's citizens lived in poverty at the end of 2005. Of that percentage, two million people live on \$1 per day or less (17). Median per capita household income fell from \$255 in 2003 to \$144 in the first half of 2004. Meanwhile, income inequalities were growing in the same period (18). Among the poorest households are those headed by women, representing at least 11 percent of all households (18). Although almost all households received subsidized food rations (instituted in 1990), medical authorities are reporting an increasing number of cases of malnutrition among children. A senior official at the Ministry of Health reported toward the end of 2005 that approximately half of Iraqi children suffered from some form of malnourishment and one child in 10 is also suffering from chronic disease or illness (90). A survey by UNICEF, published in May 2006, found one-third of children in households without regular access to sufficient food to be chronically malnourished (57).

The war has resulted in hundreds of thousands of displaced people. According to a report in April 2006 by the NGO's Coordination Committee in Iraq, about 1.5 million people in the country had been displaced in the three years following the U.S./British invasion in April 2003. The *Seattle Times* reported 250,000 displaced from the October 2004 siege of Fallujah alone (14). While some sources suggest internal disruptions have occurred for three decades, most acknowledge that the invasion and occupation both accelerated and greatly expanded displacement in Iraq. As displaced people move into new areas, the demand for basic services in those locations increases. In what can only be viewed as gross indifference, the Iraqi government's budgeted U.S.\$400,000 to assist the tens of thousands of displaced people is hugely inadequate. The U.S. appears to pay little or no attention to the situation of the displaced, and on occasion, has even blocked aid from others from reaching them.

The food ration provided to Iraqis runs counter to prevailing market-oriented U.S. policy—as well as that of the World Bank and IMF which regularly advise the Iraq governing authorities.

Thus, in April 2006, the subsidy on two-thirds of food items was removed and prices immediately jumped (97).

Most children suffer serious psychological problems because of the chronic insecurity in their neighborhoods and confronting their families. A February 2006 report by The Association of Psychologists of Iraq noted that children in Iraq especially fear kidnapping and explosions. The Association surveyed over 1,000 children across and found that “92% of the children examined [had] learning impediments, largely attributable to the current climate of fear and insecurity” (91).

In addition to the psychological trauma of the occupation, universal human rights protections for children and adults are falling away. Writing in 2006, Amal Kashf Al-Ghitta, a member of the Iraqi National Assembly and Director of the Islamic Foundation for Women and Children, described how child labor was increasing in Iraq as children are called upon to contribute to family economic security. Ghitta writes: “Contractors in municipal services, for example, prefer to use children in order to cut costs. Here, a child may be used for agricultural labor or for janitorial work” (8).

Other contractors are importing hundreds of thousands of workers, mostly from South and Southeast Asia. Human rights groups report that at least some contractors withhold pay, fail to pay overtime, hold workers’ passports to prevent them from moving to other jobs, and maintain unsafe working conditions. So extreme and widespread had the abuses become by Spring 2006 that the U.S. military “issued new orders to private contractors in Iraq to crack down on violations of human trafficking...” (16).

### *Security and well-being*

One of the responsibilities of occupying powers is to provide peace and security to people living under their control. The obligation to protect of human life—especially civilians—is recognized in international law. A large number of civilian deaths and disruptions to daily life characterize the occupation. Adding to the insecurity are the vast numbers of kidnappings, for vengeance or extortion. During the first four months of 2006, some 20,000 people, half of whom were women and children, were kidnapped in Iraq (33).

In the Spring of 2004 and again by the end of 2005 the U.S. forces had abdicated

responsibility for providing security in many areas. In 2004, to reduce casualties and the obvious Iraqi displeasure with the U.S. military occupation, the U.S. command withdrew its troops from major urban areas, including Fallujah and Samara. Responsibility for maintaining order was

“Yesterday they were showing Sunni and Shia clerics praying together in a mosque and while it looked encouraging, I couldn’t help but feel angry. Why don’t they simply tell their militias to step down-to stop attacking mosques and husseiniyas-to stop terrorizing people? It’s so deceptive and empty on television-like a peaceful vision from another land. The Iraqi government is pretending dismay, but it’s doing nothing to curb the violence and the bloodshed beyond a curfew. And where are the Americans in all of this? They are sitting back and letting things happen- sometimes flying a helicopter here or there-but generally not getting involved.”

--Iraqi blogger “Riverbend” February 27, 2006,  
<http://riverbendblog.blogspot.com/>

passed to Iraqi security forces. The latter efforts failed, and nationalist fervor grew in the cities (30). In the wake of “insurgent” regrouping in the cities, the U.S. conducted periodic raids through the cities. By the end of 2005, it was clear to many commanders that it was impossible to maintain stability in many parts of the country (6). Not only were there too few U.S./British troops, but the resistance had become too widespread. But probably more important was the sense by the U.S. forces that they had little control over determining the course of events, including maintaining a peaceful environment. *New York Times* correspondent, Jeffrey Gettleman, wrote on his return to Baghdad: “Gone were the American tanks that used to guard the intersections. Instead, aggressive teenagers with machine guns and shiny soccer jerseys ruled the streets” (7). In September 2006, the Marine commander in western Iraq reported that the U.S. military had essentially “lost” that vast region and the central government had no presence or control in the area (85).

With the breakdown of any semblance of security (and further contributing to instability), resistance groups have targeted professionals, intellectuals, academics, journalists and artists, in addition to people within the Iraqi security forces. Many professionals who can afford to leave the country are doing so; others are moving to cities in Iraq where they feel more secure (10; 11; 25). The growing sectarian-based violence in 2006 widens the scope of targets.

The Iraq Ministry of the Interior has been reported to be a base for some of the militia, armed guards and death squads operating in Baghdad and elsewhere in the country (68). In other instances, politicians and religious leaders have organized their own militias; some are as large as several thousand people. Whether militias, guards, or death squads, all are functioning outside the control of the government. In many cases, these para-military groups are acting as police (or enforcers) and many of the groups are associated with individuals and factions who hold positions of authority within the Ministry of the Interior, according to former Human Rights Chief for the United Nations Assistance Mission for Iraq, John Pace (15). Pace noted of these private militias operating as public police forces: “They have roadblocks in Baghdad and other areas, they would kidnap in [sic] other people. They have been very closely linked with numerous mass executions, at least mass arrests of people who later turned up showing signs of some execution. And so they constitute a major destabilizing factor in the sense that they are responsible for a large degree of the lack of protection of Iraqis in their own country” (15).

Mainstream media have focused attention on sectarian aspects of violence in Iraq in 2006. Pace does not discount that, but argues that the Ministry of Interior militias and other militias in the country relate to the failure of the occupying forces to provide overall stability and security. He said, “My observation has been certainly there are sectarian aspects to the conflict that's going on. But in my view...the sectarian aspect is only a result of the main cause. And main cause is the total breakdown in any kind of law and order” (15).

While security for the civilian population deteriorated, the U.S. military has shown a willingness to engage in actions that open the way for human rights abuses if not actual war crimes. A short piece in the *Christian Science Monitor* in January 2004 noted: “The rules of engagement instruct U.S. soldiers to bring withering force to bear on positions they're attacked from, even when an insurgent ducks into a private house for cover” (22).

The military actions against urban centers is described below. On a smaller scale, numerous reports exist of various abuses against civilians arising from tactical decisions: in Haditha in November 2005 where 24 civilians were killed, allegedly by U.S. Marines; in Hamdania, on April 26, 2006, an Iraqi man was said to have been deliberately killed by Marines; in the village of Abu Sifa, near Balad, in March 2006 during which 11 Iraqis, mostly women and children, apparently were massacred by U.S. troops. These and numerous other incidences of gross abuses of Iraqis are regular occurrences, especially in a military environment that tends to judge all Iraqis as the enemy.

In 2004, on two occasions which have been documented, U.S. forces kidnapped the wives of men believed to be involved in the resistance movement, with the intent to have the men surrender for the release of their wives (19). According to UN observers 80 to 90 percent of people who are arrested and detained in either U.S. or Iraqi jails and prisons are innocent of any crime or active involvement in the resistance (15). Detentions will be discussed in more detail below.

One of the goals of the U.S. occupation is to train and prepare Iraqi security forces—military and police. Considerable resources have been put into such training. As of early 2005, Iraqi military units increasingly took part in actions alongside of U.S. units. The Iraqi units have demonstrated improvements in tactical areas, but U.S. military commanders working with the units are circumspect in granting them too much credit. One unit of Iraqi police being trained by the U.S. is the Public Order Special Police whose role is to conduct raids, cordon-and-search operations, provide area and fixed-site security, and reinforce local police. The head of the U.S. training, Colonel Gordon 'Skip' Davis, said in February 2006 of the Special Police: the teams “lack...a professional and a strong NCO [non-commissioned officer; an enlisted man, with leadership responsibilities] core, and that's really where our major problem is in terms of unit control or individual discipline.” One of the commanders within the U.S. training teams acknowledged: “Well, obviously, these guys [Special Police commando units]—one of their strengths is that they're aggressive, and so what we try to do is ensure that their aggressiveness does not go over the top and is—and that they operate in accordance with Iraqi law. We do address it. We address it intentionally through training. We address it through leadership” (70).

## **5. Specific situations of illegal military tactics**

### *Massive Use of Firepower Against Civilians*

A Johns Hopkins University study published in the medical journal *Lancet* in 2004 estimated conservatively that 100,000 Iraqi civilians had been killed or died between the invasion in March 2003 and October 2004. The article argues: “...after the invasion violence was the primary cause of death. Violent deaths were widespread, ...and were mainly attributed to coalition forces. Most individuals reportedly killed by coalition forces were women and children. The risk of death from violence in the period after the invasion was 58 times higher...than in the period before the war” (28). Given the dramatic increase in air attacks, surges in combat and sieges of cities since

that time, the number of civilians deaths now far exceeds that number.<sup>14</sup> Further, the number of people wounded during attacks is four to six times the number killed.

One reason for the huge numbers of civilian casualties under the U.S. occupation is that U.S. soldiers have often behaved as if they have been told to shoot anything that moves. As noted in the *Christian Science Monitor*: “The rules of engagement instruct U.S. soldiers to bring withering force to bear on positions they're attacked from, even when an insurgent ducks into a private house for cover” (22). However, many NGOs have attested that private homes and persons who are clearly civilians are attacked without any possible excuse that a particular attack was directed at insurgents.

By the end of 2003, the U.S. military actions affecting civilian populations had become blatant, regular and egregious. The U.S.-endorsed Iraqi minister for human rights, Abdel Baset Turki, went to Geneva in January 2004 for sessions with the acting U.N. High Commissioner for Human Rights. He apparently specifically condemned human rights violations by U.S. occupying forces in Iraq and asked the UN to investigate (5). The Acting High Commissioner issued a report (E/CN.4/2004/4) to the UN Commission on Human Rights on the situation in Iraq. Turki resigned his post in Spring 2004, apparently out of protest for the numerous human rights violations.

Part of the rationale offered by the U.S. military and the administration for the broad sweeps and urban sieges that kill and injure so many civilians is a presumed need to attack centers infiltrated by non-Iraqi fighters. This rationale was offered, for example, for the attacks on Tal Afar in September 2005. However, a follow-up by *Washington Post* reporter Jonathan Finan had military and intelligence officers agreeing that non-Iraqi involvement in the resistance was minimal. Finan wrote: “...analysts say the focus on foreign elements is also an attempt to undermine the legitimacy of the insurgency in the eyes of Iraqis, by portraying it as terrorism foisted on the country by outsiders. ‘Both Iraqis and coalition people often exaggerate the role of foreign infiltrators and downplay the role of Iraqi resentment in the insurgency,’ said Anthony H. Cordesman, a former Pentagon official now at the Center for Strategic and International Studies in Washington....” (6).

The tactics of engagement practiced by the U.S. military dramatically increased the likelihood of

“One sergeant in northern Iraq puts it this way: ‘If someone runs into a house, we're going to light it up. If civilians get killed in there, that's a tragedy, but we're going to keep doing it and people are going to get the message that they should do whatever they can to keep these people out of their neighborhoods.’”

-- Dan Murphy, *Christian Science Monitor*,  
January 21, 2004

"We do not employ force just for the sake of employing force. We use lethal force only when justified, proportional and, most importantly, lawful "

-- statement by General Michael W. Hagee,  
Commandant of the Marine Corps,  
May 25, 2006

<sup>14</sup> Lower estimates, based on direct observation, place the number of civilian deaths at between 41,000-50,000. These do not take into account death in regions not easily accessible to the press or take into account deaths not recorded except by family members (27).

civilian casualties. An attack on the small town of Baiji illustrates situations that have been repeated numerous times and on both larger and smaller scales. The following excerpts are taken from an article by Michael Schwartz, using reports from the *New York Times* and the *Washington Post*.

In early January 2006, ...a relatively small incident (not even worthy of front page coverage)...illustrated perfectly the capacity of the American military to kill uncounted thousands of Iraqi civilians each year.

Schwartz cited the *Times* account of what happened at Baiji, 150 miles north of Baghdad, on January 3. The account relied on U.S. officials who had stated:

"A pilotless reconnaissance aircraft detected three men planting a roadside bomb about 9 p.m. The men 'dug a hole following the common pattern of roadside bomb emplacement,' the military said in a statement. 'The individuals were assessed as posing a threat to Iraqi civilians and coalition forces, and the location of the three men was relayed to close air support pilots.'

"The men were tracked from the road site to a building nearby, which was then bombed with 'precision guided munitions,' the military said. The statement did not say whether a roadside bomb was later found at the site. An additional military statement said Navy F-14's had 'strafed the target with 100 cannon rounds' and dropped one bomb."

Schwartz continues his narrative:

The target was a "building nearby," identified by a drone aircraft as an enemy hiding place. According to eyewitness reports given to the *Washington Post*, the attack effectively demolished the building, and damaged six surrounding buildings. While in a perfect world, the surrounding buildings would have been unharmed, the reported amount of human damage in them (two people injured) suggests that, in this case at least, the claims of "precision" were at least fairly accurate.

The problem arises with what happened inside the targeted building, a house inhabited by a large Iraqi family. Piecing together the testimony of local residents, the *Times* reporter concluded that fourteen members of the family were in the house at the time of the attack and nine were killed.

Because in this case -- unlike in so many others in which American air power utilizes "precisely guided munitions" -- there was on-the-spot reporting for an American newspaper, the U.S. military command was required to explain these casualties. Without conceding that the deaths actually occurred, Lt. Col.

Barry Johnson, director of the Coalition Press Information Center in Baghdad, commented: "We continue to see terrorists and insurgents using civilians in an attempt to shield themselves."

Notice that Lt. Col. Johnson (while not admitting that civilians had actually died) did assert U.S. policy: If suspected guerrillas use any building as a refuge, a full-scale attack on that structure is justified, even if the insurgents attempt to use civilians to "shield themselves." These are, in other words, essential U.S. rules of engagement. The attack should be "precise" only in the sense that planes and/or helicopter gunships should seek as best they can to avoid demolishing surrounding structures. Put another way, it is more important to stop the insurgents than protect the innocent.

And notice that the military, single-mindedly determined to kill or capture the insurgents, cannot stop to allow for the evacuation of civilians either. Any delay might let the insurgents escape, either disguised as civilians or through windows, backdoors, cellars, or any of the other obvious escape routes urban guerrillas might take. Any attack must be quickly organized and -- if possible -- unexpected (58).

These tactics have become the norm, treating all civilians as suspects, without an opportunity to demonstrate otherwise and usually with no benefit of doubt. If civilians are in areas where resistance fighters operate, they are immediately suspect.

### *Detentions*

Large-scale rounding up and detention of civilians has been a major feature of the occupation. Most of those detained were not involved in combat actions against U.S. forces. In some areas, military units have used force and detentions indiscriminately against all civilians. The Geneva Conventions are explicit in stating that unlawful detention, denying civilians or POWs of fair trial rights; hostage-taking are all grave breaches of international law, and hence, war crimes.

In many cases, people are detained for extended periods without being charged with a crime. In the latter part of 2003 and on into 2005, it was common for U.S. troops to invade homes, hold children, the elderly, and women at gunpoint while homes are searched. Iraqi men were assaulted and insulted in front of their families before being handcuffed and led away. Some military commanders encouraged regular and broad sweeps of villages and towns, detaining any men of military age. It was not uncommon for such searches to be conducted every day (73, p. 237).

The U.S. Army 4<sup>th</sup> Infantry Division, operating in the northern part of what is called the "Sunni Triangle," was especially aggressive in conducting regular sweeps of settlements and detaining large numbers of men. The number of detained people overwhelmed the ability of U.S. staff to interrogate detainees quickly or effectively, leading to abuses at numerous centers, including Abu Ghraib. Adding to the human rights abuses experienced by detainees was the reality that most should not have been taken in the first place. In May 2004 the Red Cross reported that

military intelligence officers estimated that 70 to 90 percent of over 43,000 Iraqis who had been detained were innocent of any military or civilian crime (92). Between August 2004 and August 2005, the number of people held had doubled, many taken in military operations in October and November 2004 (93).

The military response to the detentions was to look at such tactics as creating deeper bitterness about the occupation and creating more “insurgents”—which, of course, was occurring. Little concern was expressed for the rights of Iraqis or the abuses suffered during raids.

## **6. Use of illegal weapons**

The U.S./British forces are equipped with some of the most advanced weapons available in the world; some of them are illegal under existing international law rules.

The use of illegal weaponry has been raised by human rights monitors since the beginning of the war.

The use of weapons containing depleted uranium (DU) was widely condemned by non-governmental organizations at the 2003 session of the United Nations Commission on Human Rights. Many of the tanks employed in Iraq fire DU projectiles, and many experts insist that the larger missiles used in “shock and awe” were also DU munitions. In any case the U.S. concedes it uses DU weapons, but insists, in the face of overwhelming opinion to the contrary, the DU weapons are not illegal.<sup>15</sup> However, as UN and other experts argue, DU weapons can be considered illegal because of the prohibitions in The Hague Convention of 1907 on poisons, the 1925 Protocol on Gases, Protocol I of the 1983 Convention on “Conventional” weapons that prohibits non-detectable fragments<sup>16</sup> and because they are indiscriminate. DU particles cannot be contained to the legal field of battle, cannot be “disengaged” when the war is over, cause medical catastrophes (cancer, birth defects, genetic damage, and the like) long after the cessation of hostilities and are therefore inhumane, and pollute the environment. Widespread use of DU weapons in Iraq has resulted in an escalating incidence of birth defects, cancers, and other illnesses and conditions related to use of this type of uranium. In Basra, for example, where DU was used by invading U.S. forces in 1991, cancer rates increased nine-fold in the eight years after their use (48). The same conditions evinced by Iraqis are also present in U.S. troops and their offspring—the dread “Gulf War Syndrome.”

The U.N. expert body also addressed the issue of cluster (fragmentation) bombs, found to be illegal as they easily spread from legal to illegal military targets (they typically spread over an area of several football fields), and, because they have a poor detonation record, continue as unexploded ordinance (UXOs) for many years unless cleaned up.<sup>17</sup> Numerous NGOs at the 2003

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<sup>15</sup> The main argument made by the U.S. is that there is no treaty outlawing DU. But as the International Court of Justice and UN experts have shown, a weapon may be banned without a specific treaty if it cannot be used without violating humanitarian law.

<sup>16</sup> DU particles are less than a micron in size and are not detectible by x-ray.

<sup>17</sup> As the Sik Yuen reports attest, it is the difficulty of clean-up that is a major reason that these weapons are illegal. The U.S. used cluster bombs in Laos during the Vietnam War, and these are still causing civilian casualties more than 40 years later. Also reference Footnote 5.

session of the UN Commission on Human Rights also condemned their use by the invading forces. As most of the cluster bombs were used in urban areas, there was little chance for civilians to escape injury or death.

The U.S./British forces have been shown to use massively destructive weapons that are indiscriminate in their targets. Daily, planes bomb and fire cannons upon Iraqi towns and cities, although the air war has been grossly under-reported. One analyst notes: “The tactic of using massively powerful 500 and 1,000 pound bombs in urban areas to target small pockets of resistance fighters has, in fact, long been employed in Iraq” (60). Clearly, cannon fire from the air on individuals or small groups is largely indiscriminate.

The weaponry used against the people in Fallujah was vast and the firepower- intense: air-to-ground fire from AC-130s supported the ground troops. The planes carry 40 mm cannon that can fire 120 rounds per minute, and big 105 mm cannon, normally a field artillery weapon. The plane’s latest version, the AC-130U, known as “Spooky,” also carries Gatling gun-type 20 mm cannon. The gunships were designed primarily for battlefield use to place saturated fire on massed troops. Obviously, a city occupied by civilians and combatants was no place for AC-130s, as various human rights groups argued (21). The military returned the AC-130s to the battlefield in March 2006.

U.S. military commanders acknowledged, after initial denials, that Napalm was dropped on Iraqi troops during the advance on Baghdad. “The attacks caused massive fireballs that obliterated several Iraqi positions” (49). The Pentagon argues that the weapons dropped in Iraq are not “traditional” Napalm, but ones created with a slightly different mixture of jet fuel and sticky polystyrene-like gel. The results, however, are as devastating and terrifying.

The U.S. Department of Defense acknowledged, after strong denials, that white phosphorus was used by the U.S. forces during the siege of Fallujah. Also, at least one published article written by a U.S. military officers acknowledges the use of white phosphorus during the siege of Fallujah in November 2004 (71). Other credible sources also reported its use in Fallujah, forcing the issue with the U.S. government (59, p.102). One source noted: “Some artillery guns fired white phosphorous rounds that create a screen of fire that cannot be extinguished with water. Insurgents reported being attacked with a substance that melted their skin, a reaction consistent with white phosphorous burns” (51).

The use of white phosphorous artillery and mortar shells was called “shake and bake” by the U.S. military. The white phosphorous shells were accompanied by other high explosives, the heat of the former forcing people into areas where the latter would have the highest impact.

Other incendiary weapons have also been used. A reporter for the British paper, *Guardian*, investigated and found the Marines used an “assault weapon... armed with warheads containing `about 35 percent thermobaric novel explosive (NE) and 65 percent standard high explosive.”” Citing an article in the *Marine Corps Gazette*, the author noted that the weapon was designed to “`cause the roof to collapse and crush the insurgents fortified inside interior rooms.’ It was used repeatedly: `the expenditure of explosives clearing houses was enormous.”” (40). Like other

weapons, this explosive did not distinguish between fighters and civilians. Also, it exploded as fireball, giving the impression of other weapons, such as Napalm.

The conclusion, as one analyst puts it, is “[w]e can now say with certainty that the only WMDs [weapons of mass destruction] in Iraq were those that were introduced by foreign invaders from the U.S. who have used them to subjugate the indigenous people” (51).

## **7. Aggression against selected urban areas**

The U.S. attacks on Iraqi cities have involved a range of actions and weapons that are illegal under international law, and the people of Iraq’s cities have borne the brunt of those military abuses. The attacks on Fallujah were among the most fierce and are described in some detail below as the evidence is most thorough and compelling. However, Fallujah has not been the only urban area where U.S./British forces have carried out intense sieges that have lasted for weeks or months.

### *Fallujah*

Fallujah was held under siege twice, in April and again in November 2004. A conservative estimate of deaths during the April 2004 siege was 800, of which between 572 and 616 were civilians; at least half of that number were women and children. “There are clear reports of 600 people killed in total up until April 12<sup>th</sup> [2004], most of them killed before U.S. Marines began to permit women and children to be evacuated from the town” (36). Care for the people of Fallujah was aggressively denied. “Humanitarian workers speak of U.S. soldiers firing at ambulances and civilians.” Access to hospitals and clinics was denied to civilians for two weeks (40).

So remarkable was the level of killing, that Iraqi authorities strongly protested until U.S. forces were ordered to stop and withdraw from the city.

In the wake of the April withdrawal, U.S. Marines leaders argued that they had not been ready to attack at that time but they opposed the decision to withdrawal once in the city. Lt. Gen. James Conway, commander of 1st Marine Expeditionary Force in April 2004, and his assistant, Brig. Gen. John Kelly, both said that the decision to assault and then withdraw from Fallujah was made by senior U.S. military and political authorities, including at the White House (37).

By late summer 2004, Iraqi resistance fighters again were well-established in the city. Attacks against Iraqi and U.S. forces occurred regularly. The decision was made to invade the city and remove the resistance fighters. Prior to the November 2004 attack on Fallujah, the military bombed and fired artillery into the city for at least six weeks (37) and created such dangerous conditions that most civilians, an estimated 250,000, fled (39). But not all who wished to do so were allowed to leave the city. Reports indicate that the Marines prevented men of military age (not defined) from leaving, probably on the pretense that they were possible resistance fighters. At the same time, troops of the 3rd Battalion, 1st Marine Regiment “conducted Operation Clean Sweep...in areas east of Fallujah. The operation was designed to hinder enemy movement to and from the city and eliminate any possible safe havens in the vicinity” of the city (42).

Iraqi military, known as the Fallujah Brigade, and police forces that had been stationed in Fallujah after the April siege were deliberately disbanded by Coalition authorities in August 2004. “The plan was to clear the city of any Fallujah Brigade and police members who could be convinced to cooperate with the U.S. military and the government in Baghdad. They were invited to join the new Iraqi army or the highway patrol, respectively.” “The intention was to turn Fallujah into a blank slate -- that is, anyone who appeared on the street with a gun or in a uniform would be considered fair game if Baghdad asked U.S. forces to go back in and clear the city” (38).

Fox News reported that the final assault began as “An AC-130 gunship raked the city all night long with cannon fire as heavy explosions from U.S. artillery continued into Monday morning. Warplanes carried out some two dozen sorties against the city, and four 500-pound bombs were dropped over Fallujah before dawn. Orange fireballs from high explosive airbursts could be seen above the rooftops” (95).

Reporters of the *New York Times* reported: “mechanized units, mainly M1A2 tanks and Bradley fighting vehicles, entered the southern district, Shuhada,...their muzzles blazing, blowing apart buildings, rolling over barriers and confronting insurgents holed up in mosques and other refuges. It was the sixth day of the battle in Fallujah” (43).

In remarks echoing rationale for wholesale destruction in Vietnam, Army Captain Paul Fowler of the 1st Infantry Division is quoted as saying: “I really hate that it had to be destroyed. But that was the only way to root these guys out.... The only way to root them out is to destroy everything in your path” (83).

Monitoring Net of Human Rights in Iraq, a coalition of Iraqi human rights groups, issued a report that identified a variety of “crimes committed by the occupation forces and by Iraqi military units” in Fallujah in November 2004. The organization’s report is summarized here.

- The plundering of health care centers and their destruction by bombing. The Central Hospital was occupied; the staff and everyone in the hospital at that time were arrested. Ambulances in the city have been bombed and the rescue teams were hindered from entering the city, where an estimated 50,000 civilians remained.
- Internationally prohibited weapons were used in the bombing of the city, such as phosphoric weapons, Napalm, bombs containing unknown gases, causing the blood to explode out of bodies. 24 carbonized bodies have been found in the area of the military neighborhood. Surviving civilian eyewitnesses stated that the soldiers of the occupation forces entered the area wearing gas masks. Furthermore, cases of deformed newly born increased as a consequence of the use of such weapons. In a press conference, which took place during the battle, Mr. Khaled Al-Sheikhali, official of the Ministry of Health, confirmed the use of such weapons.
- “More than 280 missing persons are reported from among the inhabitants of the city of Fallujah. Their fate is still unknown. These persons are officially registered by names and by photo at the local authorities in the city. It is further estimated that the total number of missing persons exceeds 500” (4, p. 5).

- “Arrested civilians were forced to participate in cleaning the city from the remains of the battle and what has been used in it. In one of the disposal sites of these remains, bodies of fighters and civilians, among them women and children were found. The entrance to these areas is prohibited” (4. p. 6).
- “Many civilians trying to escape the hell of shell firing were victims of snipers, who were following U.S. orders to shoot at anyone who moves, even at children. Many civilian eyewitnesses affirmed that the streets of their neighborhoods were full of dead civilians, killed on their way to take refuge in the nearest mosques, following U.S. appeals to do so.”
- Eyewitnesses confirm that 4 persons of the civilians seeking refuge at the "Al-Hadra Al-Mohammadiya" mosque, were led to a near wall, with their hands tied and their eyes covered, and were then executed there by U.S. and Iraqi Forces, on the grounds of suspecting them to be fighters.
- Doctor Hafid al-Dulaimi, director of the Commission for the Compensation of Fallujah Citizens (CCFC), established by the Iraq government, reported 36,000 destroyed homes in all districts of Fallujah, along with 8,400 shops (84)

Despite the intensity of the attack on the city and the presence of at least 50,000 civilians, the military “illegally denied access to the Iraqi Red Crescent” and, according to the UN's special rapporteur, used "hunger and deprivation of water as a weapon of war against the civilian population."

Marine Corps Lieutenant General John Sattler was commander of the 1st Marine Expeditionary Force operating in western Iraq from September 2004 through March 2005. He commanded the siege of Fallujah in October and November 2004. Sattler is reported to have instructed troops, “...you don’t have the right not to shoot” (73). A British newspaper reported that U.S. troops were told by Colonel Mike Shupp, commander of Regimental Combat Team 1, a lead element of the 1st Marine Expeditionary Force: “Anyone still in the city will be regarded as a potential insurgent” (74).

During the November 2004 siege, Sattler said: “...all of the targeting that we have done within the city—each and every strike that's been conducted has been terminally controlled, meaning that the bomb is dropped on a specific target, controlled by a specific individual and dropped for a specific reason—either troops in contact, a sniper in the building, or a cache of weapons or ammunition inside that building. We have not nor will we conduct indiscriminate bombing with either our aircraft, our helicopters, our fixed-wings or our artillery” (75).

The level of munitions expended by the U.S. in Fallujah was said to have included 4,000 artillery shells, 10,000 mortar shells, 10 tons of bombs. These figures seem low, given the amount of destruction that ensued. What is known is that air cover was so dense on some occasions that planes were layered in the sky. Fighter jets regularly used Hellfire missiles and the 500-pound version of the GPS guided Joint Direct Attack Munition, known as the GBU-38. AC-130 gunships were widely used.

Despite, Sattler’s assurances of precision targeting, the military said the operation resulted in 2,000 buildings destroyed and 10,000 others severely damaged—as noted above, Iraqi estimates of the level of destruction were much higher (95; 75, pp. 401-02). The number of resistance

fighters in Fallujah at this time was estimated at 2,000. Independent journalists questioned the precision of the bombing, arguing that the massive use of firepower against supposed targets frequently affected civilians. Further, an earlier report in the New York Times cited military officials as dubious of precision air attacks on a city as densely built as Fallujah (76).

Major General Richard Natonski, commander of the 1st Marine Division led the ground maneuver element under 1st Marine Expeditionary Force in counter insurgency operations in the Battle of Fallujah. He is quoted as saying: "We had the green light this time and we went all the way...." "Natonski said he and other planners took lessons from the failed U.S. assault on the city in April, which was called off by the Bush administration after a worldwide outcry over civilian deaths" (77). During a news briefing he added: "Our intent is to minimize the damage to the buildings in Fallujah. However, we will not put to risk our Iraqi and American troops without taking measures necessary to protect their lives" (78).

### *"The Fallujah Model"*

The tactics employed by the U.S. forces were similar to those used in other urban sieges. One reporter described the situation: "The Fallujah model is being applied yet again, albeit on a smaller scale. I haven't received any reports yet of biometrics being used (retina scans, finger printing, bar coding of human beings) like in Fallujah...." The report continues: "... most of the families who fled are staying in refugee camps outside the city in tents amidst horrible conditions in the inferno-like heat of the Iraqi summer." Neither food nor water was provided to the people (53). Those people who stayed were treated as "insurgents", to use the term preferred by the U.S. military and most of the media.

### *Other Cities and Areas*

As elsewhere across Iraq, U.S. military forces face continued resistance in *Samara*, despite regular military actions and more intense assaults.

In mid-December 2003, Lieutenant Colonel Nathan Sassamon led the 1<sup>st</sup> Battalion of the 8<sup>th</sup> Infantry Regiment of the Army's 4<sup>th</sup> Infantry Division in operations in Samara. He is quoted as saying: "...we used explosive breaches on the target we went into.... No one really told us to win the hearts and minds, but they did tell us to bring the peace, to stop the insurgency, stop the fighting" (73, p.285). At least three soldiers in the Battalion were subsequently charged with various crimes against Iraqis.

A siege of Samara occurred in late 2004 as U.S. and Iraqi troops sought to gain control of the city and end the resistance. In anticipation of the attack, 40 percent of the city's population fled (30). Those who remained found water and electricity intentionally cut off (61).

By early 2006, both the resistance and U.S. attacks continued. A media report in February 2006 concluded: "Bloodshed is destroying the city and driving a wedge between the Iraqis who live there and the U.S. troops who are trying to keep order. Violence, police corruption and the blurry lines of guerrilla warfare are clouding any hopes of victory" (52).

In an effort to control population movements, especially by resistance fighters, the U.S. military built an eight-foot high dirt wall around Samara. Signs told people they would be shot if they tried to cross the wall. Residents can enter through one of three checkpoints after they show identification and submit to searches. “After the wall went up, the city's population fell from about 200,000 to about 90,000, according to U.S. military officials” (52).

Another siege of Samara was launched in mid-March 2006. More than 50 aircraft and 1,500 Iraqi and U.S. troops were involved. The U.S. military reported that the operation captured “48 suspected insurgents, 17 of which had already been cleared and released” (32). The contradiction in the use of the term “insurgents” is readily apparent as 40 percent of the captives were released within several days. Although 1,200 families fled the city, hundreds of others remained and were prevented from leaving. Also, aid agencies reported that they were prevented from entering the city with relief supplies. “We have been informed that they are taking the men for interrogation and leaving women and children alone in their homes afraid and desperate for supplies,” said Muhammad al-Daraji, Director of the Monitoring Net of Human Rights in Iraq. An emergency room doctor in another city reported receiving telephone calls from residents within Samara. They spoke of dead bodies in streets and injured people who were unable to receive assistance. Said the doctor, “They were desperate and cannot be taken out from there. According to the information we have women and children are also victims” (23).

In September 2004, the U.S. military sweep called “Black Typhoon” which involved a siege that moved the city of Tal Afar toward chaos. On 19 September 2004, the *Washington Post* reported that U.S. forces “had turned off” water supplies to Tall Afar “for at least three days” (72). An estimated 150,000 of the 250,000 in the city fled or were forced to move out of the city. At least 100,000 never returned. Over 500 police officers either deserted or joined the insurgents. The mayor of the city, installed by the U.S. military after its occupation, reported that 40 percent of the information the U.S. military had about suspects was incorrect. Reflecting the tactics of the time, the military operation was one of siege, installation of local authorities and departure. Resistance fighters quickly returned and settled into the city for another years.

A year later the troops were back; 6,000 U.S. soldiers along with approximately 4,000 Iraqi soldiers were in Tal Afar. In anticipation of the attack, an estimated 90 percent of the city’s population fled. The reason given for the siege was to attack resistance fighters, but reports indicated that they also had left prior to the attack (53). Independent reports noted that “residents of Tall Afar are reporting that most of the people killed were civilians who had no place to go so they chose to stay in their homes. People also stayed because they feared persecution at the hands of the Peshmerga and Badr Army”—that is, elements of the Iraqi military (53).

Plans for the September 2004 siege of Tal Afar, which included air and land attacks, were drawn by Lieutenant Colonel Karl Reed, commander of the U.S. Army’s 5<sup>th</sup> Battalion, 20<sup>th</sup> Infantry Regiment, 3<sup>rd</sup> Brigade (Stryker) 2<sup>nd</sup> Infantry Division, and Lieutenant Colonel Kevin Hyneman, the deputy commanding officer of the 2<sup>nd</sup> Infantry Division’s 3<sup>rd</sup> Brigade.

### *The Sunni Triangle*

Fallujah, Ramada and Samara are all in the region in central Iraq so-called the “Sunni Triangle” because of the high percentage of Sunni Muslims living there. U.S. Army Major General Raymond T. Odierno, was commanding general of the 4<sup>th</sup> Infantry Division there from March 2003 until April 2004. The division “earned a reputation for being overly aggressive. Again and again, internal Army reports and commanders said that this unit . . . used ham-fisted approaches that may have appeared to pacify its area in the short term, but in the process alienated large parts of the population.” One intelligence officer is quoted as saying: “These guys are looking for a fight. . . I saw so many instances of abuses of civilians. . . .” Another officer charged that the division “fueled the insurgency.” One general is cited as saying what the division did “was a crime” (73, pp.232-233).

Subordinates to Odierno said that he promoted the idea that all Iraqi detainees were terrorists and were to be treated as such during operations—that is, with great suspicion. One non-commissioned officer acknowledged that the division kidnapped family members in order to compel suspects to surrender (73, p. 283). Odierno became the assistant to the Chairman of the Joint Chiefs of Staff in 2005 and continued in that position until mid-2006.

### *Baghdad*

Security for Baghdad’s citizens has remained problematic, at best, since the invasion. Occupying forces and Iraqi government authorities live and work in the heavily encased so-called “Green Zone.” Outside those boundaries, water and electricity supplies are limited, security depends upon local militias, and movement is often limited by fear.

In April 2006, against the continued insecurity in Baghdad, some senior U.S. administration officials began discussing applying the Fallujah model to Baghdad. That is, a major military battle to remove the resistance (54). In July 2006, the U.S. increased its troop presence in Baghdad by re-positioning several thousand soldiers from other areas into the city. Now there appear to be plans to wall the city in an attempt to prevent entrance by resistance fighters.

## **8. Holding violators accountable**

The generally accepted rules of the laws and customs of war provide that a State’s political leaders, military commanders, senior officers, field officers and any soldier may be held accountable for war crimes. In the few trials that have taken place since the Nuremberg and Tokyo war crimes tribunals following World War II there has been a major focus on military and political leaders who order illegal military operations. The basic rule that “superior orders are no defense” applies to the all, from the rawest of recruits to the most senior commanders.

As is apparent from this report, there have been many individual military commanders that have issued illegal orders involving the deliberate targeting of non-combatants, including medical personnel. Other orders have sanctioned: torture; the use of illegal weapons; the deliberate

targeting of protected goods and facilities such as hospitals, ambulances, medical supplies, food, and water; the obstruction of humanitarian aid; and the wanton destruction of property. U.S./British military forces have no reasonable defense for most of the violations. For example, there is no allowable defense that military forces are dealing with “guerrilla” forms of resistance.<sup>18</sup> The wholesale attacks on urban areas are particularly serious as attacks may not be carried out when, because of the environs, there is a high likelihood of high civilian casualties relative to military casualties. Thus in the Iraq War, individual commanders of U.S./British military forces, as well as the entire chain of military command up to the civilian leadership in the Department/Ministry of Defense and the Chief Executives, can be held accountable for their military decisions, orders, and omissions.

Individual military commanders have made decisions about choices of weapons to be used and the intensity of their use. During urban sieges, they have used tactics to remove large proportions of Iraqi occupants from the cities and have either given orders to treat all remaining occupants as real or potential “insurgents” or not given orders to fully protect and provide necessary security for those remaining citizens. Military action against civilian populations is a war crime. It can not be excused by the difficulties of dealing with guerrilla forms of resistance. In essence, it is a form of collective punishment that exceeds international law.

In this report there is ample of evidence of the indiscriminate use of deadly force and of physical abuse short of death against large and small numbers of Iraqis. In some cases, this illegal behavior appears to have been encouraged by military leaders, and in many more cases there appears to have been little or no attempt to prevent it.

## **9. Mechanisms for accountability**

Action to enforce international law will, of course, need evidence of specific crimes. Witnesses are an important part of the evidence chain. For the U.S./British military conduct in Iraq it likely will be necessary to link specific military officers with specific orders or tactics. Some of that evidence currently exists in public accounts. Other evidence is likely to be found in correspondence and orders prior to specific military actions, post-action reports, logistics and weapons reports (especially for aircraft), and similar written documentation within the Department of Defense.

A major source of evidence may well be actual admissions by U.S. personnel that an event occurred. For example, U.S. officials do not deny that they attacked Fallujah General Hospital, but they say they attacked it because it was an enemy field hospital. Of course, attacking any working hospital is a war crime, whether civilian or the enemy’s, and the officials’ ignorance of humanitarian law is glaringly apparent. As more soldiers and officers understand the rules, they themselves may provide highly useful evidence, especially if they begin to refuse the orders they are obliged to refuse under international law.

Iraqi officials, doctors, military personnel and civilians may have compelling evidence. There is also ample photographic evidence of attacks on hospitals and many other violations.

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<sup>18</sup> Humanitarian law does not distinguish types of warfare, and there is no prohibition of “guerilla” style operations, suicide attacks or the like, provided that the target of these operations is the opposing military forces.

As this report shows, there is ample evidence to guide full investigations of war crimes by individual military officers with U.S. forces in Iraq and on up the whole chain of command.

There are a number of options for holding accountable U.S. military officers and civilian officials who have been involved in breaches of international humanitarian law during the invasion and occupation of Iraq.

### *The War Crimes Act*

One option for holding perpetrators accountable is through application of the US War Crimes Act, signed into law in 1996. The law stipulates severe penalties for grave breaches of the Geneva conventions, including the death penalty. The Act applies the term “war crime” to the grave breach provisions of the Geneva Conventions and Protocols set out in this paper, to certain articles in The Hague Convention of 1907, and the use of certain weapons. Because of the clear language and purpose of this Act, and aware of the appalling violations, the current administration seeks to limit its use against its own violators by proposing amendments that would effectively absolve retroactively many of its personnel, including those in very high

#### **U.S. Code, section 2441: War crimes**

- (a) **Offense.**— Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.
- (b) **Circumstances.**— The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).
- (c) **Definition.**— As used in this section the term “war crime” means any conduct—
  - (1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;
  - (2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;
  - (3) which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or
  - (4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

positions. To date, these have failed, but there is every indication that the current administration will continue efforts to water down, through domestic legislation, the long-accepted definitions

of war crimes. This would also violate the U.S. Constitution as the Constitution places treaties as U.S. law, and a party to a treaty cannot unilaterally alter the treaty.

It is most distressing that legislators have not paid attention to implementing the Act in the Iraq war except in a very limited fashion. For example, in a letter to the U.S. Attorney General, 51 members of the House of Representative argued that the Act did apply to abuses committed in Abu Ghraib prison (64). Congressman Jim McDermott of Washington state referred to war crimes, but not to the War Crimes Act, in calling for an investigation of the attacks on hospitals and other crimes in Fallujah (65). Otherwise, members of Congress and most of the media have not referred to the Act as a means to further investigate and, if appropriate, prosecute individual military officers.

Although the Nuremberg War Crimes Trials held against Germans deemed responsible for the conduct of World War II in Europe and the atrocities against European civilians provide a precedent, none of those who were tried were frontline military officers. War crimes trials in East Timor did prosecute several Indonesian military and para-military officers involved in crimes against Timorese civilians as East Timor sought independence in the late 1990s. Separate trials were held in Indonesia for military officers involved in war crimes in East Timor. Despite a number of flaws in the conduct of the trials, two generals were convicted (63).

### *International Action*

A second option for accountability is to work through the mechanisms provided by the Geneva Conventions or that are in place at the U.N. The Geneva Conventions have very clear provisions for ensuring that violators are brought to justice. Each Convention has provisions that require States to “enact any legislation necessary to provide effective penal sanctions for persons committing . . . grave breaches.” All States must “search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”<sup>19</sup> The Conventions further provide:

No [State] shall be allowed to absolve itself or any other [State] of any liability incurred by itself or by another [State] in respect to [grave breaches.]<sup>20</sup>

Under this rule, U.S. or British personnel alleged to have violated humanitarian law may be sought by other signatories to the Geneva Conventions if there are no proceedings taking place elsewhere.

Even before the war in Iraq began, the United States initiated defensive measures to protect itself from liability for war crimes in Iraq by seeking bilateral treaties with most States. These agreements state that the other States would “decline” to prosecute or to bring U.S. citizens before the International Criminal Court. States that did sign such agreements suffered substantial withholding of U.S. aid. Even though patently illegal, and therefore ultimately void in

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<sup>19</sup> Geneva Convention I, Article 49. There are duplicate provisions in the other 3 Conventions for this and the following provisions. States may, however, transfer the person to another State concerned with the matter.

<sup>20</sup> In Geneva Convention I, this is Article 51.

international law, a number of States did enter into these agreements. At present there are some groups in Europe seeking to void those signed in European countries. Most countries in Latin America refused to sign these agreements, and most were “punished” by losing U.S. aid. While repugnant to the whole concept of humanitarian law, these agreements have presently stifled international action against the U.S. for war crimes in Iraq. This is in spite of the fact that the U.S. does not deny many of the war crimes, such as attacking hospitals, it has committed.

While it may prove difficult to establish a special tribunal at The Hague, such as in place now in regards the former Yugoslavia, or even cases against the U.S. and its personnel brought in national courts of other countries in the near future, Other options exist. For example, the Association of Humanitarian Lawyers has brought a suit at the Organization of American States. In addition, people can transmit information of war crimes to the relevant United Nations investigators. To date, the United Nations special rappers on torture (Mr. Nowak), extrajudicial killings (Mr. Alston); the independence of justice (Mr. Despouy); human rights defenders (Ms. Jilani); sale of children (Mr. Petit); the right to food (Mr. Ziegler) and the Working Group on Arbitrary Detention (Ms. Zerroughi, Chairperson) have all reported on violations in Iraq.<sup>21</sup> It seems likely that the Special Rapporteur on the right to health (Mr. Hunt) may in the future. Information can be transmitted through mechanisms described by the Office of the United Nations High Commissioner for Human Rights.

### *World Tribunal*

A third option is to invoke a new sitting of the World Tribunal on Iraq (WTI), a non-governmental collective of international citizens. As the WTI website states, the “legitimacy of the World Tribunal on Iraq is located in the collective conscience of humanity.” The Tribunal is a legacy of the 1967 Russell Tribunal that considered evidence on the U.S. involvement in and war against Vietnam. In a series of sessions in 16 different countries during 2004 and 2005, the WTI heard and considered testimony on the legality of the invasion and occupation of Iraq. It did not consider the role of individual military officers, but that could be a subsequent step if the WTI were to re-convene. While not having the force of law, a citizens tribunal can nonetheless amass sufficient evidence against perpetrators to compel U.S. or other authorities to initiate legal actions. These citizens tribunals are also important to provide evidence of the dictates of the public conscience.

### *Truth and Reconciliation Commissions*

A fourth option for holding individual military officers accountable would be the creation of a form of a Truth and Reconciliation Commission, as has been used in Rwanda, South Africa and elsewhere to hear evidence of abuses and crimes. In the case of South Africa, the commission proceedings could result in referral to courts, but as with all such commissions, the primary goal was to openly acknowledge the crimes that had been committed as a way to promote national healing. A U.N. - mandated Truth Commission in El Salvador did name “over forty military officers and eleven members of the FMLN [anti-government force] responsible for ordering, carrying out, or covering up abuses. The Commission recommended that all those named in the

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<sup>21</sup> The reports can be found at the website of the United Nations High Commissioner for Human Rights, [www.ohchr.org](http://www.ohchr.org).

report be banned from public office for ten years, and from public security functions for life” (66). However, the Commission did not recommend prosecution of the individuals, although that could have been a logical step.

The precedents and experiences of Truth Commissions offer an option for adaptation to the U.S. involvement in Iraq. There is sufficient public awareness of the abuses by U.S. forces in Iraq and skepticism about the credibility of the U.S. administration to proceed with a form of a Truth Commission. Further, such a commission can further investigate, gather information and add to the public’s understanding of the abuses that have occurred in Iraq.

## **10. The “dictates of the public conscience”**

The Iraqi War is rapidly becoming one of the worst “missions” ever undertaken by the U.S./British forces. At the present time, most people and legislators in the two countries are horrified at what has and is occurring but seem unable to stop the carnage.

All people have a right and a duty to insist on not only consequences for engaging in an illegal war in the first place, but also for on-going violations that constitute war crimes by any definition of the term.

It is time to begin to recapture humanitarian law in order to prevent an erosion of principles that could, in the end, make for a very bleak future for the planet.

In this light, there is one most important provision of The Hague Convention of 1907 that all should keep firmly in mind -- the “Martens’ Clause -- named for the Russian delegate who drafted it. It is now part of the Geneva Conventions and Protocols as well. The Martens’ clause states that in time of war all civilians and all combatants

remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.<sup>22</sup>

### *Our Challenge as U.S. Citizens*

Each citizen of the United States is challenged to be willing to recognize first that fellow citizens in the executive branch of the Federal government and in the military have repeatedly violated international law in the invasion and occupation of Iraq. The next step is to open our minds to not only the possibility but the absolute necessity to hold our fellow citizens to account. As noted above, we have a law to do so—the War Crimes Act. The law was created to discourage exactly what has been done in Iraq by U.S. civilian and military officials.

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<sup>22</sup> The Hague Convention of 1907, 8<sup>th</sup> preamble paragraph. Restated in the four Geneva Conventions of 1949, it is found in Article 63 of Geneva Convention I. The Martens’ clause cannot be abrogated even if a party to the Geneva Conventions renounces the Conventions as a whole. The Geneva Conventions also require States to widely disseminate them so that they are known to the entire population. In Geneva Convention I this common article is Article 47.

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