

18TH IADL CONGRESS – THE BRUSSELS TRIBUNAL

Iraq Commission

Towards accountability and justice for Iraq

Helena De Vylder, Sophie Forrez, Karel Deneckere

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The Iraq Commission assembles international legal experts and human rights activists from all over the globe to discuss possibilities to bring justice and reparation to Iraq, and find ways to bring the perpetrators to justice

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I. INTRODUCTION

1. THE FACTS

The 18th IADL Congress took place in Brussels from 15-19 April 2014. The Iraq Commission, organized by the Brussels Tribunal and one of the specialized commissions of the Congress, worked on the subject 'Towards Accountability and Justice for Iraq'.

Mr Dirk Adriaensens¹ clarified the context in which the Iraq war occurred.

On March 19th 2003 the 'Coalition of the Willing', consisting predominantly of UK and US military forces, invaded Iraq, triggering a war and military occupation that lasted almost nine years.

Several reasons were given for the invasion, many of which, remarkably enough, appeared to be groundless. Iraq had no link with the terrorist organization Al Qaeda, nor were nuclear weapons of mass destruction found. Both arguments had been put forward by the US government.

The invasion of Iraq was not in conformity with the United Nations Charter, making it an illegal war. Moreover, numerous cases of human rights violations, a total destruction of Iraq's infrastructure, economy, and social fabric followed in the wake of the invasion. The population's sense of 'Iraqiness' as well as its historical awareness was severely eroded.² Ironically enough, in the United States the Iraq war is referred to as 'Operation Iraqi Freedom'.

However, more than a decade after the launching of this illegal war, no official has been brought to justice for these war crimes, nor has any victim been able to claim his or her rights under international law.

The Iraq Commission assembles international legal experts and human rights activists from all over the globe to discuss possibilities to bring justice and reparation to Iraq, and find ways to bring the perpetrators to justice. Of course, a lot has been done already. Many speakers shared their experiences about past and present legal procedures.

This report aims to outline the key facts and atrocities committed in Iraq, and furthermore, to present a roadmap for legal action that can be used by law professionals and activists worldwide. Legal action is essential and can take many forms: universal jurisdiction, defending Iraqi victims in court, seeking arrest warrants when former US politicians want to travel outside the US and so on.

¹ Mr Dirk Adriaensens is a member of the executive committee of the Brussels Tribunal. He works as a criminologist, writer and activist. Between 1992 and 2003 he led several delegations to Iraq. He was a member of the International Organizing Committee of the World Tribunal on Iraq (2003 – 2005).

² Mrs Eman Khamas eyewitnessed the atrocities and the results therefrom for the Iraqi population. Her eyewitness report is to be found in the first attachment to this report.

Context in which the war on Iraq was started: military roadmap of global conquest

Prof. Michel Chossudovsky³ points to the importance of understanding the circumstances from which the idea to invade Iraq originated. He considers it vital to situate the Iraq debate in a broader comparative and international context, linked to the history of US Foreign Policy.

The atrocities committed in Iraq by the 'Coalition of the Willing' are part of a military agenda, i.e. the "Long War" by the Pentagon. This long war originates in the Truman Doctrine – which emerged in the late forties - and sets the agenda for a process of conquest. Throughout the last century, we can see a sequence of wars, such as the one in Korea, Vietnam, targeted assassinations in Indonesia, Afghanistan, Iraq, Bosnia, and now Syria, revealing a clear pattern. The Iraq war was just a part of the military roadmap for global conquest.

Numerous documents refer to this global strategy, for example a document of 1995 published by the US central command (USCENTCOM), describing the sequencing military operation: "first Iraq, then Iran"; the statement of general Wesley Clark; a document by the Project for the New American Century (PNAC) . The PNAC outlines what they describe as simultaneous theatre wars in different parts of the world, as well as constabulary functions (military and intelligence operations), as well as destabilization and regime change.

It did not take long until the façade of the official US discourse showed its first cracks. In February 2003, US Secretary of Defense Donald Rumsfeld's memo for the United Nations, allegedly originally of MI6, appeared to be a plagiarized PhD-paper.

We are now in the realm of non-conventional warfare. Iraq and Afghanistan were theatre wars. The Syrian war is a covert war. It is a war that uses Al Qaeda as foot soldiers.

The 9/11 attacks were abused as a pretext and justification to start a global 'War on Terrorism'. The intervention in Afghanistan has had important legal ramifications, as it has set the stage for the war in Iraq.

On the morning of September 12, 2001, an Atlantic Council Meeting was held in Brussels, in which article 5 of the Washington Treaty was invoked. This article states that an attack against any member will be considered as an attack against all the members of the Atlantic Region, which implied that Afghanistan had attacked the US and that they had done it through Al Qaeda. It implied that 9/11 was a state-led attack. The Afghan Government (referred to by the US as the "Taliban") had offered twice to deliver Osama Bin Laden to the justice system through diplomatic channels. This was turned down, as US president George W. Bush did not want to 'negotiate with terrorists'.

The killing of civilians is part of the 'anti-terrorism agenda'. Mr Tommy Franks, the leading general of central command, uses the term massive casualty producing event, to refer to the large scale killing of the civilians. This goes hand in hand with a non-sensical rhetorical

³ Prof. Michel Chossudovsky is an award-winning author, professor of economics (emeritus) at the University of Ottawa, founder and director of the Centre for Research on Globalization (CRG), Montreal and editor of the globalresearch.ca website.

trick of blaming the victims for their own deaths. As a consequence, US forces avoid any responsibility, at least in the official discourse. Moreover, the ruining of infrastructure is part of the modus operandi.⁴

War is always double-sided. Beside the realities on the front, there is the propaganda-machinery to guarantee support for the cause at home. The propaganda apparatus is crucial, as “you don’t wage a war without lies”. The strategy is to turn realities upside down, to present war as peace-keeping and peace-making undertaking.

The Al Qaeda logic takes a special place within the propaganda apparatus. The anti-war movement regards Al Qaeda as some kind of independent external entity, threatening the Western world. But Al Qaeda is an intelligence asset, an instrument, a mercenary force. It originates in the Soviet-Afghan war (December 1979-February 1989), during which Al Qaeda operatives operated as proxies of the US intelligence services.

Furthermore, it is very important to understand the Al Qaeda logic. The anti-war movement views Al Qaeda as some kind of independent outside entity, threatening the Western world. But Al Qaeda is an intelligence asset, an instrument, a mercenary force. It originates in the Soviet Afghan war. The Al Qaeda operatives are instruments of US intelligence services.

To conclude, this war was part of a roadmap. We are talking about a project of world conquest. It is vital to understand the military doctrine, and the fact that everything is coordinated. There is not a ‘one country agenda’, but a consistent methodology.

2. THE LEGALITY

The Iraq war was not in conformity with the United Nations Charter.

The UN Charter is the foundation of modern international law. The Charter is a treaty ratified by the US and most of its coalition allies in the invasion of Iraq, which are therefore legally bound by its terms. Article 2(4) of the Charter bans the use of force by states except when certain conditions are met. It states: “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN”. Former UN Secretary General Kofi Annan said “the decision to take action in Iraq should have been made by the Security Council, not unilaterally” . Furthermore he stated: “I have indicated it was not in conformity with the UN Charter. From our point of view, from the charter point of view, it was illegal.” However, the UN was silent when it did happen.

The fact that no weapons of mass destruction were found, that no link with Al Qaeda existed, and that the US invasion did not bring freedom and democracy to the Iraqis, leaves the Iraq war without a reason. The absence of a clear casus belli meant there was no

⁴ Mr Ghazwan Al-Mukhtar witnessed the ruining of Iraqi infrastructure during the Gulf War 1991. His eyewitness report is included as attachment 2.

justification and thus no international mandate for waging a pre-emptive war. The war fits the Nuremberg definition of a crime against peace.

According to a detailed legal investigation conducted by an independent commission of inquiry set up by the government of the Netherlands headed by former Netherlands Supreme Court president Willibrord Davids, the notion of "regime change" as practiced by the powers that invaded Iraq had "no basis in international law."

Several, mostly unsuccessful, attempts have been made to bring to responsible warmongers to court. Nonetheless, there are some hopeful signs. (for more details on these attempts, see supra, p. 5-21)

Some examples of specific war crimes: the Fallujah siege and the Palestine Hotel attack

Mr Ross Caputi⁵ argues that the siege of Fallujah was one of the largest and deadliest operations in Iraq. The US military servicemen were mis- or even uninformed about the military operation and the danger it caused for civilians. His battalion was told that the only people present in the city were combatants. However, the vast majority of the men they fought against in Falluja were locals, unaffiliated with al Qaida, who were trying to expel the foreign occupiers from their country.

According to Mr Caputi, white phosphor was used in Iraq. He does not know whether uranium was used. But white phosphor is not a precision weapon, as it travels with the wind.

His eyewitness report is a very important one, since it comes from the heart of the aggressors' action. He talked about the indiscriminate nature of the attack, the use of air strikes and tanks in civilian neighborhoods, the practice of deliberately destroying food. He witnessed a lawless atmosphere, saw privates searching dead people's pockets to find money.

His role in the Fallujah siege changed his view on the world, it changed his ideals. He wants to fight for accountability. He leads the Justice for Fallujah project, a group of veterans, students, and working people dedicated to raising awareness about the suffering of the people of Fallujah, promoting solidarity with the victims of US war crimes, and ultimately ending all US wars and occupations. Being asked whether he would also give his testimony in a possible future (ICC) trial, he consented.

⁵ Ross Caputi is a former US marine, having served from 2003 till 2006. He took part in the second siege of Fallujah in November 2004. He became openly critical of the military and was discharged in 2006. Ross holds an MA in linguistics and is the founding director of the 'Justice for Fallujah Project'. He is also the director of the documentary film 'Fear Not the Path of Truth: a veteran's journey after Fallujah'.

II. (LEGAL) ACTIONS

The subsequent part of this report will outline the possible actions to bring justice and reparation to Iraq, to hold perpetrators responsible, with regard to both legal and extra-legal perspectives. Moreover, international as well as national means will be investigated. Although the emphasis will be on future opportunities, a careful examination of the remedies that have been used already will be included.

1. PREVENTING AND CONDEMNING WAR IN GENERAL

A. UNIVERSAL JURISDICTION

Regular jurisdiction means that criminal charges can only be laid in a certain state when (a) an offence is committed in that state, (b) the perpetrators or (c) the victims are connected with that state, or (d) the crime harms that state's own interest. 'Universal jurisdiction' means that it is not necessary to show such a link in order to raise criminal charges.

The Spanish **Judge José Antonio Martín Pallín**⁶ questions the abandonment of universal jurisdiction all over the world.

As a member of the Spanish Supreme Court, the Palestine Hotel Case was launched before him based on the Spanish law on universal jurisdiction. The facts in this case consist of the attack of the Palestine Hotel in the center of Bagdad by US tanks, claiming that snipers were hiding inside, although it were foreign cameramen. The US raised pressure, which lead to the repelling of universal jurisdiction in Spain before the case was judged.

Similarly, the Belgian provision of universal jurisdiction was scrapped in 2004 under political pressure of the US and Israel. Therefore, an attempt to bring a case against general Franks, commander of coalition forces in Iraq, to court, was dismissed.

Judge Martín Pallín emphasizes the importance of universal jurisdiction, in order to make it possible for independent judges to examine crimes.

Moreover, **prof. Gurdial Singh Nijar**⁷ refers to universal jurisdiction as an essential tool of international justice. With regard to war crimes, he argues that this is not an internal

⁶ Mr José A. Martín Pallín is a former Public Prosecutor and judge at the Spanish Supreme Court. He presided over the Spanish Progressive Prosecutor Union and was the spokesperson of Jueces para la Democracia, a very prestigious judiciary Association. He also presided over the Spanish Human Rights Association, and is also a member of the Spanish Bioethics Committee and many other Law associations. In 1996 Universidad Complutense de Madrid awarded him the Jurist Award.

⁷ Prof. Gurdial Singh Nijar is a senior practicing lawyer and former legal advisor to the Third World Network. He is currently professor at the law faculty, university Malaya at Kuala Lumpur and director of the National Centre of Excellence for Biodiversity Law. He also led the Malaysian and third world countries' negotiations that concluded with 2 international environmental law treaties

affair, which excludes the necessity to establish a link to state. Moreover 'humanity' itself forms the link as war crimes are an affront to the global conscience in which the world may intervene to prevent or to punish. No state should allow a certain criminal to be shielded in its territory. Extraditing, prosecuting or delivering him to an international criminal court that has jurisdiction over the suspect, should be the rule. Universal jurisdiction is an essential tool to deal with the limited jurisdiction internal courts may suffer from, or the unwillingness that might be shown by the national police or prosecuting authorities to investigate war crimes.

Moreover, professor Gurdial Singh Nijar argues that besides universal jurisdiction, immunity for heads of state should be retracted. Where immunity for heads of state is not retracted, it is usually limited to official functions. Crimes against humanity are not covered since it is not a function of a head of state to commit serious international crimes. (e.g. Pinochet-case n° 1 and 3).

The real challenge is to get countries to institute charges under universal jurisdiction. This requires lobbying, public interest litigation and civil society pressure. Notwithstanding the problems that arise in this regard, such as the influence of power politics and the need for 'cosying up', the reassertion of the rule of law and the triumph of good over evil clearly requires our best effort.

B. CRIMINALIZE WAR

The purpose of the Kuala Lumpur Foundation (KLF) is to criminalize war. **Tun dr. Mathahir Mohamad**⁸ argues why the KLF want to criminalize war. He considers that the general point of view contains a contradiction here: on the one hand, we consider the killing of one person by another as murder, and we are even prepared to punish him by taking his life. On the other hand, if you kill a million people in war, it is not a crime, but it is glorified. How can this contradiction be?

It is about time that killing is made a crime, no matter if it happens in peace time or in a war. Consequently, anyone who kills in a war should be considered a criminal and be tried in a court of law. That is why waging war should be considered a crime. Of course, a distinction should be made between the defendants and the aggressors before the court of law.

The KLF exists since seven years and during that time the word has been spread throughout the world. People from all over the world have been participating in our seminars, because it is necessary to make this idea a part of the human value-system, the human civilization. We think we can influence people to condemn war as a crime and this can be done especially in democratic countries. Now, if candidates for elections in these

in 2010. Prof Gurdial Singh Nijar has represented Malaysia at numerous international forums and meetings. He is the Lead Prosecutor of the Kuala Lumpur War Crimes Tribunal.

⁸ Dr. Tun Mahathir is a former Prime Minister of Malaysia. He held the post from 1981 till 2003. After his retirement he founded the Perdana Global Peace Foundation, a first but resolute step in the arduous journey towards global peace, moves towards the single goal of putting an end to war.

countries are made to pledge rejection of war as a means of settlement of disputes between countries, then people should elect them. Maybe this is a far-fetched idea, but people will eventually come around to the idea that war is a crime, just as much as in the past slavery was common.

Eventually, the conscience of the people was awakened and slavery became indeed a crime, as it was degrading to humanity. A similar way of criminalization should be possible as well with war. Currently, people who declare war, who invade countries are not punished. In fact, if they win the war, they will even punish the victims for war crimes. We saw that after the Second World War when the defeated Germans and Japanese were tried in a court set up by the victors and they were found guilty and some of them were hanged.

This was contradicting with the fact that in a court of law the judge needs to be impartial and there should not be conflicts of interest and they should judge both victors and the defeated. We find that today there are courts that would treat the defeated as criminals, guilty for war crimes. A court must, however, also try the victors for starting the war. That is why we tried former president George W. Bush and former prime minister Tony Blair and found them both guilty of war crimes.

The tribunal, of course, has no means of enforcing its findings, but it is making known that these people are criminals. In a certain degree they will be made to suffer, perhaps rejection by people because of their past crimes. But there is hope that eventually the world will come around to the view that people who wage war should be tried as much as the defeated nation.

We hope that in the future these people will be tried by an impartial tribunal set up by the world. In the case of Iraq, we know that president George W. Bush went against the United Nations when declaring war on Iraq, because of the so-called dictatorship of Saddam Hussain. The leaders defied the international community in order to invade Iraq. Now Iraq is worse off than under Saddam Hussain.

Now KLF's message is being spread across the world. This is important because we want to teach our children that war is illegal. As alternatives to war, in solving disputes between nations, there could be negotiations or arbitration or they could go to the court of law. The war to defend yourself is legitimate, because you did not cause it yourself. Defendants are in their right. For example, the Palestinians are in their right to defend the own land as they are attacked. And of course, who's retaliating against whom?

I hope that the Brussels Tribunal will succeed in addressing this issue and complement KLF in campaigning for justice for Iraq.

C. INTRODUCING A NEW INTERNATIONAL LEGAL ORDER

Prof. Niloufer Bhagwat⁹ challenges the current legal order and proposes a framework for the establishment of a new international legal order.

Irreconcilable contradiction

As we look back at twenty-five years of developments on the vital issue of war and the absence of peace, with successive wars waged it is necessary to rid ourselves of illusions and reappraise economic and political systems and the international legal system that has been put in place in recent decades, after the cold war, to facilitate this criminality.

We as jurists and lawyers seem to have been carried away by our own illusions, believing that it was possible to avoid war, irrespective of the nature of the economic and political system of dominant nations, by merely advocating legal structures and systems, relying on precedents and pacifism, rather than on opposition to the political and economic systems, using war as alternative policy, by financial and other monopolies seeking to extend themselves everywhere in the world for profits, by any and every means. Could such political systems be the basis for a just international legal order in the world?

The Nuremberg and Far East Trials after WWII demonstrated a system of “victor’s justice”. Radhabinod Pal ‘s, judge at the Far East Trials, observed that “*it does not comply with the idea of international justice that only vanquished states are obliged to surrender their own subjects to jurisdiction of an international tribunal for the punishment of war crimes*”. Despite the magnitude of destruction by both Axis and Allied powers, very few were really tried. With the revival of hostility to the former USSR, a program was instituted to re-integrate Germany and Japan into the Western Defence Alliance System.

The dissenting judgement of judge Pal cautioned against a limited approach, observing that “*questions of law are not decided in intellectual quarantine in which legal doctrine and local history of the dispute alone are retained, and all else forcibly excluded...*”. This was the approach of the Security Council that appointed ad hoc tribunals, the International Criminal Tribunal on former Yugoslavia and International Criminal Tribunal for Rwanda, in view of the geopolitical and self- serving objectives behind the appointment of the tribunals.

The juridical acceptance of the Nuremberg and Far East trials was based on two important jurisprudential advances. The first states “if certain acts of violation of treaties are crimes, they are crimes whether the United States does them or Germany does them and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have against us”. The second reason for wider acceptance of the trials was its declaration that waging a war of aggression is a crime: “War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world. To initiate a war of aggression therefore is not only an international crime; it is the Supreme International Crime... it contains within itself, the accumulated evil of the whole.” The confidence of jurists in the universality of these principles was belied by the history of the immediate post war period (Korea, Vietnam,...).

⁹ Prof. Niloufer Bhagwat is Professor of Comparative Constitutional Law at the University of Mumbai. She is also Vice President of the Indian Lawyers Association in Mumbai. Moreover, she served as a Judge with the Tokyo International Tribunal for War Crimes in Afghanistan.

The ideological basis for successive wars of aggression.

After the collapse of the Soviet Union, Russia and many former republics became a “basket case, an appendage of Western financial institutions, under ‘economic reforms’”. What was the nature of forces, which emerged victorious? “The dominant force in today’s financialized globalization is the Imperialist capitalism of oligopolies of which financial oligopolies constitute the headquarters backed up by the power of states... and the so-called international economic organizations that serve their interests.”

With the capitulation of the Soviet Union, the United States assumed “the role of the capital system as such, subsuming under itself by all means at its disposal all rival powers” leading the world into the “potentially deadliest phase of Imperialism”. The Project for the New American Century planned for a “New American Century”, in alliance with NATO and the Triad, with the ideological construct for “continuous” and “endless wars in our lifetime” including the “war of terror” which began with a false flag operation on 9/11.

Robert Cooper’s essay “The New Liberal Imperialism”, called for new wars: “Among ourselves, we operate on the basis of laws... but when dealing with more old-fashioned kind of states outside the post modern conditions of Europe, we need to revert to rougher methods of an earlier era – force, pre-emptive attack, deception... What form should intervention take? The most logical way... and the one most employed is colonization... though the opportunities, perhaps even the need for colonization is as great as it was in the 19th century... What is needed is a new kind of Imperialism... First there is the voluntary Imperialism of the global economy. This is usually operated by a global consortium through international financial institutions such as the IMF and World Bank etc. is characteristic of the new Imperialism... the second form of postmodern imperialism may be called the imperialism of neighbours”. The new warfare strategy includes covert and privatized warfare to create conditions for regime change.

Devising a new international strategy and a new International Legal System for intervention and control, as an extension of the strategy for war.

The New World Economic and Political Order as it emerged in 1991 required a different international legal system for the penetration of finance capital into every region and the ‘multi-nationalization’ of the world through the WTO and financial and military means.

One of the first acts in pursuance of the new International legal hegemony post 1990, was the gross misuse by the UK-US dominated Security Council of provisions of the UN Charter, in particular Chapter VII, the so-called peace-keeping powers of the Security Council. It was this chapter, which was used to impose and indefinitely continue illegal sanctions on Iraq, which was war by imposition of hunger. The sanctions regime imposed in August 1990, a near total financial and trade embargo, when the Iraqi army entered Kuwait was continued for more than 12 years, and lifted only after the 2003 war despite the fact that Iraqi forces withdrew from Kuwait in early 1991.

Christopher Weeramantry, one of the judges presiding the International Court of Justice, observed in the Lockerbie case: *“That the history of the UN... corroborates the view that a limitation on the plenitude of Security Council’s power is that those powers must be exercised in accordance with well established principles of International Law.”*

Emboldened at the end of the Cold War, one of the largest coalition of forces for war was assembled and led by the US and UK in the first Gulf War. "Excessive force was used that went well beyond normal war aims." The final words on the manner in which sanctions on Iraq were subversive of the UN Charter and Chapter VII, came from the Secretary General of the United Nations, Kofi Annan, who later was to declare the 2003 invasion of Iraq illegal: *"Let me conclude by saying that the humanitarian situation in Iraq poses serious moral dilemmas for the organization. The United Nations has always been on the side of the vulnerable and weak, and has always sought to relieve suffering, yet here we are accused of causing suffering to an entire population. We are in danger of losing the argument and the propaganda war – if we haven't lost it – about who is responsible for the situation."*

The establishment of ad hoc tribunals for Yugoslavia and Rwanda ultra vires of the UN Charter and Chapter VII.

The ad hoc tribunals for Yugoslavia and Rwanda were wholly illegal bodies. There is no article in the Charter of the United Nations or in Chapter VII of the UN Charter which permits the constitution of judicial or quasi-judicial tribunals by the Security Council even as so-called subsidiary organs. At the relevant time and until the establishment of the International Criminal Court in 2002, international civil and criminal jurisdiction vested only in one body: the International Court of Justice. As the word 'ad hoc' implies, both these tribunals were unusual bodies, as only two countries and regions had been singled out, former Yugoslavia and Rwanda.

According to Michael Scharf who drafted the ICTY statute: *"There was a clear consensus that the US would not support the inclusion of 'crimes against peace' in the statute of the ICTY, notwithstanding the Nuremberg precedent... in the final analysis, the United States government, which had been accused by human rights groups and several governments of committing 'crimes against peace' with respect to recent military invasions such as the '89 invasion of Panama, did not want the ICTY to exercise jurisdiction over this offense, leading to precedents that might hamper similar US military action in future."*

Both tribunals were used for a geopolitical purpose of penetrating and extending economic and political control, and never intended to resolve the issue between the warring parties, to keep alive the ethnic conflicts through the widely publicized use of the tribunals. It was with a view to test the so-called objectivity of the International Criminal Tribunal for Yugoslavia, that several organizations filed detailed complaints with the prosecutor of the ICTY against the NATO leaders responsible for the NATO bombings of Yugoslavia. Until today, not a single leader or military personnel of NATO has been charged with war crimes or crimes against humanity before the ICTY, although all complainants against NATO pursued the matter relentlessly. The statements made by prosecutor Carla Del Ponte of the ICTY on several complaints of war crimes and crimes against humanity made against NATO leaders was that NATO was absolved, without investigation.

International Criminal Court statute violates the 'Rule of Law' - Major war criminals given impunity, even as small countries targeted for political reason.

On 1st July 2002, the Rome statute of the International Criminal Court came into force on 60 states ratifying the statute. The 'supreme international crime', the crime of waging a

war of aggression, was significantly missing from the list of crimes over which the ICC had jurisdiction, indicating the extraordinary influence brought to bear on the drafting of the statute by major war criminals operating behind the scenes. This statute conflicts with the rule of law. A basic principle of criminal jurisprudence has been violated by the statute of the ICC, in so far as the permanent members of the Security Council can prevent any referral in respect of their own crimes by the exercise of a veto, while insisting that smaller countries bow to their diktat of referral for 'situations' requiring investigation and trial, including situations purely of domestic criminal jurisdiction.

This curious approach, despite the Nuremberg principles and the UN Charter preamble and objectives, constitutes clear evidence that aggressive war is actual state policy of the dominant economic and political powers.

The duplicity of the United States government is established from the fact that even though it gave other governments the impression that it was signing the treaty and did sign it, simultaneously its concerned officials were finalizing the American Service Members Protection Act 2002 which was legislated as it empowers the US president to use "all means necessary and appropriate measures to bring about release from captivity of US or allied personnel detained or imprisoned by or on behalf of the ICC."

Developments like the aforementioned are making many African nations, as well as India and China grow suspicious towards the ICC.

An analysis of the International Legal System structured and put in place at the end of the cold war, conclusively establishes that this legal system is in furtherance of 'New Imperialism', with the United States government, Israel and the NATO military pact the 'geopolitical lynchpin' of this 'New World Order'.

The solution now lies in exposing the duality of the International Legal System of a fascistic world order, and exposing its global alliances; with a relentless campaign to overturn the foundations of a political and economic system which uses militarization, war and war crimes as an extension of economic policy, making peace a mirage. Significantly even as the International Legal order has collapsed, the rule of law is being gradually abandoned on the home front of so many countries waging war, as these are two parts of the same whole.

Major war criminals have not only targeted individual countries, they target the whole of humanity, in their own turn. It is in the interest of citizens whose governments are waging wars to create the political conditions for a trial of their own major war criminals, even as we do not give up our efforts to make them internationally accountable.

In the memory of the martyrs of the united Iraqi Resistance, at this Commission let us pronounce "No pasaran" ("They shall not pass"), the stirring words of La Pasionaria, leader of the broad alliance of Spanish Republican forces in a similar historic situation. This time there will be no defeat.

2. THE IRAQ WAR: BRINGING THOSE RESPONSIBLE BEFORE COURT

Dr. Curtis F.J. Doebbler¹⁰ listed the legal remedies available in human rights law, humanitarian law and general international public law.

A. THE REGIONAL HUMAN RIGHT COURTS

In the international human rights law there is no prohibition in the use of force, nonetheless there is the notion of the right to life (exists in European Convention of Human Rights, in the American Convention of Human Rights, and in the International Covenant on Civil and Political Rights). When force is used in an arbitrary and illegal way, it violates the right to life. The restrictions for use of force in peace time apply, and here the threshold is lower.

In the case of the Iraq war, we are dealing with the application of international human rights law, since the use of force was not legal. International human rights law covers with issues like arbitrary detention, unfair trial, unlawful killing, denial of health care and education.

In contrast to international humanitarian law, international human rights law incorporates mechanisms that are able to identify the state(s) responsible for human rights violations and remedy these violations.

The European Convention of Human Rights (ECHR) is relevant in this regard.

Any person, NGO or group of individuals, claiming to be a victim of a violation by one of the contracting parties of the rights set forth in the Convention or its Protocols may petition the European Court of Human Rights (ECtHR). The contracting parties include all 'European' states at large, including Russia and Turkey, but without Belarus.

Two high level cases against the United Kingdom challenging the human right violations during the war and occupation in Iraq have been successfully litigated before the ECtHR so far.

The judgments in the Grand Chamber-cases *Al-Jedda v. United Kingdom* and *Al Skeini and others v. United Kingdom* were both released at the 7th of July 2011.

In *Al Skeini and others v. United Kingdom*, the six applicants with Iraqi nationality complained under the procedural duty encased in article 2 ECHR (right to life), which is the duty to investigate suspicious deaths. The first three applicant's relatives received fatal gunshot wounds when British soldiers opened fire allegedly believing that they were under attack or at immediate risk. Another applicant's wife was killed after allegedly being caught in crossfire during a firefight between a British patrol and unknown gunmen. The fifth applicant's son was beaten by British soldiers. They suspected him of looting and

¹⁰ Dr. Curtis F.J. Doebbler is an expert in international law, particularly international human rights law. Dr. Doebbler practices law before the International Court of Justice, the African Commission and Court of Human and Peoples' Rights, the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, the United Nations Administrative Tribunal, and the United Nations Treaty bodies.

forced him into a river, where he drowned. The sixth applicant's son, died of asphyxiation at a British military base, with multiple injuries on his body. However the British military instances were each time immediately called in to investigate, no further investigation was deemed to be necessary in all cases. Only in the last case public apologies were made, a compensation fee was paid and a public enquiry into the death was nearing completion at the date of judgment. In the first five cases the ECtHR held the UK responsible for violations of the procedural duty included in the right to life; because the facts happened under the authority and control of the British troops, and the UK failed to initiate an investigation which met the requirements of article 2 ECHR (independent, adequate, accessible to the family members,...).

In *Al-Jedda v. United Kingdom*, the applicant also is an Iraqi national. He was arrested on suspicion of involvement in terrorism and he was held detained for over three years in a detention facility in Iraq controlled by the British troops. The intelligence supporting the allegation was never disclosed to him and neither were criminal charges brought against him. The ECtHR again held the UK responsible. It held that the indefinite detention without charges was in violation of article 5 of the ECHR, the right to liberty and security. Moreover, the fact that a UN resolution authorized the British involvement in Iraq afterwards, did not mean that responsibility for human right violations was not in British hands, as long as it is established that the British soldiers were exercising authority and control.

Proceedings before the ECtHR are an excellent tool to hold the UK responsible for the human right violations committed by its responsible military and civilian officials.

On the American level, the American Convention on Human Rights (ACHR) is the relevant human rights treaty. However the US signed, but never ratified the Convention. For this reason, it is impossible for its adjudicatory body – the Inter-American Court - to review cases concerning human rights violations committed by the US. The US thus cannot be held responsible for a regional human rights body with adjudicative powers.

Lastly, Dr. Doebller suggested proceedings before the Human rights Council to bring the perpetrators before Court and as a means to remedy the atrocities in Iraq. He did however not go more into detail about this opportunity.

B. HUMANITARIAN LAW MECHANISMS

International humanitarian law is the law of war. It comprises the rules which ,in times of armed conflict, seek to protect the people who are not or are no longer taking part in the hostilities and to restrict the employed methods and means of warfare. An armed conflict can only be justified in two sets of circumstances: namely: (1) the United National Security Council considers it an armed conflict; and (2) a proportionate defense to an armed attack by another state.¹¹

¹¹ Supra p. 4.

Almost every country agrees to international humanitarian law: The US is a most remarkable exception. However the US ratified the fourth Geneva Convention, the Geneva Conventions are short of international mechanisms. The only mechanism available is an International Fact Finding Commission, as in article 90 of the First Protocol to the fourth Geneva Convention. This could have been called upon, but it is a state that has to call upon this commission, and this has not happened yet, as it is highly political.

The violations of international humanitarian law could also have been raised before the UN General Assembly. However, the US sent letters to governments who were planning to do so, and told them that the raising of this question at the UN would be considered an unfriendly act. Hence, the General Assembly has not been called upon yet.

C. INTERNATIONAL CRIMINAL TRIBUNAL

The ICC (International Criminal Court) is a permanent international criminal court, founded to “bring to justice the perpetrators of the worst crimes known to human kind – war crimes, crimes against humanity, and genocide”, especially when national courts are unable or unwilling to do so.

The Office of the ICC Prosecutor has received over 240 communications concerning the situation in Iraq. These communications expressed the concerns of numerous citizens and organizations regarding the launching of military operations and the resulting human loss. Many of these complaints concerned the British’ participation in the invasion, as well as the alleged responsibility for torture deaths while in British-controlled detention facilities.

Complaints regarding the US responsibility are inadmissible for lack of jurisdiction, since the US did not ratify the treaty that installed the ICC.

In 2006, after having waited for years to answer the 240 individuals and organizations that filed complaints, the then Special Prosecutor Moreno Ocampo issued an amazing statement. About that statement Mr. **Dirk Adriaensens** wrote:

“The available information provided no reasonable indicia that Coalition forces had “intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such”, as required in the definition of genocide (Article 6) Similarly, the available information provided no reasonable indicia of the required elements for a crime against humanity, i.e. a widespread or systematic attack directed against any civilian population (...) The available information did not indicate intention attacks on a civilian population. (...) After analyzing all the available information, it was concluded that there was a reasonable basis to believe that crimes within the jurisdiction of the Court had been committed, namely willful killing and inhuman treatment. (...) The information available at this time supports a reasonable basis for an estimated 4 to 12 victims of willful killing and a limited number of victims of inhuman treatment, totaling in all less than 20 persons. Even where there is a reasonable basis to believe that a crime has been committed, this is not sufficient for the initiation of an investigation by the International Criminal Court.

Conclusion

For the above reasons, in accordance with Article 15(6) of the Rome Statute, I wish to inform you of my conclusion that, at this stage, the Statute requirements to seek authorization to initiate an investigation in the situation in Iraq have not been satisfied.

This conclusion can be reconsidered in the light of new facts or evidence. I wish to remind you, in accordance with Rule 49(2) of the Rules of Procedure and Evidence, that should you have additional information regarding crimes within the jurisdiction of the Court, you may submit it to the Office of the Prosecutor.”

In short, the attempt to bring the responsible persons before the ICC failed. Former Prosecutor Moreno Ocampo alleges that the available information did not provide a reasonable basis for crimes in the jurisdiction of the Court.

On the 11th of January 2014, a new attempt has been made to bring the (British) war criminals before the ICC. The law firm Public Interest Lawyers led the legal side of campaigning over abuse of civilians and prisoners in Iraq. They presented a shocking dossier to the International Criminal Court. Its 250 pages included allegations of mock executions, sexual assault, electrocution, beatings and named former Defense Secretary Geoff Hoon, former Defense Minister Adam Ingram, and former Head of the British army Sir Peter Wall. Now it is waiting for the ICC’s response to this complaint.

D. INTERNATIONAL COURT OF JUSTICE

In contentious cases (adversarial proceedings seeking to settle a dispute), the International Court of Justice (ICJ) produces a binding ruling between states that agree to submit to the ruling of the Court. However, the US did not consent. A contentious case against another country of the ‘Coalition of the Willing’ would be possible, but it is important to keep in mind that it has to be a state that brings another state before the ICJ. This would mean that we have to convince the Iraqi Government to sue another state.

E. NATIONAL LAW SUITS TO CREATE ACCOUNTABILITY

Not just the international level foresees mechanisms that create the opportunity to bring perpetrators to justice and remedy the situation of many people in Iraq, the nation level equally provides opportunities to hold war criminals responsible. The claim initiated by **Mr Inder Comar**¹² serves as an excellent example of the strategy that can be pursued and the arguments that can be made in such a case.

Mr Comar represents Sundus Shaker Saleh, in a class action suit in the Northern District of California Court, San Francisco Division. A class action suit is a particular US law suit in which a person sues either a group of people or a single person on behalf of a “class” of

¹² Mr Inder Comar is Legal Director at Comar Law. He completed his legal training at New York University School of Law. Comar Law has initiated a new project that aims to memorialize and record testimony from witnesses, victims and survivors of the 2003 invasion of Iraq by United States’ forces.

similar complainants who may have suffered similar harm. The main requirements of a class action are that everyone in the group share common legal or factual issues, and that the group consists of enough people that it would be impractical for each individual to bring their own claim.

In this case, Sundus Shaker Saleh is the plaintiff, and also represents also “those similarly situated”, a class of persons consisting of all innocent Iraqi civilians (i.e. non-combatants) who, through no fault of their own, suffered damage as a but-for and proximate cause of Defendants’ international legal torts, specifically their conspiracy to commit the crime of aggression and the crime of aggression itself, hereinafter referred to as the Iraq Civilian Victim’s Class.

The defendants in the suit are George W. Bush, Richard Cheney, Donald Rumsfeld, Condoleezza Rice, Colin Powell, Paul Wolfowitz and Does 1-10¹³. They are accused of conspiracy to commit aggression, and the crime of aggression, as they were part of the Bush Administration that started the illegal war in Iraq.

During the Nuremberg trials, the chief crime prosecuted against the Nazis was the ‘crime of aggression’, the supreme international crime. The crime of aggression is engaging in a premeditated war without lawful reason. The United Nations General Assembly Resolution 3314, the Kellogg-Briand Pact¹⁴, Article 6 of the Nuremberg Charter, and Article 5 of the International Military Tribunal for the Far East regard this as a violation of law.

The defendants violated the Kellogg-Briand Pact, a treaty signed in 1928, with the US as signatory. This Pact requires state-parties to “condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another”. The Kellogg-Briand pact was the primary treaty used by the Nuremberg Tribunal to recognize and enforce the crime of aggression. The lawsuit also claims that the Defendants violated the UN Charter by planning to commit and eventually committing the crime of aggression.

These treaties are, as treaties of the US, incorporated into its law under Article VI, clause 2 of the United States Constitution, which declares “treaties made... to be the supreme law of the land.”

This is the first time since the Nuremberg trials that a defendant is charged with the crime of aggression before a duly authorized court.

To establish jurisdiction in a US court, there are two possibilities: first is the Alien Tort Statute, this is a section of the United States Codes, which reads as follows: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”. The US courts interpret this statute to allow foreign citizens to seek remedies in US courts for violations

¹³ A “Doe” or “John Doe” defendant is an unknown person who has yet to be named in the lawsuit. By suing 10 additional Doe defendants, Ms. Saleh has reserved the right to add up to 10 additional defendants who may have participated in the common plan or conspiracy to commit aggression against Iraq, assuming she discovers further evidence or facts that would identify those defendants.

¹⁴ Kellogg-Briand Pact (or Pact of Paris), officially named the General Treaty for Renunciation of War as an Instrument of National Policy.

of international law for conduct committed outside the US.¹⁵ Second possibility is the fact that the crime of aggression is also a violation of customary international law, which creates binding obligations on the US, its citizens, and its courts. United States federal courts have recognized that international law is part of US law, and furthermore it has established that a court may look to customary international law when its own nation lacks any instruction that is on point for a particular matter. Therefore, the crime of conspiracy to wage an aggressive war is also a violation of customary international law, which creates binding obligations on the US, its citizens and its courts.

Premeditated war

Rumsfeld and Wolfowitz, the chief architects of the Iraq war, spent nearly two years lobbying Congress, the press and the American public to use military force to overthrow Saddam Hussein from power. According to Rumsfeld and Wolfowitz, "American policy cannot continue to be crippled by a misguided insistence on unanimity in the UN Security Council." The defendants engaged in a common plan to attack another country. They initiated this plan as early as 1997.

There is a lot of information on how, on and after 9/11, the Bush Administration and their 'Coalition of the Willing' sought a way to link the attack to Saddam Hussein and Iraq. Although all intelligence was pointing toward Bin Laden, Rumsfeld's notes, made on 9/11, quote him as saying: "Judge whether good enough hit S.H." – meaning Saddam Hussein – "at same time. Not only UBL" – the initials used to identify Usama bin Laden. "Go massive," the notes quote him as saying. "Sweep it all up. Things related and not."

Legal arguments in the suit – chief legal argument: Nuremberg trials

Justice Robert Jackson, the leading architect of the trials and Chief Prosecutor for the US stated in his opening speech in the trial against Hermann Göring, commander-in-chief of the German air force, and others before the Nuremberg tribunal: "We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well."

In August 2013, the US Department of Justice requested that George W. Bush, Richard Cheney, Donald Rumsfeld, Colin Powell, Condoleezza Rice and Paul Wolfowitz be granted procedural immunity. This issue is currently pending before the court and has not yet been resolved.

The Department of Justice claims that in planning and waging the Iraq War, ex-President Bush and key members of his Administration were acting within the legitimate scope of their employment and are thus immune from suit. Furthermore, it is alleged that this issue is too political for a court to decide on, and that the court would be overstepping its boundaries in case it took the case.

¹⁵ Recently, the US Supreme Court has narrowed the reach of the Alien Tort Statute by requiring some nexus or conduct to the United States. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013). The US Department of Justice has argued that *Kiobel* bars the reach of the Alien Tort Statute to Iraq.

Mr. Comar was prepared for this reaction. The plaintiff alleges that the conduct at issue began prior to these defendants entering into office. Furthermore, it is quite surprising that the DOJ considers that planning a war of aggression constitutes lawful employment duties for the American president and his or her cabinet. Mr. Comar: "The systematic manipulation and exaggeration of intelligence in order to convince the American public that an invasion of Iraq was necessary was not the kind of conduct that Defendants were employed to perform. Defendants were not hired, inter alia, to falsely link al Qaeda to Iraq, which is what they did."

Nuremberg was a legal process, and not a political one. If it was not legal, it would have been victor's justice. There is a striking similarity between what the Nazis thought of the Nuremberg trials, and what is now claimed by the DOJ. Göring stated that the Nuremberg trials were political, not criminal. It is interesting to see that the same sentiments and psychology of moral disengagement are coming back in the Bush Administration.

Mr. Comar stresses that this case is about much more than only war. This case is even more so about liberty.

According to Mr. Comar, assuming it were procedurally and ethically proper, it would be very useful to have this same law suit in 49 other States. On this way we could limit the range that the defendants can travel. Even more so, we should start a suit in all the state courts. So there is need for more plaintiffs to take hold of international law. Another possibility is to have this same law suit in as many countries as possible, of course adapted to each country's legal specifics.

Furthermore, we should start using the language of piracy for war criminals. International law recognizes the concept of *hostes humani generis* (enemies of the human race): pirates, hijackers, and similar outlaws. For these 'enemies' universal jurisdiction needs to apply. The defendants are in fact pirates. If we could have this concept applicable for war criminals, we finally could bring the notion 'no safe haven for war criminals' into reality.

When asked about the chances of the law suit, Mr. Comar answers that the Nuremberg precedent is quite strong. Of course, it is not a guarantee for success, if a court looks for a way out to circumvent it, it is possible they will succeed.

3. ENQUIRIES TO ESTABLISH RESPONSIBILITY

Beside proceedings in courts with the formal power to hold perpetrators responsible or remedy the case, a nation may also establish enquiries that research the facts in the light of the applicable law, in order to clarify what happened and who is responsible, without the formal power to take measures against those responsible. Two enquiries into the Iraq war deserve particular attention:

A. THE CHILCOT ENQUIRY

The Chilcot-enquiry is a British enquiry into the nation's role in the Iraq war, named after its chairman Sir John Chilcot. The inquiry concerns Britain's involvement in Iraq between mid-2001 and July 2009. It covered the run-up to the conflict, the subsequent military action and its aftermath with the purpose to establish the way decisions were made, to determine what happened and to identify lessons to ensure that in a similar situation in future, the British government is equipped to respond in the most effective manner in the best interests of the country. Although the inquiry is more wide ranging than the previous Butler and Hutton inquiries, it is still designed to be an establishment solution to an intractable political problem, in Mrs. **Lindsey German**¹⁶'s point of view.

The public sessions commenced in November 2009 and concluded early February 2011. The enquiry heard a variety of witnesses, including former politicians, former government officials and Tony Blair himself.

The Chilcot-enquiry is struggling with the collection of evidence because the British government is claiming that some evidence regarding the legal advice and when the decision to go to war was taken, cannot be disclosed because of refusal by the US government. However, it seems unlikely that this option was not considered when the inquiry was set up.

Moreover, the delay of the report of the enquiry is criticized. The enquiry has still failed to report, more than three years after it stopped taking evidence, and five years after it was set up. Rumors that it would report by Easter 2014 have clearly not been borne out.

B. THE KUALA LUMPUR WAR CRIMES TRIBUNAL

On initiative of **dr. Mahathir**¹⁷, the Kuala Lumpur War Crimes Commission and Tribunal was established under Malaysian law. The respective Charter was signed on June 2008 and installed the Kuala Lumpur War Crimes Commission (KLWCC) and the Kuala Lumpur War Crimes Tribunal (KLWCT) as its key institutions. The former was established as a filter, in order to hear complaints and make recommendations for further action by the chief prosecutor. The KLWCT then hears the charge(s) filed by the chief prosecutor. The KLWCC and KLWCT are competent to consider charges regarding crimes against peace, war crimes, crimes against humanity.

Although according to **prof. Gurdial Singh Nijar** the working methods of the Tribunal comprise of many assets, the value of the Tribunal is not that of a treaty-based international court. The fair procedures are characterized by overall professionalism in the persons of the adjudicators, prosecutors and the defense, moreover legalism is secured

¹⁶ Lindsey German is the convenor of the British anti-war organization 'Stop the War Coalition' and a former member of the central committee of the Socialist Workers Party. She was editor of Socialist Review for twenty years until 2004. She has twice stood as a left wing candidate for Mayor of London, coming fifth in 2004 and most recently standing as the Left List mayoral candidate in the May 2008 elections.

¹⁷ Dr. Tun Mahathir is a former Prime Minister of Malaysia. He held the post from 1981 till 2003. After his retirement he founded the Perdana Global Peace Foundation, a first but resolute step in the arduous journey towards global peace, moves towards the single goal of putting an end to war.

as the tribunal bundles expert knowledge of the relevant laws. The quality of the procedures is furthermore assured by the qualitative evidence and submissions, supporting documents, presentation and judgments. Moreover, the KIWCT strives for full transparency. However, professor Richard Falk said: *“the KIWCT followed a juridical procedure purported to operate in a legally responsible manner. This would endow its findings and recommendations with a legal weight expected to extend beyond a moral condemnation of the defendants, but in a manner that is not entirely correct.”* The value of the KIWCT consists merely of naming and shaming of the condemned. Next, the judgments are believed to be a cogent basis for further action (by countries in exercise of their universal jurisdiction, by civil society, and for public interest litigation), and lead to awareness raising and the promotion of activism.

In November 2011, the Tribunal heard charges regarding crimes against peace against former president of the US George W. Bush and former British Prime Minister Anthony Blair. The prosecution team was headed by professor **Guardian Singh Nijar**. The Tribunal concluded that both Bush and Blair were guilty of crimes against peace, crimes against humanity and genocide as result of their roles in the Iraq war, as the invasion and occupation of Iraq was unlawful.

Six months later, in May 2012, the Tribunal was given the opportunity to assess complaints regarding war crimes, torture and inhuman and degrading treatment, against Bush, Rumsfeld, Cheney, Gonzales, Addington, Haynes, Bybee and John Yoo. Once more, the Tribunal found the accused guilty.

The Tribunal does not have the power to enforce its judgments. Nonetheless, the establishment of responsibility is a clear sign to the public. As such, the Tribunal succeeded in its mission.

4. CIVIL SOCIETY INITIATIVES

Mrs Lindsay German referred to the UK as an example of growing public dissatisfaction and emerging of civil society initiatives. Whereas the war was initially supported by the majority of the public, the extent of evidence about the illegality of the war and the various legal challenges lead to a solid anti-war opinion throughout the UK.

Doubts about the legality of the war include:

- Evidence that Jack Straw - former Secretary of State for Foreign and Commonwealth Affairs - in 2002 said that there should be a fresh UN mandate for the war to be legal;
- Evidence that the Attorney General Peter Goldsmith gave advice in 2002 and early 2003 that the war was illegal, but in the weeks before the war he changed his mind;
- Evidence from the Downing Street Memo, leaked to the Sunday Times in May 2005, which showed the minutes of a meeting on 26 July 2002, where the head of MI6 said that the intelligence and facts were fixed around the policy;

- Evidence that Foreign Office Deputy Legal Adviser Elizabeth Wilmhurst resigned in March 2013 over the legality of the war and whether UN authorization was required.

Nowadays it is rightfully believed that the conduct and prosecution of the war in Iraq remains one of the great shames of modern British politics. The role of civil society may not be underestimated.

On the one hand, among other civil society-initiatives, the citizen's arrest of Blair is very visible. The campaign begun by the journalist George Monbiot, 'Arrest Blair', which offered a bounty to anyone who managed to make a citizen's arrest on the former Prime Minister. So far, five individuals attempted, the most recent one being a young waiter working in a restaurant in the City of London. Media coverage for these events reached great heights, in- and outside the UK.

On the other hand, the law firm Public Interest Lawyers led the legal side of the campaign over abuse of civilian prisoners in Iraq. They highlighted the case of Baha Mousa, killed by British troops soon after the invasion and occupation in 2003, and presented a shocking dossier to the ICC early 2014.

As a result of these initiatives, long term anti-war opinion in the UK strengthened and made the legality of a war a much more central question. While civil society could not stop the war in 2003, it succeeded preventing a new one in Syria. Where David Cameron called back Members of Parliament from their holidays in August 2013 for an emergency session to support proposed air strikes in Syria, they surprisingly voted against such an intervention. Moreover, polls shows strong opposition to any military intervention in Ukraine.

Finally, civil society plays an important role in holding governments and their allies accountable. Whereas it was impossible to forbid the war in Iraq, the strong antiwar feeling that lives in the minds of many people thanks to the war of civil society-movements, made the legality of war a much more central question and can prevent future wars.

5. WITHDRAWING SUPPORT FOR THE COALITION OF THE WILLING

The last means of action does not fit neatly in the foregoing structure. This action involves a judicial but preventive character in a concrete case.

Bush justified the war on Iraq, calling it a 'war for peace, human rights and democracy'. Initially, Costa Rica expressed its official support to the Coalition of the Willing. However, Costa Rica is a peaceful country, as it has abolished its army in 1948 and, shortly thereafter, the Costa Rican Supreme Court reaffirmed peace as a "foundational value of our nation". Old military headquarters are now museums. That is why it was important for Bush to have Costa Rica in the 'Coalition of the Willing', strengthening his discourse that it was an invasion meant to bring peace to the Iraqi people.

Mr Roberto Zamora¹⁸ successfully went to the Costa Rican Supreme Court to force his country to withdraw the support given to the coalition. He challenged the support since it would violate the statement of neutrality of the country, and also based his claim on international law. The Court annulled the support, accepting Mr. Zamora's arguments, since the invasion was a unilateral act. It also declared that support for the US invasion violated the United Nations Charter and contradicted a fundamental principle of "the Costa Rican identity", which is peace as a fundamental value. Never before had the court annulled the support of a government for an invasion.

III CONCLUSION AND FUTURE STEPS

All too often the legal status of the war in Iraq remains unscrutinized for obscure reasons. Nevertheless, as TV cameras follow in the wake of the military withdrawal, the reality of the consequences of the war persist. It should be clear that the demand for justice does not follow media attention logics and should not be left to the whims of the powerful.

The two days 18th IADL Congress "Accountability and Justice for Iraq" has epitomized the endurance of the struggle against impunity. This congress, which has evinced much professionalism and many in-depth discussions, has boosted an exchange of ideas to ultimately bring the war criminals to justice.

The reality was acknowledged that, unfortunately, as justice will not automatically flutter down as a belated but inevitable response to impunity, it has to be actively claimed by the public.

During the Congress the urge to bundle forces in order to raise public awareness was strongly emphasized. The message ought to focus not only on the persistent suffering, but – and perhaps especially – on the possibility for justice to prevail. Continuous efforts to raise public awareness should result in resolute democratic pressure to claim justice.

1. Important strategies to (re)frame our message, include the de-legitimization of the major war criminals and finding political allies that are willing to strive for the establishment of a new international legal order, since the current order tolerates impunity and is somehow biased in its convictions (cf. only African and Serbian war criminals appear before the International Courts). In connection with this, the 'banality of war' (reference to German philosopher Hannah Arendt), should be exposed: "it's all to be at war all the time".

In a democracy the people need to be vaccinated against militarism: Move the focus of the peace movement from reacting on war to preventing the next one, spread the idea that these wars are not ad hoc, but a part of a global strategy.

A reframing should also include a criminalization of the current undemocratic judicial system that favours the powerful over the powerless, a criminalization of the economic

¹⁸ Mr Luis Roberto Zamora Bolaños is a Costa Rican lawyer who sued the Costa Rican government for being part of the Coalition of the Willing.

system that welcomes war as a lucrative business opportunity, a criminalization of the media that uphold the lies of criminal policy. The propaganda-apparatus is fragile and can be dismantled by counter-propaganda.

A de-legitimization strategy could also include asking BRICS-states for support. This could have the effect of a statement in which the decline of the US-hegemony is recognized. This could go hand in hand with a boycott of the US dollar and other symbols of power.

2. The issue of justice has to be kept on the public agenda. Everyone who attended the Congress has an educational duty to raise awareness about the injustice, to speak and blog about what has been said.

An emphasis was placed on the potential of people's tribunals. Being part of a wider political, economic and cultural people's movement, they are increasing in importance.

The stage is already set for several countries to organize universal law. The challenge now is to make sure that there is no safe haven for war criminals. The success of international law starts with the people having confidence in it: despite of all the uncertainty international law is valid and it is as much law like any other type of law.

3. A public in the fight for justice that deserves special attention are the US citizens. The people of the US are in need of a new vision, as the awareness grows that there are no genuine alternative political options. The United States is still a very difficult place for activism. Successful campaigning means breaking through the wall of apathy.

One 'best practice' for campaigning is the justice for Fallujah-project that organizes several awareness raising events. Its focus now lies on the reparations, as it considers 'restorative justice' as an alternative to the liberal model of justice. Codepink.org offers another 'best practice', as it provides practical campaigning material and examples. Also a website could be set up with all court cases around the world, serving as a useful tool for the peace movement. There was also a special call to include young people in particular.

4. Many foreign lawyers and other experts must be involved Also Iraqi lawyers could be given extra training by organizing workshops. But these ideas come, of course, with the challenge of finding new ways to do fundraising.

Note of the reporters: in the report, the lecture of Basim Al-Janabi was not mentioned. Given the importance of the theme of international responsibility, we refer to the full text of Basim Al Janabi:
-Arabic version video report: http://www.brussellstribunal.org/article_view.asp?ID=1536
-English version: http://www.brussellstribunal.org/article_view.asp?ID=1522

IV ATTACHMENTS

1. EYEWITNESS MRS EMAN A. KHAMAS

Mrs Eman Khamas¹⁹ is an eye witness of the destruction of Iraq. According to her, the occupation is also an invisible crime. The Iraq invasion and the subsequent occupation killed the sense of the Iraqi identity. Now, an Iraqi has to identify him- or herself in terms of religion, ethnicity, sect, and so on, instead of simply being able to say: I am an Iraqi.

According to BBC, there are no statistics on how many people have been killed during the Iraq wars. There are two clear indications that the US led wars against Iraq had a genocidal nature. First of all, there is the bombing of the Amiriyah-bunker in February 1991, where many women and children were thought to find shelter. It turned into a massacre. The second indication is the attack from the back by US forces of retreating Iraqi troops, two days after the US announced a cease-fire. Former secretary of state Madeleine Albright most inappropriately said that “the price was worth it”, to topple the regime of Saddam Hussein.

One could ask oneself why a rebuilding, like the one that happened in Germany and Japan after the Second World War, was not possible in Iraq? After the devastation of the country, the occupying regime created a climate where foreign investors came to dominate the Iraqi economy. The Iraqi dinar plummeted, resulting in a high inflation.

The full text can be found here: http://www.brussellstribunal.org/article_view.asp?ID=1537

2. EYEWITNESS MR GHAZWAN AL-MUKHTAR

Mr Ghazwan Al-Mukhtar²⁰ brings to life the circumstances that the Gulf War of 1990-91 provoked. During the Gulf War of 1990-1991, about 600.000 US soldiers invaded the country. Later on, UN Secretary-General Martti Ahtisaari deplored that the war was destroying the social and cultural ties. For the majority of the people, living a quiet life is of major importance. The war and subsequent occupation had made this practically impossible.

The occupation also provoked food shortages. This was rather strange, since Iraq had been known until the eighties to have the highest level of per capita food availability in the Middle East. After the first invasion, the US established the so-called “Oil for Food

¹⁹ Mrs Eman A. Khamas is an Iraqi journalist, published writer, documentary producer and (women's) human rights activist. She was director of the International Occupation Watch Center (2003-2006).

²⁰ Mr Ghazwan AL-Mukhtar was a well-known anti-sanctions activist during the embargo years (1990-2003). He wrote many articles about the sanctions for numerous news outlets. He holds a geophysics degree from Berkley, and graduated with an engineering degree from Marquette. After 2003 he was forced to leave Iraq and moved to Sweden. He is the editor of the website www.iraqsources.com.

Program”, which impeded food production. A similar evolution can be discerned concerning electricity provision and housing. Where there were no significant shortages before the invasion, the US had made sure that all existing infrastructure was damaged or destroyed, making the Iraqis depending. In healthcare the situation is at least equally poignant: Of the 34.000 Iraqi doctors, 20.000 have left the country. After 1991, more than 500.000 children have died.