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Aggressive War: Supreme International Crime

By Marjorie Cohn

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Associate United States Supreme Court Justice Robert Jackson was the chief prosecutor at the Nuremberg Tribunal. In his report to the State Department, Justice Jackson wrote: "No political or economic situation can justify" the crime of aggression. He also said: "If certain acts in violation of treaties are crimes they are crimes whether the United States does them or whether 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 invoked against us."



Between 10,000 and 15,000 U.S. troops with warplanes and artillery have begun to invade the Iraqi city of Fallujah. To "soften up" the rebels, American forces dropped five 500-pound bombs on "insurgent targets." The Americans destroyed the Nazzal Emergency Hospital in the center of town. They stormed and occupied the Fallujah General Hospital, and have not agreed to allow doctors and ambulances go inside the main part of the city to help the wounded, in direct violation of the Geneva Conventions.



The battle of Fallujah promises to be far more shocking and awful than the bombardment of Baghdad that kicked off Operation "Iraqi Freedom" in April 2003. A senior Marine Corps surgeon warned that casualties will surpass any level seen since the Vietnam War.



There have already been 100,000 "excess" Iraqi deaths since Bush launched his first strike on Iraq 18 months ago - that is, above and beyond those killed by Saddam Hussein, sanctions, U.S. bombings, and disease, all put together, in the 15 months prior to the invasion.

A study published by the Lancet found that the risk of death by violence for Iraqi civilians is now 58 times higher than before Bush began to liberate them in April 2003.



Bush's war on Iraq is a war of aggression. "Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition," according to General Assembly Resolution 3314, passed in the wake of Vietnam.

The only two situations where the UN Charter permits the use of armed force against another state is in self-defense, or when authorized by the Security Council. Iraq had not invaded the U.S., or any other country, Iraq did not constitute an imminent threat to any country, and the Security Council never sanctioned Bush's war. Bush and the officials in his administration are committing the crime of aggression.

Virtually every Western democracy has ratified the treaty of the International Criminal Court, except the United States. Bush knows that the Court will prosecute leaders for the crime of aggression. Mindful that he and his officials could become defendants, Bush renounced the Court, and extracted bilateral immunity agreements from more than 80 countries.

This year, however, Bush unsuccessfully sought to ram through the Security Council an immunity resolution that would exempt U.S. personnel from the Court's jurisdiction. But shortly after the photographs of U.S. torture of Iraqi prisoners emerged, the Council refused to put its imprimatur on preferential treatment for the United States.

Bush knows that the Court will also punish war crimes. Pursuant to policies promulgated by Bush and Rumsfeld, U.S. forces have engaged in widespread torture and inhuman treatment of prisoners in Iraq, Afghanistan, and Guantánamo Bay, Cuba. Bush admitted in his 2003 State of the Union address that he had sanctioned summary executions of suspected terrorists.

Torture, inhuman treatment, and willful killing are grave breaches of the Geneva Conventions, treaties ratified by the United States. Grave breaches of Geneva are considered war crimes under our federal War Crimes Act of 1996. American nationals who commit war crimes abroad can receive life in prison, or even the death penalty if the victim dies. Under the doctrine of command responsibility, a commander can be held liable if he knew or should have known his inferiors were committing war crimes and he failed to prevent or stop them.

The first U.S. attack on Fallujah, last April, killed 900-1000 people, mostly noncombatants. It was conducted in retaliation for the killing and mutilation of the bodies of four Blackwater Security Consulting mercenaries. Collective punishment against an occupied population for offenses committed by others also violates the Geneva Conventions.

Bush has sought to cover his crimes by putting an Iraqi face on his brutal war. The New York Times reported: "Thousands of Iraqi troops have moved into position with their American counterparts and are expected to take part ... American soldiers are to do most of the fighting on the way in, clearing the way for the Iraqi security forces to take control once the insurgents are defeated. With this method, Iraqi and American leaders hope for the best of both worlds: American muscle and an Iraqi face."

If Bush were a student of history, he would realize that Iraqization, like Vietnamization, will fail to win the hearts and minds of the Iraqi people.

Working hand-in-glove with the U.S. government, interim puppet prime minister Iyad Allawi helped to soften up the rebels by declaring martial law throughout most of Iraq. His authority came from legislation the human rights minister characterized as "very similar to the Patriot Act of the United States." It enables Allawi to conduct extensive surveillance, impose cordons and curfews, limit freedom of movement and association, and freeze bank accounts and seize assets.

"Iraqi confidence in the interim government has plummeted in recent months as the insurgency in Falluja and elsewhere has gained in strength and lethality," according to The New York Times.

And although foreign Islamic extremists have joined the fight, most resisting the American occupation are Iraqi. "Didn't the Americans bring with them the British and the Italians?" asked Suhail al Abdali. "Well, we have multinational forces, too," he said wryly. Then al Abdali added, "They will pay the price with the blood of American sons who came to occupy Iraq. They won't take Fallujah unless they fight street to street, house to house."

Twenty-six prominent Saudi scholars and preachers wrote in an open letter to the Iraqi people: "The U.S. forces are still destroying towns on the heads of their people and killing women and children. What's going on in Iraq is a result of the big crime of America's occupation of Iraq." They stressed that armed attacks by militant Iraqi groups on U.S. troops and their allies in Iraq represent "legitimate

resistance."

"The attack on Fallujah is an illegal and illegitimate action against civilians and innocent people," said the Association of Muslim Scholars, an influential Sunni clerics group. "We denounce this operation which will have a grave consequence on the situation in Iraq," declared spokesman Mohammed Bashar al-Faidhi.

Baghdad University political science professor Salman al-Jumaili warns, "What happens in Fallujah will spread out across other Sunni cities, including Baghdad." Al-Jumaili expects the Fallujah offensive will spin out of control, with fighting hop-scotching from one town to the next.

A senior U.S. diplomat agrees. "I would never tell you that violence in Sunni areas won't get worse when you open up a battle," he told the Los Angeles Times, on condition of anonymity.

Following the Holocaust, the International Military Tribunal at Nuremberg called the waging of aggressive war "essentially an evil thing . . . to initiate a war of aggression . . . is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole."

Bush's aggressive war against the people of Iraq promises to kill many more American soldiers and untold numbers of Iraqis. Nuremberg prosecutor Justice Jackson labeled the crime of aggression "the greatest menace of our times." More than 50 years later, his words still ring true.

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