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## In the Name of Democracy

### American War Crimes in Iraq and Beyond

By Jeremy Brecher, Jill Cutler and Brendan Smith

**11/07/05 "ZNet"** -- -- Brandon Hughey was a private at Fort Hood when he discovered that his army unit was about to be sent to Iraq. The eighteen-year-old from San Angelo, Texas, was desperate-not because he was afraid to go to war, but because he was convinced that the Iraq war was immoral. He considered solving the problem by taking his own life. Instead, he got in a car and drove to Canada. He explained, "I would fight in an act of defense, if my home and family were in danger. But Iraq had no weapons of mass destruction. They barely had an army left, and [UN Secretary-General] Kofi Annan actually said [attacking Iraq was] a violation of the UN charter. It's nothing more than an act of aggression. You can't go along with a criminal activity just because others are doing it." If, as the Bush administration has maintained, the United States is fighting in Iraq to protect itself from terrorism, free the people of Iraq from tyranny, enforce international law, and bring peace and democracy to the Middle East, then war resisters like Brandon Hughey appear deluded if not cowardly and criminal.

But what if Private Hughey is right? What if the U.S. operation in Iraq is "nothing more than an act of aggression?" What if it indeed constitutes "criminal activity"? What, then, is the culpability of President George W. Bush, Defense Secretary Donald Rumsfeld, and other top U.S. officials? And what is the responsibility of ordinary Americans? Until recently, the possibility that top U.S. officials were responsible for war crimes seemed to many Americans nothing but the invidious allegations of a few knee-jerk anti-Americans. But as more and more suppressed photos and documents have been disclosed, and as more and more eyewitness accounts from prisons and battlefields have appeared in the media, Americans are undergoing an agonizing reappraisal of the Iraq war and the broader war on terror of which it is allegedly a part.

**the evidence**

There are three sets of questions regarding possible U.S. war crimes in Iraq. The first set of questions concerns the legality of the U.S. attack on Iraq under international law. Secretary-General Kofi Annan of the United Nations stated shortly before the attack that the UN Charter is "very clear on the circumstances under which force can be used. If the U.S. and others were to go outside the Council and take military action, it would not be in conformity with the charter." He subsequently stated that the invasion of Iraq was "not in conformity with the UN Charter, from our point of view, and from the Charter part of view, it was illegal." The U.S. admission that Iraq had no weapons of mass destruction, and the growing evidence that the United States fabricated the evidence on which that charge was based, has provided added weight to Annan's view.

The second set of questions involves the possible illegality of the U.S. occupation of Iraq and its conduct. The seriousness of such questions was recently underlined by the warning of Louise Arbour, the UN High Commissioner for Human Rights, that those guilty of violations of international humanitarian rights laws-including deliberate targeting of civilians, indiscriminate and disproportionate attacks, killing of injured persons, and the use of human shields-must be brought to justice, "be they members of the Multinational Force or insurgents."

The military technology the United States is using in Iraq, such as cluster bombs and depleted uranium, may be illegal in itself. Under Article 85 of the Geneva Conventions it is a war crime to launch "an indiscriminate attack affecting the civilian population in the knowledge that such an attack will cause an excessive loss of life or injury to civilians." A UN weapons commission described cluster bombs as "weapons of indiscriminate effects." A reporter for The Mirror (United Kingdom) wrote from a hospital in Hillah, "Among the 168 patients I counted, not one was being treated for bullet wounds. All of them, men, women, children, bore the wounds of bomb shrapnel. It peppered their bodies. Blackened their skin. Smashed heads. Tore limbs. A doctor reported that 'All the injuries you see were caused by cluster bombs'...The majority of the victims were children who died because they were outside."

The third set of questions has to do with the torture and abuse of prisoners in U.S. custody. This has been a huge but unresolved issue since it was first indelibly engraved in the public mind by the photos from Abu Ghraib prison. Cascading disclosures have revealed that torture and other forms of prisoner abuse have been endemic not only in Iraq but in Afghanistan, Guantanamo, and many other U.S. operations around the world.

### **facing the implications**

The possibility that high U.S. officials may be guilty of war crimes and may be

preparing to commit more raises questions that few Americans have yet faced. These questions go far beyond technical legal matters to the broadest concerns of international security, democratic government, morality, and personal responsibility. Part IV presents perspectives from a variety of disciplines and political viewpoints designed to help us address those questions.

The UN Charter, the Geneva Conventions, and the principles of international law, while all too often violated, have provided some basis for international peace and security. What is the likely result of following the advice of the Bush administration's John Bolton that it is "a big mistake for us to grant any validity to international law"? Is it likely to be greater freedom and security, or an unending war of all against all? Are the American people-not to mention the people of the world-ready to abandon the international rule of law and return to what Justice Jackson called "a system of international lawlessness"?

## **resisters**

Some of the most difficult issues are faced by those in the military and the government who may be directly complicit in war crimes. Some have said no to participation in the war in Iraq and the cover-up of related criminal activity.

Specialist Jeremy Hinzman of Rapid City, South Dakota, joined the Eighty-second Airborne as a paratrooper in 2001. He wanted a career in the military and did a stint in Afghanistan. Then he was ordered to Iraq. "I was told in basic training that, if I'm given an illegal or immoral order, it is my duty to disobey it. And I feel that invading and occupying Iraq is an illegal and immoral thing to do."

In September 2004, Stephen Funk, a marine reservist of Filipino and Native American origin was tried for refusing to fight in Iraq. "In the face of this unjust war based on deception by our leaders, I could not remain silent. In my mind that would have been true cowardice...I spoke out so that others in the military would realize that they also have a choice and a duty to resist immoral and illegitimate orders."

In December 2004, the Hispanic sailor Pablo Paredes reported to his ship in San Diego Harbor wearing a T-shirt reading, "Like a cabinet member, I resign." Refusing to help take troops to Iraq, the Bronx native said, "I don't want to be a part of a ship that's taking three thousand marines over there, knowing a hundred or more of them won't come back...I'd rather do military prison time than six months of dirty work for a war that I and many others do not support. War should be an absolute last resort...Never in a million years did I imagine we would go to war with somebody who had done nothing to us."

## **halting war crimes**

Under the principles established by the Nuremberg and Tokyo war crimes tribunals, those in a position to give orders are responsible for war crimes and crimes against humanity conducted under their authority. But responsibility does not end there. Anyone with knowledge of illegal activity and an opportunity to do something about it is a potential criminal under international law unless the person takes affirmative measures to prevent the commission of the crimes.

Crimes are ordinarily dealt with by the institutions of law enforcement. But those institutions are largely in the hands of people who may be complicit in the very crimes that need to be investigated. Can they be held accountable? Or can war criminals forever act with impunity?

The problem of a government that is ostensibly democratically elected but that defies actual accountability is one that citizens in many countries have faced at one time or another. We can take inspiration from the way citizens from Serbia to the Philippines and from Chile to Ukraine have utilized "people power" to block illegal action and force accountability on their leaders. We can similarly take inspiration from resistance to illegitimate authority in our own country from the American Revolution to the Watergate investigations that ultimately brought the Nixon administration to account for its criminal abuse of power.

### **in the name of democracy**

If war crimes are being committed, they are being committed in the name of democracy. Their ostensible purpose is to extend democracy throughout the world. They are committed by a country that proudly proclaims itself the world's greatest democracy.

Such acts in Iraq and elsewhere represent, on the contrary, the subversion of democracy. They reflect the imposition by violence and brutality of a rule that is not freely chosen. Such acts also represent a subversion of democracy at home. They represent a presidency that has denied all accountability to Congress, courts, or international institutions. As Elizabeth Holtzman puts it: "The claim that the President...is above the law strikes at the very heart of our democracy. It was the centerpiece of President Richard Nixon's defense in Watergate—a defense that was rejected by the courts and lay at the foundation of the articles of impeachment voted against him by the House Judiciary Committee." It denies the constitutional constraints that have made the United States a government under law. It subverts democracy in the name of democracy.

War crimes represent the defiance not only of international but also of U.S. law. The effort to halt them is at once a movement for peace and a struggle for democracy.

[This is an edited excerpt of the Introduction to IN THE NAME OF DEMOCRACY: AMERICAN WAR CRIMES IN IRAQ AND BEYOND edited by Jeremy Brecher, Jill Cutler, and Brendan Smith. Metropolitan Books. [www.americanempireproject.com](http://www.americanempireproject.com)]

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