

Why the War in Iraq Was Illegal And Immoral

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Peace is more than just the absence of war. But in order to build a positive peace, the international community must find a way to abolish war. At the end of World War II, with the creation of the United Nations and the outcome of the Nuremberg trials, the world did attempt to outlaw war. The most fundamental norm of international law is the prohibition of the use of force by nations found in Article 2 Section 4 of the UN Charter. And the Tribunal at Nuremberg declared that waging a war of aggression was a state crime, the “supreme international crime.”

United Nations Secretary General Kofi Annan recently said that the war on Iraq was illegal. I agree. In this lecture I will argue that the invasion and occupation of Iraq in 2003 by the United States and its allies was a state crime, a flagrant violation of the UN Charter, the Nuremberg Charter, and other forms of international law. I will also contend that the war on Iraq was immoral since it was not undertaken for a just cause and it has, according to Amnesty International, unnecessarily killed tens of thousands of innocent people. Finally, I will argue that this illegal and immoral war undermines the collective security system of the UN, makes aggressive war more likely to occur, and thus poses a grave threat to the creation of world peace in the future.

State Crime

As a criminologist I have long been involved in the study of state crime. In his 1988 Presidential Address to the American Society of Criminology, Professor William Chambliss offered the following definition of state crime: “The most important type of criminality organized by the state consists of acts defined by law as criminal and committed by state officials in the pursuit of their job as representatives of the state.” This definition has two key characteristics.

First, it directs attention to the structural and organizational basis of state crime by emphasizing that these crimes are committed by state officials who occupy

organizational goals of the state.

Second, Chambliss contends that state crime research must be grounded in some legal framework in order to determine when acts committed by state officials constitute state crimes. In his Presidential Address Chambliss deployed the conventional criminological definition of crime as an act in violation of a state's own criminal law. He did note, however, that this definition limits the study of crime to acts the political state has elected to criminalize. A few years later, Chambliss challenged criminologists to “develop a disciplinary vision which defines crime sociologically as behavior that violates international agreements and principles established in the courts and treaties of international bodies.” This vision of using international law to define state crime guides my criminological analysis of the war on Iraq.

Public international law, consisting of customary state practices and treaties, governs the relations among nation-states, and details the standards of human rights that should guide state practices. After the horrors of World War II there was a significant expansion and codification of the body of public international law, particularly rules concerning aggressive war and the use of force in general. The creation of the United Nations (and the adoption of the U.N. Charter) was the central engine of this expansion. Another source was the Nuremberg Charter that grew out of the International Military Tribunal that conducted the trials of Nazi war criminals. As legal scholar Louis Henkin points out: “At Nuremberg, sitting in judgment on the recent past, the Allied victors declared waging aggressive war to be a state crime (under both treaty and customary law) as well as an individual crime by those who represented and acted for the aggressor state.” Finally, the four Geneva Conventions of 1949 expanded International Humanitarian Law (IHL), the Law of Armed Conflict, which is centered on the moral principle that innocent human life must be protected during times of war. As we shall see, the invasion and occupation of Iraq violated all three of these bodies of international law.

Violating the U.N. Charter

bedrock document of the international legal system. The Charter is considered to be the highest treaty in the world, the embodiment of international law that codifies and supercedes all existing laws and customs. The Nuremberg Charter is a part of the UN Charter. It is important to note that the U.N. Charter is also a treaty entered into and ratified by the United States and as such becomes part of the “supreme law of the land” within the United States under Article VI, Clause 2 of the Constitution. Thus, a violation of the Charter could also be considered a domestic crime in the United States.

At the heart of the U.N. Charter is the moral and legal prohibition of war. As C. G. Weeramantry, a former Judge of the International Criminal Court, points out: “It would be true to say...that by its very structure, by its express provisions and by its underlying intent the U.N. Charter completely outlaws unilateral resort to armed force.” The specific prohibition of aggressive war is found in Article 2(4) of the Charter which reads: “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 [behave] in any other manner inconsistent with the purposes of the United Nations.” Article 2(4) is a peremptory norm having the character of supreme law that cannot be modified by treaty or by ordinary customary law.

On its face, the US war on Iraq is a clear violation of Article 2(4). However, American and British state officials have argued that the invasion of Iraq can be legally justified by reference to various exceptions to Article 2(4) that are found in the UN Charter and in the emerging concept of humanitarian intervention. To determine whether or not the Iraq war was a state crime we must determine whether or not these exceptions are valid.

Exceptions to Article 2(4)

There are three possible exceptions to the Article 2(4) general prohibition on the use of force. Two can be found within the UN Charter itself: Article 51 (the right of self-defense) and Article 42 (collective enforcement authorized by the Security Council). Article 51 of the UN Charter recognizes that states have an “inherent right” to use force in self-defense. The triggering condition for the exercise of self-defense

situation in Iraq there was clearly no armed attack by Iraq against the US or UK, and no evidence that Saddam Hussein had any intention of attacking either country. Thus, it would seem that Article 51 cannot be used to justify the unprovoked invasion of Iraq.

The Bush administration, however, implied on numerous occasions that there was a strong connection between Saddam Hussein and the Al Qaeda terrorist organization that was responsible for the September 11, 2001 attacks in the United States. While they never stated it directly, administration officials repeatedly implied that Iraq was somehow involved in the 9-11 terrorist attacks. During the build up to the war, no major statement on Iraq by the Bush administration was made without multiple references to terrorism in general and Al Qaeda specifically. Attacking Iraq, they argued, was part of the broader war on terrorism. This campaign was highly successful as evidenced by the fact that prior to the start of the invasion, 70 percent of Americans believed that Iraq was responsible for 9-11. The clear implication of the administration was that Saddam Hussein was responsible for the terrorist attacks against the US and that war on Iraq was a legitimate form of self-defense.

There is, however, no evidence that Iraq had any ties to Al Qaeda or any responsibility for the 9-11 terrorist attacks. The Bush administration claims concerning Iraqi connections to Al Qaeda have been thoroughly investigated, most recently by the 9-11 Commission, and found to be false. Richard Clarke, the Counterterrorism expert who has served four presidents, reported that he personally informed President Bush that Al Qaeda was responsible for the terrorist attacks and that Iraq had no connection to Al Qaeda. Yet statements implying such a connection became a staple of the prewar campaign to build public support for an invasion. In late 2003, both President Bush and Secretary of State Colin Powell were finally forced to admit in public that there was no evidence connecting Saddam Hussein to 9-11. Thus, the war on Iraq cannot be justified as self-defense against an actual armed attack under Article 51.

Some legal scholars, however, interpret Article 51 more broadly to allow for preemptive or anticipatory self-defense in response to an imminent threat. In 2002

the United States has the right to use force preemptively against any perceived threat to U.S. security. This new strategic doctrine was then asserted as a legal justification for the use of force against Iraq. Testifying in front of Congress on September 19, 2002 Secretary of Defense Donald Rumsfeld rejected the idea that a US attack would violate international law and evoked a right of anticipatory self-defense against Iraq's alleged weapons of mass destruction. In the build up to the war, American and British officials repeatedly claimed to have intelligence that showed that Iraq had stockpiles of biological and chemical weapons, an active nuclear weapons program and the potential to hand these weapons off to terrorist groups for use against the West. Iraq thus constituted a "grave and gathering threat" of imminent harm they argued, a threat that required the US and UK to launch a preemptive strike in self-defense.

There are several major problems with the claim that the invasion of Iraq was covered under the legal concept of self-defense. First, the doctrine of anticipatory self-defense is only legally justified when the necessity for action is, in the words of Daniel Webster, "instant, overwhelming, and leaving no choice of means, and no moment for deliberation." That is, the threat must be imminent. There was no evidence of an imminent threat from Iraq in 2003.

But the biggest problem with the claim of anticipatory self-defense, of course, is that Iraq did not, in fact, have any remaining biological or chemical weapons or an active nuclear weapons program. Prior to the war there was a considerable amount of evidence that Iraq no longer possessed prohibited weapons. The United Nations Special Commission (UNSCOM) inspection process operated in Iraq from 1991 to 1998 and verified that all or nearly all of Iraq's biological and chemical weapons had been destroyed, and that its nuclear weapons program had been dismantled. An Iraqi defector, Hussein Kamel, who was Saddam Hussein's son-in-law and a manager of Iraqi weapons programs, reported that Iraq had destroyed its stockpiles of weapons and the missiles to deliver them. The UN Monitoring, Verification and Inspection Commission (UNMOVIC), headed by Hans Blix, and the International Atomic Energy Agency (IAEA), directed by Mohammed ElBaradei, operating in Iraq right up

of mass destruction, nor any viable facilities to produce them.

During the invasion the Iraqi military did not use chemical or biological weapons and after the war American and British troops found no prohibited weapons. The final blow to the US/UK claims concerning Iraqi weapons of mass destruction came from the report of the CIA's Iraq Survey Group, headed first by David Kay and then by Charles Duelfer. In January 2004 Kay reported that no evidence of any stockpiles of Iraqi weapons had been found. "It turns out we were all wrong" he stated. Then earlier this month, Duelfer reported that Iraq had destroyed its illicit weapons stockpiles within months after the Persian Gulf War of 1991, and its ability to produce such weapons had significantly eroded by the time of the American invasion in 2003. Thus, the available evidence makes it clear that Iraq had, in fact, disarmed, was in compliance with UN Security Council resolutions, and had not posed any threat that would justify war under the legal doctrine of anticipatory self-defense. Furious debates erupted in both the US and the UK about whether the pre-war intelligence was flawed or whether American and British officials had manipulated the reports. The bulk of the evidence points to deliberate manipulation of the evidence concerning the threat of Iraqi weapons in order to build public support for the war.

The Bush and Blair administrations have now reframed their justification for the invasion around the claim that Iraq had "weapons related programs" or the "intent" to develop weapons of mass destruction in the future. These were not, however, the claims they used to mobilize public support for the war in the months prior to the invasion of Iraq. Moreover, claims about intent and future possible programs have no legal standing as justifications for preemptive war. They do not constitute an imminent threat. The war cannot be justified on the basis of self-defense.

UN Security Council Authorization

A second exception to the Article 2(4) prohibition of war is found in Chapter Seven of the Charter that sets out the collective security structure of the UN. When the UN Security Council determines, under Article 39, that there is a threat to, or

respond to the threat or breach. If all of the non-military measures allowed under Article 41 have been exhausted, then, and only then, can the Security Council authorize the use of force under Article 42 to restore or maintain international peace and security. There was no such authorization for the use of force against Iraq in March of 2003. The US, the UK and Spain had sought a Security Council resolution in early 2003 that declared that Iraq was in violation of an earlier resolution (1441), and that this noncompliance posed a threat to international peace and security. This draft resolution did not explicitly authorize force, but it was clear that the drafters intended to use such a resolution to legally justify their planned invasion. Despite intense pressure from the Bush and Blair administrations, and amid charges of US and UK efforts to spy on other Security Council members, the draft resolution was withdrawn when the sponsors decided that it would not pass. As Hans Blix concluded: “By withholding an authorization desired if not formally requested, the Council dissociated the UN from an armed action that most member states thought was not justified—at any rate, not at this stage.”

Even though there was no formal UN Security Council resolution authorizing war against Iraq, American and British officials argued that a series of previous Security Council resolutions could be read in such a way as to provide legal justification for the invasion of Iraq. This argument avers that these earlier resolutions concerning Iraq provided a continuing authorization for war. The resolutions in question are 678 (1990), which authorized the use of force to repel Iraq from Kuwait, 687 (1991), which set out the terms of the cease fire at the end of the first Gulf War, and the more recent 1441 (2002), which sent UNMOVIC to Iraq to establish an enhanced inspections regime.

In essence, the US and UK argument was that any material breach of the disarmament requirements of 687 or 1441 either revived the authority to use force under 678, or triggered a new authorization for any member state to use all necessary means (military force) to enforce the disarmament resolutions. According to a number of legal critics these assertions required a “selective,” “misleading,” “creative,” “problematic” and ultimately “unsustainable” interpretation of the

with Iraq's withdrawal from Kuwait. Second, neither 687 nor 1441 contains an automatic trigger for the use of force. In both resolutions the Security Council declared that it "remained seized of the matter" meaning that if there were any problems with the enforcement of the resolutions the issue would have to come back to the Council for further consideration. While 1441 expresses concern that the government of Iraq may have failed to comply with its commitments pursuant to resolution 687, it responded to this concern by establishing "an enhanced inspection regime." That inspection process (UNMOVIC) was in place and, according to Hans Blix was operating with reasonable cooperation from the Iraqi government at the time of the invasion. Furthermore, the decision to enforce a Security Council resolution must always be a collective decision of the Council itself, not a unilateral decision of any particular member state or coalition of member states. Most importantly, as I noted earlier, overwhelming evidence has established that Iraq did not have weapons of mass destruction and was in fact, in compliance with its disarmament obligations under 687 and 1441. If Iraq was not in material breach of its obligation to disarm, then this legal justification for war is null and void, and even if they had been in material breach, it would still have required a Security Council resolution expressly authorizing the use of force to render the invasion other than an illegal war of aggression.

Humanitarian Intervention

The third possible exception to Article 2(4) can be found in what legal scholar Roger Normand calls "the legally dubious doctrine of humanitarian intervention, a new concept that has not gained the support of the international law community." The US and the UK argued that they had a right and a duty to use military force for the humanitarian purpose of liberating Iraq and saving the Iraqi people from the human rights violations of the brutal tyrant Saddam Hussein.

There are good reasons to doubt that this was a primary motive for the war. In most of the major statements the Bush administration made justifying the invasion, the liberation of Iraq was barely mentioned. As Professor Richard Falk notes, "War is

on another.”

Furthermore, in the past the US had strongly supported and supplied Saddam Hussein, particularly during his war against Iran in the 1980s. And as Professor Gary Dorrien of Kalamazoo College documents in his new book, *Imperial Designs: Neoconservatism and the New Pax Americana*, the invasion and occupation of Iraq was planned by the neoconservatives in the Bush administration as the first step in their grand geopolitical strategy to enhance US imperial domination of the world.

But even if we put those doubts aside and accept humanitarian intervention as the true motive for invading Iraq, the question remains as to the legality of such an intervention under international law. As Normand points out: “This concept has aroused considerable skepticism from most international lawyers, in part because it circumvents well established procedures and principles of the UN Charter and international law. Even supporters concede that humanitarian intervention is a moral argument and not a legal right.”

If a situation involving gross human rights abuses exists and requires a humanitarian intervention, the UN Security Council is already empowered, under Chapter Seven, to respond with force if necessary to maintain international peace and security. But if the Security Council is unable or unwillingly to intervene in such a situation, can “a coalition of the willing” use force to respond to the crisis? Some legal scholars say “yes,” citing the NATO intervention in Kosovo in the 1990s as a prime example. This action violated the UN Charter’s rules on the use of force. Still, the Independent International Commission On Kosovo later concluded that the intervention was, in a memorable phrase, “illegal, but legitimate.” Lest this conclusion be interpreted as an overly broad cover to allow individual states a right to intervene and use force without accountability to general principles of law, the Commission suggested that several conditions must apply for a humanitarian intervention to be legitimate. As Richard Falk notes:

The troublesome elasticity of this doctrine was conditioned in two ways, first by suggesting the need for the intervening side to bear a heavy burden of persuasion as to the necessity of intervention to avoid an impending or ongoing humanitarian catastrophe. Second, there was

achieve legitimacy, emphasizing the protection of the civilian population, adherence to the international laws of war, and a convincing focus on humanitarian goals, as distinct from economic and strategic aims.

According to the logic of this doctrine, although a military intervention undertaken for a humanitarian purpose would be technically illegal if not authorized by the Security Council, it would be spared the label of state criminality if the intervention met certain legitimating conditions that outweighed the illegality of the act in the eyes of the international community. The question is, did the war on Iraq meet these legitimating conditions? Most legal analysts say no.

There is no public evidence that a humanitarian crisis existed in 2003 in which a large-scale loss of human life was being caused by the Iraqi government. While it's certainly true that Saddam Hussein's government had a record of political repression, human rights abuses and chemical weapons use, most of these crimes occurred in the 1980s and early 1990s when the US and other Western nations were either supporting and supplying Iraq or standing idly by. After the Gulf War of 1991, the Iraqi government was kept in check by UN weapons inspections, Security Council sanctions, and US no fly zones. While the Hussein government remained a brutal and repressive regime, Human Rights Watch concluded that at the time of the U.S. invasion, political killings in Iraq were "not of the exceptional nature that would justify such intervention," nor was invasion "the last reasonable option to stop Iraqi atrocities." The Bush administration chose to risk invasion and occupation despite widespread concern around the world that this choice would result in more rather than less death, injury, and material destruction for Iraqis. The heavy burden of persuasion to justify a humanitarian invasion was not met, and subsequent events have made it clear that the intervention has unleashed an even greater humanitarian crisis for Iraq.

In addition to bearing the burden of persuasion, the legal and moral legitimacy of humanitarian interventions depends, at a minimum, on protecting civilian populations. This was not done. The use of indiscriminate weapons (such as cluster bombs, napalm, and depleted uranium shells) and indiscriminate tactics (such as decapitation strikes) by the invading forces killed thousands of Iraqi civilians. As

primary motive for the invasion, given the destruction of civilian life and infrastructure that it caused, questions can be raised about whether the means used to protect Iraqi human rights were proportionate.” That is, even if the liberation of the Iraqi people was a just cause, we must examine the morality of the means that are selected to accomplish that goal. As Professor Stephen Shalom points out: “Basic morality and international law specify that not all means are permissible even in the pursuit of a just cause.” War is rarely a permissible means to accomplish any goal. “Talking about the world, or at least Iraq, being better off” says Paul Savoy, “avoids the civilian carnage caused by the war.” In the end, I believe that killing the innocent by the thousands to advance any purpose, however worthy, is legally and morally wrong.

Violating International Humanitarian Law

Given that the invasion of Iraq was illegal under international law, the deaths and destruction it caused are, arguably, war crimes. Beyond these crimes, however, it has been documented that during the invasion and subsequent occupation, the US engaged in a number of specific violations of international humanitarian law (IHL), also known as the law of armed conflict. IHL stems from a variety of sources, particularly the 1907 Hague Regulations, the four Geneva Conventions of 1949, and the First Additional Protocol of 1977 to the 1949 Geneva Conventions (Protocol I). This body of international law is also built on the broad moral principle that innocent human life must be protected at all costs. IHL requires parties to an armed conflict to protect civilians and noncombatants, limits the means or methods that are permissible during warfare, and sets out the rules that govern the behavior of occupying forces. Violations of IHL are considered war crimes. The US Congress expressly incorporated the 1949 Geneva Conventions into US law with the ratification of the Geneva treaties and the passage of the War Crimes Act of 1996.

Protecting Civilians

As I have noted, the most important moral principle of International Humanitarian Law is the protection of innocent civilians. IHL forbids direct assaults

language of Protocol I, are “expected to cause incidental loss of civilian life, injury to civilians [or] damage to civilian objectives ... which would be excessive in relation to the concrete and direct military advantage anticipated from that attack.” Yet, as I have also noted, more than 10, 000 Iraqi civilians have died as a result of the invasion and subsequent occupation. Although time limitations prevent a full description of the US/UK violations of IHL that led to this large death toll, a Human Rights Watch report documents that the widespread use of cluster bombs and numerous attempted “decapitation” strikes targeting senior Iraqi officials -often based on scanty or questionable intelligence – were responsible for the deaths of hundreds of Iraqi civilians. Coalition forces have also exposed Iraqi civilians to significant “collateral damage” through the deployment of Mark 77 firebombs, which are similar to napalm bombs, and the indiscriminate use of depleted uranium munitions that release dangerous radioactive debris in the short term, and pose long-term environmental hazards to people exposed to uranium-contaminated soil or water.

Violations of IHL During The Occupation

In addition to the use of weapons and military tactics that brought devastating lethality to Iraqi’s civilian populations during the period of “active hostilities,” four other sets of war crimes were committed by the Bush and Blair administrations during the occupation phase of the campaign: 1) the failure to secure public safety and protect civilian rights, 2) the illegal transformation of the Iraqi economy, 3) indiscriminate responses to Iraqi resistance actions that resulted in further civilian casualties, and 4) the torture of Iraqi prisoners.

Once the US and UK became occupying powers, a new set of legal obligations were incurred under international law. In the first instance, under the Fourth Geneva Convention, the occupying power must ensure public safety and order, and guarantee the civilian population’s fundamental rights to food, health care, education, work and freedom of movement. The lives and property of civilians must be respected at all times. If the occupying power fails to assure these rights it is a violation of IHL and is considered a war crime. The evidence is clear that the American and British occupiers failed to meet these legal obligations.

insecurity prevailed in the first year of the occupation. In the early weeks following the overthrow of the Hussein government, US and UK troops stood by as most important public buildings were looted and destroyed. The immediate outlawing of the Iraqi Army and criminalization of key governmental leaders meant that at the point of defeat, there was no one in a position of authority to surrender to invading forces while providing a continuity of government services. The elimination of low-level Baath party members from public positions, including policing, had additional consequences for Iraq's security situation. The wholesale blacklisting of large numbers of Baathist public employees significantly weakened Iraq's police forces. Left leaderless, and without an effective police apparatus, Iraqi cities, particularly Baghdad, made a swift descent into not only looting and chaos, but a free-for-all of private retribution and routine criminality. As the AI report noted:

The Coalition Forces had removed the previous government's authority, but had demonstrably failed to provide the protection and assistance they were obligated to give the people whose land they were occupying. Under international humanitarian law, as occupying powers it was their duty to maintain and restore public order, and provide food, medical care and relief assistance. They failed in this duty, with the result that millions of Iraqis faced grave threats to their health and safety.

The U.S. effort to privatize Iraq's economy constitutes a second set of war crimes. The objective of the Bush administration is to transform Iraq from a state controlled economy into a showpiece market economy characterized by free trade, supply-side tax policy, privatization of key economic sectors, and widespread foreign ownership in those sectors. However, as journalist William Greider notes, international law prohibits an occupying state from unilateral transformation of the economic or social structure of the occupied country. "The obstacle is the Fourth Geneva Convention of 1949, which codified in greater detail the principles of 'occupation law' first framed by the Hague Convention of 1907-rules of warfare meant to prevent a military power from plundering a defeated nation or reordering the country (as Hitler repeatedly did) to conform to the conqueror's ideology and economics." Occupation law requires the occupying power to respect the domestic

necessity. Yet in a series of Orders in 2003, L. Paul Bremer, the head of the Coalition Provisional Authority at the time, ignored Iraqi law and opened the country up for foreign investment and ownership. As economist Antonia Juhasz notes:

These orders include the full privatization of public enterprises, full ownership rights by foreign firms of Iraqi businesses, full repatriation of foreign profits, the Flat Tax (that darling of the American Right), the opening of Iraq's banks to foreign control, national treatment for foreign companies (which means, for example, that Iraq cannot require that local firms able to do reconstruction work should be hired instead of foreign ones), and (with an earlier Order) elimination of nearly all trade barriers.

This transformation of the Iraqi economy, what Bremer called "reconstruction," has been handed over primarily to American-based corporations, with Halliburton and Bechtel being major winners of multi-billion dollar contracts. Amid charges of "war profiteering," these companies have received contracts without competitive bidding or even minimal oversight. The Bush administration has also systematically blocked proposals to have Congressional auditors oversee spending, or to impose severe penalties for fraud.

In addition to opening the door for war profiteering and corruption, the consequences of this economic colonization for the Iraqi people have been devastating. Privatization has led to 70 percent unemployment. There is no unemployment insurance or welfare system. According to journalist David Bacon, "the violence of grinding poverty, exacerbated by economic sanctions after the first Gulf War, has been deepened by the US invasion. Every day the economic policies of the occupying authorities create more hunger among Iraq's working people, transforming them into a pool of low-wage, semi-employed labor, desperate for jobs at almost any price." Moreover, it is clear that the CPA, at the highest levels, was aware that the economic changes responsible for these conditions were illegal under international law. In a March 26, 2003 controversial leaked memo, British Attorney General Lord Peter Goldsmith, informed Prime Minister Blair that the transformation of the Iraqi economy was illegal.

US/UK response to the Iraqi resistance. The occupation has provoked fierce armed resistance by militant Sunni and Shiite sectors of the Iraqi populace. The result has been the death of thousands of Iraqis and hundreds of American and British military personnel. There is strong evidence that the occupying powers have engaged in numerous violations of IHL as they attempt to handle the Iraqi resistance, which has only served to fan the fires of insurrection and deepen the daily security crisis for average Iraqi citizens. In their attempts to control the resistance American and British forces have shot and killed demonstrators, bombed civilian areas and used other types of excessive force resulting in the death of innocent civilians, demolished homes and destroyed property in acts of collective punishment. Coalition forces have used hostage-taking as way of rooting out insurgents, effected arbitrary arrests, and held detainees indefinitely without charges or access to lawyers. Iraq's occupiers have, in effect, stripped Iraqis of the most basic protections of due process rights, protections they are enjoined to guarantee by existing International Humanitarian Law.

The final set of war crimes I will consider concerns the torture of Iraqi prisoners being held by Coalition forces. In April of 2004 Seymour Hersh obtained a 53 page Pentagon report prepared by US Major General Antonio Taguba that detailed the "systemic and illegal" torture and humiliation that occurred inside the infamous Abu Ghraib prison. Specifically, Taguba found that there were numerous instances of "sadistic, blatant, and wanton criminal abuses" at Abu Ghraib. Photos released by CBS' 60 Minutes II on April 28, 2004 documented both physical and psycho-sexual abuse inflicted on Iraqi detainees by US military personnel at the prison. As Marjorie Cohn, executive vice president of the US National Lawyers Guild, points out: "These actions are not only offensive to human dignity; they violate the Geneva Convention, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

Bush administration officials tried to downplay the torture scandal by suggesting that the crimes were the work of just a few "bad apples" among the Military Police (MP) Brigade working at Abu Ghraib; individual crimes

involvement of higher-level state officials and private contractors hired by the US government.

The criminal liability for the Abu Ghraib torture and abuse, as for all the violations of IHL during the invasion and occupation of Iraq, does not stop with those immediately guilty of the crimes. As Cohn observes, the well-established doctrine of “command responsibility,” enshrined in both international law and US military law, “provides criminal liability for commanders whose underlings commit war crimes. Even if the superior officer did not personally carry out the criminal acts, she would be liable if she knew or should have known of the conduct, yet failed to take reasonable measures to prevent or repress the criminal behavior.” In the case of Iraqi prisoners in American custody, there is significant evidence that immediate superior officers were aware that prisoners were being tortured, and that these practices were not limited to the Abu Ghraib prison. And as Hersh’s new book, *Chain Of Command: The Road From 9/11 to Abu Ghraib* shows, responsibility for these abuses does not stop with superior officers in Iraq, but goes right to the top of the Pentagon and the White House.

Conclusion

In this lecture I have set forth the case that the invasion of Iraq and subsequent acts of war and occupation constitute war crimes under existing international law. If this is true, then George W. Bush, Tony Blair, and their core military and political advisors are arguably war criminals who should be subject to removal from office, prosecution, and punishment. These are not matters of technical violations of international law in pursuit of just ends. The Bush and Blair administrations are criminally and morally responsible for the mass murder of over ten thousand Iraqi civilians, the brutal torture and illegal detention of prisoners of war, and the death of over a thousand soldiers from the coalition forces. These crimes are even more heinous if, as Gary Dorrien and other analysts have suggested, the war was conceived and implemented for imperial designs rather than the self-defense and humanitarian motives that Bush and Blair have professed.

U.S. is not a signatory to the International Criminal Court, and as permanent members of the UN Security Council the U.S. and U.K. can veto any move to censure their illegal behavior. As the dominant state in a unipolar world order, the United States enjoys an exemption from legal accountability for its violation of the UN Charter System and other forms of international law.

And what of the future of the UN Charter System after Iraq? As Richard Falk asks in his new book, *The Declining World Order: America's Imperial Geopolitics*, "Can the Charter System work without the dominant state in the world adhering to its procedures and restraining rules?" I for one don't believe that it can. Wars of aggression, the most destructive and destabilizing form of state crime, will be impossible to prevent in the future if the Bush doctrine of preventive war becomes established as precedent. The international community must once again, as it did after World War II, say no to the scourge of war. The UN Charter System must be reformed and international law strengthened if we are to avoid another state crime like the invasion and occupation of Iraq. And that will only happen with a new administration in Washington that respects international law rather than holding it in contempt, and stops acting like a unipolar outlaw.

I conclude with the words of Richard Falk:

There is little doubt that the Iraq War and the American Occupation that has ensued represents a serious setback for advocates of a law-governed approach to world order, as well as to the procedural effort to give the United Nations Security Council primary authority to mandate exceptions to the Charter prohibition on the nondefensive use of force to resolve international conflicts. But history can be cunning. There exists some possibility that the burdens of occupation in Iraq, as well as the discrediting of the rationale advanced to justify the American recourse to war, will cause a political swing in the United States and elsewhere in the direction of greater respect for the cardinal rules and principles of international law, for the United Nations, and for a peace-oriented public opinion at home and abroad.

I agree with Falk. The possibility is there and we must seize it. With hard work and determination, "we the people" can start that important "political swing" two weeks from tomorrow on election day! Thank you.

Kramer on October 18, 2004 at Western Michigan University. (Sponsored by the WMU Center For The Study Of Ethics In Society). References available by request at:ronald.kramer@wmich.edu. Professor Kramer acknowledges the valuable contribution of Professor Ray Michalowski, Northern Arizona University, to the crafting of this lecture.