

Violation of Human Rights: A Study on Iraq War 2003

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Abstract: Since 9/11 US languishment vested with the regime change in Iraq. US allies allege Iraq having WMD, violation of human rights and link with the terrorist organizations. On March 18, 2003 US alliance started bombing on Iraq and successively killed 60,196 civilians in 14,196 events till March 19, 2008. The US lobbies attack was an occupation, or liberation, or self-defense, or aggression? However, Obama administration has retreated albeit from his predecessor's policy. But legality of Iraq War 2003 in both jus ad bellum and jus in bello is still unsettled in many points of view. International community should raise their voice and strengthen mechanism to reduce probability of war, or aggression. This article, however, tries to scrutinize the worldwide impact of such unlawful and exported war to a sovereign state; and to highlight the helplessness of the world community to find any measures to be justified.

1.0 Introduction

Human rights violations occur when any state or non-state actor breaches any part of the UDHR treaty or other international human rights or humanitarian law. Human rights abuses are monitored by United Nations committees, national institutions and governments and by many independent non-governmental organizations, such as Amnesty International, International Federation of Human Rights, Human Rights Watch, World Organisation Against Torture, Freedom House, International Freedom of Expression Exchange and Anti-Slavery International. These organisations collect evidence and documentation of alleged human rights abuses and apply pressure to enforce human rights laws. Wars of aggression, war crimes and crimes against humanity, including genocide, are breaches of International humanitarian law and represent the most serious of human rights violations. The Rome Statute of International Criminal Court 1998 is the complementary basic law to drag the accused persons under justice if the state party is unwilling or unable to try the case.

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Basic Rules of International Humanitarian Law—

1. Persons hors de combat and those not taking part in hostilities shall be protected and treated humanely.
2. It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.
3. The wounded and sick shall be cared for and protected by the party to the conflict which has them in its power. The emblem of the Red Cross or the Red Crescent must be respected as the sign of protection.
4. Captured combatants and civilians must be protected against acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.
5. No one shall be subjected to torture, corporal punishment or cruel or degrading treatment.
6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare.
7. Parties to a conflict shall at all times distinguish between the civilian population and combatants. Attacks shall be directed solely against military objectives.²

2.0 Background

A stated rationale for a potential attack on Iraq is the desire to remove any threat from weapons of mass destruction (WMD) that it possessed.³ Throughout 2002, the Bush administration made clear that removing Saddam Hussein from power in order to restore international peace and security was a major goal.

The principal stated justifications for this policy of "regime change" were that Iraq's continuing production of WMD and known ties to terrorist organizations, as well as Iraq's continued violations of UN Security Council resolutions, amounted to a threat to the U.S. and the world

² de Preux (1988). *Basic Rules of the Geneva Conventions and their Additional Protocols*, 2nd edition. Geneva: ICRC. p. 1.

President George W. Bush stated in November, "America's goal, the world's goal is more than the return of inspectors to Iraq. Our goal is to secure the peace through the comprehensive and verified disarmament of Iraq's weapons of mass destruction. Voluntary [sic], or by force, that goal will be achieved." Remarks by the President to Prague Atlantic Student Summit, Hilton Prague, Prague, Czech Republic, November 20, 2002,

<http://www.whitehouse.gov/news/releases/2002/11/20021120-4.html> (retrieved January 14, 2003).

community. The Bush administration's overall rationale for the invasion of Iraq was presented in detail by Secretary of State, Colin Powell, to the United Nations Security Council on February 5, 2003. In summary, he stated:

"We know that Saddam Hussein is determined to keep his weapons of mass destruction; he's determined to make more. Given Saddam Hussein's history of aggression... given what we know of his terrorist associations and given his determination to exact revenge on those who oppose him, should we take the risk that he will not someday use these weapons at a time and the place and in the manner of his choosing at a time when the world is in a much weaker position to respond? The United States will not and cannot run that risk to the American people. Leaving Saddam Hussein in possession of weapons of mass destruction for a few more months or years is not an option, not in a post-September 11 world.

The main allegations at that time were that Saddam Hussein was in possession of, or was attempting to produce WMD particularly in light of two previous attacks on Baghdad nuclear weapons production facilities by both Iran and Israel which only postponed weapons development progress; and that he had ties to terrorists, specifically al-Qaeda. Moreover, it has also been alleged by some commentators that, while it never made an explicit connection between Iraq and the September 11 attacks, the Bush Administration did repeatedly insinuate a link, thereby creating a false impression for the American public.

Grand jury testimony from the first World Trade Center attack (February 26, 1993) trials cited numerous direct linkages from the terrorists to Baghdad and Department 13 of the Iraqi Intelligence Service in that initial attack marking the second anniversary to vindicate the surrender of Iraqi armed forces in Operation Desert Storm. For example, The Washington Post has noted that—

While not explicitly declaring Iraqi culpability in the September 11, 2001, terrorist attacks, administration officials did, at various times, imply a link. In late 2001, Cheney said it was "pretty well confirmed" that attack mastermind Mohamed Atta had met with a senior Iraqi intelligence official. Later, Cheney called Iraq the "geographic base of the terrorists who had us under assault now for many years, but most especially on 9/11." ⁴

⁴ Milbank, Dana (June 18, 2004). "Bush Defends Assertions of Iraq-Al Qaeda Relationship". The Washington Post: p. A09. <http://www.washingtonpost.com/wp-dyn/articles/A50679-2004Jun17.html>.

Steven Kull, director of the Program on International Policy Attitudes (PIPA) at the University of Maryland, observed in March 2003 that "The administration has succeeded in creating a sense that there is some connection [between Sept. 11 and Saddam Hussein]". This was following a New York Times/CBS poll that showed 45% of Americans believing Saddam Hussein was "personally involved" in the September 11 atrocities.

As the Christian Science Monitor observed at the time, while "Sources knowledgeable about US intelligence say there is no evidence that Hussein played a role in the Sept. 11 attacks, nor that he has been or is currently aiding Al Qaeda... the White House appears to be encouraging this false impression, as it seeks to maintain American support for a possible war against Iraq and demonstrate seriousness of purpose to Hussein's regime." The CSM went on to report that, while polling data collected "right after Sept. 11, 2001" showed that only 3 percent mentioned Iraq or Saddam Hussein, by January 2003 attitudes "had been transformed" with a Knight Ridder poll showing that 44% of Americans believed "most" or "some" of the September 11 hijackers were Iraqi citizens.⁵

The BBC has also noted that while President Bush "never directly accused the former Iraqi leader of having a hand in the attacks on New York and Washington", he "repeatedly associated the two in keynote addresses delivered since September 11", adding that "Senior members of his administration have similarly conflated the two.

"For instance, the BBC report quotes Colin Powell in February 2003, stating that "We've learned that Iraq has trained al-Qaeda members in bomb-making and poisons and deadly gases. And we know that after September 11, Saddam Hussein's regime gleefully celebrated the terrorist attacks on America." The same BBC report, from September 2003, also noted the results of a recent opinion poll, which suggested that "70% of Americans believe the Iraqi leader was personally involved in the attacks."⁶

⁵ Feldmann, Linda (March 14, 2003). "The impact of Bush linking 9/11 and Iraq". The Christian Science Monitor. <http://www.csmonitor.com/2003/0314/p02s01-woiq.html>. Retrieved on 22/10/07.

⁶ "Bush administration on Iraq 9/11 link". BBC News Online. September 18, 2003. <http://news.bbc.co.uk/2/hi/americas/3119676.stm>. Retrieved on 22/10/07.

Also in September 2003, the Boston Globe reported that "Vice President Dick Cheney, anxious to defend the White House foreign policy amid ongoing violence in Iraq, stunned intelligence analysts and even members of his own administration this week by failing to dismiss a widely discredited claim: that Saddam Hussein might have played a role in the Sept. 11 attacks."⁷ A year later, Presidential candidate John Kerry alleged that Cheney was continuing "to intentionally mislead the American public by drawing a link between Saddam Hussein and 9/11 in an attempt to make the invasion of Iraq part of the global war on terror."⁸

According to then-President of the United States George W. Bush and the Prime minister of the United Kingdom of that time; Tony Blair, the reasons for the invasion were "to disarm Iraq of WMD, to end Saddam Hussein's support for terrorism, and to free the Iraqi people."⁹ According to Blair, the trigger was Iraq's failure to take a "final opportunity" to disarm itself of nuclear, chemical, and biological weapons that U.S. and coalition officials called an immediate and intolerable threat to world peace.¹⁰ Although some remnants of pre-1991 production were found after the end of the war, U.S. government spokespeople confirmed that these were not the weapons for which the U.S. went to war.^{11/12}

In 2005, the Central Intelligence Agency (CIA) released a report saying that no weapons of mass destruction had been found in Iraq.¹³

2.1 US Allies Argument to Attack Iraq

George Bush, speaking in October 2002, said that "The stated policy of the United States is regime change... However, if Hussein were to meet all the conditions of the United Nations, the conditions that I have described very clearly in terms that everybody can understand, that in itself will signal the regime has changed".¹⁴

⁷ Kornblut, Anne E.; Bender, Bryan (16/9/2003). "Cheney link of Iraq, 9/11 challenged". http://www.boston.com/news/nation/articles/2003-09-16_cheney_link_of_iraq_911_challenged/. Retrieved on 22/10/07.

⁸ Kerry challenges Bush on Iraq-9/11 connection". CNN, 12/9/04. <http://www.cnn.com/2004/ALLPOLITICS/09/12/kerry.powell.iraq/index.html>. Retrieved on 22.10.07.

⁹ President Discusses Beginning of Operation Iraqi Freedom". <http://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030322.html>

¹⁰ President Bush Meets with Prime Minister Blair

¹¹ "Report: Hundreds of WMDs Found in Iraq", FOXNews.com, June 22, 2006

¹² Fax and report, June 21, 2006

¹³ CIA's final report: No WMD found in Iraq - Conflict in Iraq - MSNBC.com". [Msnbc.msn.com](http://www.msnbc.msn.com/id/7634313). April 25, 2005. <http://www.msnbc.msn.com/id/7634313>

¹⁴ Bob Kemper (2002-10-23). "Saddam can keep rule if he complies: Bush". Daily Times. http://www.dailytimes.com.pk/default.asp?page=story_23-10-2002_pg4_1

Based on claims from intelligence sources, George Bush stated on March 6, 2003 that he believed that Saddam Hussein was not complying with UN Resolution 1441, which granted Iraq a final opportunity to disarm itself of Weapons of Mass Destruction, certain missile types, and other components and technologies.¹⁵

In September 2002, Tony Blair stated, in an answer to a parliamentary question, that "Regime change in Iraq would be a wonderful thing. That is not the purpose of our action; our purpose is to disarm Iraq of weapons of mass destruction..."¹⁶

In November of that year, Tony Blair further stated that "So far as our objective, it is disarmament, not régime change - that is our objective. Now I happen to believe the regime of Saddam is a very brutal and repressive regime, I think it does enormous damage to the Iraqi people... so I have got no doubt Saddam is very bad for Iraq, but on the other hand I have got no doubt either that the purpose of our challenge from the United Nations is disarmament of weapons of mass destruction, it is not regime change."¹⁷

At a press conference on January 31, 2003, George Bush again reiterated that the single trigger for the invasion would be Iraq's failure to disarm: "Saddam Hussein must understand that if he does not disarm, for the sake of peace, we, along with others, will go disarm Saddam Hussein."¹⁸

As late as February 25, 2003, it was still the official line that the only cause of invasion would be a failure to disarm. As Tony Blair made clear in a statement to the House of Commons: "I detest his regime. But even now he can save it by complying with the UN's demand. Even now, we are prepared to go the extra step to achieve disarmament peacefully."¹⁹

Additional justifications used at various times included Iraqi violation of UN resolutions, Saddam's repression of Iraqis and Iraqi violations of the 1991 cease-fire.²⁰

¹⁵ "News Release". White House. <http://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030306-8.html>.

¹⁶ "Tony Blair: Answer to Parliamentary Question". Hansard. <http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo020924/debtext/20924-05.htm>

¹⁷ "PM gives interview to Radio Monte Carlo". <http://www.number10.gov.uk/output/Page1299.asp>

¹⁸ "Bush, Blair: Time running out for Saddam". CNN. <http://www.cnn.com/2003/US/01/31/sprj.irq.bush.blair.topics/>

¹⁹ "Tony Blair: Parliamentary Statement". Hansard. <http://www.number10.gov.uk/output/Page3088.asp>

²⁰ Fax and report, June 21, 2006

Since the invasion, U.S. and British claims concerning Iraqi weapons programs and links to terrorist organizations have been discredited. While the debate of whether Iraq intended to develop chemical, biological, and nuclear weapons in the future remains open, no WMDs have been found in Iraq since the invasion despite comprehensive inspections lasting more than 18 months.²¹

In Cairo, on February 24, 2001, Colin Powell had predicted as much, saying "He [Saddam Hussein] has not developed any significant capability with respect to weapons of mass destruction. He is unable to project conventional power against his neighbors."²² Similarly, assertions of significant operational links between Iraq and al Qaeda have largely been discredited by the intelligence community, and Secretary Powell himself eventually admitted he had no incontrovertible proof.²³

In September 2002, the Bush administration said attempts by Iraq to acquire thousands of high-strength aluminum tubes pointed to a clandestine program to make enriched uranium for nuclear bombs. Indeed, Colin Powell, in his address to the U.N. Security Council just prior to the war, made reference to the tubes. But a report released by the Institute for Science and International Security in 2002 reported that it was highly unlikely that the tubes could be used to enrich uranium. Powell later admitted he had presented an inaccurate case to the United Nations on Iraqi weapons, based on sourcing that was wrong and in some cases "deliberately misleading."^{24/25/26}

The Bush Administration asserted that the Hussein government had sought to purchase yellowcake uranium from Niger.²⁷

On March 7, 2003, the U.S. submitted intelligence documents as evidence to the IAEA. These documents were dismissed by the IAEA as forgeries, with the concurrence in that judgment of outside experts. At the

²¹ "CIA's final report: No WMD found in Iraq". MSNBC.com, April 25, 2005. Retrieved on April 5, 2007, Associated Press

²² Australian Associated Press (2003-09-23). "Pilger claims White House knew Saddam was no threat.". Sydney Morning Herald.

²³ Marquis, Christopher (2004-01-09). "Powell Admits No Hard Proof in Linking Iraq to Al Qaeda.". New York Times. <http://www.nytimes.com/2004/01/09/politics/09POWE.html?ex=1388984400&en=6bb5457574b8ecd&ei=5007&partner=USERLAND>

²⁴ "Evidence on Iraq Challenged," Joby Warrick, The Washington Post, Sept. 19, 2002

²⁵ Colin Powell's speech to the UN, Feb 5, 2003

²⁶ Meet the Press, NBC, May 16, 2004

²⁷ Lichtblau, Eric. "2002 Memo Doubted Uranium Sale Claim", The New York Times, January 18, 2006. Retrieved on May 10, 2007.

time, a US official claimed that the evidence was submitted to the IAEA without knowledge of its provenance, and characterized any mistakes as "more likely due to incompetence not malice".

Bush formally began making his case to the international community for an invasion of Iraq in his September 12, 2002 address to the UN Security Council.²⁸

Key US allies in NATO, such as the United Kingdom, agreed with the US actions; while France and Germany were critical of plans to invade Iraq, arguing instead for continued diplomacy and weapons inspections.

Security Council members France and Russia made clear that they did not believe these consequences to include the use of force to overthrow the Iraqi government.²⁹

After considerable debate, the UN Security Council adopted a compromise resolution, 1441, which authorized the resumption of weapons inspections and promised "serious consequences" for noncompliance.

Both the US ambassador to the UN, John Negroponte, and the UK ambassador, Jeremy Greenstock, publicly confirmed this reading of the resolution, assuring that Resolution 1441 provided no "automaticity" or "hidden triggers" for an invasion without further consultation of the Security Council.³⁰

U.N. Security Council passed Resolution 1441, gave Iraq "a final opportunity to comply with its disarmament obligations" and set up inspections of Iraq by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA).

Saddam Hussein accepted the resolution on November 13 2002, and inspectors returned to Iraq under the direction of UNMOVIC chairman Hans Blix and IAEA Director General Mohamed Elbaradei.

As of February 2003, the IAEA "found no evidence or plausible indication of the revival of a nuclear weapons program in Iraq"; the IAEA concluded that certain items which could have been used in nuclear

²⁸ Remarks by the President in Address to the United Nations General Assembly, New York; official transcript, press release, The White House, September 12, 2002.

²⁹ "France threatens rival UN Iraq draft". BBC News, October 26, 2002.

³⁰ "U.S. Wants Peaceful Disarmament of Iraq, Says Negroponte". Embassy of the United States in Manila. November 8, 2002. <http://manila.usembassy.gov/www/hira3.html>.

enrichment centrifuges, such as aluminum tubes, were in fact intended for other uses.³¹

UNMOVIC "did not find evidence of the continuation or resumption of programs of weapons of mass destruction" or significant quantities of proscribed items. It did supervise the destruction of a small number of empty chemical rocket warheads, 50 liters of mustard gas that had been declared by Iraq and sealed by UNSCOM in 1998, and laboratory quantities of a mustard gas precursor, along with about 50 Al-Samoud missiles of a design that Iraq claimed did not exceed the permitted 150 km range, but which had travelled up to 183 km in tests. Shortly before the invasion, UNMOVIC stated that it would take "months" to verify Iraqi compliance with resolution 1441.³²

In October 2002, the U.S. Congress passed a "Joint Resolution to Authorize the Use of United States Armed Forces against Iraq". While the resolution authorized the President to "use any means necessary" against Iraq, Americans polled in January 2003 widely favored further diplomacy over an invasion.

Later that year, however, Americans began to agree with Bush's plan. The U.S. government engaged in an elaborate domestic public relations campaign to market the war to the American people.

See, Public relations preparations for 2003 invasion of Iraq. Americans overwhelmingly believed Hussein did have weapons of mass destruction: 85% said so, even though the inspectors had not uncovered those weapons. Of those who thought Iraq had weapons stashed somewhere, about half were pessimistic that they would ever turn up. By February 2003, 74% of Americans supported taking military action to remove Saddam Hussein from power.³³

In February 2003, US Secretary of State Colin Powell addressed the United Nations General Assembly, continuing US efforts to gain UN authorization for an invasion. Powell presented evidence alleging that Iraq was actively producing chemical and biological weapons and had ties to al-Qaeda.

³¹ Statements of the Director General". IAEA.

<http://www.iaea.org/NewsCenter/Statements/2003/ebsp2003n006.shtml>.

³² Blix, Hans (2003-05-13), Thirteenth quarterly report of the Executive Chairman of the UNMOVIC in accordance with paragraph 12 of Security council resolution 1284 (1999).

³³ "Poll: Talk First, Fight Later". CBS.com, Jan. 24, 2003.

As a follow-up to Powell's presentation, the United States, United Kingdom, Poland, Italy, Australia, Denmark, Japan, and Spain proposed a UN Resolution authorizing the use of force in Iraq, but NATO members like Canada, France, and Germany, together with Russia, strongly urged continued diplomacy. Facing a losing vote as well as a likely veto from France and Russia, the US, UK, Spain, Poland, Denmark, Italy, Japan, and Australia eventually withdrew their resolution.³⁴

With the failure of its resolution, the US and their supporters abandoned the Security Council procedures and decided to pursue the invasion without UN authorization, a decision of questionable legality under international law.³⁵

In March 2003, the United States, United Kingdom, Spain, Australia, Poland, Denmark, and Italy began preparing for the invasion of Iraq, with a host of public relations, and military moves.

In his March 17, 2003 address to the nation, Bush demanded that Hussein and his two sons Uday and Qusay surrender and leave Iraq, giving them a 48-hour deadline.³⁶

But Bush actually began the bombing of Iraq on March 18, the day before his deadline expired. On March 18, 2003, the bombing of Iraq by the US, the UK, Spain, Italy, Poland, Australia, and Denmark began, without UN support, unlike the first Gulf War or the coming in of Afghanistan.

Leaked White House documents reveal that UK Prime Minister Tony Blair and US President George Bush planned to invade Iraq regardless of whether or not they won UN approval. Though Blair has asserted that the final decision to invade was made only twenty-four hours before the war began, the leaked documents from a high-level meeting between Bush and Blair indicate that the decision was made before the Security Council discussed - but never adopted - a second resolution authorizing war against Iraq.³⁷

³⁴ "US, Britain and Spain Abandon Resolution". Associated Press. 2003-03-17.

<http://www.globalpolicy.org/security/issues/iraq/attack/armtwist/2003/0317usbritspain.htm>

³⁵ "Iraq". House of Commons Hansard Debates for 18 Mar 2003 (pt 6).

http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030318-debtext_30318-06.htm#30318-06_head1

³⁶ "Global Message". Whitehouse.gov.

<http://georgewbushwhitehouse.archives.gov/infocus/iraq/news/20030317-10.html>

³⁷ Mail on Sunday :Blair in Secret Plot with Bush to Dupe UN (January 29, 2006)

2.2 View of UN Security Council

In March 2003 the US government announced that "diplomacy has failed" and that it would proceed with a "coalition of the willing" to rid Iraq under Saddam Hussein of WMD the US insisted it possessed. The invasion began a few days later. Prior to this decision, there had been much diplomacy and debate amongst the members of the UN Security Council over how to deal with the situation. Prior to 2002, the Security Council had passed 16 resolutions on Iraq. In 2002, the Security Council unanimously passed Resolution 1441.

In 2003, the governments of the US, UK, and Spain proposed another resolution on Iraq, which they called the "eighteenth resolution" and others called the "second resolution." This proposed resolution was subsequently withdrawn when it became clear that several permanent members of the Council would cast no votes on any new resolution, thereby vetoing it.³⁸ Had that occurred, it would have become even more difficult for those wishing to invade Iraq to argue that the Council had authorized the subsequent invasion. Regardless of the threatened or likely vetoes, it seems that the coalition at no time was assured any more than four affirmative votes in the Council—the U.S., Britain, Spain, and Bulgaria—well short of the requirement for nine affirmative votes.³⁹

On September 16, 2004 UN Secretary-General Kofi Annan, speaking on the invasion, said, "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."

2.3 Voice of the World:

2.3.1 US Population

March 2003: 75% of US citizens felt the invasion was not a mistake. May⁴⁰ 2003: 79% thought the Iraq War was justified, with or without evidence of illegal weapons. 19% thought weapons were needed to justify the war. April 2007: 58% stated that the initial attack was a mistake.⁴¹ Dec. 2008: 64% felt the Iraq War was not worth fighting, with 34% saying it was worth fighting, with 2% undecided.⁴²

³⁸ Iraq war illegal, says Annan BBC 16 September, 2004.

³⁹ Blix urges US and UK to hand over Iraq evidence Guardian Dec 20 2002

⁴⁰ <http://www.pollingreport.com/iraq.htm>

⁴¹ Poll Shows View of Iraq War Is Most Negative Since Start, New York Times, May 2007.

⁴² <http://www.pollingreport.com/iraq.htm>

Did the United States do the right thing in taking military action against Iraq?

According to The New York Times and the CBS News Poll, 35% said USA did the right thing. 61% opined that US should have stayed out. How are things going for the US in its efforts to bring stability and order to Iraq? 20% replied "very well", 21% said "somewhat well," but 47% answered "very badly" and 29% "somewhat badly."

2.3.2 Voice of the World: Iraq

82-87% of the Iraqi populace was opposed to the US occupation and wanted US troops to leave ---2005. 69% believed the presence of U.S. forces is making things worse. 51% of the population considered attacks on coalition forces acceptable, up from 17% in 2004 and 35% in 2006.⁴³

3.0 Criteria of Just War theory

Just War Theory has two sets of criteria. The first establishing *jus ad bellum*, the right to go to war; the second establishing *jus in bello*, right conduct within war.⁴⁴

3.1 Jus ad bellum

(a) US attack in Iraq: an Occupation or Liberation?

U.S. military forces entered Baghdad on April 9, 2003, General Tommy Franks, commander of the coalition forces, announced that the Americans had "come as liberators, not occupiers."

In the traditional understanding, an occupying power is a temporary custodian of the status quo in the territory it controls. Occupiers are assumed to remain only for the limited period between the cessation of hostilities and the conclusion of a final peace treaty. That treaty determines the fate of the occupied territory, most likely returning it to the ousted *de jure* sovereign. Thus, an occupier exercises mere *de facto* power. For that reason it enjoys no general legislative authority to make permanent changes to legal and political structures in the territory.

⁴³ <http://www.pollingreport.com/iraq.htm>

⁴⁴ Chandress, James F. (1978). "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria". *Theological Studies* 39: 427-45.

(b) US Attack in Iraq: a Self Defense?

Since it was not directly attacked by Iraq the United States did not have an obvious right to self-defense. The administration, though, argued that it had a right to defend itself preemptively against a future possible attack. In his speech to the United Nations on September 12, 2002, President Bush described Saddam Hussein's regime as "a grave and gathering danger," detailed that regime's persistent efforts to acquire weapons of mass destruction, and spoke of an "outlaw regime" providing such weapons to terrorists. For an extensive discussion of international law and the preemptive use of force, We can see the Congressional Research Service's Report for Congress of September 23, 2002.

While arguing for preemption, the administration also suggested that the United States had a right to self-defense on the grounds that the Iraqi regime was connected to Al Qaeda, the organization responsible for the attacks on the United States of September 11, 2001. In February 2003, Secretary of State Colin Powell told the United Nations Security Council that Iraq was harboring a terrorist cell led by Abu Musab Zarqawi, a suspected associate of Al Qaeda. Powell also said that senior Iraqi and Al Qaeda leaders had met at least eight times since the early 1990s. Ansar al-Islam, an Islamist militia group, was also suspected of ties to Al Qaeda, and was based in a lawless part of northeast Iraq, though it was not known to have cooperated with Saddam Hussein.

(c) Analysis of Jus ad bellum

Thus, Iraq war was a Self Defense? Simply not because Iraq's missile power was limited within 150 to 180 kilometers, that could not reach to the territory of US or its neighboring countries. It was an Anticipatory Self Defense? No, because anticipatory self defense is a vague idea. Apart from this, UNMOVIC and IAEA did not find any development of weapons of mass destruction or nuclear weapons that may be a threat to world peace and security. Iraq attack was a Reprisal? Simply should not be because CIA and other Intelligence Agency could not trace out any involvement of Iraq with Al Qaeda, or 9/11 mishaps in US. Iraq War was s Doctrine of Necessity? I think it should not be because finally Iraq accepted UN Resolution 1441 and UNMOVIC and IAEA inspected the required suspected places of Iraq. Iraq War was a humanitarian intervention? I think if Iraq violated human rights to a large scale, President Saddam Hussein should be dragged under justice for crimes against the humanity but regime change cannot be the object of military

action. Diplomatic negotiations comes first. If it fails, then economic sanctions might have been imposed upon Iraq and even diplomatic relations might be curtailed. Then the responsibility should go to the UN Security Council, not of USA. Thus I think Iraq war was an aggression and use of unauthorized force by US allies.

Asked in the fall of 2002 if the upcoming war in Iraq would be a just war, Cardinal Joseph Ratzinger said that "the concept of 'preventive war' does not appear in the Catechism of the Catholic Church."⁴⁵ UN Secretary General stated that the use of force without Council endorsement would "not be in conformity with the Charter" and many legal experts now describe the US-UK attack as an act of aggression, violating international law.

Attorney General Lord Goldsmith describes regime change in Iraq as a disproportionate response to Saddam Hussein's alleged failure to disarm, illegal in the eyes of international law. Goldsmith stresses that in terms of legality, "regime change cannot be the objective of military action." In 2003, apparently under pressure from Prime Minister Tony Blair, Goldsmith stated that invading Iraq was legal even without a second UN Security Council resolution. (The Common Dreams)

Senior UK judicial figure, Lord Bingham, argues that the US and UK invasion of Iraq in 2003 was a serious violation of international law as there was no hard evidence that Iraq failed to disarm. UK opposition parties are pressing for an independent inquiry to scrutinize the actions of the government in the run up to the invasion.⁴⁶

4.0 Crimes against Humanity in Iraq War 2003

4.1 Indiscriminate Killings of Civilians

During the second half of 2008, despite significant improvements in security conditions, the indiscriminate killing of civilians continued. According to the Ministry of Health, a total of 6,787 persons were killed and 20,178 injured in 2008 as a result of ongoing violence. The most affected provinces were Baghdad and Ninawa. United Nation Assistance Mission for Iraq reiterates that the systematic and widespread attacks against the civilian population are tantamount to crimes against humanity and violate the laws and customs of war, and their perpetrators should be prosecuted.

⁴⁵ Benedict XVI, The Peace Pope

⁴⁶ The Guardian

After 2003 another massive brain drain began when the lives of Iraqi academics were pervaded by a constant fear of being murdered. 269 academic staff members were killed in 2005, 180 teachers were killed since 2006.

The charts below shows statistics provided by the ministry of Health of persons killed in 2008 by Governorates

| Province | Injured | | | | Killed | | | |
|--------------|--------------|-------------|-------------|---------------|-------------|------------|------------|--------------|
| | Men | Women | Children | Total Injured | Men | Women | Children | Total Killed |
| Baghdad | 7503 | 822 | 676 | 9001 | 1437 | 111 | 101 | 1649 |
| Karbala | 137 | 18 | 16 | 171 | 83 | 22 | 8 | 113 |
| Najaf | 18 | 3 | 0 | 21 | 39 | 5 | 2 | 46 |
| Wasit | 202 | 29 | 23 | 254 | 170 | 20 | 2 | 192 |
| Babil | 328 | 31 | 20 | 379 | 155 | 17 | 16 | 188 |
| Thi Qar | 376 | 36 | 28 | 440 | 109 | 44 | 45 | 198 |
| Salah Addin | 524 | 34 | 51 | 609 | 263 | 25 | 21 | 309 |
| Misan | 205 | 23 | 9 | 237 | 103 | 18 | 5 | 126 |
| Basra | 1525 | 193 | 211 | 1929 | 487 | 57 | 28 | 572 |
| Diwaniya | 40 | 4 | 6 | 50 | 15 | 4 | 3 | 22 |
| Muthanan | - | - | - | - | - | - | - | - |
| Ninawa | 3443 | 466 | 385 | 4294 | 1313 | 100 | 66 | 1479 |
| Kirkuk | 672 | 59 | 29 | 760 | 279 | 24 | 7 | 310 |
| Anbar | 191 | 11 | 6 | 208 | 160 | 4 | 2 | 166 |
| Diyala | 1480 | 211 | 134 | 1825 | 918 | 129 | 70 | 1117 |
| Total | 16644 | 1940 | 1594 | 20178 | 5531 | 580 | 376 | 6487 |

Source: United Nations Assistance Mission for Iraq

<http://www.hrw.org/en/news/2007/04/11/iraq-us-data-civilian-casualties-raises-serious-concerns>

<http://www.hrw.org/en/news/2003/10/20/iraq-civilian-deaths-need-us-investigation>

4.2 Weapons Causes Civilians Death in Iraq (2003-2008)

A dramatically increases health care needs in Iraq of the effect of the war, with a types of various weapons were attacked to civilian. According to IBC-Iraq Body Count, a nongovernmental organization documents civilian violent in Iraq specially indentify civilian whose deaths are of particular concern from a public health and humanitarian stand point. Even during the sieges of Fallujah in 2004, the US used chemical weapons such as white phosphorus and a napalm derivative, causing indiscriminate harm and unnecessary suffering in the civilian population.⁴⁷

⁴⁷ Los Angeles Times

| Number of Iraqi Civilians, Female Civilians, and Children Killed by Particular Weapons in Short-Duration Events of Armed Violence, March 20, 2003 through March 19, 2008 ⁶⁸ | | | | | | | |
|--|--|---------------|---------------------------------------|-------------------------------------|---|---------------------------------|---|
| Method | Total No.(%) of Civilian Killed (N=60,481) | No. of Event | Mean No. of Civilian killed per Event | No.(%) of Female Civilians (N=2396) | No. of Female / No. of Civilians of known Sex killed (% female) | No. of Children killed (N=2146) | No. of Children/No. of Civilians of Known Age Killed (% children) |
| Execution | | | | | | | |
| Any | 19,706 (33) | 2,844 | 7±0.2 | 300(13) | 300/6,592(5) | 124(6) | 124/6,687(2) |
| with torture | 5,760(10) | 714 | 8±0.4 | 49(2) | 49/1,906(3) | 16(1) | 16/1,882(1) |
| Small-arms gunfire | 11,877(20) | 5,943 | 2±0.03 | 660(28) | 660/7,220(9) | 416(19) | 416/7,963(5) |
| Suicide bomb | | | | | | | |
| Any | 8,708(14) | 725 | 12±1.0 | 266(11) | 266/2,535(11) | 340(16) | 340/2,734(12) |
| Bomber in vehicle | 5,401(9) | 514 | 11±1.2 | 142(6) | 142/1,440(10) | 234(11) | 234/1,607(15) |
| Bomber on foot | 3,293(5) | 210 | 16±1.5 | 124(5) | 124/1,086(11) | 106(5) | 106/1,118(9) |
| Vehicle bomb | 5,360(9) | 866 | 6±0.4 | 244(10) | 244/859(28) | 216(10) | 216/1,053(21) |
| Roadside bomb | 3,293(9) | 1,404 | 2±0.1 | 126(5) | 126/1,230(10) | 149(7) | 149/1,409(11) |
| Mortar fire | 2,079(3) | 786 | 3±0.1 | 170(7) | 170/386(44) | 231(11) | 231/556(42) |
| Air Attack without ground fire | | | | | | | |
| Any | 2,363(4) | 253 | 9±0.9 | 258(11) | 258/564(46) | 277(13) | 277/703(39) |
| Bomb only | 479(1) | 28 | 17±3.6 | 28(1) | 28/67(42) | 34(2) | 34/88(39) |
| Missile only | 357(1) | 45 | 8±2.3 | 36(2) | 36/115(31) | 35(2) | 35/118(30) |
| Air attack with ground fire | 687(1) | 41 | 17±6.5 | 63(3) | 63/177(36) | 66(3) | 66/234(28) |
| Total all methods | 60,481 (100) | 14,196 | 4±0.1 | 2,396(100) | 2,396/21,448 (11) | 2146(100) | 2146/23,581(9) |

4.3 Soldiers and Civilians were detained as Prisoners of war

Until August, 2006, the site known as the Abu Gharib Prison was used by both the US-led coalition occupying Iraq and the Iraqi government. The area known as "the Hard site" is under the complete control of the Iraqi government and is used for housing convicted criminals. The prison has been used as a detention facility, holding more than 7,000 people at its peak in early 2004. The current population, however, is much smaller. Many detainees have been sent from Abu Gharib to Camp Bucca.

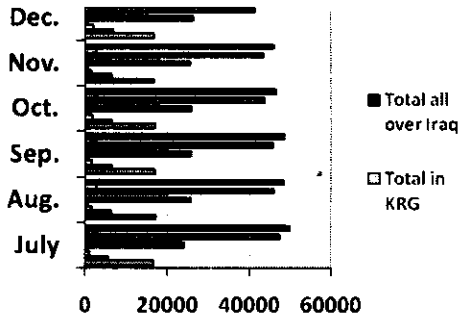
In March 2006, US Military had decided to transfer Abu Gharib Prison to Iraq Authorities and with 4,500 inmates. In year 2009, Abu Gharib Prison has been changed the name to Baghdad Central Prison with facility and capability on increasing up to 15,000 prisoners.

4.4 Abu Gharib Torture and Abuse of Detainees

Beginning in 2004, accounts of physical, psychological, and sexual abuse, including torture sodomy, and homicide of prisoners held in the Abu Gharib Prison in Iraq come to public attention. These acts were committed by personnel of the 372nd Military Police Company of the United States Army together with additional US governmental agencies.

⁶⁸ The New England Journal of Medicine, Perspective-April 16, 2009, <http://www.nejm.org>

Detainees Breakdown



| Detainees Breakdown: July to December-2008 | | | | | | | |
|--|--------------------------|-------|-------|-------|-------|-------|-------|
| Seq | Detention jurisdiction | July | Aug. | Sep. | Oct. | Nov. | Dec. |
| 1 | MOL | 16788 | 17177 | 17070 | 16916 | 16661 | 16675 |
| 2 | MOI | 5720 | 6538 | 6473 | 6573 | 6616 | 6956 |
| 3 | MOD | 1060 | 1525 | 1618 | 1844 | 1639 | 1995 |
| 4 | MOLSA | 648 | 670 | 657 | 614 | 694 | 623 |
| 5 | Total Iraq Government | 24216 | 25910 | 25818 | 25917 | 25610 | 26249 |
| 6 | MNF-I | 23229 | 20054 | 20054 | 17827 | 17827 | 15058 |
| 7 | Total in Iraq except KRG | 47445 | 45964 | 45872 | 43774 | 43437 | 41307 |
| 8 | Total in KRG | 2640 | 2675 | 2655 | 2780 | 2718 | 2707 |
| 9 | Total all over Iraq | 50085 | 48639 | 48527 | 46554 | 46155 | 44014 |

Note: MOJ-Ministry of Justice, MOD-Ministry of Defense, MOLSA-Ministry of Labor and Social Affair, MOL-Ministry of Labor

According to the report, Ministry of Justice recorded the detainee of 101,287; Ministry of Defense 9,681; Ministry of Social and Labour Affairs 3,906 and Ministry of Labour 38,876. In a grand total 153,750 detainees under the estimate of the concerned four ministries.

The number of Iraqi detainees in official US and Iraqi detention centers stands at 66,000 but Iraqi MP Mohammad Al-Dainy contends that this is only "one quarter of the total number being held" in Iraq. Al Dainy argues that Iraqi inmates suffer massive human rights violations in the hundreds of secret prison facilities throughout Iraq, many of which are jointly controlled by the US and Iraqi government. (Swissinfo)

4.5 Treatment of Prisoners

Prisoners were subjected to severe physical and psychological abuse. The abuse included using dogs to scare and bite prisoners, death threats and sexual abuse. Death of Manadel al-Jamadi: The prisoner Manadel al Jamadi died in Abu Gharib prison after being interrogated and torture by a CIA officer and a private contractor. The torture included physical violence and strap and hanging.

Nearly 20, 000 Iraqis in US detention centers like Bucca Camp continue to suffer from the US refusal to implement basic international law. The US denies Iraqi detainees the right to seek legal counsel and even refuses to consider evidence in the process of determining a prisoner's release. (The Nation)The US military holds more than 500 juveniles in detention centers in Iraq, according to the UN Committee on the Rights of the Child. The occupation force has held at least 2,500 children in detention centers since 2002, including eight in Guantanamo Bay. The author notes that the detention of children in adult detention centers violates US obligations under the UN Convention on the Rights of the Child, as well as accepted international human rights norms. (Associated Press)

4.6 US Policy on Interrogations and Torture

Reaction from the U.S. administration characterizes the Abu Gharib torture scandal as an isolated incident uncharacteristic of American actions in Iraq; this view is widely disputed, notably in Arab countries, but also by organizations such as the International Red Cross, which says that it has been making representations about abuse of prisoners for more than a year.

A former military intelligence officer with experience at Guantanamo Bay and Abu Gharib alleges a systematic failure caused by a combination of inexperienced troops arresting innocent Iraqis, who are then interrogated by inexperienced interrogators determined to break these apparent hard cases. The U.S. military's interrogation techniques and treatment of prisoners at Abu Gharib are consistent with its treatment of noncombatants in past conflicts, including for example in Vietnam and with its training of military personnel of U.S. allies.⁴⁹

⁴⁹ <http://en.wikipedia.org/wiki/Baghda>



Spc. Charles Graner poses over Manadel al-Jamadi's corpse.



Abeer Qasim Hamza, a 14 years old girl, was raped and murdered by US Army 502nd Infantry Regiment

According to former US Army interrogator Anthony Lagouranis, mid- and low-level officials have shouldered all responsibility for prison abuse in Iraq, despite signals from high level officials justifying the use of torture. Interrogators routinely use dogs, hypothermia, and other "enhancements" while interrogating prisoners, despite clear violations of international law. Colonel Thomas Pappas, the top intelligence officer at Abu Ghraib, admitted authorizing such techniques without regard for the Geneva Conventions. Though US President George Bush has signed legislation banning torture, he asserts the right to interpret the legislation "in a manner consistent with the constitutional authority of the president" as justification for the continued use of torture. (New York Times)

4.7 Rape and Murder: Mamudiyah Case

The Al-Mahamudiyah Killing happened on March 2006 in a small village in the south of Baghdad, Iraq. A five US army soldiers of the 502nd Infantry Regiment were alleged to the crimes. Abeer Qasim Hamza, a 14 years old girl, was gang-raped, murdered and was set fire to her body before decamping, after her family, father, mother, and two of her younger sister and younger brother, had been murdered.

4.8 Ishaqi Incident

The Ishaqi Incident refers to the reported of Iraqi civilians allegedly committed by US forces in the town of Ishaqi in March 2006. A shooting

of 11 people, including 5 children and 4 women were killed by the U.S. forces raid targeted to Al-Qaeda operative believing that present in the house. But really there were no Al-Qaeda members.

4.9 Haditha Killings

The Haditha killings (also called the Haditha incident or the Haditha massacre) refer to the incident where 24 Iraqi men, women and children were killed on November 19, 2005 in Haditha, a city in the western Iraq province of Al Anbar. At least 15 of those killed were noncombatant civilians, and the 24 were killed by a group of United States Marines. It has been alleged that the killings were retribution for the attack on a convoy of United States Marines with an improvised explosive device that killed Lance Corporal Miguel Terrazas.

4.10 Hamdania Incident

The Hamdania Incident refers to an incident involving members of the United States Marines in relation to the shooting death of a possible insurgent Iraqi man on April, 2006 in Al Hamdania, a small village west of Baghdad near Abu Gharib. An investigation by the Naval Criminal Investigative Service resulted in charges of murder, kidnapping, housebreaking, larceny, Obstruction of justice and conspiracy associated with the alleged coverup of the incident. The defendants are seven Marines and a Navy Corpsman. As of February 2007, five of the defendants have negotiated pleas to lesser charges of kidnapping and conspiracy, or less, and have agreed to testify in these trials.

4.11 Wedding Party Massacre (Mukaradeeb killings)

The Mukaradeeb killings better known as the Wedding party massacre, refers to the American shooting and bombing of a wedding party in Mukaradeeb, a small village in Iraq near the border with Syria, on May 19, 2004. 42 civilians were killed. A senior Iraqi police officer told the Associated Press that a helicopter fired at the party early yesterday morning in a remote village close to the Syrian border, killing between 42 and 45 people.⁵⁰

4.12 Women Abduction, Rape, Forced Prostitution and Trafficking

Iraqi women say they are now worse off than they were during the rule of dictator, Saddam Hussein, and that their plight has deteriorated year by

⁵⁰ <http://www.guardian.co.uk/world/2004/may/20/iraq.rorymccarthy>

year since the US-led invasion in March 2003. Iraqi Women have seen their rights eroded in all areas of life, while the world observes from afar.⁵¹ A report by the US-based 'Women For Women International' released in March 2008 said the state of Iraqi women has become a "national crisis" since the March 2003 US-led invasion. 64% of the women surveyed complained that violence against them had increased. 76% of the women interviewed said that girls in their families were forbidden from attending school.

4.12.1 Women killed or abducted and raped during the conflict

Human Rights Watch released a report in July, 2003, titled Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad. Only months after Baghdad fell to US forces, they had already learned of twenty-five credible allegations of the rape and/or abduction of Iraqi women.

4.12.2 Women in custody

The scandal of prisoner abuse at Abu Ghraib focused on the torture, sexual abuse, and humiliation of Iraqi men. A variety of sources suggest that female prisoners suffered similar treatment, including rape. According to a Human Rights Watch report, the secrecy surrounding female detentions "resulted from a collusion of the families and the occupying forces." Families feared social stigma; the occupying forces feared condemnation by human rights groups and anger from Iraqis who saw such treatment of women by foreigners as a special act of violation.⁵²

4.12.3 Women Prostitution and Trafficking

There may be 50,000 Iraqi refugee women forced into prostitution. The Organization for Women's Freedom in Iraq (OWFI) has documented the disappearance of some 4000 women and girls since the U.S. invasion in early 2003. OWFI believes most have been trafficked to other countries and forced into prostitution. The U.S. State Department's June 2005 report on the trafficking of women suggested that the extent of the problem in Iraq is "difficult to appropriately gauge" under current chaotic circumstances, but cited an unknown number of Iraqi women and girls being sent to Yemen, Syria, Jordan, and Persian Gulf countries for sexual exploitation.⁵³

⁵¹ UN Special Rapporteur, Ms Yakin Ertuerk on December 1, 2008

⁵² [Thhttp://www.zmag.org/znet/viewArticle/14607e](http://www.zmag.org/znet/viewArticle/14607e) War on Iraq's Women

⁵³ War on Iraq's Women/ August 28, 2007 By Lucinda Marshall

4.12.4 Pregnant women and mother

The welfare of pregnant women has been particularly deteriorated: Mothers are usually anemic and children are born underweight, as a result of a poor nutrition and lack of pre-natal care, even worse than Saddam Hussein's time. For at least two women in every 12 who seek emergency delivery assistance here, either the mother or her child dies. -Dr Ibrahim Khalil, a gynecologist at Al-Karada maternity hospital.

Maternal Mortality Rate was increased 11.7% (1989) to 65% (2007). By Save the Children, in 1990 the mortality rate for under-fives was 50 per 1,000 live births. In 2005 it was 125. While other countries have higher rates, the rate of increase in Iraq is higher than elsewhere.

4.13 Children became Orphans

Iraq's official government statistics revealed that five million (or 35%) of Iraqi children were orphans. The term 'orphan' applies in Arabic to a child whose father or both his or her parents have died. Jan 2008, the Iraqi Ministry of Labor and Social Affairs released a report estimating that there were 4.5 millions Iraqi orphans, with 500,000 living on the streets without any home or family care. The report further said there were only 459 orphans in governmental houses of orphans while there were 800 Iraqi orphans in American Iraqi prisons.⁵⁴

4.14 Poverty and Hunger

60 % of the Iraqi population is unemployed. One third of Iraqis are living at or below the poverty line, with 5% suffering from extreme poverty. 69% of Iraqi families is affected by non-availability of food. Only 20% of households said they had any savings. 70% often population lack regular access to clean water, and only 60% have access to the public food distribution system. 80% of the recommended daily calorie intake in the form of wheat rice and beans. No meat, vegetables or fruit are included. 58% described reconstruction efforts in the area in which they live as very ineffective, and 9% described them as being totally nonexistent. 64% described their family's economic situation as very bad, up from 30% in 2005. 88% described the availability of electricity very bad, up from 65% in 2004. 69% described the availability of clean water very bad, up from 48% in 2004. 88% described the availability of fuel for cooking and driving as very bad.

⁵⁴ War on Iraq's Women/ August 28, 2007 By Lucinda Marshall

4.15 Unlawful Shooting

The Iraqi body is still unidentified, but the defense attorneys of the Marines on trial challenged this, stipulating that the victim was actually Hashim Gowad, a suspected insurgent and the cousin of the Marines' intended target, Saleh Gowad. The charges against the marines were thereafter revised to identify the shooting victim only as " an unknown Iraqi". According to testimony received under various plea agreements, it was alleged that the Marines abducted an Iraqi man, killed him a half hour later, placed an AK-47 and a shovel next to his body along the road, then falsified the formal report of the incident, asserting he was shot while digging a hole for a roadside bomb.

4.16 Damage of Daily Life

64% described their family's economic situation as being somewhat or very bad, up from 30% in 2005. 88% described the availability of electricity as being either somewhat or very bad, up from 65% in 2004. 69% described the availability of clean water as somewhat or very bad, up from 48% in 2004. 88% described the availability of fuel for cooking and driving as being somewhat or very bad. 58% described reconstruction efforts in the area in which they live as either somewhat or very ineffective, and 9% described them as being totally nonexistent. A 2007 survey for the first time asked ordinary Iraqis their view on the highly contentious draft oil law. According to the poll, 76 percent of Iraqis feel inadequately informed about the contents of the proposed law. Nonetheless, 63 percent responded that they would prefer Iraqi state-owned companies - and not foreign corporations-to develop Iraq's extensive oil fields. Finally Resolution 1483 passed by U.N. Security Council voted to lift sanctions against Iraq and to give the US and UK authority to control the oil to help Iraq reconstruction.

4.17 Health Situation

This Brussels Tribunal (March 21, 2007) article points out that the conditions of Iraq's health system are deteriorating. According to the Iraq Medical Association, 90 percent of hospitals in Iraq lack essential equipment and 18,000 of 34,000 physicians left the country. Further, the report of the NGO Coordinating Committee in Iraq revealed that military forces occupied Mosul Hospital and ambulances have been attacked on a regularly basis in Najaf, Fallujah and other parts of Anbar province. US forces have been also intruding into hospitals daily and Iraqis have

refrained from using hospitals for fear of being shot. The US occupation of Iraq has resulted in a massive public health disaster for Iraqis.

4.17.1 Children Health Care

Violence threatens health in Iraq and the country has some of the worst statistics for diarrhea, measles, respiratory infections, malaria and under-nutrition affecting 30 per cent of children under five, contributing to excessive rates of infant and child mortality. Even tuberculosis and cholera have re-emerged after having long disappeared. Dirty water and diarrhea still claim children's lives. One in ten Iraqi children suffers from a chronic disease, and 50 per cent of the children are malnourished. There are reported to be one million cripples and disabled people in Iraq, an increase of 30 per cent since 2003. According to the Iraqi Medical Association, about 10 per cent of Baghdad's total force of 32,000 registered doctors - Sunnis, Shiites and Christians.- left or were driven from work in 2005. 30,000 physicians were registered in Iraq's main medical syndicate, or union, before the war. In 2007 there were 8,000. With the departure of so many, it will take years to rebuild the Iraqi health system.

4.18 Refugee

UNHCR estimated that over 4.7 million Iraqis have been displaced, with 2.7 million within Iraq and 2 million in neighboring countries: Jordan, Syria and Egypt-2008. Roughly 40% of Iraq's middle class is believed to have fled. Most are fleeing systematic persecution and have no desire to return.⁵⁵

5.0 Analysis of International Humanitarian Law

5.1 Jus in Bello in Iraq War 2003

Crimes against Humanity:

The Iraq War is full of horrible, terrible murder, bombardments, torture, rape and destruction of civilian properties. Thus the Hague Convention, 1907; the Fourth Geneva Convention, 1949; the Additional Protocol-I, 1977 are not followed accordingly, even indiscriminately violated by US-led allies. The New England Journal of Medicine, Perspective April 16, 2009, as the report says, since 20 March 2003 to 19 March 2008 total civilian killed 60,481 in 14,196 events, total female civilian killed 2,396

⁵⁵ http://en.wikipedia.org/wiki/Refugees_of_Iraq

and children 2,146. UNAMI (United Nations Assistance Mission for Iraq) says 6,787 civilian were killed and 20,178 people injured in the second part of 2008.

The Ishaqi incident- shooting of 11 people included 5 children and 4 women. At Haditha in Al Anbar province 24 people were killed by 12 members of Kilo Company in the 3rd Battalion, 1st Marine Regiment, 1st Marine Division on Nov 19, 2005. 42 civilians were killed known as the Wedding Party Massacre at Mukaradeeb village near Syria border on May 2004.

5.2 Protection of the Civilian Population, Civilian Objects and Precautionary Measures :

As per the Additional Protocol-I, 1977, Chapter II, Art 51(1) the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations....

51(2). The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Attacks against the civilian population or civilians by way of reprisals are prohibited.⁵⁶

Even precautionary measures before attack the civilian areas were not taken. As we see in the Additional Protocol-I, Chapter IV, Article 57 (1) in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

US-led allies should have ensured the civil defense before their indiscriminate attack in Iraq as per Additional Protocol-I, Chapter VI, Article 61- the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival. These tasks are:

(a) warning; (b) evacuation; (c) management of shelters; (d) management of blackout measures; (e) rescue; (f) medical services, including first aid, and religious assistance; (g) fire-fighting; (h) detection and marking of danger areas; (i) decontamination and similar protective measures; (j) provision of emergency accommodation and supplies; (k) emergency

⁵⁶ The Additional Protocol-I, 1977, Chapter II, Art 51(6)

assistance in the restoration and maintenance of order in distressed areas; (l) emergency repair of indispensable public utilities; (m) emergency disposal of the dead; (n) assistance in the preservation of objects essential for survival; (o) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization;

Apart from this, "Civilian objects shall not be the object of attack or of reprisals. Attacks shall be limited strictly to military objectives. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used."⁵⁷

5.3 Protection of Women and Children

"Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault."⁵⁸

"Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason."⁵⁹ But the New England Medicine, perspective April 16, 2009 says, from 20 March 2003 to 19 March 2009 2,146 children were killed. Another report says, 1594 children were killed and 376 were injured.⁶⁰

5.4 Rights of Prisoners of War

As per article 47 of The Hague Conventions, 1907 pillage is forbidden. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.⁶¹ All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

⁵⁷ The Additional Protocol-I, 1977, Chapter III, Article 52

⁵⁸ The Additional Protocol-I, 1977, Article 76(1)

⁵⁹ The Additional Protocol-I, 1977, Article 77(1)

⁶⁰ UNAMI (United Nations Assistance Mission for Iraq) Report Dec 2008

⁶¹ The Hague Conventions IV, 1907, SECTION III, Article 50

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defense, which shall not be less favorable than those provided by Article 105 and those following, of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.⁶²

Article 124 of the Fourth Geneva Convention says, "Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein....." According to Article 125 internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily. They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital. They shall have permission to read and write, likewise to send and receive letters. No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 143 of the present Convention.

Apart from this, in the aftermath of the September 2007 Blackwater shootings, lawyers for the US State, Justice and Defense departments debate whether private security contractors fall under the same broad definition of "unlawful combatants" which the Bush administration uses to justify detentions in Guantanamo Bay. Legal commentators criticize the Bush administration for failing to clarify the legal status of private security contractors before putting them into military roles.⁶³

5.5 Restriction of Chemical Weapons

During the sieges of Fallujah in April 2004, the US used chemical weapons such as white phosphorus and a napalm derivative, causing indiscriminate harm and unnecessary suffering in the civilian population. Although the use of those weapons is banned under several international treaties and the Geneva Conventions, no government or the United Nations has condemned such acts and these crimes remain unpunished. Three years after the sieges, the population of Fallujah continues to face innumerable hazards, living with daily attacks and factional violence and having no access to clean water or health care.⁶⁴

⁶² The Geneva Convention-I, chapter IX, Article 49

⁶³ The Los Angeles Times

⁶⁴ The Guardian, April 4, 2007

Though white phosphorous munitions are banned under the 1980 Geneva Convention on Biological and Chemical Weapons, the US has not signed the agreement and instead classifies white phosphorous as a "psychological" weapon. As ZMag points out, there is nothing psychological about a weapon that melts skin to the bone while damaging the nervous system and blocking the circulation of blood.⁶⁵

5.6 Individual Responsibility of Criminal Offense

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.⁶⁶

5.7 Responsibility of Superiors

The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.⁶⁷

In addition to other grounds of criminal responsibility under this Statute (Rome Statute) for crimes within the jurisdiction of the Court:⁶⁸

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective

⁶⁵ Willy Peter, January 2006

⁶⁶ The Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993, Article 7(1)(2)

⁶⁷ The Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993, Article 7

⁶⁸ The Rome Statute of the International Criminal Court, 1998, Article 28

command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where: (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where: (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

5.8 Superior Orders and Prescription of Law

Article 33 of the Rome Statute says, "The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless: (a) The person was under a legal obligation to obey orders of the Government or the superior in question; (b) The person did not know that the order was unlawful; and (c) The order was not manifestly unlawful. 2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful."

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.⁶⁹

⁶⁹ The Nuremberg Charter, Article 8

Iraq's Foreign Minister Hoshiyar Zebari has formally notified the UN Security Council that it wants the US-led multinational force (MNF) to remain in place. Resolution 1637 said the Council would terminate the MNF's mandate at the request of Iraq's government. The letter's release coincided with a five-hour visit to Baghdad by US President George W. Bush (13 June 2006 Reuters). But UN and US nobody pay heed to the words of Iraq.

6.0 US Role to Drag the Alleged Soldiers under Justice

6.1 Rape and Murder: Mamudiyah Case

In the case of Abeer Qasim, a 14 years old girl in the south of Baghdad, was raped and murdered by US army 502 Infantry Regiment on 12 march 2006. The army also killed all family, father, mother, and two her younger sister and younger brother. After the legal proceedings, as of May 2009, five soldiers namely; Barker, Spielman, Cortez and Howard have been convicted and sentenced for this crime and Green has been convicted.

6.2 Hamadania Incident: Charges and Investigation

The Marines involved, members of Kilo Company, 3rd Battalion, 5th Marines, 1st Marine division, have been placed in confinement in Camp Pendleton pending possible charges. Press reports noted it was unusual for Marines to be placed in the brig before charges have been filed, suggestion concern by authorities the men may be considered a flight risk. Under military law the defendants could face the death penalty. These Marines were brought back from Iraq with no restraint and had stops along the way back to Camp Pendleton.⁷⁰

6.3 Wedding Party Massacre

Iraqi officials report 13 children were among the dead. 27 members of the extended Rakat family were killed. The U.S. military took the stance that the location was a legitimate target. Brigadier General Mark Kimmitt, the coalition deputy chief of staff for U.S. operations in Iraq: "We took ground fire and we returned fire. We estimate that around 40 were killed. But we operated within our rules of engagement." American fire included both bullets and bombs, leaving behind craters. Although a senior Iraqi police officer told the Associated Press that a helicopter fired at the party early last day morning in a remote village close to the Syrian border,

⁷⁰ http://en.wikipedia.org/wiki/Hamadania_incident

killing between 42 and 45 people.⁷¹ Finally no criminal charge has been framed against the alleged soldiers in this case.

6.4 Isaqi Incident Case

The discrepancy of reported of US army and US press briefing about the assessment and the number of the civilian were killed and the lack of evidence appeal to US Army decided to opening up an investigation.⁷²

6.5 Legal Proceedings

The intentional killing of noncombatants is prohibited by modern laws of war derived from the UN Charter, the Hague Conventions and the Geneva Conventions, and constitutes a war crime. The Marines and officers are subject to possible courts martial under American military law, the Uniform Code of Military Justice.

As of June 17, 2008, six defendants had their cases dropped and one was found not guilty. The exception is SSgt. Wuterich, whose trial date has been postponed. At least three officers have been officially reprimanded for failing to properly initially report and investigate the killings.⁷³

7.0 Why US cannot be dragged under International Criminal Court

ICC has the jurisdiction over those facts of member states that the states are unwilling or unable to try in the domestic Court but the state wants to try the case. As ICC is a complementary Court of the domestic Court of law and the USA is not a member state of ICC, upto now International Criminal Court has no jurisdiction over the offenses committed by US government or their soldiers. Although the appointment of prosecutor by UNSC, primary investigation of the case by the prosecutor, approval of the pre-trial chamber, provisions of appeal to the trial chamber ensure much of the transparency of International Criminal Court, US has not yet ratified the Rome Statute.

Apart from this, the George W Bush Administration "unsigned"⁷⁴ the Clinton signature on the Rome Statute, sought through bilateral diplomacy to persuade or coerce other states into exempting US personnel from the coverage of the ICC, delayed UN peace keeping

⁷¹ <http://www.guardian.co.uk/world/2004/may/20/iraq.rorymccarthy>

⁷² http://en.wikipedia.org/wiki/Ishaqi_incident

⁷³ http://en.wikipedia.org/wiki/Haditha_killings

⁷⁴ David P. Forsythe, *Human Rights in International Relations*, 2nd Ed 2006, Cambridge University Press, Page-107

deployments until the Security Council exempted any participating US personnel from any review by the ICC, and in almost every way imaginable tried to undermine the ICC. In 2005, however, the USA abstained on a UN Security Council resolution that authorized the ICC prosecutor to open investigations about possibly indicating certain Sudanese leaders for atrocities in the Darfur region of that country.

International Criminal Court Prosecutor Luis Moreno Ocampo announced that his office will not investigate war crimes committed in Iraq by coalition forces. The Bush administration has staunchly opposed the ICC claiming it will "unfairly target" US military personnel. Ocampo's decision gives evidence of the court's impartiality.⁷⁵

However Congress passed the so-called American Service Members Protection Act, which among other provisions authorized in advance the US military action to free any US national detained abroad in connection to ICC proceedings. President George W Bush signed it, despite considerable foreign criticism.

8.0 Conclusion

In the run up to the 2003 invasion of Iraq, the question of whether the invasion would be a just war was posed. Many of those on both sides of the debate framed their arguments in terms of the Just War. They came to quite different conclusions because they put different interpretations on how the just war criteria should be applied. Supporters of the war tended to accept the US position that the enforcement of UN resolutions was sufficient authority or even, as in the case of the Land Letter that the United States as a sovereign nation could count as legitimate authority. Opponents of the war tended to interpret legitimate authority as requiring a specific Security Council resolution. They also asserted that the US had neither exhausted its diplomatic options nor allowed international efforts to run their course and take effect.

According to Pope John Paul II, however, the Iraq war was clearly not a just one.⁷⁶ One of Spain's leading judges on war crimes and terrorism-related cases, Baltasar Garzon, ranks the 2003 US-led invasion of Iraq among "the most sordid and unjustifiable episodes in recent human history." The judge criticizes US President George W. Bush and his allies,

⁷⁵ Citizens for Global Solutions: Ocampo Turns Down Iraq Case: Implications for the US (February 2006)

⁷⁶ <http://www.foxnews.com/story/0,2933,80875,00.html>

including British and Spanish Prime Ministers Tony Blair and Jose Maria Aznar, who supported the attack "despite having doubts and biased information." Garzon's condemnation of the leaders reflects growing disenchantment worldwide with the Iraq catastrophe.⁷⁷

Furthermore, in a German court an army major has successfully argued that the US and the UK did not legally invade Iraq, therefore he broke no laws in refusing to obey a military order. The author concludes that such decisions set a precedent for the recognition of the Iraq war as an act of aggression, and therefore a war crime - of which the British government should be very wary.⁷⁸

A prosecutor of Nazi war crimes at Nuremberg, Benjamin Ferencz, believes US President George W. Bush's aggressive war in Iraq constitutes a "supreme international crime" capable of prosecution in an international court. Claiming that the atrocities of the Iraq war were "highly predictable," Ferencz points to the UN Charter, which unequivocally states that no nation can use armed force without UN Security Council permission. He convincingly argues that, due to his invasion of Iraq and the subsequent acts of the US military, Bush should face charges for war crimes along with Saddam Hussein.⁷⁹

On the eve of the Security Council's quarterly discussion on the situation in Iraq, a group of NGOs has written the Council to voice their concern. Several disturbing reports have been released by Secretary General Kofi Annan, the United Nations Assistance Mission for Iraq (UNAMI), and human rights organizations. These reports have highlighted significant violations of international human rights and humanitarian law, especially in the area of detention practices. In response, the NGOs ask the Council to break its pattern of pro forma review, "accept its responsibility" and "substantially review the mandate it has given to the MNF."⁸⁰

In this interview, former United Nations Assistance Mission for Iraq (UNAMI) human rights chief John Pace discusses sectarian violence, US military operations, and the legality of the war. According to Pace, ongoing US military operations have led to widespread civilian displacement and destruction, and along with the rise in sectarian militias

⁷⁷ World Socialist Website, March 27, 2007

⁷⁸ The Guardian, Oct 17, 2006

⁷⁹ The One World, Aug 25, 2006

⁸⁰ NGO Letter to the Security Council on Iraq (March 14, 2006)

contribute most to instability in Iraq. Furthermore, US detentions violate the Geneva Conventions and as many as 90 percent of all Iraqi prisoners are innocent. "Normalization," Pace says, cannot go forward in Iraq so long as the US military occupation remains.⁸¹

A group of 27 NGOs points out that the US-led Multinational Force (MNF) in Iraq has seriously violated international law, including bans on the use of torture, illegal detentions, siege tactics against population centers, and "indiscriminate and especially injurious" weapons. Furthermore, the MNF is responsible for failing to address patterns of corruption and mismanagement in Iraq's development fund and reconstruction programs. Citing numerous official reports and legal texts, the letter urges Council members to "substantially reconsider, revise or terminate" the MNF's mandate to bring it into conformity with international law.⁸²

In a statement ahead of a Council meeting July 14, 2006 reviewing the mandate of the Multinational Force (MNF), Amnesty International USA calls on the UN Security Council and the Iraqi government to hold to account "those who commit crimes under international law in Iraq, including members of the US-led MNF." Amnesty demands that the Council not extend the immunity from legal proceedings for abuses by the MNF or their contractors and concludes that "the Iraqi criminal justice system should be able to exercise jurisdiction over any crime committed in Iraq."

Although US and Iraq government has already dragged some of the alleged soldiers and civilians under justice, there are still many offences caused by US military forces or George W Bush Administration, and Iraqi soldiers and suicidal bombers which are still beyond justice as per the Rome Statute of the International Criminal Court, 1998 as US and Iraq are not the member states of International Criminal Court. Apart from this it depends on US and Iraqi governments how they will be capable of applying their domestic humanitarian laws regarding the offences committed since Iraq war 2003 to until now.

⁸¹ Democracy Now!, 28 Feb 2006

⁸² Global Policy Forum, Letter to the Security Council (May 19, 2006)