

The Crime of Aggression Against Iraq

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In a televised address to the nation on March 17, 2003, President Bush issued an ultimatum to Saddam Hussein that he and his sons “must leave Iraq within 48 hours.” Bush then threatened that “their refusal to do so will result in military conflict, commenced at a time of our choosing.”¹ On March 19, 2003, the U.S.-U.K. Coalition planes started bombing various military facilities in Iraq, thereby launching a full military invasion against Iraq. After conquering Iraq easily, more than 150,000 US-UK forces still occupy Iraq at this time. It is extremely unfortunate that the UN Security Council has failed so far to condemn the U.S.-U.K. invasion as a crime of aggression, even though it is required to do so under Article 39 of the UN Charter.² Thus, it is critical for the international community—as least the legal community and the civil society—to reflect on the illegal nature of the 2003 invasion, in observance of the 60th anniversary of the birth of the United Nations this year, and hold those high officials responsible for the aggression accountable. In addition, the international community must undertake an urgent reform of the UN system of the collective security so that the United Nations can deal with any future aggression by a permanent member of the Security Council.

Concerning the 2003 invasion, it is to be noted that, for more than a decade prior to this Gulf War II, the U.S. and U.K. have been engaging in acts of aggression against Iraq by attacking various military sites in Iraq, after unilaterally establishing the so-called northern “no-fly” zone in 1991 and the southern “no-fly” zone in 1992. In particular, in December 1998, the US forces committed a serious aggression against Iraq by conducting a massive bombing campaign called “Operation Desert Fox,” a series of air strikes that continued for four days and nights, to degrade Iraq’s military capability. However, this memo will focus its discussion on the US crime of aggression as it was perpetrated in March 2003.

George W. Bush was the Commander in Chief of the U.S. forces at the time of the March 2003 invasion. President Bush was the main instigator and co-conspirator who initiated and ordered the naked war of aggression against Iraq (a.k.a. Gulf War II), and thus his crimes against peace must be condemned and prosecuted by the international community in order to uphold the existing international law and preserve the world peace. Otherwise, the rule of force will prevail in the future over the rule of law.

I) Crime Against Peace or Crime of Aggression

In the post-World War II Allied Military Tribunals, the top leaders of the defeated Germany and Japan were prosecuted and found guilty of the crimes against peace for their war of aggressions. The Nuremberg Charter was adopted in 1945 by the Allied Powers in the Agreement for the Prosecution and Punishment of the Major War

¹ “President George W. Bush’s Speech on Iraq,” *The New York Times*, March 18, 2003.

² This is, of course, due to the veto power of the U.S. and U.K. in the Security Council—exposing the weakness of the present UN Charter.

Criminals of the European Axis (a.k.a. the London Agreement), 59 Stat. 1544, 82 U.N.Y.S. 279. Article Six of the Charter defined crimes against peace as follows:

“Planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, assurances, or participation in a common plan or conspiracy for the accomplishment of any of foregoing.”³
(underline added for emphasis)

In condemning wars of aggression, the Nuremberg Tribunal set a new legal precedent of holding the top leaders of a nation who planned and waged a war of aggression accountable as war criminals. In December 1946, the UN General Assembly passed a resolution, affirming the “principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal.”⁴ Thus, the Nuremberg principles and judgment are binding upon American officials as part of case law and customary international law.

However, the Allied Tribunals or the UN Charter never defined “war of aggression.” The most authoritative definition of aggression comes from the UN General Assembly Resolution 3314 of 1974. While this is not a treaty, it fairly represents the customary international law, reflecting a broad international consensus. Article 1 of the Resolution provides the following definition for aggression:

“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations....”⁵

Then, Article 2 states that “the first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression....” Article 3 of the Resolution offers an illustrative list of acts of aggression: invasion, attack, or occupation of whatever duration; bombardment; blockade; attack on another State’s armed forces; unauthorized use of military forces stationed in a foreign State; allowing territory to be used for aggression; and sending armed bands or similar groups to carry out aggression or substantial involvement therein.

Thus, one of the key questions in regard to the legality of the Gulf War II is whether the US-UK invasion of Iraq was carried out in violation of the Charter of the United Nations, and whether the US-UK forces attacked Iraq first.

II) Violation of the United Nations Charter

The Charter of the United Nations is the most important international treaty that forms the foundation of the international peace and security system in the post-WW II period.

³ Friedman, Lissitzyn & Pugh, *International Law* (1969), p. 884.

⁴ GA Res. 95(1), “Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Tribunal,” December 11, 1946.

⁵ GA Res. 3314, “Definition of Aggression,” December 14, 1974.

The Charter was adopted on June 26, 1945 in San Francisco, and entered into force for the U.S. and U.K. as a binding treaty on October 24, 1945. So far, 191 nations have agreed to abide by the UN Charter. Under the Charter, use of force is authorized only under two circumstances: when the Security Council decides to use force (Art. 39 and Art. 42) and in self-defense (Art. 51).

The military invasion of Iraq, which was unilaterally carried out by the US-UK Forces as a “coalition of willing,” was a major blow to the integrity and authority of the United Nations, violating many provisions (e.g. Art. 2(4), 39, 42 and 51) of the Charter and undermining the whole post-WWII international legal and security system as a whole.

A) Prohibition Against Use of Armed Force

In adopting the UN Charter at the end of the WW II, the international community was convinced that war should be permanently banned in settling international disputes if civilization was to survive. Note the Preamble of the UN Charter, which sets out the spirit and framework of the document: “We, the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind...” After reciting other purposes of the UN, including “...respect for the obligations arising from treaties and other sources of international law...,” the Preamble continues: “and for these ends...to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest...”(underline added for emphasis) Members of the UN are obligated to honor not only the Articles of the Charter but also the spirit of the Preamble.

Furthermore, Article 2, Section (3) and (4) as well as Article 33 of the Charter specifically require Member States to settle international disputes by peaceful means. Article 2, Section (4) states as follows:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

In waging an illegal war, the US, UK and other members of the “coalition of the willing” have blatantly violated the important commitment in the Charter, namely the prohibition against the use of armed force in international affairs.

The only exceptions to this general prohibition against the use of armed force under the Charter are available in two circumstances: If the use of armed force is authorized by the Security Council in accordance with Article 39, 41 and 42 or in case of self-defense under Article 51. Article 39 authorizes the Security Council to “determine the existence of any threat to the peace, breach of the peace, or act of aggression” and “decide what measures shall be taken...to maintain or restore international peace and security.” In invading Iraq, President Bush and Prime Minister Blair claimed that their attack was authorized by the UN Security Council resolution 1441 of November 2002, the old Resolution 687 of 1991 and Resolution 678 of 1990. Thus, an examination of these claims is necessary to expose their flimsy excuses for the war.

B) UN Security Council Resolution 1441

The Security Council Resolution 1441 was adopted in November 2002 to pressure Iraq to disclose more information about its weapons of mass destruction program (WMD) and provide enhanced power to the UN weapons inspectors. However, the resolution did not provide any specific authorization for the use of force against Iraq. It merely warned Iraq of “serious consequences” in case of a non-compliance of the resolution by Iraq. Such a warning did not amount to an automatic authorization for the use of force, and this fact was well understood by all members of the Security Council, including the US and UK, at the time the resolution was adopted. In fact, a legal memo from the British Foreign Office which was submitted to the House of Commons stated that “It is important to stress that SCR 1441 did not revive the 678 authorization immediately upon its adoption. There was no ‘automaticity’...”⁶ Besides, paragraph 12 and 14 of the Resolution 1441 were quite clear as to the need for the Security Council to meet again to assess the next move in case of non-compliance:

“12. Decides to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security;....

14. Decides to remain seized of the matter.” (underline added for emphasis)

Subsequently, the U.S. and U.K., in fact, attempted to obtain a new Security Council resolution for use of force in February 2003, including the personal appearance and sensational presentation of Secretary of State Colin Powell to the Security Council. However, they had to abandon the effort because they could not muster the minimum nine votes from the fifteen members of the Security Council, aside from the threat of veto by France.

C) UN Security Council Resolution 687 and 678

Thus, thwarted in their attempt to obtain a new S.C. Resolution specifically authorizing the use of force, the United States and the United Kingdom fell back on S.C. Resolution 687 from 1991 and 678 of 1990, arguing that Iraq’s failure to destroy its weapons of mass destruction constituted a material breach of 687, thus reviving 678 authorization to use force.

However, that is a far-fetched logic since Resolution 678 was originally adopted for the purpose of expelling Iraq from Kuwait. This authorization lapsed, under the basic rules of interpretation, when the stated objective was achieved and a formal cease-fire agreement was entered between Iraq and the UN in 1991. As for Resolution 687, which offered a cease-fire agreement to Iraq with certain disarmament obligations on Iraq at the end of the Gulf War I, there was no specific authorization for the use of force in case of non-compliance of the disarmament obligations by Iraq. On the contrary, paragraph 34 of the Resolution clearly stated that the Security Council shall “take such further steps as may be required for implementation of the present resolution.” Accordingly, the Security

⁶ Paul Waugh, “Attorney General Conceded Doubts Over Legality of War,” *Independent*, March 4, 2004.

Council subsequently adopted a new Resolution 1441, in view of the circumstances then existing in November 2002, granting Iraq “a final opportunity to comply” and authorizing an “enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687...” Thus, Resolution 1441 clearly superceded all prior resolutions including 678 and 687.

D) Self-Defense and Preventive War

In his address to the nation on March 17, 2003, President Bush also implicitly relied on the doctrine of self-defense as another justification for his unilateral military action against Iraq. He stated as follows:

“The danger is clear. Using chemical, biological or, one day, nuclear weapons, obtained with the help of Iraq, the terrorists could fulfill their stated ambitions and kill thousands or hundreds of thousands of innocent people in our country or any other...Before the day of horror can come, before it is too late to act, this danger will be removed. The United States of America has the sovereign authority to use force in assuring its own national security.”⁷

The right to self-defense is recognized under Article 51 of the UN Charter. However, such right to self-defense is allowed only “if an armed attack occurs against a Member of the United Nations.”(underline added for emphasis) Since Iraq did not initiate an armed attack on the U.S first, the unilateral, preventive attack on Iraq by the U.S., carried out even under the name of “a coalition of willing nations,” constitute a clear violation of Article 51 of the UN Charter. Thus, it is not surprising that President Bush never bothered to mention Article 51 in his March 17 address.

Basically, Bush was relying on his own preventive war doctrine (a.k.a. Bush doctrine) that he unveiled in June 2002. In the subsequent document called the “National Security Strategy of the United States” in September 2002, Bush declared that, “as a matter of common sense and self-defense,” the U.S. will take preventive action against terrorist groups or states linked with terrorist groups to stop “emerging threats before they are fully formed.” Although the Bush doctrine is often referred as a preemptive war doctrine, it is more accurate to call it a preventive war doctrine.

In any case, both preemptive and preventive wars are not permitted under Article 51. The UN Security Council itself already condemned the use of preventive war when it adopted Resolution 487, in reaction to the Israeli attack on an Iraqi nuclear reactor in 1981. The Resolution states that the Security Council “strongly condemns the military attack by Israel in clear violation of the Charter of the United Nations and the norms of international conduct.”⁸

As for preemptive war, Judge Weeramantry, a former Judge of the International Court of Justice, states that, under the terms of Article 51, “preemptive strikes in anticipatory self-

⁷ “President George W. Bush’s Speech on Iraq,” *The New York Times*, March 18, 2003.

⁸ S.C.Res. 487, June 19, 1981.

defense are also outlawed.”⁹ In accord with the strict, narrow interpretation of the Article 51 is the semi-official commentary to the UN Charter.¹⁰ The commentary states as follows:

“An anticipatory right of self-defence would be contrary to the wording of Art. 51 (‘if an armed attack occurs’), as well as to its object and purpose, which is to cut to a minimum the unilateral use of force in international relations. Since the (alleged) imminence of an attack cannot usually be assessed by means of objective criteria, any decision on this point would necessarily have to be left to the discretion of the State concerned. The manifest risk of an abuse of that discretion which thus emerges would *de facto* undermine the restriction to one particular case of the right of self-defence. Therefore, Art. 51 has to be interpreted narrowly as containing a prohibition of anticipatory self-defence. Self-defence is thus permissible only after the armed attack has already been launched.”¹¹

Although there is a minority opinion in the legal community that Article 51 would permit a preemptive strike against a real, imminent military attack, that view is based on an erroneous interpretation and misunderstanding of the negotiation history of Article 51. During the international conference leading to the adoption of the UN Charter, the British diplomats wanted “a more expansive triggering mechanism” than “armed attack” under Article 51, but it was none other than the U.S. Secretary of State Stettinius who refused to budge, contending that a broader phraseology would allow states too great a leeway which would wreck the organization.¹² Thus, it is apparent that the 19th customary international law under the *Caroline* case¹³ that would allow preemptive strike in self-defense is specifically overruled by Article 51 of the UN Charter. In this regard, it is very unfortunate and a great disservice to the UN that the Secretary General Kofi Annan proposed in March 2005 a broad interpretation of the Article 51, apparently to accommodate the Bush doctrine of preemptive war.¹⁴

E) Violation of the UN Security Council Resolutions on Iraq

Article 25 of the UN Charter states that “Members of the United Nations agree to accept and carry out the decisions of the Security Council.” However, that promise was blatantly broken by the US & UK in invading Iraq. For instance, at the time of the US-UK invasion of Iraq, some 100 UN Monitoring, Verification and Inspection Commission (UNMOVIC) inspectors were conducting extensive inspections for weapons of mass destruction and missiles of prohibited range inside Iraq in accordance with the S.C. Res. 1441. In the period from November 27, 2002 and March 17, 2003, during which UNMOVIC performed 731 inspections, covering 411 sites, in Iraq without any hindrances, it “did not find evidence of the continuation or resumption of programs of

⁹ C.G.Weeramantry, *Armageddon or Brave New World* (2003), p. 22.

¹⁰ Bruno Simma, et. al. (Editors), *The Charter of the United Nations: A Commentary*, (2nd Edition), Vol. I.

¹¹ *Ibid.*, p. 803.

¹² Stephen C. Schlesinger, *Act of Creation: the Founding of the United Nations*, p.185.

¹³ Wolfgang Friedmann, et al. (Editors), *International Law* (1969), p. 882.

¹⁴ See Kofy Annan’s Report: *In Larger Freedom*, paragraph 124. (www.un.org/largerfreedom/chap3.htm)

weapons of mass destruction....”¹⁵ However, these UN inspectors were forced to leave Iraq in a hurry because President Bush issued a warning in his address on March 17, 2003 that “all foreign nationals, including journalists and inspectors, should leave Iraq immediately.”

Such sudden interruption in the vital work of the UN inspectors was in clear violation of the Security Council Resolution 1284 of 1999 which established the UNMOVIC. Article 10 of Resolution 1284 asked that “Member States to give full cooperation to UNMOVIC and the IAEA in the discharge of their mandates.” In addition, Article 10 of the S.C. Resolution 1441 also requested that “Member States to give full support to UNMOVIC and the IAEA in the discharge of their mandates.” It is also to be noted that S.C. Resolution 687 stated that disarming Iraq’s weapons of mass destruction (WMDs) should be a step towards the creation of a Middle East-wide zone free of all weapons of mass destruction and the missiles to deliver them. While focusing on disarming Iraq of WMDs, Bush and Blair have taken no steps whatever in disarming Israel’s WMDs or withdrawing their own WMDs from the area.

III) Bush’s Lies and Planning for the War of Aggression

President Bush justified his invasion of Iraq on the grounds that Saddam’s regime poses a “grave and gathering danger” to the U.S., the “global war on terror,” and securing freedom for the Iraqi people. However, it is apparent that the real reasons for his military invasion were to control the oil resources of Iraq, consolidate U.S. domination of the Middle East by enlarging its military presence there, and enhance security for Israel.¹⁶ Other possible reasons seem to be pure hatred for Saddam Hussein and just doing “Lord’s will” to liberate Iraq in the nature of another Christian crusade against Islam.¹⁷ Although Saddam was certainly a brutal dictator, he did not pose any imminent danger to Iraq’s neighbors or the U.S.

In order to back up his false claims for the invasion, Bush and his close advisers deliberately exaggerated or distorted the available U.S. intelligence to depict Iraq as a serious danger to the security of the U.S. For instances, some of their lies and misrepresentations are now well-known: 1) One of the September 11 hijackers met an Iraqi intelligence official in Prague; 2) Iraq and Al Qaeda were working together; 3) Iraq tried to import aluminum tubes and uranium yellowcake to develop nuclear weapons; 4) Iraq still had vast stocks of chemical and biological weapons from the first Gulf War; 5) Previous weapons inspections had failed; 6) Iraq was obstructing the UN inspections; 7) Two trailers found in Iraq were mobile biological laboratories, etc.¹⁸

¹⁵ S/2003/580, May 2003, Annex, 13th Quarterly Report of of UNMOVIC.

¹⁶ Emad Mekay, “Iraq War Launched to Protect Israel: Bush Adviser,” *Inter Press Service*, March 29, 2004; Jeffrey Sachs, “Saudi Arabia Was Real Target in Iraq War,” *Financial Times*, August 12, 2003; and Neil Mackay, “The West’s Battle for Oil,” *Sunday Herald-Online*, Oct. 6, 2002.

¹⁷ Rupert Cornwell, “Bush: God Told Me to Invade Iraq,” *The Independent*, October 7, 2005.

¹⁸ Glen Rangwala & Raymond Whitaker, “20 Lies About the War,” *Independent*, July 13, 2003

Jimmy Carter, the former US president, in an interview with *The Independent*, a British paper, on the first anniversary of the US-UK invasion, strongly criticized President Bush and Tony Blair for waging an unnecessary war on Iraq based on lies and misrepresentations. He said:

“There was no reason for us to become involved in Iraq recently. That was a war based on lies and misinterpretations from London and from Washington, claiming falsely that Saddam Hussein was responsible for 9/11 attacks, claiming falsely that Iraq had weapons of mass destruction. And I think that President Bush and Prime Minister Blair probably knew that many of the allegations were based on uncertain intelligence....a decision was made to go to war (then they said) ‘Let’s find a reason to do so’.”¹⁹

According to Sir Christopher Meyer, the former British Ambassador to Washington, Bush and Blair, in fact, reached a secret understanding for Iraq war when Blair visited the White House nine days after the September 11 attack.²⁰

In fact, Bush was anxious to attack Iraq from the time he assumed his office in January 2001. This was confirmed by many high-level former officials of the Bush administration who have come out publicly in 2004. Their stories are quite revealing of the long-term intention and planning to attack Iraq by President Bush and his close neo-con advisers. The first major exposure of President Bush’s war planning was made by the former Secretary of Treasury, Paul O’Neill, who wrote about his experience in the Bush administration in his 2004 book, *The Price of Loyalty*. He said invading Iraq was “topic A” at the very first meeting of President Bush’s National Security Council, 10 days after his inauguration on January 20, 2001, and continued to be an abiding theme in follow-up meetings.²¹ Another former Bush official also revealed a similar story. According to Richard Clarke, who resigned from the position of the White House Counter-Terrorism Coordinator, in the initial discussions after September 11, Secretary Rumsfeld called for bombing Iraq rather than Afghanistan, declaring that there were no good bombing targets in Afghanistan. Clarke wrote in his critical book, *Against All Enemies*: “I realized with almost a sharp physical pain that Rumsfeld and Wolfowitz were going to try to take advantage of this national tragedy to promote their agenda about Iraq.”²²

Perhaps, it is even true that the Bush’s plan to invade Iraq originated long before Bush was elected as President. In 1997, a new “think-tank” group called “The Project for the New American Century” (PNAC) was formed with many neo-conservative leaders such as Dick Cheney, Donald Rumsfeld, Paul Wolfowitz and Douglas Feith. A PNAC’s report entitled “Rebuilding America’s Defenses” advocated global US hegemony, based mainly on the threat or use of unilateral US military power, which was apparently incorporated

¹⁹ Andrew Buncombe, “Carter Savages Blair and Bush,” *Independent*, March 22, 2004.

²⁰ David Rose, “Bush and Blair Made Secret Pact for Iraq War,” *The Observer*, April 4, 2004.

²¹ Andrew Gumbel. “Bush Was Demanding Excuse to Invade Iraq in Jan. 2001, Says Ex-Treasury Secretary,” *Independent*, Jan. 12, 2004.

²² Patrick Martin, “Former Terrorism Aide Charges Bush Manufactured Case for Iraq War,” *World Socialist*, March 23, 2004.

into the Sept. 2002 Bush doctrine. It is now evident that the 2003 invasion of Iraq became a major test case for the world domination goals of PNAC and the Bush doctrine.²³

IV) Accountability for the Crime of Aggression

In his address to the nation two days before the commencement of the Gulf War II, President Bush warned the Iraqi troops as follows:

“War crimes will be prosecuted. War criminals will be punished.
And it will be no defense to say I was just following orders.”²⁴

Well, it is now time for the international community, the American people in particular, to apply the same standard in assessing the criminal responsibility of President Bush, Vice President Dick Cheney, Secretary of Defense Donald H. Rumsfeld, former Deputy Secretary of Defense Paul Wolfowitz, former Secretary of State Colin Powell, and other high civilian and military officials for their commission of the crime of aggression against Iraq. According to the judgment of the Nuremberg Tribunal, the crime against peace (or crime of aggression) is described as “the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”²⁵ Let’s examine how these war criminals can be held accountable under international and U.S. laws.

A) The United Nations and the International Criminal Court

Unfortunately, the UN Security Council has failed so far to condemn the U.S.-U.K. invasion as a war of aggression or set up a special war crimes tribunal for Iraq because the U.S. has a veto power in the Security Council. Besides, the UN officials and smaller countries seem to be too intimidated and afraid to challenge the rogue behavior of the Bush administration. Any future UN reform must ensure that the General Assembly shall be empowered to deal with any future aggression in case a permanent member of the Security Council becomes the aggressor.

The International Criminal Court (ICC) seems to be focusing on the prosecution of war crimes in the African continent at this time. Although ICC has jurisdiction over the crime of aggression, it will be very difficult to exercise jurisdiction over President Bush and other high officials since the United States and Iraq were not a party to the ICC statute in 2003 and the court cannot exercise its jurisdiction until the elements of the crime of aggression are to be agreed to by the Member States of the ICC.²⁶ However, the U.K. is a party to the ICC, and therefore there is a small window of opportunity for the ICC to indict Prime Minister Blair (and possibly President Bush as a co-conspirator and facilitator) for the war crimes and/or crimes against humanity committed by the U.K. forces.

²³ See Conclusions of the Brussels Tribunal, April 14-17, 2004.

²⁴ “President George W. Bush’s Speech on Iraq,” *The New York Times*, March 18, 2003.

²⁵ Friedman, Lissitzyn & Pugh, *International Law* (1969), p. 885.

²⁶ See Art. 5 of the Rome Statute for ICC.

B) Impeachment

The ideal way to mete out justice to Bush, Cheney and Rumsfeld would be for the U.S. Congress to impeach them under Article II, Section 4 of the U.S. Constitution, for their “High Crimes and Misdemeanors” of violating their oath of office to “faithfully execute” their duties and “preserve, protect and defend the Constitution of the United States.”²⁷ Article VI of the U.S. Constitution states that “this Constitution,....and all Treaties made....shall be the supreme Law of the Land.” In waging the war of aggression, President Bush violated the Articles of the UN Charter, which is an international treaty of the U.S.

Furthermore, President Bush also violated Article I, Section 8 of the U.S. Constitution by obtaining an illegal resolution delegating the War Power from the Congress to him under the dubious language of Section 3(a) of the Resolution: “The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to (1) defend the national security of the United States against the continuing threat posed by Iraq....” (emphasis added) Such power cannot be delegated to the President because Article I, Section 8 states clearly that “the Congress shall have power....to declare War...” (emphasis added)

In addition, in order to obtain the Congressional resolution authorizing the use of military force against Iraq,²⁸ President Bush and other top officials also lied and misrepresented to the American people and the Congress about the alleged dangers of weapons of mass destruction in Iraq. For instance, on October 7, 2002, about one week before the Congressional vote, in a public speech Bush delivered in Cincinnati, he tried to scare the American people by warning as follows: “The evidence indicates that Iraq is reconstituting its nuclear weapons program... Iraq has attempted to purchase high-strength aluminum tubes and other equipment needed for gas centrifuges, which are used to enrich uranium for nuclear weapons.” This claim has turned out to be complete baloney. The Department of Energy officials, who monitor nuclear activities, in fact, concluded that the tubes could not be used for enriching uranium.²⁹ Incidentally, this kind of deliberate attempt of the Bush administration to distort the intelligence to justify the military attack on Iraq was duly reported by Sir Richard Dearlove, the British director of M16, foreign intelligence, who warned the British officials in July 2002, in the famous “Downing Street Memo,” that “the intelligence and facts were being fixed around the policy” of military invasion.³⁰

It is also to be noted that President Bush already started his war of aggression against Iraq months before he obtained the Congressional authorization. For instance, on September 5, 2002, more than one hundred US-UK planes attacked the H-3 airfield, Iraq’s main air defense site, to prepare for the full invasion and allow US-UK special forces to enter Iraq

²⁷ Article II, Section 1, last paragraph, the U.S. Constitution.

²⁸ Public Law 107-243, Joint Congressional Resolution, adopted on Oct. 16, 2002.

²⁹ Christopher Scheer, “Ten Appalling Lies We Were Told About Iraq,” *AlterNet*, June 27, 2003. (www.alternet.org/story/16274/)

³⁰ “The Secret Downing Street Memo,” *The Sunday Times (UK)*, May 1, 2005

undetected at the time.³¹ In other words, Bush's preemptive war on Iraq began in September 2002 or earlier, without obtaining a declaration of war by the Congress. However, in speaking to the members of his cabinet and the Congress at the White House garden soon after the Congressional vote, Bush had the nerve to assert that he "have not ordered the use of force" so far and hoped "the use of force will not become necessary" even though he knew well then that he was already engaged in military action against Iraq.³²

Thus, there are many grounds for impeachment of Bush, but it will not likely to happen any time soon since the Congress is dominated by pro-war Republicans and Democrats alike at this time.

C) Federal Criminal Prosecution

While there is no specific U.S. statute punishing a crime of aggression, President Bush and his close advisers have violated numerous federal criminal statutes in the course of their preparation, invasion and occupation of Iraq. Some of the relevant statutes related to the international crime of aggression include making false statements (18 USC 1001), assaulting foreign officials with deadly weapons (18 USC 112), conspiracy to commit offense against the U.S. (18 USC 371), expedition against friendly nation (18 USC 960), murder or manslaughter of numerous Iraqi soldiers and civilians as well as American soldiers (18 USC 1111, 1112), international terrorism by use of weapons of mass destruction (18 USC 2332A(b)), torture (18 USC 2340-2340B), and war crimes (18 USC 2441).

In particular, Bush's numerous false statements to the American people and the Congress, regarding the weapons of mass destruction in Iraq, can constitute a criminal felony that may subject him to a sentence of imprisonment up to five years. Two good test cases for the violation of 18 USC 1001 would be Bush's statement, in his 2003 State of Union Address, that "the British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa" and that "our intelligence sources tell us that he has attempted to purchase high-strength aluminum tubes suitable for nuclear weapons production..."³³ As for the British intelligence, that information was based on forged documents and this was well known to the State Department and the CIA at the time since it was debunked by the report of the then US ambassador to Niger and by the report of personal investigation trip to Niger by former ambassador Joseph C. Wilson 4th in February 2002.³⁴ And yet, Bush used the discredited intelligence report in his speech, creating a false impression that he believed in the information.

Thus, the victims of the illegal Gulf War II and the peace/justice groups should file a formal criminal complaint against Bush and his gang with the Office of U.S. Attorney in the District of Columbia, with a specific written request that the complaint, with any

³¹ See the Timeline in www.afterdowningstreet.org; also Jeremy Scahill, "The Other Bomb Drops," *The Nation*, June 1, 2005.

³² Mark Danner, "The Secret Way to War," *The New York Review of Books*, June 9, 2005.

³³ State of Union Address, Jan. 28, 2003 (See www.pbs.org/frontline).

³⁴ Joseph C. Wilson 4th, "What I Didn't Find in Africa," Op-Ed., *The New York Times*, July 6, 2003.

evidences, be presented to a special grand jury.³⁵ If the Office of U.S. Attorney refuses to undertake an investigation, present the case to a special grand jury, or indict Bush, which is most likely under the influence and command of Alberto Gonzales, the U.S. Attorney General, then it will be necessary for us to ask a federal district court to intervene in the case. A legal memo in support of the criminal complaint will be helpful in the review of the case by the U.S. Attorney and the federal court.

Another option would be for the Congress to establish an independent, special commission with certain number of prosecutors to investigate and prosecute Bush's crimes. The commission should have full subpoena power to ask for the production of all relevant government documents from the Bush administration. However, this route will be as difficult as bringing an impeachment proceeding in the Congress.

D) Federal Civil Action

Along with federal criminal complaint, the victims of war as well as peace groups and some members of the Congress, should also bring a civil action in the federal court for a declaratory judgment that the 2003 invasion of Iraq was in violation of the US Constitution and international law, 2002 Congressional resolution authorizing the war on Iraq was null and void, or Bush failed to comply with the requirements of the Congressional resolution in question.

Victims of the war, both Americans and Iraqis, could also possibly bring a civil action for damages against Dick Cheney, Rumsfeld, and other high-level officials who engaged in false statements themselves while helping Bush's illegal war. Unfortunately, a civil action for damages against Bush is not available at this time.

E) Peoples' War Crimes Tribunal

Under the current difficult circumstances in which the United Nations, International Criminal Court and the U.S. federal prosecutors are unwilling to investigate and prosecute President Bush, in connection with the illegal war against Iraq, it is up to the people of the world to uphold the international law and prosecute Bush and his gang for their crimes against peace. The right to try war criminals anywhere in the world is, in fact, a universal and inalienable right of the world community. This right is strongly upheld by none other than the Chief Prosecutor for the Tokyo War Crimes Trial, Joseph B. Keenan, who stated as follows:

“The right of world society to try persons accused of war crimes and to punish them if they are found guilty is inalienable. It may neither be given nor taken away. It is not a matter of compromise or settlement.... Crime merits punishment because the balance between good and evil must be restored. Unless good is vindicated, justice fails. Without justice, peace and social order are impossible.”³⁶

³⁵ See 18 USC 3332(a).

³⁶ Joseph B. Keenan & Brendan F. Brown, *Crime Against International Law* (1950), p. 18.

This is why peoples' tribunals on Iraq are being organized in major cities around the world today. For instance, the Iraq War Crimes Tribunal held in NYC in May and August 2004 were historic because they were first attempts in the United States to accuse Bush for the crime of aggression and war crimes. Other significant tribunals have been held in London, Brussels, Berlin, Tokyo, and Istanbul.³⁷ Thus, there is a strong need for the U.S. peace/justice groups to try to organize a major international war crimes tribunal in Washington, D.C. too to educate the American people, the Congress and media as well as to put pressure on the Congress and the Department of Justice to hold Bush accountable.

V) Conclusion

The U.S. military invasion of Iraq in March 2003 was an illegal war of aggression that took place without any specific authorization of the Security Council and in the absence of any justification for self-defense under Article 51 of the UN Charter. Such unilateral use of force has undermined greatly the authority of the United Nations and the existing international legal order. President Bush, Vice President Cheney, Bush's close advisers, and the top U.S. military commanders are guilty of the crime of aggression since the military attacks and bombing on Iraq were planned, initiated and carried out by them in violation of the UN Charter and the customary international law of today. They also violated numerous federal criminal laws. They are jointly responsible for the terrible destruction of Iraq and the unjust killing and wounding of tens of thousands of Iraqi soldiers and more than 100,000 Iraqi civilians³⁸ as well as the untimely deaths of more than 2,000 soldiers from the U.S. and other coalition countries. They must be brought to justice.

The U.S. Congress, in order to uphold the U.S. Constitution and international law, should start an immediate impeachment proceeding against Bush, Cheney and Rumsfeld for their crime of lying to the American people and the world as well as the subsequent aggression and war crimes committed in Iraq. In addition, the victims of this illegal war, including the Iraqi civilians and soldiers as well as the wounded soldiers of the Gulf War II and relatives of the U.S. soldiers killed, along with the peace groups, should also file a formal criminal complaint with the Office of District Attorney, demanding a formal investigation and indictment against Bush and his close associates for their violation of various U.S. criminal laws and international treaties.³⁹

If the Justice Department refuses to undertake such criminal proceedings as expected, the victims of the illegal war and their supporters should attempt to bring their cases, as civil and/or criminal, to the federal courts in the U.S. or other countries where universal jurisdiction over serious violations of international humanitarian law is recognized.⁴⁰ In

³⁷ For further info, visit www.worldtribunal.org, www.worldtribunal-nyc.org, www.peoplejudgebush.org, www.icti-e.com

³⁸ See the research findings published in the British medical journal, *The Lancet*, at www.thelancet.com

³⁹ For instances, false statements, 18 U.S.C. 1001; war crimes statute, 18 U.S.C. 2441; torture statute, 18 U.S.C. 2340; the UN Charter; the Geneva Conventions of 1949, etc.

⁴⁰ It is encouraging to see some actions have been taken already in this regard. For examples, see the criminal complaint filed against Rumsfeld and the U.S. military leaders in Germany on November 30,

the U.S. federal court, it may be possible at least to obtain a declaratory judgment about the illegality of the war on Iraq. At the same time, it will be important for the national peace/justice groups in the U.S. to organize a major international war crimes tribunal on Bush in the nation's Capitol to encourage the impeachment and criminal prosecution process. As the Bible says, the door will open when it is knocked on persistently.

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2004 (www.ccr-ny.org) and the civil complaint filed by four former Guantanamo detainees in the federal district court under the Alien Tort Claims Act of 1789 (*Boston Globe*, Oct. 28, 2004).