

# J'accuse: War Crimes & Iraq

By Conn Hallinan | November 4, 2004

*"... The Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives..."*

Article 48, 1977 addition to the Geneva Conventions, Part IV

The above "Basic Rule" is at the heart of the Geneva Conventions, the international treaty that tries to be the thin line that separates civilization from savagery. It is not something the Bush administration has paid much attention to as it goes about the "pacification" of Iraqi cities where local insurgents are resisting the American occupation.

## Consider the following:

On Oct. 8, U.S. fighter bombers carried out what the Pentagon called a "precision strike" against "terrorist leaders" in Falluja, a sprawling city of 300,000 west of Baghdad. For the past two months Falluja has been the target of a bombing campaign. According to the *New York Times*, the attack wounded 17 people, nine of whom were women and children. The victims were apparently from a wedding party that had just dispersed.

The *Times* went on to quote a "senior Pentagon official" who said, "We know what the strike was supposed to hit and we hit it. If a wedding party was going on, well, it was in concert with a meeting of a top Zarqawi lieutenant." Zarqawi is a Jordanian who has claimed credit for numerous roadside bombings and assassinations in Iraq.

But according to Article 50 of the Conventions, "The presence within the civilian population of

individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

In short, the attack violated the Conventions, and the "Pentagon official"—most likely Assistant Secretary of Defense Paul Wolfowitz—should be arrested and tried for violating international law.

Since the attack constituted a "grave breach" of the Conventions, the official could also be charged under the 1996 U.S. War Crimes Act.

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In the same article, the *Times* also quoted a "senior Bush administration official" as saying that the bombing was helpful for exploiting "fault lines" in Falluja, and that it would push the "citizenry" of Falluja to deny sanctuary and assistance to the insurgents, adding "that's a good thing."

The "official" might, indeed, think it was "a good thing," but it also violated Article 51, which states:

"The civilian population as such, as well as individual civilians, shall not be the object of attack."

A "Pentagon official" also told the *Times*: "If there are civilians dying in connection with these attacks, and with the destruction, the locals at some point have to make a decision. Do they want to harbor the insurgents and suffer the consequences that come with that?"



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In other words, terrify the civilian population into cooperating, a strategy that Article 51 explicitly forbids: “Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.”

## Violations of the Convention

The violations of the Convention are not limited to the bombing campaigns. The *Washington Post* recently revealed that the Bush administration allowed the CIA to transfer Iraqi combatants out of the country (a violation of Article 49) and to hide them from the Red Cross (a violation of Article 63).

According to an FBI report, FBI agents visiting Abu Ghraib Prison, witnessed hooded and chained Iraqi prisoners being slapped by U.S. soldiers, who told the agents it was a sleep deprivation technique. The agents also saw prisoners held naked in tiny isolation cells. The Defense Department readily admits it uses loud music, painful restraints, and a semi-drowning technique called “water boarding,” to “soften up” prisoners for interrogation.

All of the above behavior breaks numerous parts of the Convention. Article 85, for instance, says that, “Sleeping quarters shall be sufficiently spacious and well ventilated.” Article 90 instructs that, “The clothing supplied by the Detaining Power to internees and the outward marking placed on their clothing shall not be ignominious or expose them to ridicule.” Article 117 says, “Imprisonment in premises without daylight, and in general, all forms of cruelty without exception are prohibited.”

Besides transgressions of Geneva, the agents also witnessed violations of several other international treaties to which the U.S. is a signatory.

Article 5 of the Universal Declaration of Human Rights states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The UN Convention Against Torture prohibits, “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,” adding “no exceptional circumstances whatsoever... may be invoked as a justification for torture.”

On Oct. 27, Theo van Boven, UN director of reports on torture, expressed “serious concern” over “allegations of attempts to circumvent the absolute nature of the prohibition of torture and other forms of ill treatment in the name of countering terrorism, particularly in relationship to interrogation and conditions of detention of prisoners.” While he did not charge the U.S. by name, there is no argument about to whom he was referring.

The Bush administration likes to invoke the so-called changed nature of the post-9/11 world as the attacks created new conditions that render the Conventions obsolete, somehow trumping U.S. adherence to international law. White House counsel Alberto Gonzales dismisses the Geneva Conventions as “quaint,” and the U.S. Justice Department wrote up memos giving the CIA the right to violate both international laws and the U.S. War Crimes Act.

## Systematic Violations

But systematic violations of the Geneva Conventions by the U.S. hardly started with 9/11. Indeed, they are characteristic of virtually every conflict the U.S. has been involved in since the end of World War II. The following are just a few examples:

- According to a 1999 Pulitzer Prize winning series by Associated Press, it was the official policy of the U.S. military to fire on South Korean civilians during the Korean War. U.S. bombing also obliterated virtually every civilian target in North Korea.

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- In Vietnam, civilians living in “free fire zones”—most of the country—were considered valid targets, and civilians were overwhelmingly the victims of bombing during the Indochina war. Then National Security Advisor Henry Kissinger instructed the U.S. Air Force to bomb “anything that moved” in Cambodia. From 1967 to 1970, the “Phoenix Program” assassinated some 60,000 to 70,000 civilians in South Vietnam. A U.S. Congressional study found that the Program “appears to have violated the 1948 Geneva Conventions for the protection of civilians.”

- Bombing attacks in the first Gulf War and the Kosovo War systematically targeted power plants and grids, railway stations, refineries, communication networks, sewerage treatment facilities, and water purification plants, in spite of Article 54 of the Geneva Conventions which prohibits attacking any objectives “indispensable to the survival of the civilian population.”

One could even make a case that the use of hundreds of tons of Depleted Uranium Ammunition (DUA) in Kosovo and the two Gulf wars constitutes a war crime. The Conventions clearly require the victorious party to assume responsibility for the conquered civilian population and to clean up the chaos of war. DUA has poisoned water supplies in Iraq, parts of Kuwait, and Yugoslavia, and birth defects and cancer incidences are far higher in areas where DUA was used. The U.S., however, claims that DUA poses no potential health risks, and therefore it doesn't have to remove the low-level radioactive debris.

It is not only a record Americans should be ashamed of; it is one that should make us afraid. The Geneva Conventions and other international laws

were not drawn up by bleeding heart liberals, nor were they designed to protect weaker nations. They were a response to the enormous numbers of civilian casualties inflicted by World War II, and as a practical way to shield everyone's armed forces from humiliation, torture and death at the hands of an adversary.

If we are cavalier or dismissive about international law, it will encourage others to be so as well. The most likely victims of that policy will be we civilians, as well as our own uniformed forces. If we torture

prisoners and hide them from the eyes of organizations like the Red Cross, why shouldn't others do the same to our soldiers and civilians?

In a recent commentary in the *Financial Times*, Jakob Kellenberger, president of the International Committee of the Red Cross, wrote: “The struggle against terrorism cannot be legitimate if it undermines basic values shared by humanity. The right to life and protection against murder, torture and degrading treatment must be at the heart of the actions of

those engaged in this struggle. The struggle will lose credibility if it is used to justify acts otherwise considered unacceptable, such as the killing of people not participating in hostilities.”

Apart from the inhumanity our actions engender, as an entirely practical matter, to do anything less than Kellenberger suggests is to place our own people in harm's way.

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