

# The Iraq War and the Crisis of a Disintegrating Global Order

The following is a statement given by Inder Comar at a side event of the 37th Regular Session of the UN Human Rights Committee in Geneva, Switzerland, on March 15, 2018.

By Inder Comar

Democracy is dying. As we convene to remember the 15th year anniversary of the Iraq War, the fundamental lesson of that war is that our democratic norms are at grave risk when judges and courts fail to hold government leaders accountable for a patently illegal war.

It is impossible to understand the lack of accountability over the Iraq War without understanding the defining crisis of our time. And that is the crisis of Empire; of a disintegrating global order where the rule of law is now being replaced with the rule of might.

Aggression: the supreme international crime.

A crime that was banned at Nuremberg.

A crime which sent Nazi leaders to the gallows.

The prohibition against aggression is a *jus cogens* norm of international law, meaning a norm from which no derogation is permitted, and which states are obligated to uphold.

There is overwhelming legal consensus that the United States and the United Kingdom committed the crime of aggression when they launched their invasion in 2003. UN Secretary-General Kofi Annan concluded that the US-led war was “illegal” in 2004 and in contravention of the UN Charter.

The Charter only allows acts of violence against another State under two circumstances. The first is in times of self-defense. The second is with explicit approval from the Security Council. Neither circumstance applied to the Iraq War.

There was no Security Council resolution that authorized the war. Language in Resolution 1441, passed in November 2002, threatening Iraq with “serious consequences” for failure to disarm was not enough.

The U.S. and the U.K. knew they needed a specific Security Council resolution to

authorize an invasion. This is plainly evidenced by their frantic attempts to obtain a second resolution immediately prior to the war. That effort was abandoned when it became clear that a second resolution would be vetoed. The U.S. and the U.K. invaded Iraq anyway.

Where would we be if all States acted like this? What would be the purpose of the resolution process? What would be the purpose of the U.N.?

It is also clear the war was not conducted in self-defense. Self-defense is generally an immediate action against an imminent aggression. Iraq, which had been subject to more than a decade of crippling international sanctions, was not in any position to invade the strongest country on Earth. Iraq had no connection to al Qaeda, and had disarmed its weapons program—two truths the Bush Administration did not want to believe, and which they tried to cover up as they pushed for war.

In the 15 years since the U.S.-led invasion, there has been only one serious attempt to hold the responsible leaders accountable for this “supreme international crime.” Private Iraqi civilians who were affected by the war tried to hold Bush-era officials accountable in U.S. courts under a theory of aggression.

However, in 2017 a court of appeals ruled in the case *Saleh v. Bush* that former President Bush and other high officials were immune from civil investigation. The appellate court relied upon a domestic law that grants U.S. officials immunity for alleged crimes, including heinous international crimes.

This shows that, in the United States today, international legal obligations are inferior to the protection of government leaders, even when those leaders have committed grave offenses against others.

The Coalition also committed numerous other war crimes during the Iraq War that I would like to address:

- o First, the Member States of the Coalition directed attacks against civilians who were not taking part in hostilities—a direct breach of the Geneva Conventions.

- o Second, human rights organizations, news agencies, and official military inquiries found that U.S.-operated detention facilities used various forms of torture during the occupation.

§ For instance, the torture at Abu Ghraib prison included common physical abuse like punching, slapping, and kicking detainees, as well as arranging naked male detainees in a pile and then jumping on them.

§ There is a documented history of sexual abuse and rape at the prison.

These acts of torture are grave breaches under the Geneva Conventions. They are war crimes and should be addressed as such.

The U.S. has never prosecuted any high-ranking government employee for these war crimes, including for torture. And in light of that 2017 judgment in *Saleh v. Bush* there is virtually no chance that a civil inquiry will produce restitution for victims, or change anyone's behavior in high office. In fact, just this week, the woman who helped oversee the Bush-era torture program has been rewarded for her complicity and is now the nominee to run the Central Intelligence Agency.

A world in which government officials are immune from judicial scrutiny is a world of despotism and tyranny. The essence of the rule of law is that no one is above the law; and that the actions of all people, including chief executives, can be scrutinized by a judge.

Today the rule of law, everywhere, is in grave danger. And we are dangerously close to living in a world where imperial norms are ascendant—even in Western countries.

Fifteen years after the U.S. invasion, what chills me the most has been the rapid acceptance and glorification of Empire in the United States.

In matters of foreign policy, and increasingly, in matters of domestic policy, the American president is totally unaccountable, immune from inquiry, and hostile to inalienable freedoms.

Today, President Trump claims the authority and the power:

- To invade any country at will, or destroy it completely with nuclear weapons;
- To assassinate any person with a robotic drone;
- To gather and collect any and all electronic communications;
- To hold any suspected terrorist indefinitely, without charge, in Guantanamo Bay;
- And to disregard preexisting laws, constitutional rights or judicial review.

The powers of the American president today are greater than that of any English king, or any Roman emperor.

Like the ancient Romans, who were fed a steady diet of bread and circus, modern Americans are subject to some of the most pernicious forms of propaganda ever

developed. Concentrated media power has resulted in corporate news programming which demonizes Muslims, foreigners, and people of color.

Meanwhile, concentrated economic power has resulted in the greatest systemic inequality of wealth in American history.

And concentrated political power has resulted in a neo-fascist and openly racist Republican Party, and a neo-liberal and systemically racist Democratic Party.

More than ever, Americans accept the slaughter of people in the Middle East in the name of their security. In Bagram, Guantanamo, and elsewhere people are indefinitely detained, without trial, and are subjected to torture.

Imperial garrisons encircle our planet with more than 800 American military bases in 80 countries on every major continent, from Diego Garcia to Okinawa to Rammstein to Samoa to the Azores. Just in the last month, the American Government announced its plans to develop a new class of nuclear weapons, furthering an arms race with the Russians, the Chinese and the North Koreans. It also seeks a 13% increase in its arms budget from 2017.

Not since Rome has the world borne witness to so few controlling so many.

But, "these violent delights have violent ends." American society—my society—is ever more crippled by moral, ethical and humanitarian crises that routinely shock visitors from other countries.

Students are drowning in student debt, unable to start their careers or build families.

Lack of affordable health care and an addiction crisis is dragging American life expectancy downward. America's obsession with war has now turned inward, as a gun violence crisis results in the weekly sacrifice of children, to the cult of the Second Amendment.

De facto apartheid keeps power in the hands of a privileged white elite, who have destroyed labor unions, created enemies out of Muslims and blacks, have crippled millions of people into lives of debt servitude and destitution, and who buy and sell their favored elected officials by caprice and whim.

The country that produced the Iraq War 15 years ago is in far worse shape today.

There are three important reasons we need to urgently create accountability for the Iraq War.

First, we must restore an international order based on the rule of law.

Second, we must confront the bias of international law—holding only poor and non-Western countries liable for international crimes, while ignoring the crimes of Western powers. This bias is underscored and exacerbated if the international community declines to investigate and prosecute the Coalition's crimes in Iraq.

Third, we must provide justice to the victims of the Iraq War.

These three reasons are of course related.

The United Nations was manipulated as a tool to acquire wider support for the invasion—most prominently, U.S. Secretary of State Colin Powell's 2003 speech falsely claimed facts about the Iraqi weapons program. In so doing, the United States abused the United Nations, turning these halls into a house of lies — lies spread to support the annihilation of another member state.

This abuse of the United Nations to further a perverse agenda—an agenda that stands in direct contradiction to the purpose of the United Nations—makes it essential to restore accountability.

Without accountability, we invite future abuse of this precious international system. And we exacerbate the divisions in our world where non-Western crimes are treated with far more scrutiny than those committed by Western Powers. A just world order depends on consistent accountability, for all nations, for war crimes and the crime of aggression. International law needs to be applied equally to all nations.

Without accountability, we leave Iraqi victims to fend for themselves. We fail them—as lawyers, as diplomats, and as ethical beings.

There is a choice facing our species at this very moment. Humor me when I tell you that I have glimpsed our future. And it is a future that is dark.

I foresee a world beset by environmental problems, with numerous species going extinct, with plastic choking our waterways and forests, and with climate change creating global chaos for which our world is simply not prepared.

I foresee displacement and refugee crises, as people flee their homes in the wake of rising seas, more powerful storms, and historic heat waves and droughts—people movements that will make the Syrian crisis seem like a child's game.

I foresee a world where people, devastated by economic despair, turn to demagogues and authoritarians—as they are already doing—as ways of dealing with the desiccation of their ways of life.

I foresee a world where our democratic freedoms, already withering, are replaced

with stark imperial values.

But this does not have to be our future.

There is another way.

And that way begins here, today, with each of us. It begins with imagining a world where the rule of law and democracy are the fundamental building blocks of our shared human rights, our shared freedoms, and our shared civilization.

It begins with us realizing that we deserve to live in a better world than one in which leaders who commit grave international crimes can walk free, while the victims of those outrageous acts are forced to recover in the solitude and pain of trauma.

There is a choice we face—a choice between civilization and chaos.

The Iraq War was the gravest international crime since the Second World War. It was a malicious act committed by leaders of the most powerful country in history, with the full resources of a multi-trillion dollar economy.

We cannot build a civilized future for ourselves and for our descendants unless we build a robust international legal order.

The people who commandeered my country and my government must be held to account before a judge—so that they know, and others may know, that the supreme crime cannot go unpunished.

Help me build that future. Help me in our shared quest for a civilized Earth.

I call today for the creation of an independent international tribunal, with jurisdiction to investigate and indict the British and American leaders who led the invasion, for the crime of aggression, war crimes and crimes against humanity.

I call for this tribunal to analyze, impartially, once and for all, the issue of immunity as it relates to grave international crimes.

I call for due process for the accused, that they be advised of the charges against them and be given access to counsel so that they may mount a defense. If convicted, I call for them to serve out their sentences in humane conditions, where they can reflect on what they have done. I call on the tribunal to order restitution to the millions of victims who suffered on account of their conduct.

I call for every nation concerned with justice to open their courts to claims of aggression on the basis of universal jurisdiction. Those who commit aggression,

like those who commit torture, slavery, and piracy, are *hostis humani generis* – enemies of humanity, who may be prosecuted and held to account in the court of any civilized country.

The hope of our shared civilization rests on a renewed commitment to the United Nations and its vision of collective security. World leaders must settle their disputes through dialogue.

Thus, I urge the Human Rights Council to appoint a Special Rapporteur for the human rights situation in Iraq. I urge the United Nations to condemn illegal acts of aggression, torture and mass killings, including those committed by powerful countries like the United States.

And I ask my countrymen and women, in America, to walk back from the abyss of Empire. We have a special duty to hold our leaders responsible, to make redress to the Iraqi people, and to promote and sustain the global peace.

This is the way back to civilization itself, towards a deep and fulfilling justice that enables all of us to live out our lives in dignity and in peace. This is a future worth imagining and a future worth creating. It starts with justice for Iraq.

Thank you.

**[Originally published at InderComar.com. Republished with permission.]**

---