

Donald Rumsfeld: The War Crimes Case

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Global Research, November 13, 2006

[JURIST](#) 9 November 2006

Region: [USA](#)

Theme: [Crimes against Humanity](#)

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JURIST Contributing Editor [Marjorie Cohn](#) of Thomas Jefferson School of Law, president of the [National Lawyers Guild](#), says that although Donald Rumsfeld is resigning as US Secretary of Defense, steps should be and will be taken to hold him accountable for breaches of international law and even war crimes sanctioned in Iraq and Guantanamo during his tenure...

As the Democrats took control of the House of Representatives and were on the verge of taking over the Senate, George W. Bush announced Wednesday that Donald Rumsfeld was out and Robert Gates was in as Secretary of Defense. When Bush is being run out of town, he knows how to get out in the front of the crowd and make it look like he's leading the parade. The Rumsfeld-Gates swap is a classic example.

The election was a referendum on the war. The dramatic results prove that the overwhelming majority of people in this country don't like the disaster Bush has created in Iraq. So rather than let the airwaves fill up with beaming Democrats and talk of the horrors of Iraq, Bush changed the subject and fired Rumsfeld. Now, when the Democrats begin to investigate what went wrong, Rumsfeld will no longer be the controversial public face of the war.

Rumsfeld had come under fire from many quarters, not the least of which was a gaggle of military officers who had been clamoring for his resignation. Bush said he decided to oust Rumsfeld before Tuesday's voting but lied to reporters so it wouldn't affect the election. Putting aside the incredulity of that claim, Bush likely waited to see if there would be a changing of the legislative guard before giving Rumsfeld his walking papers. If the GOP had retained control of Congress, Bush would probably have retained Rumsfeld. But in hindsight, Bush has to wish he had ejected Rumsfeld before the election to demonstrate a new direction in the Iraq war to angry voters.

Rumsfeld's sin was not in failing to develop a winning strategy for Iraq. There is no winning in Iraq, because we never belonged there in the first place. The war in Iraq is a war of aggression. It violates the United Nations Charter which only permits one country to invade another in self-defense or with the blessing of the Security Council.

Donald Rumsfeld was one of the primary architects of the Iraq war. On September 15, 2001, in a meeting at Camp David, Rumsfeld suggested an attack on Iraq because he was deeply worried about the availability of "good targets in Afghanistan." Former Treasury Secretary Paul O'Neill reported that Rumsfeld articulated his hope to "dissuade" other nations from "asymmetrical challenges" to U.S. power. Rumsfeld's support for a preemptive attack on Iraq "matched with plans for how the world's second largest oil reserve might be divided

among the world's contractors made for an irresistible combination," Ron Suskind wrote after interviewing O'Neill.

Rumsfeld defensively sought to decouple oil access from regime change in Iraq when he appeared on CBS News on November 15, 2002. In a Hamlet moment, Rumsfeld proclaimed the United States' beef with Iraq has "nothing to do with oil, literally nothing to do with oil." The Secretary doth protest too much.

Prosecuting a war of aggression isn't Rumsfeld's only crime. He also participated in the highest levels of decision-making that allowed the extrajudicial execution of several people. Willful killing is a grave breach of the Geneva Conventions, which constitutes a war crime. In his book, *Chain of Command: The Road from 9/11 to Abu Ghraib*, Seymour Hersh described the "unacknowledged" special-access program (SAP) established by a top-secret order Bush signed in late 2001 or early 2002. It authorized the Defense Department to set up a clandestine team of Special Forces operatives to defy international law and snatch, or assassinate, anyone considered a "high-value" Al Qaeda operative, anywhere in the world. Rumsfeld expanded SAP into Iraq in August 2003.

But Rumsfeld's crimes don't end there. He sanctioned the use of torture and cruel, inhuman and degrading treatment, which are grave breaches of the Geneva Conventions, and thus constitute war crimes. Rumsfeld approved interrogation techniques that included the use of dogs, removal of clothing, hooding, stress positions, isolation for up to 30 days, 20-hour interrogations, and deprivation of light and auditory stimuli. According to Seymour Hersh, Rumsfeld sanctioned the use of physical coercion and sexual humiliation to extract information from prisoners. Rumsfeld also authorized waterboarding, where the interrogator induces the sensation of imminent death by drowning. Waterboarding is widely considered a form of torture.

Rumsfeld was intimately involved with the interrogation of a Saudi detainee, Mohamed al-Qahtani, at Guantánamo in late 2002. General Geoffrey Miller, who later transferred many of his harsh interrogation techniques to Abu Ghaib, supervised the interrogation and gave Rumsfeld weekly updates on his progress. During a six-week period, al-Qahtani was stripped naked, forced to wear women's underwear on his head, denied bathroom access, threatened with dogs, forced to perform tricks while tethered to a dog leash, and subjected to sleep deprivation. Al-Qahtani was kept in solitary confinement for 160 days. For 48 days out of 54, he was interrogated for 18 to 20 hours a day.

Even though Rumsfeld didn't personally carry out the torture and mistreatment of prisoners, he authorized it. Under the doctrine of command responsibility, a commander can be liable for war crimes committed by his inferiors if he knew or should have known they would be committed and did nothing to stop or prevent them. The U.S. War Crimes Act provides for prosecution of a person who commits war crimes and prescribes life imprisonment, or even the death penalty if the victim dies.

Although intending to signal a new direction in Iraq with his nomination of Gates to replace Rumsfeld, Bush has no intention of leaving Iraq. He is building huge permanent U.S. military bases there. Gates at the helm of the Defense Department, Bush said, "can help make the necessary adjustments in our approach." Bush hopes he can bring congressional Democrats on board by convincing them he will simply fight a smarter war.

But this war can never get smarter. Nearly 3,000 American soldiers and more than 650,000 Iraqi civilians have died and tens of thousands have been wounded. Our national debt has skyrocketed with the billions Bush has pumped into the war. Now that there is a new day in Congress, there must be a new push to end the war. That means a demand that Congress cut off its funds.

And the war criminals must be brought to justice – beginning with Donald Rumsfeld. On November 14, the Center for Constitutional Rights, the National Lawyers Guild, and other organizations will ask the German federal prosecutor to initiate a criminal investigation into the war crimes of Rumsfeld and other Bush administration officials. Although Bush has immunized his team from prosecution in the International Criminal Court, they could be tried in any country under the well-established principle of universal jurisdiction.

Donald Rumsfeld may be out of sight, but he will not be out of mind. The chickens have come home to roost.

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