

Nuremberg Set a Valid Precedent for Iraq War Trials

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As the number of deaths continues unabated in Iraq –the worst since 2008- so do calls for the prosecution of those that led both the United States and Great Britain into war, George W. Bush and Tony Blair. In December alone there were 44 deaths in just one day, over 766 for the whole month and over 9,200 civilian deaths in the whole year. If Nuremberg Principles were applied, both Mr. Bush and Mr. Blair would have probably been condemned for their role in the Iraq war.

The Nuremberg Principles, a set of guidelines established after World War II to try Nazi Party members, were developed to determine what constitutes a war crime. The principles can also be applied today when considering the conditions that led to the Iraq war and, in the process, to the deaths of hundreds of thousands of people, many of them children, and to the devastation of a country's infrastructure.

In January 2003, a group of American law professors warned President George W. Bush that he and senior officials of his government could be prosecuted for war crimes if their military tactics violated international humanitarian law. The group, led by the New York-based Center for Constitutional Rights, sent similar warnings to British Prime Minister Tony Blair and to Canadian Prime Minister Jean Chretien.

Although the United States is not part of the International Criminal Court (ICC), U.S. officials could be prosecuted in other countries under the Geneva Convention, says Michael Ratner, president of the Center for Constitutional Rights. Ratner likened the situation to the attempt by Spanish magistrate Baltazar Garzón to prosecute former Chilean military dictator Augusto Pinochet when Pinochet was under house arrest in London.

Both former President George W. Bush and senior officials in his government could be tried for their responsibility for torture and other war crimes under the Geneva Conventions. Should the Nuremberg Principles be followed by an investigating tribunal former President Bush and other senior officials in his administration could be tried for violation of fundamental Nuremberg Principles.

In 2007, Luis Moreno-Ocampo, then ICC's chief prosecutor, told The Sunday Telegraph that he could envisage a scenario in which both British Prime Minister Tony Blair and then President Bush faced charges at The Hague.

Perhaps one of the most serious breaches of international law by the Bush administration was the doctrine of "preventive war." In the case of the Iraq war, it was carried out without authorization from the U.N. Security Council in violation of the U.N. Charter, which forbids

armed aggression and violations of any state's sovereignty except for immediate self-defense.

As stated in the U.S. Constitution, international treaties agreed to by the United States are part of the "supreme law of the land." "Launching a war of aggression is a crime that no political or economic situation can justify," said Justice Jackson, the chief U.S. prosecutor for the Nuremberg Tribunal.

Benjamin Ferencz, also a former chief prosecutor for the Nuremberg Trials, declared that "a prima facie case can be made that the United States is guilty of the supreme crime against humanity — that being an illegal war of aggression against a sovereign nation."

The conduct and the consequences of the Iraq war are subsumed under "Crimes against Peace and War" of Nuremberg Principle VI, which defines as crimes against peace "(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i)." In the section on war crimes, Nuremberg Principle VI includes "murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property."

The criminal abuse of prisoners in U.S. military prisons in Iraq, Afghanistan and Guantanamo are clear evidence of ill-treatment and even murder.

As for the plunder of public or private property, there is evidence that even before the war started, members of the Bush administration had already drawn up plans to privatize and sell Iraqi property particularly that related to oil.

Although there are obvious hindrances to trying a former U.S. president, a British Prime Minister and their associates, such a trial is fully justified by legal precedents such as the Nuremberg Principles and by the extent of the toll in human lives that that breach of international law has exacted.

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