

## War Crimes and The “Just War” Theory

The "Just war" theory serves to camouflage the nature of US foreign policy, while providing a human face to the invaders.

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The World Tribunal on Iraq (WTI) through sessions held in Western Europe, Asia and the US has established a comprehensive record of US-UK war crimes in Iraq.

An extensive documentation has been put forth, testimonies have been presented in some 17 global sessions. The BRussels Tribunal sessions of the WTI in Brussels in April 2004 focused on the role of “The Project for the New American Century” (PNAC) which consists in a blueprint of global military conquest. <http://www.worldtribunal.org/main/?b=28>

At the New York session in August 2004, organized by the International Action Center, criminal indictment charges were brought against inter alia George W. Bush, Richard B. Cheney and Donald H. Rumsfeld, for “Crimes Against the Peace” and violations of the Charter of the United Nations and the Constitution of the United States. (<http://www.worldtribunal.org/main/?b=32> )

The WTI at its final session in Istanbul in June 2005, brought to public attention the testimonies of several prominent writers including [Dahr Jamail](#) , [Arundhati Roy](#), [Niloufer Bhagwat](#) , Hans von Sponeck, not to mention the powerful statement of [Denis Halliday on the role of the United Nations](#). ( <http://www.worldtribunal.org/main/?#> )

The WTI put forth a powerful final declaration by the Jury which contains the following charges against the the governments of the UK and the US:

- *Planning, preparing, and waging the supreme crime of a war of aggression in contravention of the UN Charter and the Nuremberg Principles.*
- *Targeting the civilian population of Iraq and civilian infrastructure*
- *Using disproportionate force and indiscriminate weapon systems*
- *Failing to safeguard the lives of civilians during military activities and during the occupation period thereafter*
- *Using deadly violence against peaceful protestors*
- *Imposing punishments without charge or trial, including collective punishment*
- *Subjecting Iraqi soldiers and civilians to torture and cruel, inhuman, or degrading treatment*
- *Re-writing the laws of a country that has been illegally invaded and occupied*
- *Willfully devastating the environment*
- *Actively creating conditions under which the status of Iraqi women has seriously been degraded*

- *Failing to protect humanity's rich archaeological and cultural heritage in Iraq*
- *Obstructing the right to information, including the censoring of Iraqi media*
- *Redefining torture in violation of international law, to allow use of torture and illegal detentions*

"The Jury also established charges against the Security Council of United Nations for failing to stop war crimes and crimes against humanity among other failures, against the Governments of the Coalition of the Willing."

## The Just War Theory

There is one important aspect of the WTI's activities at its final sessions in Istanbul, which tends, however, to weaken the thrust of the work accomplished in the various global sessions. It pertains to the role of the "Just War theory" in assessing war crimes.

At the WTI's Istanbul venue, the "Panel of Advocates", which had a mandate to collect and analyze the evidence of US war crimes, was led by Professor Richard Falk, a protagonist of the "Just War" theory, who has gone on record for openly supporting two previous US led wars.

The "Just War" theory (*justum bellum*) has a longstanding tradition. It can be found in the writings of the Greek philosophers including Plato. It is contained in the Old Testament and was later embodied into the teachings of the early Christian Church. It has been used throughout history to uphold the dominant social order and provide a justification for waging war.

While Professor Falk rightly focuses on ethical and moral principles in assessing war crimes in Iraq, he fails to put the Iraq war in an appropriate historical perspective. War Crimes in Iraq cannot be divorced from the broader history of US military aggression and the crimes and atrocities committed in previous wars including Korea, Vietnam, Afghanistan and Yugoslavia. Moral and ethical standards for assessing war crimes cannot be formulated in a historical vacuum or in piecemeal fashion, in defiance of the Geneva Convention and the Nuremberg Charter, which apply unequivocally to *all* US led wars.

While Professor Falk condemns the US led war on Iraq, he has endorsed, on moral and ethical grounds, the 1999 NATO bombing of Yugoslavia and the 2001 US-led invasion of Afghanistan:

"The Kosovo War was a just war because it was undertaken to avoid a likely instance of "ethnic cleansing" undertaken by the Serb leadership of former Yugoslavia, and it succeeded in giving the people of Kosovo an opportunity for a peaceful and democratic future. It was a just war despite being illegally undertaken without authorization by the United Nations, and despite being waged in a manner that unduly caused Kosovar and Serbian civilian casualties, while minimizing the risk of death or injury on the NATO side."

([http://www.wagingpeace.org/articles/2003/08/01\\_falk\\_interview.htm](http://www.wagingpeace.org/articles/2003/08/01_falk_interview.htm) , emphasis added)

In the immediate wake of 9/11, Professor Falk made a case for "self defense" and retaliation

against terrorism, on moral and ethical grounds. His position regarding the launching of the war on Afghanistan was broadly consistent with that of the Bush Administration announced on September 12, 2001:

“I have never since my childhood supported a shooting war in which the United States was involved, although in retrospect I think the NATO war in Kosovo achieved beneficial results. The war in Afghanistan against apocalyptic terrorism qualifies in my understanding as the first truly just war since World War II. But the justice of the cause and of the limited ends is in danger of being negated by the injustice of improper means and excessive ends. Unlike World War II and prior just wars, this one can be won only if tactics adhere to legal and moral constraints on the means used to conduct it, and to limited ends. (The Nation, 11 October 2001, emphasis added)

He later revised his position with regard to Afghanistan, while maintaining the main moral and ethical thrust of his argument:

Early on, I was overly persuaded by the language used by President Bush and other leaders that they understood that force must be used sparingly and with great sensitivity in relation to civilian innocence. As the military campaign in Afghanistan deepened, with America once again seeming to confine its battlefield role to high-altitude bombing and Vietnam-era tactics, I felt unable to endorse any longer the justice of the means. Now, given the unexpectedly rapid collapse of the Taliban regime and the obvious impact on the operational nexus of Al Qaeda, there seems, at least temporarily, to be a restored sense of proportionality between means and ends. (The Nation, 6 December 2001, emphasis added)

Professor Falk was not alone in endorsing the wars on Yugoslavia (1999) and Afghanistan (2001). Many “progressive” intellectuals supported the US war agenda. The humanitarian mission of the US administration was accepted and upheld: *jus ad bellum*. In March 1999, a large segment of “the Left” in the US, Canada and Western Europe took a stance in favor of the NATO led war, including support, in some cases, for the self proclaimed Kosovo Liberation Army (KLA), which was responsible for atrocities committed against Albanian, Serbian and Roma civilians in Kosovo.

## Yugoslavia

It was known and documented at the time that the pretext to bomb Yugoslavia had been fabricated in the same way as the WMD pretext was fabricated for Iraq. NATO was upheld by Western public opinion as coming to the rescue of ethnic Albanians, whose rights had supposedly been violated.

I recall when the 1999 bombings of Yugoslavia occurred, the Canadian antiwar movement was completely isolated. None of the main organizations, including the trade unions and the NGOs were prepared to lift a finger.

The media lies on Yugoslavia were accepted as indelible truths. While the bombings were

often condemned on humanitarian grounds, the overall legitimacy of the war was not questioned.

According to Nuremberg jurisprudence, NATO heads of State and heads of government were responsible in Yugoslavia for the supreme crime: “the crime against peace.” In the words of the late William Rockler, former prosecutor of the Nuremberg War Crimes Tribunal at the height of the 1999 bombings of Yugoslavia:

“The [1999] bombing war violates and shreds the basic provisions of the United Nations Charter and other conventions and treaties; the attack on Yugoslavia constitutes the most brazen international aggression since the Nazis attacked Poland to prevent “Polish atrocities” against Germans. The United States has discarded pretensions to international legality and decency, and embarked on a course of raw imperialism run amok.”

The geopolitics behind the war in Yugoslavia, not to mention the underlying economic interests, were misunderstood. The disintegration of Yugoslavia was part of the US foreign policy agenda, which had been carefully prepared in several stages since the early 1980s. National Security Decision Directives (NSDD) had been issued under the Reagan administration, which called for the destabilization of the Yugoslav model of market socialism. (See Michel Chossudovsky, [Dismantling Former Yugoslavia, Recolonizing Bosnia-Herzegovina](#) , 1996)

In the mid-1990s, the CIA and Germany’s Secret Service, the BND, joined hands in providing covert support to the Kosovo Liberation Army (KLA). In turn, the latter was receiving support from Al Qaeda.

The role of the Kosovo Liberation Army (KLA) as a terrorist organization has been amply documented by Congressional transcripts, yet many “progressive” voices upheld the KLA as a liberation movement.

According to Frank Ciluffo of the Globalized Organized Crime Program, in a testimony presented to the House of Representatives Judicial Committee:

“What was largely hidden from public view was the fact that the KLA raise part of their funds from the sale of narcotics. Albania and Kosovo lie at the heart of the “Balkan Route” that links the “Golden Crescent” of Afghanistan and Pakistan to the drug markets of Europe. This route is worth an estimated \$400 billion a year and handles 80 percent of heroin destined for Europe.”  
(House Judiciary Committee, 13 December 2000)

The relationship between the KLA and Al Qaeda had also been confirmed by Interpol’s Criminal Intelligence division:

“The U.S. State Department listed the KLA as a terrorist organization, indicating that it was financing its operations with money from the international heroin trade and loans from Islamic countries and individuals, among them allegedly Usama bin Laden . Another link to bin Laden is the fact that the brother of a

leader in an Egyptian Jihad organization and also a military commander of Usama bin Laden, was leading an elite KLA unit during the Kosovo conflict.” (US Congress, Testimony of Ralf Mutschke of Interpol’s Criminal Intelligence Division, to the House Judicial Committee, 13 December 2000).

## The Broader War Agenda

With perhaps the exception of Michel Collon in his book [Monopoly](#) and the late Sean Gervasi, the relationship between the war in Yugoslavia and the broader US-NATO military agenda extending into Eastern Europe, Central Asia and the Middle East was never analyzed, nor was it addressed in a meaningful way by the antiwar movement.

Gervasi had already foreseen in 1995, the crucial geopolitical role of the Balkans:

There are deeper reasons for the dispatch of NATO forces to the Balkans, and especially for the extension of NATO to Poland, the Czech Republic and Hungary in the relatively near future. These have to do with an emerging strategy for securing the [oil] resources of the Caspian Sea region and for “stabilizing” the countries of Eastern Europe — ultimately for “stabilizing” Russia and the countries of the Commonwealth of Independent States. ([Sean Gervasi](#) , 1995)

## Jus ad Bellum: 9/11 and the Invasion of Afghanistan

The Just War theory in both its classical and contemporary versions upholds war as a “humanitarian operation”. It calls for military intervention on ethical and moral grounds against “rogue states” and “Islamic terrorists”, which are threatening the Homeland.

Possessing a “just cause” for waging war is central to the Bush administration’s justification for invading and occupying both Afghanistan and Iraq.

Taught in US military academies, a modern-day version of the “Just War” theory has been embodied into US military doctrine. The “war on terrorism” and the notion of “preemption” are predicated on the right to “self defense.” They define “when it is permissible to wage war”: *jus ad bellum*.

Jus ad bellum serves to build a consensus within the Armed Forces command structures. It also serves to convince the troops that they are fighting for a “just cause”. More generally, the Just War theory in its modern day version is an integral part of war propaganda and media disinformation, applied to gain public support for a war agenda.

The US Military Academy at West Point has recently sponsored a Conference focusing inter alia on “just cause ” and “the rules that govern just and fair conduct in war” (*jus in bello*). <http://www.dean.usma.edu/departments/law/lawterror.htm> )

In 2001, when Afghanistan was bombed and later invaded, “Progressives” largely upheld the Administration’s “just cause” military doctrine. The “self-defense” argument was accepted at face value as a legitimate response to 9/11, without examining the fact that the

US administration had not only supported the “Islamic terror network”, it was also instrumental in the installation of the Taliban government in 1995-96.

In the wake of 9/11, the antiwar movement against the illegal invasion of Afghanistan was isolated. The trade unions, civil society organizations had swallowed the media lies and government propaganda. They had accepted a war of retribution against Al Qaeda and the Taliban. Several prominent intellectuals upheld the “war on terrorism” agenda.

Media disinformation prevailed. People were misled as to the nature and objectives underlying the invasion of Afghanistan. Osama bin Laden and the Taliban were identified as the prime suspects of the 9/11 attacks, without a shred of evidence and without addressing the historical relationship between Al Qaeda and the US intelligence apparatus. In this regard, understanding 9/11 is crucial in formulating a consistent antiwar position.

Professor Falk has not revised his position on Kosovo despite [recent documentary evidence](#) , nor has he fundamentally altered his position with regard to Afghanistan and America’s right to defend itself in the wake of 9/11:

The Afghanistan War was again controversial in relation to the just war tradition. It seems to qualify as an instance of defensive necessity in view of the high risks of harm associated with the heavy al Qaeda presence in the country, and its demonstrated capacity and will after September 11 to inflict severe harm on the United States in the future. Again, as with Kosovo, the means used and the ends raised serious doubts about the just means and just ends of the war. The American failure to assume the risks of ground warfare in order to carry out the mission of destroying the al Qaeda presence, as well as the failure to convert the battlefield outcomes into a durable peace, raise doubts about the overall justice of the war. (Turkish Daily News, August 1, 2003)

## Iraq

With regard to Iraq, Falk’s position remains ambiguous. While he condemns the US led war, he nonetheless tows the official line in stating that the 2003 invasion had the “effect of freeing Iraqis” from oppression:

When it comes to the Iraq War, there seems to be little doubt that the war is generally regarded as an unjust war, despite its effect of freeing the Iraqi people from the oppressive rule of Saddam Hussein. The reasons for viewing it as unjust in origin are the following: the absence of defensive necessity, the refusal of the UNSC to authorize war, the dangerous uncertainties associated with recourse to war, the manipulation of evidence relating to the alleged presence of weapons of mass destruction in Iraq, the reluctance in the aftermath of the fighting to respect the aspirations of the Iraqi people to achieve political independence and exercise their rights of self-determination. For all of these reasons it is difficult to avoid the conclusion that the Iraq War is a clear example of an unjust war. (Ibid)

Moreover, at the WTI’s press conference in Istanbul in June 2005, Richard Falk, speaking this time on behalf of the Tribunal, in blatant contradiction with the WTI Jury, indicated that the

WTI “is not opposing the governments or the UN”:

“The WTI is opposing aggressive war, war crimes, and crimes against humanity. It is not opposing the governments or the United Nations. Indeed it hopes to create pressure from below that will encourage law-abiding governments and the UN to do their proper job of protecting weaker countries and their populations against such illegalities. (WTI at <http://www.worldtribunal.org/main/?b=89>, June 2005, emphasis added)

The issue has to do with *the perpetrators of war crimes* as defined by the Nuremberg charter. In this case, *it is the governments, which have committed war crimes*. Military invasion on a fabricated pretext is a war crime under international law:

“To initiate a war of aggression... is not only an international crime, it is the supreme international crime differing only from other war crimes, in that it contains within itself the accumulated evil of the whole”. (1948 Nuremberg Military Tribunal).

The illegal invasion of Iraq was ordered by President George W. Bush and Prime Minister Tony Blair and endorsed by the US Congress and the British House of Commons. In other words, war criminals lead those “governments” and Richard Falk speaking on behalf of the World Tribunal on Iraq at its final session in Istanbul, says we are “not opposing the governments”. We want to put pressure on “law abiding governments” and help the UN “to do their proper job”.

Is Falk suggesting that the WTI is opposed to war crimes but not to the governments, which have committed and ordered those war crimes, nor is it opposed to the United Nations, which is in violation of its own charter? The statement of Professor Falk is not only contradictory and misleading; it serves to weaken the thrust of the testimonies as well as the work accomplished in the WTI global sessions. It also contributes to creating divisions within the anti-war movement.

Unless there is a meaningful change of government in the UK and the US, not to mention the other governments which are part of the “Coalition of the Willing”, it is difficult to see how the antiwar movement can “work with governments” headed by war criminals. This of course raises the broader issue of impeachment and prosecution of the war criminals, who continue to occupy positions of authority in the governments, which have ordered countless atrocities.

Moreover, the illegal occupation of Iraq was accepted by the UN and the so-called “international community”, which instead of initiating sanctions against the invaders, have collaborated with the US-led occupation forces. Professor Falk’s stance, once again, speaking on behalf of the World Tribunal on Iraq (WTI) is that we should work with the United Nations.

Under the disguise of peacekeeping, the UN played a supportive role in violation of its own charter. In the words of [Denis Halliday in testimony at the Istanbul WTI sessions](#):

“[T]he March 2003 invasion took place in breach of all known international laws, executed with the application of terrorism and commission of war crimes, including further and massive use of depleted uranium. The UN, its member states and its Secretary-General failed to employ all possible means to protect the people of Iraq. Worse the UN was generally seen around the world to be acquiescent and collaborative. (...). The occupation was supported by member states and donor agencies, and then actively supported by the UN. That support and active involvement constitutes collaboration. (...) The UN had no mandate to be in Iraq. A demand from Washington and/or London does not constitute a legitimate invitation. And puppet regimes cannot be recognized by the UN.

## History of US Led Wars

The “Just War” theory as formulated by Richard Falk sets double standards (on ethical grounds): some US led imperial wars are “just” whereas others are “unjust”.

On what grounds? The whole concept is devoid of a historical perspective. Crimes against humanity were committed in all US led wars including Yugoslavia, Afghanistan and Iraq and more recently in Haiti where [UN “peace-keeping” troops have participated in the massacres of innocent civilians](#)

The invasion of Afghanistan in 2001 was not different from that of Iraq. It resulted in countless civilian casualties, it destroyed an entire country, while installing, with the UN’s seal of approval, a US sponsored puppet regime.

The issue, however, does not pertain to Professor Falk’s writings per se. The fundamental question is why did the Istanbul organizers invite Professor Falk to lead the Panel of Advocates, knowing that he was supportive of two previous US led wars, on “humanitarian grounds”? Why was this issue not raised by the participants and those who provided testimony?

## From the Truman Doctrine to the “War on Terrorism”

George F. Kennan had outlined in a 1948 State Department brief what was later described as the “Truman doctrine.” What this 1948 document conveys is continuity in US foreign policy, from “Containment” to “Pre-emptive” War. In this regard, the NeoCons Project for a New American Century (PNAC), should be viewed as the culmination of a post-war agenda geared towards establishing US military hegemony and global economic domination, as initially formulated under the “Truman Doctrine” at the outset of the Cold War.

Needless to say, successive Democratic and Republican administrations, from Truman to George W. Bush contributed to carrying out this military agenda of global conquest.

Kennan’s writings point to the formation of the Anglo-American alliance, which currently characterizes the close relationship between Washington and London. It also points to the inclusion of Canada in the Anglo-American military axis. In this regard, Kennan also underscored the importance of preventing the development of a continental European power that could compete with the US.

With regard to Asia, including China and India, Kennan hinted to the importance of

articulating a military solution: “The day is not far off when we are going to have to deal in straight power concepts. The less we are then hampered by idealistic slogans, the better”

Moreover, from the outset of the Cold War era, Washington was also intent upon weakening the United Nations as a genuine international body, an objective that has largely been achieved under the Bush administration:

The initial build-up of the UN in U.S. public opinion was so tremendous that it is possibly true, as is frequently alleged, that we have no choice but to make it the cornerstone of our policy in this post-hostilities period. Occasionally, it has served a useful purpose. But by and large it has created more problems than it has solved, and has led to a considerable dispersal of our diplomatic effort. And in our efforts to use the UN majority for major political purposes we are playing with a dangerous weapon which may some day turn against us. This is a situation, which warrants most careful study and foresight on our part. (Kennan 1948)

The wars in the Balkans, Afghanistan and Iraq are part of the same “military road-map”, responding to US strategic and economic objectives. These wars are intimately related from a geopolitical standpoint. Iran and Syria have already been identified as the next targets of the US led war.

There is a continuum in US-led military operations from the “Truman doctrine” to Bush’s “war on terrorism”.

The “Just war” theory serves to camouflage the nature of US foreign policy, while providing a human face to the invaders.

It undermines and weakens all forms of meaningful resistance to the US led war agenda. It is in contradiction with the basic tenets of international law including the Geneva Convention and the Nuremberg Charter. It can under no circumstances be part of a war crimes tribunal.

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