



Accountability and Justice for Iraq

The 17th Commemoration of the 2003 Invasion of Iraq



Geneva International Centre *for* Justice

Independent, non-profit, International non-governmental organisation

March 20, 2020

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On March 20, 2003, the United States of America and the United Kingdom led an illegal war on the Republic of Iraq, resulting in a devastating occupation and annihilation of the country. Seventeen years have passed since the invasion, but for the Iraqi people, it has now been seventeen years of unfulfilled promises, destruction, death, violations and hardship. As Archbishop Desmond Tutu noted, “the immorality of the United States and Great Britain’s decision to invade Iraq in 2003, premised on the lie that Iraq possessed weapons of mass destruction, has destabilized and polarized the world to a greater extent than any other conflict in history.”¹

Geneva International Centre for Justice (GICJ) hereby demands the creation of an independent, international tribunal to investigate and prosecute those leaders responsible for (i) the illegal war in Iraq, and (ii) crimes committed during the occupation, including crimes against humanity and war crimes. We demand a fair and impartial tribunal, constituted under international law, that will weigh responsibility and provide much needed accountability for the grave crimes committed by the invading countries, including but not limited to the crime of aggression.

Accountability for the Crime of Aggression

The Nuremberg Tribunal declared that, “The initiation of a war of aggression is not only an international crime; it is the supreme international crime.” The US and UK-led invasion of Iraq was an unlawful war of aggression. International violence between states is prohibited by the Charter unless it is authorized by the United Nations Security Council or committed in self-defence. In addition, the prohibition against aggression is a *jus cogens* norm of international law, inalienable, and which all countries are required to support and sustain. This norm finds life not only in the Charter, but also in the Nuremberg Charter, the Tokyo Charter and the Kellogg-Briand Pact.

¹ Desmond Tutu, Why I had no choice but to spurn Tony Blair, The Guardian, 2 September 2012.
<http://www.guardian.co.uk/commentisfree/2012/sep/02/desmond-tutu-tony-blair-iraq>

By failing to hold the aggressors accountable under law, the international community choose anarchy over the rule of law, and a Darwinian state of nature over collective security. We are now walking the path of a lawless world. When leaders of countries commit international crimes with impunity, rule of law irreparably suffers, leading to the destruction of democratic values, and the end to human rights. Our world is far less safe today than it was prior to the Iraq War, and democracies are far more fragile than could ever have been imagined.



We have no choice but to end this impunity. And the way to achieve this is through the rule of law. Accordingly, we call for the creation of an impartial and international tribunal that can adjudicate the crimes of the Iraq War and restore justice at the international stage.

In addition to the crime of aggression, the international tribunal must also analyse the crimes committed by invaders and occupiers. Many of the violations and effects resulting from the invasion and occupation are well known and have been documented by GICJ and other NGOs and human rights bodies, but the full scale of the destruction, loss of life and suffering of the Iraqi population will never be truly known. Taken together, the war against Iraq and the subsequent occupation has been responsible for countless violations of international law, international human rights law, and international humanitarian law, including, *inter alia*, violations of the Hague Regulations on Land Warfare, the 1949 Geneva Conventions and its 1977 Protocols, the International Covenant on Civil and Political Rights, various provisions of the UN Charter, the

Convention on the Rights of the Child, and the Convention Against Torture and other Inhuman or Degrading Treatment of Punishment.

Human Rights Violations During the Occupation of Iraq

Under the U.S.-led occupation of Iraq, the Iraqi civilian population suffered from systematic and gross violations of human rights. These violations included torture, extrajudicial executions, trafficking of persons and arbitrary detention. 17 years later, the only stable element of the country's landscape is the rampant and systemic corruption, starting with the highest levels of the government. Many of these violations continue under the successive governments established under the occupation and whose security apparatus and methodology of operation is based on force and oppression.

The destruction of a functioning government in Iraq also produced a national health care and education crisis, congenital birth defects and other health issues, mass displacements, family separations, and the physical destruction of a culture and country. The destruction of Iraq led to the rise of ISIS, producing even more chaos for both local victims and as well as global victims who have fallen victim to ISIS-inspired terrorism.

The Iraqi people are desperate. It is therefore unsurprising that Iraqi took to the streets and have been relentlessly demanding a complete dismantle of the sectarian regime in order to build a real democracy.

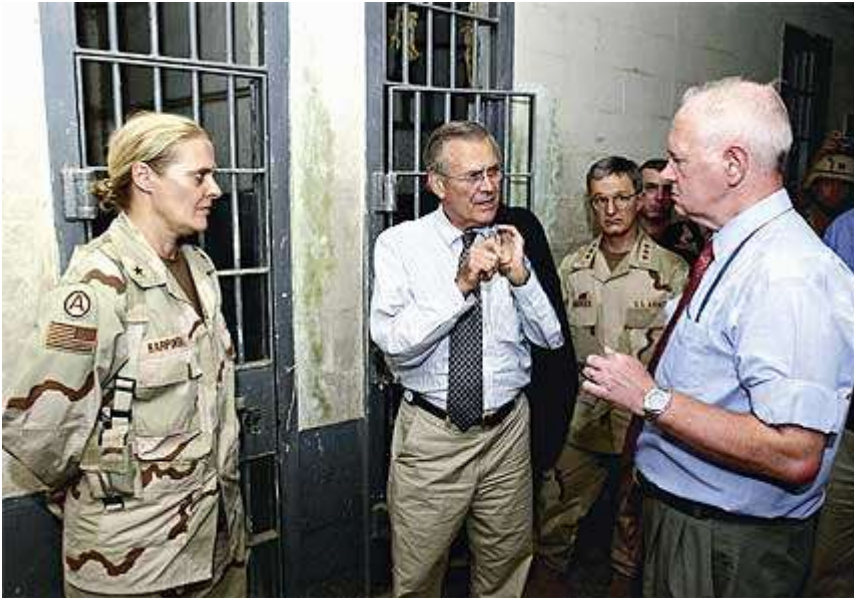
Stolen Lives

Since the onset of the invasion, hundreds of thousands have been killed. Millions of others have either been displaced or have fled the country. A significant proportion of those now living as refugees around the world were from the country's educated and middle class, who have been systematically targeted. It is also estimated that from 2003 onward, up to 1 million individuals have disappeared and their fate continues to remain unknown ².

² OHCHR, Treat Bodies Sessions, document, INT-CED-IRQ-41846-E.pdf alternative report submitted by Geneva International Centre for Justice (GICJ) to the 18th session of the UN Committee on Enforced Disappearances, due on 30 March to 9 April 2020, In relation to the examination of the Republic of Iraq follow up report, United Nations- Geneva
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1403&Lang=en

Systemic Torture and Ill-treatment

Reports of abuse of detainees by U.S. and other foreign troops began to surface within days of the onset of the occupation. One of the most well-known cases of abuse was that of Abu Ghraib, but this was hardly an isolated incident. This culture of torture and ill-treatment has continued under the successive post-occupation governments.



May 2004

US Defence Secretary, Donald Rumsfeld, at Abu Ghraib prison where thousands of innocent Iraqis were subjected to severe torture and ill-treatment

Shattered Innocence

With estimates of 8.9 million living in poverty³, 1.5 million under the age of five undernourished and 100 infants dying every day, Iraq has become one of the worst places for children in the Middle East and North Africa. Trauma, displacement, lack of education, child labour, human trafficking, drug and sexual abuse, detention, and losing one or both parents; these are only some of the dark realities that Iraqi children are forced to face. Millions of children live on the streets, making them easy targets for criminals and traffickers. Trauma has also had an enormous impact on their lives. For years during the invasion and occupation children were exposed to violence daily, from fighting and passing dead bodies up on the street, to witnessing the killing or injury of friends and relatives.

³ The World Bank, Iraq's Economic Update — October 2019

<http://pubdocs.worldbank.org/en/388791570664067170/EN-MPO-OCT19-Iraq.pdf>

Women

For Iraqi women, who before 1991 were privy to some of the highest levels of rights protection and social participation in the region, life is radically worse than since the invasion. Women held in detention centres also often fall victim to rape, beatings and other forms of sexual abuse. Millions of women have been displaced, widowed, and are single mothers or heads of households, which, combined with high unemployment rates, exacerbates their economic situation.

Mercenaries in Iraq

An additional element that contributed to the perpetration of violations was the use and continued presence of private military and security companies (PMSC). The occupation of Iraq marked a turning point in the participation of PMSCs in modern warfare. These PMSCs operate without any control or lines of command, threaten the security of Iraqi civilians, undermine Iraqi sovereignty, cause health damages with their activities, and commit grave human rights violations including summary executions, torture, trafficking of persons and arbitrary detention. Their presence in the country represents a continued danger for the civilian population of Iraq

Failure of institutions

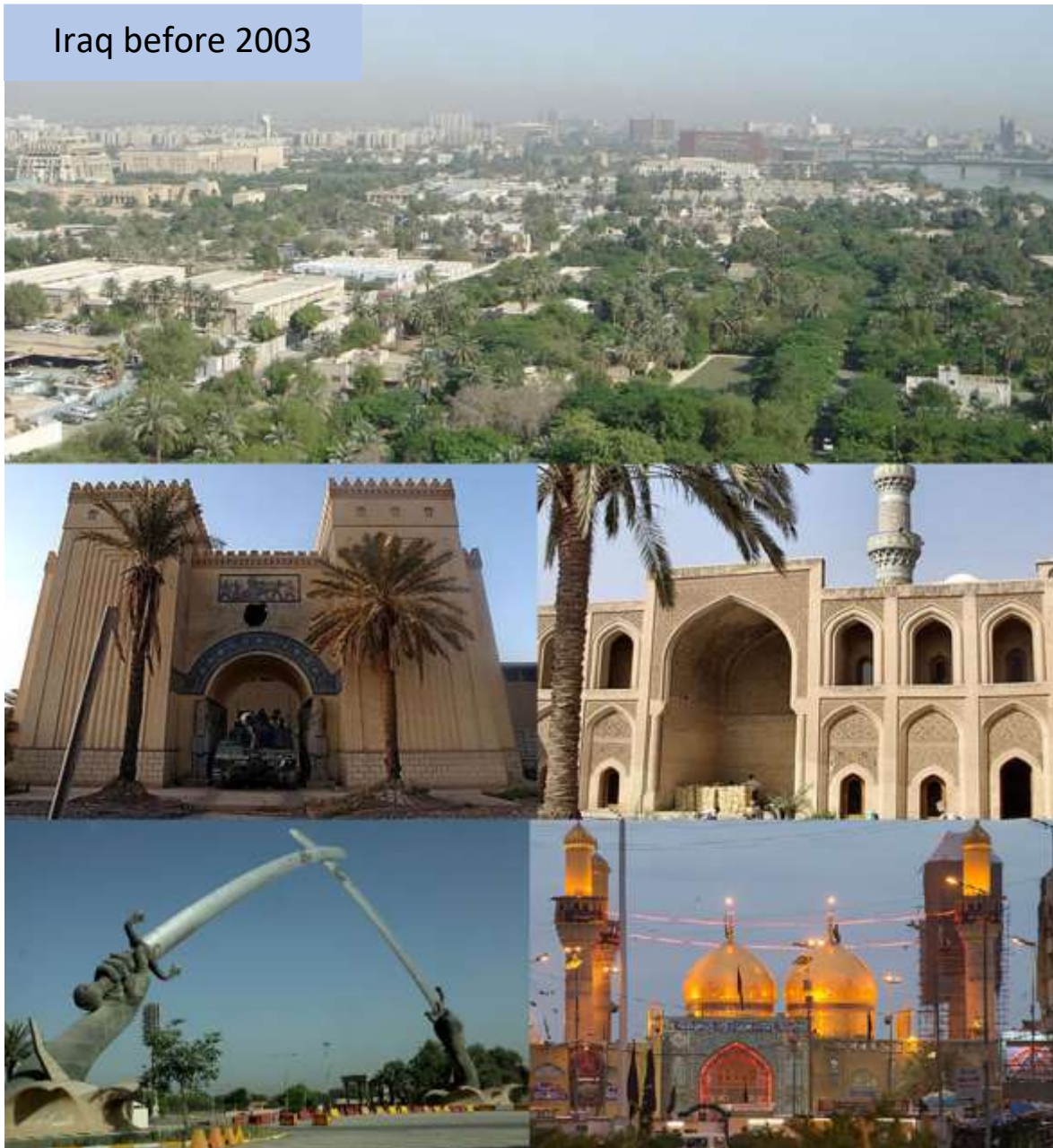
Authorities have failed in providing critical social services such as security, employment opportunities, schools, healthcare, electricity and potable water. Unemployment is rampant. The healthcare system has also been crippled. Having once been considered the best in the region, medical services have collapsed. Seventeen years of “reconstruction” have passed and health services in Iraq still fail to meet minimum standards. Of grave concern as well is the unacceptable assassination, dismissal, and the threat thereof of doctors by militias.

The Iraqi education system once represented the highest standard in the Middle East. Sanctions, war, and the occupation have changed that. Iraq has undergone a form of “educide”, the killing of educated segments. It is important to note that U.S. forces, the Iraqi Army and Iraqi police units occupied school building for military purposes, which is in violation of international law.

A judicial system without justice

The rule of law in Iraq is practically non-existent, and its criminal justice system is subject to international scrutiny. Coerced confessions, arbitrary detention, ill-treatment, torture, lack of

due process, unfair trials, absence or lack of legal representation, and executions; these are all present aspects of the Iraqi judicial system. Adding to all of this is the surplus of incompetent and corrupt judicial officials in place.



The longstanding and almost universally ratified provisions of the Fourth Geneva Convention forbid changes to the laws or judicial system of a country under occupation. The actions taken pursuant to the invasion are directly responsible for lawlessness and sectarian violence.

Summary or Arbitrary Executions

Since 2003, Iraq had become one of the countries with the highest rates of executions in the world, permitting the death penalty against adults for a wide range of crimes. Since then, approximately 100 people are being executed each year.

There are numerous reports by detainees of abuse, threats and torture being used to extract confessions, which are later used to apply the death sentence. Aside from illegal methods of extracting confessions, detainees are often sentenced without a fair trial or due process. Under Iraqi law, a person can be sentenced to death for some 48 crimes, several of which are non-fatal crimes. Since 2014, the authorities, and its militias, used the rise of ISIS to sentence hundreds of individuals to death on merely sectarian basis using the flawed counterterrorism legislation.

A country and culture destroyed

The country has undergone immeasurable and irreversible damage and destruction as a result of the invasion and occupation. An ancient and deeply rooted culture has been thrown into chaos and thousands of years of heritage have been destroyed. The United States and its allies ignored the warnings of organizations and scholars concerning the protection of Iraq's cultural heritage, including museums, libraries, archaeological sites and other precious repositories. Archaeological and cultural sites have been reduced to rubble and tens of thousands of pieces of cultural property have been lost or stolen from archaeological sites and the Baghdad Museum. Cities have been brought to ruins and the country's infrastructure, including hospitals and schools have been destroyed.

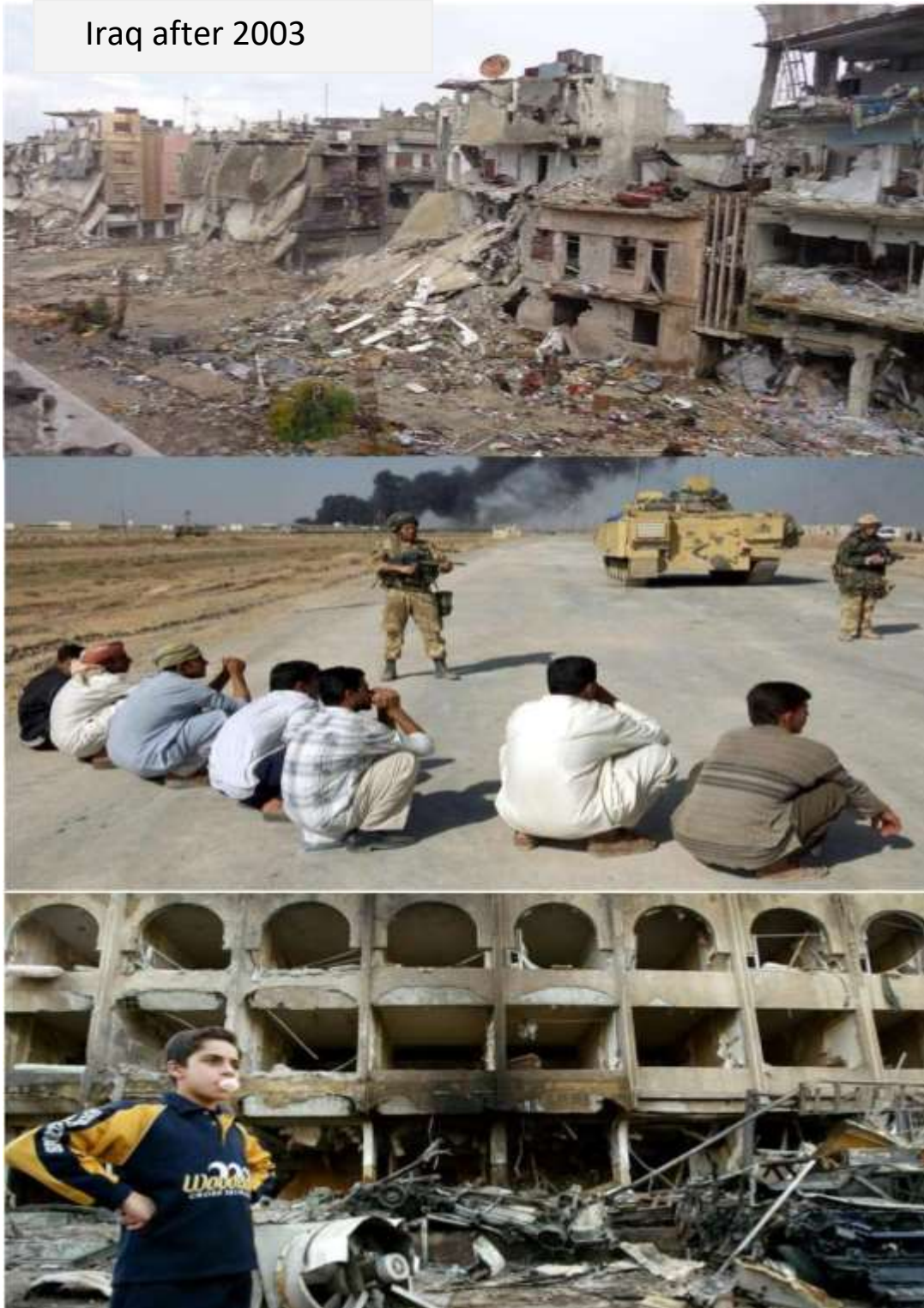
Looting is still a common practice today; this time not as a result of the chaos that followed the American invasion in 2003, but rather due to the bureaucratic indifference of Iraq's incompetent authorities. Thousands of archaeological sites - containing some of the oldest treasures of civilization - have been left unprotected, allowing a resumption of brazenly illegal excavations, especially in southern Iraq.

Environmental Contamination

Environmental damage has affected the Iraqi population to an unimaginable degree. In a serious breach of international humanitarian law, coalition forces used white phosphorous and depleted uranium weapons during the war. Their use has significantly polluted the environment and is at the root of an alarming and concerning health situation. Fallujah and Basra, two heavily

bombarded cities, are both contaminated with lead and mercury, extremely toxic heavy metals. Contamination from depleted uranium (DU) munitions and other military-related pollution are suspected of causing a high number of illnesses throughout Iraq, including rises in congenital birth defects, miscarriages, premature births, infertility, sterility, leukaemia, cancer and new illnesses not previously seen in Iraq.

Iraq after 2003



Death by sanctions

Although the invasion of 2003 brought with it a new decade of unrelenting devastation to Iraq and its people, we must not forget that their suffering had already reached inhumane levels due to the sanctions regime introduced by the United Nations on August 6, 1990. The economic sanctions imposed on Iraq were the “most severe and most comprehensive multilateral sanctions” ever imposed on a country and led to the quick “deterioration of the well-being of the Iraqi people.”⁴ Being highly dependent on the importation of food and medicine, Iraq was extremely vulnerable to the effects of sanctions. By 2002 it was estimated that over 1.6 million Iraqis had died as a result of the sanctions regime, including over 667,000 children under the age of five.⁵ Over the period of time that sanctions were in place, the infant mortality rate almost quadrupled from 24 per thousand in 1990 to 98 per thousand in 2000.⁶ The sanctions drained the lifeblood of Iraq.

The Rise of Sectarianism

One of the most destructive results of the invasion and occupation of Iraq is the imposing of a sectarian regime that is based on the allocation of public offices, parliamentary memberships, and even dividing state resources along ethno-sectarian lines between the parties that came to the country along with the invaders. The introduction of this system which called in Arabic “Muhasasa” has created sectarian divides, obliterated the national unity, and encouraged self-interest among politicians and then allowed the rise of the corruption at all level in the country. The creation of militias by the parties that ruled the country in order to increase their power has led to sectarian tension and grave violations.

It is in this context that sectarian violence could thrive, and that ISIS could emerge, gain a foothold, and commit horrendous atrocities. ISIS arose from the ashes of an once flourishing country. Its emergence was facilitated by the horrors of the war, the complete disintegration of the entire Iraqi security sector – rife with sectarian behaviour, corruption, and brutality.

While the horrendous crimes committed by ISIS cannot be put into words, some of the most prolific violations of international human rights law and international humanitarian law of this

⁴ Dr. Hans-C. Graf Sponeck, Former UN Assistant Secretary General and UN Humanitarian Coordinator for Iraq, Accountability and Justice for Iraq Conference, Geneva, 14 and 15 March 2013.

⁵ Geoff Simons, “Targeting Iraq: Sanctions & Bombing in US Policy”, page 82.

⁶ Ibid, page 72.

century have been conducted not only by ISIS, but also by those actors allegedly “fighting terror” and combating ISIS, notably Iraq’s notorious and government-backed al-Hashd al-Sha’abi sectarian militias.



Sectarian Militias

The October Revolution

Since the 1st October 2019, millions of Iraqi people took the streets in huge demonstrations in several of Iraqi cities, mainly the capital Baghdad and hotspots in the Shia-majority areas of the Southern part of the country in the cities of Nasiriya, Basra, Kut, Najaf, and Karabala. Although this was not the first demonstration since 2003, it is completely different as it concentrates its demands on the total elimination of the sectarian regime. That is why it has come to be known as the “October Revolution”.

The sectarian system is highly problematic, not least because government posts are awarded in return for loyalty to the ruling ethno-sectarian system, rather than as a result of skill or talent. This system also fosters rampant corruption, as each party in government, in order to allow their particular sect to dominate the political field, exploits the resources of the ministry for which they are in charge.

Despite the legitimacy of their demands and the general peaceful nature of the protests, the demonstrators are being targeted by government security forces and militias, with abhorrent numbers of killings and serious injuries having been recorded. Nevertheless, the demonstrations

continue, demonstrators insist that they will not stop until achieving their goal and built a new democratic system based on the national not sectarian identity.



The UN stands silent

According to its charter, the United Nations was created to “save succeeding generations from the scourge of war...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained....”⁷ When it comes to Iraq, the United Nations has failed miserably in upholding every one of these basic principles and responsibilities. Up to this day:

- The UN has never condemned the illegal invasion and occupation of Iraq or the ensuing destruction of the Iraqi state, its institutions and infrastructure.

⁷ Preamble of the Charter of the United Nations, 26 June 1945.

- The UN has never condemned the attempts by neighbouring countries to partition the country, as well as their flagrant interference in its internal affairs.
- The UN official bodies have neglected Iraq, a founding member of the UN, its destruction, and the suffering of its people.
- The UN official bodies have failed to investigate the grave human rights violations committed in Iraq during the invasion and occupation, which include mass killings, arbitrary detentions and systemic tortures, and which are tantamount to war crimes and crimes against humanity.
- UN Human Rights bodies failed to thoroughly discuss the situation of Iraq during Human Rights Council sessions and other relevant meetings, completely contradicting the mandates of these bodies and giving a flagrant example of their double standards and political biases.

A Call for Justice

The time has come for the people of Iraq to obtain the justice that they deserve and are legally entitled to. The current state of impunity must end. All those responsible for the invasion, occupation and their resulting destruction, violations and pain must be held accountable.

GICJ, calls for the United Nations, the international community, members of the “coalition of the willing” and the occupying countries to finally step up to their responsibilities and take the necessary steps to begin the process of justice for Iraq and its people. We are well aware that it is not possible to address all of the violations and injustices committed on Iraq and its people here, but we come together in solidarity and urgently call on the above-mentioned bodies for:

An international legal tribunal

We call for the international community to empanel an international and impartial tribunal to investigate and prosecute any and all people responsible for the planning and execution of the Iraq War, and for war crimes and crimes against humanity committed during the course of that war. We call for this international tribunal to be composed of fair and impartial judges, versed in international law, who will provide due process to those accused and who will ensure that the proceedings and outcomes, whatever they may be, contribute to civilizing and pacifying our chaotic world. We call for this tribunal to analyse once and for all the issue of immunity as it relates

to grave international crimes and to consider whether countries may shield their high leaders from judicial scrutiny, even when those leaders have committed heinous and terrible offenses. We call for this tribunal to examine the crime of aggression, and to contribute to our understanding of this crime.

Accountability and reparations should be high on the agenda of the United Nations and the international community in order to ensure that perpetrating countries fulfil their legal responsibilities towards Iraq and its people for all of the violations committed during the invasion and occupation.

An official apology

An apology to the Iraqi people is long overdue. Along with taking responsibility for their unlawful actions, all the governments of the “coalition of the willing” should issue an official apology to Iraq and its citizens. An official apology would be the first step in fulfilling the obligation of compensation stipulated under Article 36 of the Articles on State Responsibility. Specifically, Article 37 stipulates that “The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by the act insofar as its obligation cannot be made good by restitution or compensation. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.”

Restitution and Compensation

All the governments of the states comprising the “coalition of the willing” must compensate the Iraqi people for both material and moral injury sustained as a result of the invasion and occupation. This would include the costs of rebuilding Iraqi infrastructure, government institutions, schools and private property that was bombed or damaged during the war or occupation.



Before 2003

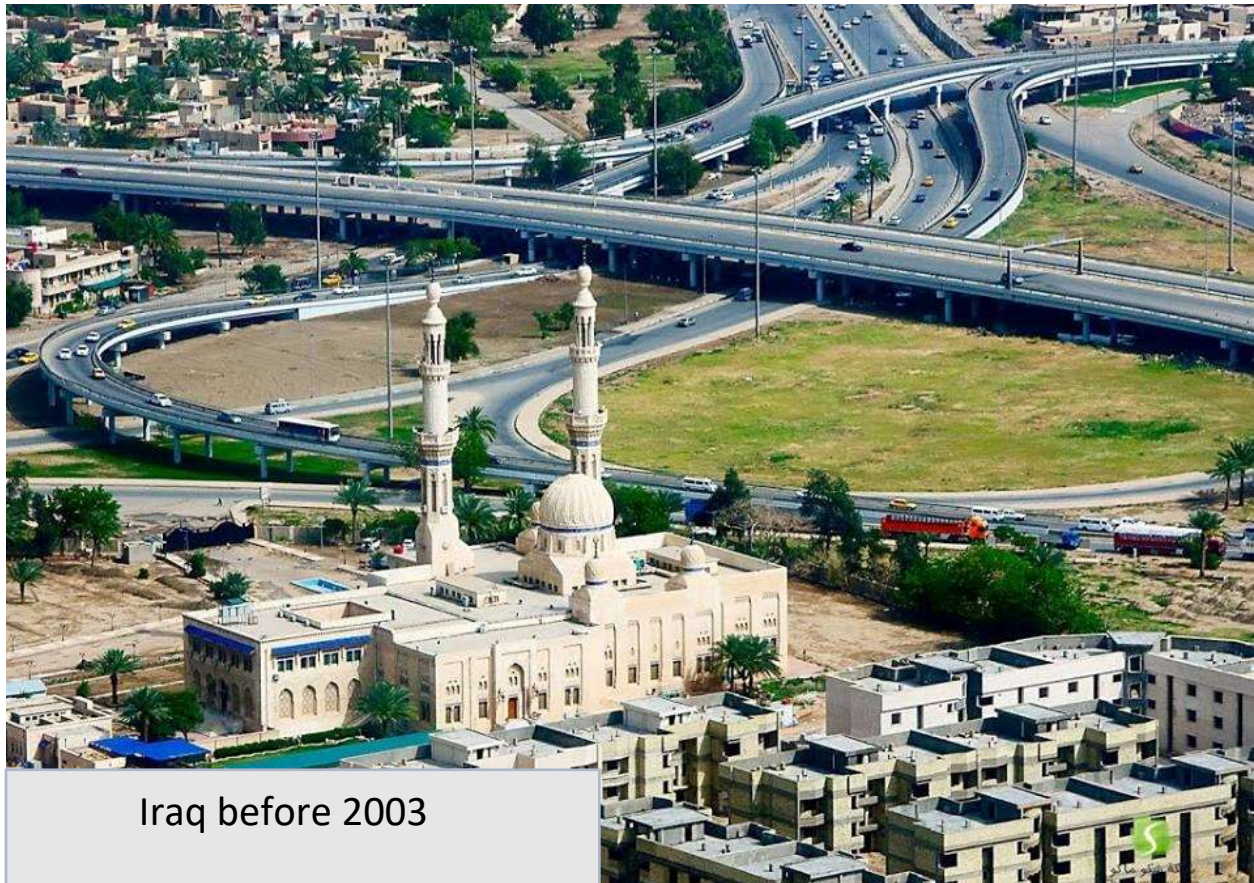


After 2003



Removal of all weapons and an environmental remediation

Article 35 of Protocol I, a 1977 amendment of the Geneva Conventions specifically states that, “It is prohibited to employ weapons, projectiles and material method of warfare of a nature to cause superfluous injury or unnecessary suffering.” It also prohibits the employment of “methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage....” In its use of white phosphorus and radioactive weapons, the U.S., U.K. and all the members of the “coalition of the willing” committed a direct violation of international humanitarian law. All involved countries must undertake and finance an environmental clean-up, specifically, the removal of dangerous weapons and ammunition still present in the country and all toxins and radioactive remnants.



Iraq before 2003

Restoration of the health system

To date, after seventeen years of “reconstruction”, basic health services in Iraq still fail to meet minimum standards. Health services and infrastructure should be restored to pre-invasion levels, which at one time were the best in the region. Measures must also be introduced to ensure the safety of all health workers and practitioners.

Protection of internally and externally displaced persons

Since the invasion, millions of Iraqis have either been displaced or have fled the country. Immediate measures must be put in place to identify all displaced persons and to preserve their rights and dignity. The occupying countries, in cooperation with international human rights bodies like UNHCR, ICRC and UNAMI, should offer financial and political support to refugees, in accordance with UN resolution 1770 of August 10, 2007.⁸



Locate disappeared persons

Kidnappings, abductions, and detentions continue to occur daily. Many of those who have disappeared languish in prisons, are executed, or have died in custody as a consequence of torture and abuse. It is imperative that these cases be disclosed in accordance with the convention for the Protection of All Persons from Enforced Disappearance (ICCPED) implemented in Iraq in 2010.

⁸ S/RES/1770 (2007) “assist vulnerable groups, including refugees and internally displaced persons, and promote the protection of human rights and judicial and legal reform (...) should take all feasible steps to ensure the protection of affected civilians, and should create conditions conducive to the voluntary, safe, dignified, and sustainable return of refugees and internally displaced persons”

Further, every effort must be made to identify those who have been reported missing or have disappeared and to bring all those found responsible to justice.

Appointment of a Special Rapporteur

The appointment of a Special Rapporteur for Iraq by the United Nations Human Rights Council was one of the fundamental demands by GICJ and other NGOs since the early years of the invasion and the occupation. It is imperative that the human rights abuses inflicted on the Iraqi people by the Iraqi authorities, the American occupation, foreign mercenaries and regional powers still present in the country be closely monitored and documented. Violations committed during the war and invasion must also not be permitted to go unpunished. The appointment of a special rapporteur is a critical first step in achieving justice for the Iraqi people.

United for Justice in Iraq

The United Nations represents the joining together of nations to protect human rights and preserve peace, or as stated in its Charter, “to unite our strength to maintain international peace and security....”⁹ On March 20, 2003, by standing by as the “coalition of the willing” unlawfully invaded Iraq, the UN failed to uphold its mission, purpose and international law.

The 2003 invasion of Iraq “cannot be justified under any reasonable interpretation of international law. It violates the outer limits of laws regulating the use of force...and it amounts to mass murder.” George Bush and Tony Blair “took the law into their own hands” and acted with “deceit and with falsehood” and in “flagrant violation of international law of war and peace.”¹⁰

Thus, we call for a renewed commitment to the international system and a vision of collective security based on international law.

⁹ Preamble of the Charter of the United Nations, 26 June 1945.

¹⁰ Kuala Lumpur War Crimes Commission v. George W. Bush and Anthony L. Blair, Judgment, K.L.W.C.T. Reports 2011, pgs. 42-43

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GICJ

GICJ is an independent, non-profit, non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes.

Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

Mission

GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.

Work on Iraq

GICJ has been tackling issues of justice and accountability pertaining to Iraq since it was established. GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network within Iraq. Through these channels, GICJ is able to receive documentation and evidences of human rights violations and abuses as they occur in Iraq. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.

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