

Iraq after Wikileaks: Truth without Justice and Power without Law

Maximilian C. Forte

It was the Argentinean revolutionary, Che Guevara, who once explained: “When the oppressive forces maintain themselves in power against laws they themselves established, peace must be considered already broken.” The wisdom in the statement is that it is a revolutionary act to hold the authorities accountable to their own laws, norms, and values. If the authorities should fail to defend their own principles and laws, or even worse, flagrantly violate them, then the revolutionary will have achieved two immediate victories in a larger war: one, the dominant state will have revealed itself to be one that wields power arbitrarily, and that therefore invites even stronger opposition and dissent; and second, that the power of the state is unjust and loses legitimacy in the eyes of the very citizens it claims to defend. In the case of the United States’ invasion and occupation of Iraq, the U.S. has also attacked the international community and its laws, and the current Iraqi regime is revealed as a collaborator with a record of brutal human rights violations that rivals anything alleged against its predecessor, Saddam Hussein. This picture is now more completely detailed and corroborated thanks to Wikileaks’ Iraq War Logs—currently being [translated into Arabic](#) by some valiant Iraqi citizen journalists. Hopefully others will join in what is a massive translation effort which will help to repatriate Iraqi history to the people of Iraq, which is one of the stated intentions of Julian Assange in releasing the Iraq documents.

In a very recent interview with TIME Magazine, Julian Assange spoke to the question of law:

“As for the law, we have now in our four-year history had over 100 legal attacks of various kinds and have been victorious in all of those matters.

“So if you want to talk about the law, it’s very important to remember the law is not what, not simply what, powerful people would want others to believe it is. The law is not what a general says it is. The law is not what Hillary Clinton says it is. The law is not what a bank says it is. The law, rather, is what the Supreme Court in [the] land in the end says it is, and the Supreme Court in the case of the United States has an enviable Constitution on which to base its decisions.”

Let us look at how the U.S. stands up under international law, after it attacked and undermined the very laws, principles and norms that it claims to uphold and defend as the leader of the so-called “civilized world.” The U.S. invasion of Iraq was an unprovoked act of aggression that had no support in international law; it violated the U.N. Charter; and it failed to win the support of the U.N. Security Council. Richard Perle, an advisor to former U.S. Defense Secretary Donald Rumsfeld, told a London audience in 2003 that “international law stood in the way” of the U.S.’ will. In a “secret and personal” letter from Jack Straw (the U.K. Foreign Secretary in 2002) to Prime Minister Tony Blair, he “warned the prime minister that the case for military action in Iraq was of dubious legality”; Straw also stated that “regime change per se is no justification for military action” and “the weight of legal advice here is that a fresh [UN] mandate may well be required.” This means that at the highest levels there was recognition of the fact that the U.S. and U.K. had committed the “supreme crime” as stipulated in Nuremberg.

Second, Kofi Annan, then U.N. Secretary general, in an interview broadcast by the BBC World Service, declared explicitly that the U.S.-led invasion violated the UN charter and hence international law: “I have indicated [the war against Iraq] was not in conformity with the UN Charter,” and, “from our point of view, from the charter point of view, it was illegal.”

Third, the greatest mass of international legal opinion also supported Annan’s view. The International Commission of Jurists on 18 March 2003 expressed its “deep dismay that a small number of states are poised to launch an outright illegal invasion of Iraq, which amounts to a war of aggression. The United States, the United Kingdom and Spain have signalled their intent to use force in Iraq in spite of the absence of a Security Council Resolution. There is no other plausible legal basis for this attack. In the absence of such Security Council authorisation, no country may use force against another country, except in self-defence against an armed attack.”

Fourth, agencies and agents within some of the states that took part in the invasion, have confirmed both international legal opinion, and what Perle and Straw rightly conceded. This year an official inquiry in The Netherlands, “in a damning series of findings on the decision of the Dutch government to support Tony Blair and George Bush in the strategy of regime change in Iraq,” the inquiry found the action had “no basis in international law.” Willibrord Davids, a Dutch supreme court judge, said U.N. resolutions in the 1990s prior to the 2003 invasion have no authority for the invasion. In the 551-page report, the inquiry stated: “The Dutch government lent its political support to a war whose purpose was not consistent with Dutch government policy. The military action had no sound mandate in international law.” In the U.K., Lord Bingham, a former Lord Chief Justice, explained that the British decision to invade Iraq along with the U.S. was “fundamentally flawed” in terms of its legality. Also in the U.K., in a minute dated 18 March 2003 from Elizabeth Wilmshurst (Deputy Legal Adviser) to Michael Wood (The Legal Adviser), copied to the Private Secretary to the Permanent Under-Secretary, Alan Charlton (Director Personnel) and Andrew Patrick (Press Office), Wilmshurst stated: “I regret that I cannot agree that it is lawful to use force against Iraq without a second Security Council resolution I cannot in conscience go along with advice – within the Office or to the public or Parliament – which asserts the legitimacy of military action without such a resolution, particularly since an unlawful use of force on such a scale amounts to the crime of aggression; nor can I agree with such action in circumstances which are so detrimental to the international order and the rule of law.”

The Nuremberg Tribunal condemned a war of aggression in the strongest possible terms:

“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.”

It held individuals accountable for “crimes against peace”, defined as the “planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.” The U.N. General Assembly unanimously affirmed the

Nuremberg principles in 1946, and it affirmed the principle of individual accountability for such crimes.

After the U.S. committed what it knew was the supreme international crime, a crime against peace, and a crime against the laws of the international community, it committed many more crimes, crimes against the human rights of Iraqis, on a vast scale of shocking brutality that must never be forgotten. What the Wikileaks Iraq War Logs included, that was new information, was:

- The fact that the U.S. had gunned down surrendering insurgents—a clear war crime;
- U.S. troops handed over detainees to a notorious Iraqi torture and interrogation squad, known as the Wolf Battalion—also a clear war crime, and furthermore, American documentary confirmation of the human rights abuses of its client/partner state;
- The Obama administration continued to hand over detainees to its Iraqi partners, despite American officials' reports of torture;
- U.S. forces documented and reported to superiors cases of Iraqi abuse of prisoners on more than 1300 occasions, even as U.S. military spokespersons were stating in press conferences that they found no evidence of abuse; in fact, torture was found to be widespread in Iraqi detention facilities;
- Two secret orders were issued instructing U.S. troops not to investigate torture or take any action where torture was found—FRAGO 242 and FRAGO 039—both of which violate the laws of war and the legal duties binding the U.S. as the UN formally recognized it as an occupying power;
- That U.S. troops gunned down and killed a vast number of innocent civilians at checkpoints on roads;
- And, that at least 15,000 more civilian deaths, attributable to the actions of U.S. forces, have been found in the documents than were previously known.

What has been the official reaction from Iraq and the U.S.? How, in particular, does the leader of the “civilized world” justify itself, and adhere to its own dictates about “responsible behavior” and the “rule of law”? What do their reactions tell us about the moral and legal order in which we actually live? And what do they tell us about the possibilities for change, for securing justice, when the proper, legal avenues are cut off?

The office of Prime Minister Nouri al-Maliki, while reacting in a calmer tone than we heard from Washington, still leveled accusations at Wikileaks itself, as if Wikileaks was somehow not just a vehicle, but the actual author of the leaks. For example, his office issued a statement saying it would need to investigate if the charges were “truthful” or “politically motivated,” adding: “There are many question marks about the timing and way of the release of the said documents that target...the Prime Minister specifically.”

From Washington, the official response was even more preposterous. The U.S. Department of Defense issued a statement saying, among other things,

“We strongly condemn the unauthorised disclosure of classified information and will not comment on these leaked documents other than to note that ‘significant activities’ reports are initial, raw observations by tactical units....the period covered by these reports has

been well-chronicled in news stories, books and films and the release of these field reports does not bring new understanding to Iraq's past.

“However, it does expose secret information that could make our troops even more vulnerable to attack in the future. Just as with the leaked Afghan documents, we know our enemies will mine this information looking for insights into how we operate, cultivate sources, and react in combat situations, even the capability of our equipment. This security breach could very well get our troops and those they are fighting with killed.”

In other words, the complaint was that the act of leaking was criminal, and there was no indication of any interest or intention to prosecute war crimes committed by U.S. troops. In addition, there was nothing new—which is, of course, a statement we already demonstrated to be false—but was nonetheless a threat to security. This led to a chorus of condemnation in American mainstream media and from leading conservative political figures, raining down increasingly shrill accusations against Assange, with many calling for his capture and even execution.

What few seem bothered to consider, in this regime of institutionalized and ritualized hate fomented by those in power, is that whoever leaked the documents in the first place could be seen as morally if not legally required to do so. The alleged source of the leak, Bradley Manning, is a soldier with intimate knowledge of many U.S. crimes in Iraq. The emphasis in the state's rhetoric is on his alleged “criminal” actions. Yet, one might think that if documentation of war crimes is found, that for moral reasons, and in line with international humanitarian law, and concern for the laws of war, that such information must be released. Knowing the details, having the information, and then refusing to disclose it, is the same as concealing that information and covering up a crime, which is a crime itself. If anything, one not only has a right to disclose such information, it is one's duty. This is especially true when higher ups claim full knowledge. For example, one of the frequent refrains heard from Washington is that the Iraq War Logs offer nothing new? *Nothing new?* This means they were fully aware of the crimes documented in the reports, and chose to do nothing. In fact, if anything, they have tried to keep absolute silence on those crimes.

Washington also claimed that the leaks put lives at risk. One might think that if people are (a) concerned about the safety of civilians, and, (b) that troops not be put in harm's way, that the only logical position would not be one that is anti-Wikileaks, but one that is anti-war. Anti-war? We cannot even get the U.S. to agree that torture is a crime that must be prosecuted. Instead, it wants us to just think about how “criminal” it was for the documents to be “stolen.”

To truth, the U.S. speaks the language of force and coercion. It lacks power in the form of authority and legitimacy. The UN High Commissioner for Human Rights, Navi Pillay, has called for an investigation into allegations of abuse and murder of Iraqis within detention centers, following the publication of the Wikileaks documents. She also demanded that all alleged abuses against Iraqi civilians by U.S. troops be properly investigated. Washington's response to this? Silence. The challenge presented by Wikileaks is for the U.S. to prove itself accountable to its own laws, and to hold it to its ideals. The U.S. instead seems to have set a much lower standard for itself, and for the rest of us.