

The International Criminal Tribunal for Iraq

Judgment

12 December 2004

Note: Final Judgment covering all charges, including those raised in supplementary indictment, is to be issued at the final trial in March 2005.

The International Criminal Tribunal for Iraq (ICTI), sitting from July 17 to 18, 2004 in Kyoto and from December 11 to 12, 2004 in Tokyo, heard the evidences, testimonies and views presented at these trials as well as numerous public hearings held in various places in Japan throughout this period. The judgment delivered today is the unanimous court opinion of the Tribunal composed of four judges of the ICTI, who participated in this Tribunal from Korea, Indonesia and Japan. This judgment will be complemented by individuals opinions by each judge who wishes to record his or her opinion separately.

The defendants before this Tribunal are George W. Bush, the President of the United States, Tony Blair, the prime minister of the United Kingdom, Koizumi Jun-ichiro, the prime minister of Japan, and Gloria M. Arroyo, the President of the Philippines. They are all serving presidents or prime ministers, and under the current framework of international law, crimes committed by serving heads of state or ministers could be appropriately prosecuted at the International Criminal Court (ICC), which came into existence on July 1, 2002. On the other hand, elements including the fact that most of the home countries of these defendants, except for the United Kingdom, have not yet ratified the Statute of the ICC have made the chances of actualizing such path practically improbable. However, even serving heads of state or ministers shall not be above the law, especially international law, and if the realization of the rule of law is being prevented by malfunction of international legal system, it is the role of civil society of the world to speak the law and act in the name of all human beings who share common values and moral conscience. People's Tribunals established to that effect have long history dating back to the Vietnam War Crimes Tribunal (The Russell Tribunal) in the late 1960s, followed notably by the International War Crimes Tribunal on the United States' War Crimes against Iraq in 1992, the Women's International War Crimes Tribunal in 2000 and the International Criminal Tribunal for Afghanistan in 2003, and this International Criminal Tribunal for Iraq joins such efforts supported by the voices of world opinion, which constitute the essential and genuine basis of the ultimate validity of the body of international law.

In this connection, the Tribunal wishes to emphasize the significance of the enterprise to open this Tribunal in Japan. In the wake of the tragedy of the Second World War, the international community created the United Nations as the principal organization to maintain international peace and security, and all the member States of the UN solemnly pledged to settle international disputes peacefully and to abstain from the threat or use of force against any State in their international relations. And Japan, as the State which had greatly disturbed international peace and security by its aggressive war and brought unspeakable damage to millions of victims, enacted the Constitution of Japan in 1946 in which it declared its

fundamental policy as a pacifist nation. The Preamble of the Constitution of Japan proclaims: "We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want". Article 9 of the Constitution provides, totally in line with the principles of the United Nations Charter, that "Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat of force as means of settling international disputes". The Tribunal believes that, in light of these high ideals enshrined in the Constitution, it is particularly significant that this Tribunal is held in Japan, and that it is all the more so, at a time when the policies of the present government have seriously deviated from the resolutions made in the Constitution.

The Statute of the ICTI, along with the Statute of the ICC, makes it clear that the official position of an accused person, whether as head of State or government or as a government official, shall not relieve such a person of criminal responsibility. Thus the Tribunal delivers its judgment below, on behalf of citizens of the world sharing common conscience as mankind, and urges all those concerned to act upon them in pursuit of justice and peace in Iraq and international community as a whole.

I. The Opinion of the ICTI

The defendants George W. Bush, Tony Blair and Koizumi Jun-ichiro were accused of variety of crimes committed in the attack against Iraq on 20 March 2003 and afterwards in the indictment submitted at the trial in July 2004 and the supplementary indictment submitted in December of the same year. Also, in the supplementary indictment, the president of the Philippines, Gloria M. Arroyo, was indicted for crimes committed in relation to the attack against Iraq. On these charges, the ICTI delivers its findings as follows:

1. The Attack against Iraq by the U.S. and U.K. Armies

(1) Crime of Aggression

On the military attack of the territory of Iraq by the U.S. and U.K. Armies commencing on March 20, 2003, the Tribunal considers that no ground invoked to justify it can legitimize such preemptive use of force against another State. The right of self-defense may be exercised only "if an armed attack occurs", and there is no rule of international law that allows a State to launch preemptive strike against imagined threat before an actual armed attack occurs. Also, the Security Council resolution 1441, which warned Iraq that "it will face serious consequences as a result of its continued violations of its obligations" concerning monitoring of weapons of mass destruction (WMD), cannot be interpreted to approve member States to take any measures including use of force. The fact that WMD did not exist in Iraq was later clearly confirmed by expert investigations in both countries and was recognized by the administration of both States. Another justification, the liberation of the Iraqi people from dictatorship, which was used alternatively to alleged existence of

WMD, hardly legitimize the forceful overthrow of a political regime of a sovereign State by another State. Thus, by the attack against Iraq without the authorization by resolutions of the Security Council of the United Nations or other valid grounds in international law, the Tribunal finds the defendants George W. Bush and Tony Blair GUILTY for crime of aggression under Article 2 of the Statute of the ICTI [para.2; para. 3 (a) the invasion or attack by the armed forces of a State of the territory of another State; (b) bombardment by the armed forces of a State against the territory of another State, or use of any weapons by a State against the territory of another State; (c) the blockade of the ports and coasts of a State by the armed forces of another State; (d) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State]. The defendants George W. Bush and Tony Blair are individually responsible and liable for the crimes, as they ordered the commission of such crimes in their capacity of supreme commander [Article 7, para.2 (b)].

(2) War Crimes

On the air strikes and other military attacks targeting civilian population and facilities in an indiscriminate manner and causing the death and injury of civilians and destruction of civilian facilities, the Tribunal finds the defendants George W. Bush and Tony Blair GUILTY for war crimes under Article 5 of the Statute of the ICTI [para.1 (a) willful killing; (c) willfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carries out unlawfully and wantonly; para.2 (a) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (b) intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (d) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would clearly excessive in relation to the concrete and direct overall military advantage anticipated; (e) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives]. The defendants George W. Bush and Tony Blair are individually responsible and liable for the crimes, either because they ordered the commission of such crimes in their capacity of supreme commander [Article 7, para.2 (b)], or because they failed to take necessary measures to prevent such acts by members of their armies [Article 7, para.4].

On the use of cluster bombs, which give humans great suffering and which could function as landmines if left as dud bomb, during the attack on Iraq commencing on 20 March 2003, the Tribunal finds the defendants George W. Bush and Tony Blair GUILTY for war crimes under Article 5 of the Statute of the ICTI [para.1 (c) willfully causing great suffering or serious injury to body or health; para.2 (d) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would clearly excessive in relation to the concrete and direct overall military advantage anticipated; (o) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a

comprehensive prohibition]. The defendants George W. Bush and Tony Blair are individually responsible and liable for the crimes, either because they ordered the commission of such crimes in their capacity of supreme commander [Article 7, para.2 (b)], or because they failed to take necessary measures to prevent such acts by members of their armies [Article 7, para.4].

On the use of the weapons of depleted uranium by the U.S. Army, radioactive weapons which cause extremely serious damage to human body and unborn child and have long-lasting, harmful effects to the environment as well as to humans for generations to come, during the attack on Iraq commencing on 20 March 2003, the Tribunal finds the defendant George W. Bush GUILTY for war crimes under Article 5 of the Statute of the ICTI [para.1 (c) willfully causing great suffering or serious injury to body or health; para.2 (d) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would clearly excessive in relation to the concrete and direct overall military advantage anticipated; (m) employing poison or poisoned weapons; (o) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition]. The defendant George W. Bush is individually responsible and liable for the crimes, either because he ordered the commission of such crimes in his capacity of supreme commander [Article 7, para.2 (b)], or because he failed to take necessary measures to prevent such acts by members of his army [Article 7, para.4].

@On the charge of the use of the bomb BLU-82, a weapon of mass destruction called "Daisy cutter", in the Iraqi city of Kut on April 2, 2003, the Tribunal finds the charge not sufficiently proven, and reserves its judgment on the issue for further examination.

On the air strike of the hotel in the city of Baghdad by the U.S. Army, where a number of foreign journalists were staying and of broadcasting center, which caused casualties including the death of 3 journalists, the Tribunal finds the defendant George W. Bush GUILTY for war crimes under Article 5 of the Statute of the ICTI [para.1 (a) willful killing; (c) willfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; para. 2 (a) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (b) intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (e) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives]. The defendant George W. Bush is individually responsible and liable for the crimes, either because he ordered the commission of such crimes in his capacity of supreme commander [Article 7, para.2 (b)], or because he failed to take necessary measures to prevent such acts by members of his army [Article 7, para.4].

(3) Crimes against Humanity

On the use of the weapons of depleted uranium, the Tribunal further finds the defendant George W. Bush GUILTY for crimes against humanity, as inhuman acts committed as part

of a widespread or systematic attack directed against civilian population in armed conflict [Article 4 (i) other inhuman acts]. The defendant George W. Bush is individually responsible and liable for the crimes, either because he ordered the commission of such crimes in his capacity of supreme commander [Article 7, para.2 (b)], or because he failed to take necessary measures to prevent such acts by members of his army [Article 7, para.4].

2. The Military Occupation of Iraq and Crimes Committed under the Occupation

(1) Crimes of Aggression

On the military occupation by the U.S. and U.K Armies of the territory of Iraq from 14 April 2003 onwards, the Tribunal finds that the defendants George W. Bush and Tony Blair GUILTY for crimes of aggression under Article 2 of the Statute of the ICTI [para.2; para.3 (a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by use of force of the territory of another State or part thereof]. The defendants George W. Bush and Tony Blair are individually responsible and liable for the crimes, as they ordered the commission of such crimes in their capacity of supreme commander [Article 7, para.2 (b)].

The Tribunal also finds that, in spite of the ceremonial "transfer of sovereignty" to Iraq conducted on 1 July 2004 in accordance with the Security Council resolution 1546, coalition forces are still stationed in Iraq, and that crimes of aggression are being committed even at this moment. It is a well-established principle of international law that military occupation of a territory by another State does not affect the existence of sovereignty. The Tribunal considers that the Security Council, in the resolution 1546 proclaiming the "transfer of sovereignty" to the provisional government of Iraq which does not reflect the will of the people of Iraq, transgressed the scope of its authority, and effectively violated the right of self-determination of the Iraqi people protected under international law. Although formal validity of resolutions of the Security Council has hardly been disputed, it is axiomatic that even the Security Council is bound by principles of the UN Charter, and this Tribunal observes that the "transfer of sovereignty", decided by the Security Council which does not possess such power and conducted between the occupation authority and the provisional government, does not have legitimacy in terms of the right of self-determination of the people of Iraq and that its legality should not be recognized.

(2) War Crimes

On the torture and maltreatment of Iraqi detainees conducted by the U.S. Army in several detention centers, notably in Abu Ghraib Prison, the Tribunal finds that the defendant George W. Bush GUILTY for war crimes under Article 5 of the Statute of the ICTI [para.1(b) torture or inhuman treatment; (c) willfully causing great suffering or serious injury to body or health; para.2 (p) committing outrages upon personal dignity, in particular humiliating and degrading treatment]. The defendant George W. Bush is individually responsible and liable for the crimes, in light of the fact that he knew or had reason to know that his subordinates were about to commit such acts or had done so and that he failed to take necessary measures to prevent such acts or to punish the perpetrators thereof [Article 7, para.4].

On the indiscriminate military attack in the city of Fallujah conducted by the U.S. Army repeatedly from April to November 2004, targeting civilian facilities including hospitals and causing the death of numerous civilians, the Tribunal finds that the defendant George W. Bush GUILTY for war crimes under Article 5 of the Statute of the ICTI [para.1 (a) willful killing; (c) willfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carries out unlawfully and wantonly; para.2 (a) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (b) intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (d) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would clearly excessive in relation to the concrete and direct overall military advantage anticipated; (e) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (i) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives]. The defendant George W. Bush is individually responsible and liable for the crimes, either because he ordered the commission of such crimes in his capacity of supreme commander [Article 7, para.2 (b)], or because he failed to take necessary measures to prevent such acts by members of his army [Article 7, para.4].

On the destruction of historical sites and monuments in Iraq by the U.S. and U.K. Armies for the purpose of military strategy, the Tribunal finds the defendants George W. Bush and Tony Blair GUILTY for war crimes under Article 5 of the Statute of the ICTI [(i) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives]. The defendants George W. Bush and Tony Blair are individually responsible and liable for the crimes, either because they ordered the commission of such crimes in their capacity of supreme commander [Article 7, para.2 (b)], or because they failed to take necessary measures to prevent such acts by members of their armies [Article 7, para.4].

3. Crimes of Koizumi Jun-ichiro

(1) Crimes of Aggression

On sending the Self Defense Force to be part of the coalition forces, which illegally occupied Iraq and thereby committed crimes of aggression as this Tribunal found above, the Tribunal finds the defendant Koizumi Jun-ichiro GUILTY for crimes of aggression under Article 2 of the Statute of the ICTI [para.2; para.3 (a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack]. The defendant Koizumi Jun-ichiro is individually responsible and liable for the crimes, as he committed these crimes jointly with the defendants George W. Bush and Tony Blair [Article 7, para. 2(a) of the Statute of the ICTI].

(2) Crimes of Aiding and Assisting Aggression

On allowing the Maritime Self-Defense Force to provide oil to the U.S. fleets and carriers heading for Iraq for military attack in February 2003, the Tribunal finds the defendant Kiozumi Jun-ichiro GUILTY for crimes of aiding and assisting aggression. The defendant Koizumi Jun-ichiro is individually responsible and liable for the crimes under Article 7, para. 2 (c) of the Statute of the ICTI.

Further, on providing approximately \$ 900,000,000 of overseas development assistance for the occupation rule of Iraq by the coalition forces, the Tribunal finds the defendant Koizumi Jun-ichiro GUILTY for crimes of aiding and assisting aggression. The defendant Koizumi Jun-ichiro is individually responsible and liable for the crimes under Article 7, para. 2 (c) of the Statute of the ICTI.

(3) Crimes of Aiding or Assisting War Crimes

On the charges concerning the use of U.S. military bases in Japan, including the charge that the defendant allowed U.S. military bases in Okinawa to be used for the training of the marines for the purpose of attacking Fallujah in April 2004, and thereby aided or assisted the commission of war crimes, the Tribunal finds that the facts, that he aided or assisted the commission of such crimes for the purpose of facilitating it, not sufficiently proven, and reserves its judgment on the issue for further examination.

4. Crimes of Gloria M. Arroyo

On allowing the U.S. Army to fly the territorial air of the Philippines and to use airports and coastal facilities of the Philippines for stationing and refueling during the attack against Iraq commencing on 20 March 2003, the Tribunal finds the defendant Gloria M. Arroyo GUILTY for crime of aggression, under Article 2 of the Statute of the ICTI [para.3 (f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State]. The defendant Gloria M. Arroyo is responsible and liable for the crime, as she committed the crime individually [Article 7, para. 2(a)].

On the charges of enslavement and deportation of the people of the Philippines, raised in the supplementary indictment, the Tribunal finds the charges not sufficiently proven, and reserves its judgment on the issue for further examination.

II. Recommendations

1. Withdrawal of All Troops of Coalition Forces Stationed in Iraq and Recovery of Full Sovereignty to the Iraqi People

In spite of the fact that the "transfer of sovereignty" was conducted in accordance with the Security Council resolution in July 2004, coalition forces, including the Self-Defense Force of Japan, are still stationed in various parts of Iraq. All the foreign troops presently stationed in Iraq should immediately be withdrawn, so that full sovereignty and the right of self-determination may be recovered to the people in Iraq.

2. Refraining from Indiscriminate Military Attack against Civilians

Indiscriminate attacks against civilian population and facilities, most recently conducted in November 2004 in Fallujah, constitute serious war crimes and no troops should be involved in such illegal actions targeting civilian and civilian facilities.

3. Recognition of the Illegality of All the Crimes Committed and Sincere Apology for the Crimes

The defendants and their respective governments should recognize the illegality of all the crimes committed as this Tribunal found above, and should express their sincere apologies to all those who were victimized as a result of their crimes.

4. Reparation to the Victims

All the victims who suffered damage from the crimes are entitled to reparation including the payment of compensation and rehabilitation. In this connection, guiding principles of international law concerning the rights of individuals to remedy and reparation can be found in the final report of the Special Rapporteur M. Cherif Bassiouni entitled "Basic principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law" (E/CN.4/2000/62,Annex) presented at the United Nations Commission on Human Rights. In providing remedy and reparation, a gender perspective should adequately be taken into account, in accordance with the current standards of international law including the Statute of the ICC.

5. Investigation and Punishment of the Perpetrators of Crimes

The defendants and their respective governments should promptly investigate all war crimes as well as crimes against humanity, bring all those responsible to justice, and enforce appropriate punishment to them. Failure to prosecute and punish the perpetrators would give rise to State responsibility, as the State is considered to be tolerating impunity in violation of international law.

6. Investigation and Impact Assessment of Weapons on Human Body and Environment

Concerning the weapons used during the attack against Iraq, and especially the weapons of depleted uranium, scientific investigation and impact assessment of those weapons on human body and environment should be conducted urgently. All the information and findings produced as a result of such investigation and assessment should be open to public, and should be utilized for victims and all those affected as a matter of priority.

7. Ratification of the Statute of the International Criminal Court

The Rome Statute establishing the ICC is a culmination of longtime aspiration of humankind to prevent massive violation of human rights and humanitarian law by punishing the perpetrators of such crimes, and the respective governments should promptly proceed to the ratification of the ICC Statute if they have not yet done so. It is especially contradictory and unsatisfactory that the United States, one of the leading advocates of major war crime tribunals beginning from Nuremberg and Tokyo Tribunals after the Second World War, has not yet ratified the ICC Statute. The United States, as well as Japan and the Philippines,

should ratify the Statute instantly, and uphold the efforts to create international community based on the rule of law. Also, the bilateral agreements concluded between the United States and nearly 90 States under the pressure of the former, in order to ensure immunity to U.S. soldiers from prosecution of the ICC, are clearly incompatible with the obligation of States parties of the ICC to cooperate with the Court, and should not be allowed to prevail. The United States should not press other States to conclude such agreements which are directly contrary to the object and purpose of the ICC Statute. States should refrain from concluding such agreements, and or terminate such treaty relationship if they have already entered into it.

8. Reform and Restructuring of the United Nations System, Particularly of the Security Council

Under the present system of the United Nations which grants veto power to the five permanent members of the Security Council, the determination of the existence of threat to the peace, breach of the peace, or act of aggression is in the hands of these States, and the determination of such situations caused by, or related to, these States is virtually impossible by definition. This is a fundamental defect of the UN system, and should be improved on urgent basis. Also, as painfully evident in the case of economic sanctions to Iraq which gave immense damage both to the people and the basic social and economic infrastructure of Iraq, resolutions of the Security Council adopted for certain purposes may infringe upon fundamental values and principles of international law such as the protection of human rights. In light of these facts, and recalling that the preamble of the UN Charter starts with the phrase "WE the people of the United Nations...", the present UN system, especially that of the Security Council, should be restructured to a system that would make the application of international law fair and truly universal, and to make it possible to reflect the voices of citizens of the world.

Judge SHIN Hae Bong (Acting Chief Justice)

ABE Kohki

LEE Jang Hie

Johnson Panjaitan