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“Crimes against Peace”: Historic Class Action Law Suit against George W. Bush

By Inder Comar

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On March 13, 2013, my client, an Iraqi single mother and refugee now living in Jordan, filed a class action lawsuit against George W. Bush, Richard Cheney, Colin Powell, Condoleezza Rice, Donald Rumsfeld and Paul Wolfowitz in a federal court in California.

She alleges that these six defendants planned and waged the Iraq War in violation of international law by waging a “war of aggression,” as defined by the International Military Tribunal at Nuremberg, more than sixty years ago. (The current complaint can be found here).

At the Nuremberg Trials, American chief prosecutor and associate justice of the US Supreme Court Robert H. Jackson focused his prosecution on the planning and execution of the various wars committed by the Third Reich. Jackson aimed to show that German leaders committed “crimes against peace,” and specifically, that they “planned, prepared, initiated wars of aggression, which were also wars in violation of international treaties, agreements, or assurances.”

For Jackson, the Nuremberg Trials were a high watermark of legalism. In his report regarding the negotiations of the treaty that would set up the Nuremberg Tribunal, Jackson wrote that the Tribunal “ushers international law into a new era where it is in accord with the common sense of

mankind that a war of deliberate and unprovoked attack deserves universal condemnation and its authors condign penalties.” He concluded, “all who have shared in this work have been united and inspired in the belief that at long last the law is now unequivocal in classifying armed aggression as an international crime instead of a national right.”

The Nuremberg Tribunal agreed with Jackson. In its famous judgment in 1946, the Tribunal wrote,

“War is essentially an evil thing . . . to initiate a war of aggression, therefore, 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.”

The case against Bush is based on the conduct of members of the administration prior to coming into office as well as conduct taking place on and after 9/11. Years before their appointment to the Bush Administration, Richard Cheney, Donald Rumsfeld and Paul Wolfowitz were vocal advocates of a militant neoconservative ideology that called for the United States to use its armed forces in the Middle East and elsewhere.

They openly chronicled their desire for aggressive wars through a non-profit called The Project for the New American Century (or PNAC). In 1998, Rumsfeld and Wolfowitz would personally sign a letter to then-President Clinton, urging the president to implement a “strategy for removing Saddam’s regime from power,” which included a “willingness to undertake military action as diplomacy is clearly failing.”

On 9/11, Rumsfeld and Wolfowitz openly pressed for the United States to invade Iraq, even though intelligence at the time confirmed that it was al Qaeda, and not Saddam, that was responsible. Richard Clarke, former National Coordinator for Security, Infrastructure Protection and Counter-terrorism, famously told President Bush that attacking Iraq for 9/11 would be like invading Mexico after Pearl Harbor.

We now know that the Bush Administration began a concerted effort to scare and mislead the American public in order to obtain support for the Iraq War. As alleged in the complaint, this included the famous phrase that “the smoking gun could not be a mushroom cloud,” which was used repeatedly by Administration officials on news shows as a way of equating non-action with the vaporization of a United States city. The Administration used bogus and false intelligence to make the case for weapons of mass destruction, and also falsely linked al Qaeda to Iraq, despite the fact that there has never been any evidence of any operational linkages between the two. These were not simple mistakes: this was an intentional campaign by Administration officials to use faulty data to garner support for a war.

The crime of aggression was completed when these officials failed to secure proper authorization for the war. So concerned with their invasion, the Administration dismissed any need for a formal Security Council mandate. Today, Kofi Annan, an official Dutch inquiry, the Costa Rican Supreme Court, a former law lord from the House of Lords (Lord Steyn) and a former chief prosecutor from the Nuremberg Trials (Benjamin Ferencz) have all concluded the Iraq War was illegal under international law.

After months of briefing, the Northern District of California will issue its order any day as to whether it will recognize the crime of aggression, and whether my client may pursue a civil case against the Bush-era defendants based on that crime. In August of last year, the Obama Department of Justice requested that the district court immunize Bush and his high officials from civil charges on the basis that they were acting “within the scope of their authority.” This issue also remains pending before the court, but it should be noted that both Nuremberg, as well as the more recent Pinochet decision, reject the idea of immunity for leaders when they step outside the appropriate scope of their authority.

We need your support and attention to this case. We cannot let the crime of aggression disappear into history; indeed, even the International Criminal Court has now provided its own definition for aggression, with jurisdiction for this crime being enabled after 2017. We must affirm Jackson’s belief that, “law is not only to govern the conduct of little men, but that even rulers are, as Lord Chief Justice Coke put it to King James, under God and the law.”

For most of the post-war period, this notion — that leaders must be held accountable for their decisions to go to war — has gathered dust. This must change, or else the legacy of Nuremberg, and its foundation for the post-war international legal regime, will be tossed aside in favor of the state of anarchic international relations that led to the Second World War itself. It is time to fulfill Jackson’s dream of a global order governed by law, not war. And it is time for accountability over the Iraq War and for the millions of people who lost their lives or who were affected by it.