

War crimes and questions on justice in asymmetric warfare: the case of Iraq.

Lily Hamourtziadou and Leon Skeritt

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

Martin Luther King Jr., Letter from the Birmingham Jail, 1963

“As long as poverty, injustice, and gross inequality persist in our world, none of us can truly rest.”

Nelson Mandela, Trafalgar Square, 2005

The Greek word for ‘right’, since Aristotle, has been ‘δικαίωμα’, a word that has ‘δίκαιο’ as its root. ‘δίκαιο’ means justice; the understanding of rights has since then been connected to a sense of fairness, of what someone justly deserves. Rights are entitlements that dominate understandings of what actions are morally permissible, which laws are just and what constitutes a crime.

The Geneva Conventions of 1949 set out to define and legally frame the rights of combatants and non-combatants in wartime, based on the principle of humanity: even during war, nobody should be treated inhumanely, but must be treated with dignity. As a negative right, nobody -even soldiers- can be tortured, degraded or made to suffer, once they have given up their arms, are captured, or are wounded.

- I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949.

- II. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of August 12, 1949.
- III. Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949.
- IV. Geneva Convention relative to the Protection of Civilian Persons in Time of War, of August 12, 1949.

That was a watershed moment in the history of human rights and international justice. Yet over 70 years later, in the 21st century, are we any closer to providing justice for those whose rights are violated in war? Moreover, given the nature of certain irregular wars and asymmetric conflicts, such as the one in Iraq, is justice even possible? This paper examines war crimes committed within the war on terror, by states and by non-state actors, and questions whether restorative justice, while desirable, can be an option or a factor in ending a 20-year-old bloody conflict that has claimed hundreds of thousands of innocent lives.

Restorative Justice

According to the Restorative Justice Council,

Restorative justice brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm. This is part of a wider field called restorative practice...

Restorative practice can involve both a proactive approach to preventing harm and conflict and activities that repair harm where conflicts have already arisen. ... Restorative practice supports people to recognise that all of their activities affect others and that people are responsible for their choices and actions and can be held accountable for them. It enables people to reflect on how they interact with each other and consider how best to prevent harm and conflict (Restorative Justice Council).

Restorative justice gives victims the chance to tell offenders the real impact of their crime, get answers to their questions and get an apology. Restorative justice holds offenders to account for what they have done. It helps them understand the real impact, take responsibility, and make amends.

Restorative practice in western criminal justice systems dates back to the 1970s and the desire for alternatives to the retributive model of justice (Ashe, 2009; van Wormer, 2009; Wenzel et al., 2008). Retributive justice refers to the classical just deserts or biblical eye-for-an-eye mantra of justice, where the proverbial pound of flesh is required in the unilateral imposition of punishment by the state (Wenzel et al., 2008). The issue with this form of justice is that it is the state that is served by justice with little regard for the victim. Restorative justice, instead, places the victim and the offender at the centre of the justice process through things such as conferencing, that enables the two parties to engage in dialogue in an attempt to restore a moral, social and legal sense of justice (Gerkin et al., 2017). This was a result of years of campaigning by political activists and criminal justice reformers who took from

indigenous people's use of community-based punishments for rule breaking rather than punitive ones. In the international system there have been attempts at a restorative approach to justice. The truth and reconciliation commission in South Africa after the ending of the system of apartheid, is possibly the most famous example of restorative practice in the international system (Llewellyn & Howse, 1999).

The international system is anarchic and retribution-based unilateralism in the indecision making of states in this system is part of the problem (Gerkin et al., 2017). The human security approach puts the focus on the repairing of justice from a moral and legal perspective. Whilst restorative justice seems like a winning proposition in the pursuit of social justice, there are various issues such as lack of international accountability, political will and agreed upon restorative practices that keep all sides happy.

One of the common misconceptions of restorative justice is that it is the soft option on offenders and rule breakers (Ashe, 2009). Restorative justice is a tool of reconciliation and punishment that allows for the victim and the perpetrator to engage with each other outside of the punitive, retributive framework (Gerkin et al., 2017). The centering of the victim is in line with the intentions of the human security approach and the concept of positive peace (Galtung, 1969). With people rather than the state as the referent object and desire for attitude change, societal security and resilience, restorative justice plays a key role in international security and conflict resolution. Restorative justice is not just one thing, but a plethora of initiatives with the intention of providing legal and social justice for its victims and survivors One such example of this, are the Extraordinary Chambers in the Court of Cambodia (ECCC), which has

been dubbed the most important trials since Nuremberg (Gruspier & Pollanen, 2017). This court has been set up not only to administer a judicial outcome but to offer an opportunity for the survivors and the families of those that were killed during the reign of the Khmer Rouge to engage with the restoration of moral and social justice (Bernath, 2018). This hybrid approach to the trials simultaneously trying a legal case while attempting to offer some reconciliation for the victims, with the UN operating opposite their Cambodian counterparts, has not gone down well, with victims and critics who now feel that this is a political process and that their voices and concerns are no longer important. The fact that the Prime Minister of Cambodia who was alleged to be a former Khmer Rouge fighter who does not have the desire to bring his friends to justice is indicative of one of the main issues with restorative justice in international relations context, which is that of power (Bernath, 2018). Power plays a significant role in who gets to participate, and the direction of the restorative practices takes, there is limited scope for all parties to come together (Renckens, 2019). When many of those that have broken the rules have died or their victims are dead this poses a problem for the idea that the state cannot do wrong as what the state says is lawful and is legitimate is just that. This is why, for effective restorative practice, a human centred approach is imperative (Renckens, 2019). The majority of victims feel satisfied with restorative methods rather than the retributive approach to punishment which is about behaviour control, things like deterrence and desistance rather than behaviour modification, attitude change and the restoration of social and moral justice (Shields & Soeters, 2016).

The main reason for these issues with restorative practices revolve around power and inequalities within society and the international system. In relation to the above example of the ECCC and the ending of the system of apartheid in South Africa, there

is an inequality in the relationship, in terms of power dynamics between the two groups at either side of the restorative action (Gruspier & Pollanen, 2017; Llewellyn & Howse, 1999). With the perpetrator in these cases either being the domestic government or an invading state as in the case of Iraq. The idea that a state, which under traditional concepts of international relations and security has the monopoly on the legitimate use of violence and force, could be held accountable for exercising that legitimate force is only possible from a critical perspective on security. However, the state also possesses instrumental power and can directly impact the nature and scope of any restorative practice (Renckens, 2019). Critics of the truth and reconciliation commission express these concerns through the acknowledgement that low level soldiers and police officers were held to account whilst high ranking members of government did not need to apply for amnesty as they were not held accountable as their actions were deemed legitimate. This issue of instrumental power is even more prevalent in the case of Iraq as the invading forces of the United States and their allies as the very body capable of holding them to account is significantly funded by a perpetrator of the heinous civilian body count as a result of the invasion (Renckens, 2019). Further still, some of the worst atrocities such as the Nisour Square massacre, were carried out by unaccountable private military companies that are protected by the power of the US and were not held accountable for the deaths of seventeen civilians at the time of the incident (Snukal & Gilbert, 2015). Whilst there was some accountability nearly a decade later, it highlights an issue with trying to enact any kind of restorative justice in this context. The low-level employees were once again the subject of legal action with those sentenced eventually pardoned by US president Trump. There was no consideration taken for the people of Iraq who lost loved ones or were permanently injured in the attack (Snukal & Gilbert, 2015). This example both

highlights the need for a restorative approach to any response to crimes of this nature in considering the people of Iraq, but also drives home the futility of restorative attempts at justice when faced with power of this magnitude.

Conferencing is important for addressing power dynamics across gender lines (van Wormer, 2009). Not to be confused with mediation, which supposes opposing parties of equal status and power, conferencing is a process by which trained or expert facilitators enable the healing and reconciliation between the victim/survivor and the perpetrator (van Wormer, 2009). This is in direct contrast to current models of justice that prioritise restitution to the state's legal and political systems whilst treating the victim/survivors as a secondary concern. This is a critical point in the pursuit of restorative justice in that those at the margins of society who would otherwise be unheard are permitted to speak.

Accountability in these contexts, whilst improved, is becoming more difficult under the current retributive model with the criminal proceeding failing to restore the self-identities, status and voices of those that have survived the atrocities (Gerkin et al., 2017; Schulz & Kreft, 2022). Research on this perspective is focused on social justice as well as legal and systemic justice, with the idea of restorative justice to enhance the dignity of those at the margins of society (van Wormer, 2009). There has also been a move to use restorative processes such as conferencing to reaffirm women's community and social positions after wars and conflict. This can be seen in places such as Mali, Somalia and Angola, where women used the conflict to secure economic security and power in decision making although they still struggled to break traditional norms politically as they were not taken seriously on issues of disarmament, reconstruction and reintegration (Maedl, 2011). The core issue with restorative justice is that the process is only as good as the people that run it. This is an issue within an

international context where a powerful nation commits atrocities in a state it now occupies and is essentially in charge of its own accountability (Schulz & Kreft, 2022). It is also particularly bad for women as the post-conflict norms of society are restored and they are once again relegated to the margins with limited recourse for action. Nonetheless, in the pursuit of positive peace which involves the reintegration and restoration of individuals into society and culture, restorative justice is paramount (Galtung, 1969).

In the international system, restorative justice is about reparation in a productive and constructive way, for both the victim and the perpetrator. Holding people that have committed crimes and caused harm to account, whilst addressing things such as power imbalances in the pursuit of social justice, is essential to the restorative ideal. Power is a significant factor in who gets justice and the way in which justice is distributed and whilst power relations highlight difficulties within a restorative paradigm, the retributive response compounds harm and erases the pain of the people. The idea of conferencing is important when exploring the gendered nature of justice, especially in relation to conflict resolution and positive peace. An important element of restorative justice is that both parties have accountability. It's not mediation because mediation implies that the two parties are equal. Whereas, in restorative practices, and restorative justice, it is acknowledged that one person is the victim of one person is the perpetrator. There is a considerable impact on the individual group or nation, when they are wronged in a specific way, this is why the human security perspective is conducive to the conditions for effective, restorative practices when retributive practise places the states needs as prime, whilst neglecting the human referent.

War Crimes by States

The Russian invasion of Ukraine in February 2022 has led to renewed discussions and actions regarding war crimes, justice and accountability, as one year on the war still rages. By mid-January 2023, the Office of the United Nations High Commissioner for Human Rights (OHCHR) verified a total of 7,031 civilian deaths in Ukraine. Of them, 433 were children. Furthermore, 11,327 people were reported to have been injured. The OHCHR specified that the real numbers could be higher (Statista Research Department, 2023). Some of the dead were found buried in mass graves, bound and with signs of torture.

Another invasion, however, at the start of the 21st century, resulted in war crimes committed by states that now stand in judgement of Russia. The states in question were the United States of America and the United Kingdom, which, as a Coalition, invaded Afghanistan and, later, Iraq, as part of a declared War on Terror.

While over 7,000 civilian deaths in the space of a year have been documented in the Russian invasion of Ukraine, the US-UK coalition killed over 7,000 Iraqi civilians in the 6 weeks of the initial invasion, based on data collected by Iraq Body Count. In the same 6-week period, over 17,000 Iraqi civilians were injured. Since the March 2003 invasion, over 24,000 Iraqi civilians have been killed by the coalition, based on research carried out by Iraq Body Count and Airwars, including 1,866 children and babies.

Two of those children were 14-year-old Lina and 9-year-old Mohammed Wail Mwafaq Mosa Tabra.

‘One of the stories I remember about her is from when she was in secondary school. One day the headmaster was hitting the students (as punishment). She ran to the headmaster and told her don’t hit them, they are still little, you can hit me instead. She was quiet, smiley. As a teenager, she didn’t share her interests with us but after her death, her cousins (who were her age) told us that she liked to keep a diary and wrote poems. She wanted to grow up to be a doctor. Mohammed was an active boy who could not stand still. He liked to ride horses. He was too young to even have any dream of his own, too young to even realise what he wants to be. He was really close to his sister Lina. If Lina went to a birthday party, she would take him with her. They were close friends and they died together.’ (As told by their father Wail Mwafaq Mosa Tabra to Iraq Body Count, 4th July 2021)

Lina and Mohammed died as they sheltered in a farm with other families, as their country was being bombarded. This is where their deaths are recorded:

Incident	a6384
Type	Coalition air strike involving two missiles
Deaths recorded	19
Targeted or hit	Group of families sheltering in a farm compound
Place	Al-Ishaqi, south of Tikrit
Date and time	31 March 2003 - 1 April 2003, Around Midnight

Iraq Body Count, Incident a6384

After the thousands killed in the invasion, many more killings followed, as Iraq was occupied. With the deaths mounting, there came demands for accountability. In 2007,

the American military expressed regrets “that civilians are hurt or killed while coalition forces search to rid Iraq of terrorism,” after the 11 October killing of 15 women (one pregnant) and children in an air raid near lake Thar Thar (BBC 2007).

Sixteen women and children in US airstrikes at Lake Thar Thar

Incident	k7704
Type	US airstrikes
Deaths recorded	16
Targeted or hit	suspected Al Qaeda leaders, civilians including pregnant woman hit
Place	Al-Samacha, Lake Thar Thar
Date and time	11 October 2007, 6:49 PM

Iraq Body Count, Incident k7704

The civilian death toll by US fire was 96 in October 2007, with 23 children among them, while in September 2007 US forces and contractors killed 108 Iraqi civilians, including 7 children. In August 2007 US troops had killed 103 civilians, 16 of them children, and in July 2007 they had killed 196. In fact, in just five months US forces in Iraq killed over 600 Iraqi civilians. Regrettably.

After the invasion, British forces (Multi-National Division, South-East) were responsible for the security of four provinces in southeastern Iraq. These were Basra, Missan, Muthanna, and Thi-Qar. While this responsibility was handed back to the Iraqi authorities in stages from September 2004, responsibility for security in the most violent of its domains, Basra, was the British Army’s until December 2007, and UK

combat forces remained in the region in an advisory capacity until July 2009. During the period of British security provision from May 2003 to December 2007, 3,334 violent civilian deaths were documented, and are detailed in the Iraq Body Count database. Known to the British Ministry of Defence (MoD) were at least 1,920 homicides recorded by Basra police between January 2006 and March 2008 and forwarded to the MoD, and subsequently integrated into the IBC database after a Freedom of Information Act request to the MoD. These figures do not include the 1,694 civilians killed and the 6,184 civilians wounded in these four provinces during the US/UK-led invasion phase in March and April 2003 (compared to 5,720 killed and 11,154 wounded civilians documented for the rest of Iraq during the invasion: the southern regions were a major route of the invading ground forces). Of the post-invasion deaths from May 2003 to December 2007, 193 could be directly attributed to the Coalition military, of which 124 have been identified as victims of British military action (Iraq Body Count, 2011).

The departure on 22 May 2011 of a Royal Navy mission training Iraqi sailors marked the official end of British Armed Forces operations in Iraq. That is, until the summer of 2014, when coalition forces resumed the bombing of Iraq, to “free” Iraqis from the Islamic State. In 2014 the European Centre for Constitutional and Human Rights (ECCHR), together with Public Interest Lawyers, submitted an article 15 communication to the ICC prosecutor, alleging the responsibility of UK armed forces for war crimes involving systematic detainee abuse in Iraq from 2003 to 2008. A preliminary investigation was opened in May 2014 that led first to a 2017 report which announced that the prosecutor had reached the conclusion that there was a

reasonable basis to believe that members of UK armed forces had committed war crimes within the jurisdiction of the ICC against persons in their custody. The ICC “Situation in Iraq/UK Final Report” published on 9 December 2020 makes it clear:

There is a reasonable basis to believe that various forms of abuse were committed by members of UK armed forces against Iraqi civilians in detention. In particular, as set out below, there is a reasonable basis to believe that from April 2003 through September 2003 members of UK armed forces in Iraq committed the war crime of wilful killing/murder pursuant to article 8(2)(a)(i) or article 8(2)(c)(i)), at a minimum, against seven persons in their custody. The information available provides a reasonable basis to believe that from 20 March 2003 through 28 July 2009 members of UK armed forces committed the war crime of torture and inhuman/cruel treatment (article 8(2)(a)(ii) or article 8(2)(c)(i)); and the war crime of outrages upon personal dignity (article 8(2)(b)(xxi) or article 8(2)(c)(ii)) against at least 54 persons in their custody. The information available further provides a reasonable basis to believe that members of UK armed forces committed the war crime of rape and/or other forms of sexual violence article 8(2)(b) (xxii) or article 8(2)(e)(vi), at a minimum, against the seven victims, while they were detained at Camp Breadbasket in May 2003 (International Criminal Court, 2020: 4)

More specifically, “the article 15 communications allege: acts of torture and other forms of ill-treatment against at least 1071 Iraqi detainees; 319 unlawful killings (267 in

military operations and 52 against persons in UK custody); and rape and/or other forms of sexual violence against 21 male detainees in 24 instances” (International Criminal Court, 2020: 11). Crimes committed by the British include forced exertion, wilfully causing great suffering, forced nakedness, and cultural and religious humiliation. “Such mistreatment was systematic and had a systemic cause, which further suggests that there are hundreds more such victims. There are considerable reasons to allege that those who bear the greatest responsibility for the crimes are situated at the highest levels, including all the way up the chain of command of the UK Army, and implicating former Secretaries of State for Defence and Ministers for the Armed Forces Personnel” (International Criminal Court, 2020: 12).

Crimes against Iraqi civilians by the US-UK coalition started on the night of the invasion, 19–20 March 2003. Iraq Body Count’s “Dossier of Civilian Casualties in Iraq” 2003–2005 gave the following figures:

- 24,865 civilians were reported killed in the first two years.
- Women and children accounted for almost 20% of all civilian deaths.
- US-UK forces killed 37% of civilian victims (Iraq Body Count, 2005).

That’s 9,180 Iraqi civilians killed by the Coalition from 2003 to 2005. In addition, democratically elected governments in Iraq, supported by the US-UK coalition, have so far killed more than 4,000 Iraqi civilians through bombing and shelling aimed to

destroy the insurgency. In the last few years, the Iraqi police force and militias it supports have killed hundreds of protesters across Iraq. The Iraqi governments has also allowed the killing of thousands in airstrikes by Coalition and Turkish forces (Hamourtziadou and O'Sullivan, 2021).

Those crimes have not been addressed. The perpetrators have escaped accountability. The enforced "democracy," in Iraq as well as in Afghanistan, has been celebrated as a triumph of the Western "liberators." In both countries we see the exercise of power, control, exploitation, and violence by a complex "benevolent" hegemon: one that combines might with right. The uncivilized have been saved by the civilized. The invader, killer, and occupier is the liberating force, the saviour and provider of democracy. In the UK this humanitarian mask has found a good fit in the popular narrative of British values; the aim is to do good, to do right, to "play fair," and never to hurt – or to only hurt the bad ones.

War Crimes by Irregular Groups

The most numerous crimes and injustices committed against Iraqi civilians came from non-state actors, from groups like Al Qaeda in Iraq, ISIS, Sadr militia and Popular Mobilisation. Out of 210,000 civilian deaths recorded by Iraq Body Count, they are collectively responsible for 182,000, through car bomb explosions, suicide attacks, roadside bombs, shelling, shootings and executions.

An example of an ISIS execution of civilians is incident a6304 in the IBC database:

Fifteen executed in west Mosul.

Incident	a6304
Type	gunfire, executed
Deaths recorded	15
Targeted or hit	civilians and Ninewa police members executed after being detained in IS prisons
Place	west Mosul
Date and time	18 February 2017, PM

Iraq Body Count, Incident a6304

Over the years, the armed groups fell into the below categories. All committed crimes against civilians.

- (1) Ba'athists, supporters of Saddam Hussein's administration, including army or intelligence officers, whose ideology is a variant of Pan-Arabism. Their goal has been the restoration of the former Ba'athist government to power. They eventually joined forces with guerrilla organisations that opposed the US-UK invasion. They increasingly came under Syrian influence.
- (2) Iraqi nationalists, Iraqis who believe in Iraqi self-determination and advocate the country's territorial integrity. They also rejected the presence of the coalition forces and took arms against them.
- (3) Sunni Islamists, Salafi/Wahhabi "jihadists." Salafis advocate a return to a strict understanding of Islam and oppose any non-Muslim groups and influences, and regularly attack the Christian, Mandaean and Yazidi communities of Iraq. They also attack Shia Muslims, whom they consider apostates.

(4) Shi'a militias, including the Iran-linked Badr Organisation and the Mahdi Army.

Shia Islamists are thought to be Iranian-run groups, influenced ideologically and armed by Iran. The Badr Organisation was formed by the Iranian Government to fight the Saddam Hussein-controlled Iraq during the Iraq-Iran War 1980-88. Following the 2003 invasion, they moved back to Iraq, from Iran, to fight alongside the US-led forces against other insurgents. The Mahdi Army was made up of supporters of Muqtada al-Sadr. They were the first serious opposition to the coalition from the Shia community and fought against the occupying forces for the next 5 years. At his most popular, Al-Sadr had the support of 68% of Iraqis, according to a poll by the Iraqi Centre for Research and Strategic Studies, as he fought to liberate Iraq.

(5) Foreign Islamist volunteers, including those often linked to al Qaeda and largely driven by the Salafi/Wahhabi doctrine. They are mostly Arabs from neighbouring countries, Syria and Saudi Arabia primarily, Wahhabi fundamentalists who wish to assist the insurgency against western forces and their allies in Iraq. They are fighting a jihad under the ideological umbrella of Al-Qaeda and Ansar al-Islam.

The bloodiest mass killing incident after the invasion was the ISIS execution of abducted air cadets between June 12 and June 15, 2014:

625-1566 air force cadets executed by ISIS near Saddam's former palace in Tikrit

Incident

m2676

Type	gunfire, executed
Deaths recorded	625-1566
Targeted or hit	Shiite air force cadets kidnapped from Camp Speicher; exhumations of bodies are ongoing through 2015
Place	Camp Speicher, near Saddam's palace, Tikrit
Date	12 June 2014 - 15 June 2014

Iraq Body Count, Incident m2676

Responses

A few months after the invasion of Ukraine by Russian forces, the first trials was held for war crimes. Russian soldier Sgt. Vadim Shyshimarin, 21, pleaded guilty to violating the laws and customs of war under a section of the Ukrainian criminal code after he admitted to shooting an unarmed 62-year-old man in the head in a village in north-eastern Ukraine in the early days of the war. He also expressed remorse and pleaded for forgiveness from the victim's wife (Talmazan, 2022). In January 2023, Ursula von der Leyen, president of the European Commission, called for a special tribunal to be formed to investigate and prosecute war crimes committed in Ukraine: "Therefore, we [the European Union] think this needs a special tribunal," she said. "Russia cannot get away with what it's done to the Ukrainian people" (Al-Jazeera, 2023). It was reported that the UK would train Ukrainian judges to carry out war crimes trials for Russian soldiers (Cohen, 2022). So far, in less than a year after the invasion, 14 Russian soldiers have already been convicted.

Yet UK and US responses to war crimes they have committed have been limited to (in very few cases) compensations or 'condolence' payments, and in the vast majority of cases there have been no responses at all, or complete denial of accountability. As for

the Iraqi governments, they have resorted to arresting and killing thousands of men under the accusation that they are irregular fighters/terrorists. Let's look at some documented cases.

A fisherman was fishing in the Tigris River in the early morning, when a Coalition Forces (CF) helicopter flew over and shone a spotlight on him. The fisherman began to shout in English, 'Fish! Fish!' while pointing to his catch. A patrol of Humvees arrived, and as the deceased bent down to turn off the boat's motor, CF shot and killed him. CF did not secure the boat, which drifted off and was never retrieved." Compensation for death denied due to combat exemption; compensation for boat granted: \$3,500 US (US Department of Defence, March 2006).

The US Army paid \$6,000 for killing a child looking out of the window, while a raid was on-going in the house across the street (US Department of Defence, February 2006b). They refused, as they do in the majority of cases, to compensate the child whose father they killed as he drove home but agreed to make a 'condolence payment' of \$1,500 (US Department of Defence, February 2006a).

Al Matasan Street, Samarra, Iraq: Claim on behalf of Iraqi [Redacted] by son. [Redacted], who was deaf, was shot and killed by US forces near the Samarra Museum. Two eyewitnesses corroborated the story. Finding: denied for lack of evidence and combat exception. Condolence payment granted: \$500 US (US Department of Defence, January 2006).

Samarra, Iraq: Claim on behalf of Iraqi [Redacted] by parent. [Redacted], a four-year-old girl, was playing in her front yard when she was killed by Coalition Forces' (CF) fire. The CF and a Humvee were trying to cross the road and they shot to clear the traffic.

A bullet ricocheted off of a wall and hit [Redacted]. Army memo: “A SIGACTS investigation revealed no activity meeting” the incident’s description, and “the claim is too old to verify.” Finding: denied due to lack of evidence. Condolence payment of \$2,500 US granted (US Department of Defence, April 2006).

Reading through the Army compensation reports, it is fairly clear just what the value of an Iraqi life is, of how the loss of a beloved child, parent and sibling is valued, priced. A few thousand dollars (if that) is how much they are worth, and no more. Their loss covered by a shocking monetary compensation. No further action taken, no further accountability.

As for the British response to the 2020 detailed ICC report of British war crimes in Iraq, this is what was revealed, a year after the report was published:

The Ministry of Defence has quietly settled 417 Iraq compensation claims and paid out several million pounds to resolve accusations that British troops subjected Iraqis to cruel and inhumane treatment, arbitrary detention or assault. Individual claims that have been settled run into the low tens of thousands and follow high court rulings that concluded there were breaches of the Geneva conventions and the Human Rights Act during the military operation that followed the invasion in 2003 (Sabbagh, 2021).

Fifteen years after committing the crimes of murder, rape, torture, cultural and religious humiliation, this was the only response by a state that prides itself in having the

‘Fundamental British Values’ of democracy, the rule of law, respect, tolerance and individual liberty.

How have the democratically elected governments of Iraq reacted to the crimes committed in the country? Any crimes committed by the US-UK Coalition, or by any government agents, has never been acknowledged. As for any violence perpetrated by others, the latest report on Iraq proves very revealing.

Research by Iraq Body Count shows that Iraq’s daily violence in 2022 is not subsiding.

This persistent conflict and insecurity is the residual effect of political, economic and military decisions taken long ago, and is proving immune to resolution by the same old and tired methods. The illegal US-UK led invasion and subsequent brutal military occupation of Iraq provoked intense anti-occupation and anti-government armed struggles, the latter unsurprising given that those governments were sponsored by the occupying powers and seen by many Iraqis as illegitimate. Equally unsurprising is the routine way in which Western powers and Iraqi client governments describe the armed struggle against them as “terrorism,” whether or not its violence impacts civilians. In doing so, they deflect attention from their role in creating the conditions for the ongoing conflict, and disregard how their own violence and counter-violence could also be experienced as “terrorism” (Dardagan, Hamourtziadou and Sloboda, 2023).

This internecine 'civil' war perpetuates cycles of violence and has become a barrier to the country's transition to a secure environment. Iraq's successive governments, unstable and struggling to achieve full public legitimacy, and unable to provide normal security for citizens, remain locked in a retributive mode which shows no signs of resolving the country's persisting problem with armed violence. During 2022 Iraq Body Count recorded 740 civilian deaths, of which 74 were children. 338 of these civilian deaths were in attacks attributed to 'terrorist elements'. Another 159 involved bodies being found, some tortured and shot, some recovered from rubble or mass graves. A further 125 civilians were killed in clashes between clans seeking to 'settle disputes', an alarmingly growing phenomenon in the absence of a state trusted and able to maintain the rule of law and provide legal remedy. The remaining 118 were caused by the Iraqi military and its various state-affiliated armed actors.

Despite the fact that ISIS as a significant territory-holding force was defeated by early 2018, Iraq has dramatically accelerated arrests on terrorism charges in 2022. Iraq's counter-terrorism services stated in January 2022 that over the previous two years they had arrested 622 members of ISIS on terrorism charges and killed 343. Their spokesperson stated a few days earlier than in 2021 alone they had arrested some 250 and killed 100. Iraq Body Count's daily monitoring reveals that the number of 'ISIS' killed in 2022 alone exceeded 500, but also that arrests have similarly increased, reaching 1,332 by the end December, a more than four-fold increase on the average of the previous two years (Dardagan, Hamourtziadou and Sloboda, 2023).

"Terrorists" arrested, killed

Year	Arrests	Killed
2021	250	100
2022	1332	500+

Who are the 1,332 men arrested? Are Iraqis who have no function in ISIS or as terrorists being arrested? This expansion of arrests under the 2005 Anti-Terrorism Law (passed when Iraq was under occupation), as a response, is concerning, not least because the concept of terrorism can be a slippery one, and its application is prone to political and vindictive misuse. Various forms of violence may all too readily be described the state as terrorism. For instance, in October 2022 a provincial governor described mass-arrested rioting protesters as “terrorists”. Many people killed by governments are also conveniently labelled as terrorists, and much the same can hold for arrests, incarcerations and executions.

Are arbitrary and unjust arrests and incarcerations on terrorism charges prevalent in Iraq? In 2020, the UN reported that in Iraq,

Prosecutions under the anti-terrorism legal framework—with its overly broad and vague definition of terrorism and related offences—focused on ‘association’ with or ‘membership’ of a terrorist organization without sufficiently distinguishing between those who participated in the violence and those who joined ISIL for survival and/or through coercion, and with harsh penalties that failed to distinguish degrees of underlying culpability (UNAMI/OHCHR, 2020).

A later study from the UN highlighted the severe injustices of the justice system itself. The study detailed 'a labyrinth of unfairness, with detainees often denied due process at every turn... Confessions frequently come through torture... [such that] detainees frequently end up signing documents admitting crimes they did not commit... Few detainees see a lawyer until they appear in court' (Loveluck, 2021). Severe beatings, electric shocks, stress positions and suffocation are some of the methods of abuse of detainees by the state. Sexual violence was also reported.

There will be legitimate cases among these arrests, but applying only retributive tactics, while ignoring paths to reconciliation, cannot lead to anything other than more conflict and counter-violence, particularly when allegations of confessions via torture are themselves unaddressed. Groups and individuals resort to deadly terrorist actions for varied and complex reasons, one of which is vengeance, or retribution: a settling of scores over harm done to them and their loved ones. All insurgency has at its core a grievance, a perceived wrong or injustice. The cycle cannot be broken by more killing and repressive violence. In addition, the fact that on average one terrorism-attributable incident occurred each day in 2022, concurrent with all these arrests, suggests that whatever else these killings and arrests are achieving, it is not peace. Peace-making involves very different, difficult but essential processes. South Africa's is the best-known and most hopeful example of a national project of restorative justice, one incorporating compassion and forgiveness. In South Africa, as anywhere, justice could not be pursued without truth. In Iraq, too, reconciliation processes will require accountability from all actors, and reaching back to the original crime of the 2003 invasion itself.

Just and truthful reconciliation will require recognition that all social groups in Iraq have suffered human losses. The motivation and desire to pursue national reconciliation needs

to originate with the people of Iraq, but the space for such problem-solving must also exist, and this space is hard to create while war, arbitrary arrests, executions, lack of accountability and offensive monetary compensations remain the official and preferred responses.

Conclusion

There were fault lines in Iraq before 2003. The state was weak economically, after years of wars and economic sanctions; it was weak politically, with an unpopular dictator, at home and abroad; it was weak societally, clearly divided into Sunnis, Shias and Kurds. The fault lines were to widen so much that they reached the size of trenches. The initial unprovoked attack of 2003 by two of the world's most powerful states was a big contributing factor. It was followed by years of occupation, insurgency, terrorism and increasingly competing interests. Internally, the interests of the Sunnis, the Shias, the Kurds, the religious fanatics, the secular, the non-Muslim; externally, the interests of the US and the UK, Iran and Syria, all of which want to expand their political and ideological sphere of influence at any cost. Those competing interests led to the internal collapse of Iraqi society and remain the sad legacy of the invasion. In this asymmetric irregular battlefield, justice and reconciliation, mutual understanding, mercy and forgiveness have not even been attempted. Restorative justice lost out to approaches that focused on the perpetrator (including punishment and deterrence from committing future crimes) and on how to reduce crime in society.

A series of United Nations treaties and conventions have made clear that the international community was willing to seek redress for war crimes and their victims. These included the United Nations Charter, enacted in 1945; the Universal Declaration of Human Rights, enacted in 1948; and the United Nations Declaration of Basic

Principles of Justice for Victims of Crime and Abuse of Power, enacted in 1985. Markus Funk in his book *Victims' Rights and Advocacy at the International Criminal Court* recommends that a victim advocate compile a 'dossier' summarising victims' experiences and evidence. This file could include forensic documentation, evidence, and expert reports, and could serve to secure testimony that may not be available in future years (Funk, 2010). There are several potential bases to incorporate a dossier into the record at various stages of ICC proceedings, and Funk offers suggestions about when and how victim advocates should submit this to the Trial Chamber and the Office of the Prosecutor.

Funk encourages victim advocates to develop a theory of the case, articulating how the accused victimized the individual, how the crime affected the individual, and why the court should take additional actions on the victims' behalf. Funk further urges victim advocates to request that some of the victims personally address the Trial Chamber at the time of sentencing, in order to 'put a human face on the inhumane acts of the convicted perpetrator' (Sorensen, 2010: 1698).

But in Iraq, where are the victim advocates? Where is the human face? And where are the ethics that guide even war?

Much of the international humanitarian law framework that came into effect after the Second World War has its conceptual roots in the Western moral tradition of just war theory. This is the underlying moral basis of the legal framework that governs international armed conflict. The Rome Statute in 1998 expressly provided that victims are entitled to various remedies, including reparations. Since the 9/11 attacks in 2001, academics (Moseley and Norman 2001; Robinson 2006; Jokic and Ellis 2001) have

turned their attention to just war again, to analyse and evaluate wars and atrocities committed in the fog of battle. Conducting attacks with drones poses political and strategic challenges, as much as moral and legal ones, with attacks often taking place in a grey area between war and peace, justice and injustice. Drone warfare changes the nature of war and the nature of peace. The new remote warfare of targeted assassinations, a strategy of 'kill, not capture', resembles a game of emotionless, merciless, distant killing, and a game of indefinite or interminable duration, oriented towards the display of particular technological triumphs and difficult to align with *jus post bellum*. Coupled with daily arrests, murders and a variety of violations of human rights by state and non-state actors, this aggressive approach to security in the tragic case of Iraq is a demonstration of how irregular war can become perpetual war. And in this context, what chance is there for restoring peace, ensuring accountability or achieving any kind of justice?

References

Al-Jazeera. 'Calls for special tribunal for Russia's war crimes in Ukraine'. Russia-Ukraine War. Jan 17, 2023. Accessed Jan 23, 2023, <https://www.aljazeera.com/news/2023/1/17/special-tribunal-needed-for-russian-war-crimes-in-ukraine-eu>

Ashe, Fidelma. "From Paramilitaries to Peacemakers: The Gender Dynamics of Community-Based Restorative Justice in Northern Ireland." *The British Journal of Politics and International Relations* 11, no. 2 (2009): 298–314. <https://doi.org/10.1111/j.1467-856x.2008.00345.x>.

BBC. 'Iraq strike "kills 15 civilians" '. *BBC*. Oct 12, 2007. Accessed Jan 23, 2023, http://news.bbc.co.uk/1/hi/world/middle_east/7040697.stm

Bernath, Julie. "Political Violence as a Time That Is Past? Engaging with Non-Participation in Transitional Justice in Cambodia." *Social & Legal Studies* 28, no. 5 (2018): 600–624. <https://doi.org/10.1177/0964663918805270>.

Cohen, Tamara. 'UK to train Ukrainian judges to carry out war crimes trials for Russian soldiers'. *Sky News*. Dec 14, 2022. Accessed Jan 23, 2023, <https://news.sky.com/story/uk-to-train-ukrainian-judges-to-carry-out-war-crimes-trials-for-russian-soldiers-12767724>

Dardagan, Hamit., Hamourtziadou, Lily. and Sloboda, John. 'Iraq's Residual War'. *Iraq Body Count*. Jan 1, 2023. Accessed Jan 23, 2023. <https://www.iraqbodycount.org/analysis/beyond/residual-war/>

Funk, Markus T. *Victims' Rights and Advocacy at the International Criminal Court* Oxford University Press, 2010.

Galtung, Johan. "Violence, Peace, and Peace Research." *Journal of Peace Research* 6, no. 3 (1969): 167–91. <https://doi.org/10.1177/002234336900600301>.

Gerkin, Patrick, John Walsh, Joseph Kuilema, and Ian Borton. "Implementing Restorative Justice under the Retributive Paradigm." *SAGE Open* 7, no. 1 (2017): 215824401769156. <https://doi.org/10.1177/2158244017691562>.

Gruspier, Katherine, and Michael S. Pollanen. "Forensic Legacy of the Khmer Rouge: The Cambodian Genocide." *Academic Forensic Pathology* 7, no. 3 (September 2017): 415–33. <https://doi.org/10.23907/2017.035>.

Hamourtziadou, Lily. 'Fault Lines to Trenches: Iraq 2003-2014'. *Journal of Global Faultlines*, 2, no 1 (2014): 98-108.

Hamourtziadou, Lily. *Body Count: the war on terror and civilian deaths in Iraq*. Bristol University Press, 2020.

Hamourtziadou, Lily and O'Sullivan, Aidan. 'Crimes of a "benevolent" hegemony: Configurations of UK power in Northern Ireland and Iraq' *Journal of Global Faultlines* 8, no. 2 (2021): 153-171.

International Criminal Court. "Situation in Iraq/UK Final Report." December 9, 2020. Accessed Jan 23, 2023, <https://www.icc-cpi.int/itemsDocuments/201209-otp-final-report-iraq-uk-eng.pdf>.

Iraq Body Count. 'The unexamined Iraqi dimension of UK involvement in Iraq'. Iraq Body Count. May 22, 2011. Accessed Jan 23, 2023, <https://www.iraqbodycount.org/analysis/beyond/uk-involvement/>

Iraq Body Count. 'A Dossier of Civilian Casualties in Iraq 2003–2005'. *Iraq Body Count*. July 19, 2005. Accessed Jan 23, 2023, <https://www.iraqbodycount.org/analysis/reference/press-releases/12/>

Iraq Body Count Database. '19 by Coalition air strike in Al-Ishaqi, south of Tikrit'. Incident a6384. *Iraq Body Count*. Accessed Jan 23, 2023, <https://www.iraqbodycount.org/database/incidents/a6384>

Iraq Body Count Database. 'Sixteen women and children in US airstrikes at Lake Thar Thar.' Incident k7704. *Iraq Body Count*. Accessed Jan 23, 2023, <https://www.iraqbodycount.org/database/incidents/k7704>

Iraq Body Count Database. 'Fifteen executed in West Mosul.' Incident a6304. *Iraq Body Count*. Accessed Jan 23, 2023, <https://www.iraqbodycount.org/database/incidents/a6304>

Iraq Body Count. '625-1566 air cadets executed by ISIS near Saddam's former palace in Tikrit'. Incident m2676. *Iraq Body Count*. Accessed Jan 23, 2023, <https://www.iraqbodycount.org/database/incidents/m2676>

Jokic, Aleksander, and Ellis, Anthony eds. *War Crimes and Collective Wrongdoing*. Wiley Blackwell, 2001.

Llewellyn, Jennifer J., and Robert Howse. "Institutions for Restorative Justice: The South African Truth and Reconciliation Commission." *The University of Toronto Law Journal* 49, no. 3 (August 1999): 355–88. <https://doi.org/10.2307/826003>.

Loveluck, Louisa. 'Iraqi authorities denying prisoners their rights from arrest to prosecution, U.N. says'. *Washington Post*. Aug 3, 2021. Accessed Jan 23, 2023, https://www.washingtonpost.com/world/iraq-authorities-deny-prisoner-rights/2021/08/03/5f9d2c7e-f07a-11eb-81b2-9b7061a582d8_story.html

Maedl, Anna. "Rape as Weapon of War in the Eastern DRC?: The Victims' Perspective." *Human Rights Quarterly* 33, no. 1 (February 2011): 128–47. <https://doi.org/10.1353/hrq.2011.0005>.

Moseley, Alexander and Norman, Richard eds. *Human Rights and Military Intervention*. Ashgate, 2001.

Renckens, Stefan. "The Instrumental Power of Transnational Private Governance: Interest Representation and Lobbying by Private Rule-Makers." *Governance* 33, no. 3 (2019): 657–74. <https://doi.org/10.1111/gove.12451>.

Restorative Justice Council, 'What is restorative justice?' *Restorative Justice*. Accessed Jan 23, 2023, <https://restorativejustice.org.uk/what-restorative-justice#:~:text=Restorative%20justice%20brings%20those%20harmed,wider%20field%20called%20restorative%20practice>.

Robinson, Paul. *Military Honour and the Conduct of War*. Routledge, 2006.

Sabbagh, Dan. 'MoD has settled 417 Iraq war compensation claims this year'. *The Guardian*. Nov 6, 2021. Accessed Jan 23, 2023, <https://www.theguardian.com/uk-news/2021/nov/06/mod-has-settled-417-iraq-war-compensation-claims-this-year#:~:text=The%20Ministry%20of%20Defence%20has,treatment%2C%20arbitrary%20detention%20or%20assault>

Schulz, Philipp, and Anne-Kathrin Kreft. "Accountability for Conflict-Related Sexual Violence." *Oxford Research Encyclopedia of International Studies*, 2022. <https://doi.org/10.1093/acrefore/9780190846626.013.702>.

Shields, Patricia M., and Joseph Soeters. "Peaceweaving." *The American Review of Public Administration* 47, no. 3 (2016): 323–39. <https://doi.org/10.1177/0275074015589629>.

Snukal, Katia, and Emily Gilbert. "War, Law, Jurisdiction, and Juridical Othering: Private Military Security Contractors and the Nisour Square Massacre." *Environment and Planning D: Society and Space* 33, no. 4 (2015): 660–75. <https://doi.org/10.1177/0263775815598077>.

Sorensen, Juliet S. 'Restorative Justice for Victims of War Crimes'. *The Journal of Criminal Law and Criminology* 100, no 4 (2010): 1689-1698.

Statista Research Department. 'Number of civilian casualties in Ukraine during Russia's invasion verified by OHCHR as of January 15, 2023'. *Statista*. January 17, 2023. Accessed Jan 23, 2023, <https://www.statista.com/statistics/1293492/ukraine-war-casualties/#:~:text=Number%20of%20civilian%20casualties%20during%20the%20war%20in%20Ukraine%202023&text=The%20Office%20of%20the%20United,Of%20them%2C%20433%20were%20children>.

Talmazan, Yuliya. 'Russian soldier sentenced to life in prison in Ukraine's first war crimes trial since invasion'. *NBC News*. May 23, 2022. Accessed Jan 23, 2023, <https://www.nbcnews.com/news/world/russian-soldier-sentenced-life-prison-ukraine-first-war-crimes-trial-rcna29628>

UNAMI/OHCHR. 'Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL'. *OHCHR*. Jan 2020, Accessed Jan 23, 2023, https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf

US Department of Defence. Claims Filed Under the Foreign Claims Act by Civilians in Afghanistan and Iraq, Army Bates. January 2006. *American Civil Liberties Union*. Accessed Jan 23, 2023, https://www.aclu.org/files/natsec/foia/pdf/Army0952_0958.pdf

US Department of Defence. Claims Filed Under the Foreign Claims Act by Civilians in Afghanistan and Iraq, Army Bates. February 2006a. *American Civil Liberties Union*. Accessed Jan 23, 2023, https://www.aclu.org/files/natsec/foia/pdf/Army1149_1152.pdf

US Department of Defence. Claims Filed Under the Foreign Claims Act by Civilians in Afghanistan and Iraq, Army Bates. February 2006b. *American Civil Liberties Union*. Accessed Jan 23, 2023, https://www.aclu.org/files/natsec/foia/pdf/Army0342_0343.pdf

US Department of Defence. Claims Filed Under the Foreign Claims Act by Civilians in Afghanistan and Iraq, Army Bates. March 2006. *American Civil Liberties Union*. Accessed Jan 23, 2023, https://www.aclu.org/files/natsec/foia/pdf/Army0550_0554.pdf

US Department of Defence. Claims Filed Under the Foreign Claims Act by Civilians in Afghanistan and Iraq, Army Bates. April 2006. *American Civil Liberties Union*. Accessed Jan 23, 2023, https://www.aclu.org/files/natsec/foia/pdf/Army0588_0591.pdf

van Wormer, K. "Restorative Justice as Social Justice for Victims of Gendered Violence: A Standpoint Feminist Perspective." *Social Work* 54, no. 2 (2009): 107–16. <https://doi.org/10.1093/sw/54.2.107>.

Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow.
“Retributive and Restorative Justice.” *Law and Human Behavior* 32, no. 5
(October 2008): 375–89. <https://doi.org/10.1007/s10979-007-9116-6>.