

Beyond impeachment: Applying the War Crimes Act of 1996

OVER the past few weeks, following the public release of the "Downing Street Memos," there have been numerous calls from Democratic members of Congress and other opposition figures for the impeachment of George W. Bush. There are probably a hundred perfectly valid legal arguments for impeaching Bush – all rising to a level far more serious than the lying about a blow-job that led to impeachment proceedings against Bill Clinton (though in actuality, there were far better reasons to impeach Clinton as well – I'll get to that later).

The Downing Street Memos, however, arrived at a time when public opinion resolutely turned against Bush's decision to invade Iraq. The "memos" are leaked minutes from a confidential meeting between British Prime Minister Tony Blair and George W. Bush eight months before the invasion of Iraq. The memos, whose legitimacy is not being contested by the British government, document Bush and Blair agreeing that Saddam needed to be overthrown and that intelligence reports would need to be "fixed" to support an invasion.

The memos provided slam-dunk smoking gun proof verifying an avalanche of supporting evidence reported in this column and other alternative press sources, that Bush purposely fabricated the WMD myth that "justified" the Iraq war. The memos offer first-hand evidence of Bush and Blair conspiring together to lead both nations into an

illegal war against Iraq – for reasons that neither has to this day made public. Bush lied to the American people and Congress regarding alleged weapons of mass destruction. This lie, like Clinton’s denial about having sex with Monica Lewinsky, is grounds for impeachment, though the implications of Bush’s lie are certainly graver.

The Downing Street Memo story, despite its historic gravity, languished for weeks in an American media netherworld. While the story captured headlines around the globe, it remained invisible in a Michael Jackson-obsessed U.S. corporate press. When impeachment calls finally arrived, the memo story snuck onto the periphery of the American media radar where it still lingers today mostly unnoticed.

A recent Zogby International Poll, however, indicates that despite a corporate media blackout, support for impeachment is quickly growing. Forty-two percent of Americans support impeaching Bush if he did what the memos prove he did – not tell the truth about the reasons for going to war with Iraq. Even among Republicans, 25 percent support impeachment. The overall number is even higher in the west (52 percent) and in the northeast (49 percent).

Capital crime and the Nazi precedent

An even less reported story is the international call for going beyond impeachment and prosecuting Bush, along with Donald Rumsfeld and a host of other administration officials, for war crimes in Iraq and Afghanistan.

It works like this: a relatively obscure, but gravely important bill became American law in 1996. The War Crimes Act of 1996 makes violating certain provisions of the Geneva Convention (or any protocol to the Convention that the U.S. is a signatory of) a U.S. federal crime if officials commit a “grave breach,” which the Geneva Conventions define, for example, as purposeful “killing, torture or inhuman treatment” of prisoners. The law designates this as a capital crime when such a violation results in the death of a detainee. Conviction could result in the death penalty.

While most Americans are unaware of this law, it was on the radar of current U.S. Attorney General Alberto Gonzales back in January of 2002 when he served as George W. Bush’s personal attorney. At the time, he warned about possible future prosecutions resulting from U.S. actions in Afghanistan. He suggested that the U.S. opt out of the Geneva Conventions, the universal set of laws enacted in 1949 to protect civilians and prisoners during wartime. Gonzales argued that the Conventions were “obsolete” and did not apply to Taliban fighters, echoing a nearly identical argument made in 1941 by the head of Hitler’s Wehrmacht, General-Field Marshal Wilhelm Keitel, who argued that international law regarding prisoners’ rights didn’t apply to Soviet soldiers.

John Ashcroft, the former Attorney General who would have been responsible for prosecuting any such crime when Gonzales issued his warning, concurred, suggesting that Bush weather angry world opinion and negate the United States' commitment to the Conventions. The U.S., however, stayed with Geneva.

Calling for prosecution

Now, organizations such as Amnesty International (USA), the American Bar Association, the Center for Constitutional Rights and Human Rights Watch have joined together in calling for an investigation of the Bush Administration for violating the U.S. War Crimes Act of 1996. Amnesty International has gone so far as to also request that international governments apprehend Bush or Rumsfeld and prosecute them for violating international law if either enters their territory.

Veterans for Peace, an independent group of U.S. military veterans, has outlined the specific Geneva Conventions protocols that the Bush administration has violated, in turn violating the U.S. War Crimes Act. They are:

A) Protocol I, Article 75: "(1)...persons who are in the power of a Party to the conflict...shall be treated humanely in all circumstances...(2) The following acts are and shall remain prohibited...whether committed by civilian or by military agents: (a) violence to the life, health, or physical or mental well-being of persons...(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault...and threats to commit any of the foregoing acts."

B) Protocol I, Art. 51: "The civilian population...shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." Art. 57: (parties shall) "do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects...an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one ..."

C) Protocol I, Art. 70: " The Parties to the conflict...shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel...even if such assistance is destined for the civilian population of the adverse Party."

D) Protocol I, Art. 35: "In any armed conflict, the right of the Parties...to choose methods or means of warfare is not unlimited...It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the environment."

E) Convention I, Art. 3: "Persons taking no active part in the hostilities, including

members of armed forces who have laid down their arms... shall in all circumstances be treated humanely...To this end, the following acts (in addition to those listed in Art. 75, above) are and shall remain prohibited:...the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

F) Convention III, Art. 5: "Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy (are prisoners of war under this Convention), such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

G) Convention IV, Art. 33: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited."

It is obvious that U.S. treatment of detainees at gulags such as Abu Ghraib and Guantanamo violates Articles 5, 75 and possibly Article 3. The siege of Fallujah violates Articles 51, 70, 33 and 35. The use of Depleted Uranium weapons in crowded urban areas such as Baghdad violates Article 35 among others. The list goes on and on, supported by a number of U.S. and international investigations such as one conducted by General Antonio Taguba which documented "widespread" "sadistic, blatant and wanton criminal abuses." Many of these violations have resulted in the deaths of innocent parties.

Presidential culpability

The question is how high in the chain of command does culpability for these crimes go? Former Member of Congress and New York District Attorney Elizabeth Holtzman argues that it goes right up to the top, implicating Secretary of Defense Donald Rumsfeld, Attorney General Alberto Gonzales and George W. Bush. In a recent article in *The Nation*, she argues that "officials in the chain of command who order inhuman treatment or who, knowing about it, fail to stop it are responsible." She goes on to cite directives from Rumsfeld permitting coercive interrogation and a May 22, 2004 FBI document citing an executive order from George W. Bush authorizing the use of stress inducing positions, sleep deprivation, etc. during interrogation. Other presidential directives on interrogation, she points out, are still under wraps, as is Bush's charge to the CIA regarding interrogation. There is also ample documentation now that torture continued in American-run gulags well after the world learned of such activities – without Bush taking

any meaningful action to end it.

Of course, don't hold your breath waiting for prosecution. A special prosecutor would have to be appointed by Bush and Gonzales. Gonzales, who is arguably culpable in many of these alleged crimes, created the legal arguments for torture when he was Bush's personal attorney. He is now the person in charge of prosecuting himself and Bush. And don't expect the Republican-led Congress to initiate impeachment proceedings. It's not like Bush lied about a blowjob. And don't expect Democrats to get too excited about the War Crimes Act of 1996. They certainly didn't act to prosecute Bill Clinton for the purposeful U.S. bombing raid against Serbia's R.T.S. civilian radio and TV studios in 1999, which resulted in the deaths of 13 media workers.

The forbidden headline

And don't expect the U.S. corporate media to give any serious attention to this story. Headlines such as "Should Bush Get the Death Penalty," are inconceivable in this political climate, now matter how clear the law is, how strong the evidence is or how numerous the victims are.

There is no statute of limitations, however, on the War Crimes Act of 1996. In the 1970s nobody thought that a Chilean court would ever prosecute that country's dictator, Augusto Pinochet, for crimes against humanity (he is currently being prosecuted). And nobody in the 1960s ever expected Klansmen responsible for the murders of civil rights workers in Mississippi to be brought to justice. For Bush (and Clinton, for that matter) to continue to evade justice, our current junta will have to rule on into the indefinite future – which given the growing irregularities in the American electoral system and the near absolute corporate concentration of ownership in the media, is entirely possible.