

**Replies and Comments:**

**Kate Greenwood**

For comments:

[kate.greenwood@ruhr-uni-bochum.de](mailto:kate.greenwood@ruhr-uni-bochum.de)

0049.234.3227935

**On the web**

<http://www.ifhv.de/>

**Focus**

**Links**

**Briefing by Amnesty International to the Security Council on Iraq**

<http://web.amnesty.org/library-/Index/ENGMDE140782003-?open&of=ENG-IRQ>

**Genocide in Iraq:** reports by Human Rights Watch

<http://www.hrw.org/reports/1993/iraqanfal/>

<http://www.hrw.org/reports/1992/iraqkor/>

**INDICT:** a UK-based organisation which collects evidence that can be used in the prosecution of senior members of the Iraqi regime for war crimes and crimes against humanity.

<http://www.indict.org.uk/about.php>

**This year's model: tribunal for Iraq**

While coalition forces seek to secure and preserve evidence of war crimes and atrocities, speculation is rising as to what form of tribunals will be or ought to be set up in Iraq and what crimes will be addressed. The prosecution of Iraqi government officials, armed forces and anyone else, regardless of nationality, who "order, direct, solicit, procure, coordinate, participate in, or support acts of violation of the international law of armed conflict as defined by the 1907 Hague and 1949 Geneva Conventions" has been proposed. The recent discovery of Kuwaiti prisoners of war, captured and held for 12 years makes it plain that not only breaches of the laws of war in the current conflict but also breaches from the Kuwait conflict and the Iran-Iraq conflict should be pursued. For a war motivated by the possession and threatened use of weapons of mass destruction by the Iraqi regime, past crimes of using chemical weapons against the Kurds during the Anfal campaign and against Iranian troops during the Iran-Iraq war which resulted in over ten thousand deaths must be prosecuted. Finally, acts of genocide or crimes against humanity in the form of the draining of the southern marshes and the displacement of the Marsh Arabs, the disappearances of the Yazidis and the Assyrians following a false amnesty in 1988, the killing of 30,000 to 60,000 Iraqis during the suppression of an uprising in 1991, and systematic torture and summary execution should also be addressed.

Key questions that arise include who would be subject to the jurisdiction of the court, how such a tribunal would avoid the perception of victors' justice, how international standards of justice and fairness can be guaranteed, and the extent of the jurisdiction that could be exercised by such a court.

One option that is not on the table is the referral of matters arising out of the current conflict to the ICC by the Security Council. This is for two reasons; first, the ICC would only have jurisdiction over offences which occurred after July 1 2002 (necessitating other trials of the same defendants for pre-July 2002 offences), and secondly the US, the most persistent objector to the exercise of ICC jurisdiction over nationals of non-party states, would probably veto such a referral by the Security Council.

Prior to the conflict, the US had supported the setting up of an ad-hoc tribunal for Iraq, similar to the ad-hoc Tribunals for Former Yugoslavia and Rwanda set up under the Chapter VII powers of the Security Council. The current US proposal is for a special court or "other appropriate tribunal or commission" to be established.

The US proposal leaves open several options for the type of court that could be created. The establishment of military commissions, already criticised for failing to accord international standards of fairness, due process and protections to the rights of the accused, should not be adopted. Local courts, constituted of Iraqi court officers who survived the regime or exiled Iraqi jurists brought back from exile by coalition forces would suffer problems of legitimacy. The most appropriate model would be a mixed or hybrid tribunal (i.e. a tribunal constituted of a mix of local and international jurists) which has been set up in conjunction with the United Nations such as those used in Kosovo, East Timor and Sierra Leone, and now agreed to for Cambodia. It should have jurisdiction over all persons responsible for serious violations of international humanitarian law that occurred in Iraq and have the powers to subpoena witnesses and documents outside Iraq. Such a tribunal would address concerns about legitimacy and the observance of international standards of fairness and justice, it would also contribute to the long term rebuilding of the Iraqi justice system.

---

**Responsibility**

BOFAXEs are published by the Institute for International Law of Peace and Humanitarian Law of the Ruhr-University Bochum: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

BOFAXEs are supported by the German Red Cross. **The writer is solely responsible for the content.**