



## The international criminal responsibility for war crimes committed by the British troops in Iraq 2003-2008 within the framework of the international criminal court (ICC)

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### Abstract

In 2003, the United States of America established an international alliance to wage war against Iraq. Britain was the main strategic ally of the US. In this war, the British troops committed war crimes during the invasion and after the occupation in Iraq between 2003 to 2008, but the problem is: *How to prove the responsibility of these forces for war crimes in Iraq?* The aim of this paper is to shed light the most important war crimes within the jurisdiction of the ICC so that victims can prosecute these forces for these crimes committed against them, as well as to support and activate a deterrent mechanism by punishing the perpetrators of these crimes in order to stop the crimes from happening in the future. The methodology adopted in this paper is a doctrinal legal research, this methodology has been chosen to examine the issues involved and clarify ambiguities and place them in a logical and coherent structure. As a result of war crimes committed against Iraqi victims, the British forces bear full international criminal responsibility for these crimes under Article 8 of the ICC Statute.

**Keywords:** international criminal responsibility, the British troops, International Criminal Court (ICC), war crimes in Iraq, international crimes

### 1. Introduction

The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in 1998<sup>[1]</sup>, which resulted in the formation of the first permanent International Criminal Court (ICC) to penalise the perpetrators of the most serious crimes against the international community, particularly war crimes<sup>[2]</sup>. It came into effect on July 1, 2002<sup>[3]</sup>. Through the establishment of the ICC, the international community has found the lost connection in the international legal order for settling the dispute and provides remedies in respect of the ICC jurisdiction<sup>[4]</sup>.

The foundation of the ICC was supposed to make the international community safer through the application of the

law in form of deterrence and punishment<sup>[5]</sup>. However, the opposite happened as wars and war crimes increased. The war waged by the international coalition forces led by the US and the British forces<sup>[6]</sup> against Iraq in 2003 is an example of this. These troops invaded Iraq on March 20, 2003. Since then until November 17, 2008<sup>[7]</sup> these troops committed the most heinous and grievous war crimes against Iraqi civilians and military<sup>[8]</sup>.

### 2. Problem Statement

In 2003, the United States of America established an international alliance to wage war against Iraq. Britain was the main strategic ally of the US. The international coalition forces in Iraq, especially the British troops, were responsible for a number of international crimes committed against the Iraqi people, especially war crimes. Since the beginning of the

<sup>1</sup> "United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court", in *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court* (Rome: United Nations, 1998), 1-88, accessed October 30, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N98/281/44/IMG/N9828144.pdf?OpenElement>. This conference was held in the Italian city, Rome, from June 15 to July 17, 1998. Delegations representing 160 countries, 31 international organisations and 136 non-governmental organisations as member observers participated in this conference. In this conference, the principal statute of the International Criminal Court (ICC) was issued after 120 countries voted for it.

<sup>2</sup> Article 8 of the ICC Statute.

<sup>3</sup> Article 126/1 of the ICC Statute.

<sup>4</sup> International Court of Justice, under Article 34 of its principal statute, has no jurisdiction over individuals but only over states.

<sup>5</sup> United Nations, "Rome statute of the International Criminal Court," <http://legal.un.org/icc/general/overview.htm> (accessed October 25, 2017).

<sup>6</sup> These forces were chosen from the forces contributing to the international alliance because of their high presence as they constitute the second in the number of soldiers after US troops; they committed heinous crimes in Iraq despite the fact that Britain was among the first States which organised the International Criminal Court as Britain signed the Statute of the ICC in November 30, 1998, and it ratified it to become state party number 42 in October 4, 2001. Coalition for the ICC, "United Kingdom," <http://www.iccnw.org> (accessed December 20, 2014).

<sup>7</sup> This is the date of signing the strategic agreement between Iraq and the United States of America.

<sup>8</sup> Linda Muammar Yashwi, *The Permanent International Criminal Court and its Jurisdiction* (Amman: Dar Al-Thaqafa Linnashri wa Li'lam, 2008), 313-318.

invasion and the occupation of Iraq, international coalition forces have committed numerous grave violations which fall under war crimes whose perpetrators can be punished before the ICC if the conditions of these crimes are met. In a statement of Mr. Mark Warwick, Chairman of the Committee set up by the British government to investigate the accusations made against British soldiers in 2010 in the British newspaper "The Independent", he confirmed for the first time that there was sufficient evidence to bring criminal charges against some of the British soldiers regarding 1,500 cases, including 280 accusations that count of illegal murder by the British armed forces in Iraq. The investigation began with 25 cases of accusation of illegal murder, whereas the investigation of more than 200 cases has not started yet. As well the British armed forces have used various kinds of weapons, ammunition, conventional and internationally forbidden bombs, such as the Weapons of Depleted Uranium, Napalm, the White Phosphorus and Cluster Munitions. The British forces were also committed the Detention, Torture or Inhuman Treatment crimes and Bombing the Cities and the Destruction of the Infrastructure, as well as to the violation of international law through interfering with Iraqi codes and regulations. However, proving that these forces are responsible for committing war crimes in Iraq has always prevented Iraqi victims from obtaining their legitimate rights, especially as Britain refused to open an investigation into complaints against its soldiers before the ICC for war crimes committed in Iraq between 2003 and 2008. In addition, the British government's has cancelled of the Iraq Historic Allegations Team (IHAT) assigned to investigate British soldiers accused of human rights violations in Iraq, leaving behind hundreds of cases without a solution. Therefore, this article attempts to find a solution to the problem of proving the responsibility of the British troops for war crimes during the invasion and occupation of Iraq 2003-2008.

### 3. Research Question

This article attempts to answer the main question: *How to prove the responsibility of the British troops for war crimes in Iraq between 2003-2008?*

### 4. Research Objective

The aim of this paper is to shed light the most important war crimes within the jurisdiction of the ICC so that victims can prosecute these forces for these crimes committed against them, as well as to support and activate a deterrent mechanism by punishing the perpetrators of these crimes in order to stop the articles from happening in the future.

### 5. Research Methodology

This paper contains a doctrinal legal research on the legal issues involved in the quest to prove the international criminal responsibility of the British forces for committing war crimes in Iraq from 2003 to 2008 and to prevent the impunity of these forces, as well as to give Iraqi victims more proof to obtain their rights. In this paper, the data for analysis are drawn from primary sources such as international and regional treaties, UN resolutions, statutes of the ICC, the domestic laws, international documents and non-governmental organisations such as Amnesty International. Secondary sources obtained

from books, articles, publications and internet sources will be referred to as well. The rationale for the choice of this methodology is underpinned by the fact that the issues involved require clarifying ambiguities and placing them in a logical and coherent structure which can only be effectively carried out by a doctrinal approach<sup>[9]</sup>.

The invasion and occupation have led to the emergence of a problem that the present writers seek to resolve, namely how to prove the International Criminal Responsibility for war crimes committed by the British armed forces from 2003 to 2008 be proved before the ICC?

Accordingly, the authors will introduce a number of points that will prove such criminal responsibility and answer the above question.

### 6. Literature Review

The ICC is: "A permanent international court, established to investigate and prosecute people accused of committing the most serious crimes which concern the entire international community, namely genocide, crimes against humanity, war crimes, and the crime of aggression."<sup>[10]</sup> In accordance with article 5 of the Statute of the ICC, the article 5 (1) (C) was allocated to war crimes<sup>[11]</sup>.

According to Helmut Satzger<sup>[12]</sup>, he defines war crimes as: "A violation of International Humanitarian Law, which creates a direct international responsibility under International Criminal Law." On the basis of this definition, the content of war crimes is a violation which affects IHL. This law is of two types. The first is the Geneva law which relates to the protection of victims of war, namely members of the military and non-combatants. The second law is the Hague law, which aims at protecting soldiers and prohibiting the use of dangerous and brutal ways in conflict, like using poisoned armaments. In defining war crimes in Article 8 of the Statute of the ICC, this law has taken into consideration the previous developments of committing international war crimes; this article, in the second paragraph, has distinguished between the categories of crimes committed between international armed conflict and those committed in the context of armed conflicts not of an international character.

Another important literature is the work of Walid Abdelgawad and Elizabeth Lambert-Abdelgawad<sup>[13]</sup>, in which they stressed that, during the military invasion of Iraq the US-British coalition was responsible for the commission of several

<sup>9</sup> Paul Chynoweth, 'Legal research.' *Advanced Research Methods in the Built Environment*, Wiley-Blackwell, Oxford (2008): 28-38.

<sup>10</sup> ICC, "What is the International Criminal Court?" [www.iccpi.int/en\\_menus/icc/about%20the%20court/frequently%20questions/Pages/1.aspx](http://www.iccpi.int/en_menus/icc/about%20the%20court/frequently%20questions/Pages/1.aspx) (accessed March 19, 2015).

<sup>11</sup> Article 5 of the Statute of the ICC:

" 1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression."

<sup>12</sup> Helmut Satzger, *International and European Criminal Law*, (Munich-Germany: Verlag C.H. Beck oHG, 2012), 262-270.

<sup>13</sup> Walid Abdelgawad and Elisabeth Lambert-Abdelgawad, "Les crimes internationaux de la coalition Americano-britannique en Irak," Centre for Research on Globalisation (CRG), <http://globalresearch.ca/articles/ABD306A.html> (accessed May 3, 2015).

international crimes, including war crimes. US-British Coalition committed many violations of fundamental rules of the law of war, in particular Articles 35, 48, 51, 52 & 53 of the Additional Protocol to the Geneva Conventions concerning the protection of victims of international armed conflicts.

## 7. Research Gap

Based on the kinds of literature reviewed, it would suffice to note that indeed a research gap exists in the sense that none of the previous works have addressed the issue of war crimes from the perspective of the current research. This study/research will enrich the discussion on war crimes within the framework of the ICC focusing mainly on war crimes committed by the British armed forces between 2003-2008. Hence, this study is indeed timely in addressing the acts of war crimes committed by the British armed forces in Iraq in order to bring the perpetrators to justice.

## 8. Discussion and Analysis

The International Criminal Responsibility is divided into two types<sup>[14]</sup> The International Criminal Responsibility of a natural person and the State. *The first is the international criminal liability of a natural person*; Domestic or international legislation has not been subjected to the definition of criminal responsibility, whether for natural persons or the state, leaving its definition of domestic and international jurisprudence<sup>[15]</sup>.

Jurisprudence has defined the criminal responsibility of the natural person as: *"The ability of the individual to bear the criminal penalties resulting from the crimes he committed."*<sup>[16]</sup> Article 3 of the Hague Convention 1907 states

<sup>14</sup> Yousif Hassan Yousif, *International Criminal Responsibility of State Institutions and International Manner of Litigation* (Cairo: National Centre for Law Publications, 2013), 36.

<sup>15</sup> Nofal Ali Abdullah Al-Safo, "Definition of Criminal Responsibility," [http://rights.uomosul.edu.iq/files/files/files\\_231463.pdf](http://rights.uomosul.edu.iq/files/files/files_231463.pdf) (accessed October 26, 2017).

<sup>16</sup> Sawaeidia Sami, "Methods of follow-up to international criminals," (master's thesis, University of Kasdi Merbah - Ouargla-, 2015), 11. In the same meaning, Al-Safo, "Criminal Law and Criminal Procedure". This has been demonstrated by the first principle of the Nuremberg Tribunal: "Any person who commits an act constituting an offence under international law shall be held liable for such act and liable to punishment." Haider Abdulrazaq Hameed, *The Development of International Criminal Justice from Temporary Courts to the Permanent International Criminal Court* (Egypt: House of Legal Books and Shtat House for Publishing and software, 2008), 106. This principle has been included in several international conventions and as well as Security Council resolutions, including: "Convention on the prevention and punishment of the crime of genocide," December 9, 1948, *United Nations Treaty Series* 78, no. 1021 (1948): 277-87. "Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field," August 12, 1949, *United Nations Treaty Series* 75, no. 973 (1949): 31-69. "Geneva Convention II for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea," August 12, 1949, *United Nations Treaty Series* 75, no. 971 (1949): 85-134. "Geneva Convention III relative to the Treatment of Prisoners of War," August 12, 1949, *United Nations Treaty Series* 75, no. 972 (1949): 135-286. "Geneva Convention IV relative to the Protection of Civilian Persons in Time of War," August 12, 1949, *United Nations Treaty Series* 75, no. 973 (1949): 287-417. "International Convention on the Suppression and Punishment of the Crime of Apartheid," November 30, 1973, *United Nations Treaty Series* 1015, no. 14861 (1973): 243-96. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," December 10, 1984, *United Nations Treaty Series* 1465, no. 24841 (1984): 85-210. "Rome Statute of the International Criminal Court," July 17, 1998, *United Nations*

that a belligerent party that violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. The belligerent party shall be responsible for all acts committed by persons forming part of its armed forces<sup>[17]</sup> Therefore, the criminal responsibility of a natural person in war crimes is committed by a natural individual, such as the president of the State or military commanders. This was the conclusion of the International Military Criminal Court in Nuremberg which states:

*"Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced"*<sup>[18]</sup>.

The prevailing view in international law that the persons responsible do not bear personal responsibility because they are protected by the principle of the sovereignty of the State. However, the Nuremberg tribunal rejected this argument, because the regulations of International Law that protect the representatives of a State should not be applied to acts that are considered as criminal acts by International Law, as well as the perpetrators of these acts should not protect themselves by utilising their official positions in order to escape from punishment<sup>[19]</sup>.

In addition, Article 27 of the Statute of the ICC has followed the stable regulations brought forward by the regulations of International Law regarding International Criminal Responsibility of natural persons. The article state as follows:

*"1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.*

*2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."*

***The second type is the International Criminal Responsibility of the State.*** International Criminal Responsibility of the State means: *"The punishment of the aggressor for what he*

*Treaty Series* 2187, no. 38544 (1998): 1. Security Council resolution 955/1994 on the establishment of the International Criminal Tribunal for Rwanda (ICTR), Security Council Resolution, S/RES/955 (1994). As well as Security Council resolution 808/1993 on the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Security Council Resolution, S/RES/808 (1993).

<sup>17</sup> Article 3 of the Hague Convention 1907:

*"A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."*

"Laws and Customs of War on Land (HAGUE, IV)," October 18, 1907, *Treaty Series* 539 (1907): 651.

<sup>18</sup> Bartłomiej Krzan, "International Criminal Court Facing the Peace vs. Justice Dilemma," *International Comparative Jurisprudence* 2, no. 2 (December/2016): 81-88.

<sup>19</sup> Trial of the Major War Criminals before the International Military Tribunal Nuremberg, 14 November 1945-1 October 1946, vol. I, Opinion and Judgment, Published at Nuremberg, Germany, 1947, p. 223. See also: Adel Majid, *International Criminal Court and National Sovereignty* (Cairo: Center for Political and Strategic Studies, 2001), 31.

committed crimes under international criminal law”<sup>[20]</sup>. International Criminal Responsibility has been associated with the problem of state sovereignty as determining such responsibility may affect the prestige and the sovereignty of the state. This has caused legal scholars to hold different views on its foundation. Some considered that state sovereignty is an objection to the International Criminal Responsibility<sup>[21]</sup>. Others said that the responsibility exists and does not affect the sovereignty of the state<sup>[22]</sup>. Each of them is supported by different arguments and evidence<sup>[23]</sup>. However, the International Criminal Responsibility of a state before the ICC is based on the fact that the criminal perpetrator is the reason for his own state’s commission of crimes, and the state’s responsibility is limited to compensation only. The fourth paragraph of Article 25 of the Statute of the ICC has resolved that by stating:

“No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under International Law.”<sup>[24]</sup>

On March 4, 2009, the ICC issued an arrest warrant against President of Sudan, Omar Al-Bashir for two war crimes under article 8 (2) (e) (I) and 8 (2) (e) (v) based on his individual criminal responsibility under article 25 (3) (a) of the ICC Statute<sup>[25]</sup>.

The effect of the war crimes committed by the British troops in Iraq are immense, and more seriously the problem coming from the severe environmental pollution of Iraqi cities as a result of the British troops’ use of internationally prohibited weapons<sup>[26]</sup>. This has made Iraq in the first rank in pollution<sup>[27]</sup>. Studies have revealed that nerve gas is the reason behind the high rate of infections with leukaemia (blood cancer) in children<sup>[28]</sup>. Researchers have found that 698 documented cases of leukaemia in the province of al-Basrah only happening to among children under the age of 15 from 2003 till 2007<sup>[29]</sup>. The use of internationally prohibited weapons in Iraq has had an impact on pregnant women (embryos) who inhaled contaminated dust even if such inhalation took place tens of kilometres far from the launch site. A medical report issued by

the Iraqi Ministry of Health states that about (64,000) thousand people most of whom were children and women were infected with cancer during the years 2005-2010<sup>[30]</sup>.

The absence of proper preparations to maintain order in the early days of the invasion and to provide long-term structural reforms of the Iraqi economy are also war crimes committed by British forces in Iraq<sup>[31]</sup>. Among the most controversial procedures is the administrative order No. 39 (2003) issued by the Provisional Coalition Authority with regard to the radical reform of the foreign investment law. Through this decision, Iraq was entirely opened to foreign investment; all the previous legal provisions which impose severe restrictions have been cancelled. In addition, foreign investors were no longer bound to reinvest part of their profits in Iraq as the transfer of all dividends obtained has become possible. Accordingly, these structural reforms which were not necessary to ensure the security of the occupation army nor to maintain civilian life was contrary to the provisions of Article 43 of the Hague Convention 1907, which states:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in their power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

According to a report by non-governmental organisations<sup>[32]</sup>, which has been adduced about the war and the invasion of Iraq, which took place on March 20, 2003, the invasion and occupation of Iraq caused destruction and violence, civil strife and economic hardship in the country. The report cited a summary of a number of war crimes committed, namely:

**Dangerous Weapons and Indiscriminate Use:** The British troops, participating in the international coalition that entered war against Iraq in 2003 and invaded it, has used internationally banned weapons, cluster bombs and depleted uranium weapons, the Iraqi ministry of the environment has proved that the use of 20,000 tons of depleted uranium alone during the invasion of Iraq<sup>[33]</sup>. The British Armed Forces Minister Mr. Adam Ingram admitted to the British House of Commons that British Challenger 2 tanks had fired depleted uranium bombs in southern Iraq<sup>[34]</sup>. As well as the British forces used cluster munitions which cause pain and unjustifiable and random effect<sup>[35]</sup> the British Defence

<sup>20</sup> Hameed, The Development of International Criminal Justice, 30.

<sup>21</sup> Shadia Ibrahim Ahmad Hamid Muhammad Amira, *International Legal Protection of Heads of States* (Cairo: General Egyptian Book Organisation, 2007), 152-154.

<sup>22</sup> Ibid.

<sup>23</sup> Yousif, International Criminal Responsibility, 37. For more details about these views, consider: Amira, International Legal Protection, 150-160.

<sup>24</sup> Taufiq Al-Anbari, “International Responsibility in the View of the United Nations Charter and the Jurisdiction of the International Criminal Court (state of the US Occupation of Iraq).” *Journal of International Studies*, 34 (2007): 115-116. This is also provided for in article 6 of the Statute of the ICTY and article 7 of the Statute of the ICTR. Hameed, The Development of International Criminal Justice, 32.

<sup>25</sup> ICC, Warrants of Arrest for Omar Hassan Ahmad Al Bashir, (No.: ICC-02/05-01/09 Date: 4 March 2009), [https://www.icc-cpi.int/pages/item.aspx?name=icc%20issues%20a%20warrant%20of%20arrest%20for%20omar%20al%20bashir\\_%20president%20of%20sudan](https://www.icc-cpi.int/pages/item.aspx?name=icc%20issues%20a%20warrant%20of%20arrest%20for%20omar%20al%20bashir_%20president%20of%20sudan) (accessed December 9, 2017).

<sup>26</sup> Ibid, 34, 118.

<sup>27</sup> Adil Al-Bayyati, “Catastrophic Effects of the Crime of the Invasion of Iraq on the Environment,” al Basrah Net, [www.albasrah.net/ar\\_articles\\_2010/0710/3adel\\_030710.htm](http://www.albasrah.net/ar_articles_2010/0710/3adel_030710.htm) (accessed August 24, 2015).

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Robert Kolb, “Occupation in Iraq since 2003 and the Powers of the UN Security Council,” *International Review of the Red Cross* 90, Number 869 (March/2008).

<sup>32</sup> Non-governmental report, war and occupation in Iraq, without the number or date, <https://www.globalpolicy.org/war-and-occupation-in-iraq.html> (accessed May 2, 2015).

<sup>33</sup> Razaq Hamad Al-Awadi, “The implications of the crime of aggression under the norms of international law and international covenants on human rights,” Secular Studies & Researches Centre in Arabic World, <http://www.ssrcaw.org/ar/print.art.asp?aid=256798&ac=1> (accessed September 27, 2017).

<sup>34</sup> Richard Norton-Taylor and Owen Bowcott, “British Use Of Cluster Bombs Condemned,” *The Guardian*, April 4, 2003, accessed October 28, 2017, <https://www.theguardian.com/politics/2003/apr/04/uk.iraq1>.

<sup>35</sup> One of the humanitarian reasons for banning these munitions is that it hit both combatants and civilians, as well as it leaves behind large quantities of unexploded ordnance which lead to the death of a large number of civilians indiscriminately. Kevin Riordan, “Convention on Cluster Munitions,” UN Audiovisual Library of International Law, [http://legal.un.org/avl/pdf/ha/ccm/ccm\\_e.pdf](http://legal.un.org/avl/pdf/ha/ccm/ccm_e.pdf) (accessed October 1, 2017).

Secretary Mr. Geoff Hoon told the House of Commons that his forces had already used cluster munitions in Iraq to protect his troops [36]. This is indeed what happened on 11<sup>th</sup> August 2004 when one of a cluster munition exploded on the victim Hamid Jassim Ali during his official work as a guard in the Maysan Chamber of Commerce, which resulted in the amputation of the left hand with injuries to the right hand and abdominal area [37]. In addition, the British forces have not assumed their international responsibility for identifying and removing areas affected by cluster munitions and to remove these munitions in contravention of Article 3 (2) of the Protocol V of the Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects [38].

**Detention and Prisons:** The British armed forces have detained and tortured a large number of the Iraqi victims without legal justification, as well as the lack of adequate safeguards for trial and fair defence for them thereby violating Article 129 of the Third Geneva Convention [39] and articles 5 (2) (3) (4) of the European Convention on Human Rights (ECHR) [40]. For example, the British forces violated article 5 of the third Geneva convention for detaining 88 Iraqis without specifying their positions by a competent court, 66 of them

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Moreover, the prohibition of these weapons has been also mentioned in several international treaties, the most important of which is article 22 of the Hague Convention 1907, "Laws and Customs of War on Land (HAGUE, IV)," October 18, 1907, *Treaty Series* 539 (1907): 651. As well articles 35, 51 and 52 of the Additional Protocol I of 1977 to the Geneva Conventions of 1949, "Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)," June 8, 1977, *UNTS* 1125, no. 17512 (1977).

<sup>36</sup> Norton-Taylor and Bowcott, "British Use Of Cluster Bombs Condemned."

<sup>37</sup> Hamid Jassim Ali, "Victim", interview by Haider Abdulrazaq, in person (Cairo district 2 / Maysan, January 11, 2016).

<sup>38</sup> "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects," October 10, 1980, *UNTS* 1342 (1980).

<sup>39</sup> Article 129 of the Third Geneva Convention states:

*"...Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention."*

"Geneva Convention III relative to the Treatment of Prisoners of War," August 12, 1949, *United Nations Treaty Series* 75, no. 972 (1949): 135-286. See also: Yashwi, International Criminal Court, 316.

<sup>40</sup> Article 5 (2) (3) (4) of the ECHR states:

*"2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*

*3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

*4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."*

"European Convention on Human Rights," November 4, 1950, *TS* 4, no. 5 (1950).

were in military uniform, or inside a military depot, or Iraqi soldiers [41].

**Abuse and Torture of Prisoners:** The communications that the total number of cases of torture and ill-treatment amounted to 1,009 cases until September 29, 2015 [42]. This was what the victim Radi Alioui Jabr was subjected to when he was arrested by the British armed forces on a suspicion between the victim's house and his neighbours, which the British forces are trying to arrest [43], as well as the suffering of Mr. Raad Mwat Khazaal [44] from torture and brutal treatment during his detention amounting to three (3) years by the British armed forces. They attacked him inside the prison during the performance of prayer and they made severe beatings resulting in a broken left jaw and internal bleeding and injure the intestines in addition to the tearing of the Holy Quran, as well they gave him a special injection causing permanent infertility [45].

**Attacks on Cities:** The British armed forces carried out attacks against indispensable properties to civilian life such as drinking water factories and water supply in many cities. In Basra, for instance, power and water were cut off for two weeks after the start of the war. In all of these acts, there was a clear violation of the provisions of Article 8 of the Statute of the ICC regarding the treatment of civilians and civilian property during the war [46]. As well the British troops employed white phosphorus in Iraq through a series of

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<sup>41</sup> The office of the prosecutor of the ICC, Report on preliminary examination activities on November 12, 2015, <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf> (accessed October 5, 2017).

<sup>42</sup> Ibid.

<sup>43</sup> Radi Alioui Jabr, "victim", interview by Haider Abdulrazaq, in person (Al Magar large / Maysan, January 12, 2016).

<sup>44</sup> He is one of the victims of detainees in the British Armed Forces with the serial number (872) for the period of three years and his arrest is written by the Red Cross with the number (012 429), and the man who attacked him is the Sergeant Major (Officer Deputy) named Sweet with a woman named Paula from the British armed forces.

<sup>45</sup> Raad Mwat Khazaal, "victim", an interview by Haider AbdulRazaq, in person (Almajar large/ Maysan / Iraq, 1/12/2016). Amnesty International confirmed that the coalition forces in Iraq arrest and torture the Iraqi citizens who remain for a long time in prison without charge or trial or even human treatment in addition to the lack of an apology to them after their release. Amnesty International, "Victims of torture at Abu Ghraib are still seeking justice," April 27, 2006, <https://www.amnesty.org/ar/latest/news/2006/04/abughraib-torture-victims-still-seeking-redress-20060427/> (accessed October 26, 2016). The crimes of torture carried out by the British armed forces are not only limited to all Iraqis, but it also tortures two Libyan dissidents, namely: Abdelhakim Belhadj and Sami al-Saadi in 2004 during the process of deportation from Britain to Libya at the time of the rule of Muammar Gaddafi. Aljazeera, "Guardian: the involvement of Britain must be revealed in torture cases," <http://www.aljazeera.net/> (accessed October 17, 2016). In addition, The Britain has allowed the use of torture in Northern Ireland in the seventies of the last century. Amnesty International, "Northern Ireland: those who turned a blind eye must be accountable to torture or its allowance," <https://www.amnesty.org/en/latest/news/2014/06/northern-ireland-those-who-condoned-or-authorized-use-torture-must-be-held-accountable/> (accessed October 17, 2016). Accordingly, the Government of Edward Heath banned torture and inhuman treatment in Northern Ireland in 1972. Husam Abdulmir Khalaf, "Academic expert", interview by Haider Abdulrazaq, in person (College of Law - University of Baghdad, September 10, 2017). It is worth mentioning that a British soldier died during his service in Iraq because of the heat. So, how was the Iraqi prisoner being tortured and treated inhumanely by the British armed forces? Refer to: R (on the application of Mousa) v Secretary of State for Defence. (Judgment of 10 December 2010) Case No. EWHC 3304 (2010).

<sup>46</sup> Yashwi, International Criminal Court, 218-226.

undoubted confessions and evidence. These include the announcement by the spokesman for the Prime Minister Tony Blair on November 16, 2005 that the British forces possessed white phosphorus and used it to invade the city of Fallujah <sup>[47]</sup>.

**Killing Civilians, Murder and Atrocities:** The British armed forces have established permissive rules "of engagement" that allow soldiers to use deadly force against any possible threat. As a result, members of the international coalition killed Iraqi civilians at checkpoints and during military operations at less suspicion places. The British armed forces killed several Iraqi non-combatants in military operations and air strikes <sup>[48]</sup>. The British judiciary has proved that the British forces violated the right to life <sup>[49]</sup>, and the prohibition of torture or inhuman treatment <sup>[50]</sup> of Iraqi civilian victims in many incidents, including the case of Mr. Bahaa Musa <sup>[51]</sup>. Accordingly, it is submitted, the British armed forces violated Articles 48, 51, 52 and 53 of Additional Protocol I 1977 of the Geneva Conventions of 1949. This is also a clear violation of article 8 of the Statute of the ICC <sup>[52]</sup>.

Furthermore, it is the contention of the others the occupation forces also violated Article 63, 142 and 143 (5) of the Fourth Geneva Convention regarding humanitarian organisations and their rights during armed conflicts as organisations like the ICRC and Red Crescent were banned from performing their duties in Iraq, which is a war crime according to Article 8 of the Statute of the ICC <sup>[53]</sup>.

Based on the above, it appears that the British armed forces have committed multiple violations against the Iraqi victims, which of course require them to bear the international criminal responsibility of these violations before the British domestic courts and the ICC.

## 9. Conclusion and recommendation

Based on the above, the authors reached that the US and British forces occupied Iraq. This occupation was recognized by Security Council resolution 1483/2003 <sup>[54]</sup>, under which the powers and obligations under international law to be applied by the US and Britain as occupying powers under unified command were defined <sup>[55]</sup>. During this invasion, the British armed forces committed war crimes in Iraq from 2003 to 2008, and all of these crimes fall under the acts of war crimes punishable by Article 8 of the Statute of the ICC. As a result

of these crimes, the British armed forces bear international criminal responsibility for the individual and international actions committed by their forces in Iraq from 2003 to 2008 as war crimes before the ICC. Iraqi victims must also be urged to obtain their rights by filing a complaint against the British forces who committed war crimes against them before the British courts first and then before the ICC in accordance with the principle of complementarity contained in Articles 1 and 17 (1) (a) and (b) of the Statute of the ICC <sup>[56]</sup>, considering that Britain is a founding member of the ICC. The Iraqi government also urged to join the ICC in support of international justice.

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<sup>47</sup> Dina Hajj Ahmed, "Napalm, Phosphorus and Uranium... the American Way to Democracy," *Iraqi issues* 16, (2006): 5.

<sup>48</sup> Khadr Karim Ashour, "The victim's uncle Hamid Mazal Karim and a member of the Iraqi delegation negotiating with the British side", interview by Haider Abdulrazaq, in person (Almagar large / Maysan, January 12, 2016). Aslo: Amnesty International, Iraq: Murdar by UK forces, May 11, 2004, MDE 14/007/2004.

<sup>49</sup> Article 2 (1) of the ECHR:

*"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."*

<sup>50</sup> Article 3 of the ECHR:

*"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."*

<sup>51</sup> R (on the application of Mousa) v Secretary of State for Defence. (Judgment of 21 December, 2010) Case no. EWHC 3304 (2010).

<sup>52</sup> Article 8 (a) (i), (ii) and (iii) of the ICC Statute.

<sup>53</sup> Article 8 (b) (iii) and (xxv) of the ICC Statute.

<sup>54</sup> Security Council Resolution S/RES/1483 (2003).

<sup>55</sup> Paragraph 14 of Security Council resolution 1483/2003.

<sup>56</sup> Article 1 of the Statute of the ICC:

*"An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute."*

Article 17 (1) (a) and (b) of the Statute of the ICC:

*"1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;"*

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