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**THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN
OCCUPATION**

Joint written statement* submitted by The Europe – Third World Centre (CETIM), a non-governmental organization in general consultative status, and the American Association of Jurists (AAJ), and International League For The Rights And Liberation of Peoples (LIDLIP), non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2005]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

THE SITUATION IN IRAQ, SINCE THE RECENT INVASION, IS CHARACTERIZED BY AN ACCUMULATION OF HUMAN RIGHTS VIOLATIONS, WITHOUT PRECEDENT, SINCE THE END OF THE SECOND WORLD WAR

I. THE AGGRESSION

The invasion of Iraq, under the false pretext that the regime in place possessed weapons of massive destruction, was a crime of aggression and a crime against peace¹.

II. WAR CRIMES

Acts of war committed during an aggression are war crimes, as specified in the Nuremberg Ruling (Judgement), already mentioned in footnote 1.

Furthermore, during the aggression against Iraq, different war crimes, sanctioned under international humanitarian law (The Hague Conventions of 1889 and 1907, their related regulations on laws and customs of territorial war, the Geneva Conventions of 1949 and their optional protocols I and II of 1977, etc), were committed :

- 1) Attacks against civilian populations;
- 2) Use of prohibited weapons;
- 3) Massive and prolonged bombing;
- 4) Attacks against civilian infrastructures;
- 5) Attacks against communication media and death of journalists.

III. THE OCCUPATION

Around one hundred thousand Iraqi civilians died, most of them women and children, most frequently as a result of the violence of the occupation, according to the conclusions of a study published on 29 October 2004 in the British medical weekly, *The Lancet*.

The occupation is also Abou Ghraib prison and torture, daily aerial attacks by the occupation forces, estimated at around 145,000 and the massive presence of mercenaries, estimated at around 30,000, that is, generalized and systematic violations

¹ Article 6 (a) of the Statutes of the Nuremberg Tribunal specifies: "Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under." And the Nuremberg Tribunal Ruling of 30 September 1946 states "Starting a war of aggression is not only an international crime, it is the supreme international crime, being no different from other war crimes except that it encompasses them all".

The Statutes and Judgement of Nuremberg are part of the applicable law conforming with resolution 95 (I) of the UN General Assembly of 11 December 1946, which confirmed the principles of international law recognized in these two documents. The 1968 Convention on the imprescriptibility of war crimes and crimes against humanity also ratified these principles.

of the Geneva Conventions.

IV. THE SECURITY COUNCIL ENDORSED VIOLATIONS OF INTERNATIONAL LAW IN IRAQ

On 22 May 2003, the 14 Member States present (Syria was absent) of the Security Council, unanimously adopted Resolution 1483, based on a project presented by the USA, Great Britain and Spain. The said resolution: 1) ordered the lifting of the embargo against Iraq 2) granted the control of the economy and the political future of Iraq to the occupying forces in violation of the 3rd section of Title III (occupied territories) of the 4th Geneva Convention, which gives limited prerogatives to the occupation forces 3) asked to the occupying forces to work for the establishment of a provisional administration "until an internationally recognized and representative government can be established by the Iraqi people" *but sets no timetable nor time limit to ending the occupation*, etc. 4) provides for the establishment of a Fund for the development of Iraq, to be administered by the Central Bank of Iraq under the supervision of the occupying powers and provisioned by oil revenues. This fund is intended for the economic reconstruction and rehabilitation of infrastructures -most of which were destroyed by the allied forces- and which, in fact, has been attributed almost exclusively to US companies, etc.

It should be noted: 1) that with Resolution 1483, the Security Council, by recognizing the foreign occupation of an independent country, for an indefinite period of time and the appropriation by the occupying forces of its natural resources, in particular its oil, violates fundamental principles of the UN Charter, the Universal Declaration of Human Rights and International Covenants on Human Rights. Furthermore, the Security Council accepts that an independent State can be placed in a situation which is inferior to that provided for in Chapters XI and XII of the UN Charter (non-autonomous territories and international regime of fiduciary administration); 2) that the said resolution is in flagrant contradiction with Resolution 1514 (XV) of the UN General Assembly of 14 December 1960 (Declaration on the granting of independence to colonised countries or peoples) which solemnly proclaims: "Subjection of people to subjugation, to domination and to foreign exploitation constitutes a denial of fundamental human rights, is contrary to the United Nations Charter and compromises the cause of peace and international cooperation"; 3) that Resolution 1483 officially re-establishes the international custom of wars of aggression, colonialism and neo-colonialism and the systematic pillage of the resources of countries which are victims of these crimes.

On 16 October 2003, the Security Council adopted resolution 1511 which reiterates the legitimacy of the foreign occupation of Iraq.

On 8 June 2004, the Security Council adopted resolution 1546 which among other things:

"1. Endorses the formation of a sovereign Interim Government of Iraq, as presented on 1 June 2004, which will assume full responsibility and authority by 30 June 2004 for governing Iraq while refraining from taking any actions

affecting Iraq's destiny beyond the limited interim period (underlining by authors) until an elected Transitional Government of Iraq assumes office as envisaged in paragraph four below;"

We wonder if the interim government, which must "refraining from taking any actions affecting Iraq's destiny beyond the limited interim period" has the power to repeal the Coalition Provisional Authority Orders, No. 39 which has privatized state enterprises and opened Iraqi markets without limitation to foreign investors (in fact only US investors) departing from previous legislation in this area. This constitutes a flagrant violation of international law currently in force, including the Fourth Geneva Convention and the Hague Convention of 1907 which allow the transfer of sovereignty of an occupied state to the occupying state. The occupation is a fact and not a source of law. Coalition Provisional Authority Order No. 37 which exempts occupying and administering forces from tax, or even No. 17 which accords legal immunity to the occupiers and to their sub-contractors (underlining by authors). We may assume that among the "sub-contractors" benefiting from immunity are the interrogation specialists from private companies CACI International and Titan International. The latter have signed contracts with the occupier have been active in Abu Graib prison and are accused of torture.

Paragraph 2 of Resolution 1546 states:

"Notes with satisfaction also that between now and 30 June 2004, the occupation will end, the provisional authority of the coalition will cease to exist and Iraq will regain its sovereignty."

On 30 June 2004, the occupation "ended". However, the occupation army, made up of 150,000 men, remains in Iraq because the interim government so requested. The fact that a foreign army of 150,000 is "invited" to remain on national territory, while this very army occupied the country during a war of aggression and maintains decision making power on the use of force, implies complete renunciation of national sovereignty.

Paragraph 2 of Resolution 1546, like paragraph 9 reproduced below, is a challenge to common sense and the most elementary principles of logic and law.

The continuity of the occupation is therefore a unilateral decision of the occupant and the Resolution 1546 does not manage to disguise this fact.

It is possible that the "sovereign" government of Iraq might request the occupiers to withdraw from Iraqi territory. This possibility is taken into account in paragraphs 9,10 and 12 of Security Council Resolution 1546:

"9. Notes that the presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore reaffirms the authorization for the multinational force under unified command established under resolution 1511 (2003), having regard to the letters annexed to this resolution;

10. Decides that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of the multinational force and

setting out its tasks, including by preventing and deterring terrorism, ...;

12. Decides further that the mandate for the multinational force shall be reviewed at the request of the Government of Iraq or twelve months from the date of this resolution, and that this mandate shall expire upon the completion of the political process set out in paragraph four above, and declares that it will terminate this mandate earlier if requested by the Government of Iraq;

Thus, if the Iraqi government requests the occupants to leave, it will find itself confronted by a powerful army which will only go if the US government² so decides and not before, and by three Security Council resolutions (1483, 1511 and 1546) which “legitimate” the said occupation. Thus, any request to end the occupation would have to be approved by another Security Council Resolution, which the USA would be able to prevent through its right of veto.

V. A POLITICAL PROCESS IMBUE WITH ILLEGITIMACY

We are witnessing the establishment of a political process involving fundamental actions for the exercise of sovereignty by the people and the nation of Iraq. This is happening under the reign of an army of occupation which has the right to use force for the maintenance of “stability and security and to control terrorism” with no control by Iraqi authorities, as has emerged clearly from the exchange of letters between Colin Powell and Ayad Allawi and the refusal by the USA of the proposal by the French government to establish a minimum of Iraqi control in relation to the use of force.

The members of the occupation army continue to enjoy legal immunity on Iraqi territory, as established by the occupation authorities Coalition Order No. 17. They benefit therefore from this immunity in the International Criminal Court (ICC) even though the Security Council has not renewed resolutions 1422 and 1487, adopted in 2002 and 2003, which accorded immunity to US occupation troops at the ICC. This immunity in the ICC remains because the USA is not party to the Treaty of Rome. Only the Iraqi government therefore could denounce US citizens at the ICC for crimes committed on its territory, in conformity with Article 12 of ICC statutes. However, that action is prevented by Coalition Order No. 17. The Security Council could also take this action but as we know, the USA can exercise its right of veto.

The “political process” therefore is completely flawed because it is being developed under a foreign occupation which controls all the power, can exert it and is exerting it, in a discretionary, brutal manner with impunity.

Furthermore, the special representative of the UN Secretary-General has played and continues to play a simple role of bystander.

The elections of 30 January 2005 took place against this background. Further, the climate of insecurity made the presence of foreign observers and the press impossible.

² President Bush in his State of the Union address to Congress on 2 February 2005, said that fixing a timetable for the withdrawal of the occupying forces was “artificial”.

Without effective and efficient international control before and during the elections, without internal control by the occupying authorities, with anonymous candidates and without a real electoral campaign, it is impossible to consider that the elections reflect the sovereign will of the Iraqi people.

It suffices to recall that the elections in East Timor took place two years after the withdrawal of the occupying forces and that they were prepared and organized under UN control.

The so called “international community” that is, the leaders of a handful of great powers, declared themselves satisfied with this parody of an election, qualifying them as democratic. If these elections had taken place without the patronage of a superpower, this same “international community” would have unanimously condemned them.

VI. CONCLUSION

The American Association of Jurists (AAJ), the Europe - Third World Centre (CETIM) and the International League for the Rights and Liberation of Peoples (LIDLIP) believe that the Human Rights Commission, in the strict context of its mandate, should adopt a resolution:

- 1) Condemning unambiguously the violations of international law and humanitarian law which have been committed in Iraq since the aggression;
- 2) Supporting an enquiry into the violations and bringing to justice the perpetrators;
- 3) Supporting a peaceful and democratic solution with participation, without exception, of all sectors of Iraqi society in the context of respect of the sovereignty and the right to self determination of Iraq, a solution which requires, as first priority, the withdrawal of the occupation army.
