Judgment

Prof. Niloufer BHAGWAT, J.

The Prosecution has presented a formidable Indictment against the Defendant, George Walker Bush, President of the United States and Commander-in-Chief of US military forces for serious crimes; waging a war of aggression on Afghanistan, war crimes and crimes against humanity against the Afghan people, against prisoners of war; and the use of radioactive depleted uranium weapons of mass destruction, against the people of Afghanistan; with serious fall out effects on the military personnel of the United States, UK and other forces deployed; and on countries, in and around the region.

Relevant for the trial, is the profile of the Defendant, elected as the 43rd President of the United States, and sworn in as President in January 2001; the year of the military attack on Afghanistan; after an election which received international focus, in view of the issues involved, resolved by the Supreme Court. The Defendant's past history, of close association, with the Corporate sector in the United States of America, has been highlighted in the indictment by the prosecution, in particular with the Oil and Energy sector; the Defendant formed an oil company, the Arbusto Energy Inc in 1978, which was unsuccessful; after which Spectrum 7 Energy of Ohio was formed in 1984 with the Defendant as CEO; thereafter the Defendant was a Consultant to Harken Energy from 1986, prior to being elected as Governor of Texas in 1994 and re-elected in 1998.

2. Accomplices and Accessories to the Crimes of waging a war of aggression, war crimes and crimes against humanity.

In view of the undisputed facts, that apart from the military forces of the United States, ordered to be deployed by the Defendant as Commander-in-Chief for the war on Afghanistan, military forces of other governments were deployed and leading members of the defendant's administration, participated in the decision making; the prosecution has clarified in the indictment, that other members of the Defendant's administration who were a party to the conspiracy to wage a war on Afghanistan, and those heads of government who have deployed military forces of their countries to assist in the military occupation; are equally accomplices and accessories to the crimes committed by the Defendant; though in this trial it is the Defendant who has been proceeded against.

3. Universal Jurisdiction

The Tribunal being conscious of the basic principle of jurisprudence that ' no one must be condemned unheard ', that ' justice must not only be done but appear to be done '; appointed amicus curiae, a Senior counsel from Japan, to assist with the defense of the Defendant; amicus curiae entered a plea of “not guilty”, on behalf of the Defendant and questioned the jurisdiction of the Tribunal as and by way of preliminary objection; the Defendant, though duly served by the Secretariat of the ICTA through the embassy of the United States in Tokyo and directly, failed to appear before the Tribunal and enter a plea.

Professor Willard B. Cowles in an article titled ‘Universality of Jurisdiction over War Crimes’

(California Law Review, Vol. 33 (1945) p.177) emphasized that:

> ... "all civilized states have a very real interest in the punishment of war crimes "...and that" an offense against the laws of war, as a violation of the laws of nations, is a matter of general interest and concern"...

This was in an academic paper written more than half a century ago, when the principle of 'Universality of Jurisdiction', and the personal accountability of individuals for War Crimes, was gaining adherents among jurists, after the Second World War.

The objection raised to the exercise of jurisdiction by this Tribunal on behalf of the Defendant, by amicus curiae; and the United States government claiming "impunity" in various forums, against indictment for war crimes; is best answered by the undertaking given to the International Military Tribunal at Nürnberg, by the Chief Counsel for the government of the United States of America, Mr. Justice Robert H. Jackson, who stepped down temporarily, as Judge of the United States of America, to represent the United States before the Nürnberg Tribunal, established pursuant to the Moscow Declaration and the London Agreement of 1945, to which the government of the United States was a signatory. Justice Jackson categorically declared that:

> "If certain acts of violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them and we are not prepared to lay down a rule of criminal conduct against others, which we would not be willing to have invoked against us..."

In view of this position taken before the Nürnberg Tribunal, the Defendant is liable not only before this Tribunal, but the entire claim of 'impunity' of the government of the United States, is legally untenable; no government can surrender the right vested in its citizens to invoke International Criminal Law, not by a Resolution of the Security Council nor by bilateral treaty.

On the issue raised by amicus curiae, of how authoritative is the verdict of such a Tribunal; it is necessary to restate, that sovereignty is a constitutional and political concept, which resides in the final analysis with the people; who have a right to judge through legal forums created by them; at a critical period of history for serious crimes committed against humanity; in particular, when several governments across continents have abandoned the democratic principle of governance; many being elected in seriously flawed electoral process; on the basis of Corporate support and campaign contributions.

4. The World Disorder.

The critical question, among others, posed before this Tribunal by the Prosecution is, how do we challenge this "World disorder"; this is a juridical question; yet the law is always a reflection of existing economic and political systems; though all legal systems maintain that the purpose and objective of law, is the preservation of the 'Rule of Law' within and between nations; this presupposes that there are no privileged individuals, classes, or groups, within and across nations.

5. The Charge of Waging a War of Aggression.

The International Military Tribunal at Nürnberg referring to the charge of waging a war of aggression highlighted the gravity of this offense in the following words:

> "To initiate a war of aggression...... is not only an international crime; it is the supreme international crime differing only from other war crimes, in that it contains within itself the accumulated evil of the whole".

The legal defense of the Defendant to this charge, is to be found in public statements made by the Defendant, after the terrorist attacks of 11th September 2001, on the World Trade Center and the Pentagon, by hijacking of aircraft in the United States; which admittedly, destroyed the lives of approximately three thousand innocent citizens of the United States; and of other nationalities and religious beliefs.

The defense advanced by amicus curiae is, that the military attack of 7th October 2001 ordered by the Defendant, as President of the United States and its Commander in Chief, was a 'just war' or a 'bellum justum'; a war of self defense, a preventive war; in response to the terrorist attacks of Al Qaeda, masterminded by Osama bin-Laden, harboured by the Taliban government in Afghanistan, which had permitted terrorist camps on its territory; who were committing hostile acts against the United States of America.

6. 11th September 2001 attacks in the United States had no connection with Afghanistan.

The prosecution has questioned the factual and legal basis of this defense, submitting at page 17 of its Indictment that -

> "... it is not established that the 9.11 incidents were the acts of Osama bin-Laden and the Al Qaeda ……..the letter to the Chairman of the UN Security Council which the United States sent on October 7,2001 and another letter which the United Kingdom sent of October 4, 2001 and the videotape released on December 13 are inadequate as defences.Therefore the criminal activities of Osama bin-Laden and the members of the Al Qaeda have never been established enough to prosecute them for 9.11 incidents".

Admittedly videotapes of an individual claiming to be Osama bin-Laden, reaching swiftly into the hands of the administration of the Defendant, and other governments, desiring to advance their own explanation for events; is not proof of the involvement of Osama bin-Laden and the Al Qaeda organization, in the terrorist attacks of 9.11; this is tainted evidence.

On the basis of the facts which have emerged in the public domain, of the background of Osama bin-Laden and of those alleged to have perpetrated the attacks of the 11th September 2001; of which judicial notice can be taken as per rules of evidence of the ICTA statute; the core issue which confronts this Tribunal is whether those who allegedly committed the crimes of the 11th September 2001 in the United States, had any connection with Afghanistan. The relevant facts to assess the defense are:

A. As per identities of the hijackers/terrorists of 11th September disclosed by US Intelligence Agencies; 15 are citizens from Saudi Arabia; and four others are citizens of countries like Kuwait, Morocco, and UAE.

B. There is yet, no authoritative report on the perpetrators of 9.11.The organization and circumstances, which resulted in the hijacking of so many aircraft. The US Senate Investigative Commission has held back crucial pages of its report, dealing with the role of “friendly” governments.

C. The families of the victims of the 11th September 2001 terrorist attacks, have demanded another Commission; publicly requesting disclosure of vital evidence, such as the “black boxes”, “voice recorders”, the complete “air traffic control records” of the relevant flights; and the airport “surveillance tapes” showing passengers boarding the flights and passenger lists.

D. Administration and Justice Department officials moved to prevent disclosure of evidence, that could be used in discovery proceedings, in Civil Law Suits filed by many families of 9.11 victims; Judge Hellerstein, hearing the suits has suspended 9.11 tort law suits, pending clarification of government's decision.

E. Another 10 member commission jointly of the Senate and White House, the Keenan Committee has been appointed, which has yet not given an authoritative report on the events of 9.11; some of the members of this committee, have issued statements of being denied Daily Intelligence Briefings made to the President by the CIA in the months preceding the attack.

F. General Richard B. Myers, chairman of the Joint Chiefs of Staff of the United States military, admitted, that no US aircraft from any US air base, or from Norad, the joint US -Canadian Air Defense Command were mobilized or scrambled on 11th September 2001 to protect the citizens of the United States.

G. Osama bin-Laden is not an Afghan or a religious fighter, but a wealthy billionaire; a citizen of Saudi Arabia; recruited as the Intelligence asset of the United States and other countries for many years; the pivot of the 'Arab fighters '; trained in furtherance of the military strategic interests of the government of the United States on the Pakistan/ Afghanistan border; for deployment in various regions. The bin Laden family has had extensive financial interests in the United States and Saudi Arabia, including in the Carlyle Corporation, in which the Defendant and his family also had investments.

H. The takeover of the Taliban militia in 1996, as the de facto government in Kabul controlling several regions of Afghanistan, was with the backing of the California based oil and energy company, Unocal, with extensive military and logistic support from the United States, Pakistan and Saudi Arabia. Jane's Defense Weekly an authoritative journal on defense acquisitions the world over, has conservatively estimated that half of all military supplies of the Taliban militia were from Pakistan; which in turn obtains substantial military supplies from the government of the United States.

I. The de facto Taliban government in Kabul, was wholly dependent for support on the government of the United States and Pakistan; and had not committed a single act hostile to people of the United States; prior to the military invasion of Afghanistan on 7th October 2001 and the dispersal of the Taliban forces. It was not the case of the Defendant that the United States was attacked by the Taliban government.

J. The Al Qaeda a fact which is undisputed was not an organized military force; they were “foreign fighters” recruited by covert agencies from several countries.

K. On the submission advanced by amicus curiae that this was a "just war" what has been termed as "bellum justum" against international terrorism, to disperse terrorist bases in Afghanistan; it is public knowledge that the terrorist bases, were established to conduct the "holy war" against communism on the Pakistan/Afghan border by the United States with the assistance from the ISI in Pakistan; this has been officially confirmed by the public admissions of Zbigniew Brezinsky, the eminent former National Security Adviser to President Jimmy Carter; who has disclosed that the first directive sanctioning assistance for the training of such fighters on the Pakistan /Afghanistan border, to pursue the civil war against the communist government in Afghanistan, was issued by President Jimmy Carter on July 3,1979; prior to the arrival of Soviet troops into Afghanistan; this had the desired effect of involving the Soviet military in support of the Afghan government, which escalated the civil war; these facts have been independently confirmed by the former Director of the CIA Robert Gates in the book "From the Shadows".

On the basis of the aforesaid factual position the defense advanced that the military attack on Afghanistan was a "just war" as a measure of "self- defense" or a "preventive war" cannot be legally sustained.

7. The war on Afghanistan not in conformity with the Charter of the United Nations, customary International Law and the decisions of the International Court of Justice.

Despite the aforesaid findings on facts, the absence of evidence to establish that the 9.11 attacks had any connection with Afghanistan; even if such a conclusion was possible, as per the public statements of the Defendant on the reasons for waging this "War against Terror"; would this justify a full scale military onslaught on Afghanistan by the Defendant, with hundreds of bombing sorties.

One of the most significant 20th Century developments in International Law has been the restriction and regulation by treaty and customary law of the former unregulated privileges of States to resort to war.

The Defendant as President of the United States and as Commander-in-Chief of the United States Armed forces was not constitutionally empowered to declare war; the Congress under the US Constitution was not authorized to delegate to the President of the United States its constitutional power to declare war. Whereas under Article 1, Section 8, clause 11 of the Constitution of the United States, the power to declare war vests with Congress; limitations are imposed on the exercise of this power, by Article 1, Section 8, clause 15, which mandates that Congress is not authorized to "call forth the militia" except to "execute the laws of the Union and to suppress insurrections and invasions". The terrorist attack of 11th September 2001 was neither an invasion nor insurrection of the United States of America; Congress could not delegate what was constitutionally impermissible; prima facie the military attack on Afghanistan was an unconstitutional and illegal exercise of power by the Defendant.

Moreover the war on Afghanistan was not justified in accordance with the Charter of the United Nations; Article 2, paragraph 4 of the United Nations, a treaty ratified and signed by the United States, specifies that-

> "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations."

The only exception to the aforesaid binding rule, is the right to resort to self-defense under Article 51 of the Charter of the United Nations, strictly subject to the rule of law and procedure laid down in the UN Charter; the nature of incidents of 9.11, were terrorist attacks; as such Article 51 of the United Nation Charter could not be resorted to; the issue ought to have been resolved by resorting to Conventions against terrorism to which the United States is a signatory. Article 33 of the UN Charter mandates that before resorting to war, every government is required to resort to negotiation, mediation, conciliation, arbitration and judicial settlement. Admittedly this mandatory procedure was not complied with.

The communication of John Negroponte, US Permanent Representative to the Security Council, indicates, that the decision by the Defendant to resort to war was taken, before the complete facts were available on the nature of the attack. This communication informed the Security Council that:

> "Since 11 September, my government has obtained clear and compelling information that the Al Qaeda organization which is supported by the Taliban regime in Afghanistan had a central role in the attacks. There is much we do not know. Our enquiry is in its early stages. We may find that our self-defense requires further actions with respect to other organizations and States"

It was clear that the enquiry, as to the nature and cause and perpetrators of the attack were in the "early stages"; war cannot be resorted to unless the facts are clearly ascertained, it is a remedy of last resort; the last sentence of this communication, that the government of the United States reserves its right to take "further actions with respect to other organizations and States" establishes that a case for continuous military intervention was already being made.

The right to resort to war as a measure self-defense, is neither unrestricted nor subjective; as observed by the International Court of Justice in the case relating to "Military and Paramilitary Activities in and against Nicaragua" (Nicaragua V The United States of America, I.C.J. Reports 1986 p.94 para 176) ruling that;

> ... "the submission of the right to self-defense to the conditions of necessity and proportionality is a rule of customary International Law..."
>
> ... "there is a specific rule whereby self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in International Law"...

This dual condition applies as much to customary International law and to the right of self-defense under Article 51 of the Charter of the United Nations.

The terrorist attacks of 9.11 in the United States were not carried out by any government or an armed contingent of any government or State party; nor authorized in any manner whatsoever by the de facto Taliban government in Kabul; the response of the Defendant in waging a war to devastate an entire nation, was neither a proportional response, nor warranted.

The Defendant and his administration from the past practice of States, was wholly aware, that many countries facing terrorist attacks; hijackings of aircraft, shooting down of civilian aircraft, and continuous cross border terrorism for several years; have not resorted to war; opting to negotiate on the issues. The United States government could have resorted to the provisions of the Tokyo Convention or to the 1971 Montreal Convention for the Suppression

of Unlawful Acts against the safety of Civil Aviation; or to any of the existing Conventions against terrorism; a proportionate response.

Article 51 of the Charter of the United Nations permits the exercise of the right to self-defense only "until the Security Council has taken measures". The Security Council responded immediately; the Security Council, by Resolution No.1368 passed on 11th September 2001 and Resolution No.1373 dated 28th September 2001; called on member States to work together urgently to "fully implement the relevant International Anti-Terrorist Conventions" and "prevent and suppress the financing" of terrorist attacks by "freezing financial" assets.

It may be argued, that the Defendant made an attempt to prevent the war, by demanding that Osama bin-Laden and the Al Qaeda, should be handed over by the Taliban; this admittedly was not a bona fide attempt; as wholly inadequate time was allotted for the staged negotiations, even though the Taliban government, made some responses. In less than a month of the terrorist attack, before dawn on 7th October 2001, the US-UK coalition forces launched serial bombings in Afghanistan on Kabul and on 31 major cities and towns without exhausting other alternative remedies.

The document Prosecution Ex. B-1 which is the address of the Defendant to Congress dated 20th September 2001 establishes that the Defendant declared that the Al Qaeda organization, was to be found in sixty countries; that the "war against terror", was just beginning with Afghanistan, as the first target, but not the last; and that for the Defendant, the military attack on Afghanistan was only the first of a series of wars to be initiated against different nations.

In any assessment of the nature of the war in Afghanistan, it must be remembered that the United States had termed Soviet military troop presence in Afghanistan, in support of the then Afghan government in 1979; as Soviet military aggression; applying the same standards, the war waged by the Defendant could not be regarded as a "just war" or a war in "self-defense"; as the Taliban government admittedly did not request for any military assistance from the United States, which the Afghan government in 1979 had sought from the former USSR, against the Mujahedeen groups waging covert war.

The issue of waging a war of aggression cannot be judged by this Tribunal blindfold; events in Iraq, even before the hearings of this Tribunal commenced, establish a consistent pattern which this Tribunal is entitled to take judicial notice of; the war in Afghanistan was followed, by the military attack on Iraq; on the basis of "non-existing weapons of mass destruction"; a war in which the entire infrastructure of Iraq was destroyed in a manner similar to Afghanistan; DU weapons were extensively used in both countries as weapons of extermination of present and future generations, genocidal in properties. It is only the oil pipelines, oil wells and platforms and the contracts of Corporations which had to be secured; even as the livelihood and economies of both nations were destroyed.

The war waged on Afghanistan was manifestly a war of aggression.

8. The alternative reasons advanced by the prosecution for the War of Aggression - UNOCAL's (Centgas Consortium) objective of regime change for the pipeline project.

The prosecution has referred in the Indictment to the involvement of oil and energy Companies of the United States, in the internal affairs of Afghanistan as the real reason for this war, and relied on public documents, establishing that the California based Oil Company,

the Unocal, through a seven member consortium Centgas, had commenced negotiations with various factions, in the government of Afghanistan; for its pipelines project, across Afghanistan, Pakistan, to the Indian Ocean; from the oil-gas rich Central Asiatic Republics of the former USSR; in preference to the old pipeline routes through Russia or an alternative route through Iran. (UNOCAL Position Statement: "Proposed Central Asian Pipeline Projects", (1998) www.unocal.com/).

This project aimed at exercising monopoly control over the hydrocarbon resources in this region and distribution through pipelines; referred to in the Complaint/Petition lodged in 1998, by citizens groups to the Attorney General of California, under California Code of Civil Procedure 803 and the California Corporations Code,1801, for cancellation of Charter of UNOCAL, for violation of human rights within the USA, in Afghanistan and Myanmar.

The Unocal company commenced negotiations with various political factions in the government; however the internecine fratricidal struggle of the former Mujahideen groups, created a difficult situation for negotiation; as a consequence the Unocal, supported the creation of a hard line Taliban militia government, with arms supplies and logistic support from Pakistan; supported by the United States and Saudi Arabia; which gradually captured Kabul and extensive areas in the southern, central and eastern regions of Afghanistan.

The proposed pipeline project once again faced difficulties, on the failure of the Taliban militia, to control the entire geographical territory of Afghanistan, in particular the Northern regions close to Turkmenistan and other Republics; vital for the pipelines, which continued under the control of the Northern Alliance; and the difficulties in respect of the alternative negotiations being conducted by the Argentinean Company Bridas in the same region. Unocal in these circumstances, increasingly frustrated, sought political /military alternatives by way of "regime change".

Admittedly Unocal's case on the pipeline project was advanced through successive US administrations. Financial investments and inflows of capital into the United States, it has always been emphasized by US oil and energy Corporations; could be controlled, by monopoly control and distribution of hydrocarbon resources of the world.

The prosecution has placed on record before this Tribunal, Prosecution document Ex. -40 which is the testimony of John J. Maresca, Vice President, International Relations, UNOCAL Corporation, to the House Committee on International Relations , Subcommittee on Asia and Pacific on 12th February, 1998 (www.house.gov/international_relations105th/ap/wsap212982.htm.) A core document on the stand of the prosecution, that the reason for the war lay elsewhere; in the hydrocarbon resources of the region.

John Maresca, Vice President of Unocal, in his testimony outlined implicitly a future rational for a military invasion of Afghanistan and take over of its resources. The testimony indicates disillusionment with the Taliban forces, which UNOCAL had once supported and spells out future possibilities-

> ... "The country has been involved in a bitter warfare for almost a decade. The territory across which the pipeline would extend is controlled by the Taliban, an Islamic movement that is not recognized as a government by most other nations. From the outset we have made it clear that construction of the proposed pipeline cannot begin until a recognized government is in place that has the confidence of governments, lenders and

> our company...... In spite of this, a route through Afghanistan appears to be the best option...... Centgas cannot begin construction until an internationally recognized Afghanistan government is in place. For the project to advance it must have international financing......"

In 1998 even as the Taliban and Northern alliance battled for control of the Northern Region, the UNOCAL company posted on its web page on August 21,1998 (also reproduced in the memorandum submitted by citizens groups in the USA to the Attorney General of California in 1998 referred to earlier) the following statement-

> "As a result of sharply deteriorating political conditions in the region, Unocal which serves the development manager for the Central Asian (Centgas) pipeline consortium, has suspended all activities involving the proposed pipeline project in Afghanistan"......
>
> ...... "Unocal will only participate in construction of the proposed Central Asian Gas Pipeline when and if Afghanistan achieves peace and stability, necessary to obtain financing from International Agencies for this project and an established government is recognized by the United Nations and the United States."

Simultaneously the economic and political reasons, which was the ideology for the new wars for oil, hydrocarbon and other resources, amid deteriorating economic conditions for Corporate America; was being worked out by the Project for the New American Century, which dovetailed with the aggressive economic policies of the Oil, Energy and other Corporations.

In 1997 prominent Republican party members among them, Donald Rumsfeld, Dick Cheney, Jeb Bush, Paul Wolfowitz, John Bolton, Peter Rodham, Zalmay Khalilzad (an employee of UNOCAL) and 18 other prominent Americans, broadly known as the neo-conservatives, organized the Project for the New American Century, the PNAC (www.newamericancentury.order) for the establishment of a New World Order. A reference to these facts, influencing the ideology of the Defendant is necessary; just as a reference to the ideology of the Nazi party was permitted to be brought on record at the Nürnberg trials.

Objectively considered, governments of both Republican and Democratic parties have resorted to war, to control regions and resources prior to, during and after the Second World War. However the PNAC in its document published in September 2000 called "Rebuilding America's defenses: Strategy, Forces and Resources for a New Century" was an ideological justification to prepare the citizens of the United States for continuous wars. The PNAC documented highlighted that -

> ...... "At present United States faces no global rival. America's grand strategy should aim to preserve and extend this advantageous position so far into the future as possible......"
>
> ...... "Further the process of transformation, even if it brings revolutionary change is likely to be a long one, absent some catastrophic and catalyzing event --- like a new Pearl Harbor......"
>
> ...... "And advanced forms of biological warfare that can target specific genotypes may transform biological warfare from the realm of terror to a politically useful tool......"

The prosecution has conclusively proved its case, for the alternative reasons for the war of aggression waged by the Defendant; which was regime change, in the interest of UNOCAL's

pipeline project, by inviting judicial notice of the Tribunal to established facts, that whereas Afghanistan was attacked on 7th October 2001; a conference was convened by the government of the United States and NATO on 27th November 2001,acquiesced to by the Secretary General of the United Nations to form a transitional government, not in Afghanistan but in Bonn; where the four non-Taliban Northern Alliance groups remained present. The cabinet was nominated on 5th December 2001 by the United States of America and other occupying powers not by these groups. Even earlier, on 1st December 2001, President Hamid Karzai, a resident of the United States over several years, a green card holder; the former official Representative of Unocal to the erstwhile Taliban militia's de facto government in Kabul, was sworn in as head of the interim government (officially called the Transitional Government of Afghanistan). Unocal now directly controls the government of Afghanistan.

On 23rd January 2003, the Project for the New American Century, the PNAC sent one more note to President Bush which stated...... "we write to endorse the bold course you have chartered for American National Security strategy...... the victory over the Taliban in Afghanistan was an essential step in stabilizing that country...... other rogue states remain a major problem."

In 1864 referring to the increasing interference of Corporations in the political life of the USA; President Abraham Lincoln was to warn in a letter to Colonel William Elkins:

> "I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country...... Corporations have been enthroned and an era of high corruption will follow and the money power of the country will Endeavor to prolong its reign by working on the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed..."

The decision for regime change in Afghanistan, as in the changes of the earlier governments in Afghanistan, was dictated by the interests of Unocal and the Centgas consortium; the result was war.

9. Testimony of RAWA Revolutionary Association of Afghan Women

A vital and independent witness at this trial, is Witness D, a representative of RAWA, the Revolutionary Association of Afghan Women (the name of the witness cannot be disclosed for reasons of personal security; the Tribunal has resorted to alphabetical identification of these witnesses with a view to ensure their security) who deposed on the tragedies inflicted by the government of the United States and other outside powers on the Afghan people; emphasizing that the war waged by US forces did not liberate the people and women of Afghanistan as was claimed by the Defendant; the militarily attack on Afghanistan, brought even more suffering on the Afghan people; who faced bombings and were once again refugees in the camps. Women faced increasing insecurity and even rape and kidnapping by warring factions. That the Taliban militia was initially supported by the United States, as were the former Mujahideen who had regrouped as Northern "war lords"; Osama bin-Laden, not an Afghan had been supported by the United States. The witness emphasized that women in Afghanistan, did not need to be emancipated by foreign military forces; they had been emancipated by the Afghan ruler Shah Amanullah in 1920, and had the right to vote from 1929; Despite the dispersal of the Taliban women continued to be oppressed, by the "war lords" who were members of the Karzai Government and some of the provincial governors. Coercive laws, continued to exist against women, even in Kabul; the dignity and equal rights of Afghan

women, which prevailed in the period prior to 1979, before the civil war commenced in Afghanistan, has not been restored. Afghanistan because of these civil war conditions, followed by military occupation, was economically devastated and had been reduced to the world's biggest producer of opium.

The evidence of this witness, who does not belong to any of the political factions in the tortuous history of Afghanistan, supports the prosecution case, that the war waged by the Defendant was not a "just war", against terrorism; and that the defendant had committed the serious crime of waging a war of aggression against a nation already facing difficult conditions, by external support to extremist and other organizations misusing religion in Afghanistan; and that women had not been emancipated by this war as was claimed by the Defendant.

10. The effects of 9.11 and of the war on the people of the United States.

The 11th September 2001 terrorist attacks and the war, raise issues as to the use of 9.11 attacks and the war; within the United States; even as Corporations, collapsed, due to financial accounting frauds and systemic problems, which resulted in millions of job losses, attributed to 9.11 by the media.

Two witnesses appeared before the Tribunal, to depose about conditions in the United States, immediately after the 11th September 2001. Mr. Bobby Marsh, who lost a loved one in the World Trade Center, gave the Tribunal a poignant account of the personal tragedies of so many people in the United States, including his own. The attacks were seen by him and other people in the United States, first on Television. The visual images had a devastating impact on him and other people; those who had loved ones in these buildings were agonized about their safety. The witness deposed that he was informed on the cell phone by Margaret, his close friend and companion who worked at the World Trade Center, that instructions had been given by some officials to all those trapped in the towers, when the attack took place, to stay where they were, till the fire brigade department gave further instructions; his companion who obeyed the instructions died. This was the last communication that he was to receive from her. Many people who rushed to safety, ignoring official instructions, survived. This witness further deposed that the terrorist attacks of 11th September 2001 were used to create paranoia among the people; there was an attempt to create a war hysteria. The media in particular was immediately mobilizing people for war; on the other hand the anti- war movement was supported by thousands of Americans across the United States who did not support a war on Afghanistan; even some of those who were affected by the 9.11 terrorist attacks and had lost their loved ones.

Ms. Gloria La-Riva, President of the press workers union, the Union of Typographical Workers gave detailed evidence on the use of the print and television media to create mass hysteria; and on the deteriorating situation within the United States for the freedom and democratic rights of citizens; with workers losing jobs, facing repression, and reductions in their social security benefits; the witness mentioned that immigrants were detained in hundreds without trial and no access to legal counsel. Simultaneously surveillance commenced, on different groups and individuals, by intelligence organizations within the United States including illegally accessing their internet., telephones, and even libraries to verify their political beliefs. In this atmosphere, the Patriot Act was passed, sacrificing political freedom in the name of National Security; authorizing detentions and extensive surveillance of law-abiding citizens. In answer to a question from the Tribunal, as to in whose

interest the Patriot Act was passed; this witness replied that it was passed in the interest of the Corporations in the context of mounting job losses.

11. War Crimes

The Defendant as Commander-in-Chief of US forces, was aware that the military attack on Afghanistan was unjustified; yet orders were given for the carpet-bombing of cities, towns, and villages. The nature of weapons of mass destruction used, the range of firepower unleashed in a country with few military targets; resulted in mass murder of civilians and unnecessary loss of life of combatants who were surrendering. The entire infrastructure of Afghanistan was destroyed;

The women of Afghanistan, who have lived through the horror of these war crimes, have given evidence before this Tribunal; their oral evidence has been reinforced and supported by authoritative reports of humanitarian and scientific organizations. It is clear from these reports from neutral sources, that the bombings of United States military forces were indiscriminate, sparing neither the International Red Cross Hospitals in Kabul and Kandahar, the Kajakai dam; warehouses of the Red Cross where food was stored; the maternity hospital at Kabul; the military hospital at Herat; homes, electrification facilities, irrigation projects, schools, TV stations and telephone exchanges were among other institutions indiscriminately bombed and destroyed; constructed over years of development efforts by the people of Afghanistan, a landlocked developing country.

The testimony of Kenji Katsui, a journalist from Japan, who with a team investigated the destruction caused by the war and bombing; reveals that in several parts of Kabul, in towns and villages across of Afghanistan, civilian homes and the infrastructure of the country was in ruins, due to bombing; sources of water supply and electricity were affected, normal life in such circumstances for the people was impossible. The witness conceded that a civil war, had raged in Afghanistan for more than 20 years, causing immense suffering; however he emphasized, that the war waged by the United States was the final blow. The witness handed over the video film taken by him which was screened by the Tribunal, of the destruction caused and interviews with people in Afghanistan. The witness maintained that his testimony was supported by the entire investigative team; present as observers at the trial.

There have been other agonizing accounts before this Tribunal, of indiscriminate bombing of civilian homes and areas; from witnesses for whom it was not easy to depose, as they were women from Afghanistan, the victims of the bombing, directly affected. Witnesses A, B and C (whose identities have been concealed on request by referring to them in an alphabetical order).

Witness A had lost members of her family in the bombings of Kabul in a civilian home; Witness B fled from Afghanistan, when the bombings commenced from US aircraft; trekked several miles seeking shelter in refugee camps on the borders of Afghanistan/Pakistan, which she said lacked in 2001 the basic facilities, such as food and other amenities, which had been available during the earlier civil war in Afghanistan, when she had sought shelter from successive regimes and their atrocities; deposing that she and her family had become a refugee four times since 1979.Witness C had lost her daughter, a dedicated young teacher in her early twenties, immediately after her marriage; the couple had been bombed in their home, by United States forces while they were asleep; her only desire was that a school be constructed, to commemorate her daughter's commitment to education.

On answers to questions from the Tribunal the witnesses denied that their homes were military targets, or in close proximity to any military installations; Witness A stated that a few Taliban were residing in residential homes in the area, but there were no military installations.

The witnesses agonized by their loss, maintained, that the reason for their presence at the trial, was the necessity to find a voice for the suffering inflicted on them, without reason; and the disruption of their lives earlier by the civil war between the Mujahideen forces and the government of Afghanistan, when Russian troops arrived; thereafter by the warlords; after that by the Taliban forces; and finally by the US military invasion, bombings and occupation; they had lost hope for the future.

Even as the Tribunal prepared for its concluding hearings in December 2003; a UN spokesmen on 5th/6th December expressed regret that 15 children were killed in US bombing, on a village. Whereas US forces claimed that this was collateral damage as they were pursuing the Taliban.

12. Plea on behalf of the Defendant of "collateral damage" on civilians that use of weapons of mass destruction not prohibited by a specific Convention; legally untenable in view of clear rules of International Humanitarian Law for the conduct of warfare.

The defense advanced by amicus curiae on behalf of the Defendant, to the charge of war crimes committed on civilians, by indiscriminate bombings on the population, and on existing civilian infrastructure; on combatants and non-combatants alike; is that this was collateral damage in a just war against terrorism; that the Defendant had no knowledge of the bombings on civilians and civilian infrastructure; and that none of the weapons used in Afghanistan by US forces, even though weapons of immense destructive power were prohibited by specific Conventions to which the United States was a signatory.

It is necessary to reiterate well-established principles of International Humanitarian Law which prohibit such war crimes. In the Advisory Opinion of the International Court of Justice on Nuclear Weapons rendered in 1996; Judge Christopher Gregory Weeramantry, in a learned and reflective judgment, recalled, that traditional principles of Humanitarian Law is deep rooted in many cultures and civilizations, whether "Hindu, Buddhist, Chinese, Christian, Islamic and traditional African" among other civilizations, over thousands of years, Referring to and quoting the famous "Martens clause" introduced by unanimous vote into the Hague Convention of 1899 on the Laws and Customs of War on Land (Hague IV) and the 1907 Hague Convention which mandated that-

> ...... "In cases not included in the Regulations adopted by them, the inhabitants and belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usage established among civilized peoples, from the law of humanity and the dictates of conscience."

Justice C.G. Weeramantry referred in his judgment to an interesting historical fact, relevant in this trial of the Defendant; that Mr. Martens, author of the aforesaid "Marten Clause" had clarified, during the negotiations of the 1899 and 1907 Hague Conventions; that Mr. Martens owed the inspiration of this clause "to President Abraham Lincoln's directives to Professor Leiber, to prepare instructions for General Grant, to draw up regulations, for the humane conduct of the War of Secession in the United States, between forces of the Union and Confederacy"...... and what was referred to as the "Martens clause" in International

Humanitarian Law was its “logical and natural development”.

To contend as the Defendant does, that the United States Armed forces and its President, is not bound by rules of International Humanitarian Warfare for the manufacture, stockpiling and use of weapons, in violation of the laws of warfare; of which a critical clause, reproduced thereafter in practically every Convention regulating International Humanitarian Law, was inspired by President Abraham Lincoln of the United States; is an attempt to turn back the clock of history, and to continue the tragic and criminal decision making of the government of the United States, that led to the nuclear attack on Hiroshima and Nagasaki, serious war crimes; and which the Tokyo District Court in Shinoda vs. The State (The Japanese Annual of International Law, Volt 8 1964, p.240) did not take to its correct logical and legal conclusion; though the court conceded in a part of its reasoning, that it could “safely see that besides poison gas and bacterium the use of means of injuring the enemy which causes at least the same or more injury is prohibited by International Law...” It is necessary to recall the threat of the government of the United States to bomb Vietnam “into the stone age” while assessing these Crimes.

The International Court of Justice in the Advisory Opinion on Nuclear Weapons in 1996; referred to customary International law regulating the conduct of war; to the 1899 and 1907 Hague Conventions; the four Geneva Conventions including the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous and other Gases and of Bacteriological Methods of Warfare; the two Additional Protocols of 1977, binding on all State parties, even those who are not signatories, as these protocols merely reaffirm existing principles of International Customary Law regulating armed conflict; the Environmental Modification Convention of 1977 and the Conventional Weapons Convention of 1980;as International Humanitarian Law on the conduct of warfare emphasizing that the “Martens Clause” is the link between Treaty Law and Customary International Law in International Humanitarian Law.

In addition to the aforesaid Conventions, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997, and similar Conventions; merely codify, established principles of customary International law, that the right of parties “to adopt means of injuring the enemy are not unlimited” and “arms, projectiles or material calculated to cause unnecessary suffering shall not be used”; and that civilian populations are not to be harmed, among other principles codified subsequently by Convention.

The working paper prepared, pursuant to the Resolution 2001/6, by Y.K.J.Yeung Sik Yuen on “Human Rights and Weapons of Mass Destruction, Or With Indiscriminate Effect, or of a Nature to Cause Superfluous Injury or Unnecessary Suffering” for the Sub-Commission on the promotion and protection of Human Rights, of the Commission of Human Rights, Economic and Social Council (E/CN.4/Sub.2/2002/38 dated 27th June 2002) broadly reiterates the principles of the aforesaid Advisory Opinion of the ICJ. The author referring to the principles of customary International Humanitarian Law, and to the Conventions and treaties, in force for over a century has correctly summarized the tests to be satisfied before weapons systems fulfill the legal test for deployment as follows-

> “The above Conventions are by no means exhaustive and taken together with the precepts of customary International Law show that a number of legal principles banning or limiting certain arms are now firmly established.”

Weapons are to be considered banned if:

(a) Their use has indiscriminate effects (no effective distinction between civilians and belligerents);

(b) Their use is out of proportion with the pursuit of military objective;

(c) Their use adversely affects the environment in a widespread, long term and severe manner;

(d) Their use causes superfluous injury and unnecessary suffering.

In accordance with these tests, the following weapons systems used in Afghanistan are illegal and their permitted use by the Defendant, Commander-in-Chief of US forces are War Crimes. The illegal weapons are:

1. Depleted Uranium munitions
2. Fuel-air explosives (Fees) or Daisy Cutters
3. Cluster bombs.
4. Anti-Personnel mines

13. Use of genocidal and omnicidal radioactive Depleted Uranium weapons in Afghanistan, a war crime, genocide, and omnicide

The evidence presented before the Tribunal, which has shocked the conscience of the judges of this Tribunal, is the thoroughly researched evidence on the genocidal and omnicidal nature of Depleted Uranium weapons used in Afghanistan by United States military forces, with the Defendant as their Commander-in-Chief by Leuren Moret, President, Scientists For Indigenous People, City of Berkeley Environmental Commissioner; Professor Katsuma Yagasaki of the Faculty of Science of the Ryukyu University, Okinawa; and of Major Doug Rokke, Professor of Physics and Geosciences of Jacksonville State University, former Director of DU weapons project of the US army from 1994-1995 in charge of the cleaning up of DU in Iraq, himself affected by DU.

These three witnesses made available to this Tribunal, details of their investigations, scientific documents, memorandum from the US army sources and the Manhattan project; statistical studies of people of Iraq, children and others exposed to DU ordnance after the first Gulf War, including from the Gulf War Veterans Association, on the nature of this weapon; which prove beyond doubt that the Defendant as Commander-in-Chief of US forces used DU weapons in Afghanistan, in the manner that Zyklon-B was used across Europe; as a weapon of mass murder in Afghanistan calculated to destroy of all living species exposed.

Professor Albrecht Schott, Scientist, World Depleted Uranium Center, Berlin in an address titled "Consequences of the Military and Civil Use of Depleted Uranium (DU)", at the public symposium on 'American Policy and its Consequences', has described Depleted Uranium as "A Weapon Against This Planet." Prosecution Document E-130; this leads logically to the word "Omnicide" used by witness Leuren Moret, among other scientists while describing the effect of this weapon system; as going beyond the "silent genocide" it has inflicted on the Afghan and Iraqi people.

Rosalie Bertell author of the classic book "No Immediate Danger" has given the following

comprehensive meaning of the term Omnicide as:

> "The concept of species annihilation means a relatively swift, deliberately induced end to history, culture, science, biological reproduction and memory. It is the ultimate human rejection of the gift of life, an act which requires a new word to describe it as omnicide."

The use of DU ordnance in Afghanistan by the United States military forces has not been denied. The US military forces with the Defendant as Commander-in-Chief, with full knowledge of the nature and impact of the weapons system, known to the Manhattan project as early as 1943; used DU ordnance by way of attack aircraft, AH-64 helicopter gun ships, advanced cruise missiles, CALCM among others. PGU -14 API uranium piercing munitions fired by Vulcan Canon installed on A10 Gun ships and AH-64 Apache gun ships apart from the Bunker buster bombs (DU weapons) which were dropped from F-16 attack planes.

It is authoritatively estimated by independent scientific investigations and reports on record before this Tribunal, and the prosecution conservatively estimates, that at the very minimum 500-600 tonnes of DU ordnance were used throughout Afghanistan including at Tora Bora, Shaikoot, Paktia, Mazar-e-Sharif, Jalalabad, Nangarhar, Khost, Kunduz and Kabul around Bagram from October 2001 after the bombings commenced on 7th October 2001, whereas Dr Mohammed Daud Miraki of the Afghanistan Recovery Fund refers to not less than 1,000 tonnes of Depleted and undepleted Uranium being used.

On 16th January 2002, the Secretary for Defense, Mr. Rumsfeld in a briefing confirmed that "high levels of radioactive count" had been confirmed due to the result of "Depleted Uranium shells on some warheads"-Prosecution Document Ex. E-122. Mr. Philip Coyle Senior Adviser of the Center for Defense Information in Washington DC admitted that DU weapons had been used in Afghanistan.

The documented reports of Marc Herold and Dai Williams, Prosecution documents at Ex. E-118 and E-119; the Survey of the Uranium Medical Research Center, Washington DC; Prosecution Document - E 120; the reports of Dr Mohammed Daud Miraki, Afghan Recovery Fund, referred to above, Prosecution Documents Ex. E-137 and E -138, among other documents; refer in detail to the widespread use and effects of DU weapons on the people in Afghanistan inflicting slow and painful death, termed the "silent genocide"; affecting the unborn, altering irreversibly the genetic code of all those exposed.

Testimonies of fathers and mother, made to the field teams of the Uranium Medical Research Center (UMRC) are horrifying: "What else do the Americans want? They killed us, they turned our new borns into horrific deformations, and they turned our farmlands into graveyards and destroyed our homes. On top of all this their planes fly over and spray us with bullets……we have nothing to lose …….we will fight them the same way we fought the previous invaders"...... (Sayed Gharib at Tora Bora).

Ms Leuren Moret gave vital evidence of United States military policy, on the use of DU weapons, tracing the history of its creation and the politics of its use - Prosecution document Ex.E 156. Ms Leuren Moret deposed that after the bombing of Hiroshima and Nagasaki, an international outcry and taboo against nuclear weapons, prevented the further use of nuclear and radioactive weapons; this policy was abandoned in 1991;a decision was made by the Strategic Command in the USA to blur the distinction between conventional and nuclear weapons by introducing DU into the battlefield; this witness has aptly described DU as the "Trojan horse" of nuclear weapons; with similar effects.

The witness maintained that it was the cost factor which made DU weaponry an attractive weapon for the arms industry; though on the other hand the cost to humanity, was an unacceptable cost; deposing further, that DU being a byproduct from nuclear weapons and nuclear power industries; a "radioactive" hazard, a liability to the Department of Energy; millions of tons were passed on to the "military-industrial" complex for the manufacture of weapons. By selling depleted uranium weapons to more than 20 countries, the DOE has made a profitable business for the arms industry.

The documents produced by this witness, handed over to her by Major Doug Rokke; prove conclusively that the United States government and military were aware from 1943, of the genocidal and omnicidal nature of DU weapons. A memorandum dated 30th October 1943, received by General Groves in charge of the Manhattan Project (nuclear weapons project) from three physicians working under him, Prosecution document Ex -E 126, recommends that radiological materials be developed for use as a military weapon on the battlefield. It was a blueprint for depleted uranium weaponry.

The aforesaid memorandum describing the property of DU weapons describes that "...... The material...... ground into particles of microscopic size...... would be distributed in the form of dust and smoke by ground fired projectiles, land vehicles and bombs...... inhaled by personnel...... it is estimated that one millionth of a gram accumulating in a persons body would be fatal. There are no known methods of treatment for such casualty...... areas so contaminated by radioactive dusts and smokes would be dangerous as long as high concentration of metal was maintained...... reservoirs or wells would be contaminated...... food poisoned...... particles larger than I micron would be deposited in the nose, trachea and bronchi...... particles smaller than 1 micron are more likely to be deposited in alveoli where they will remain...... or be absorbed into the lymphatic or blood...... Beta and gamma emitting fission products...... may be absorbed by the blood and distributed to the whole body."

In the second document produced, memorandum dated 1ST March 1991 addressed by Lt.Col.M.V.Zeiman (after the first Gulf War of 1991) to Major Larsson of the Studies and Analysis Branch on the subject of "The Effectiveness of Depleted Uranium Penetrators", Prosecution Document Ex. E-127, emphasizes that...... "the impact of DU penetrators were very effective against Iraqi armour...... there has been and continues to be concern regarding the impact of DU on the environment...... DU rounds may become politically unacceptable...... and thus be deleted from the arsenal...... we should ensure their future existence...... I believe we should keep this in mind when after action reports are written".

The interpretation of this memorandum, by the witness Leuren Moret, that this memorandum in fact directed, that after action reports should be falsified, to conceal the real effects of DU weaponry, is correct.

The third significant document produced by this witness, is the communication dated 19th August 1993, Prosecution Document Ex. E -128, by Brigadier Eric. K. Shinskei, at the relevant time Brigadier General, GS, Director of Training forwarded to the Assistant Secretary of the Army (Installation, logistics and Environment) on the subject: Review of Draft Report to Congress -Health and Environmental Consequences of Depleted Uranium in the US army. This communication states that after Operation Desert Storm (the first Gulf War) the GAO examined the Army's ability to contend with Depleted Uranium contamination. The GAO published a draft memorandum which was accepted by the Department of Defense on 15th January 1993 which was a tasking memorandum directing the Secretary of Army to-

A. Provide adequate training for personnel who may come in contact with DU contaminated equipment;

B. Complete medical testing of all personnel exposed to DU contamination.

C. Develop a plan for DU contaminated equipment recovery during future operation.

Leuren Moret, concluding her testimony deposed, that from the properties of DU weapons; its radioactive particles traveling through air, water and food sources; it is not only countries where these weapons are used which are in the affected zone, but all countries within a radius of approximately 1000 miles of the use of DU weapons; due to the wind factor and atmospheric dusts; a map was displayed indicating the countries in the DU affected zone from the use of the weaponry in Afghanistan and Iraq, placed on record of this Tribunal which indicates that Iran, Pakistan, Turkey, Turkmenistan, Uzbekistan, Russia, Georgia, Azerbaijan, Kazakhstan, China and India, are among the countries affected by the use of DU weaponry in Afghanistan; and Saudi Arabia, Syria, Lebanon, Palestine, Israel, Turkey, Iran are among the countries affected by the use DU weapons in Iraq during both the military attacks against Iraq.

Major Doug Rokke Director of the DU project from 1994 to 1995, himself a victim of the DU weapons, clean up operations after the first Gulf War; was interviewed at the Hamburg Conference on DU in October 2003, by Prosecutor Kazuko Ito, the video of interview is Prosecution document Ex. E 124; amicus curiae who has seen the interview has raised no objections to its production. Major Doug Rokke commenting on his attempts to focus on the risks of DU weapons while in charge of the DU program of the US army stated:

> "...... military officers from the UK, Australia, Canada and Germany participated in the project to study the risk of DU weapons and I was directed by the Army to direct the team...... we submitted recommendations which were completely ignored...... the US army has not taken any measures to protect soldiers. Although we made a proposal that clean up is essential, complete clean up is impossible. Therefore we proposed, not to use DU weapons any longer. However our proposal was ignored by the upper level of the government and completely ignored by NATO, UK, Australia and others"

Referring to the videos which had been made for the Pentagon about DU weapons; on risks, clean up measures, method of measuring radioactivity etc. for the US army; the witness emphasized that these videos were never used and the U.S decided to seal this DU project, because the results revealed that DU weapons were extremely risky and its use would be prohibited by international pressure. The United States government the witness stated, continues to use these weapons because they are inexpensive and effective, and also because it is a milestone to make fourth generation nuclear ordnance acceptable, by advancing the proposition that contamination of fourth generation nuclear weapons, would not exceed the levels of radioactive contamination of DU.

The evidence of Major Doug Rokke, has to be assessed in the light of the report on Gulf War Veterans. By now half of all the 697, 000 soldiers involved in the 1991 Gulf War have reported serious illnesses. According to the Gulf War Veterans Association, more than 30% are chronically ill. Children born to soldiers of coalition personnel after the Gulf War were born deformed or with serious birth defects; including those who had healthy babies earlier. Recently a soldier in the UK has succeeded after several years of struggle, in obtaining a judgment which recognizes the DU weapons had caused serious physiological effects.

The third witness before the Tribunal on the issue of the use of DU weapons as a War Crime,

Professor Katsuma Yagasaki, Prosecution documents Ex. E 158 and 159 presented oral and documentary evidence clarifying that the term "depleted" seems to convey the incorrect impression that DU is uranium that does not contain radioactivity any more, which is not the case; as DU ammunition causes radioactive contamination and is no less serious than nuclear weapons. Even one DU particle has adequate capacity to cause cancer and once absorbed into the body can transform genes, cells and affect all the organs and lymph nodes. Professor Yagasaki deposed that the total amount of 235U dispersed in Hiroshima was 61.2 kilograms; since it was estimated that about 500-600 tons of DU weapons were used in Afghanistan, DU pollution in Afghanistan is 8,170 tons more than in Hiroshima; that the adverse effects of radioactive contamination in Afghanistan and the internal radiation risk is beyond our imagination, as the alpha ray from the DU damages the DNA irreversibly and that the entire concept of low radiation risk was misleading with respect to internal exposure, as DU is absorbed by inhalation and internal contamination.

Professor Yagasaki in the paper on record before this Tribunal presented at the 'World Uranium Conference Weapons Conference' in October 2003; calculated that 800 tons of DU is the atomicity equivalent to 83,000 Nagasaki bombs. The amount of DU used in Iraq is equivalent to 250,000 Nagasaki bombs. Professor Yagasaki affirmed that DU shells are atrocious radioactive weapons which should not be used, and that DU has a long life of 4.5 billion years remaining in the soil, air, and water in all affected zones.

The Tribunal on an issue vital for this trial had to deal with the ambiguity of the WHO report; this report Prosecution document ex. E-123 was placed before Professor Yagasaki by the Tribunal, to elicit his scientific response to the document, since it was relied on by amicus curiae to defend the use of this weapons system by the Defendant; stating that the WHO report did not refer to such horrific consequences; the WHO report was found to be vague and evasive, partly admitting, partly in denial, not in conformity with the overwhelming and authoritative evidence from 1943, deposed to by the witnesses; moreover the WHO report was not signed; no scientist or panel of scientists had authenticated this report.

In his paper on "Undiagnosed Illnesses and Radioactive Warfare" Dr. Asaf Durakovic who first identified the "Gulf War Syndrome" caused by exposure to DU ordnance, Prosecution document Ex. E-120; has on the basis of investigations carried out on Gulf War Veterans in Canada and elsewhere; reported that DU accumulates in the bone, kidney, reproductive systems, brain and lung, with verified genotoxic, mutagenic and carcinogenic properties, as well as reproductive and teratogenic alterations even 10 years after inhalation exposure or receiving of shrapnel wounds; this contradicts the WHO report

Professor Yagasaki gave details to the Tribunal on the unscientific nature of the WHO report on material particulars, in particular on the inability of the report to analyze the properties of DU. On reading the unsigned report of the WHO report on DU munitions, I find that while concealing the serious effects of the weapons system; it attempts to take a safe and evasive position, in the eventuality of the report being faulted by the on the ground situation, by mentioning that:

> ...... "following conflict, levels of DU contamination in food and water may be detected in affected areas after a few years. This should be monitored......"
>
> "where possible, clean up operations in impact zones should be undertaken, if there are substantial number of radioactive projectiles remaining and where qualified experts deem contaminated levels to be unacceptable......"

The WHO is contradicted by its own scientist, Dr. Michael H. Repacholi of the WHO who is quoted by Dr. Mohammed Daud Miraki in his report 'Silent Genocide from America' Prosecution document Ex. E-137, as having reported that:

> "DU is released from fired weapons in the form of small particles which may be inhaled, ingested or remain in the environment…..children may be at greater risk of DU exposure...... within a war zone...... through contaminated food and water......"

A recent BBC Television report of February 2004 quoted Dr. Keith Baverstock, Senior Radiation Specialist to the WHO, who stated that he was the co-author of a WHO Report 2001, on the affects of DU on health which was classified as "Secret" by WHO to prevent its release to the public.

On October 20, 2002 Dr. Asaf Durakovic, Professor of nuclear medicine at George Town University whose report has been submitted to the Tribunal; reported preliminary test results on sick civilians from Southern Afghanistan at Qatar. Specimens contained 100 times the normal level of uranium concentration Curiously this was undepleted and not depleted uranium...... Dr Asaf said in an interview to Al-Jazeera television in November 2002, that "the US forces had used more DU in Afghanistan than they had in the first Gulf War and the Balkans."

> "A large number of health specialists in Afghanistan...... regard the increasing birth defects to be the result of the dropping DU munitions on Afghanistan...... children were born with no eyes, no limbs, and tumors protruding from their mouth...... with deformed genitalia"

It was noticed that soldiers, birds in large numbers died after bleeding from their mouths, noses and ears; many people died without any physical injuries after having developed unusual symptoms.

Marc. W Herold of the University of New Hampshire in the detailed study titled "Uranium Wars: The Pentagon Steps Up Its Use of Radioactive Munitions" has reported that-

> "in the Afghan campaign, a new generation of uranium weapons is suspected to have been used extensively for targeting underground facilities and caves......" "Intensely bombed hard target zones...... may now be heavily contaminated with DU oxide...... During the course of the operation, US planes conducted 950 sorties and dropped more than 3,450 bombs."
>
> "...... risks to US and Afghan troops being sent out to check out bombed cave systems are horrendous...... even more serious are...... in densely populated target zones like Kabul......"
>
> "...... Given the heavy US bombing of the mountains of eastern Afghanistan, it seems probable that large amounts of DU have found their way into the rivers of the Hindu basin whose source is precisely in the mountains of the Hindu-Kush. For example heading east from Kabul...... the Kabul river crosses into Pakistan and feeds the Indus river. In arid areas like Southern Afghanistan, most of the uranium oxide would remain as surface dust where it will have been widely dispersed by wind and vehicle movements......"
>
> "...... In mid-December, the Pentagon announced the development of another new,

high-tech bunker busting bomb in Afghanistan. The laser-guided bomb is a thermo baric weapon, a high pressure explosive that destroys underground caves and tunnels......"

14. The Use of Cluster Bombs {CBU 87 and CBU 103} & Daisy Cutters {Fuel Air Explosive} War Crimes

Apart from using DU weapons with the full knowledge of the Defendant, the Commander-in-Chief of the military forces of the United States, Cluster Bombs and Fuel-Air Explosives (Daisy Cutters) were used by the United States military.

The report of Human Rights Watch has in a report titled "Fatally Flawed: Cluster bombs and Their Use by the United States in Afghanistan" reported that-

> "...... the US arsenal included cluster bombs, large bombs that release hundreds of smaller ammunitions or bomblets......, they also have serious civilian side effects...... (the areas over which the bomblets disperse) as well as the fact that they leave behind large numbers of unexploded sub-munitions, that they become de facto land mines.
>
> The United States dropped about 1,228 cluster bombs containing 248,056 bomblets between October 2001 and March 2002...... the United States primarily used two models, the CBU-87, a veteran of the Gulf War and the NATO bombing campaign in Yugoslavia, and the new...... CBU-103...... Navy CBU-99s, CBU-100S and JSOW were also used......"

In a three and a half week mission to Afghanistan in March 2001, Human Rights found ample evidence that cluster bombs caused civilians harm;

> "...... Cluster bombs also left unexploded bomblets, or live duds which continue to injure and kill innocent civilians long after the attack...... common post-strike victims in Afghanistan include shepherds grazing their flocks, farmers plowing their fields, and children gathering wood."

In the report by Laura Flanders titled, Weapons of Mass Destruction (US is dropping World's Biggest Non-Nuclear Weapons in Afghanistan) on record before this Tribunal describes, that BLU-82 is named "Daisy Cutter" because of the nature of crater it leaves. That it has the ability-

> "to clear a 3 mile long path. Dropped from a huge transport aircraft "Big Blue" releases a cloud of inflammable ammonium nitrate, aluminum dust, and polystyrene slurry which is then ignited by a detonator. The result is a firestorm that incinerates an area the size of five football fields, consumes oxygen, and creates a shock-wave and a vacuum pressure that destroys internal organs of anyone in range".

None of these weapons systems used in Afghanistan satisfy the tests of International Humanitarian Law; the use of these weapons are war crimes. Humanity cannot evade or avoid the question, as to the nature of criminality of an individual and system, which seeks to destroy not only existing life, but to mutilate the life to come.

15. War Crimes committed by the Defendant on of Prisoners of War: The relevant

details from the Fact Sheet on Status of Detainees at Guantanamo Bay, released by the office of the Press Secretary on February 7,2002 Prosecution document Ex- 31 states:

> "...... The President has determined that the Geneva Convention applies to the Taliban detainees but not to the Al Qaeda detainees.
>
> Al Qaeda is not a State party to the Geneva Convention; it is a foreign terrorist group. As such its members are not entitled to POW status.
>
> Although we have never recognized the Taliban as the legitimate Afghan government, Afghanistan is a party to the Convention, and the President has determined that the Taliban are covered by the Convention, however the Taliban detainees do not qualify as POWs......"

The official stand of the United States government that the Taliban fighters are not entitled to POW status is in violation of Article 4 of the Geneva Convention 1949 (III) on Prisoners of War which defines a POW as follows:

> "Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:
>
> 1. Members of the armed forces of a party to the conflict as well as the members of militias or volunteer corps forming part of such armed forces.

The United States government had dealt with the de facto government of the Taliban directly and through UNOCAL; prisoner of war status cannot be denied to the Taliban combatants; even though the United States had not recognized the Taliban, which was recognized only by Pakistan, Saudi Arabia and the UAE with the United Nations continuing to recognize the previous government. The Geneva Convention 1949 (III) Article 4, does not mandate that a party to the conflict should be recognized as a government, before members of its armed forces are entitled to POW status.

The status of Al Qaeda or "foreign fighters" differs as admittedly they belonged to various countries, not parties to the conflict and it is not conclusively established that they were "volunteers" or "mercenaries"; Yet the "foreign fighters" are entitled to humane treatment, under the Martens Clause of the Additional Protocol 1 of 1977, a rule of customary law..

The issue is far more complicated than it appears; and the facts however distasteful to concerned countries, are that the "foreign fighters" were recruited, from several countries; the US, UK, Saudi Arabia, Australia, Canada, Pakistan, Morocco, Saudi Arabia and others; trained on the Pakistan /Afghanistan border by special forces of the United States, Pakistan and other countries in furtherance of the strategic interest of the United State and of those countries, who were close allies; a fact admitted to by Mr. Brezinski, former National Security Advisor and former Director of the CIA Director Robert Gates;

The legal issue which arises for determination is can the United States government deny the "foreign fighters" POW status, having recruited, financed, trained and supported "foreign fighters" through friendly intelligence agencies, and agreed to their assisting the Taliban in a supporting role for regime change; or is the POW status of "foreign fighters" to be strictly determined, by the people and government of Afghanistan, who for more than two decades have been torn apart, by countries waging a civil war through hired "foreign fighters" within its territories; and in pursuit of resources of the region which extends from Central Asia across

to Eastern Europe, to former Yugoslavia, referred to by Zbigniew Brezinsky, former National Security Adviser as Eurasia; a region where the "foreign fighters" trained on the Pakistan -Afghanistan border, have been actively engaged.

Despite the serious and illegal use of these "foreign fighters"; their status would have be first to ascertained by a competent Tribunal; not by a secret military commission or a secret military tribunal; in accordance with Article 5 of the Geneva Convention which stipulates that:

> "Should any doubt arise as to whether persons having committed a belligerent act and having fallen into the hands of the enemy, belong to any one of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

Until their status is ascertained by competent tribunals those who are suspected of being foreign fighters, are entitled to POW status.

Article 13 of the Geneva Convention relative to the Treatment of Prisoners of War 1949 mandates that:

> "Prisoners of War must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited...... no prisoner of war must be subjected to physical mutilation or to medical or scientific experiments which are unjustified.
>
> Likewise prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity."

The Indictment has charged the Defendant, as Commander-in-Chief of United States military forces for serious war crimes against prisoners of war. The policy of the Defendant and the United States government, as reflected in the reports of humanitarian organizations; supported by circumstantial evidence; leads to the conclusion that the objective appears to have been to eliminate in particular "foreign fighters"; probably to suppress evidence of the use of "Arab and other foreign fighters", in Afghanistan and different regions. Newspaper reports and articles before the Tribunal have quoted the Secretary of Defense, Mr. Donald Rumsfeld to this effect; however it would be unsafe to rely on these reports without corroboration. In this context a similar approach was adopted for different reasons in the Boer War; the informal communication of Lord Kitchener to field commanders was that "no prisoners" were to be taken; this resulted in the killing of surrendering Boer prisoners of the British forces; and an uproar in Europe; as a consequence, officers of a Australian contingent then serving the British Imperial forces in South Africa, were made scapegoats and faced a court martial for killing surrendering prisoners of war; at the highest level no responsibility was taken.

The documentary evidence presented, including the film of Jamie Doran the Irish film maker "Afghan Massacre: The Convoy of Death" Prosecution document -1; supported by actual incidents, investigated and reported by correspondents and individuals; reports of humanitarian organizations including the Red Cross; of Amnesty International; confirm that war crimes were committed by US military forces under the overall command of the Defendant as Commander-in-Chief. There is however difficulty in attributing criminal responsibility to the Defendant, as Commander-in Chief of US forces, for Taliban prisoners and foreign fighters, where there is a lacuna in the evidence, and differing versions have been

presented by the prosecution in respect of two issues relating to the prisoners of war; whether the decision to transport prisoners in containers was that of US forces or the Northern Alliance; and whether the prison at Sheberghan was in the overall control of US forces.

The International Tribunal of the Far East constituted after the Second World War held that:

> "In general the responsibility of prisoners held in Japan may be stated to have rested upon:
>
> (1) Members of the Government ;
>
> (2) Military or Naval Officers in command of formations having prisoner in their Possession;
>
> (3) Officials in those departments which were concerned with the well being of prisoners;
>
> (4) Officials, whether civilian, military, or naval having direct and immediate Control of the prisoners".

These were the officials who were responsible for Prisoners of War or detainees'. The incidents relating to culpability before the Tribunal are:

A. Bombing of Detainees and POW at Qala-I-Janghi.

The United States special forces directed the bombing by warplanes and helicopter gunships of 4,000 Taliban soldiers and foreign fighters, including hundreds of civilians and paramilitary personnel from Pakistan; who had surrendered after negotiations at Kunduz and were detained in the Qala-i-Janghi under the pretext that there had been a prison uprising; triggered by the presence of CIA interrogators. Hundreds of prisoners were killed and maimed; for which the Defendant has direct responsibility, as the Commander-in-Chief of US forces; the decision to bomb the prisoners was taken by Special Forces and Intelligence teams. This is borne out by factual, visual and circumstantial evidence.

B. Torture of Prisoners at Baghram and Diego Garcia in the Indian Ocean

Prisoners were shackled and tortured, at the prison camp at Baghram airport Prosecution document 62 OCS NEWS 17TH January,2003, exclusively under the control of US forces; blindfolded, beaten, illuminated with strong halogen lights for 24 hours, continuously deprived of sleep; left standing and kneeling for hours on end; brutalities, inhumane treatment and insults were inflicted on these prisoners; detained for interrogation in a cluster of metal shipping containers guarded by wires with no access to the outside world and during interrogation with no exposure to daylight; the Defendant as Commander-in -Chief of United States Military forces was responsible for the treatment of prisoners and detainees in the custody of the United States. National Security Officials in Washington according to the Washington post, defended the use of violence and torture against detainees and POW saying that- "if you don't violate someone's human rights some of the time, you probably aren't doing your job......" Prisoners and detainees at Diego Garcia also received similar treatment.

C. Guantanamo Bay

Prisoners and detainees were transported shackled and hooded, denied adequate food and water while being illegally transported from Afghanistan to the US military base at

Guantanamo Bay on Cuban territory, which is Cuban territory under illegal occupation; with the knowledge and assent of the Defendant; the detainees were held incommunicado, in constructed open cages; tortured, subject to interrogation with deprival of sleep; kept in solitary confinement, beaten. In the early period of their detention, the International Committee of the Red Cross was denied access to these prisoners; eventually the Red Cross was permitted access and publicly condemned the conditions under which the detainees and POW had been held.. It is documented that about 649 persons are known to be incarcerated and denied access to lawyers any legal system to prove their innocence or status. No Tribunal has been constituted in accordance with the Geneva Convention to ascertain their status.

The inhuman conditions, the interrogation by "stress and duress" techniques and torture have led to suicides and attempts at suicide. In violation of article 12 and article 13 of the Geneva Convention (III) 1949, these detainees have been transferred to other countries for interrogation, not parties to the war. The details about Guantanamo and Baghram have been incorporated in a memorandum to the Inter-American Commission On Human Rights Organization of American States by the Center for Constitutional Rights and the International Human Rights Law Group, New York submitted on 13 February 2003.

D. Transporting of Prisoners in Containers

The prosecution has in its indictment referred to the serious war crime of transporting hundreds of prisoners who were captured; the Taliban and foreign fighters who had surrendered at Kunduz in Cargo containers, and the death of these prisoners from suffocation due to lack of access to air and water. The prosecution submits that one hundred to two hundred men were placed in each container, which was about 40 feet long. The prisoners were transported to Sheberghan Prison, without air or water and majority of them suffocated to death. During transportation of these prisoners, rifle shots were fired at the containers by soldiers, for creation of ventilation holes which killed some of the prisoners The documents relied on by the Prosecution is Prosecution document Ex. P-1 Jamie Doran ' s report in the film "Afghan Massacre: the Convoy of death" and the article of Newsweek Prosecution document -K -61. However, whereas the incident is established beyond doubt, there are contradictions as to who took the decision to transport prisoners in this manner; whether this was an on the spot decision of commander of the Northern Alliance, or a pre-planned conspiracy involving US forces; in view of the lacuna in the evidence which requires further proof, if it is to be attributed to the Defendant, there is difficulty in attributing criminal responsibility to the Defendant in respect of this extremely serious incident leading to the mass murder of Taliban soldiers and foreign fighters from Pakistan and other countries without conclusive evidence.

An officer of the Northern alliance has been quoted by the prosecution as stating in Prosecution document P - 1 on prisoners of war:

> "We took charge of transferring detainees. In Qala Zeini we got hold of 25 containers on the way to Sheberghan prison and put 200 or so prisoners into each container."

The subsequent evidence relied on by the prosecution from Prosecution document -K 61 (as told to a correspondent of Newsweek) is by a person under an assumed name of Mohammed, who states that he drove one of the Containers, in compliance with the request of a soldier under General Dostum; the prisoners in the containers struck at the wall of the container and shouted for water stating that they were dying; the driver made holes with a hammer in the container; when a soldier under General Dostum heard the sound; he pretended that he was

merely sealing holes.

Mr. Mohammed Ikram, a well known Advocate of the Supreme Court of Pakistan, while deposing on instructions given to him by his client, on the treatment of Prisoners of war; mentioned that there was gross internal interference by the Intelligence agencies of the United States in Pakistan, including in matters of internal investigation; and that his client was unable to remain present to depose on aspects of treatment of prisoners of war by US troops, before the Tribunal, in view of delay in the issue of his travel documents; as a consequence, vital evidence on war crimes against detainees and POW was not made available, which would have been conclusive on the transfer of prisoners in containers and other issues.

Mr. Mohammed Ikram Chaudhary, Senior Advocate of the Supreme Court of Pakistan, gave details of the instructions given to him by his client on the treatment of detainees by the United States Occupation forces, even though he stated that his client had not been involved in hostilities; and informed the Tribunal of the interference of the Intelligence Agencies of Pakistan in the criminal investigation and administration in Pakistan, violation of Pakistan's sovereignty; deposing that he had filed a suit for damages against the government of the United States, against the illegal detention and torture of his client, Mr. Mohammed Saghir, resident of Patton in the North Western Frontier Province of Pakistan, by US forces in Afghanistan; his ill treatment, torture, denial of adequate nutrition, medical assistance within Afghanistan, and illegal transportation to Cuba in shackles and hooded and subsequent incarceration at the US military base Guantanamo Bay. Mr. Mohammed Ikram Chaudhary, advocate, produced before the Tribunal, the legal notice sent on behalf of his client to the Government of the United States. The Tribunal in view of the difficulties faced by Mohammed Sagheer in attending the trial a travel documents were not issued to him on time by the Government of Pakistan, could not address questions on the incidents directly relating to the affected individual; though the fact of detention and treatment of Mohammed Sagheer is part of the same pattern.

The Prosecution in respect of serious incident of transporting prisoners in containers, has submitted, that both the Northern alliance and the Taliban militia had used “Containers” to inflict mass murder, on prisoners taken from each other in the past; and this had happened at Mazar-e-Sharif on both sides; even before the military attack by United States military forces. In this context the evidence of the Revolutionary Association of Afghan Women, Prosecution witness D, on the brutalities committed by both political groups, trained to misuse religion and carry out violent attacks, by outside powers, to devastate Afghanistan, is relevant and requires investigation even within Afghanistan. In view of the lack of conclusive evidence of the involvement of military forces of the United States, it is not possible to arrive at a conclusive finding, to hold the Defendant guilty of this serious episode of transportation of prisoners in sealed containers; as a consequence of which hundreds, some claim thousands, lost their lives due to suffocation and the firing of rifle shots to create holes for ventilation when the prisoners were inside the containers; the incident needs further investigation and inquiry by obtaining direct evidence of survivors.

E. Conditions at Sheberghan Prison

The Physicians for Human Rights have given a report on the unsatisfactory conditions in Sheberghan prison, the risk of gastrointestinal illness, respiratory diseases caused by overcrowding, scanty clothing and lack of protection against cold weather, the inadequate diet, lack of hygiene, and adequate medical supplies. However there are contradictions in the prosecution case as to who was in control of prison conditions and prisoners at Sheberghan

prison.

In the Indictment presented to the Tribunal, at part III, War Crimes Against Prisoners of War, paragraph 4, the prosecution has stated that

> "3000 prisoners thus transported as above described were held in the Sheberghan camp where soldiers of the Northern Alliance were keeping guard...... this particular prison is known for its poor conditions...... the walls are weather beaten...... inmates were virtually unattended...... Northern alliance was primarily in charge of keeping the prison under control...... however as CIA personnel interrogated prisoners here and made arrangements for sending them to Kandahar airport and then to Guantanamo Bay; US forces were practically the major administrator of the prison...... Bush was in a position to make the prison guards aware of appropriate procedure......"

This evidence is not conclusive to hold the Defendant guilty of conditions in the prison and of treatment of Prisoners in this prison; the evidence indicates that the prison was earlier in a state of neglect and as per the prosecution case, the Northern alliance controlled this prison and the prison guards; whereas the CIA interrogated prisoners and made arrangements for transporting them. Further and precise particulars and investigation will be required of the nature of involvement of US troops at the Sheberghan prison to attribute criminality to the Defendant in respect of this prison.

F. Killing of unconscious and seriously wounded prisoners at Dashte-e-Leilli

At Dasht-e-Leilli, seriously injured and unconscious 500-600 Taliban prisoners and foreign fighters were killed by shooting, their hands were bound; the evidence in Prosecution document Ex–1 not been contradicted; it is established that there were 30 to 40 US soldiers present who observed the shooting and execution of these prisoners; this evidence conclusively proves that the Defendant as Commander-in-Chief of US forces, was guilty for the execution of prisoners of war at Dashte-e-Leilli who had surrendered and were seriously injured and that US soldier were present when the shooting took place; against all rules and norms of warfare of the Geneva Convention (III) of 1949 and the Additional Protocol I of 1977.

16. Crimes against Humanity

Afghanistan, known to the International Community, had been subjected to a brutal civil war for more than two decades. From 1979 the Afghan people had constantly buried their dead; famine conditions prevailed from 1999; as a consequence hundreds of thousands were dying and turning into refugees, searching for food, in and around three International frontiers. It was a defenseless country, when the Defendant ordered the military attack and merciless carpet-bombing; despite warnings by UN and other humanitarian agencies that the effect of war on the Afghan people would be catastrophic.

US-UK Coalition forces recklessly fired thousands of bombs and missiles including radioactive DU weapons against a country which was not the enemy.

Customary International Law over centuries reflected in the St. Petersburg Declaration of 1868, the Hague Convention of 1899, Hague Convention of 1907, the Geneva Convention IV of 1949 and the Additional protocol 1 of 1977; on the laws of warfare have enjoined that civilian populations are to be protected in times of War; The common Article 3 of the Geneva

Conventions provides that persons taking no part in the hostilities, including those who have laid down their arms, the sick and wounded …….. "shall in all circumstances be treated humanely, without adverse distinction. Violence to the life and person of the above categories is prohibited. Weapons deployed against military targets and combatants should not therefore be of indiscriminate effect as to affect civilians and those who have laid down their arms"

Article 48 of Protocol I of 1977, Additional to the Geneva Conventions promulgates the basic rule of customary International Law applicable to all States whether signatories or not to the Additional Protocol 1; as these customary laws of warfare have been in existence for over a century and a half and reflect the provisions of multilateral treaties already in existence and reads as follows:

> "In order to ensure respect for and protection of civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objects and accordingly shall direct their operations only against military objects"

The Defendant, the President of the United States of America, who has made impassioned pleas for bringing "democracy" and "freedom" to Afghanistan, Iraq to several other States; concepts which presuppose deep concern for the human condition, failed to observe the basic rule of warfare and committed crimes against humanity.

According to UNCHR report, people escaping the bombings were not in a position to carry personal belongings or food and were rendered completely destitute. The foreign ministry spokesmen of Pakistan stated that "Pakistan was not in a position to deal with mass flows of Afghan refugees into Pakistan." Consequently thousands were turned away from the Pakistan border.

Despite 10 million land mines being buried into Afghan soil, people were fleeing in different directions displaced from their hearth and home, by aerial bombings, unaware that even the ground was unsafe. The UNCHR estimated that after 7th October 2001 air strikes, the number of new refugees from Afghanistan into Pakistan alone "exceeded one million" not including those who fled towards Iran and north of Afghanistan.

On October 10, 2001, Abdul Rasheed, the representative and Deputy Manager, of the Social and Economic Department, of the UN Food and Agriculture Organization, discussing the situation in Afghanistan warned that - "several million people are facing starvation and the food situation is very serious", inviting world attention to the fact, that the World Food Program and FAO had predicted a shortage of one million ton of food in Afghanistan due to severe drought for several years; he added that the situation "would be worse" because of the air strikes.

On 1st November 2001, UN Special Envoy Brahimi warned that stored food with the onset of cold weather would only last four months for 400,000 people; there were another 900,000 facing the food crisis. On November 20, 2001 the local representative of UNICEF pointed out, that there were 2 million people weakened from hunger in and around Mazar-e-Sharif and without food aid while warehouses storing grains were being bombed across Afghanistan.

As the bombings continued, people died from the bombs, from hunger, cold and malnutrition apart from lethal radioactive DU weapons contaminating the environment through, air, water and food with radioactive particles. The organization of 'Doctors without Borders' reported in

February 2002, that one out of six children suffered severe malnutrition which would result in death without treatment. The death rate of children, as reported by Doctors without Borders went up to 3.2, as against the earlier 1.4.The International Committee of the Red Cross reported children being sold for food.

Even refugee camps were not spared the bombings. The deliberately fostered divide by more than one Intelligence Agency to divide the people, resulted in different ethnic groups fleeing areas, worried about reprisals from rival forces; all of whom whether Northern Warlords or the Taliban had been assisted at one time or another by the United States; ethnic strife was a policy to control the people of Afghanistan and ensure continuance of the civil war to effect regime change; devastating peoples lives as armed bands roamed the countryside.

The "extermination" of people by creating catastrophic humanitarian conditions arising out of acts of aggression; subjecting people to displacement from their hearth and homes by bombings resulted in more than a million refugees crowding into camps; subjecting people to death from starvation, disease, cold and exposure; polluting water sources; destroying homes and infrastructure all "Crimes Against Humanity"; hundreds of thousands died from the catastrophe of war, without health care with hospitals, schools, hydroelectric and irrigation dams and food warehouses all bombed; millions were affected, and continue to be by the consequences of weapons systems used; the Defendant and his administration were indifferent to the warnings of Humanitarian Agencies that Afghanistan faced a catastrophe.

The military occupation and bombing of the Afghan people continues till date though President Karzai has stated that there is no Al Qaeda in Afghanistan.

17. Verdict:

I find the Defendant, George Walker Bush, President of the United States and Commander-in-Chief of United States Armed Forces guilty-

1. Under Article 2 of the Statute of the International Criminal Tribunal for Afghanistan and under International Criminal Law, for waging a war of aggression against Afghanistan and the Afghan people;

2. Under Article 3, Part I, clause (a), (b), (c),(d), (f),(g) and Article 3, Part II, clause (a), (b), (c), (d), (e), (f), (h), (i), (k), (l), (n), (o), (p), (q) of the Statute of the International Criminal Tribunal for Afghanistan, under International Criminal Law and International Humanitarian Law, in respect of War Crimes committed against the people of Afghanistan by the use of weapons prohibited by the laws of warfare causing death and destruction to the Afghan people; maiming men, women and children;

3. Under Article 4, clause (a), (b), (d), (e), (f), (h) and (i) of the Statute of the International Criminal Tribunal and International Humanitarian Law, for Crimes Against Humanity committed against the people of Afghanistan; resulting in inhumane acts affecting large sections of the population cause by the military invasion, bombing, and lack of humanitarian relief;

4. Under Article 3, Part I, clause (a), (b), (c), (f), (g) and Article 3, Part II clause (f), (k), (p) and (q) and 4(d) of the Statute of the International Criminal Tribunal for Afghanistan, under International Criminal Law and the Hague Convention and Geneva Convention (III) of 1949 in respect of the torture and killings of Taliban and other prisoners of war who had

surrendered and their torture and inhumane conditions of detention and deportation of innocent civilians;

In respect of the transport of prisoners in sealed Containers and their death due to suffocation and filing of rifle shots at the Container for creating holes for ventilation with the prisoners inside; and for conditions at Sheberghan prison; the Defendant is entitled to benefit of doubt at this trial however the issues are left open for trial before any other court/tribunal; as the evidence before the Tribunal is not conclusive on the involvement of United States forces;

5. Under Article 3, Part I (c) and (g); Article 3 Part 2 (a), (b), (c), (d), (e), (h), (i), (l) and Article 4 (b), (l) of (n), (p), (q) of the ICTA in respect of the serious humanitarian situation resulting from the refugee exodus in Afghanistan due to the bombing of civilian population and civilian infrastructure in a country already affected by serious famine resulting in mass exodus of people and death from bombing, hunger, displacement, disease; and absence of humanitarian relief;

6. Under Article 3, Part II, clause (o), (p) and under Article 4 clause (a), (b) and (l) of the statute of the International Criminal Tribunal for Afghanistan, and under International Criminal Law and International Humanitarian Law; in respect of the DU weapons used on the people of Afghanistan to exterminate the population; and for the crime of “Omnicide” the extermination of life, contamination of air, water and food resources; and the irreversible alteration of the genetic code of all living organisms including plant life; as a direct consequence of the use of radioactive munitions in Afghanistan; affecting countries in the entire region;

7. Under Article 3, Part II, clause (o), (p) and under Article 4 (a) and (i) of the Statute of the International Tribunal for Afghanistan, under International Criminal Law, for exposing soldiers and other personnel of the United States, UK and other soldiers of coalition forces to radioactive contamination by the use of DU weapons, hazarding their lives, their physiology, and that of their future progeny by irreversible alteration of the genetic code.

18. Direction:

1. The Defendant is a convicted war criminal consequently unfit to hold public office; citizens, soldiers and all civil personnel of the United States would be constitutionally and otherwise, justified in withdrawing all co-operation from the Defendant and his government; and in declining to obey illegal orders of the Defendant and his administration; including military orders threatening other nations or the people of the United States on the basis of the Nürnberg Principle, that illegal orders of Superior must not be obeyed.

19. Recommendations:

A. Immediate cessation of the use of Depleted Uranium Munitions-Moratorium on production, stockpiling and manufacture.

i. It has been conclusively proved that DU Weapons are Radioactive, Omnicidal nuclear weapons(the by product of the uranium enrichment process of manufacture of nuclear weapons and nuclear fuel) used as weapons of “silent genocide” in Afghanistan, Iraq and the Balkans and destructive of all life on earth; irreversibly altering the genetic code of all exposed. The manufacture, stockpiling and use of

such weapons is strictly prohibited by existing Conventions of International Humanitarian Law and must cease immediately. Corporations producing these weapons, heads of State, heads and personnel of Defense departments, military officers and others involved in decisions for its use, are liable to be criminally prosecuted before the International Criminal Court, or within national legal systems, and /or face suits for compensation.

ii. The manufacture, stockpiling, and use of Cluster bombs and Fuel-air explosives also known as Daisy Cutters, to immediately cease as these weapons systems are also prohibited by existing Conventions of International Humanitarian Law and those manufacturing, purchasing, stockpiling and permitting such weapons for military use; including those using these weapons systems are liable to be prosecuted for war crimes and face liability for claims of compensation.

B. Payment of Reparations to the people of Afghanistan

The people of Afghanistan individually and collectively are entitled to reparations for the war of aggression, war crimes, crimes against humanity, and the use of DU weapons; in keeping with International historical and legal precedent of the payment of compensation Lockerbie victims; the compensation paid to the Jewish people and the government of Israel, after the holocaust, by the German Government and Corporations; the compensation paid to Japanese citizens wrongfully interred during the Second World War and in accordance with the legal principles of the Theo Van Boven Report, adopted by the UN Committee in April 2000, "On the Right to a Remedy and Reparation for Violations of Human Rights and Humanitarian Law '.Reparations to be paid by Unocal company and Centgas consortium, the Defendant, the Government of the United States, UK, NATO countries, Pakistan, and other countries who offered bases or logistic facilities. The valuation of reparation to be based on the Lockerbie Award paid by Libya, and to the victims of the French Airlines crash also paid by Libya, even though Libya did not accept guilt. The life of an Afghan man, woman and child is not less than the worth of a life of a citizen of the United States, of Europe or Israel as the planet earth is the common home of all races. Afghanistan must be reconstructed.

C. Revoke the Charter of the Unocal Corporation based in California.

In 1998 several citizens groups in the United States had filed a complaint to the Attorney General of California, for cancellation of the Charter of the Unocal, for serious violations of human rights of citizens, within the United States and in countries such as Afghanistan and in Myanmar. It is recommended that a Complaint/Petition be filed again to revoke the Charter of Unocal and against companies of the Centgas consortium wherever liable; as records of this trial and the earlier complaint, establish that the Unocal Company and Centgas have used the military forces of the Republic of the United States, UK and other forces, paid for by citizens, in conspiracy with the Defendant, to wage a war of aggression in Afghanistan, to establish direct political and economic control.

D. To complete the Unfinished Task of the Nürnberg Trial and Far East Trials - and analyse the real reasons for the wars of the 20th and 21st Century for citizens.

As citizens, jurists, lawmakers, we have to complete the unfinished task of the Trials at Nürnberg and the Trials of the Far East; to lift the "Corporate Veil" on wars of aggression which the world has been subjected to. It has been concealed from citizens and soldiers alike, that decisions even for war and peace have vested in conglomerates, financial, Banking

interests, Corporations and their political allies and lobbies; manipulating resources and institutions of the state, created of millions of people, even in systems we have termed as democracies and Republics. The reasons for the First and Second World War, was not because the German or Japanese people were inclined towards war; the Axis and Allied nations with a few exceptions, were in the crucible of the same system with difference of degrees; oppressing other peoples and nations for economic resources; which they succeeded in camouflaging at the Nürnberg and Far East Trials. The nuclear bombings of Hiroshima and Nagasaki, and of German towns which had no military targets, were also war crimes. Despite the contribution of outstanding Investigators and Prosecutors these realities were swept away, and even as US soldiers were landing on Normandy beach, certain US Corporations were still dealing with the Nazi Party, some US Corporations had used slave labor, held stocks and were partners in German plants; a continuation of the capital accumulation from the slavery of African people caught and sold across the Atlantic by Companies.

E. Assert Public/State control through legislation and autonomous bodies over Armament Industries and Major Corporations in all countries -in the interregnum prevent National Budgets from being hemorrhaged by the Military-Industrial Complex referred to by President Eisenhower- within and across nations -a major cause of wars.

i. To prevent wars every national budgets has to be protected from the International Arms Industries, diverting scarce resources to armaments with a vested interest in wars, armed conflicts and terrorism... The continuation of these Industries in private hands, is itself a threat as the issue of DU weapons has shown. The connection between Krupps, the Arms Corporation and the Nazi Party cannot be forgotten; such alliances existed at the relevant time in both countries of the Axis and Allied powers; such alliances still exist between Corporations and governments as we have seen in this trial not only within nations but globally.

ii. It was a President of the United States, General Dwight Eisenhower who stressed among other eminent leaders of the world that-

> "Every gun that is made, every warship launched, every rocket fired signifies in the final sense, a theft from those who hunger and are not fed; those who are cold and not clothed. This World in Arms is not spending money alone. It is spending the sweat of its laborers, the genius of its Scientists, the hopes of its children".

iii. The economy of the United States in respect of which the IMF has sounded an alarm; the infrastructure of health, housing, education does not reflect the status of a "super power"; the people of the United States have paid the price of the subsidies given by its citizens to armament and other corporations, in whose interests these wars have been waged; with adverse affects on other economies linked or dependent on the US economy.

iv. In this context Article XXI of the GATT, provides freedom for military spending for any reason related to national security…to maintain order, so that national defense and security budgets are not subject to scrutiny by International Financial and Bretton Woods Institutions (World Bank and IMF), as an incentive to the Arms industry; whereas social and development budgets of national governments regulated by Structural Adjustment Loans, are strictly controlled by the aid/loan agencies. This must be revoked.

F. Revise the concept of permanent membership of the Security Council not in the interest of peaceful solution of disputes, with the rotational principle; and enhance the powers of the General Assembly of the UN.

The Security Council, continues to reflect the historically outdated principle of 'balance of power' among the Permanent members; the legacy of the Second World War; giving disproportionate status to certain governments; this no longer reflects the real world and its democratic aspirations; as a consequence the Security Council at crucial moments has either been paralyzed; or has been utilized to camouflage military occupations of countries, in private interests. The General Assembly of the United Nations, where the democratic principle prevails, must assume its rightful role in the resolution of conflicts. The Security Council should function on a rotational principle, and the concept of permanent membership abolished, to restore democracy to the world body, reflecting 21st Century realities.

G.Adherence to the letter and spirit of Article 33

Article 33 of the United Nations Charter provides for mediation, conciliation, arbitration and adjudication prior to resort to war; any legal defense or justification by any government of waging a “just” war; must be subject to the test of Article 33 as to whether these alternative dispute mechanisms were resorted to. The Security Council and General Assembly must secure compliance.

It is necessary for me to place on record, the invaluable assistance rendered for this trial, by organizations working for peace in Japan and the support of humanitarian and other organizations and individuals who came forward to testify from all over the world. In the final analysis the acceptance of a decision in any legal system, is dependent on the confidence of vast numbers of people in the independence, integrity and juridical wisdom of a Court or Tribunal, and its capacity to reflect the collective conscience of humanity in trials as serious as this one; all higher forms of social organization have evolved directly out of mankind's yearning for a “just and harmonious society” and for the realization of the worth of every human being.

This judgment is the result of the legal dialogue during hearings, with attorneys from Japan, the United States and Germany appearing for the Prosecution and the amicus curiae team of lawyers, who spared no effort to assist the Tribunal; and legal discussions with my colleagues, the Judges at this trial; representing different legal systems discovering principles common to all our legal systems.

Without the assistance of the ICTA Executive and Secretariat based in Japan, the painstaking task of compilation of documents, translations, interpretation for witnesses and coordination of work across continents would have been impossible.

I believe that “Truth” is a weapon on the side of humanity. If truth is known tyranny and injustice will be defeated. The Tribunal has performed its Judicial task. It is now for people to ensure the implementation of this verdict.