
The 4th International Criminal Tribunal for Afghanistan

Judgement

Compiled by **The Executive Committee of ICTA**

Opinion of the Tribunal

The International Criminal Tribunal for Afghanistan (ICTA) delivers the opinion of the court based on the evidences, testimonies and views presented at a multitude of public hearings held in different locations with thorough preparations, and the trials at three public courts held in Tokyo.

The ICTA movement was initiated by the groups of Japanese peace activists who had doubts about the validity of the attacks of the coalition forces of the United States and the United Kingdom assisted by others to the land of Afghanistan and its people in October of 2001. Many citizens were involved, including university professors, journalists and legal experts who presented testimonies, evidences as well as legal analysis at public hearings while even larger number of citizens has given moral and financial support to the ICTA in inviting witnesses, prosecutors and judges from abroad. The facts the court has to deal with are complicated, and the incidents took place in the area far distant from Japan, the country of Afghanistan, one of the poverty-stricken regions of the world. General public had limited access to the news on the development of the war because of the media control imposed by the U.S.-UK forces. Nor did they have access to independent media operating freely to inform the reality in detail. Nevertheless, everybody was aware that the whole world is involved with the war through direct cooperation, military bases, or logistic supports which many countries provide to assist U.S. in their own land including UK and Japan.

We, on behalf of the world's peace-loving people, admire the courage of the ICTA people who refused to turn the blind eye to the injustice and would like to express the profound gratitude to efforts of all the citizens that supported the movement, by which they are never rewarded materially.

At the same time, we are proud that the public conscience manifested in today's judgment will be a small step ahead to promote the rule of law, legal principles of peace embodied in the wisdom of human being, such as international law, international humanitarian law as well as constitutions of many countries and Human Rights Charter.

The court opinion expressed here is the unanimous opinion of all the judges of ICTA except for a few points. Five judges participated in this court from the country with different legal system, that is, from the United States, United Kingdom, India, and Japan. Except for the judge Peter Erlinder who was

partially absent from the court proceeding, as he needed to work as a solicitor in the UN International Criminal Court for Rwanda, five judges participated in the past three courts, listening to and interrogating the witnesses, watching the videos, reading the documents and discussed the subject with earnest interest.

Each of the judges examined the matter carefully and dispassionately, expressed her or his view and drafted the opinion. In this court opinion, the points commonly shared among judges are to be presented based on the individual opinions. The judgment is made in answer to aspiration and deep concern of the people victimized and damaged by war in Afghanistan, the people who actively supported the ICTA movement following their conscience as a citizen in pursuit of peace and justice in Japan, U.S., U.K. India and other countries. Some participated in the public hearings to learn the facts about the Afghan war, some came forward with courage to testify before the courts, members of the Executive Committee supported the movement financially and morally, and you people in the audience who are anxious to listen to the historical judgment in the presence of judges.

I. Main Sentence

Defendant Mr. President Bush who is the 43rd President of the United States as well as the U.S. Commander-in-Chief of U.S. Armed Forces was accused of variety of crimes committed in the war against Afghanistan in the indictment dated June 30th, 2003 and the supplementary indictment dated December 13th of the same year. The ICTA delivers the judgment as follows ;

1. Under Article 2 (Crime of Aggression) 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 ; guilty

2. Under Article 3 [War Crimes], Part I, clause (a) [willful killing], (b) [torture/inhuman treatment], (c) [great suffering/serious injury], (d) [extensive destruction and appropriation of property], (f) [willfully depriving a prisoner of war of the rights of fair and regular trial ; (g) [unlawful deportation or transfer or unlawful confinement of a civilian] ; and Article 3, Part II, clause (a) [Intentional attacks against the civilian population], (b) [Intentional attacks against civilian objects], (c) [intentional attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance], (d) [launching an excessive attack], (e) [bombarding undefended towns or villages], (f) [Killing or wounding a surrendered combatant], (h) [deportation or transfer of the population of the occupied territory], (i) [attacks against buildings dedicated to religion], (k) [Killing or wounding treacherously individuals belonging to the hostile nation or army] ;, (l) [Destroying or seizing the enemy's property], (n) [Employing poison or poisoned weapons ;], (o) [Employing asphyxiating, poisonous or other gases], (p) [Employing weapons of indiscriminate nature], (q) [Committing outrages upon personal dignity] 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 ; guilty

3. Under Article 4, clause (a) [murder], (b) [extermination], (d) [deportation], (e) [imprisonment], (f) [torture], (h) [persecutions] and (i) [other inhumane acts] 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 caused by the military invasion, bombing, and lack of humanitarian relief ; guilty

4. Under Article 3 [War Crimes], Part I, clause (a) [willful killing], (b) [torture/inhuman treatment], (c) [great suffering or serious injury], (f) [willfully depriving a prisoner of war of the rights of fair and regular trial] ; (g) [unlawful deportation or transfer of a civilian] ; Article 3, Part II, clause (f) [Killing or wounding a surrendered combatant], (k) [Killing or wounding treacherously individuals belonging to the hostile nation or army] ; (l) [Destroying or seizing the enemy's property], (n) [Employing poison or poisoned weapons ;], (p) [Employing weapons of indiscriminate nature], (q) [Committing outrages upon personal dignity] and Article 4 [Crimes against humanity], clause (d) [deportation] 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 firing 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) [willfully causing great suffering or serious injury] and (g) [unlawful deportation or transfer of a civilian] Article 3 Part 2 (b) [attacks against civilian objects,], (c) [attacks against personnel, installations involved in a humanitarian assistance], (d) [attack which would cause damage to civilian objects or widespread, long-term and severe damage to the natural environment], (e) [bombarding undefended towns or villages], (g) [Making improper use of a flag of truce, of the flag or of the military insignia], (h) [deportation or transfer of the population of the occupied territory], (i) [attacks against buildings dedicated to religion], (l) [Destroying or seizing the enemy's property], (n) [Employing poison or poisoned weapons ;], (p) [Employing weapons of indiscriminate nature], (q) [Committing outrages upon personal dignity] and Article 4 [Crime against humanity] clause (b) [extermination], (i) [other inhumane acts] of the statute of the International Criminal Tribunal for Afghanistan 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 hunger, displacement, disease ; and absence of humanitarian relief ; guilty

6. Under Article 3 [War Crimes], Part II, clause (o) [Employing asphyxiating, poisonous or other gases], (p) [Employing weapons of indiscriminate nature] and under Article 4 clause (a) [murder], (b)

[extermination] 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 ; guilty

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 ; guilty

II. Significance of Judgment

Defendant Mr. President Bush 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 Nuremberg Principle, that illegal orders of Superior must not be obeyed.

III. Recommendations

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

DU, a by-product of the uranium enrichment process of manufacture of nuclear weapons and nuclear fuel, is highly dense metal, which has been used in munitions for its penetrating ability since 1991 for the first time in Iraq, then in Kosovo, Afghanistan and Iraq again in 2003. DU is chemically toxic to human body, physically has low radioactivity, irreversibly altering the genetic code of all exposed. DU forms a cloud of finely dispersed particles in air (called “aerosol”), which over time, can gradually be dispersed on the soil surface mainly by rain water and thereby at the same time be diluted into ground water while wind can cause further redistribution over the wide area. Health risk is great when these particles are inhaled or when they come into the body by drinking contaminated water or ingesting contaminated food. Although its mechanism is not yet clear, it is destructive to all life including human beings beyond control. Because it produces only a low level of radioactivity, it escapes the detection of a Geiger counter. Therefore, as long as DU weapons are used, human beings are faced with horrible consequences of irrevocable damage to all life. That is why it is called the weapons of silent genocide.

As explained separately in the individual judgment, the manufacture, stockpiling and use of such weapons are strictly prohibited by existing Conventions of International Humanitarian Law. Thus, use of DU weapons must be stopped 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.

The manufacture, stockpiling, and use of cluster bombs and Fuel-air explosives also known as Daisy Cutters should cease immediately as these weapon systems are also prohibited by existing Conventions of International Humanitarian Law. And those who manufacture, purchase or permit the military use of such weapons ; including those who directly handle these weapon systems are liable to be prosecuted for war crimes and face liability for claims of compensation.

It would be effective and useful to ban DU weapons and other weapon systems of indiscriminate nature described above by treaty in light of the experience in global treaty for banning landmines. In formulating the treaty, it is possible to clarify the illegality of those weapon systems, set up the monitoring system of manufacturing, selling, purchasing, transferring and stockpiling of the munitions, and to establish the most effective measures to eliminate these destructive weapons. All the nations have legal obligations to conclude and ratify such treaty owed to the entire human beings and all living creatures on earth.

B. Payment of Reparations to the People of Afghanistan

The people of Afghanistan who have suffered the incurable damage from the illegal use of armed force are individually and collectively entitled to reparations, especially on the grounds of aggression, war crimes, crimes against humanity, and the use of DU weapons. There are historical precedents of the payment of compensation. They are Lockerbie bombing incidents and French airplane explosion, in which the Libyan government paid compensation to the victims ; holocaust during the World War II, for which the Germany government and German corporations paid the compensation to the Jewish people and the government of Israel and the wrongful internment of Japanese-American citizens during the Second World War, in which the U.S. government paid the compensation. And its legal ground is clearly established in 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."

Those who have to pay reparations would be Unocal Company and Centgas consortium, the Defendant Mr. President Bush, the Government of the United States, UK, NATO countries, Pakistan, and other countries who offered bases or logistic facilities.

The amount of reparation shall be calculated based on the amount paid by Libya to Lockerbie victims, and also to the victims of the French Airlines. Such calculation should be made based on the responsibility of perpetrators not based on the living standard of victims in Afghanistan as the planet earth is the common home of all races.

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 be filed again to revoke the Charter of Unocal wherever liable. Again wherever it is liable, it is recommended that a complaint be filed against the companies of the Centgas consortium. As the court has evidence on the record that Unocal and Centgas were involved with the development in conspiracy with the Defendant Mr. President Bush to wage a war of aggression in Afghanistan, to establish direct political and economic control and that they have used the military forces of the United States paid for by the tax money of U.S. citizens for such interested motives.

D. The Unfinished Task : What are the Real Reasons for the Wars of the 20th and 21st Centuries ?

The 20th Century was the century of wars and armed conflicts. Efforts have been made to record what happened, prosecute the war criminals and pursue the responsibilities of wars to prevent further destruction and overcome obstacles in maintaining the law and order of peace starting with the International Military Tribunal at Nuremburg and International Military Tribunal for Far East. As citizens, jurists, lawmakers, we have to continue the pursuit of war responsibility in legal terms not leaving the task of the Trials at Nuremburg and the Trials of the Far East unfinished. The real reason was “Corporate Interests” which planned and profited from the wars of aggression by taking advantage of the wars. It has been concealed from citizens and soldiers alike because the veil has covered the reality until now. Time has come to lift the veil on the wars of aggression.

E. Public Control over Armament Industries and Multi-national or Giant Corporations operating in and across nations

It has been discussed that close alliance of military and industries manipulates the information, abuses the public fund such as tax money only to drive a nation and its citizens into a war. A former President of the United States, General Dwight Eisenhower rightfully pointed out the danger of such military-industrial complex in his speech at the retirement.

To prevent wars, every national budget has to be protected from the International Arms Industries, which divert scarce resources to non-productive merchandise such as armaments with a vested interest in wars, armed conflicts and terrorism. The continued existence of these Industries in private hands is itself a threat to global citizens as those private industries’ major goal is to maximize their profit.

As the IMF has sounded an alarm, the economy of the United States is in serious trouble not reflecting the status of a “super power” in terms of the infrastructure of health, housing, education. The people of the United States have paid the price of the subsidies given by its citizens to armament and other corporations. When the U.S. is in a war, not only the economy of the United States deteriorates but also other economies linked or dependent on the US economy will have adverse effects.

In this context, some of the trade and financial systems of the world seem to encourage the militarization of a nation rather than to discourage it. For example, Article XXI of the GATT provides freedom for military spending for any reason related to national security. Also environment or conditions, which tend to invite a war, should be changed. Especially it is widely known that poverty and destitute tend to cause localized conflicts. In order to eliminate the causes of conflicts, the international community needs to promote the welfare and human rights of the total population of human beings on earth as advocated by the U.N. Charter. For that goal, it is desirable that international financial organizations such as World Bank and International Monetary Fund, exercising the huge influence on the national economies, should be subject to scrutiny and monitor by the civil society. Financial issues which would affect the people’s growing rights should be discussed openly in international forums so that we could establish the best

possible methods to utilize the international finance to eliminate the poverty and destitute of from the surface of the earth and put them into practical use.

F. Reform of the United Nations

Parties to international disputes and conflicts should seek settlement through discussions not only at U.N. Security Council but also at other organizations like UN Human Rights Commissions and Committees as well as legal settlement or advisory opinions at the International Court of Justice. Incompetence or inability of UN was often emphasized as a factor to launch a military operation in Afghanistan.

The Security Council has often been paralyzed by the veto given to permanent members of the council. In an effort to overcome the past weakness of the League of Nations, which had little control over the international disputes, United Nations set up a special agency called Security Council, which is vested with much stronger power to settle the conflicts by cooperation among permanent members. The principle of harmony among powerful nations is often converted into the principle of “balance of power”, the legacy of the Second World War. Security Council is getting controversial because of this system, which has given disproportionate status to certain governments.

It is time that UN was reorganized to reflect the real world and its democratic aspirations. For example, it should be examined that the General Assembly of the United Nations, where the principle of democracy prevails, is given more power so that it can play its rightful role in the resolution of conflicts. Also the Security Council needs to be reformed. Either the concept of permanent membership be abolished or the Security Council function on a rotational principle of elected members serving the term so as to restore and strengthen democracy to the world body.

G. Adherence to the letter and spirit of Article 33

Every and each conflict of the international community should be settled peacefully and non-militarily. Article 33 of the United Nations Charter provides for absolute priority of peaceful means for the settlement of conflicts prior to resort to war in the spirit of UN Charter Article 2 which prohibit the use of armed force for the settlement of international disputes. Therefore, provided Article 51 says, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense...”

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. And likewise, provided dialogues and discussions have to be kept strictly confidential during the negotiations, all the records of efforts and activities for the peaceful settlement have to be open to the public honestly and accurately once the efforts failed and resulted in a war subsequently. The Security Council and General Assembly must secure compliance with Article 33 to the best they can within their power and authority.

Declared as above,

Judge	Osamu Niikura	Peter Erlinder
	Robert I.Akroyd	Asaho Mizushima
	Niloufer Bhagwat	