

SPECIAL REPORT: WATER UNDER SIEGE IN IRAQ

US/UK Military Forces Risk Committing War Crimes by Depriving Civilians of Safe Water



Raw sewage flows in the streets of Kut. Photo © 2003 Terry J. Allen



Center for Economic and Social Rights
Emergency Campaign on Iraq | Right to Water Project

APRIL 2003

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About the Center for Economic and Social Rights

The Center for Economic and Social Rights (CESR), based in New York, is an international human rights organization dedicated to promoting social justice through human rights. CESR currently has consultative status with the United Nations Economic and Social Council and serves as the Secretariat for the International Network on Economic, Social, and Cultural Rights, with hundreds of member organizations throughout the world.

Since 1991, CESR has produced a series of groundbreaking legal and humanitarian reports on the Iraq crisis. These include the first independent report on the public health crisis after the 1991 Gulf War;¹ the first post-war epidemiological survey to document increased child mortality in Iraq as a result of war sanctions;² the first medical journal article to report over half a million excess child deaths since 1991;³ the first law journal article to report on war crimes by Coalition forces;⁴ and the first legal report to condemn UN sanctions policy for violating the human rights of the Iraqi population.⁵

CESR recently launched an *Emergency Campaign on Iraq* to promote solutions to the Iraq crisis based on well established principles of international law. As part of this campaign, CESR has produced a set of educational resources and fact sheets, prepared legal and humanitarian reports, and conducted fact-finding in Iraq. From January 17-30, 2003, CESR organized a mission to Iraq to assess the potential humanitarian and legal consequences of war through a combination of field surveys, interviews, and access to confidential UN documents. The research team concluded that a US-led military intervention in Iraq will trigger the collapse of Iraq's fragile public health and food distribution systems, leading to a humanitarian crisis that will far exceed the response capacity of UN and other relief agencies.⁶

CESR subsequently released a report on the resort to force under the UN Charter and international law entitled *Tearing Up the Rules: Illegal Invasion of Iraq*.⁷ Other legal and humanitarian reports will be forthcoming.

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Executive Summary: Water Crisis in Southern Iraq

Water is fundamental to life. No one can survive without sufficient water for drinking, cooking, washing, and general hygiene. For this reason, international law recognizes access to safe water as a basic human right—“indispensable for leading a life in human dignity”—as well as an integral component of the rights to life, health, and housing.⁸

The current invasion of Iraq by the United States, United Kingdom, and Australia poses a grave threat to the right to water of Iraq’s 24 million inhabitants, almost half of them children under the age of 15.⁹ Anglo-American military forces have already laid siege to numerous urban centers in southern and central Iraq, disrupting electrical, water and sanitation systems that sustain millions of civilians.¹⁰ With the approach of summer, when temperatures in this region regularly exceed 120 degrees Fahrenheit,¹¹ the likelihood of water-borne disease epidemics is alarmingly high.¹²

In Basra, the Anglo-American blockade deprived one million residents of access to safe drinking water for almost two weeks.¹³ UNICEF warned that “there are 100,000 children in Basra at risk for severe fever and death because one water treatment plant stopped functioning.”¹⁴ The regional spokesperson for UNICEF described a “most dire” humanitarian crisis:

The situation is leading to a rise in disease and we’ve already seen some incidents of cholera now in the south, as well as what we call Black Water Fever, which is extremely deadly if you’re under 5... (The cholera outbreak is) of extreme concern to us because not only does it show that there’s been a major impact due to unclean water in the area, but also our ability to get in and reach these people in the middle of a combat zone is extremely limited right now.¹⁵

The public health crisis in Basra provides a window into the possible fate of Iraqi civilians in Nasiriyah (population 560,200), Najaf (585,600), Kerbala (572,300), Hilla (548,000), Amara (351,100), and Baghdad (5.8 million).¹⁶ Civilians in Baghdad are especially vulnerable given expectations of intense aerial bombardment, a tight blockade, and fierce urban combat aimed at toppling the Iraqi regime.¹⁷ On April 3, power was cut to 90% of Baghdad—the result of damage to the Al-Doura power station during the American capture of Saddam Airport.¹⁸

United Nations agencies and the International Committee of the Red Cross have alerted the international community to the growing water crisis throughout southern and central Iraq.¹⁹ UN Secretary-General Kofi Annan has stated that “humanitarian assistance would have to be provided by the United States and its coalition partners in those areas under their control, consistent with their overall responsibility under international law.”²⁰

Before the war, US and British leaders assured their publics that “liberating” Iraq would be a quick and clean military operation, relying on high-tech precision weapons to minimize civilian casualties.²¹ The Iraqi people, especially the long-suffering Shi’a majority in the South, were expected to welcome Anglo-American forces.²² This scenario has not materialized and the Pentagon has called for an additional 120,000 American soldiers to supplement 250,000 already in the Persian Gulf.²³

It now appears likely that Anglo-American forces will continue blockading cities in southern and central Iraq in preparation for direct urban combat. If as a result electricity is disrupted for extended periods, Iraq's entire structure of civilian life support—public health, water and sanitation, and food distribution—will collapse, with devastating consequences for the civilian population.

The Anglo-American military strategy would therefore impose disproportionate costs on civilian life and property in violation of the most fundamental principles of law and humanity. Political and military personnel on all sides of the conflict who issue or carry out illegal orders are subject to prosecution for war crimes.

In fulfillment of their lawful duties, the Center for Economic and Social Rights urges all warring parties—the US, UK, Australia, and Iraq—and all organs of the United Nations—the Security Council, General Assembly, and Secretariat—immediately to establish and respect:

- A cease-fire to enable impartial humanitarian agencies, independent of any military forces, to restore and maintain life-sustaining services to Iraqi civilians.
- Ongoing humanitarian corridors to enable aid agencies to ensure the survival of vulnerable civilian populations throughout the conflict.
- Withdrawal of Anglo-American military forces to positions held before March 19, 2003, to allow the United Nations to fulfill its mandate of resolving the Iraq crisis in accordance with the UN Charter and international law.

Lessons from the 1991 Gulf War: Protect Civilian Infrastructure

During the first Gulf War, attacks against Iraqi infrastructure by US-led military forces claimed a minimum of 110,000 civilian casualties.²⁴ The vast majority of deaths were caused not by the direct impact of bombs but by the destruction of the electric power grid and the ensuing collapse of the public health, water and sanitation systems, leading to outbreaks of dysentery, cholera, and other water-borne diseases. The first post-war epidemiological survey throughout Iraq in August 1991 reported the deaths of 47,000 children under the age of five.²⁵ The first United Nations mission to post-war Iraq documented how “apocalyptic damage” to the infrastructure had reduced the country to “the pre-industrial age.”²⁶

While devastating to the civilian population, the attacks against electricity and water in 1991 played little role in defeating the Iraqi army. One week into the war, Chief of Staff General Colin Powell, then Chairman of the Joint Chiefs of Staff, dismissed the military value of attacking electricity, acknowledging that Iraq's leaders “have redundant systems, resilient systems, they have work-arounds, they have alternatives, and they are still able to command their forces.”²⁷

The human costs of disabling Iraq's civilian infrastructure were known in advance to the Pentagon. Partially declassified Defense Intelligence Agency assessments from January to March 1991 accurately predict the onset of a public health crisis in Iraq.²⁸ One document, entitled “Disease Outbreaks in Iraq,” reports that:

Conditions are favorable for communicable disease outbreaks, particularly in major urban areas affected by coalition bombing... Infectious disease prevalence in major Iraqi urban areas targeted by coalition bombing (Baghdad, Basrah) undoubtedly has increased since the beginning of Desert Storm... Current public health problems are attributable to the reduction of normal preventive medicine, waste disposal, water purification and distribution, electricity, and the decreased ability to control disease outbreaks.²⁹

By attacking infrastructure targets without direct military value, the US intended to pressure the Iraqi leadership by imposing widespread suffering on the civilian population. A US Air force planner stated that “we wanted to let people know, ‘we’re not going to tolerate Saddam Hussein or his regime. Fix that and we’ll fix your electricity.’”³⁰ Similarly, Brig. Gen. Buster Glosson, the architect of the 1991 air campaign, explained that bombing telecommunications was meant to “put every household in an autonomous mode and make them feel they were isolated. I didn’t want them to listen to radio stations and know what was happening. I wanted to play with their psyche.”³¹

Humanitarian Law and the Right to Water: Potential Violations in Iraq

Humanitarian law, derived from the Geneva and Hague Conventions, places limits on the means and methods of combat. It is built on the fundamental principles of distinction and proportionality.³² Under humanitarian law it is illegal to launch either indiscriminate attacks that do not distinguish between military and civilian targets, or attacks against military targets if the result would be excessive civilian casualties “in relation to the concrete and direct military advantage anticipated.”³³ The Rome Statute of the International Criminal Court prohibits “intentionally directing attacks against civilian objects, that is, objects which are not military objectives.”³⁴

It is also illegal to launch attacks intended to demoralize or spread terror among the civilian population. According to the Geneva Conventions, “It is prohibited to attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population, such as... drinking water installations and supplies.”³⁵

Depriving civilians of access to safe water—whether through direct attacks against water or electricity or the indirect effect of extended blockades—clearly violates these basic principles of international law and constitutes a war crime.

Humanitarian law also guarantees the right of affected civilians to receive aid.³⁶ The Geneva Conventions require all warring parties to allow aid agencies to deliver humanitarian relief “in accordance with Red Cross principles.”³⁷ The founding principle of the Red Cross is complete independence from the military.³⁸ The ICRC therefore rejects any direct involvement of military forces in relief operations:³⁹

Military operations should be clearly distinct from humanitarian activities. Particularly at the height of hostilities, military forces should not be directly involved in humanitarian action, as this would or could, in the minds of the authorities and the population, associate humanitarian organizations with political or military objectives that go beyond humanitarian concerns.⁴⁰

As the UN General Assembly has declared, “Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.”⁴¹ These legal principles of humanitarian aid have not been respected by Anglo-American military forces invading Iraq.

Water Crisis in Southern Iraq: Civilians at Grave Risk

Iraq’s 24 million people—almost half of them children under the age of 15—are extremely vulnerable to water shortages during the conflict.⁴² After 12 years of crippling economic sanctions, the infrastructure has only been partially rebuilt, with a resulting decrease in water availability from 330 to 150 liters per person per day in Baghdad, and from 180 liters to 65 liters in rural areas.⁴³ The UN oil-for-food program OFFP has provided limited funds to rehabilitate the water system since 1998, but that program has already been suspended due to the war.⁴⁴

The potential collapse of the water system in southern and central Iraq is the most serious humanitarian emergency of the war. According to UNICEF, “this conflict will have more people dying from water treatment plants going down than from war itself.”⁴⁵

The situation in Basra is a case in point. On March 21, US-British bombing destroyed high voltage lines and knocked out Basra’s electrical power.⁴⁶ That in turn disabled Basra’s water and sanitation systems, including the Wafa’ Al Qaed Water Pumping Station, which pumps water from the Shatt al-Arab river to five water treatment plants that supply piped water to over 60% of Basra’s 1.5 million residents.⁴⁷ On March 25, a British military spokesperson cited the crisis resulting from lack of water and electricity as a justification for continuing military action: “taking Iraq’s southern city of Basra has now become a military objective in order to get humanitarian aid to civilians there.”⁴⁸ The situation may soon improve, as ICRC has supplied six back-up generators to restart Wafa’ Al Qaed and reports that “as of April 2 it should be possible to resume the water supply to several water treatment plants in the city.”⁴⁹

The crisis is already severe in urban centers throughout southern and central Iraq that, like Basra are encircled and besieged by Anglo-American military forces. On April 2, the ICRC reported that “entire towns and suburbs have now been without piped water for about a week, including several district towns north of Dhi Qar and Najaf but also towns south of Basra such as Al-Zubayr and Safwan.”⁵⁰ An ICRC engineer surveyed south and west of Baghdad and found that “major water treatment plants... are now only operating at 40-50% of their normal capacity, owing to repeated power cuts.”⁵¹

The most dangerous situation is in Baghdad, where over 5 million residents face a potentially fierce and extended battle for control of the seat of government power. Military analysts believe that Iraq has concentrated “some 250,000 Republican Guard and regular Army strengthened by perhaps as many as 75,000 irregulars” in and around Baghdad.⁵² General Richard Myers, Chairman of the US Joint Chiefs of Staff, has indicated that “the first option” might be to cut off Baghdad from the rest of Iraq: “When you get to the point where Baghdad is basically isolated... you have a country that Baghdad no longer controls.”⁵³

If the strategy of extended siege is accompanied by disruption of essential services, the population of Baghdad faces a grave risk of increased water-borne disease. Major water treatment facilities lie

outside the city center. The ICRC has warned that “As US forces tighten their encirclement of Baghdad, workers may be cut off from the plants as happened in the southern city of Basra.”⁵⁴

On the evening of April 3, power to Baghdad was cut off for the first time since the Anglo-American invasion began on March 19. An American journalist reported that:

The blackout followed a 15 minute artillery barrage on Baghdad’s southern outskirts, where approaching US forces were assaulting Saddam International Airport, about 10 miles southwest of Baghdad. One of Baghdad’s key power-generating plants is at Dora, near the airport.⁵⁵

Predicting the Risks: Another Humanitarian Crisis Foretold

A confidential UN document from December 2002 estimated that over 60% of the Iraqi population would lose access to water and sanitation during a war, with the most severe impact in southern Iraq.⁵⁶ Following a January 2003 humanitarian assessment mission to Iraq, the Center for Economic and Social Rights warned that Iraq’s water and sanitation systems could not withstand military attack:

Having functioned for over a decade without capital investment, maintenance, and spare parts, their operation is jury-rigged and unsustainable. In the event of another military attack which disables the electrical supply, they are unlikely to recover and would not function until they were replaced.⁵⁷

There can be little doubt that, as with the 1991 Gulf War, the US government was aware in advance that invading Iraq would result in a profound public health crisis throughout the country. In February 2003, USAID solicited bids from a handful of private contractors to rehabilitate the water infrastructure in all 45 major urban centers of Iraq after the war. The bid document anticipated that:

Disruptions to electrical supply, as well as possible damage to supply and distribution, will severely compromise the integrity of piped water systems... All systems are currently operating at a highly degraded level of performance, and will likely suffer further degradation as a result of a conflict.⁵⁸

On March 26, USAID administrator Andrew Natsios blamed Iraq’s “Ba’athist Party” for “shutting down the water system” and precipitating a humanitarian crisis—without mentioning the effects of either economic sanctions or the Anglo-British blockades and attacks against civilian infrastructure.⁵⁹ On March 30, US military commanders in the port town of Umm Qasr proposed selecting Iraqi businesses with tanker trucks to sell clean water to desperate civilians for a “reasonable” fee.⁶⁰ Only public protest by British authorities in control of Umm Qasr prevented this breach of humanitarian principles from taking place.⁶¹

The potential sources for funding Iraq’s eventual rehabilitation and reconstruction—estimated at up to \$100 billion⁶²—are currently being discussed in the Security Council. Despite opposition at all levels of the UN, the US has proposed to divert \$10.9 billion already in the pipeline of the oil-for-food program from UN-administered humanitarian relief programs to US-controlled reconstruction funds, much of which has already been allocated to American corporations.⁶³

The Pentagon is also insisting on exercising direct control of relief operations inside Iraq, in violation of longstanding legal principles meant to ensure the neutrality and independence of

humanitarian action. InterAction, an umbrella coalition representing 160 major US relief and development groups, recently accused the Pentagon of:

forcing nongovernmental organizations to operate under Department of Defense jurisdiction... [which] complicates our ability to help the Iraqi people and multiplies the dangers faced by relief workers in the field.⁶⁴

Accountability for War Crimes: Punishing the War Criminals

War crimes are international crimes for which there is individual responsibility. In 1950 the Nuremberg Military Tribunal stated: “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”⁶⁵

War crimes fall within the international law principle of universal jurisdiction on the grounds that certain crimes are so universally reviled that any state may prosecute the perpetrators. According to Amnesty International, “at least 120 states have enacted legislation which would appear to permit their courts to exercise universal jurisdiction over conduct amounting to some or all war crimes in certain circumstances.”⁶⁶ Many states, including the UK and Australia, have ratified the Rome Statute of the International Criminal Court, which provides for prosecution of genocide, war crimes and crimes against humanity.⁶⁷ Although the US has expressly rejected the International Criminal Court, Congress in 1996 enacted the War Crimes Act, under which civilian courts have authority to try either service members or civilians for war crimes and grave breaches of the Geneva Conventions.⁶⁸

President Bush has declared that Iraqis will be prosecuted to the full extent of the law if they:

take innocent life, if they destroy infrastructure, they will be held accountable as war criminals... War crimes will be prosecuted. War criminals will be punished. And it will be no defense to say I was just following orders.⁶⁹

The same logic applies equally to illegal orders by President Bush and allied leaders, and to illegal acts carried out by Anglo-American forces in furtherance of such orders.

CESR is cooperating with a wide range of legal organizations around the world to compile evidence, prepare legal strategies, and eventually prosecute all parties that commit war crimes in Iraq. In the US, the Center for Constitutional Rights, along with over 100 concerned organizations and international lawyers, have placed President Bush and Secretary of Defense Rumsfeld on public notice that they will “ensure the accountability of those persons who may be found responsible for the commission of crimes against humanity and war crimes.”⁷⁰ In a similar initiative, Public Interest Lawyers, Matrix Chambers, and the Campaign for Nuclear Disarmament have concluded that senior members of the UK government can and must be held individually responsible for violating the laws of war.⁷¹

Conclusion: Upholding the Law in Iraq

Every country in the world is bound by principles of law developed over centuries to govern international relations. The essence of international law is the principled and consistent application of a single standard for the strong and weak alike. Selective manipulation of international law by powerful states undermines its legitimacy, just as domestic order is destroyed when powerful individuals are allowed to act above the law. This is the fundamental distinction between the rule of law to serve the common good of all people and the use of force to impose the special interests of a privileged elite.

International law was significantly strengthened through the creation and universal acceptance of the UN Charter, the Universal Declaration of Human Rights, and the Geneva Conventions over 50 years ago. These laws—established after World War II to protect humanity from a recurrence of that unprecedented carnage—provide a common set of rights and duties for states and citizens to resolve conflicts peaceably, protect human life and dignity, and promote sustainable economic and social development.

The basis of international law protections for civilian in conflict is under threat in Iraq. While the leaders of the Anglo-American invasion have focused public attention on violations of the Geneva Conventions by Iraqi forces, they have neglected to ensure that their own military forces abide by the same standards of law.

The world has been forewarned of the unlawful and inhumane consequences of attacking or disrupting Iraq's electrical and water infrastructure. The precedent of the 1991 Gulf War demonstrates beyond question that even precision attacks against these facilities will claim a disproportionate toll in civilian suffering and death. In recent months, numerous UN and independent studies have confirmed that the Iraqi people, and the life-sustaining services upon which they depend, are extremely vulnerable to war after 12 years of sanctions. We have been told repeatedly that the world is not prepared to address war's likely humanitarian consequences. We cannot say that we did not know the costs of this conflict.

The decision by the US, UK and Australia to invade Iraq in violation of the UN Charter and the express will of the Security Council constituted a blow to the rule of international law.⁷² The question now is whether these countries will respect the laws governing warfare. If Anglo-American military forces continue to besiege major cities and disrupt electricity, Iraq's entire structure of civilian life support—public health, water and sanitation, and food distribution—will collapse. This military strategy would therefore impose disproportionate costs on civilian life and property in violation of the most fundamental principles of law and humanity.

CESR believes that it is essential that all political and military personnel on all sides of the conflict who issue or carry out illegal orders be subject to prosecution for war crimes. We call upon organizations and individuals around the world to raise their voices and demand full respect for humanitarian and human rights law during the Iraq conflict. We urge all warring parties to declare publicly their commitment to abide by well-established principles of law, and to prevent the tragedy of unnecessary and unlawful civilian suffering.

CESR therefore calls upon the US, UK, Australia, and Iraq immediately to establish and respect:

- A cease-fire to enable impartial humanitarian agencies, independent of any military forces, to restore and maintain life-sustaining services to Iraqi civilians. A window of even 48 hours would enable humanitarian experts to assess civilian needs and propose effective response measures.
- Ongoing humanitarian corridors to enable aid agencies to ensure the survival of vulnerable civilian populations throughout the conflict. These corridors would be monitored by UN personnel to guarantee neutrality.
- Withdrawal of Anglo-American military forces to positions held before March 19, 2003, to allow the United Nations to fulfill its mandate of resolving the Iraq crisis in accordance with the UN Charter and international law.

CESR also calls upon all organs of the United Nations to support these measure publicly and forcefully. In particular:

- The Secretary-General, acting under Article 99 of the Charter, should issue a public statement calling for an end to war and, in the interim, humanitarian protection for vulnerable civilians in accordance with international human rights and humanitarian law.
- The Security Council, acting under Chapter VII, should fulfill its mandate to maintain international peace and security by introducing and passing a resolution calling for these measures.
- If one or more Council members blocks effective action, the General Assembly should pass a “Uniting for Peace” resolution calling for these measures.

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