

REPORT ON FAILURE OF COMPLIANCE WITH ARTICLE 20
PROHIBITING PROPAGANDA FOR WAR

prepared for the
UNITED NATIONS HUMAN RIGHT COMMITTEE
Eighty-seventh session

for its review of the
Second and Third Periodic Report of the United States of America under the
International Covenant of Civil and Political Rights

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INTRODUCTION

This report regarding United States violations of Article 20, paragraph one, is submitted to the Committee to inform and support its consideration of the paramount issues the Committee requested the United States to address in its written and oral presentation to the Committee in July, 2006. Article 20 of the Covenant on Civil and Political Rights implicitly recognizes that the condition of war jeopardizes the integrity and exercise of all of the political and civil rights elsewhere declared in the Covenant.

The Committee has expressed concern and requested clarification of actions and policies of the United States which are in apparent violation of even the core, non-derogable protections States Parties undertake to assure under the treaty. The US government has sought to justify its actions and policies on the basis of the “war on terror” and the exigencies of its illegal war in Iraq. Because of the pervasive impact of war the propaganda campaign prohibited by Article 20, the fear and xenophobia it stoked, and the resulting illegal war have all contributed to violations, both here and abroad, of many other rights protected by this Covenant including articles 1, 2, 6, 7, 9, 10, 13, 14, 17, 19, 21, 24, 26 and 27.

The non-governmental organizations which have prepared this report regarding US violation of Article 20 are filing it with the Committee in order to bring greater visibility and attention to the full significance and implications of the Covenant’s prohibition of propaganda for war. We are women’s human rights groups, [peace and justice coalitions, and civil liberties and media advocacy organizations] concerned to insure the democratic imperative: that public discourse relating to international conflicts be based on information and knowledge free from distortion by governmental propaganda for war.

SUMMARY

This report discusses the centrality of Article 20, the civil and political rights consequences of the United States violation, the illegality of the war in Iraq, the inapplicability of the United States reservation to Article 20, and the propaganda campaign waged by the United States government that produced the Iraq War. It concludes with recommendations to the Committee suggesting actions the United States government should take to prevent such violations in the future.

The Centrality of Article 20

There is no clearer example of the significance of Article 20's prohibition than that most of the violations the Committee is examining in this review, including violations of the right to life, to be free from torture and to due process committed by the United States in relation to the war in Iraq as well as the life- and health-threatening cutbacks in social programs in the United States, have their roots in the propaganda campaign which produced this illegal war. Examination of this issue by the Committee is particularly urgent as the course of U.S. Administration statements as to Iran over many months suggests a repetition of the same process.

Through a campaign of unsubstantiated, inflated and sometimes clearly false propaganda, the Bush administration mobilized domestic and some international support for the illegal invasion of Iraq.

The war has taken the lives of over 2,450 U.S. soldiers and an estimated minimum of 35,000 Iraqi civilians, with an additional 18,000 U.S. military and untold Iraqi casualties and trauma; it destroyed the infrastructure of a nation and is tearing a society apart; it provides excuse for stripping away protections of civil and political rights in the United States; and it has cost approximately 280 billion dollars while federal spending cuts announced in February, 2006 will affect health care, education, environmental protection and other social programs with consequent harm to the rights of the poor, people of color, women, children, elderly, disabled, and the working people of the United States.

The Illegality of the War

The Committee's General Comment 11 states "The prohibition under paragraph 1 of article 20 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations,"

The United States' invasion of Iraq was an illegal act of aggression, declared by Secretary-General Kofi Annan as in violation of the Charter of the United Nations. The consensus of international experts is in accord. The invasion of Iraq was never authorized by the Security Council though the United States has asserted

that the invasion was based on Security Council resolutions, including Nos. 678 and 1441. Neither was it justifiable under the narrow exception allowed for self-defense under Chapter 51 of the Charter. Accordingly, "any propaganda for war," promoting the invasion, as by the U.S. government here, was illegal under Article 20. In addition, the government's propaganda was inflated, misleading and, in numerous critical respects, groundless.

The United States Reservation

Despite the Committee's enjoining States parties in General Comment 11 to provide sufficient information to evaluate their compliance with Article 20, the United States in its current report merely reiterates the one sentence also in its 1994 report citing its reservation to Article 20 "that Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States." (paragraph 330)

This reservation in no way affects the applicability of Article 20 to actions of the United States government. The U.S. Supreme Court has recognized that the rights of free speech and association under the first amendment to the U.S. Constitution protect the *people*, not the government.¹ The animating concern of the first amendment is government censorship, not restrictions on what government may wish to say.² Where as here, the propaganda campaign is initiated by the government, depends upon government-generated information, and is carried out by the highest governmental officials, it is potentially the most effective and the most lethal form of the prohibited conduct.

General Comment 11 makes it clear that article 20 prohibits government-promulgated propaganda as well as from other sources, concluding that States parties which have not yet taken "the measures necessary to fulfil the obligations contained in article 20, . . . *should themselves refrain from any such propaganda or advocacy.*" (emphasis added).

The freedom of speech of private parties protected by the first amendment is, furthermore, not absolute. Federal courts have held that "libel, obscenity, and incitement are excluded from First Amendment's protective cloak."³ Thus, there is room under the first amendment for false propaganda promoting an aggressive war to be prohibited, for example, as incitement to a dangerous breach of peace.

¹ See, e.g., *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 102 (1973).

² See, *Columbia Broadcasting*, 412 U.S. at 139 (Stewart, J. concurring) ("[T]he first amendment protects the press from governmental interference; it confers no analogous protection on the government.").

³ *Thomas v. Board of Education*, 607 F.2d 1043, certiorari denied, 444 U.S. 1081 (1979); see also *Beauharnais v. People of State of Ill.*, 343 U.S. 250 (1952).

The Campaign of Propaganda for War

This administration propagated to the U.S. public, the U.S. Congress, the United Nations, and the international community two major claims, which were not only unsubstantiated but also in overt contradiction to valid intelligence information. They were: (1) that Iraq had or was developing weapons of mass destruction, including nuclear weapons; and (2) that Iraq had ties to Al-Qaeda and the September 11, 2001 attacks in the United States.

A recent publication by the Center for Constitutional Rights⁴ documents the trajectory of this propaganda campaign. Below are some highlights from it and other sources:

Even before taking office, persons who would become Bush Administration officials advocated and planned the use of “preemptive” force against Iraq.

- Early, 2002: The President, in his State of Union Address, asserted the necessity of using of “preemptive” force against nations that seek to acquire weapons of mass destruction or assist terrorism and named Iraq as part of the “Axis of Evil.”⁵ Vice-President Cheney also visited the Central Intelligence Agency to discuss intelligence regarding Iraq.
- June 1, 2002: The President declared in a formal address at the U.S. Military Academy at West Point: “Containment is not possible when unbalanced dictators with weapons of mass destruction can deliver those weapons on missiles or secretly provide them to terrorist allies.”⁶
- July 23, 2002: The “Downing Street Memo” summarizing a meeting involving Prime Minister Tony Blair and British intelligence, said of Washington: “Military action was now seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and Weapons of Mass Destruction. *But the intelligence and facts were being fixed around the policy.* The NSC had no patience with the UN route....” (emphasis added).⁷

⁴ Articles of Impeachment Against George W. Bush, Art. II (Melville House Publishing, 2d ed. February 2006). Available at www.ccr-ny.org/v2/home.asp. A copy of Article II respecting propaganda for war is attached to paper copies of this statement.

⁵State of the Union Address, January 29, 2002, www.whitehouse.gov/news/releases/-2002/01/200229-11.html/

⁶ See, www.whitehouse.gov/new/releases/2002/0620020601-3.html.

⁷ The Downing Street Memo was published in the British Sunday Times on 1 May 2005,. The article can be viewed at: <http://www.timesonline.co.uk/article/0,,2087-1593607,00.html>

- August, 2002: the White House Iraq Group is created to build public support for the war.⁸
- September, 2002: The White House released its National Security Strategy which stated the United States "must be prepared to stop rogue states...before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends." Such states "are determined to acquire weapons of mass destruction, ... sponsor terrorism around the globe, ... reject basic human values and hate the United States and everything for which it stands."⁹
- September, 2002: President Bush and nearly all his top officials blanketed the airwaves, talking about the dangers posed by Iraq, including the knowingly unsubstantiated claim that Iraq was acquiring material for and developing nuclear weapons.¹⁰ By the fall of 2002, 69% of the U.S. public believed that Saddam Hussein was responsible for the 9/11 attacks.
- October 10, 2002: the President obtained the Congressional resolution entitled "*Authorization for Use of Military Force Against Iraq Resolution of 2002*," H.J. Res. 114, permitting war against Iraq upon his determination that Iraq remained a threat that could not be dealt with diplomatically and by peaceful means.
- October 14, 2002: President Bush said of Saddam "This is a man that we know has had connections with al Qaeda. This is a man who, in my judgment, would like to use al Qaeda as a forward army."¹¹
- January 28, 2003: President Bush, in his State of the Union address, repeated that Iraq was attempting to obtain uranium tubes from Niger for

⁸ Barton Gellman and Walter Pincus, *Depiction of Threat Outgrew Supporting Evidence*, Washington Post, August 10, 2003, p. A01. Available at www.washingtonpost.com/ac2/wp-dyn/A39500-2003Aug9?language=printer.

⁹ National Security Agency, September 17, 2002 www.whitehouse.gov/nsc/nss.html

¹⁰ On NBC's "Meet the press", Vice President Dick Cheney accused Saddam Hussein of moving aggressively to develop nuclear weapons over the past 14 months to add to his stockpile of chemical and biological arms. (<http://www.msnbc.msn.com/id/3080244/>), On CNN, Secretary of State Condoleezza Rice acknowledged that "there will always be some uncertainty" in determining how close Iraq may be to obtaining a nuclear weapon but said, "We don't want the smoking gun to be a mushroom cloud." (<http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A51224-2003Jul26¬Found=true>), On CBS, President Bush said that before they were denied access to Iraq in 1998, that U.N. weapons inspectors had concluded that Saddam Hussein was "six months away from developing a weapon." He also cited satellite photos released by a U.N. agency Friday that show unexplained construction at Iraq sites that weapons inspectors once visited to search for evidence Saddam was trying to develop nuclear arms. "I don't know what more evidence we need," Bush said. (<http://www.cbsnews.com/stories/2002/09/08/terror/main521177.shtml>)

¹¹ <http://www.whitehouse.gov/news/releases/2002/10/20021014-2.html>

nuclear weapons despite internal reports to the contrary¹² and the January 27 statement of the IAEA that the inspectors “found no evidence that Iraq has revived its nuclear weapons programme” and that the tubes were consistent with the asserted non-nuclear use and would, in any event, need to be modified to be suitable for nuclear use.¹³

- January 31, 2003: A second “Downing Street memo,” confirmed in late March, 2006, summarized a conversation between President Bush and Prime Minister Blair indicating President Bush’s desire to create a pretext for war and his intent to go to war even if the effort to “twist arms” and “even threaten” failed to achieve UN approval.¹⁴

- February 5, 2003: Secretary of State Colin Powell addressed the United Nations Security Council, stating that there was “no doubt in my mind” that Saddam was working to obtain key components to produce nuclear weapons notwithstanding an effort from within the CIA to stop it. In September, 2005 Mr. Powell told the press that it was “devastating” to learn later that some intelligence agents knew and did not inform him that the information he had was unreliable.¹⁵

- March 17, 2003: Bush asserted that “intelligence...leaves *no doubt* that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised...[and] has aided, trained, and harbored terrorists, including operatives of Al Qaeda.”¹⁶

- March 18, 2003: President Bush sent a letter to Congress expressing his “determination,” as required by Congressional resolution H.J. Res. 114, that war was necessary, and made a statement again linking the use of force against Iraq to the 9/11 attacks.¹⁷ It was later revealed that the National Intelligence Estimate, which was presented to Congress several days before the October, 2002 vote on war “was sanitized to remove dissent and make conjecture seem like fact.”¹⁸

¹² <http://www.washingtonpost.com/ac2/wp-dyn/A38459-2004Jul9?language=printer>

¹³ *The status of nuclear inspections in Iraq*, Statement to the United Nations Security Council, by Mohamed El Baradei, Director General, IAEA, New York (27 January 2003). Available at <http://www.un.org/News/dh/iraq/elbaradei27jan03.htm>.

¹⁴ Don Van Natta, Jr., *Bush Was Set on Path to War, British Memo Says*, NY Times, March 27, 2006. Available at www.nytimes.com/2006/03/27/international/europe/27memo.html?ei=5088&en=be186887fe0c83a2&ex=1301115600&partner=rssnyt&emc=rss&pagewanted=print.

¹⁵ International Herald Tribune, www.iht.com/articles/2005/09-09/news/powell.php.

¹⁶ <http://www.whitehouse.gov/news/releases/2003/03/20030317-7.html>

¹⁷ Text of the Presidential letter: <http://www.whitehouse.gov/news/releases/2003/03/20030319-1.html>

¹⁸ NY times article: 11/15/05 N.Y. Times A26; 2005 WLNR 18424453: *Decoding Bush’s denial* <http://www.nytimes.com/2005/11/15/opinion/15tue1.html?ex=1289710800&en=d341df71c8d7c041&ei=5088&partner=rssnyt&emc=rss>

- March 20, 2003: The United States invaded Iraq.

In March 2004, a report of U.S. House of Representatives Committee on Governmental Reform Minority Office concluded that, in the march to war, five (5) leading administration officials made 237 misleading statements in 125 public appearances. All 237 were statements characterized as “misleading based on what was known to the administration at the time the statements were made.”¹⁹

It has been officially concluded that at the time of making these statements, administration officials knew or should have known that its claims were based on unreliable informants, inflated claims, and faulty interpretations of available documentation. For example, the first phase of the Report of the US Senate Intelligence Committee concluded that “[m]ost of the major key judgments in the Intelligence Community’s October 2002 National Intelligence Estimate (NIE), *Iraq’s Continuing Programs for Weapons of Mass Destruction*, either overstated, or were not supported by, the underlying intelligence reporting.”²⁰

The Senate Committee’s conclusions rested upon and have been substantiated by numerous accounts of both current and former administration officials. Warnings as to the lack of support for the key claims were made by IAEA officials as well as by officials in the intelligence agencies.²¹ The second phase of the Senate Committee’s investigation, which was to address the way senior policymakers used intelligence, was delayed until after the election of 2004 and has not been completed.²²

The propaganda record is also replete with examples in which the administration ignored, sanctioned or punished dissident views from within the administration and the intelligence agencies. Richard Kerr, a former Deputy Director of the Central Intelligence Agency, has stated that there was significant pressure on the intelligence community in 2003 to find evidence that supported a connection between Al-Qaeda and Iraq. He told the Senate Intelligence Committee that the administration’s “hammering” on Iraq was harder than he had seen in his 32 years at the Agency.²³

There was, in the end, no evidence found in fact of any weapons of mass destruction, chemical and biological weapons labs, acquisition of materials for a nuclear bomb or any ties to Al-Qaeda.

¹⁹ Committee on Government Reform Minority Office, U.S. House of Representatives, Iraq on the Record Report: The Bush Administration’s Public Statements on Iraq (March 16, 2004). <http://democrats.reform.house.gov/IraqOnTheRecord/> (last visited March 15, 2006).

²⁰ Select Committee on Intelligence United States Senate: Report on the U.S. Intelligence Community’s Prewar intelligence assessment on Iraq: Conclusions: <http://intelligence.senate.gov/conclusions.pdf>:

²¹ <http://www.washingtonpost.com/ac2/wp-dyn/A38459-2004Jul9?language=printer>

²² <http://www.hillnews.com/thehill/export/TheHill/News/Frontpage/042506/news4.html>

²³ Decoding Bush’s denial, supra, fn. 18.

The propaganda record continues in the effort to justify continued U.S. military involvement in Iraq. The *Chicago Tribune* recently reported on a media saturation campaign planned by a right wing organization “closely aligned with the white house” to utilize photos of the 9/11, Madrid, and London attacks to justify continuing the de facto occupation of Iraq. There are indications that a similar propaganda campaign may be beginning with respect to Iran. The U.S. Ambassador to the United Nations, John Bolton, has threatened that the U.N. Security Council should issue a “vigorous response” to Iran's nuclear ambitions “or the United States might have to consider *other_steps*.”(emphasis added)²⁴

The Bush administration’s violations of Article 20’s prohibition on “any propaganda for war” have thus resulted in the gravest breaches of international law and at the same time it continues to stoke the fears of the U.S. public to garner support for continuing and further illegal military action.

We emphasize that this propaganda, the war it produced, and the administration’s aggressive advocacy of “preemptive strike” is at the root of many of the violations of the rights of people in the U.S. and subject to its jurisdiction abroad secured by the Convention on Civil and Political Rights. It thus urgently deserves the attention of the Committee in its questioning and concluding observations.

RECOMMENDATIONS

Accordingly, we urge the Committee to examine the applicability of Article 20 to the past and current conduct of the United States, and to inquire into what the United States is doing to investigate and punish these violations, including by top administration officials, and to prevent such misinformation and propaganda for war in the future, including:

- a. what measures exist to ensure vigorous debate in the intelligence agencies, including protection of whistleblowers;
- b. what measures exist to ensure transparency in the communication of intelligence information to the U.S. Congress, the U.S. public, and the United Nations;
- c. what laws exist pursuant to which those who knowingly instigate, pressure, condone, or use false or inflated information as propaganda for war can be prosecuted and what investigations or prosecutions are underway;
- d. what legislation is or will be proposed to prevent and punish governmental and private propaganda for war in the future.

²⁴ Available at
<<http://www.washingtonpost.com/wpdyn/content/article/2006/03/09/AR2006030900993.html>>.

We ask the Committee to incorporate into its concluding observations an expression of concern regarding the United States' limited interpretation of the applicability of Article 20 and to request that it address the issues raised in this report in any follow-up to the review process of the United States Second and Third Combined Report.

We thank the Committee for its consideration of these issues.

Submitted by:

THE INTERNATIONAL WOMEN'S HUMAN RIGHTS LAW CLINIC OF THE CITY
UNIVERSITY OF NEW YORK SCHOOL OF LAW

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, UNITED
STATES SECTION

THE CENTER FOR CONSTITUTIONAL RIGHTS

MADRE

INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH)

WOMEN'S ENVIRONMENT AND DEVELOPMENT ORGANIZATION (WEDO)

NATIONAL LAWYERS GUILD

AMERICAN HUMANIST ASSOCIATION

Contact information:

Gillian Gilhool
Women's International League for Peace and Freedom
1213 Race Street
Philadelphia, PA 19107
rgilhool@verizon.net

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