

Let's hear it for Belgium

An attempt to try Tommy Franks for war crimes in a Belgian court has outraged the US

Belgium is becoming an interesting country. In the course of a week, it has managed to upset both liberal opinion in Europe - by granting the far-right Vlaams Blok 18 parliamentary seats - and illiberal opinion in the US. On Wednesday, a human rights lawyer filed a case with the federal prosecutors whose purpose is to arraign Thomas Franks, the commander of the American troops in Iraq, for crimes against humanity. This may be the only judicial means, anywhere on earth, of holding the US government to account for its actions.

The case has been filed in Belgium, on behalf of 17 Iraqis and two Jordanians, because Belgium has a law permitting foreigners to be tried for war crimes, irrespective of where they were committed. The suit has little chance of success, for the law was hastily amended by the government at the beginning of this month. But the fact that the plaintiffs had no choice but to seek redress in Belgium speaks volumes about the realities of Tony Blair's vision for a world order led by the US, built on democracy and justice.

Franks appears to have a case to answer. The charges fall into four categories: the use of cluster bombs; the killing of civilians by other means; attacks on the infrastructure essential for public health; and the failure to prevent the looting of hospitals. There is plenty of supporting evidence.

US forces dropped around 1,500 cluster bombs from the air and fired an unknown quantity from artillery pieces. British troops fired 2,100. Each contained several

hundred bomblets, which fragment into shrapnel. Between 200 and 400 Iraqi civilians were killed by them during the war. Others, mostly children, continue to be killed by those bomblets which failed to explode when they hit the ground. The effects of their deployment in residential areas were both predictable and predicted. This suggests that their use there breached protocol II to the Geneva conventions, which prohibits “violence to the life, health and physical or mental well-being” of non-combatants.

On several occasions, US troops appear to have opened fire on unarmed civilians. In Nassiriya, they shot at any vehicle that approached their positions. In one night alone they killed 12 civilians. On a bridge on the outskirts of Baghdad they shot 15 in two days. Last month, US troops fired on peaceful demonstrators in Mosul, killing seven, and in Falluja, killing 13 and injuring 75. All these actions appear to offend the fourth convention.

The armed forces also deliberately destroyed civilian infrastructure, bombing the electricity lines upon which water treatment plants depended, with the result that cholera and dysentery have spread. Protocol II prohibits troops from attacking “objects indispensable to the survival of the civilian population such as ... drinking water installations and supplies”.

The fourth convention also insists that an occupying power is responsible for “ensuring and maintaining ... the medical and hospital establishments and services, public health and hygiene in the occupied territory”. Yet when the US defence secretary Donald Rumsfeld was asked why his troops had failed to prevent the looting of public buildings, he replied: “Stuff happens. Free people are free to make mistakes and commit crimes and do bad things.” Many hospitals remain closed or desperately under-supplied. On several occasions US soldiers acted on orders to fire at Iraqi ambulances, killing or wounding their occupants. They shot at the medical crews which came to retrieve the dead and wounded at the demonstration in Falluja. The Geneva conventions suggest that these are straightforward war crimes: “Medical units and transports shall be respected and protected at all times and shall not be the object of attack.”

The armed forces of the US, in other words, appear to have taken short cuts while prosecuting their war with Iraq. Some of these may have permitted them to conclude their war more swiftly, but at the expense of the civilian population. Repeatedly, in some cases systematically, US soldiers appear to have broken the laws of war.

We should not be surprised to learn that the US government has responded to the suit with outrage. The state department has warned Belgium that it will punish nations which permit their laws to be used for “political ends”. The Belgian government hasn't waited to discover what this means. It has amended the law and denounced the lawyer

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who filed the case.

The Bush government's response would doubtless be explained by its apologists as a measure of its insistence upon and respect for national sovereignty. But while the US forbids other nations to proscribe the actions of its citizens, it also insists that its own laws should apply abroad. The foreign sovereignty immunities act, for example, permits the US courts to prosecute foreigners for harming commercial interests in the US, even if they are breaking no laws within their own countries. The Helms-Burton Act allows the courts in America to confiscate the property of foreign companies which do business with Cuba. The Iran-Libya Sanctions Act instructs the government to punish foreign firms investing in the oil or gas sectors in those countries. The message these laws send is this: you can't prosecute us, but we can prosecute you.

Of course, the sensible means of resolving legal disputes between nations is the use of impartial, multinational tribunals, such as the international criminal court in the Hague. But impartial legislation is precisely what the US government will not contemplate. When the ICC treaty was being negotiated, the US demanded that its troops should be exempt from prosecution, and the UN security council gave it what it wanted. The US also helped to ensure that the court's writ runs only in the nations which have ratified the treaty. Its soldiers in Iraq would thus have been exempt in any case, as Saddam Hussein's government was one of seven which voted against the formation of the court in 1998. The others were China, Israel, Libya, Qatar, Yemen and the US. This is the company the American government keeps when it comes to international law.

To ensure that there was not the slightest possibility that his servicemen need fear the rule of law, George W Bush signed a new piece of extra-territorial legislation last year, which permits the US "to use all means necessary and appropriate to bring about the release" of US citizens being tried in the court. This appears to include the invasion of the capital of the Netherlands.

All this serves to illustrate the grand mistake Tony Blair is making. The empire he claims to influence entertains no interest in his moral posturing. Its vision of justice between nations is the judicial oubliette of Guantanamo Bay. The idea that it might be subject to the international rule of law, and therefore belong to a world order in which other nations can participate, is as unthinkable in Washington as a six-month public holiday. If Blair does not understand this, he has missed the entire point of US foreign policy. If he does understand it, he has misled us as to the purpose of his own diplomacy.

The US government does not respect the law between nations. It is the law. #