

KUALA LUMPUR WAR CRIMES TRIBUNAL

Case No. 1 - CP - 2011

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**The Kuala Lumpur War
Crimes Commission**

Against

10

- 1. George W. Bush**
- 2. Anthony L. Blair**

15

NOTES OF PROCEEDINGS

VENUE:

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2nd Floor, No. 88, Jalan Perdana
Taman Tasik Perdana
50480 Kuala Lumpur
Malaysia

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Before:

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- 1. Judge Abdul Kadir Sulaiman (President)**
- 2. Judge Zakaria Yatim**
- 3. Judge Tunku Sofiah Jewa**
- 4. Judge Salleh Buang**
- 5. Judge Alfred L Webre**
- 6. Judge Shad Saleem Faruqi**
- 7. Judge Niloufer Bhagwat**

35

Prosecution Division of the Legal Team:

- 1. Professor Gurdial Singh Nijar**
- 2. Professor Francis A. Boyle**

3. Mr Avtaran Singh
4. Usha Kulasegaran (Ms)
5. Gan Pei Fern (Ms)

5

Defence Division of the Legal Team (Amici Curiae):

1. **Mr. Jason Kay Kit Leon**
2. Soo Kok Weng
3. Pan Shan Ping (Ms)
- 10 4. Mohd Zharif Shafiq bin Badrul Hisam
5. Muhammad Khairil bin Khalid
6. Auzan Syaidi bin Abdul Lateh

15 **Registrar:**

Mr. Musa Ismail

19th November 2011 – Session 1

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Registrar Musa Ismail:

All rise. My Lords, my Ladies; this is the first sitting of the Kuala Lumpur War Crimes Tribunal. And for today, we have 2 cases to be tried. The Kuala Lumpur War Crimes Commission represented by the
25 Prosecutors on my right hand side, and the other, the Defence Counsel for the Accused which I shall name them now. The Accused for today is George W Bush and Anthony L Blair. And these are the counsels for the Accused. There are 2 charges today, and before I read the charges, may I introduce the prosecutors and the defence counsel?

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Professor Gurdial Singh Nijar:

May it please Your Honours, Distinguished Members of the Kuala Lumpur War Crimes Tribunal. My name is Gurdial Singh Nijar and I am here with the prosecution and appearing with me are Professor
35 Francis A. Boyle, Mr. Avtaran Singh, Ms. Usha Kulasegaran and Ms. Gan Pei Fern.

Mr. Jason Kay Kit Leon:

Honourable members of the Tribunal, my name is Jason Kay Kit Leon and I am Head of the Defence Team. I am assisted by Mr. Soo Kok Weng, Ms. Pan Shin Ping, Mr. Mohd Zharif Shafiq bin Badrul Hisam,
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Mr. Muhammad Khairil bin Khalid, and Mr. Auzan Syaidi bin Abdul Lateh

Professor Gurdial Singh Nijar:

5 Your Honours, it is conspicuous. The dock is empty. The 2 Accused are not present today but we have effected service, the 2 Accused, George W Bush and Anthony L Blair, in accordance with the charter of the Commission and I tender through the Registrar the copies, there are 4 originals, and the rest are copies of the Affidavits of Service filed
10 by the then Registrar.

Judge Abdul Kadir Sulaiman:

Mark. Can we mark for identification? What is the marking?

15 **Registrar Musa Ismail:**

War Crimes Tribunal *WCTI*. P1 for the prosecution. Defence will be D. Exhibit P1

Judge Abdul Kadir Sulaiman:

20 Exhibit P1.

Professor Gurdial Singh Nijar:

Your Honours, if I could simply take your Honours through the Affidavit-of-Service to demonstrate that we have in fact complied
25 with the provisions relating to service. The first page, Nizam Bashir, at that time, the Registrar with the KL War Crimes Tribunal. That is also averred also in Paragraph 1 of the Affidavit-of-Service which appears at page 1. The service was effected on Monday 19th September at 10:14. It was emailed to George W Bush at an address
30 provided by his biographers. He has written a book called "Decision Points". That is listed as the contact.

And then, at page 2, we have emailed this to info@tonyblairoffice.org an email address which on the name itself belongs to, or at least, listed
35 as a contact and he also has written his biography called "Tony Blair – A Journey".

Further to that, paragraph 4 states that we have also served this also on the Embassy of the United States of America and the British High
40 Commission on Friday the 4th of November.

We believe that this service is effective. We have had no indication from the Defence that they are challenging this service.

Article 6, Chapter 3, Article 6 says “*the Registrar of the Tribunal shall cause to be served on the Accused a copy of the charge*”. The mode of service is not prescribed. The key is that it arrives or ought to arrive at the, to the notification of the 2 accused persons. I verily believe that with these books who are the autobiographies who are attended upon by great fanfare by both the accused persons and they were quite happy to receive communication with regard to the books through the emails that they have indicated and therefore we believe this is effective service.

In addition, we have taken the abundant precaution of also informing their embassies and this is provided in Article 6(b) which says, “*that if the charge involves a current Head of State Government or former Head of State,*” these are former Heads of States as we know, “*then service to the copy thereof relevant embassy shall suffice,*” and the Accused is deemed to have been served.

In addition, Your Honours, the 2nd Accused, Tony Blair, was in Malaysia on the 28th of October 2011, and we attempted to try to serve him as well, to ensure that he was abundantly informed of the charges.

Judge Abdul Kadir Sulaiman:

When was the charge filed?

Professor Gurdial Singh Nijar:

The charge was filed on ...

Judge Abdul Kadir Sulaiman:

Was it before his presence here?

Professor Gurdial Singh Nijar:

Before.

Judge Abdul Kadir Sulaiman:

Fair enough. Proceed.

Professor Gurdial Singh Nijar:

But he was officiating a function here at the Mandarin Oriental but we were unable, our people was unable to effect service because there was considerable security, he was whisked away right past our people who were waiting to serve it on him. We tried to inquire as to where

he was staying but I think security was such that we were unable to effect service on the gentleman.

Judge Abdul Kadir Sulaiman:

5 So considered not served?

Professor Gurdial Singh Nijar:

On that day it was not served. But we have already effected service through the other modes that we have just described.

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Judge Abdul Kadir Sulaiman:

Oh yes yes yes, we were now talking about the incident when he was here ...

15 **Professor Gurdial Singh Nijar:**

Yes yes, he was not served. We were just showing the strenuous efforts we have made to try to secure the attendance

Judge Abdul Kadir Sulaiman:

20 Go on

Professor Gurdial Singh Nijar:

And finally, the fact that this trial is going to be today has also appeared in the Washington Post of 15th November 2011 in the news item, as well as the Daily Telegraph of the United Kingdom. And these are where the 2 accused live. So we feel that we have effected service in accordance with the Charter of the Commission. I thank you.

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30 **Judge Abdul Kadir Sulaiman:**

What have you got to say?

Mr. Jason Kay Kit Leon:

Learned Judges, under the strict reading of the Charter and the Rules, service is good. However as to

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Judge Abdul Kadir Sulaiman:

So you accept that the service is good?

40 **Mr. Jason Kay Kit Leon:**

Service is good. But I would not be able to inform this Tribunal whether George Bush reads the Washington Post, or Tony Blair reads the Daily Telegraph.

Judge Abdul Kadir Sulaiman:

Except as provided by the Charter under the legal team, now in that situation you believe the service is good?

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Mr. Jason Kay Kit Leon:

As per the strict reading of the Charter, yes.

Judge Abdul Kadir Sulaiman:

10 Are you coming in as an officer of the tribunal or a representative of the accused? In short, are you an amicus curiae?

Mr. Jason Kay Kit Leon:

15 Thank you. I will address that point. As Head of the Defence Team, I have not received any instruction from the two accused to date regarding the conduct of their defence.

Judge Abdul Kadir Sulaiman:

20 So what do we do then?

Mr. Jason Kay Kit Leon:

25 They're both not present in court. I therefore seek leave from this Tribunal to act as Amicus Curiae pursuant to Article 15 of the Rules of Procedure and Evidence of this Tribunal. If I may read for the Tribunal?

Judge Abdul Kadir Sulaiman:

Yes please.

30 **Mr. Jason Kay Kit Leon:**

35 *"If the Tribunal is satisfied that the accused is for any reason unwilling to appear in person or unwilling to appoint counsel to represent him before the Tribunal, the Tribunal shall appoint one or more amici curiae from the Defence Division of the Legal Team to assist the Tribunal by presenting an unbiased assessment of the charge and evidence against the accused."* I therefore seek such leave.

Judge Abdul Kadir Sulaiman:

40 Anything else you want to address on your leave?

Mr. Jason Kay Kit Leon:

No. Thank you.

Judge Abdul Kadir Sulaiman:

Right. Unanimous decision. Application granted.

5 **Judge Niloufer Bhagwat:**

Amicus, one question. The time given for service is adequate? I find that 19th September 2011, the 1st notice by email was served. Are you satisfied that the time is adequate?

10 **Mr. Jason Kay Kit Leon:**

It is about 2 months before the Tribunal. It would seem a reasonable time frame – and there is no time frame stipulated in the Charter or the Rules. Therefore there would be no basis for any objection, on the law.

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Judge Abdul Kadir Sulaiman:

Any precedent or any cases suggesting service by email could be considered as valid or effective?

20 **Mr. Jason Kay Kit Leon:**

I do apologise for not being prepared on this point. I was only served, handed a copy of the

Judge Abdul Kadir Sulaiman:

25 So there is no precedent?

Mr. Jason Kay Kit Leon:

Not that I know of at this moment.

30 **Judge Abdul Kadir Sulaiman:**

What do you have to say about it?

Mr. Jason Kay Kit Leon:

35 Email is now a very normal mode of communication. It has superseded fax and in essence it's one step before internet, voice over IP, internet chatting. The modes of communication has progressed with the times, especially in the last 10-15 years. What used to have been delivered, what used to necessitate delivery by hand, could also be done now; later became by courier, or registered post, then it
40 became fax. Email can deliver a true ... The purpose of delivery is to merely ensure that the correct copy, the information, is delivered to the recipient. And there is no indication, and I do not believe there has

been any tampering of the charge during the mode of its delivery. I accept the Affidavit-of-Service as it is.

Judge Abdul Kadir Sulaiman:

5 Any possibility of non delivery?

Mr. Jason Kay Kit Leon:

If there is there would usually be a bounce back from the recipient of the email.

10

Judge Abdul Kadir Sulaiman:

Did you ever receive one?

Mr. Jason Kay Kit Leon:

15 I do not believe on the face of the Affidavit there was any indication that there was a bounce back from the email of both the Accused.

Judge Abdul Kadir Sulaiman:

Alright, go on.

20

Mr. Jason Kay Kit Leon:

So, the Court needs to move with the time; law need to move with the times.

25 **Judge Niloufer Bhagwat:**

It is recited in the Affidavit that the charge sheet has also been served on the 2 embassies of the United States and the UK, is that correct?

Mr. Jason Kay Kit Leon:

30 Yes, as stated

Judge Niloufer Bhagwat:

You don't contest that position?

35 **Mr. Jason Kay Kit Leon:**

No. And it's provided for

Judge Abdul Kadir Sulaiman:

40 No, at the start he said service is good. He said service is good. Only thing we're dwelling on this area where there is no precedent. But there's always a first time. Don't rely merely on precedent. If there is none, doesn't mean that we're helpless. There's always a first time.

You're the first trying to argue that service by email is good and effective.

Mr. Jason Kay Kit Leon:

5 I believe the prosecution may be able to assist.

Judge Abdul Kadir Sulaiman:

Prosecution do you want to say anything. Sorry, you should draw my attention

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Professor Gurdial Singh Nijar:

Just to assist the Court Your Honours, I think if we look at Article 6(b) it says, *"If the charge involves a former Head of State or Government, service of copy thereof to the relevant embassy or High Commission shall suffice and the Accused is deemed to have been served."*

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Judge Abdul Kadir Sulaiman:

That that that, there is no argument about that. Because here the case put to us is there's also email service, so that's why we're dwelling on the email side. But as far as that one is concerned, there is no contention

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Professor Gurdial Singh Nijar:

Yes, as far as email is concerned I agree entirely with the defence that email has superseded fax. Fax is accepted as

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Judge Abdul Kadir Sulaiman:

Of course, of course I'll hear you but have you finished on the area of email?

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Mr. Jason Kay Kit Leon:

Yes.

Judge Abdul Kadir Sulaiman:

Right. Ok now we invite

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Professor Gurdial Singh Nijar:

We agree entirely with the views expressed by the Learned Defence Counsel that email is sufficient mode of communicating, in fact it is far superior to couriers and AR Registered Post. Almost all courts, in the Commonwealth tradition accept AR Registered Post and that is subject to the vagaries of the postman and the postal service

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Judge Abdul Kadir Sulaiman:

Yeah, that's why we're talking about precedent, there was precedent, but here email, can you, on your side, have you ever come across, cited somewhere that email ... and the Court accepted?

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Professor Gurdial Singh Nijar:

I have not but I think I can in the course of the proceedings try to look that point up.

10 **Judge Abdul Kadir Sulaiman:**

AR Post, no no no, no argument about that. We accept it. Everywhere it's acceptable. Fair enough. Anything else?

Professor Gurdial Singh Nijar:

15 Nothing else. Thank you My Lord.

Judge Abdul Kadir Sulaiman:

Thank you. Alright. Move on. Read it to the world.

20 **Registrar Musa Ismail:**

There are 2 charges here before the Kuala Lumpur War Crimes Tribunal. Charge No. 1.

25 Charge No. 1 is against George W. Bush and Anthony L. Blair. The charge is **Crimes Against Peace**. I shall read the charge now.

The Accused persons had committed Crimes against Peace, in that the Accused persons planned, prepared and invaded the sovereign state of Iraq on 19 March 2003 in violation of the United Nations Charter and international law.

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I now shall read the particulars of the charge

35 1. On 19 March 2003 the United States of America and the United Kingdom launched a war against Iraq without the sanction of the United Nations and without just cause whatsoever.

2. The accused George W Bush was at the relevant time the President of the United States of America and the accused Anthony Blair was the Prime Minister of the United Kingdom.

40 3. Bush acted on purported advice that the United States could launch a pre-emptive war without the approval of the United Nations,

notwithstanding the fact that Iraq had not threatened war against the US or attacked the US;

4. Bush had contemplated waging war against Iraq as early as 15 September 2001 and had at some time confided in Blair of this intention. During 2002, Bush and Blair, without the sanction of the United Nations Security Council directed air strikes against Iraq in order to degrade Iraq's air defenses, in preparation to invade Iraq in 2003.

5. A memorandum of a UK cabinet meeting known as the 'Downing Street Memo' dated July 23 2002 summarised a meeting between Blair and his cabinet with British intelligence officials. It records that *'Military action was seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD (which is weapon of mass destruction). But the intelligence and the facts were being fixed around the policy'*. Blair supported this line of action.

6. On [8] November 2002 the United Nations Security Resolution 1441 (SCR1441) was adopted. This resolution was jointly sponsored by the USA and the UK. The summary of the SCR1441 is as follows:

a. That Iraq was and is in breach of its obligations to cooperate with UN inspectors and the IAEA, and to complete certain actions as required by previous resolutions, among them SCR 687.

b. Gave Iraq a final opportunity to comply with its obligation to disarm.

c. Declared that if Iraq failed to comply then:

i. This would be a further breach of its obligations.

ii. A report will be made to the Security Council by the UNMOVIC and the IAEA for assessment.

iii. The Security Council would convene immediately to consider

- the situation and

- the need for full compliance with all the resolutions in order to secure peace and security.

d. Noted that the Council had repeatedly warned Iraq *'that it would face serious consequences as a result of its continued violation of its obligations'*.

The SCR 1441 clearly did not authorise the use of military action to compel compliance with the resolution. A straight reading of the resolution made it abundantly patent that the Security Council would convene to decide on the next course of action, if any, upon receiving the requisite report.

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7. This was further emphasised by the statements made by the ambassadors of both the US and UK after the passing of the SCR1441 that there was no automatic right of unilateral military action in the event Iraq failed to comply with SCR144; and that any further action will have to be decided by the Security Council.

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8. The US and the UK leaders, namely Bush and Blair, subsequently, and aware that the Security Council would not support their resolution to go to war, changed their stance and declared that they reserved the right to take military action against Iraq if the Security Council did not take action.

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9. Under the UN Charter there is no right for implied authorisation to take unilateral decisions to use force against a sovereign country, except in self-defence in circumscribed circumstances (which has no application to the facts here).

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10. Iraq had, in any event, complied with SCR1441 by re-admitting weapons inspectors.

11. Blair had in testimony to the Chilcot inquiry on 14 January 2011 admitted that the then Attorney General, Peter Goldsmith, advised that a further Security Resolution (after SCCR 1441) was obligatory under international law to authorise the use of military force; and his Cabinet Office had reached the same conclusion in its earlier paper.

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12. On 24 February 2003 the US, UK and Spain did table a second draft resolution that Iraq had failed to take the final opportunity afforded to it in SCR 1441. The other permanent members of the Security Council did not agree with this assessment to authorise the use of force.

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13. In any event it is now a well established fact which is in the public domain that Iraq did not possess any weapons of mass destruction. Indeed it was made clear by the Chief UN Inspector Scott Ritter that by 1998 Iraq's chemical structures were completely dismantled and that the nuclear weapons were completely eliminated. The physical structures were also dismantled. This means that, in any event as of that date, the alleged threat posed for weapons of mass destruction was nil. This information was willfully ignored by Bush and Blair and

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demonstrates that Bush and Blair knowingly contrived to use an utterly false basis to invade Iraq several years later – in 2003.

14. There is also evidence that the sites named by the US that were sealed since the late 1990s by the UN Inspectors were found to be still sealed after the war was launched against Iraq. This was also confirmed by Scott Ritter the chief UN Inspector.

15. The allegations made that Saddam kicked out inspectors in 1998 is also not true.

16. On 24 September 2004 the then UN Secretary General, Kofi Annan, also weighed in to state that the war against Iraq was illegal.

17. Bush and Blair have over the years since the war admitted that they knew or believed the intelligence reports on WMD to be unreliable; and yet they proceeded unilaterally to wage war based on a false and contrived basis.

18. More than 1.4 million Iraqis have been killed and continue to die as a direct and indirect result of the illegal war waged by Bush and Blair against Iraq.

19. By these acts and omissions, George W Bush and Anthony L Blair committed **Crimes Against Peace** by willfully waging war against the sovereign nation of Iraq without any just cause and in breach of international law, international conventions and the United Nations Charter.

charge number one. I think My Lords I don't have to read the additional facts.

Judge Abdul Kadir Sulaiman:

Is it, er, part of the first charge?

Professor Gurdial Singh Nijar:

It is part of the first charge but I would humbly suggest that perhaps it's not necessary to read the additional facts.

Registrar Musa Ismail:

I shall now go to charge no. 2. This is charge number 2. The second charge. This charge is against George Walker Bush

Judge Abdul Kadir Sulaiman:

First, we come to the service aspect of the second charge

Professor Gurdial Singh Nijar:

Your Honour, we will be requesting, we will be making an application to this court that ...

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Judge Abdul Kadir Sulaiman:

going through the process of knowing whether ... what you intend to do now

10 **Professor Gurdial Singh Nijar:**

What we suggest is that we proceed only with this first charge and we will be making an application when we get the signal from your Honours that the 2nd charge which is the charge against George Bush, Donald Rumsfeld, Richard Chaney, and his lawyers the Attorney General's chambers staff

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Judge Abdul Kadir Sulaiman:

So in short, in these proceedings, what you plan is to proceed only

20 **Professor Gurdial Singh Nijar:**

Proceed on the 1st charge. So we will be proposing that with regard to the 2nd charge all proceedings, which include reading of the charge be postponed to a date which this Honourable Court thinks just.

25 **Judge Abdul Kadir Sulaiman:**

No need ... else we'll be talking about reading the charge in the end you'll be telling us, "We're not proceeding," right? So good. So you pray that 2nd charge be ...

30 **Professor Gurdial Singh Nijar:**

2nd charge be, and all proceedings in relation to it be adjourned to another date to be fixed by this Court

Judge Abdul Kadir Sulaiman:

35 Adjourned sine die right? ... So any objections, anything to say? Alright, so 2nd charge be stood down, and.... Ok, proceed.

Professor Gurdial Singh Nijar:

Your Honours, before I proceed on my submission, I've been given advanced intimation by the Learned Counsel for the defence that they are raising some preliminary objections and I think it's appropriate that those be heard before I commence my submission.

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Judge Abdul Kadir Sulaiman:

Alright, alright. Preliminary objection. Yes.

Mr. Jason Kay Kit Leon:

5 Learned members of the Tribunal, I have 2 preliminary objections and one concerns the jurisdiction of the tribunal itself and I have a second but I believe the second one should be taken first.

Judge Abdul Kadir Sulaiman:

10 What is it about?

Mr. Jason Kay Kit Leon:

It is an application for one of the members of this tribunal to recuse for

15 **Judge Abdul Kadir Sulaiman:**

One member to recuse

Mr. Jason Kay Kit Leon:

For an apparent bias.

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Judge Abdul Kadir Sulaiman:

Fair, never mind. That is the basis of your 2nd preliminary objection that you would apply for one of our members here to recuse. In other words to step down on ground of bias.

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Mr. Jason Kay Kit Leon:

Yes. For apparent bias.

Judge Abdul Kadir Sulaiman:

30 You intend to proceed with the 2nd one first

Mr. Jason Kay Kit Leon:

The 2nd one first and then I will take the point of jurisdiction. For the point of apparent bias. It is with some regret that I have to say this, but it is against

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Judge Abdul Kadir Sulaiman:

There's no regret

40 **Judge Niloufer Bhagwat:**

There's no regret. Be fearless

Mr. Jason Kay Kit Leon:

Judge Niloufer Bhagwat. And I have chanced at a very late hour one authority. May I present it?

5 **Judge Niloufer Bhagwat:**

There's something which I would like to state right here. That if either prosecution or the defence for whatever reason arrive at a conclusion that I would be biased even before submission are made...

10 **Judge Abdul Kadir Sulaiman:**

Attention! Attention! Don't assume. I don't know who's to be accused of bias. Please. No matter how your conscience works on you, please wait. As of now, it was told to us, there is a 2nd application that one of the members required to recuse on grounds of bias. That's all that we know. Somebody's conscience is pricked, please, hold on. In the first place, we may turn down if the hearing goes down on this and that. Therefore we don't know yet. Please cool down my sister. Alright, proceed.

20 **Mr. Jason Kay Kit Leon:**

Thank you. I refer to the case of Davidson v. Scottish Minister (No. 2)

Judge Abdul Kadir Sulaiman:

25 Until he himself uttered. He hasn't uttered anything at all. You know, I may be asked to go. I wouldn't know.

Judge Niloufer Bhagwat:

My brother judge, he has mentioned my name.

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Judge Abdul Kadir Sulaiman:

No, no, no. no. Let us not quibble over that. Not Another thing I would like to remind ... do let me know. Indicate ... I may say yes or no. ... this is under my control. Bear that in mind.

35

Yes, you are going to proceed on this one. 2nd preliminary objection. Before you go on objecting now it is time for you to identify. Then it will be supported by the authority you're giving.

40 **Mr. Jason Kay Kit Leon:**

I am identifying Judge Niloufer Bhagwat.

Judge Abdul Kadir Sulaiman:

Who?

Mr. Jason Kay Kit Leon:

5 Judge Niloufer Bhagwat. I hope I am pronouncing the name correctly.

Judge Niloufer Bhagwat:

Perfectly.

10 **Judge Abdul Kadir Sulaiman:**

Don't don't say anything yet sister. Please cool down. Cool down. Cool down. Listen to me.

Mr. Jason Kay Kit Leon:

15 Judge Niloufer Bhagwat.

Judge Abdul Kadir Sulaiman:

Ok. Now proceed.

20 **Mr. Jason Kay Kit Leon:**

Thank you. I refer to the one case which is ... it is the loose copy. It's an English House of Lords decision 2005 of Davidson v. Scottish Ministers (No. 2). I turn to page no. 2, at Held No. 1. And I read

25 *"It was difficult if not impossible to lay down hard edge rules to distinguish a case where apparent bias can be found with one where it may not, but a risk of apparent bias is liable to arise where judge is called upon to rule judicially on the effect of legislation he or she has drafted or promoted during the Parliamentary process and a fair*
30 *minded and informed ... having considered the facts that there was a real possibility that Lord Harvey sitting judicially would subconsciously try to reaching a conclusion which would ... assurances he had given to Parliament."*

35 I wish to draw the Panel's attention to the word **"has drafted or promoted"**, specifically the word **"promoted"**. And I propose to use this case as analogy. If I may now turn to the Defence Bundle ... page 568, Volume 3. This is an article by David Luban, in the Yale Journal of International Law, ... where he cites Grotius, which at the first
40 paragraph of that page itself; says that "Grotius founder of international law". So reading from the last paragraph of page 568:-

"A crucial component of natural justice is impartiality,"

The last paragraph of page 568. In Grotius' words:

5 *"Our judgment is apt to be biased by our affections in cases where our interest is concerned."*

10 I focus the Tribunal's attention on the word "***affections***". Let me seek a little bit of lee-way to submit on a point which may illustrate. We all are quite aware, I believe the Tribunal is quite aware that the War on Iraq was the 2nd major war post-Sept 11. The first one, of course, was the war in Afghanistan. And I will now turn to 2 cases where Judge Bhagwat was an interested party involved.

15 **Judge Abdul Kadir Sulaiman:**

In what way?

20 **Mr. Jason Kay Kit Leon:**

If I may turn ... The first, may I direct the Tribunal's attention to the Defence Bundle number 2 at page 1. This is the final written opinion of Judge Niloufer Bhagwat on the 10th of March 2004 at the International Criminal Tribunal for Afghanistan in Tokyo. And the case is "The People vs George Walker Bush, President of the United States of America", accused number 1 in today's case. Judge Niloufer Bhagwat had written this judgment on the war in Afghanistan. But I will just like to direct the Tribunal's attention to very specific passages. First at page number 2. It starts with

25 *"The prosecution has presented a ***formidable*** indictment"*

30 If I may submit, the word "***formidable***" suggests that there certain bias on that. but allow me to continue.

35 *"The prosecution has presented a formidable indictment against the Defendant George Walker Bush President of the United States"*

Judge Abdul Kadir Sulaiman:

What is stated about the word, mean it cannot use the word "formidable" at all? Therefore you ...

40 **Mr. Jason Kay Kit Leon:**

To me, I would submit that it was an excess of adjective.

Judge Abdul Kadir Sulaiman:

I see

Mr. Jason Kay Kit Leon:

5 *“George Walker Bush President of the United States and
Commander-In-Chief of US military forces for serious crimes, waging
war of aggression on Afghanistan, and crimes against humanity
against the Afghan people, against prisoners of war, and the use of
radioactive depleted uranium weapons of mass destruction, against
10 the people of Afghanistan with serious fallout effects on military
personnel of the United States, UK and other forces deployed and
countries in and around the region.”*

15 That was what the case was about. Allow me to just cut to the end and
turn the Tribunal’s attention to page 31. The verdict, item number 17.
Judge Bhagwat in that case:

20 *“I find the defendant George Walker Bush President of the United
States and Commander-In-Chief of the United States armed forces
guilty.”*

25 There was a pronouncement of guilt and continues with the reasons
thereafter, specifically under item 1, “for waging war of aggression
against”, and continued at the next page, “Afghanistan and the Afghan
people.” So there was a **finding** of guilt for the Afghanistan war
against the 1st Defendant today in a separate Tribunal. That is
concerning the war in Afghanistan.

30 May I now turn the Tribunal’s attention to Bundle number 2

Judge Abdul Kadir Sulaiman:

Same bundle?

Mr. Jason Kay Kit Leon:

35 Same bundle at page 300. This is a different case. It concerns Iraq.

Judge Abdul Kadir Sulaiman:

I see.

40 **Mr. Jason Kay Kit Leon:**

Now this case, it appears that Judge Bhagwat was a prosecutor in the
World Tribunal on Iraq in the year 2005, thereabouts. If I may read
the first paragraph and a little bit of the second.

5 *“Honourable members of the jury, concerned citizens of Turkey and other nations present at this trial, the combination of a global movement of people for justice against the war, defying the acquiescence of many governments and the Security Council of the United Nations in the continuing war of aggression and military occupation of Iraq which millions the world over continue to oppose,”*

10 This is the important part now,

*“I present before you **on behalf of the prosecution** this indictment on the criminalized and privatize nature of this brutal war which is the corporate invasion and occupation of Iraq.”*

15 I continue with a little bit more for the 2nd paragraph, *“The decision to wage war of **aggression** privatized by the Bush administration representative of and identified with dominant US corporations, a **conspiracy** of an oligarchy of US and UK corporations,”* and I do not need to continue.

20 In this case, Judge Bhagwat has appeared ***as a prosecutor*** concerning the war on Iraq. So, the earlier case was as a judge in Afghanistan where she found Bush guilty of the war of aggression there. Here, it was as a prosecutor.

25 **Judge Niloufer Bhagwat:**

Second document is clearly, would result in my recusal even though it was by a jury of conscience and not ...

30 **Judge Abdul Kadir Sulaiman:**

Please, please. You'll be given the right of hearing. You'll be given the right of hearing. No one is to be condemned unheard. Bear that in mind. Please, please cool down. Yes, proceed.

35 **Mr. Jason Kay Kit Leon:**

Thank you. If I may turn the Tribunal's attention now to the Advisory Opinion that was given in the year 2009.

40 **Judge Abdul Kadir Sulaiman:**

If I may ask, sister. You would like to be present? Or you would ...

Judge Niloufer Bhagwat:

I would like to be present. And I would like to recuse myself, even though I would like to clarify that ...

5 Judge Abdul Kadir Sulaiman:

You'll be given the right. You'll be given the right. ... we go by order

Judge Niloufer Bhagwat:

10 Because it would come broadly under what you have correctly submitted, transactions ...

Judge Abdul Kadir Sulaiman:

15 Please, please, Otherwise I'll use my, I won't say anything else. Please. Cool down. Not going to be my sole decision. Either unanimous, or majority. That's the way. We have the procedure. Otherwise we're waging war here. Please, everybody will be given a chance. I think I'm still under control. Ok?

Mr. Jason Kay Kit Leon:

20 I seek the Tribunal's attention to turn to the Advisory Opinion given in 2009. It's a minor point, but I would like the Tribunal's attention to turn to it. The Advisory Opinion is contained in the booklet that has, I believe, been provided, at page 1, was for the specific question:-

25 Whether a Head of State and/or Government can unilaterally exempt itself from complying with any provisions of any International Treaties/Conventions (such as the Geneva Conventions) dealing with international humanitarian law, and in particular as set out in Article 7 paragraph (l)(a)-(d) of the Charter of the Kuala Lumpur War Crimes Commission, duly ratified by the State without first abrogating the relevant treaty/convention.

30

35 It's a very generalized question. It did not name anything, any party in it. May I now turn the Tribunal's attention to the separate opinion of Judge Niloufer. It's found at page 13 to 27. I specifically refer to page 14 item number 3, 4th line. Allow me to read item number 3 in full. This is again my objection to the excess of adjectives used. It's a minor point.

40 *"Dr. Nawal Majeed Al Sammaria, Iraq's Minister for Women Affairs, had recently reported to the General Assembly, that out of 170 babies born in September 2009 at the Fallujah General Hospital, in a city which under occupation was **stormed** by the US-UK alliance"*

I submit that this is an excess of adjectives

And at page 26 of the booklet, item number 24, This was the conclusion of Judge Niloufer Bhagwat

5

“To conclude, the interpretation of treaty obligations cannot be usurped by a head of state”

10

And it goes on, a few lines down. But at line 25, a specific person, a specific party was mention:

15

*“The President of the United States declared in 2007, that "micro nukes" of less than 20 kilotons, three times as powerful as the Hiroshima and Nagasaki bombs were to be classified in the arsenal of the United States of America as I conventional ordnance'. Such acts by a head of state / government and the indiscriminate increase of stockpiles of nuclear weapons by the **powerful club** of nuclear weapon states can hardly be considered in conformity with the 1968 Treaty on the Non-Proliferation of Nuclear Weapons and other treaty obligations.”*

20

25

The question posed for the Advisory Opinion was general. The answer given in the conclusion specifically named the President of the United States. It is a by-the-way point, but it is a point I hope the Tribunal will consider in this application.

30

I would like to conclude with a quote, it's just a quote, it is not an authority, taken from Judge Niloufer herself from her submission at the World Tribunal on Iraq that is found in bundle number 2 at page 314. It is the concluding paragraph. It's the 2nd paragraph from the top. Just the first sentence.

35

“Honourable members of the jury we are before the Bar of Humanity,” which this Tribunal seeks to be also. *“Let it not be said that we lacked the courage, honesty or the perspective to speak the truth.”* I conclude - That is the conclusion of my submission for my first preliminary objection.

40 **Judge Alfred L. Webre:**

Yes Counsel, are you aware of the length of time and the number of sessions and the number of witnesses called at the Tokyo International Tribunal for War Crimes in Afghanistan?

Mr. Jason Kay Kit Leon:

No.

5 **Judge Alfred L. Webre:**

Thank you. Are you aware whether George W. Bush appeared in person before that Tribunal?

Mr. Jason Kay Kit Leon:

10 No.

Judge Alfred L. Webre:

Would it be safe to say that George W. Bush did not appear before that tribunal in person?

15

Mr. Jason Kay Kit Leon:

I would not be able to answer.

Judge Abdul Kadir Sulaiman:

20 Give an indication. What's the relevancy to this matter before us?

Judge Alfred L. Webre:

Well, we're looking at an international scaffow. I'm trying to establish that an accused has skipped out on all international tribunals. So I am very patiently asking counsel who's coming here and impugning the impartiality of one of our esteemed colleague whether he's even aware and this is just the beginning of my examination of you, Counsel.

25

Judge Abdul Kadir Sulaiman:

Ok, proceed

30

Judge Alfred L. Webre:

Let me know, because I've travelled many thousands of miles. So you do not know how many months, and how many sessions, and how many witnesses that the Tokyo International Tribunal, and you do not know whether George W Bush appeared there in person or not. May I ask Judge Niloufer.

35

Judge Abdul Kadir Sulaiman:

I'm not trying to interrupt you. ... the relevancy?

40

Judge Alfred L. Webre:

Judge Niloufer, did George W Bush appear at the Tokyo International Tribunal for war crimes as an accused?

5 **Judge Niloufer Bhagwat:**

He was served through the embassy of the United States in Tokyo, by the Prosecution through the Registry but he did not appear

Judge Alfred L. Webre:

10 Thank you. Counsel, are you aware of how many sessions and how many months and how many witnesses were called at the International Tribunal for Iraq?

Mr. Jason Kay Kit Leon:

15 No.

Judge Alfred L. Webre:

20 Are you aware whether George W Bush appeared there as an accused in person? Judge Niloufer, did George W Bush appear there?

Judge Niloufer Bhagwat:

25 The proceedings in Istanbul were not in the nature of a formal Court. It was a citizen's endeavour. There were no formal trappings of a Court at all in those proceedings, and there were eminent people from various walks of life international ... intellectuals, artists, archaeologist, cultural historians, former United Nations official all of whom presented their view point on what was the view point on the situation in Iraq. George W Bush did not appear because he was not required to appear as it was not a formal Court.

30

Judge Alfred L. Webre:

Counsel, do you have knowledge as to why your client is not in this courtroom now?

35 **Mr. Jason Kay Kit Leon:**

No I do not.

Judge Alfred L. Webre:

40 Do you have any knowledge as to why your client appeared in my own city against the recommendation of the Minority Leader of the Canadian Parliament in order to deliver a speech at a fee of \$150,000.00 in Vancouver, Canada when the minority leader of the Canadian parliament requested him not to appear?

Mr. Jason Kay Kit Leon:

Well, I would answer that I am a friend to the Court, strictly speaking at this point.

5

Judge Alfred L. Webre:

So, if we had served the Defendant with \$150,000.00 witness fee, he might be here?

10 **Mr. Jason Kay Kit Leon:**

I would not be able to answer for a client who has not given me instructions

Judge Alfred L. Webre:

15 But, wouldn't you say we're dealing with at least, an international
scaffow who has not appeared so far in at least 3 proceedings in which
he was duly served. My knowledge of the Tokyo International
Tribunal is that several million dollars were raised by the Japanese
20 people. The proceeding took over the course of a year, and over 60,
and the judge can correct me, expert witnesses from all over the world.
And here you have an international scaffow. This isn't a question of
bias. Either he was there to defend his actions, or not. So, from that
point of view, the judge is faced with a scofflaw and I think if you go
back in history that Courts are rather strict on scofflaws. Would you
25 not agree?

Mr. Jason Kay Kit Leon:

The purpose of this Tribunal ...

30 **Judge Abdul Kadir Sulaiman:**

Sorry, sorry. Let me intervene here.

35 So the issue here is, what I hear from my learned brother is the issue
of whether Bush was present or not. That's why you remember we
started off, we laboured on that because we have the provision, to
make provision for those people who are present, and those people
who are not present. Sometimes you can carry on validly under the
law even if he was not present provided you have sufficient evidence
that he was aware of it but he refused. There is a sanction for that, and
40 we are allowed to proceed. Doesn't mean that when he's not present
our hands are tied.

So, whether it is relevant to the issue before us, the issue is simply this: The Defence is contending that one of our group here is biased so so far we haven't heard anything, her reasoning was because Bush was not present. So it is a non-issue, Bush present or not.

5

But the contention here is because she was involved – one as a judge, the other one as a prosecutor involving Bush. So that's why I make a point clear here. Other than that I interjected say "What's the relevancy here?". If it's not relevant, we're going to talk the whole day about Bush. We are not going to do that. Our time is limited. We confine to the issues. Bear in mind that we are here...

10

Judge Shad Saleem Faruqi:

I have something to say to that. I feel that it's very important that a Judge should have an open mind but to have an open mind does not have to mean that you have an empty mind.

15

Judge Abdul Kadir Sulaiman:

Because after this, as I said, no one is to be condemned unheard. And I must have a clear verdict, to pronounce either way.

20

Judge Niloufer Bhagwat:

May I have an opportunity

25

Judge Abdul Kadir Sulaiman:

Any relevancy to the topic here

Judge Niloufer Bhagwat:

Yes, it is relevant. It is relevant.

30

Judge Abdul Kadir Sulaiman:

Because you'll be given the right of defence

Professor Gurdial Singh Nijar:

Yes, maybe at some point I could try to respond to the submission made by Learned Counsel, on this point only.

35

Judge Abdul Kadir Sulaiman:

On which point?

40

Professor Gurdial Singh Nijar:

On the point asking the judge to recuse

Judge Abdul Kadir Sulaiman:

Have you finished?

Mr. Jason Kay Kit Leon:

5 I would like to respond to the comments made by Judge Webre.

Judge Abdul Kadir Sulaiman:

10 No no no. It's not relevant. It's not relevant. I'm not prepared to hear. I'm not going to waste my time here listening to anything irrelevant.

Mr. Jason Kay Kit Leon:

I am finished. I seek the Tribunal's consideration on my motion.

15 **Judge Abdul Kadir Sulaiman:**

You have finished all your arguments on 2 grounds.

Mr. Jason Kay Kit Leon:

20 On the issue of jurisdiction

Judge Abdul Kadir Sulaiman:

yeah yeah on 2 grounds. You gave 2 reasons.

Mr. Jason Kay Kit Leon:

25 Yes

Judge Abdul Kadir Sulaiman:

30 So you laboured with the 2nd one first. So you have finished the 1st one?

Mr. Jason Kay Kit Leon:

Jurisdiction no. I have not started on my point on jurisdiction.

Judge Abdul Kadir Sulaiman:

35 Is it on the same matter? Jurisdiction or generally affecting everyone of us or in particular to ...

Mr. Jason Kay Kit Leon:

40 I seek a ruling on Judge Niloufer first and after that ruling is made I will submit on the issue of jurisdiction.

Judge Abdul Kadir Sulaiman:

Ah that means general, not affecting her alone. Affecting the Tribunal?

5 **Mr. Jason Kay Kit Leon:**

Yes.

Judge Abdul Kadir Sulaiman:

So you have finished on the 2nd one. Yes, now let us hear from you.

10

Professor Gurdial Singh Nijar:

Thank you your Honour. I wish to make point that I am not here to defend any particular member of the Tribunal but I think in the interest of justice I should say something in relation to the submission made.

15

Judge Abdul Kadir Sulaiman:

Because you are an officer of the Court.

Professor Gurdial Singh Nijar:

20

The first point I want to make is, I am taken, the prosecution team is taken entirely by surprised as to this submission that has sprung upon us.

Judge Abdul Kadir Sulaiman:

25

Do you need time?

Professor Gurdial Singh Nijar:

No I don't need time. I want to make a point. And the point is this

30 **Judge Abdul Kadir Sulaiman:**

That you were taken by surprised.

Professor Gurdial Singh Nijar:

35

Now the point is this. It has a bearing on this application because if this had been indicated, and we had case management yesterday as well, this had been indicated, then, it was perfectly possible for the distinguished member of the Tribunal to have indicated her interest and extent of interest prior to the submission being made.

40 **Judge Abdul Kadir Sulaiman:**

No. I wouldn't agree with that. You were taken by surprised and I take note of that if you need time

Professor Gurdial Singh Nijar:

5 No no. The point I'm making is quite different. And that is this. If I could refer to the authority that has been cited by my Learned Friend Davidson v. Scottish Ministers, if I could invite your attention to this case that he cited. And I refer to page 2 of this sheet. I refer to the final paragraph, under "observed at", and I read with your leave:

10 *"Observed that.... before or at the outset of the hearing disclosed a previous activity or association which would"*

15 The point I'm making is that if this had been notified, if this was of concern to the defence team, then a disclosure at the outset itself would be a badge of impartiality, in other words, the judge declare and says, *"Look, you're taking objection to this, now this is the position, I declare my interest,"* and that itself on the basis of this authority is a badge of impartiality. That's on this point.

20 Second point is: That this case deals with a situation where a judge was involved in drafting a legislation. So he while he was in the Attorney General's chambers, or some such thing, he drafted and promoted the legislation. And then he was asked subsequently to judge this particular matter, revolving an interpretation of that legislation. So there obviously in the case where he would defend something which is his baby. He is the architect of that, and therefore he's gotta defend that. He cannot say, "It is wrong." So that is what this case is about.

30 Now, coming back to this position, the 1st case cited, the first precedent cited where a person is a judge in Afghanistan; first Afghanistan has nothing to do with this case so it's quite inappropriate on this matter. But even if it was, the fact is that when a judge pronounces on the facts of that particular case his view or opinion, what we call a judgment, it does not mean that in every such situation that has a parallel to that case therefore he's going to be disqualified. Otherwise, I think, almost every judge with regard to murder case 35 where he expresses a powerful argument where it's against humanity and you know, then he can never judge a murder case subsequently. So I think on the question of the judgment that's out.

40 What's more interesting is the view expressed by her Honour with regard to the Iraq case. Now, the 1st point I want to make is this: This is a war that has affected the views of everyone. I can

comfortably say without fear of contradiction that everyone has a view on this war and its atrocity and so on so forth.

Judge Abdul Kadir Sulaiman:

5 But we act on evidence.

Professor Gurdial Singh Nijar:

10 There's a point that I want to take up on. The Nuremberg trial was the victor trying those they had captured, after arduous effort. And yet, Nuremberg was the situation was where they said, "*Yes, of course we can apply*" as your Honour has observed. We can apply our independent mind to the facts of this particular case because no facts, no 2 paper cases are the same. So I'm in your hands entirely on the observations that your Honour, with respect, have quite correctly made.

15
20 Now with regard to that particular case itself where the judge was a prosecutor; that was a case of citizens, NGOs, getting together and having a kind of a show trial. And the prosecutor then puts forward, or the prosecutor is within. There was no Charter established, there's no evidence that there was any Charter established in that, and so they proceeded to give their views, she proceeded to give her views on that matter as it appeared to her then.

25 So on one view it can say she talked about the Iraq war and condemned the accused person that could suggest some apparent bias. But we would like to respectfully suggest that we look at it from a wider canvass, from a wider perspective, and that it is: That is an NGO situation where they talking about a war, of giving their opinion, and I think you Honour would be in a better position. The point I'm making is that that's entire different from a situation where this is a formally constituted Tribunal, under a Charter, with it's Rules of Evidence which are very similar to the Rules of Evidence of the Hague Tribunal for example, as we will submit later.

30
35 And so the gist of the matter is: Can we say that a person who has expressed strong vies on a particular thing, at a separate occasion, outside of the province of a Court setting, cannot apply his or her own mind on the evidence. That is the point.

40 So, I would like to urge, without really defending any one member, or more of the Panel, that we look at it from a broader perspective and I

would like to respectfully submit that we reject the application to recuse the judge in this case. Thank you.

Judge Niloufer Bhagwat:

5 May I ...

Professor Francis A. Boyle:

10 I want to associate myself wholly with my colleague Professor Singh and just make 2 additional points drawn from practice in the highest court in the world, the International Court of Justice in the Hague, the World Court, and the United States Supreme Court.

15 Now, in the International Court of Justice in the Hague, judges are capable and are permitted to adjudicate cases involving their own states of nationalities. There is no recusal at all. And they are deemed to be fair and objective even when it comes to their own state of nationalities. I submit in this case, even if it's an independent state ...
20 here we're dealing with a Head of State of the United States and the Prime Minister of Britain ... the Head of Government, I submit she can be fair and objective just as is a Judge on the International Court of Justice.

25 Second, in the practice of the United States Supreme Court, where I'm licensed to practice law, the question of recusal is decided by each Justice on a case by case basis. As a matter of fact, the Supreme Court has no authority to order the recusal of any Justice. Rather, it is for each Justice to decide for himself or herself whether or not to recuse on the grounds that they do not believe they can adjudicate fairly.
30 And I would respectfully submit to the Judges of this Tribunal that that should be the practice – the International Court of Justice and the US Supreme Court – I ... here to Malaysia and I have great respect ...but I would put the 2 together and say it is really for Judge Bhagwat to decide as a matter of conscience: Can she be fair and adjudicate
35 fairly in these proceedings? And if she decides as a matter of conscience she cannot, then she should recuse herself.

Judge Niloufer Bhagwat:

40 May I ...

Judge Abdul Kadir Sulaiman:

Hold on. So ... we are working on the issue of the mind and the conscience. An ideal position would be: A man comes and

straightaway tell us, *“Sorry, I think I should back out from this proceeding because blah blah blah.”* But here that thing doesn’t happen that way. She, her choice of mind and conscience, alright she think she got every reason to say. Now the defence’s objection, that she should, have gone against the norm, not all, by not declaring. To her, what is there to declare, what is there to recuse myself? So that’s really the issue. So having heard, I think what we’ll do, we’ll have a short adjournment, we’ll deliberate among ourselves, and then we’ll come back. Alright?

We adjourn for 20 minutes.

19th November 2011 – Session 2 (11.40am)

Registrar Musa Ismail:

Court rise, please be seated.

5

Judge Abdul Kadir Sulaiman:

So as I've said, we have a system. We have adjourned just now for about 20 minutes or so to deliberate among ourselves upon this very crucial issue. We were given the liberty to hear, and we're supposed to come up with a decision here. But before that, I'll give the opportunity now for my Learned Sister concerned because she said she has something to say. As I've said, no one is to be condemned unheard. But there must be patience. Wait for the time. You know, she appealed to us. Give her a chance to say something. So I'll give that liberty with the agreement of everybody.

10
15

Judge Niloufer Bhagwat:

The presiding judge of the Kuala Lumpur War Crimes Tribunal, thank you for allowing me to make this statement.

20

Amicus has raised an important issue. However, the team is not aware that I had earlier volunteered to step down when the matter was raised with the War Crimes Commission 3 months ago. And I have specifically stated that I have no vested interest in this Tribunal. That I have functioned on the Tokyo Tribunal without fear or favour. That this appointment does not add to my bio data, or to my distinction, or lack of it. And I have emphasized that we have different standards from the standards that were adopted at Nuremberg and the Tokyo trials. And that is why I volunteered.

25

30

In full view of international opinion at Nuremberg, the Allied powers, in an agreement drafted decided to try the leaders, including political and military, of the Axis powers. There were prosecutors in full military dress of the Allied powers addressing members of the Tribunal. And no issue of bias was raised. Judges were all from the Allied countries. And not a single issue raised of affection or bias, even doubt. I said this, stated this, in my communication to the War Crimes Commission that it be placed officially on record as and when necessary.

35

40

Therefore, what I would like to advance is the objectivity of this Tribunal. To establish that we are different. Our Tribunal is different. Yet it is not lost on us that certain legal systems are quick to

make the charge of bias, but fail to adhere to international norms and legal standards. And they have been citing those Nuremberg and Tokyo Tribunals as precedents all over the world, including before our Tribunals.

5

Therefore, what I am doing today is not something which is a first step. I have already taken the first step. Today, Amicus Curiae has given me an opportunity to lay bare aspects of legal history, aspects of legal history which have never been objectively scrutinized.

10

And since justice must not only be done but appear to be done – I have no bias against the accused. I do not belong, I'm not an American citizen. And I have no bias against either of the two, the President or the Prime Minister.

15

In fact, it was my submission at the public conscience dialogue which took place that took place at Istanbul that it was not the individuals Bush and Blair alone were responsible. They were the instruments of their banks, financial institutions and corporations. So that presentation in fact can never be held against me.

20

In respect of bias against the 2 accused, however, I wish to recuse myself in respect of charge number 1 and charge number 2 on Iraq and Afghanistan. However, I will resume my seat on the Bench when other charges of war crimes are framed.

25

Judge Abdul Kadir Sulaiman :

Well, all that I can express as the President of this Tribunal, what an unfortunate turn of events. It is sort of like washing dirty linen in public. I take great honour in the trust reposed on me to discharge my duty. So I'm responsible for anything that happens, fellow members of this Tribunal. In fact I would appear to be very stern in controlling this. But that's besides the point.

30

During our deliberation, then all this came out. There was already this on-going event about the position of the unfortunate Learned Sister of mine. It could have been done very smoothly without the linen being washed, without anybody knowing anything, just among us here. After all she has no vested interest as she had said. She know what her conscience told her.

40

But unfortunately there were various communication going on between the Secretariat and my Learned Sister, not at all to my

knowledge. That is why I said, I'm shocked, I was taken by surprised with this turn of events. Then what am I hear for? Anything that is going to affect anything, I should know and I should be given the liberty to say, either in defence of my Learned Sister or advise against her taking certain steps. So that's just an expression. But whatever it is, we deliberated. The whole story came out. And she said, well, the sentiment is that ... I sympathize with her having to undergo all this, to be put in the centre there, to be discussed about the matter.

So whatever it is, she has told the public what her intent is. So we heard, she is going to take her own brave step to recuse herself. So in that instance, we deliberated on the matter. So we thought let us not make further issue about this. I am not going to make our ruling. We accept her decision, of course, in a good spirit. So all that we can say now, we bid her farewell. Thank you for whatever that she has gone through so far.

But I must express here how, on her behalf I feel a little bit shocked about the thing that has happened, that she has got to be exposed here. Don't forget, the world is watching us. And I've always stressed, the world is watching us. So let this be the first and the last incident.

Finally, the step that she has taken, very honourable step. Let us leave it at that. We won't pronounce any ruling. So she now openly declares that she wants to recuse. We all agreed and we wish her well.

Thank you very much.

(Judge Niloufer Bhagwat leaves the bench.)

Judge Abdul Kadir Sulaiman :

So there you are. We are now left with 6. As far as quorum is concerned we still have the quorum. So the only little bit of the thing is in the case of a divided decision later on. But I believe I have the casting vote. So we will go on with the proceeding.

So now, since we have settled with the 2nd objection, we'll go next to the 1st objection on the jurisdiction of this Tribunal, which consists of 6 now, not 7. Alright proceed.

Mr. Jason Kay Kit Leon:

5 Thank you. On the issue of the Tribunal's jurisdiction: The 1st fact to note is that this Tribunal does not have the mandate of the United Nations nor that of the Security Council. If your Honours would turn with me to Defence Bundle number 3, at page 567, I am reading from the last paragraph,

10 *"Only tribunals respecting the requirements of natural justice should be authorized to try those accused of crimes against humanity," as this Tribunal is, "and in practice these tribunals must be established by states or international organizations established by states."*

15 Now this is just a long way to say – It should have the authorization of the UN, or the Security Council. The United Nations represents almost all civilized countries in the world. That is where countries meet and discuss. From the Security Council there derives powers. The mandate for the establishment of the International Criminal Tribunal for Yugoslavia was made by United Nations Security Council Resolution 827, and that can be found in the Defence number 20 2 at page 129. For the International Criminal Tribunal for Rwanda was via United Nations Security Council Resolution 955 and that can be found at Defence Bundle number 2 at page 114. For the Extraordinary Chambers of Cambodia it was in line with the UN and the Government of Cambodia and that was in 2003. There is also the 25 Special Court for Sierra Leone in 1996.

30 My point is this: The mandate of the United Nations is necessary. When we wish to indict war criminals, when we wish to say that *this* person is a war criminal, or *that* person is a war criminal, the United Nations is that body which says, *"Alright, we have 190 member states saying YES, let's establish this Tribunal and let us decide."* This was not done here.

35 This Tribunal is established by the Charter. It has no backing by the United Nations. That is a fact.

40 Atrocities in international law, these are very serious crimes. Very very serious crimes. And to have the sanction of the United Nations would give it a chance, or give it a veneer of impartiality, independence and power. Power to arrest, power to punish as was done in the Tribunals of Yugoslavia and Rwanda. The indictments in these Tribunals which are mandated by the Security Council would be enforceable on the perpetrators, on the accused so charged. One

example is the case of *Prosecutor v. Stanislav Galic* where he was sentenced to life imprisonment for sniping and shelling attacks in Sarajevo, and that case can be found, I will not go into it, at Bundle 3 page 32. That's just to show that there was power for that Tribunal.

5

The United Nations' Charter, the very Charter of the United Nations itself can be found, if Your Honours would refer to the Prosecution's Bundle 1, the first Prosecution's bundle, I'm just reading from the UN Charter. I'm looking at **Chapter VII** which can be found at page 9 of said bundle. Article 39.

10

Reading from Chapter 7, "*Actions with respect to the peace, breaches of the peace, and acts of aggression.*" The ambit of that Chapter is the same as what this Tribunal wishes to adjudicate upon.

15

Reading **Article 39**, "*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*"

20

That is the founding document of the United Nations. That is what the United Nations was created to do. My question, or my poser to this Learned Tribunal is that: Is it a usurpation of such authority?

25

Verdicts that are given without the mandate of the Security Council does not have any effect; and this can be seen by the 2004 International Criminal Tribunal for Afghanistan in Tokyo, Japan. Verdicts which have no legal effect is purposeless in upholding justice or maintaining international peace and security. It is, in normal legal parlance, a "paper verdict".

30

Judge Abdul Kadir Sulaiman:

It that illegal? Does that effect the consequence? Is it illegal?

35

Mr. Jason Kay Kit Leon:

It can ...

Judge Abdul Kadir Sulaiman:

In other words, there is a sanction

40

Mr. Jason Kay Kit Leon:

There's a sanction

Judge Abdul Kadir Sulaiman:

arising out of the verdict pronounced

5 **Mr. Jason Kay Kit Leon:**

Correct. But at the same time UN Charter does provide for, on crimes against peace and aggression. So the first question to be asked would be whether there was a usurpation of such power by this Tribunal? And that is in essence the point that is taken up by the defence as a preliminary point for the consideration of Learned Members of this Tribunal. Thank you.

Judge Abdul Kadir Sulaiman:

Is that all? Thank you. Yes.

15

Professor Gurdial Singh Nijar:

Thank you My Lords. Your Honours. Yes of course if the people knew of, were confident of the way in which power would operate in favour of the people then we can use various existing rules that exists. But the essence of the matter is that (a) if we can prove to Your Honours the facts that we are going to rely, the evidence that we are going to produce it means there is a war crime committed on the basis of existing authorities, the facts and the existing authorities and existing jurisprudence, we can show that there is a war crime.

25

Now, what do the people do, because there are these war criminals, potential war criminals stalking the world at this moment. We are the people. If you look at the United Nations' Charter it starts off with, "*We the people.*" So, the situation is we cannot be complicit. We the people cannot be complicit in a crime, because if it is a war crime, and we do nothing about it, we are complicit. So the challenge therefore, in the world today, is to make power accountable. And how do we do this in relation to war crimes? We do this by constituting a body, a respectable eminent body with established rules of evidence and procedure to adjudicate upon it in the name of the people, in the name of conscience. The Charter says that it established a Tribunal of conscience. So ours is founded in the very fundamental precepts that predate the establishment of the United Nations which is humanity. The link is humanity.

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War crimes have a universal jurisdiction. There is no need to show a link with where the crimes was committed, who committed it, is he in Malaysia, is he in Europe, who is going to therefore going to have

jurisdiction? War Crimes are categorized as crimes where there is universal jurisdiction which means anybody anywhere in the world has an obligation, has an obligation, to bring these war criminals, if proved, if and when proved to account for their action.

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So, with respect, it is our respectful submission that we are not relying, we are not saying that the United Nations cannot proceed on this basis, but because of the fact that we derive our power from the people and the people are not prepared to be silent. We have seen the world now where power is being made accountable, all the time. And there is consequence and result and outcome as a result of the expression of this power, in the Middle East, in Wall Street. So this is the basis upon which we are proceeding.

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And therefore, with respect, to suggest that the only channel is the United Nations is really to miss the point of the essence of the purpose of this Tribunal established by this Charter. And it's based on, as I have said earlier and we shall show presently, it's based on rules that are modelled on the rules established by the United Nations, in particular, the Hague Tribunal on the former Yugoslavia.

20

Now, the more important poser is whether we are usurping the power? Now that's bad. Because if we are taking somebody else's power and reasserting our power in its place then maybe there is some credence and we have to treat that view with some greater respect. And there is some force in the argument that has been suggested. But let's examine this a little more closely. Now, this is also the argument that it's useless, really a paper verdict. So what on earth are we doing here? There's no effect.

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Now, I want to say 2 things. First is that when you also do something that other persons can do it's not usurpation. It's called "complementarity". We complement the growing body of opinion that deals particular situation. So we are not saying, we are not here to say, *"From tomorrow onwards our President of this Tribunal is going to replace the Secretary General of the United Nations."* Far from it. We want the Secretary General of the United Nations also to take serious account of war crimes. But the people will not be silenced. So this is a parallel process. The people will not be silent.

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Judge Abdul Kadir Sulaiman:

Pray, pray for it.

Professor Gurdial Singh Nijar:

Yes, because conscience cannot be silenced. God-given conscience cannot be silent. That is the point of this Tribunal. And that is why we are urging this.

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Now, on this question of hopeless – whether it is hopeless. I just want to invite the distinguished members of the Tribunal to the International Court of Justice, the Charter of the International, the Statute of International Court of Justice which has been established under the Charter of the United Nations. So then, this is the World Court. And if you look at the following page, Article 38, it says:

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“The Court whose function is to decide in accordance with international law such dispute as are submitted to it shall apply it applies international conventions, international custom, the general principles of law recognised by civilised nations.”

And it goes on to say, subject to the provisions of Article 59,

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“judicial decision and the teaching, and the teachings of the most highly qualified publicists of the various nations are subsidiary means of determination of rules of law.”

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In other words, the World Court takes account of the fact that there can be the teaching, in other words, the writings or the pronouncements of the most highly qualified publicists of the various nations as subsidiary means of determination of law. Now what does this mean? It means simply that they can take into account pronouncements by say one or two of the eminent members writing articles and that will become a subsidiary means of determining the rules of law.

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But here, we have an eminent body of 6, there were 7, 6 collectively upon hearing evidence, making determination. So we have then a situation where ours, this Tribunal’s voice of the people, a decision made is not something that is a worthless scrap of paper because even the World Court recognizes it. The statute recognizes it and the World Court is the judicial arm of the United Nations.

40

So this therefore suggests, in my respectful, our respectful submission that even greater force, with respect, that we are complementary to try to establish a body of law that relates to a war crime. And as have been quoted, that they have to decide in accordance with the

5 international custom as evidence of the general principles of law recognized by civilized nations. General principles of law recognized by civilized nations – how is it articulated? By eminent jurists. By people who apply their minds in a judicial manner very carefully, weighing various aspects.

10 And there can be no better forum to complement and to provide sustenance to the future development of international law and the existing development of international law if we, working the ambit of the Charter, complement the efforts of those who would seek to establish war crimes against potential international war criminals. I thank you.

Professor Francis A. Boyle:

15 Mr. President, may I please. I wish to supplement few additional points for my colleague. Learned Counsel for the Defence cited the United Nations Security Council – why didn't they authorize this Tribunal? It's very simple. The United States and the United Kingdom have vetoes at the Security Council and would thwart any opportunity by anyone to bring Bush and Blair before the bar of justice. It is not this Court that is usurping anything. It is the United States and the United Kingdom and Bush and Blair that have usurped the rules of international law, as we will establish during the course of this prosecution.

25 Second, the United Nations General Assembly, yes, they could establish a Tribunal under Article 22 of the UN Charter. I propose they establish a Tribunal to prosecute Israel; and thanks to Dr. Mahathir Mohamed, that received the support of the Malaysian government, and the Iranian government, and 4 and 5 other Moslem Arab governments. And what happened? The United States and Britain made sure this Tribunal was never established. Yes, complaint have already been filed before the International Criminal Court against Bush and Blair for what they have done. And the Prosecutor for the International Criminal Court, Mr. Moreno Ocampo, has refused, illegally, to discharge his required duty to prosecute Bush and Blair.

40 Now the US and the UK then have used their enormous power that they have to control the United Nations and to prevent any prosecution of Bush or Blair. So since we cannot prosecute them at any United Nations organizations, which I personally have tried to do, it falls to this Tribunal, under the principles of universal jurisdiction whereby

any state, any government, any group of people have the right and the obligation to prosecute international criminals such as Bush and Blair.

5 And the final point I do wish to associate my opinion here with that of
my colleague. Article 38(1)(d) of the Statute of World Court which
you now have before you, expressly recognized as “*judicial*
decisions” as a subsidiary means for the determination of the rules of
law. You will note, Your Honours, it says, “*judicial decision*”. It
doesn’t specify what body this has to be. It could be a judicial
10 decision by the Supreme Court of United States. It could be judicial
decision by the Supreme Court of the Malaysia and it could be a
judicial decision by this Tribunal. This decision will become a
subsidiary means for the rules of international law in accordance with
the statute of the International Court of Justice which is the judicial
15 arm of the United Nation Organisation.

So, of course it will have significance. Precedential significance that
could even be pleaded and proved before the International Court of
Justice itself, or any other Tribunal in the world.

20 Your Honours, the Learned Counsel for the Defence has already
conceded that the jurisdiction is established under the Charter for this
Tribunal and the Counsel for the Prosecution, I submit, has established
that this Tribunal has jurisdiction under international law, including
25 under the United Nations Charter, the Statute of the ICJ is an integral
part of the United Nations Charter and we respectfully submit that we
move on now to the determination of the merits of this case. Thank
you.

30 **Mr. Jason Kay Kit Leon:**

The definition of a vigilante: “*A person who tries in an unofficial way
to prevent crime or to catch and punish someone who has committed a
crime, especially because they do not think that official organizations
such as the police are controlling crime effectively. Vigilantes usually
35 joint together to form groups.*” That is the danger here.

If the prosecution’s contention is that anybody, anywhere in the world
can bring people to account for war crimes, the question, the logical
question is this: What is to prevent a group of people at every 50-mile
40 radius, every 100-mile radius, every 10-mile radius to say, “*Alright, I
will establish an international tribunal to try war crimes?*”

That is the danger if we do not have UN sanction. That is all. Thank you.

Judge Alfred L. Webre :

5 I would like to respectfully address a line of questioning to counsel for the accused.

Mr. Jason Kay Kit Leon:

Yes.

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Judge Alfred L. Webre:

I would like to pursue a different line here because my mind doesn't understand why the principle document relevant here is not the United Nation Charter but the Rome Statute of the International Criminal Court. Can you explain that to me?

15

Mr. Jason Kay Kit Leon:

Could you pose the question again?

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Judge Alfred L. Webre:

Yeah. I don't understand why we aren't discussing the Rome Statute of the International Criminal Court and not the UN Charter. It seems to me the Rome Statute of the International Criminal Court is the relevant document that we should be discussing here as to jurisdiction.

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Mr. Jason Kay Kit Leon:

The United States and Iraq are not state parties to the Rome Statute.

Judge Alfred L. Webre:

30

But Malaysia is.

Mr. Jason Kay Kit Leon:

We are concerned with a citizen of the United States and for crimes committed against Iraq.

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Judge Alfred L. Webre :

But we are in Malaysia, and we are at a tribunal of conscience in Malaysia and the findings of this tribunal of conscience may be taken to competent national courts that possess universal jurisdiction for war crimes because Malaysia is a signatory to the Rome Statute of the International War Crimes Tribunal and the whole purpose of the International, of the Rome Statute of the International War Crimes Tribunal was to decentralize the process of prosecution for war crimes

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and to take it out of a centralized agency like the International Criminal Court and to place it in the 120 or so signatory nations and their national courts that would be the frontline of courts and prosecutorial agencies that would be prosecuting war crimes. That's why we have Spain, who is prosecuting war criminals. That's why Augusto Pinochet was extradited from the United Kingdom.

This has nothing to do with the United Nations. That you are talking about 1945, this is 2011. The Rome Statute of the International Criminal Court is a relevant document here. You are trying to hoodwink us Counsel.

Mr. Jason Kay Kit Leon:

Judge Webre, I stand corrected, but I believe the research that is done by my team states that Malaysia is not yet a signatory to the Rome Statute.

Judge Alfred L. Webre:

Well then this court does not have to go to Malaysia, this court can go to the courts of Venezuela

Mr. Jason Kay Kit Leon:

Again as you have said, this court is now in Malaysia ...

Judge Alfred L. Webre:

No, no, but wait. This Court can go, the findings of this Tribunal can, as competent findings under a, under competent rules of evidence can be taken pursuant to the terms of the Rome Statute of the International Criminal Court to the national courts of Venezuela and to the national courts of Cuba, where I was raised, or to the national courts of Spain, or 120 other countries and we can present our entire record. In fact, that's why I'm here. And I don't think that that's biased. I'm just not ready to waste my time and that's the whole purpose of the global decentralized system of prosecution and adjudication of war crimes that was instituted by the regime of the Rome Statute of the International Criminal Court.

That has nothing to do with the administration and secretariat of the United Nations. You are trying to confuse us with the executive structure of the United Nations, let me finish, and the legislative structure of the United Nations which is the General Assembly and the judicial structure of the United Nations which is the ICJ and the ICC and in the ICC now you have, which is war crimes. The ICJ is about

nation versus nation. This is not nation versus nation. This is against individuals.

5 And you are on purpose engaging in omission, which I believe is your
modus operandi, omission. And you are ignoring the major regime
that was instituted by the Rome Statute of the International Criminal
Court to decentralize the prosecution and the adjudication of war
crimes down to the grass-roots level, which is this tribunal of
conscience, which intends to hear evidence and reach a judgment that
10 then it can take to the national courts of Cuba, Venezuela, Spain and
any other signatory of the Rome Statute. So I don't understand why
you have, you know, taken us on this diversionary course.

Judge Shad Saleem Faruqi:

15 I have a question of the Learned Counsel here. I think the gist of your
point is this: That this Tribunal has no jurisdiction because we were
not established by law.

20 Don't you think you are making some presumptions as to what
amounts to law? Is law simply a heathen word for power? Is law
simply positive enacted law? Or does law also include natural justice,
natural law, principles of justice, equity and good conscience? In
every legal system hundreds of domestic tribunals exists. They are not
created by formal law. Even established Courts we know full well, in
25 administrative law, exercise supervisory jurisdiction despite the fact
that often statute say, "*The decision of the authority concerned shall
be final and conclusive, not to be questioned, reviewed or quashed in
any proceedings*" And the Courts review it.

30 So what does that indicate? It indicates that there is law beyond law –
by which I mean there is law beyond formal law. The concept of law
is a much more majestic, holistic concept than what you are making it
out to be. Otherwise, the whole of administrative law – certiorari,
prohibition, mandamus, injunction, declaration, habeas corpus would
35 make no sense in the whole of the common law tradition. Remedies
like habeas corpus did not issue because the statute said so, but
because the Courts said they had an inherent power.

40 So what I wish to suggest to you is this: This Tribunal being a
tribunal of conscience is relying on principles of natural law, on
principles of natural justice to provide remedy to those who have no
remedy – *ubi jus ibi remedium*. And you are concerned that we are
going to impose penalties, surely we are not going to impose penalties.

We are going to put forward, if we find that there is a verdict of guilty, put forward the findings here before the necessary authorities of international law.

5 **Mr. Jason Kay Kit Leon:**

I thank you, the Learned Judge, Professor Shad. I will answer in turn.

10 Judge Webre – the seat of the Kuala Lumpur War Crimes Tribunal is in Kuala Lumpur, Malaysia. That is in Article 3(1) of the Charter. It is not in Venezuela, it is not in Cuba, I hear it's a very nice place. And it is not anywhere else. It is in Kuala Lumpur, Malaysia. And to my best of my knowledge, Malaysia is not a signatory to the Rome Statute.

15 On the point made by Judge Faruqi. Natural justice has always been, not something that we would say in the air; it can mean so much to so different people. Within the bounds of one geographical State, you may have sometimes dual systems of justice, sometimes you have customary and tribal law; and they all have their own purpose, and
20 their own reasoning.

But when people come together and say, and when nations want to come together and say, "*This person is a war criminal by any standards anywhere in the world by any country,*" we need something
25 more powerful to give it the authority than, some would say, the "in the air" concept of natural justice. And that is, I suppose, the best answer I can provide, my reply to the point made by the Learned Judge. Thank you.

30 **Judge Shad Saleem Faruqi:**

The United Nations permits NGO involvement, and I think Counsel Gurdial Singh pointed out it begins with the words, "We the peoples," and I think there are nearly 1,000 NGOs affiliated with the consultative status of the United Nations.

35 So I think the role of citizens' groups, citizen initiative in international law is not unrecognized and this Tribunal is basically a citizen initiative to discover facts, to discover the truth, and to lay its findings before the world body, which findings are being hindered and though
40 this morning you raised the issue of bias, you have adroitly avoided the issue that there are some nations who are biased, and who are not permitting the UN Security Council to do what justice and humanity

requires. So I think the role of the citizens' groups is perfectly in accordance with the Charter of the United Nations.

Judge Abdul Kadir Sulaiman:

5 Right. So in short, what we are told that in practice, right, these are things to be done. Now we go out of practice, so to speak, taking that practice in context. That's why my first question this morning was, "Will it become illegal?" It carries the very sanction arising of what becomes of our pronouncement. As somebody was saying that, of
10 course, we cannot enforce. We take the accused and do something with him. We can't. But it is the aspiration and the voice of the people. So, whatever it is, let us not dabble in this one. So I think appropriate moment for us to adjourn to 2pm today and giving us time to deliberate among ourselves on the matter.

15

So, Court stands adjourned to 2pm.

Registrar Musa Ismail:

20 All rise.

19th November 2011 - Session 3
(2.00pm)

Registrar Musa Ismail:

5 All rise. You may be seated.

Judge Abdul Kadir Sulaiman:

10 Court will resume. Firstly, this is another shock announcement;
surprise announcement which I am making. One of our members has
come forward to express his regret that he has to recuse himself on
health reasons. So we accept it. So here you see our Dr. Zakaria has
requested that he be allowed to recuse from this Tribunal on the
ground mentioned just now. After serious consideration, we accept it.
15 So now you see we are 5 of us left, but it is still within quorum. So do
not have to worry, we will proceed. It's 5 of us now. So that is
another turn of events for the day.

20 Now I come to the main point. To deliver extempore decision on the
preliminary objection raised by the defence this morning. The 2nd
issue has been settled. So we are on the 1st issue, that is on
jurisdiction of this Tribunal, which is getting smaller and smaller.
Right.

25 On the issue of Jurisdiction, this is the unanimous view of the
Tribunal. The Tribunal is of the unanimous view that it is exercising
valid jurisdiction on the following grounds:

- 30 1. We are a legally constituted body because we are an organ of the
Kuala Lumpur Foundation to Criminalize War which is a lawful
entity under the Trustee Incorporation Act.
- 35 2. In the context of international law, the concept of law incorporates
principles of natural justice and good conscience. This tribunal is a
tribunal of conscience inspired by the highest ideals of natural law
and justice.
- 40 3. Our charter is largely inspired by the Rome Statute.
4. We are guided by earlier precedents of tribunals of conscience in
many other countries including Tokyo and Turkey.

5. Our inability to enforce a judgement does not effect our validity. All legal systems know of sanctionless duties and unenforceable rights

5 6. Are we usurping the functions of the United Nations? The answer is: We agree with the Counsel for the Prosecution that we are complementing the United Nations because of its inability to act in relation to the atrocities that are the subject of this proceeding.

10 7. Crimes against peace are the subject of the universal jurisdiction and this Tribunal in Kuala Lumpur is within its powers to adjudicate on crimes against peace. Further, our Charter allows us to conduct our proceedings in other countries that are the subject of the ICC

15 8. Finally, the Tribunal notes with regret the analogy drawn by the Learned Defence Counsel with vigilante groups. This Tribunal is not a motley collection of vigilantes but a tribunal of conscience guided and inspired by the highest principles of international law and justice.

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Therefore the objection is overruled.

Mr. Jason Kay Kit Leon:

25 Thank you.

Judge Tunku Sofiah Jewa:

30 I have a question for the Amicus Curiae, Mr. Jason Kay. Your appointment was made under Article 15 of the Rules of Procedure of the Tribunal which I don't have to read, it was read this morning. I see from your Bundle of Documents, Bundle A, that 4 of your authorities concerns trials *in absentia*; that is, trials where the accused person is not present in court. Are you trying to suggest to us that there are exceptions to the *in absentia* doctrine and that this Tribunal is bound by them accordingly? You have from your bundle, right?

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Mr. Jason Kay Kit Leon:

I believe I was trying to...

40 **Judge Abdul Kadir Sulaiman:**

What is it about? What is it about? Never mind. We have made a decision. Rightly or wrongly we stand by the decision. I think we will proceed without much ado.

Professor Gurdial Singh Nijar:

5 May it please Your Honours, distinguished members of the Tribunal.
To assist the court in the submission, I have prepared a submission
and I've also prepared 2 documents which are in 1 bundle – the
Chronology of events as well as index of principal characters. I
request the Registrar to furnish Your Honours with a copy of each of
these.

10 Judge Abdul Kadir Sulaiman:

Are you not offering any oral evidence?

Professor Gurdial Singh Nijar:

15 No, Your Honour. I am not offering any oral evidence because this
really is a question of mixed fact and law.

Judge Abdul Kadir Sulaiman:

No. We only want to know for record. So no oral evidence. So you
tender your submission. Yes, proceed.

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Professor Gurdial Singh Nijar:

25 The chronology also has a 2nd document within that title of
chronology. The principle characters involved – we will be referring
to various persons and the document itself, the memorandums will be
referring to them either by their first or second name, so I have
prepared the index of the principal characters.

30 With that and with your leave I shall proceed with my submission.
How I propose to deal with this – I don't propose to read this
submission, but I have got this here to save time and recording I
suppose, and I shall go through this submission and highlight the
various areas or the essence and summarize the gist of a particular
paragraph or a particular concept that I'm trying to advance. Thank
you, your Honours.

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40 The charge is that George W. Bush and Tony L. Blair, the President of
the United States and the Prime Minister of the United Kingdom when
they were occupying this position, they planned and prepared a war
against Iraq and finally attacked Iraq on 19 March 2003 in violation of
the United Nations' Charter and international law. This, in our
respectful submission constitutes a crime against peace, which is also
sometimes referred to as a crime of aggression. The particulars have

been read by the Registrar this morning and I will not go through them.

5 I just want to very quickly state 3 reasons why we are bringing these charges. One is to signal, to send a signal that no country, however great it considers itself can arrogate itself the right to commit a crime of peace – in this case attack another country in violation of international law.

10 Secondly, to signal that there is culpability for such a crime by persons no matter how high their office. And this includes Heads of States, ex-Heads of States who knowingly order, authorise or acquiesce in such international crimes. The law cannot just stop with the punishment of petty criminals or lay the blame for more heinous
15 crimes on just underlings or minions. It must reach those who sit in the highest echelons of power and make a deliberate and concerted use of it effort to inflict evil and suffering upon men and women and children of distant lands.

20 Finally, it's our submission that this is also to preserve the integrity of international law as it has evolved and is now evolving. You cannot consign to the dustbin of history the crude and naked aggression and cruelty of power as demonstrated by the acts of these 2 accused persons, leaders of the supposedly the free and civilised worlds. What
25 these 2 men represent and did the prosecution will patiently, temperately seek to disclose. How they manipulated, how they deceived their own population, their elected representatives and ultimately defied the rest of the world in furtherance of their evil and criminal designs and objectives.

30 I've already touched on the role of this Tribunal. It's a Tribunal of conscience and Your Honours have ruled on this.

35 What makes this inquest significant is that these accused persons and I quote the summation, the closing paragraph of Justice Jackson at the International Military Tribunal at Nuremberg. He said "*what makes this inquest significant is that these prisoners represent sinister influences that will lurk in the world long after their bodies have returned to dust.*" That is what we have to do. That is the signal we
40 have to send.

Some say that the decisions on war are the inevitable consequence of a persistent reality in which power will always tend to triumph over

justice and this is the power of the supposedly most powerful nation in the world. This thinking, Your Honours, we must end and we respectfully rely on the collective wisdom of this Tribunal to banish this notion once and for all.

5

Now the jurisdiction, I will not go into the jurisdiction because this is, I've set it out, there was a Commission report: It investigated as a preliminary first step and then it recommended the indictment of George Bush and Tony Blair for crimes against peace and it is in accordance with that recommendation that we have filed 2 charges. And the first is the subject matter of this morning's proceedings.

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We have set out here why it is permissible for us to hear this case in absentia but since the defence is not taking up this point, we will, I'll just leave the submission in my written document for purposes of completeness. I've quoted several cases there.

20

Now, at page 9 of my submission as I alluded to this morning, some crimes are so serious that any court anywhere is empowered by international law to try it, regardless of where it is committed, the nationality of the offender or its victims. So this is different from ordinary crimes. In ordinary crimes you have to establish a link with the commission or the citizenship of the person who commits the crime.

25

But this is universal jurisdiction. It arises wherever an offender is found. And it arises because he is alleged to have offended against the very fundamentals of humanity itself. And that is the ground on which universal jurisdiction is founded.

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This jurisdiction arises because they are crimes against humanity simpliciter under any domestic law. The link is found in the fact that we are all human beings and that otherwise this crime might go unpunished. So, universal jurisdiction sends a signal to prospective international criminals that there is no safe haven for any person accused of this crime.

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It is our submission that waging this illegal war is a crime against peace and attracts universal jurisdiction. The Nuremberg Charter made this clear. It established jurisdiction to punish crimes against peace – that is waging a war of aggression in violation of international treaties.

40

Article 8 of the Commission Charter is word for word the same as Article 6(a) of the Nuremberg Charter, and I've set that out in my supplementary Bundle but I think it is common ground, so I shall not labour this point.

5

There is yet another dimension to this, and this is very important. It's not just a question of us deciding this case amongst ourselves and publishing the records. But these findings as we will be submitting, we will be asking for a recommendation under Article 31 of the Commission's Charter for this Commission to forward the findings of these proceedings to the International Criminal Court and other bodies, relevant bodies.

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The value of this is that we then have, if there is a finding of guilt, a well considered, well pronounced, upon full arguments, judgment. That judgment itself will increase the resolve of those States who want to take action against any international criminal who comes within their territorial shores because we have a body of respected jurists such as the distinguished members of this Tribunal who have considered this matter, and then if States want to take this up, it becomes a basis, a prima facie case, if you like, to consider to arrest these criminals when and if they arrive within their boundaries and we have the example that was given by Judge Webre of Pinochet, former head of state of Chile who, when he went to obtain medical treatment in Harley Street, was arrested in Harley Street.

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Now there they had to argue the whole case as to the jurisdiction in relation to ex Heads of States – Are they punishable for crimes against torture, for example? Here, we are now dealing with crimes against peace. There seems to be no complete judgment by any body of jurist on this matter, and this is where we can boost universal jurisdiction, boost the resolve of States and even the International Criminal Court.

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Now, the International Criminal Court lists crime of aggression as one of the crimes over which they have jurisdiction. But they cannot prosecute until such time as "aggression" is defined. But this crime will continue to remain and when and if the International Criminal Court does define and take on the prosecution of crimes of aggression, then there would be ripe and ready judgment given, reflective of the collective wisdom of this Tribunal.

40

Now I wish to state very clearly that the war against Iraq has engaged and continues to engage the world community; we are all some way or

another, whether formally or informally involved. We all have some kind of a view because the print media, the intellectual community is full of writings in relation to the Iraq war. So it would be right to say that no person has really been untouched by this aggression, which
5 now is in its 8th year. So it is to be expected that everybody, everybody of all persuasion, will have some kind of colour to add to this Iraq war.

10 So it really is not so easy task to remain truly neutral in this circumstances; yet as Nuremberg shown which tried Hitler's henchmen in the middle of very strongly held views, this Tribunal, we propose, we humbly submit, must adhere scrupulously to the rules of fair play and justice because we must not be poisoned by the same corrupting and insidious illegal ways which we hope to prove were
15 employed by these 2 accused. These proceedings and the verdict of the Tribunal will be discredited if we falter in even minor matters in being fair and temperate in our approach.

20 Now the procedure and evidence, the rules of procedure and evidence are laid out in Part 2 Chapter 1 of the Charter and Article 1 says the Tribunal is to act on "*fair, transparent and just procedure*". The minimum requirements of these are set out in Article. Where there is a lacuna, only where there is a lacuna, we have Article 2(k) which says the "*Tribunals should adopt rules which comply with*
25 *international standards of fairness and justice.*"

For this charge as we have already intimated to the Tribunal, we offer no witnesses. This course has been agreed to by the defence and which we notify. This is because the nature of the charge is such that
30 we contend that the legality or otherwise of these 2 accused can be proven by official records and much of these official records has been obtained through electronic media either from the records of officialdom or secondary sources. We have also relied on reports of organizations, which we shall duly present, the ICRC, International
35 Committee of the Red Cross, as well as writings of persons who have investigated matters before and after the launch of the war.

40 The delay in these proceedings have also yielded some bonus to us because we now have, what we would call as confessions with regard to these crimes by the 2 accused persons. Tony Blair has written a book called "A Journey" and Bush has written a book called "Decision Points". We will also be relying on several facets that have been expressed in these 2 books.

Because we are dealing with an accused, the 1st accused who was the leader of purportedly the richest nation in the world backed by incredible and sophisticated military hardware – its military is reputed to be larger than the 5 next most powerful military nations in the world, and its willing ally, the United Kingdom Tony Blair and given our limited resources, Your Honour, we must candidly confess that the case may well suffer from research that could have been more thorough and more professional. In other words, there may yet be evidence that could have some bearing upon the culpability of these accused. But, it is our respectful contention, that the case we seek to make out is completely adequate for the verdict and the judgment which we will be urging this Tribunal to render. We note that public documents of a wide range of public officials and international organizations are permitted as evidence. And this is set out in Chapter 4, Article 11(d) of the Charter, the Commission Charter.

Further, as a preliminary point, to conclude; secondary and hearsay evidence may be admissible in the interest of justice in particular circumstances. This is an exceptional rule. It exists undoubtedly because of the enormity of obtaining direct evidence and primary evidence in a case such as this. We assure the Tribunal that the documents and records we rely on, where hearsay or secondary, are those that are in the public domain, or have not been controverted, or they emanate from persons of intellectual integrity that is unquestionable. We therefore urge that they be, although they are hearsay and secondary evidence, that they be accorded the due weight they deserve.

We note in passing also that the rules of the International Tribunal for the former Yugoslavia also do not prohibit hearsay evidence. Its rule 89(c) says it “*may admit any relevant evidence which it deems to have probative value.*”

Now, outline of the case, I propose to deal with the submission as follows: Firstly, I will deal with, I’m at page 12 at the bottom of the submission. First is, I will deal with the law relating to crimes against peace. I will show the elements of such a crime under international law as well as under the Charter of the Commission.

Secondly, I will show whether and if so how this law was violated by both these accused persons.

Thirdly, I will look at the justifications as well as the generalized defences. I will examine the legality and the basis upon which the accused have throughout the years sought to justify their action, which I shall go into, in some considerable detail.

5

Fourthly, I will also show the planning and preparation by the accused persons in relation to the attack on Iraq. The crime against peace as written out by the Charter refers also to preparation and planning, and we will show this preparation and planning pre-dates 9/11 – that there was pre-plan to attack Iraq regardless of 9/11 and regardless of Security Council resolutions.

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And sub-finally, I will also look at several of the subterfuges, the chicanery that was employed by these 2 accused persons to justify their illegal attack on Iraq.

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And finally I will deal very briefly with the kind of verdict that we seek.

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So first, on the law on crimes against peace. There are 2 basis for it. One is the Charter itself, the Charter of the Commission. And the second is the United Nations Charter. I propose to deal very briefly with the Charter of the Commission.

25

Now Part 1, Article 8 of the Charter sets out the ingredients of the crimes against peace. The essence is that it relates to the preparation, the planning, the initiation of an illegal war. So the Charter says very clearly the war is illegal if it is a war of aggression, which is not defined, or a war in violation of international treaties, agreements or assurances. Participation in any of these activities is also a crime against peace, in part, or in furtherance of a common plan or conspiracy. These are the ingredients that it is, planning, preparation, initiation or waging of a war that is contrary, there's a war of aggression or a war in violation of international treaties, agreements or assurances. That is as far as our Charter is concerned, our own Charter is concerned.

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The more elaborate one is based on the United Nations' Charter. The use of force has been outlawed by the United Nations Charter. This must be very clearly expressed: The use of force is outlawed by the United Nations Charter. So, we have Article 2(4) and I respectfully invite your Honours to Bundle 1 of our list of prosecution documents. At page 3, Article 2, right at the bottom it says "*All members shall*

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settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.”

5 Then you have Article 2(4) which is the material Article, “*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 other manner inconsistent with the Purposes of the United Nations.*” And the purposes of the United
10 Nation is on the left column, “*To maintain peace and security and to that end to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or breaches of the peace and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes*”
15 [Article 1(1)] and so on.

Now this prohibition encapsulates that basis of it; it’s not this Charter itself but it is grounded in customary international law which means
20 law that all nations accept and have been acting upon and using it as a basis of their relations. And as I say in my, at page 14 of my submission, it is customary international law accepted by states as binding upon themselves and it goes by the Latin term *opinio juris*.

And it is also a *jus cogens* – it’s at page 14, 2nd paragraph, that is
25 widely accepted as a norm from which countries could not derogate. And both these aspects, in other words, this fact that you cannot use force, and it will constitute a crime of aggression, is set out in United Nations’ Charter, this prohibition. It also forms part of *opinio juris* which is the basis upon which all States act and which they consider
30 binding, and it is also *jus cogens* which is that an understanding that it’s obligatory and you cannot derogate from this.

So you have these 3 basis. And these 3 basis have been confirmed by
35 the International Court of Justice in the case of Nicaragua v. United States (1986) ICJ Reports 14. The paragraphs it is 190 are set out in my Bundle but for convenience I’ve also reproduced in my submission at page 14. So I will just briefly run through this. I don’t propose to read it.

40 But at paragraph 188, the 2nd paragraph says “The Parties”, this was a case brought by Nicaragua against the United States for assisting contras to act against the integrity of their country at that time. And they said,

5 *“The Parties thus both take the view that the fundamental principle in this area is expressed in the terms employed in Article 2, paragraph 4, of the United Nations Charter. they therefore accept a treaty-law obligation to 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 other manner inconsistent with the purposed of the United Nations.”*

10 And then, in the next paragraph it says, *“The Court has however to be satisfied that there exists in customary international law an opinio juris as to the binding character of such abstention.”*

15 And I'll explore this in the next 2 paragraphs and says, page 15, the 3rd paragraph from the top, *“On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves. The principle of non-use of force, for example, may thus be regarded as a principle of customary international law.”* So you have an added limb to this, recognized by
20 the International Court of Justice.

25 And at paragraph 189, which is the last paragraph at page 15, *“As regards the United States in particular, the weight of an expression of opinio juris can similarly be attached to its support of”* and it quotes 2 situations which was supported by the United States which show very clearly that there is an obligation, that there is an understanding that this is a binding rule that you shall not use force against another State.

30 And finally at page 16, it says, *“A further confirmation of the validity as customary international of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4 of the Charter of the United Nations may be found in the fact that it is frequently referred to in statement by State representative as being not only a principle of customary international law but also a fundamental or cardinal principle of such law.”* And so on so forth. So it's very clear.
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40 It say that last couple of lines which I have underlined, *“The United States in its counter memorial on the questions of jurisdiction and admissibility found it material to quote the views of scholars that this principle is a ‘universal norm’, a ‘universal international law’, a ‘universally recognized principle of international law’, and a ‘principle of jus cogens’”*. Jus cogens means that parties, States take it that they cannot derogate from this principle.

So there is very clear basis upon which we can establish that this is not an instrument for settling a problem – attacking countries, attacking the integrity of another country.

5

Now we come to the role of the Security Council, and it's important for me to recount this because a lot of the actions that were taken were done contrary to the Security Council resolutions. The Security Council is the primary body which implements these provisions in relation to peace and security under the United Nations Charter. This is the pursuant to expressed powers given to the Security Council by the United Nations Charter itself and I have set out the structure of this responsibility, this primary responsibility that is bestowed on the Security Council, if I could take Your Honours to page 17 under the heading of The Role of the Security Council, it says:

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Article 24: Security Council is bestowed with primary responsibility to take prompt and effective action by the United Nations.

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If I could invite, 1st Bundle again, page 7, which is the continuation of the UN Charter. It comes under Chapter 5, and it deals, the heading is The Security Council. Article 24 appears at page 7 under Functions and Powers, and here it says very clearly, *"In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council,"* this is very important remember, as my latest submission will show. All the Members have conferred on the Security Council, *"primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."*

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So Security Council is the body empowered and acts on behalf of all the Members. This is the body that will decide all issues in relation to matter of peace and security and, as we will submit, on the use of force itself. Very important to remember this.

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Then Chapter VII which is at page 9. Who decides whether there is this existence of any threat to the peace, breach of the peace or act of aggression? Who decides? Article 39, Chapter VII makes this clear: *"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in*

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accordance with Article,” so on so forth, “to restore international peace.”

5 So again, the decision making, the body empowered, the recommendations it will make based upon the decision is agreed by all members of the United Nations to be bestowed in the Security Council. And then it has, in its Article 41, *“The Security Council may decide what measures not involving the use of armed forces are to be employed to give effect its decisions, and it may call upon the*
10 *Members of the UN to apply such measures.”* So this is not involving the use of armed forces.

15 Article 42 is crucial. *“Should the Security Council consider that measures provided for in Article 41, would be inadequate or proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security.”*

20 So this is the basis upon which the Security Council can impose measures short of the use of force like sanctions, blockades and so on. And if it considers, if the Security Council considers, that these measure are inadequate, then they can take such action by air, sea or land. Again I emphasize; it is all within the province and the absolute power of the Security Council. And no one else. Not a single
25 member. Not a collective group of the willing, unwilling; but the Security Council.

30 Now Chapter VII that I’ve just read out envisages that it is the Security Council that must take the important measures. So of course, it will use the armed forces of Member States. But it decides and those members of the armed forces are within its control. In other words, it cannot, it does not allow, there’s no express provision for delegation for enforcement action to Member States under their own command and control.

35 The only time when States can act on their own with their own armed forces is when they exercise the right of self-defence. And this too is only for a very short period of time. This is only, Article 51; this is only until the Security Council can take the necessary measures.

40 So, if you’re being attacked, you have to take some measures – that’s the only situation when you use your armed forces, Article 51, but then you have an obligation to then revert to the Security Council

which is the body that is going to then take the matter from then on. So it, the simple point is any attack of another country must be authorized by the Security Council. No one else.

5 But like I've said, and I've averred quite briefly to right of self-defence, there's one situation, it's an inherent right when someone attacks you, of course you have the right to defence yourself. And this is called the right of self-defence. But it is not a loose right. It is a right that has strictures to the conditions. So this is recognized that
10 it's an inherent right of self-defence. It's recognized in Article 51. Now the conditions, there are very clear conditions that must be satisfied, and I have set it out in my page 18.

15 There must be an actual armed attack upon a state or there must be clear evidence that attack is imminent – it's gonna come. That means there are already boats, or aeroplanes that are on their way. Imminent – anytime now they're gonna land within your borders.

20 Secondly, the use of force that you're going to use against this imminent attack or actual attack, use of force must be necessary and there must be a determination that there are no other ways to avert this attack.

25 And thirdly, the act in self-defence must be proportionate and strictly confined to stopping this particular attack. Now this right of self-defence only subsists until the Security Council has taken measures to international peace and security.

30 In emergency situations, countries are not helpless. But it's only for an interim period, to allow the Security Council ... and anything that is done by that country, in the exercise of it's defence must be reported immediately to the Security Council.

35 In other words, always, since we're dealing with the matters of peace and security, Security Council is in control and this is the power that we have given to the United Nations Security Council all over the world. Now, it's common ground that neither the United States nor the UK satisfied any of these conditions for the exercise of self-defence.

40 And I have quoted at the bottom of my submission page 18 that a paper prepared to brief the UK Prime Minister Blair, the 2nd accused in early March for his meeting, he went to Crawford Texas, that's the

state of the 1st accused person, very fond of meeting at Crawford, reading Tony Blair's book and he says it's a very desolate place, a huge, many thousand of acres and there is located this house where these meetings are held. I don't know what reasons but it looked like Tony Blair was very uncomfortable when he first went to this Crawford Texas house.

Now, the thing is that for this meeting that was held in Crawford with Blair, there was a paper prepared to brief him and it is accepted that, the paper itself accepted that there is no basis – there was no self-defence issue involved at all as far as the attack on Iraq was concerned. And I have set out this particular document, at page 346. I have a series of documents from page 330 onwards which are marked as "*Confidential and Personal*" and they're marked as "*Secret UK eyes only*". And we have got this though, these are leaks of these papers that have now come into the public domain. I'll be referring to several of them because it will show exactly what the state of play was with regard to the United Kingdom, the key players including the 2nd accused as well as their relations with the 1st accused and the government of the 1st accused.

Now let me just say very quickly that as far as these documents are concerned, are they authentic? These are known as the "*Downing Street Memos*". The Downing Street is where the Cabinet sits in United Kingdom. We have in the House of Commons, Blair has admitted, in our view, in answer to a question that these are official documents, this memo and other documents, Downing Street memos that were leaked, are actually documents that emanate from the Cabinet office – that's the implication. And if I could ...

Judge Abdul Kadir Sulaiman:

Is it part of your bundle?

Professor Gurdial Singh Nijar:

This is not part of the bundle because after discussion yesterday I felt it was necessary to ensure that these Downing Street memos which are very critical to our case

Judge Abdul Kadir Sulaiman:

Just asking. Will you mark it?

Professor Gurdial Singh Nijar:

Yes. It would be marked.

Judge Abdul Kadir Sulaiman:

Your exhibit.

5 **Registrar Musa Ismail:**

P2

Judge Abdul Kadir Sulaiman:

10 What do you call this? How many such document like this do you have?

Professor Gurdial Singh Nijar:

15 No, this is the only one. This is actually Hansard debate from the House of Commons of 29 June 2005. It is not Cabinet. And it is downloaded from the publications right from the bottom, P2.

Judge Abdul Kadir Sulaiman:

20 Before we go on, I'd like an indication from the defence. Are they going to object to this? The process of downloading from the ...

Mr. Jason Kay Kit Leon:

No no no. These are Hansards. I trust the prosecution has downloaded it properly from the ...

25 **Judge Abdul Kadir Sulaiman:**

Because we know generally, if you're not going to object, we don't have to labour on that ...

Mr. Jason Kay Kit Leon:

30 For this no. These are Hansards. No. And especially because the rules of the Tribunal allows for secondary evidence. I will of course submit on this later. I reserve my right.

Judge Abdul Kadir Sulaiman:

35 So we mark as **P2**, prosecution exhibit. Proceed.

Professor Gurdial Singh Nijar:

40 Thank you Your Honour. And just to establish authenticity, if you see right at the bottom it is from the web page of the publication to the UK Parliament and you can that page right at the bottom. So anyone can click it anytime. I think got wi-fi here to verify its authenticity.

And at the 2nd page of this document, during question time, the Prime Minister, the 2nd accused was asked, and I refer to, and it says there *"The Prime Minister this morning I had meetings with ministerial colleagues and others"* and so on so forth, and Adam Price who is the Member of Parliament for Carmarthen East, the Welsh member of Parliament, this is the question he asked:

"Does the Prime Minister still regard Sir Richard Dearlove (Sir Richard Dearlove is the head of MI6 and that is in my list principal characters) as having been a reliable source of information on Iraq? If so, is it safe to assume that Sir Richard's statement in the summer of 2002 that the intelligence and facts were being fixed around the policy was an accurate assessment of the intentions and actions of the Bush administration?"

Answer: "As I'm sure the Honourable Gentleman knows, that memo (issued by Sir Richard Dearlove) and other documents (which are the Downing memo documents) of the time were covered by the Butler review."

So he acknowledges that existence of these Downing Street memos. In addition, *"that was before we went to the United Nations and secured the second resolution 1441 which has unanimous support. Contrary to the Honourable Gentleman's view when I stood next to the new Prime Minister of Iraq who had 5 of his relatives assassinated by Saddam"* and so on so forth and the glib of that will come to be associated by the world with this Prime Minister Tony Blair.

So, coming back to my submission, the document at 346 established, I hope, the authenticity of these documents because the Prime Minister of the United Kingdom has himself admitted these documents, and I will show other ways if they are challenged. But the point I'm making now is if you look at 346, now this is legal background paper for the Cabinet. It's called *"Iraq Legal Background"*. And if you look at page 348, paragraph 6 it says, under the heading

"Use of force, self defence – For the exercise of the right of self defence, there has to be an armed attack, actual or imminent. The development of possession of nuclear weapons does not in itself amount to an armed attack. What would be needed would be clear evidence of an imminent attack."

And it goes on to talk about the fact that when Israel attacked the Iraqi nuclear ... that was considered a military attack in clear violation of the Charter of the United Nation and ... So in other words, the point I'm making is that this right of self-defence was repudiated, there's no basis. And I say this because the United States and it's possible that the defence would talk that there is a pre-emptive right of self-defence. So they go one step further and not self defence but pre-emptive right, so it's our respectful submission that in the circumstances of this case there was no basis to establish any attack on Iraq on the basis of self-defence, or pre-emptive self-defence.

Now this is also made clear by the Attorney-General, the UK Attorney General's advise, and this appears at page 288 of the document. Now this document was produced at the Irish Times, and downloaded from irishtimes.com it's addressed to the Prime Minister and if your Honours if you turn to page 300 we will see the Attorney General, Peter Goldsmith's actual signature there, of course it is photocopied from the document, but you'll find Attorney General Peter Goldsmith's 7th March 2003, and if there is any question of the authenticity of this we shall refer in due course to statements made by the accused Tony Blair to the Chilcot inquiry as well as his own book which made quite clear that he was referring to his Attorney General's advise of 7th March 2003.

Now if you look at **page 288**, back to page 288 on this question of self-defence, paragraph 3 talks about self-defence and 6 lines from the bottom, the 7th line from the bottom, *"However in my opinion there must be some degree of imminence. I am aware that the United States has been arguing for recognition of a broad doctrine of a right to use force to pre-empt danger in the future. If this means more than a right to respond proportionately to an imminent attack (and I understand that doctrine is intended to carry that connotation) this is not a doctrine a which, in my opinion, exists or is recognised in international law."*

So this question of pre-emptive attack because you feel that sometime in the future someone is going to arm themselves and harm you *"is not a doctrine, in my opinion"*, the Attorney General of the UK, *"exists or is recognised in international law."* So that is on the question of right to self-defence. It has no application to the facts of this case.

Now there is another ground where maybe without Security Council resolution there has been some talk about the ability to use that ground to bypass the Security Council. And I want to briefly refer to this argument for completeness to show why it is wholly inapplicable to the circumstances of this case, and I refer Your Honours to page 19 of my submission and I say that this is a recent and highly contentious basis, is that you can use force to prevent an overwhelming humanitarian catastrophe.

Now the limits of this are not clearly defined but it appears, and I've set out in 3 bullet points the elements: *catastrophe must be clearly established through well documented evidence; there must be no other means short of force available to prevent it; and the measures must be proportionate.*

So it is an exceptional right which must be based on commonly understood moral values intrinsic to ensuring that other human beings are not hurt because otherwise there's something incredulous that ... to happen. So the root the development of international law with regard to this doctrine, if at all it exists, that States can bypass the Security Council, in the soil of common morality, if it's going to be legitimate. I'm going to repeat that. So this is where you feel other human beings are going to be severely affected that something's gotta be done. So it's rooted in morality to sustain its claim for legitimacy.

The point I'm making is that it cannot be rooted in the exigencies of national political objectives because then when you say, "*I can take action*" and go and attack based on political expediency is called imperialism. And this is, we as a subject of colonial rule know that – where countries for their own purpose go and attack another country is rooted in your political economic interest, then it falls out of this humanitarian catastrophe because that is a question of human beings saving human beings. And I have set out an article on that issue, on this precise point, I have a second bundle

Judge Shad Saleem Faruqi:

Mr Nijar is there any duty to inform the UN before this overwhelming humanitarian catastrophe requires ?

Professor Gurdial Singh Nijar:

Yes, Your Honour. There is an obligation to inform the UN. And this is the famous case of Kosovo, where the Security Council took account of this situation. And this I just highlight the article without

need to go into it just to say that this is an article by a distinguished author in the International and Comparative Law Quarterly and it appears at page 350 of the Supplementary Bundle. The 2nd Bundle I'm referring as the Supplementary Bundle. And if you look at page 350, the 3rd paragraph, *"The difference is crucial. Moral arguments can be universalised. Political arguments cannot. Rooting the development of international law in the soil of common morality is necessary in order to sustain its claim to legitimacy: the rooting of international law in the exigencies of national political objectives, on the other hand, is one of the defining characteristic of imperialism. One of the central problems of the current Iraq crisis is, it seems to me, precisely this conflation of moral and political argument."*

Again, I come back to my submission at page 19. This situation did not exist to justify ... We cannot accept the fact that, as the United States have sought to do, that this was in the long run to avoid any kind of humanitarian catastrophe. And I refer again to the UK-Iraq Legal Background paper, I come back to my **1st bundle**, that's page 346, the document starts at page 346, and I refer to page 349. And I won't labour the point, at **page 349, paragraph 7**, just the last sentence: *"The application of this doctrine depends upon circumstances at any given time, but it is clearly exceptional."*

And if you look at the Attorney General of UK, his advice, at page 289 paragraph 4, it says, *"The use of force to avert an overwhelming humanitarian catastrophe has been emerging as a further, and exceptional, basis for the use of force. It was relied on by the UK in the Kosovo crisis and is the underlying justification for the No-Fly Zones. The doctrine remains controversial, however. I know of no reason why it would be an appropriate basis for action in present circumstances."* The AG has said very clearly that this doctrine has no application to this Iraq war. So there we have it.

Judge Shad Saleem Faruqi:

Page 289 and page 349 the word used is *"avert"* or *"prevent"*. What if the humanitarian catastrophe, humanitarian intervention in turn causes greater catastrophe?

Professor Gurdial Singh Nijar:

Yes, that is one issue. But the point that I'm making is that there was nothing to start off with in the first place.

Judge Shad Saleem Faruqi:

I see.

Professor Gurdial Singh Nijar:

5 As the advisors to the 2nd accused have made quite clear. Now we
come to the nub of the matter, the Security Council authorization.
This is the crux of the matter. So we don't have self-defence, we
don't have human catastrophe, we are left only with '*in accordance*
10 *with the Treaty, in accordance with the UN*'. So it is now left to us to
examine very clearly whether there was or was not authorization by
the Security Council in the exercise of its powers under the United
Nations and this is set out at page 20 of my submission.

So, was there authorization?

15

We have to examine that particular resolution, the last resolution that
was passed by the Security Council. And this is **Security Council
Resolution 1441** which was passed on 8th November 2002 and I have
set out the whole text of this resolution at my bundle page 56. So
20 paragraph 1, if you look at the ... at page 57 right at the bottom,
"*Acting under Chapter VII of the Charter of the United Nations,*" so
I've gone through the provisions earlier and shown how the Security
Council acts under Chapter VII to ensure that they have control in
deciding any issues relating to war.

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Now we have **paragraph 1** which says, which is at **page 58**, "*Decides
that Iraq has been and remains in material breach of its obligations
under relevant resolutions, including resolution 687 (1991), in
particular through Iraq's failure to cooperate with United Nations
30 inspectors and the IAEA, and to complete the actions required under
paragraphs 8 to 13 of resolution 687 (1991)*" because they've not
cooperated. So then, what happens then?

Paragraph 2 say, now we offer Iraq a final opportunity to comply
35 with its disarmament obligation, give you a final chance to comply,
and that is the gist of paragraph 2. So it says, "*a final opportunity to
comply ... decides to set up an enhanced inspection regime with the
aim of bringing to full and verified completion the disarmament
process*". I've skipped to paragraph 3, 4, 11 and 12.

40

What if Iraq does not comply?

Paragraph 4 says, “Decides that false statements or omissions in the declarations submitted by Iraq pursuant to this resolution and failure by Iraq at any time to comply with, and cooperate fully in the implementation of, this resolution shall constitute a further material breach of Iraq’s obligations and will be reported to the [Security] Council for assessment in accordance with paragraphs 11 and 12 below.”

So let’s look at 11, at page 60.

“11. Directs the Executive Chairman of UNMOVIC and the Director-General of the IAEA to report immediately to the Council any interference by Iraq with inspection activities, as well as any failure by Iraq to comply with its disarmament obligations, including its obligations regarding inspections under this resolution.”

and 12

“12. Decides to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, ... ”

So 4 says report, 11 and 12 says inspectors to report. Once you get a report, then you convene immediately upon receipt of a report in accordance with paragraph 4, 11, and 12 “...in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international peace and security”.

So this is the structure. If there’s no compliance, you have to report and there has to be assessment by the Security Council in 4, and they have to consider the situation and the need for compliance, *the need for compliance*; Security Council must resolve this question. Not any one or two Member States. That is the nub of the matter.

So it’s very clear that 1441, I take up this point at **page 22**, that all this, what must the Security Council do? It’s very simple. It’s a very clear provision, negotiated by the permanent as well as the non-permanent Members of the Security Council – go back to the Security Council, Security Council must convene immediately, assess the situation and decide what best needs to be done to secure peace. That’s, in our view, the only plain reading of the resolution.

Tony Blair, the 2nd accused, in his assessment to the Chilcot Inquiry, he admits that his Attorney General relied on the word “assessment” in that paragraph 4 to conclude that there was therefore a need to get a

further Security Council resolution. Because they went to war, just to short circuit the thing, without that next Security Council resolution. They tried to get it, they couldn't get it, they said "*no need, sorry, because this authorises us*" and a few other arguments which are ...

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So Tony Blair say that his, the 2nd accused, says that his AG himself relied on this word "*assessment*", of course he did not go by his advice, but he said he relied on this word "*assessment*" to conclude that there was a need for further Security Council resolution.

10

Now, if you look at page 260 of my **Bundle**, this is Blair's statement to the Iraq Inquiry known as the Chilcot Inquiry. And this is what Tony Blair said in his statement which is a written statement, **page 264** under the paragraph 4, the 2nd paragraph under item 4, 5th line, "*In addition, Peter Goldsmith had advised such a fresh resolution was obligatory for reasons of international law and the earlier paper prepared by the Cabinet Office had reached the same conclusion.*"

15

So there you have it. That this resolution 1441 required a further resolution. Cabinet office advised him, as did his Attorney General. But of course he goes on to explain that the AG was not aware of the negotiating history of the resolution, because he says that resolution allowed for military force without a further decision by the Security Council.

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So he say, "*You know, the Attorney General, poor guy. When he came to this conclusion he did not look at the negotiating history. If only he had looked at the negotiating history then he would have realised this is not intended to mean that you need a second resolution.*"

30

But, it is our submission, Members of the Tribunal, that this flies in the face of the AG's note; because the AG himself throughout this document refers many times to taking into account the negotiating history, taking account of the process that led to the negotiations and conclusion of the resolution. And I will just, will very quickly, refer to the document, the AG's advice, 283, 288 where at page 290 under paragraph 10 where he makes an argument, I will point them out, 3rd line, "*Further I believe that the arguments in support of the revival argument are stronger following adoption of resolution 1441. That is because of the terms of the resolution and the course of the negotiations which led to its adoption.*" So he is taking into account the negotiating history, which his Prime Minister says he's not.

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5 And then if you look at page 291, the last paragraph, he says, "*It is clear from the text of the resolution, and is apparent from the negotiating history, that if Iraq fails to comply, there will be a further Security Council discussion.*" So again, I'm relying on the fact. He refers to negotiating history. So again for the Prime Minister to suggest that his Attorney General did not take into account the negotiating history is entirely misplaced.

10 At 292, at 293, and at 295, and 296. In fact at 296, for example, the 1st paragraph, 3 lines from the bottom they talk about to what extent the Court will accept evidence of the negotiating history. In other words, that Attorney General did look at the negotiating history. That's the point I'm making. And therefore for the 2nd accused to
15 suggest, "*Oh forgive him because he did not look at the negotiating history,*" is something completely contradicted by the Attorney General's own documents, with respect.

20 And finally, at page 296, there are few other places, but I won't labour this point. So the point therefore we're making is very simple. And this is also, we also will refer to the, if we just look at the negotiating history and what happened in the aftermath of the negotiating history; his own chief negotiator, ambassador, what he said immediately after, which I shall be going into in a short while, he immediately said, and I
25 quote the words here at page 23, "*There will be no automatic recourse to military action without going back to the Council,*" and this is what he said.

30 Then what will happen, he said, and I quote, "*The matter will return to the Council for discussion as required in operational paragraph 12.*" Of course later, they start quibbling; they said discussion means discussion without decision. So we only refer to discussion – the word there used is discussion, they didn't use the word '*decision*', so it means discussion without decision. But these are fine esoteric point,
35 these are points as I shall submit on later the desperate act of desperate persons.

40 So the point is therefore clear. That if you look at the resolution, its terms, its provisions, and even the fact the admissions made by the 2nd accused, Tony Blair and his own Attorney General, his own cabinet papers report, that at that time what was very clear in their mind was that you need a 2nd resolution. This does not authorize you

to go and attack another country. Whatever else it does, it does not allow you to do that.

5 So we submit, at the top of page 34 that 144 does not authorize any unilateral action of attacking Iraq. Follows that any use of force without a further Security Council resolution would fly in the face of the plain language of Security Council Resolution 1441 and be in violation of the UN Charter Article 1 and Article 24. And we say, in the circumstances, the war launched by the US and UK on Iraq on 19
10 March without a further decision by the Security Council was in clear violation of the UN Charter. It amounts to a war of aggression and a crime against peace. The leaders of these countries who ordered the launch of this war, 1st and 2nd defendants, are guilty of committing this crime as well as consequentially for all acts committed during this
15 war in international law.

Now, I want to look at this other question then. This is our first conclusion. I want to look at the further question of the negotiating history. Let's look at the negotiating history to first we say, you look
20 at the terms, very clear. Now we look at the negotiating history to see. Was it intended, this Security Council 1441 that is you allege that someone does not comply, a material breach, then you go and attack the country by collecting a motley crowd of ...

25 Now, so I turn to this question at page 24. If the negotiating history is relevant, then it clearly supports the view that a 2nd resolution was mandatory. The US-UK had originally proposed.

30 Originally the US UK when they wanted security 1441 they wanted some power so that the UN could act immediately without going for a 2nd resolution, and these are the words that had been proposed. The US-UK had originally proposed that if there was non-compliance then Member States were authorised to use all necessary means to restore international peace and security in the area. I repeat, then Member
35 States were authorised to use *"all necessary means to restore international peace and security in the area."* This was opposed. This wording was opposed by 2 of the 5 permanent members of the Security Council and they proposed a counter resolution. So I'll just say a little more, because of that ...
40

Judge Abdul Kadir Sulaiman:

I think we take a short break, just resolve this point ...

Professor Gurdial Singh Nijar:

5 This phrase was finally dropped that member states were authorized to use all necessary means and a further provision was added, the Security Council, the one that I read, the paragraph 10, that the further provision was added that “*the Security Council would be convened immediately to decide on the next course of action.*” So this fact that we can go straight into war was out, and in that the Security Council would be convened immediately to decide on the next course of action.

10

So perhaps we can break at this point. And when we return then I shall deal with what their own Ambassadors who had been involved in the negotiation, why they themselves agree with this particular position; and they made declarations of intent along those lines.

15

So perhaps it's opportune to have a short break.

Judge Abdul Kadir Sulaiman:

20 20 minutes?

20

Professor Gurdial Singh Nijar:

Thank you Your Honours.

Judge Abdul Kadir Sulaiman:

25

We come back at 4.

19th November 2011 – Session 4**Professor Gurdial Singh Nijar :**

5 Yes Your Honours. With your kind leave, I refer to page 24. Now,
the course of the negotiation was such that as I will show presently.
Most of the nations felt there were hidden triggers that the US, that
they wanted to make sure, after the US clause had been removed that
they would take action, authorised the taking of action, that the other
10 countries in the Security Council wanted to make sure, and they
expressed this many times, there would be no automatic attack on Iraq
by using this resolution – there would be no hidden triggers.

15 So in response to that, immediately after the vote on the Security
Council and the adoption of Security Council 1441, this is what the
UK Ambassador said to assure members that there was indeed no
hidden agenda, and I respectfully invite Your Honours to page 87 of
my Bundle, and this is although this has paging City University
London letterhead, but if we look at UK Explanation on Vote on UN
20 Security Council Resolution, it is downloaded from the website of the
UK Mission to the United Nations and the web page is indicated. So
it's the official document of the UK Mission to the United Nations.

25 And this is what he said with regard to, at page 88, the Ambassador's
name is Greenstock, and I invite Your Honours to page 88, 2nd
paragraph. I read, *"We heard loud and clear during the negotiations
the concerns about "automaticity" and "hidden triggers" – the concern
that on a decision so crucial we should not rush into military action;
that on a decision so crucial any Iraqi violations should be discussed
by the Council. Let me be equally clear in response, as a co-sponsor
30 with the United States of the text we have adopted. There is no
"automaticity" in this Resolution. If there is a further Iraqi breach of
its disarmament obligations, the matter will return to the Council for
discussion as required in Operational Paragraph 12. We would expect
the Security Council then to meet its responsibilities."*

35 So very clear. They will come back for discussion, like I said later,
there is all this question of, you know, discussion just means empty
discussion, but we'll come back to that later. So this is what he said
immediately after the adoption of the resolution. And then, we have
40 also the US Ambassadors, and this is at page 90, again it is
downloaded from the website of the US Mission to the United Nations
and the webpage is included there.

5 And this is at page 91, 3rd paragraph, *“As we have said on numerous occasions to Council members, this Resolution contains no "hidden triggers" and no "automaticity" with respect to the use of force. If there is a further Iraqi breach, reported to the Council by UNMOVIC, the IAEA, or a member state, the matter will return to the Council for discussions as required in paragraph 12. The Resolution makes clear that any Iraqi failure”*

10 So up to here, paragraph 12, let’s say, this is our contention, yes must come back for discussion and discussion means decision.

15 *“The Resolution makes clear,”* and this is the part that needs to be carefully looked at, *“that any Iraqi failure to comply is unacceptable and that Iraq must be disarmed. And one way or another, Mr. President, Iraq will be disarmed. If the Security Council fails to act decisively in the event of a further Iraqi violation, this resolution does not constrain any member state from acting to defend itself against the threat posed by Iraq, or to enforce relevant UN resolutions and protect world peace and security.”*

20 This is the arrogance that is so pithily capture in this little paragraph there. If the ultimatum given to the world body, Security Council, *“If you don’t act, I can do what I think I should do.”* This is the dismantling of world peace and world security in our respectful submission.

25 Now, and this, of course, we cannot accept. As I have already indicated. This is brute force. This is imperialism. This is all the evils that you can think of. And that is the reason why we see the dock empty. They’re afraid to face their accusers on so fundamental a ground.

30 Now, if we look at, so this is what was said. Now if you look at documents at page 85, because they gave that particular statement, the US and the UK ambassador made those statements, China, France and Russia who are the remaining members of the Security Council, they also issued a joint statement to make clear what they meant. And they also said, and I read from page 85, this is downloaded from the French ambassador webpage, 2nd paragraph, *“Resolution 1441 (2002) adopted today by the Security Council excludes any automaticity in the use of force.”*

No automatic right to use force. Simple as that.

5 *“In this regard, we register with satisfaction the declarations of the*
representatives of the United States and the United Kingdom
confirming this understanding in their explanations of vote, and
assuring that the goal of the resolution is the full implementation of
the existing Security Council resolutions on disarmament of Iraq's
weapons of mass destruction. ... In case of failure by Iraq to comply
with its obligations, the provisions of paragraphs 4, 11 and 12 will
apply. Such failure will be reported to the Security Council by the
10 *Executive Chairman of UNMOVIC or the Director General of the*
IAEA. It will be then for the Council to take a position on the basis of
that report. Therefore, this resolution fully respects the
competences of the Security Council in the maintenance of
international peace and security, in conformity.”

15 So we have very clear pronouncement by the remaining members of
the Security Council, the permanent members as to what this clearly
means.

20 Now, we have then a clause being placed later on by the UK AG
himself. And his view is that when they said, *“oh when their*
Ambassador said no hidden triggers, no automaticity, no automatic
right to use force, what he meant was that resolution should not
authorize force immediately, following its adoption.” Alright, in other
25 words, they are saying that when the resolution says that you have to
go back to the Security Council, what they mean is no immediate
attack – that means after you passed a resolution don't attack
immediately. That's the clause that has been placed by the UK AG.

30 In our respectful view, this simply does not make sense. There is also
further contention that *'no automaticity'* meant that there must be a
discussion but that doesn't matter if there is no decision. So, so long
as you discuss something, you can go and attack. It's as absurd as
that.

35 And these words, that it is absurd is not intended to be disrespectful,
and the renowned international lawyer, **Phillip Sands**, who's well
known in this area, and if I could invite Your Honours to look at the
supplementary bundle, page 362, 2nd paragraph, 3rd line from the
40 bottom, this is what he says,

“It is absurd to claim that the requirement in that paragraph for
"assessment" by the council could be met merely by a report to, and

discussion of, Iraq's failures by the Security Council: the clear intention of the drafters is that the council would take a decision after assessing the situation", remember paragraph 4 says assess the situation and then discuss after assessing the situation, "whether Iraq had committed a breach of its obligations sufficient to justify force. Resolution 1441 is not a revival of the authorization to use force; it requires that the council meet again and decide upon the situation in the event of an adverse report from Blix or El-Baradei. This is plain from the language of the resolution, and is not altered by any statements made at the time of the resolution's adoption. As the Russian deputy foreign minister, Yuri Fedotov, put it on November 8, 2003: Russia, with the support of France, China, and other UN Security Council members, took steps to remove the most unacceptable formulations from the draft, including "provisions which would permit an automatic unilateral use of force."

So here we have it, the other world powers, the permanent Security Council, they are saying very clearly this is how we negotiated and this is how we got this particular clause removed and it does not allow automaticity. And the UK Ambassador, who involved and negotiated, the US Ambassador also declared at that time, "yes, don't worry, no automaticity, we'll come back for discussion."

But later, as we see, how the subterfuges started, how the manipulation started; and for those who are familiar, how the *wayang kulit* then to play around with laughable except for the fact that it went to war, killed, and is continuing to kill even now. So that is where the seriousness of the situation become when leaders of States begin to play these political games and this is what

Now if we look at the Security Council debate itself, this becomes very, extremely apparent. We look at document at page 128 (sic) [129], the first Bundle, and this is also a summary, 128 is summary of the Security Council debate on Iraq upon the adoption of resolution 1441. Again it's downloaded from the official web page of the UN organ, and the web number is there. And we will see the **2nd paragraph from the bottom**, "Also speaking after the vote, Council members said that their views had been taken into account in the final version of the draft, which was co-sponsored by the United States and the United Kingdom. The representative of France," a very amiable French foreign minister, "welcomed the two-stage approach required by the resolution, saying that the concept of "automaticity" for the use of force had been eliminated." No automatic use of force. "The

representatives of China and the Russian Federation stressed that only UNMOVIC and the IAEA had the authority to report violations”

5 Right, then if you look at the actual statements, that earlier one, that’s the summary of a report, but if you look at the actual statements, you’ll find that at page 130, right at the bottom is John Negroponte (United States) and what he said is what exactly why I just quoted, at page 131, 2nd paragraph, “*The resolution contained, he said, no ‘hidden triggers’, and no ‘automaticity’ with the use of force. The*
10 *procedure to be followed was laid out in the resolution.*” But he threatened you know, we can do whatever we want if you all are not up to the mark, which I have already commented upon.

15 Now, and then of course, he makes the 2nd paragraph, “*The United States was not seeking to wage war on the Arab world.*”

And then Jeremy [Green]stock at page 131, 2nd paragraph he says, “*we will return to the Council for discussion.*”

20 Now if we look at page 132, it’s Jean-David Levitte of France again he said he welcomed the fact that there was no automatic right to go and attack Iraq.

25 And Mexico, Adolpho Aguilar Zinser, 2nd paragraph under Adolpho Aguilar; he also said that resolution had eliminated automaticity and the use of force. He welcomed the acceptance of the 2-stage approach in accordance with any failure to comply by Iraq to be taken on the basis of 2 prerequisites. There should be 2 time periods. A process of credible inspections of real Iraqi military capabilities and agreement
30 of the Council on ways and means to be adopted should the inspection detect a threat.

35 Then we have Ireland, Richard Ryan the last line, the Resolution he said provided for the clear sequential process for Iraq compliance, developments would then be examined by the Council itself.

40 Then Russian Federation 1st paragraph, 2nd last line, did not contain any provision for automatic use of force and underline that the sponsors for the fact that affirm that today.

And 2nd last paragraph, Bulgaria, the Resolution did not provide a pretext for the automatic use of force but instead a firm insistence on the accomplishment of ... objectives, so on.

And then we have Syria, now under another threat from some of those powers, 1st paragraph, 4th line, 5th line Resolution did not be used as pretext to strike Iraq and did not constitute the basis for automaticity.

5

Norway, 2nd paragraph, under Norway, Resolution set up a procedure where the Council would convene immediately in order to secure international peace.

10

Singapore as usual, who said something a bit vague and left it at that.

And then we have Martin, Cameroon, right at the bottom of next page, and there again they spelled out the lack of a trap, trigger or automaticity in the Resolution.

15

China they said co-sponsor, he was please to note that the co-sponsors of the Resolution had accommodated his country's concern the purpose was to disarm Iraq and it no longer contained any automaticity for the use of force. The Council must meet again if there was non-compliance.

20

So the text of the debate, all of the negotiating history that earlier, the 2nd Accused talked about – very very clear. No uncertain terms, no automaticity. And they themselves gave the assurance immediately after that, and then only the basis on which they secured the Resolution. Otherwise there will be no vote on that Resolution. The Resolution would not have been adopted.

25

So it's very important because if it forms the basis upon which, the representation upon which the resolution, you know, in simple contract, if there is a misrepresentation, the contract is void. So this was the basis; and as we shall see, all the mechanisations, the manoeuvre, to lie and to deceive the world community, by these 2 accused.

30

Now if you look at the conduct of the US and UK itself; so we have looked at the terms of the resolution, we looked at the negotiating history of the Resolution to see what it means. Now, very briefly at the conduct of the US and UK. Their own conduct, in our respectful submission makes it very clear that they knew that there was a need to go back to the UN for a 2nd Resolution.

40

This is our point.

5 So this is, can be seen by the fact that in February 24, 2003 the US ,
Britain, the UK, and Spain, they did table a 2nd draft Resolution, go to
war, and it concluded by saying that Iraq's declaration pursuant to
Security Council resolution contained false statements and omissions
and that Iraq had failed to take the final opportunity afforded to it by
Security Council resolution.

10 So in other words they are saying, now they're going back and saying,
ok, now we have to make a decision and the decision is in the form of
this 2nd resolution which we are putting forward and it says, "*Well,
you gave up the final chance and you continue to put forward false
statement.*" Which means a prelude to a decision by the Security
Council that, "*Yes, we gave you a warning, you didn't take the
15 warning, and now we've got to act.*" This is what was the resolution
was they put forward, the resolution that they said they don't need.

20 But they put forward a resolution in those terms. Now this resolution
is at page 286 of my bundle, and I just read the one or two paragraphs
at page 286. This is from CNN copy. Despite our misgivings I think
we can trust CNN on this. This is the draft resolution that they put
forward. Paragraph 6 says, this is the draft resolution for the Security
Council; so it starts off by saying, "The Security Council, preamble
and paragraph this", this is how resolutions are worded; and says
25 Security Council number 6, "*Noting that Iraq has submitted a
declaration pursuant to its resolution 1441 (2002) containing false
statements and omissions and has failed to comply with, and co-
operate fully in the implementation of, that resolution,*" then we can
skip 7.

30 8, "*Mindful of its,*" meaning Security Council's "*primary
responsibility under the Charter of the United Nations for the
maintenance of international peace and security.*"

35 Then number 11, "*Acting under Chapter VII*" which is authorising the
use of force against another State. Then the operation of paragraph 1,
"*Decides that Iraq has failed to take the final opportunity afforded to
it resolution 1441 (2002).*" In other words, this was going to be the
resolution that would have authorized attack by the Security Council –
40 authorized. So that would have been a legal basis if it had been
passed. But what happened? The other permanent Members of the
Security Council did not agree with this assessment. It was a
unilateral assessment by Bush followed very closely on its heels by

5 Blair that they declare there is a material breach. And as I shall show later; the reports itself shown there were no material breaches, there was co-operation, there was admission and that resolution was just a device, a contrivance, by the US UK to wrongfoot Saddam. They could not wrongfoot him, they declared that he had not complied – material breach.

10 But the world community did not agree with them. The body that is bestowed with powers did not agree with them. So, they drafted a counter resolution that the condition for deployment of force by the Security Council had not been met yet. Then what happened? All plans gone awry by the US and UK to attack, and they withdrew the resolution. Then they started this ingenious argument by saying,
15 *“Who said we need a resolution? We just put forward this resolution because of political acceptance; our population will find it better.”* And Bush said, *“I just did it as a favour to a friend.”* These are actual words.

20 Then started this whole train of thought that we don’t need a 2nd resolution. That Security Council 1441 had already authorized it. I mean if it had authorized, why did they go down this pathway of a 2nd resolution? This is a simple logical question.

25 They spent a lot of time and effort ... They tried to ring up the Mexican government, they threatened other governments, they said we’re going to withdraw our aid to your countries, they spend furious hours and Blair in his book “A Journey” refers to those, but of course he doesn’t say he did anything wrong, he said he just wanted to galvanize our efforts but we shall show that there is judicial committee
30 report which show the kind of underhand tactics that they did, they try to get several of these countries who were in the Security Council to try and get the 2nd resolution going.

35 And as I explained that at 27, this is what Bush says, from his own book, which is at supplementary bundle 709. This is Bush saying,

40 *“In late January, Tony Blair came to Washington for a strategy session. We agreed that Saddam had violated UN Security Council Resolution 1441 by submitting a false declaration. We had ample justification to enforce the "serious consequences." But Tony wanted to go back to the UN for a second resolution clarifying that Iraq had failed to take the final opportunity afforded to it.” “It's not that we need it,” Tony said. “A second resolution gives us military and*

5 *political protection,' I dreaded the thought of plunging back into the UN. Dick, Don, and Condi were opposed. Colin told me that we didn't need another resolution and probably couldn't get one. But if Tony wanted a second resolution, we would try. "As I see it, the issue of the second resolution is how best to help our friends."*

10 So this is what it was about, the explanation of the of the world's greatest leaders on the clearest provisions when confronted with the fact that he cannot get that resolution but wants to persist with his evil design of acting against authority to attack another sovereign nation.

15 Blair was warned in an open letter in a UK national daily by a host of international lawyers on the illegality of going to war without a 2nd resolution. In his statement to the Chilcot, he glosses over, "*no one tried to persuade me not to take this course.*" I just showed that group of lawyers.

20 Such audacious comments that I have to make, but this is simply waving red to a bull. This is the nature of the beast, the 2nd accused.

25 The AG as had given, his advice on the 7th of March, it was equivocal advice, but there were a lot of conclusions which said it's better to go down the route of a 2nd resolution because we cannot stop people from challenging us, one NGO had already filed an action, and he said I cannot promise that the courts will not decide against us if we proceed and there is a charge of murder.

30 Now the AG changes his views. Suddenly the AG turns around completely and issues a statement. Unprecedented apparently for an AG to go to the House of Commons and make a statement. And he departed from his view. In a very crisp statement, he justified the right for the use of force without a 2nd resolution. And international lawyer Sands said of this document by the AG changing his views, "*It's a bad argument, and very few States and virtually no international lawyer can see its merits.*"

40 Funny thing. 7th March he was equivocal. 17th March, 10 days away, he changed his views. What had transpired? There's no evidence in the public domain to show what had changed. Page 299 of my bundle,

"it is also that CND (Committee for Nuclear Disarmament) may try to bring further action in the domestic courts but I am confident that the

5 courts will decline jurisdiction as the case brought by CMD last
November ... remote possibility are an attempted prosecution for
murder on the grounds that the military act is unlawful and an
attempted prosecution for the crime of aggression ... it might be
argued that international aggression is a crime recognised by the
common law which can be prosecuted in the UK court. In short, there
are a number of ways in which the opponents of military action might
seek to bring a legal case against the UK, members of the government
or UK military personnel.... We cannot be certain that we cannot
10 succeed.”

15 page 297 – at the bottom, “in these circumstances I remain the safest
legal course would be to secure the adoption of a further resolution to
authorise the use of force.”

People started resigning even more. The day after, the Deputy Legal
Advisor from the Foreign Office resigned also. Document (page) 310,
Elizabeth Wilmhurst resigned in March 2003. 18 March minutes,

20 “1. I regret that I cannot agree that it is lawful to use force against
Iraq without a second Security Council resolution to revive the
authorisation given in SCR 678. I do not need to set out my reasoning;
you are aware of it.

25 My views accord with the advice that has been given consistently in
this office before and after the adoption of UN security council
resolution 1441 and with what the attorney general gave us to
understand was his view prior to his letter of 7 March.
(The view expressed in that letter has of course changed again into
30 what is now the official line.)

35 I cannot in conscience go along with advice - within the Office or to
the public or Parliament - which asserts the legitimacy of military
action without such a resolution, particularly since an unlawful use of
force on such a scale amounts to the crime of aggression; nor can I
agree with such action in circumstances which are so detrimental to
the international order and the rule of law.

40 2. I therefore need to leave the Office:

...

3. *I joined the Office in 1974. It has been a privilege to work here. I leave with very great sadness.*”

5 So this telling tale from within the ranks of those who are making decisions right in the legal advisor’s office shows very clearly what was happening.

10 From a secondary document in September 2004, the Secretary General of the United Nations Kofi Annan publicly declared that the war was illegal.

15 So on that basis, I conclude at page 30, the Prosecution submits that the negotiating history and the conduct of high officials of the US and UK, prove beyond reasonable doubt that both the accused full well knew, or ought to have known, that after Security Council resolution 1441, only the Security Council could authorize any use of force against Iraq. We repeat our earlier submission that both Bush and Blair have committed crimes against peace in international law and are guilty for ordering the war as well as for any acts committed in the
20 course of the war.

I want to go very briefly with some of the justifications that were put forward at the time to see if they have any validity at all. I turn to page 30. There are four justifications that I have identified.
25

One – In international law, it is permissible to act unilaterally – Damn the world

30 Second – The revival argument – because he failed to act in this resolution 1441, there were other resolutions 687, 678 and so on and it revived those.

35 Third – if the resolution wanted a further resolution, it would have said that. So silence means it did not prohibit it. I call that the “Implied by silence argument”

40 Fourth – Regime change. Saddam is a rogue, entitled to change the regime of those whom we classify as rogues, and states we classify as rogues.

(inaudible) ... From this point? Well, it’s 5 o’clock. Each of this in turn. Just this one itself I think half an hour. (inaudible). I’m obliged, members of the Tribunal.

Judge Abdul Kadir Sulaiman:

I adjourn this proceedings today to and we commence tomorrow at 9.00am sharp.

5

20th November 2011 – Session 1**Judge Salleh Buang:**

5 Good morning. I have a question for the prosecution. Just one question. Could you inform the Judges whether the other members in the team also will be addressing the bench subsequently?

Professor Francis A. Boyle:

10 Your Honour, I have been asked to deal with the rebuttal. But, for the record, at this point it is important for the Honourable Members of the Tribunal to understand where the concept of a crime against humanity came from. That was one of the charges levelled against the Nazi leaders at Nuremberg. And it was based on ... I'm sorry ...

15

Judge Abdul Kadir Sulaiman:

 Now I get the point. So here it would appear that there has been assigned 2 prosecution chiefs, er person, to address the Court. But the problem would be this: What we want, if possible, to avoid duplicity, both should discuss among yourselves and distribute among yourselves at your absolute discretion the task of submitting. Professor Boyle is trying to do his best for the prosecution, and Professor Nijar is also trying to do his best for the prosecution. But let is not appear that there are two prosecution teams here. That's what I mean. We're not teaching you what to do, but at least to avoid duplicity. So, you get my idea or not?

20
25

Professor Gurdial Singh Nijar:

 Thank you members of the Tribunal; and, of course, we'll be guided accordingly by the direction which you have suggested. Of course it is our intention to complement each other not to ...

30

Judge Abdul Kadir Sulaiman:

 Right, right. You got the idea.

35

Professor Gurdial Singh Nijar:

 And we will abide scrupulously by that advice that you have given us. I'll proceed with my arguments. And I was at page 31 of my submissions.

40

Judge Abdul Kadir Sulaiman:

 So you have made up your mind, right? That's the way to go.

Professor Gurdial Singh Nijar:

Of course.

Judge Abdul Kadir Sulaiman:

5 Fair enough. So we go on. Please proceed.

Professor Gurdial Singh Nijar:

10 Much obliged. Members of the Tribunal, I was yesterday at the stage of presenting the defences and I was looking at the justifications that are in the public domain and which have been advanced by the two accused persons. I have identified 4 such arguments: The right to act unilaterally, the revival argument, implied by silence, and regime change. I will deal with each of these in turn.

15 The 1st is **The right to act unilaterally**. Now by this argument, the accused suggests 2 things. One is that Security Council can be by-passed in two situations. One is where a member state feels that the Security Council is helpless to act, then a member State can do what they feel the Security Council should have done. And the second part is, if they feel that a subsequent resolution is going to be vetoed unreasonably. Then also, they can act unilaterally and decide that, "Yes, we can launch a war."

25 On the first point, that the Security Council should not, that they can act where they feel in their own judgment that the Security Council will not act or is helpless to act, this is, this position is stated, at my page 31, by the Secretary of State Colin Powell, by Bush and the UK Foreign Minister.

30 And I have set out there, at page 31, Colin Powell the Secretary of State, and this is what he says, and I've quoted it verbatim so we do not have to refer to my document although the page is indicated in the documents. If Saddam did not comply he was going to ask the Security Council to act "*and if the UN isn't willing to do that, the United States with like-minded nations will go and disarm him forcefully.*"

40 So this is the position taken: That we will go to war if you do not act – the Security Council, the world body does not act.

And Bush, the 1st accused, on the day the 2nd resolution was withdrawn, on Monday, March 17, he's quoted as saying, "*The United*

Nations Security Council has not lived up to its responsibilities, so we will rise to ours."

5 And the UK Foreign Minister, as reported in the Hansard of 7th November, that is on the eve of the adoption of the 1st resolution, 1441, he says, *"although we would much prefer decisions to be taken within the Security Council, we have always made it clear that within international law we have to reserve our right to take military action, if that is required within the existing charter ..."*

10 So, the point I'm making is this: This is entirely inconsistent with international law. You have a binding treaty called the United Nations' Charter. And the United Nations' Charter gives the right to the Security Council, as I said, at the outset of my submission
15 yesterday; they are the ones who have to decide with regards to matters of international peace and security, not individual States. So this is almost like breaking up the whole unity of the world body by saying, *"We will decide whether you're going to act or not. If you do not rise to your responsibility we will do as we want, which means we will launch a war, regardless of what the view of the international
20 community as has been agreed to by the parties."*

This is wholly incompatible with the Charter and the concept of representative bodies. This is invitation to chaos. Can you imagine if
25 in a municipal situation, in a national situation we were to say, *"Ok, I'm going to give the government the ultimatum to act. If they do not act then I am going to decide what to do. I'm going to take over law enforcement in this country. I'm giving the police 24 hours to act. If they do not act then I'm going to set up my own police force and
30 proceed to act."*?

So this is the extent to which it is an undermining of the Charter itself. So this cannot, in international law, be a justification for by-passing the United Nations and the Security Council.

35 Now the 2nd point with regard to acting unilaterally is, they said, *"Because we want to go down the UN route, we want to put forward a subsequent resolution, but you are going to veto it, and you're going to veto it, in our view, unreasonably. So if we take the view that
40 you're not entitled to veto, then we can proceed to take action – or with our group of the willing."*

Now this again undermines the whole basis, the fabric upon which the United Nations and the representative governments, international government is governed. You can't do that. Cannot simply do that.

5 Now this position was taken, for example, by both Bush, by the 1st and 2nd accused; and if I could invite Your Honours to take a look page 221 of my Documents, 1st Bundle. And I quote the 4th paragraph from the bottom, page 221. This is the Prime Minister, the 2nd accused in the House of Commons debate. And this is what he's
10 saying, 4th one from the bottom:

15 *"The position that I have set out is very clear. We have chosen to go down the UN route; I think it is important that we do. That is because if Saddam is to be disarmed, it is important that he is disarmed with the support of the international community. We want the inspectors to do their work. If the inspectors come back and we find that there is a breach of the UN resolution, action will follow. We have said that a second UN resolution is preferable, because it is far better that the UN come together."*

20 And this is the part, *"We have also said that there are circumstances in which a UN resolution is not necessary, because it is necessary to be able to say in circumstances where an unreasonable veto is put down that we would still act. That is the position that the Government have set out throughout, and it is the position that remains."*
25

So their position ...

Mr. Jason Kay Kit Leon:

30 Mr. President I do apologise for the interruption. But perhaps Professor Nijar could help clarify for the Tribunal because the quote taken at page 31, at the bottom of page 31 of the prosecution's submission, *"The United Nations Security Council has not lived up to its responsibilities, so we will rise to ours."* The quote is supposed to
35 be taken from the book "Decision Points" at page 244 which is supposed to be found in the Supplementary Bundle at page 709 but I believe my ... we have been trying to find that quote. We can't find it on that ... could the might be a typographical error.

40 **Professor Gurdial Singh Nijar:**

I apologise. It's actually at page 253 of the book "Decision Points". No no, the book "Decision Points". 253, yes, the name of the book is "Decision Points". And then the supplementary bundle page is at 718.

Yes, and the final paragraph just before, there's a line there and you will see, *"The next day, Monday, March 17, 2003, Ambassador John Negroponte withdrew the second resolution at the UN. That night, I addressed the nation from the Cross Hall of the White House "The United Nations Security Council has not lived up to its responsibilities, so we will rise to ours," I said, "...Saddam Hussein and his sons must leave Iraq within forty-eight hours. Their refusal to do so will result in military conflict, commenced at a time of our choosing."*

So that's at page 718.

Mr. Jason Kay Kit Leon:

Thank you.

Professor Gurdial Singh Nijar:

I apologise for the typo. 32, yes.

So the contention that he announced to his Members of Parliament and to the nation in the UK is that if it is going to be an unreasonable veto then we reserve the right to do as we want and launch a war on our say so. This was in fact contrary to the advice that was given by its own Attorney General, and I have at page 33 at the top referred to testimony by the Attorney General himself to the Chilcot enquiry which was at the end of last year and this year. And I have quoted verbatim what was said at page 33. This is what was said – The Attorney General when he was asked at the Chilcot Inquiry, now many years after the war was launched. Attorney General says, *"I never thought that the concept of an unreasonable veto has any application in international law."*

So it's wrong. Then,

"Q: Was the status of this part of your advice sufficiently clear to the PM?"

A: I believe so.

Q: Do you consider that the PM's words were compatible with the advice you gave him?"

A: No ... I was uncomfortable about them."

Which means that the Attorney General acted, yes, in blatant disregard of his own chief law officer. And, of course, this position is not

5 something that the Attorney General Peter Goldsmith has adopted many years after the event. His own advise at the time, before the war was similar. And if I could refer to his advice at page 298, paragraph 31, and I've set it out in my submission, this is the document I referred to yesterday, the Attorney General's advice; this is what he said:

10 *"The analysis set out above applies whether a second resolution fails to be adopted because of a lack of votes or because it is vetoed. As I have said before, I do not believe there is any basis in law for arguing that there is an implied condition of reasonableness which can be read into the power of veto conferred on the permanent members of the Security Council by the UN Charter. So there are no grounds for arguing that an "unreasonable veto" would entitle us to proceed on the basis of a presumed Security Council resolution."*

15 So it's a clear advise that had been given to the 2nd Accused before the launch of the war. You cannot use that as a basis – and yet, this is the basis that has been relied upon by the 2nd accused and the 1st accused to attack Iraq. So they say if, but if you note from the terms, they're saying if you veto unreasonably then we're entitled to launch a war. But they withdrew the resolution. There was no veto that was made with regard to this 2nd resolution. Factually also, they had no basis in international law.

20 So this was the extent there was a complete disregard, beyond reasonable doubt, a complete disregard of international law. So that deals with the right to act unilaterally. Now the 2nd justification that is put forward

25 **Mr. Jason Kay Kit Leon:**

30 May I just interject at this point. I believe there is also another typo. Just for completeness sake. At page 33 of the Prosecution's submission the quotation, page 33 of the Prosecution's submission, the quote, the final line of the quote: *"the basis of a presumed Security Council **resolution**"*, from the Bundle at page 299 from line 1, the word is *"Security Council **authorization**."* It's just a word. I believe

35 ...

40 **Professor Gurdial Singh Nijar:**

What is that?

Mr. Jason Kay Kit Leon:

The last word; page 33 “*resolution*” – that is in the submission. In the Bundle the word is “*authorization*”.

5 Professor Gurdial Singh Nijar:

Yes, yes. In fact that is, perhaps I should begin to read the Bundle itself. It says “*would entitle us to proceed on the basis of a presumed Security Council authorization.*” Yes. I’m grateful, I apologise for these typo errors. But as I’ve said I’ve set out the page itself so 31, so
10 the page of the actual quote is also with the Defence so I just I’m suggesting this to show that there is no attempt to ... yes.

Now the second argument is that, that has been put forward is that, look there was no 2nd resolution, but actually we don’t need a 2nd
15 resolution because there were so many resolutions that were put forward with regard to use of force against Iraq and so his failure to abide by this resolution, the 1441, the final one, actually revived the earlier resolutions and those earlier resolutions authorized the use of force. So, no need for this but we go back to earlier one suddenly it’s
20 resurrected, and therefore we can use that anyway so what’s the big deal about insisting about a 2nd resolution after 1441.

Now the essence of this justification appears in the UK Attorney General’s ... as I’ve said. Complete turnaround. 360 degrees from the
25 earlier advice he had given, he said look, you must, it’s prudent to get a 2nd resolution. Now on the eve of the launch of the war by the UK the Attorney General as I’ve said yesterday, in an unprecedented situation appeared before the House of Commons, which not normally done in the UK, made a very short terse statement to say that he was
30 going to proceed, that it was justifiable without a 2nd resolution; and this is what he said. I hope there’s no typo on this, I better look at my document. Yes, at page 301 of my documents, he said that the use of force against Iraq was justified on the “*combined effect of UN Security Resolutions 678, 687 and 1441.*”

35 So the essence of this argument is that if you recall yesterday, 1441 started off by saying that Saddam is in breach of the 687 Resolution. So they are saying, the argument is that they have made a reference to 687 so this revived the authorization, he did not comply, 1441 says
40 refer to 687. He did not comply with 1441. Therefore Member States, and I’ve quote there, at paragraph 34, Member States cooperating with the Government of Kuwait to use all necessary means to uphold and

implement Resolution 660 and all subsequent resolutions to restore international peace and security in the area.

5 So this is the point that is being made. That we don't have to, that the earlier resolution revived our right to use the force. Now I have here 5 rebuttals with regard to this.

10 And the First one is that all that resolution 678 was intended was to get Iraq out of Kuwait. So 678 required Iraq to comply fully with Resolution 660. So that was all. This was the limit of that Resolution – that you withdraw from Kuwait. So that Resolution did not authorize going into Iraq and effecting regime change, overthrowing Saddam and his regime. So if that Resolution was limited to that purpose, how can then 1441 revive the right to go in and attack Iraq?

15 Second point is: That if you look at the 1441 itself, there is no authorization for the use of force against Iraq. And there is no indication in this Resolution 1441 that the States acting at that time in 1991 to get Iraq out of Kuwait. There's no authorization. That authorization of 1991 could not ... there is nothing to indicate that that was to be revived. That therefore those States acting at that time, in 1991, can now go in and; there is nothing in the 1441 Resolution that so indicates. That's the 2nd point.

25 Thirdly is, what is this doctrine of revival? Where is the legal basis of this doctrine? That somehow you can resurrect something that already has spent its force? There was a Resolution, there were a few Resolutions, they have spent their force, and suddenly there is this doctrine in international law. And I have quoted one article here at my
30 Supplementary Bundle, 352, at 353, which I now invite Your Honours' attention. The article starts off at page 346, and the particular quote is at page 352, and in the final paragraph, I read that paragraph, with your leave,

35 *"The validity of the argument based on Resolution 678 has been extensively discussed and it is not my task to rehearse the arguments here in any detail. The main flaws in the 'revival' argument are well known. There is the fact that Resolution 1441, on its face, quite patently does not authorise the use of force against Iraq and does not*
40 *indicate that the authorization to the 1991 States acting in coalition with Kuwait could possibly be revived. There is the fact that there is no known doctrine of the revival of authorisations in Security Council*

resolution, on which some implied revival could be based.” This is the essence.

5 *“There is the wording of later resolutions, such as the much-*
overlooked Resolution 686 and Resolution 687 which suggest that the
authorisation to use force was given only for the duration of the
military operation to expel Iraq from Kuwait and that it is for the
Security Council to decide what, if any, further action is to be taken
10 *against Iraq. There is the fact that, far from having abandoned or lost*
interest in the matter the Security Council was itself actively seized of
the matter at all critical times. And there are the express views of
Security Council Members set out in the debate on Resolution 1441
which make it clear that, in contrast to the view of the United States,
15 *some Members required a second resolution explicitly granting an*
authorisation to use force, before force could be used against Iraq?”

This revival argument; now the UK Attorney General says that he was aware of all these arguments about, he was aware of commentaries, articles, scholarly articles about the fact that there is no such concept
20 known. So what he says is, he agrees that that concept is very controversial, and not widely accepted among academic commentators. So this is his point, right at page 34 he says I agree this kind of revival argument is controversial and not widely accepted; yet he says I choose to disagree with those commentators and lawyers
25 and he says he’s basing his ground on the terms of the resolution and the course of the negotiation which led to its adoption.

But there is no argument given as to why. He says it’s controversial; most academic lawyers, most commentators do not agree that it exists
30 but he says, *“I’m disagreeing with those commentators and lawyers.”* So our view is that as far as this part of the argument is concerned, unless there is a cogent basis for the Attorney General to disagree, then to suggest that, to dismiss it out of hand in this fashion is entirely unacceptable. And so here is a body dealing with international law.
35 We have to run with the weight of the white academic understanding of the impact, of the effect of international law. So on such a ground as this was the war launched. It’s what I’ve described in my submission as a very *“facetious ground”*.

40 Now the Fourth point with regard to why the revival argument cannot apply is that if you look at 686, 687, I’ve already made reference to this, it was only, the Resolution was only for the duration and the purpose of the military operation to expel Iraq from Kuwait. And if

there was going to be further action it had to come back to the Security Council.

5 So you cannot use now, my point is, that the 686, 687 had spent itself. It's over. You cannot now go back to that and say "*I'm going to rely on that.*" It was only for the purpose and duration of that particular Resolution which was to expel Iraq out of Kuwait. And if there was going to be anything else done with regard to that Resolution then in any event, for that Resolution too you had to come back to the Security
10 Council. Now this was also the understanding of the UK foreign office legal advisors in a note that was first circulated in March 2002 and I invite your attention, your kind attention to Volume 1, page 336. Now this is one of the ... yes, it's at page 336 and the actual reference appears at page 344. And I refer to paragraph 31, this refers to the
15 earlier Resolution, 687, and this is what it said:-

"As the ceasefire was proclaimed by the Security Council in 687, it is for the Council to decide whether a breach of obligations has occurred."

20 It is for the Council to decide. And then it goes on to say "*In contrast to general legal opinion,*" just 3 lines from the bottom, "*In contrast to general legal opinion, the US asserts the right of individual Member States to determine whether Iraq has breached 687 regardless of whether the Council has reached this assessment.*"
25

So the UK itself, the UK foreign advisors itself say that this revival based on 687 cannot work. And they also point to the fact that the US is asserting to the contrary.

30 And finally, there's nothing in 687 that allows – and that's become very clear that allows Members, one or more Members to decide on what further steps, you've got to come back to the Security Council because they deal with international peace and security. So this is
35 clear, therefore, in our view, beyond reasonable doubt that this revival argument simply does not work. And it was known by the accused persons, at least the 2nd accused that this was not a basis because they have been advised by their foreign legal office who were running the war and they had been advised by the Attorney General who was
40 appraised of the matters in relation to the war that this cannot work.

And the Attorney General of England changed his view at the last minute without any basis acknowledging the fact that this was a

controversial doctrine. So you cannot, based on a controversial doctrine, go and attack another country. I mean, this simply not the way to approach international peace and security.

5 Now, the Third argument that is suggested is that 1441 does not say we cannot act on our own, or there cannot be use of force without a 2nd resolution. So if there was indeed an intention to proceed on the basis of a 2nd resolution, why didn't the 1441 say so? Alright? So this is silent. Because this does not say so, therefore you can do it.

10 Here, we can do no better than quote a response of Professor Lowe in the article I earlier cited, I have not given the page number. I will supply it in the interim. But the quote is here. It is the same article that I referred to earlier,

15 *"It is simply unacceptable"* this is at page 36, *"It is simply unacceptable that a step as serious and important as a massive military attack upon a State should be launched on the basis of a legal argument dependent upon dubious inferences drawn from the silences*
20 *in Resolution 1441 and the muffled echoes of earlier resolutions, unsupported by any contemporary authorization to use force."*

And I've supplied an emphasis on the next sentence which says, *"No domestic court or authority in the United States or the United*
25 *Kingdom would tolerate governmental action based upon such flimsy arguments."*

Mr. Jason Kay Kit Leon:

Mr. President, may I please confer with my colleague for a moment?
30 ... Mr. President, I don't want to be pedantic or difficult. But I must point out that this is the third time that my team and myself have been finding some difficulty with the accuracy of the quotations that are reproduced in the submission when compared with the original documents. I've just instructed my team members to check for the
35 accuracy till the end of the submission. But my worry is that some, certain typos it's obviously ... we have noticed that words changing, and words are very important in what we do. So perhaps may I suggest very politely, as I have suggested to the prosecution, perhaps they would take a little bit of time just to check the accuracy of all the
40 quotes that are coming. I believe it's ... well we're at page 35 now. I believe 15 mins would be more than sufficient.

Professor Gurdial Singh Nijar:

I have a different proposal. As you would have noticed in the last, at page 344 instead of referring to my submission the quote, I actually referred to the actual text. And I was reading the actual text. So what I suggest is that I will read the actual text, and then during the break that we will have for coffee, I can then “selaras” [adjust] the 344, the, so, yes, not to waste time because I’m actually reading from the text. Because I did this myself, I typed it myself you know, I think, the word, for example is, it is for that body to ‘assert’, and I put here to ‘assess’, so it can make a difference. I’ll read from the original because it’s all I’ve just made it easier, so I read from the original, and then ... No problem. And then I will during the break I will then make sure that the submission accords with this, if there’s no objection to that.

Mr. Jason Kay Kit Leon:

As long as the submission that is to be considered by the Court and extended to us reflects it accurately because then it will avoid a lot of confusion and unnecessary objections.

Professor Gurdial Singh Nijar:

I undertake to do that during the break to make sure. Yes, now with regard to this, I was on 36.

Now the final argument that is made with regard to this is that it is permissible to use force to effect Regime change; so if you feel there is some country in the world with which you do not agree, then you can muster a couple of, you can go into a country, attack it, change the regime because you feel that that regime does not accord with your values or with your political objectives. So that is the final point, justification, that has been made.

Judge Shad Saleem Faruqi:

On the issue of revival; you have tried to argue that 1441 does not revive 678 or 687. I understand there were some other some other resolutions 1025, 1154. Are you going to address us on those?

Professor Gurdial Singh Nijar:

I can address it, but it is not part of my; and then I thought maybe I will use it in rebuttal.

Judge Abdul Kadir Sulaiman:

I leave it entirely up to you.

Professor Gurdial Singh Nijar:

5 Now this question of regime change. Yes, I have not included it in my notebook because I've just on the eve of the submission I managed to get Donald Rumsfeld's memoirs, and he's one of the main architects of this attack on Iraq; and if I could hand; I just got it photocopied this morning. Registrar.

10 (Registrar hands out documents)

Professor Gurdial Singh Nijar:

15 Now this deals with, if I could quote the last paragraph. This is his book, "Known and Unknown: A Memoir" which just came out this year. Yes, I would like it to be marked. It forms part of my submission.

Judge Abdul Kadir Sulaiman:

20 You know what I mean? Ordinarily you have the oral evidence, examination and what not, and then you have your documentary evidence in and what not. All those form part of the evidence. And then at the end of the day you submit, based on the evidence you collected.

25 But here in the beginning, I don't know how the feeling of others, I was under the impression is just a bundle, from there you make use to submit your case. And in the course of time you'll be using certain documents this and that. And those thing, as far as my record goes, is not been marked or identified as part of your evidence. So that is another area, which I feel, if you could during, we're not going to waste our time in adjourning this simply to do that, if you can sort of collect all those which you are referring to us so that we will mark it and that is part of your evidence without any oral evidence.

35 Your evidence consists of all documentary evidence. You see. We have marked P1, P2, but then, what about the rest? The resolution this, that resolution because it comes in a bundle. Like that. And similarly to you, I believe. Civil proceedings you go by exchange of documents. But here, ours is a criminal trial. Though you go by nature of exchange of documents, very good. Only thing now, which part of it is evidence? Do you get my point or not? So the other side also similarly I believe.

Mr. Jason Kay Kit Leon:

If I just may make a suggestion. I will be, of course, guided by the Tribunal's

5 **Judge Abdul Kadir Sulaiman:**

Of course, of course I need your guidance as well.

Mr. Jason Kay Kit Leon:

10 My reading of Article 24 of the Rules of Procedures allows for secondary and hearsay evidence to be admitted in interest of justice. In my humble submission, it is ultimately for the Tribunal to make that final assessment.

Judge Abdul Kadir Sulaiman:

15 Agreed. Right.

Mr. Jason Kay Kit Leon:

We will not, I believe the prosecution will not have any witnesses

20 **Judge Abdul Kadir Sulaiman:**

I think no dispute about that isn't it?

Mr. Jason Kay Kit Leon:

We do not have our defendants here either.

25

Judge Abdul Kadir Sulaiman:

30 If that be the case, my suggestion is, your Bundle, the whole bundle, you call Bundle of Document may be identified as the next one P-something, P3 – that means consists of all everything inside, and what you're doing now really is reading your bundle of submission. And similarly yours will be D1, or D-something, that's what I meant. Let us be clear. We'll do that now.

Professor Gurdial Singh Nijar:

35 Thank you Your Honour. So, I apply to have the **1st Bundle of the Prosecution's List of Documents** marked as **P3**. And the **2nd Bundle** to be marked as **P4**.

Judge Abdul Kadir Sulaiman:

40 So that is only for the moment. So now for 1st Bundle marked as P3. 2nd Bundle marked as P4. So from now on it'll be known as P3, P4.

Professor Gurdial Singh Nijar:

Yes

Judge Abdul Kadir Sulaiman:

5 You're making an application also? Might as well.

Mr. Jason Kay Kit Leon:

May I also request that the Tribunal notes for the record that ... I will
be submitting

10

Judge Abdul Kadir Sulaiman:

How many bundles you have?

Mr. Jason Kay Kit Leon:

15 We have at this point 3 bundles.

Judge Abdul Kadir Sulaiman:

3 bundles be marked respectively as **D1, D2 and D3**. Make it clear.
So that settles the point.

20

Mr. Jason Kay Kit Leon:

And Mr. President, may I request that the Tribunal notes for the record
that I will be submitting on the question of credibility and weight as to
all the documents that have been marked later. I reserve the right to,
because these are, with regards to the rules, articles ...

25

Judge Abdul Kadir Sulaiman:

Yeah. Ok. Anything you're submitting outside the document. What
I'm just saying, we know, between you and me as we go along, we
know these are documents, which form part of your evidence, but it is
not here to say that it is my evidence

30

Mr. Jason Kay Kit Leon:

In terms of admissibility, I believe the rules of the Tribunal allows, but
I reserve my right to submit on credibility and weight.

35

Judge Abdul Kadir Sulaiman:

Of course. Of course. Anything you want to submit you're entitled.

40

Mr. Jason Kay Kit Leon:

Thank you.

Judge Abdul Kadir Sulaiman:

We want just to identify your evidence only. Ok? All resolved.
Sorry, sorry for the interruption.

5 **Professor Gurdial Singh Nijar:**

Thank you. I think it's entirely appropriate.

Judge Abdul Kadir Sulaiman:

Please proceed.

10

Professor Gurdial Singh Nijar:

Now I wish to tender an excerpt from the book of Donald Rumsfeld
and request that this be marked as P5.

15 **Judge Abdul Kadir Sulaiman:**

So now will be P5. Right.

Professor Gurdial Singh Nijar:

20 I wish to first apologise that the quality of the photocopying is not
satisfactory. We used the machine...

Judge Abdul Kadir Sulaiman:

Don't worry so much. As long as we know what it is.

25 **Professor Gurdial Singh Nijar:**

Because might affect the reading. So let me read. This is what he
says. And he was one of the main architects of the war, Donald
Rumsfeld; he was Secretary of Defence, which is like the Minister of
Defence. And I read the final paragraph, "*Later in 1998 large*"

30

[page 417] 2nd last paragraph

35 "*Later in 1998 large bipartisan majorities in each House of the US
Congress generally endorsed the policies in our letter to Clinton. The
Iraq Liberation Act declared that the goal of US policy should be to,
'remove the regime headed by Saddam Hussein from power'.*"

35

40 So this is it. 1998. The Iraq Liberation Act declared the goal of US
policy was to remove the regime headed by Saddam Hussein from
power. The US House of Representative approved that legislation by
a vote of 360 to 38. It passed the Senate without a single dissenting
vote. Clinton signed the legislation into law. And this is the key part,
"*regime change in Iraq was now the official policy of the United
States.*"

40

So from 1998, declares the Minister of Defence, this was the official policy: To go in and get Iraq, to get regime out. Somehow.

5 Now, coming back to my submission at page 36. This was also the policy of the 2nd accused and his government. And if you look at P3 at page 264, and the document itself P3 page 260 is Tony Blair's statement to the Iraq inquiry, 14th January 2011. And this is at page 264. And this is what, the last paragraph at 264: *"The objectives for both President Bush and myself in trying to secure a fresh resolution were clear: to give Saddam one final chance to comply; and make it clear if he didn't, then we,"* meaning UK and US, *"would act, if necessary by force. In other words: change of heart or change of regime."*

15 That this was his policy from beginning to the end is also evidenced by what he said subsequent to the launch of the war and I refer to P3 at 301, sorry, it is 303. It starts at 303. Now this is the Mail Online which is a newspaper, an article written in the newspaper; to the best of my knowledge it has not been corrected, and I refer to page 306

Judge Salleh Buang:

Did you say it was *"The Mail"* just now? In your submission it is said as *"The Guardian"*.

Professor Gurdial Singh Nijar:

25 Yes. I think there is some ... UK Guardian. I think I've got the ... it's actually at page 257, yes, can that be corrected to, it's 257. In fact, if you look at page 37, that quote that should be in line with the paragraph, comments by Blair's, I'll refer to the actual document itself. So I refer to P3, 257, if I could refer to that page, it's an extract from *"The Guardian"* and it's headlined *"Tony Blair admits I would have invaded Iraq anyway."* And the sub-heading is *"WMD were not vital for war says ex-PM ahead of appearance at Chilcot Inquiry."*

30 And, if I read from the actual report, 257:

35 *'Tony Blair has said he would have invaded Iraq even without evidence of weapons of mass destruction and would have found a way to justify the war to parliament and the public. The former prime minister made the confession during an interview with Fern Britton, to be broadcast on Sunday on BBC1, in which he said he would still have thought it right to remove Saddam Hussein from power.'* And this is the part, *"If you had known then that there were no WMDs, would you*

40

still have gone on?" Blair was asked. He replied: "I would still have thought it right to remove him [Saddam Hussein]".'

5 And then, at page 258, paragraph 4: *"Though Blair has always argued that Iraq would be better off without Saddam Hussein, to parliament and the public, he always justified military action on the grounds that the Iraqi dictator was in breach of UN-backed demands that he abandon his weapons of mass destruction (WMD) programme. It is possible that Blair has shifted his ground in anticipation of his*
10 *appearance early next year before the Chilcot inquiry. The inquiry has heard that Blair made clear to President George Bush at a meeting in Texas 11 months before the Iraq invasion that he would be prepared to join the US in toppling Saddam."*

15 And then there's a quote by Blair's former foreign policy advisor, *"Blair was "absolutely prepared to say he was willing to contemplate regime change if [UN-backed measures] did not work", Sir David Manning, Blair's former foreign policy adviser, told the inquiry. If it proved impossible to pursue the UN route, then Blair would be*
20 *"willing to use force", Manning emphasised."*

Then in the 2 paragraphs below, or the next paragraph: *'The Chilcot inquiry has seen a number of previously leaked Whitehall documents which suggest Blair was in favour of regime change although he was*
25 *warned by Lord Goldsmith, the attorney general, in July 2002, eight months before the invasion, that "the desire for regime change was not a legal base for military action". Manning told Blair in March that year that he had underlined Britain's position to Condoleezza Rice, Bush's national security adviser."*

30 And this is a quote from Manning, *"I said you [Blair] would not budge in your support for regime change,"* that's what he told Condoleezza Rice, *"but you had to manage a press, a parliament, and a public opinion which is very different than anything in the States,"*
35 *Manning wrote, according to a leaked Whitehall document. A Cabinet Office document also seen by the Chilcot inquiry, dated July 2002, stated: "When the prime minister discussed Iraq with President Bush at Crawford [his Texas ranch] in April, he said that the UK would support military action to bring about regime change provided that*
40 *certain conditions were met: efforts had been made to construct a coalition/shape public opinion ..." Now Blair appears to be openly admitting that evidence of WMD – the purpose behind the now discredited weapons dossier he ordered to be published with the help*

5 *of MI6 and Whitehall's joint intelligence committee – was not needed to invade Iraq, and he could have found other arguments to justify it. Blair did say in a speech to Labour party conference in 2004, over a year after the invasion: "I can apologise for the information [about WMDs] that turned out to be wrong, but I can't, sincerely at least, apologise for removing Saddam. "The world is a better place with Saddam in prison not in power."*

10 So this was then a very clear policy that was stated before the invasion and reconfirmed after the invasion that the whole idea about going down whatever route they wanted to go down, UN or non-UN, was to remove Saddam, and they didn't care a damn whether there authorization or no authorization. This was the act of 2 of the most, at least one of the most powerful powers, then at least, now there seems to be some problems, but, most powerful nations in the world to arrogate to itself the right to be the policeman of the world in total disregard of international law. And this is the clearest evidence that shows beyond reasonable doubt that they had launched this war, planned to launch this war without any further regard for international law.

25 Now if further evidence is required of their commitment from 1998 to proceed to effect their policy, which was regime change, right from the beginning, we can refer to the book written by George Bush, and I refer to P4, page 692. Bush first refers to at page 692 to the policy that I had earlier quoted which Rumsfeld also mentioned initiated by President Clinton. And if you look at the last paragraph, he quotes this: *"The Clinton administration responded by launching Operation Desert Fox. A four-day bombing campaign conducted jointly with Great Britain and aimed at degrading Saddam's WMD capabilities."* So they had already started bombing Saddam to degrade his weapons of mass ... this is an admission in 1998.

35 So the war had already begun in attrition form since President Clinton's time. And they quote President Clinton as saying, *"The hard fact is that so long as Saddam remains in power, he threatens the well-being of his people, the peace of his region, the security of the world. The best way to end that threat once and for all is with a new Iraqi government. A government ready to live in peace with its neighbors, a government that respects the rights of its people...."* So that is at page 227, 692. 227 of the book, and 692 of the P4.

And then at page 697 of P4, oh yes, before that, at page 695, he then continues with his policy, the 2nd paragraph, this is his policy: *"Coercive diplomacy with Iraq consisted of two tracks: One was to rally a coalition of nations to make clear that Saddam's defiance of his international obligations was unacceptable. The other was to develop a credible military option that could be used if he failed to comply. These tracks would run parallel at first. As the military option grew more visible and more advanced, the tracks would converge. Our maximum leverage would come just before they intersected. That would be the moment of decision. And ultimately, it would be Saddam Hussein's decision to make."*

So they make it very clear that they were already pursuing this 2-track policy called coercive diplomacy. And this is, that military use of force is part of this particular policy itself. And then at page 697, the 2nd paragraph: *"Above all, Tony Blair had courage."* They praised throughout the 2 books that they have each written, they praised each other to no end. So *"Above all, Tony Blair had courage,"* he says. *"No issue demonstrated it more clearly than Iraq. Like me, Tony considered Saddam a threat the world could not tolerate after 9/11."*

And then the next paragraph, *"If we had to remove Saddam from power Tony and I would have an obligation to help the Iraqi people,"* help the Iraqi people, this Bush and Tony, *"help the Iraqi people, replace Saddam's tyranny with a democracy."*

And then in that page, the final paragraph, *"In April 2002, Tony and Cherie visited Laura and me in Crawford. Tony and I talked about coercive diplomacy as a way to address the threat from Iraq. Tony suggested that we seek a UN Security Council resolution that presented Saddam with a clear ultimatum: allow weapons inspectors back into Iraq, or face serious consequences. I didn't have a lot of faith in the UN."* Hmmmm, not surprising. *"The Security Council had passed sixteen resolutions against Saddam to no avail. But I agreed to consider his idea."*

Then at page 233, which is page 698 or P4, the following page, he says, the 2nd last paragraph, *"I discussed Iraq with Gerhard,"* who is the Chancellor of Germany, *"during his visit to the White House on January 31, 2002. In my State of the Union address two days earlier, I had outlined the threats posed by Iraq, Iran, and North Korea. 'States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world,' I said. The media seized on the*

5 phrase "axis of evil." They took the line to mean that the three countries had formed an alliance. That missed the point. The axis I referred to was the link between the governments that pursued WMD and the terrorists who could use those weapons. There was a larger point in the speech that no one could miss: I was serious about dealing with Iraq." So he declares his clear intent.

10 Then at the following page 699, at that paragraph just after that line in the centre, "Two months after 9/11, I asked Don Rumsfeld to review the existing battle plans for Iraq. We needed to develop the coercive half of coercive diplomacy." So existing. That means 2 months after 9/11 there were already existing plans for Iraq. Battle plans for Iraq. Battle plans to attack Iraq were already in place. Nothing to do therefore with the Security Council Resolutions and so on.

15 And then at page 235 which is page 700, he says, just below the cut in the page in the centre: "Between December 2001 and August 2002, I met or spoke with Tommy more than a dozen times." Tommy is Tommy Franks, who was the central command, that means the chief of operations, military operations in that area; CEN-COMM they call it. "Between December 2001 and August 2002, I met or spoke with Tommy more than a dozen times," that means with his military chief. "The plan was getting better," the attack plan was getting even better, "but I wasn't satisfied. I wanted to make sure we had thought through as many contingencies as possible." And so on. Alright, his discussion with Tommy.

30 Then the next paragraph, "The updated plan Tommy presented in the Situation Room on August 5, 2002, resolved several key concerns. We had lined up basing and overflight permission from leaders in the Gulf. Tommy had devised a plan for Special Operations to secure suspected WMD sites, Iraq's southern oil fields, and Scud missile launchers. He had also designed a massive aerial bombardment that would make it costly for Saddam's elite Republican Guard units to remain in the capital, reducing the chances of a Fortress Baghdad scenario. "Mr. President," Tommy said in his Texas drawl, "this, is going to be shock and awe."

40 So this is it. Right from 2001, the operation Shock and Awe that we saw on TV, and it was called "Shock and Awe", dramatized that they had already planned an attack. So all this is subterfuges, as we shall presently show, this question of UN Resolution; and then we can understand the conduct of the 2 accused persons when they tried all

kinds of routes but at the end of the day always asserted their right that we will carry through with our plan, because they already had this plan, 2001 regime change, battle plans in position. Talked to his military chiefs, dozens of times to update the plan.

5

Now Blair, the accused. If you look at P3, 288, at page 288, this is the Attorney General's advice that we have referred to, and if you look at page 300, just above the signature of Attorney General, the paragraph before his signature, at page 300, it reads as follow, *"This is not to say that action may not be taken to remove Saddam Hussein from power if it can be demonstrated that such action is a necessary and proportionate measure to secure the disarmament of Iraq. But regime change cannot be the objective of military action. This should be borne in mind in considering the list of military targets and in making public statements about any campaign."*

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15

So it's clear. He had been advised. And we suggest, respectfully, that the distinguished Tribunal, Members of the Tribunal, accept that therefore Blair was acting in complete defiance of his own chief legal officer with regard to the basis upon which they were going to launch the attack. Of course later, because of this when he says be careful about making public statements about any campaign we will see how they "putar belit" [manipulate], how they manoeuvred, their arguments to kind of shape in with this. But the message we are sending is very clear: They had a clear programme for regime change and they were going to effect it come what may.

20

25

Now the other, the next 2 generalized defences I have put forward I will use as a basis for responding, if there is any suggestion made that there is no individual responsibility or that ex-Heads of State are immune from any action. But before I proceed to my next point, my colleague, Professor Francis Boyle wants to say something about regime change, if he can, with your leave.

30

35 **Professor Francis A. Boyle:**

Your Honours, the doctrine of regime change as well as the doctrine of intervention on humanitarian grounds were decisively rejected by the International Court of Justice in the Nicaragua decision. So whatever speculations you might hear by professors of international law in the US and the UK who like their governments, the Nicaragua decision is the leading case in international law all over the world on the threat and use of force. And I submit that in respect of these 2 doctrines, I will be getting to other matters on rebuttal, but on these 2

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doctrines, this Court must follow the teachings of the World Court in the Nicaragua decision.

5 On regime change, let me refer you to paragraph 263 of the Nicaragua case, it's in List of Prosecution Documents 2, P4, page 133; I'm sorry, page 242, paragraph 263, and I quote and will interpret. Does everyone have page 242, paragraph 263 of the Nicaragua case?

10 *"263. The finding of the United States Congress also expressed the view that the Nicaraguan Government had taken "significant steps towards establishing a totalitarian Communist dictatorship".*

15 This is exactly what the United States Congress did on Iraq. As my colleague Professor Nijar pointed out on adopting the Iraqi Liberation Act, so called Iraqi Liberation Act calling for regime change against Iraq, just as Congress did calling for regime change against Nicaragua, and the World Court said,

20 *"However the regime in Nicaragua be defined, adherence by a State to any particular doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty, on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State."*

25 So notice, if we accepted the doctrine of regime change, the Americans could come here, and Britain, and say let's have regime change in Malaysia. We don't like the Malaysian government. And the World Court soundly repudiated this doctrine in the Nicaragua case. To return,

30 *"Consequently, Nicaragua's domestic policy options, even assuming that they correspond to the description given of them by the Congress finding, cannot justify on the legal plane the various actions of the (United States) Respondent complained of. The Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another (State) on the ground that the latter has opted for some particular ideology or political system."*

40 Now you've heard Professor Nijar quote language by both Blair and Bush admitting that regime change was one of the reasons; and that is clearly illegal going as far back as the Nicaragua case, repeatedly

reaffirmed by the World Court as recently as *Congo v. Uganda*. They have incriminated themselves, in their own words.

5 Finally, with respect to this doctrine of humanitarian intervention, which Bush and Blair have attempted to relate to regime change: They are intervening to save the Iraqi people from their own government. The Reagan administration made this exact same argument to justify its illegal and criminal war against Nicaragua. And here is what the World Court said in paragraph 269, page 246 of
10 your Bundle. I'm sorry, page 246 paragraph 269 of your Bundle. Oh I'm sorry, paragraph 268, page 244 Nicaragua case.

15 *"268. In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the*
20 *contras. The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States, and cannot in any event be reconciled with the legal strategy of the (United States) respondent State, which is based on the right of collective self-*
25 *defence."*

Your Honours, the United States has been on notice since 1968 in the Nicaragua case ruling against it that regime change is illegal, and humanitarian intervention is illegal. And Bush and Blair have both
30 incriminated themselves in their own documents and statements here that this were 2 of the reasons for why they waged war against Nicaragua. And I submit that this Court, respectfully, is bound to apply the rulings of the World Court in the Nicaragua case. Thank
35 you.

Professor Gurdial Singh Nijar:

I just want to add that the reaction of the United States to this decision, they rejected ...

40 **Judge Abdul Kadir Sulaiman:**

How long will you take on that?

Professor Gurdial Singh Nijar:

I'm coming to the final part of my submission which is pre-planning and preparation. I think I will take about an hour and a bit.

5 Judge Abdul Kadir Sulaiman:

So if that be it, I think we will adjourn here, give you half an hour, and we come back at 11.

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20th November 2011 – Session 2**Professor Francis A. Boyle:**

5 Your Honours, my colleague Professor Nijar has been slightly delayed, so let me present and continue presenting his submissions. Is that acceptable? Thank you. As soon as he shows up I will yield the podium to him.

10 We come to the question of the alleged defence of no individual responsibility. And I don't have to say very much about that because this is a sacrosanct principle of international law going all the way back to the Nuremberg Charter, judgment and principles – that of course there is individual criminal responsibility for Heads of State and Heads of Government. And that is a long line now of precedents
15 that have been established, also the Tokyo Tribunals, the same principles, prosecution the Japanese war criminals, the Statute for the International Criminal Tribunal for the former Yugoslavia, the Statute for the International Criminal Tribunal for Rwanda, and the Statute for the International Criminal Court. So nothing could be clearer that
20 there is individual criminal responsibility for Heads of State and Heads of Government.

And I will now yield the podium to my colleague Professor Nijar. Thank you.

25

Professor Gurdial Singh Nijar:

I must apologise to the distinguished Members of the Tribunal for being caught up downstairs. Thank you.

30 I now proceed to the final part of my, if you look at the Charter, the Charter in defining the war crime, I'm referring to the Charter of the Kuala Lumpur War Crimes Commission. Article 8, part 1 Article 8, Crimes against Peace Part 1. And it talks about crimes against peace. Crimes against peace refer to planning, preparation, initiation or
35 waging of wars. So there is also planning and preparation. And it is to this element that I now turn in my the final stage of my submission.

40 This Article 8 actually is inspired by Article 6(a) of the Nuremberg Charter. It's a word for word the same, almost. Now at page 42 of my submission, I would say that plans have been laid out long in advanced and we have, yesterday, when the Registrar read the charges and additional facts of the charge, that paragraphs 4 and 5, this lists out the preparation and planning to attack Iraq.

I have this morning also referred to some broad policy that had been initiated by the US followed by the UK to change the regime, to go in and change the regime of Iraq. I just want to cite 3 other documents in support of that position. And if I could refer to P3, page 319. Now this is a quotation taken from a book called 'Blair's Wars' and the credibility of this book, of what is suggested in this book can be seen by the fact, it's a book by Anthony Howard and was voted the Sunday Times, part of the Sunday Times' "Book Of The Year". And at paragraph, the 2nd paragraph at page 319,

"Blair had no idea how vigorously some of the 'principals' in the Bush foreign policy team had been advocating military action against Iraq so soon after the attacks on the Twin Towers. It was in the first emergency meeting of the National Security Council on 11 September itself," 2001 that is, "that Rumsfeld asked: "Why shouldn't we go against Iraq, not just al-Qaeda?"

And in that same paragraph, if you go 8th line from the bottom of that paragraph it says,

"Undeterred; Rumsfeld and Wolfowitz held secret meetings about opening a second front – against Saddam. Powell, Colin Powell, "was excluded. The strategy envisaged the use of air 'support and the occupation of southern Iraq with ground troops, to install a new government run by Ahmed Chalabi's Iraqi National Congress. Under the plan American troops, would seize the oil fields around Basra, in the south, and sell the oil to finance the opposition."

And then at this, in this P3 at page 315, this is an extract from "Articles Of Impeachment Against George W Bush – Centre for Constitutional Rights", it's a well respected centre in the United States at page 317, again they say at the 2nd paragraph, 7th line, or the 6th line,

"Their interest in using 9/11 as cover for attacking Iraq was evident within hours of 9/11. On the very day of the 9/11 attacks, Defense Secretary Rumsfeld instructed his aides to start thinking about attacking Iraq. The day after the attacks, Rumsfeld said that Iraq had better targets for military action than Afghanistan, implying that we attack Iraq even if it had nothing to do with 9/11" and so on.

But if you go down the 3rd line from the bottom of that paragraph,

“On September 15, 2001, Bush stated that “once Afghanistan has been dealt with, it will be Iraq's turn,” and a day later, Wolfowitz said that 9/11 created an opportunity to attack Iraq.”

5

So this was the planning already, well in advance, which is one of the elements in the Crime Against Peace. Now this was in fact was, this is upon 9/11, but if you look at page, if I invite Your Honours respectfully to look at page 396; before that if you could kindly look at page 375.

10

This is a report that was prepared, it's an investigative report prepared at the direction of a member of the House of Representatives of the United States. And he is known as John Conyers. And this is a minority report, and they have carried out an investigation, and had hearings, and this is the first report that came out, part 1. The final report, it's the 1st part is identical to the report that I am tendering.

15

Judge Shad Saleem Faruqi:

20

Could you assist us? What's the reference?

Professor Gurdial Singh Nijar:

This is at page 375 of P3. This is the 1st report that came out by the Judiciary Committee Democratic Staff if you can read that. It's what they call a minority report and it was produced at the direction at John Conyers, sometimes it's called the John Conyers's report. And it was triggered by ...

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Judge Alfred L. Webre:

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Sorry to interrupt. I'm a bit confused. What is the page of your submission that you're referring to now? Which paragraph?

Professor Gurdial Singh Nijar:

Paragraph 5.2

35

Judge Alfred L. Webre:

Could we go to 5.1?

Professor Gurdial Singh Nijar:

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Yes, I've just completed 5.1 where I quoted the document at page 319 which is

Judge Alfred L. Webre:

Now the reason for my confusion, and I may have missed something is that you say on 9 November within 2 days of 9/11. Now 9/11 is September 11 2001. 9 November would be 9 November 2001, that's
5 within 2 months of 9/11. Do you mean within 2 months of 9/11?

Professor Gurdial Singh Nijar:

Within 2 months, yes.

10 Judge Alfred L. Webre:

That's what I was trying to understand the meaning of that paragraph and I couldn't get it. Thank you. Sorry.

Professor Gurdial Singh Nijar:

15 That is why I'm quoting the actual page of the ... as I've said earlier I'm going to rectify some of these errors but I'm going to the actual page ... start focus on this ... I apologise

Professor Gurdial Singh Nijar:

20 Now at page 42 of my submission, item/paragraph 5.2, and I'm referring to P3 at 375. And I was explaining that this is a report produced at the direction of representative John Conyers who is a ranking member of the House Judiciary Committee of the House of Representatives of the United States. I have only managed to secure
25 this report lately, but I will make the whole of the final report available to Members of the Tribunal and try to secure one for the defence as well. But the parts I'm going to rely on are reflected in the pages, in P3 itself.

30 The point is that to prepare this report, this committee reviewed, I'm quoting from them, tens of thousands of documents and materials. They had testimonies submitted at 2 hearings. And this was mainly in relation to the Downing Street minutes because in the Downing Street Minutes, in the UK Cabinet, it had been revealed that intelligence was
35 being manipulated by the Bush regime to fix it around the policy. They wanted to attack Iraq and they were manipulating the intelligence and the evidence in relation to that policy. So this was an exposure that came out in the UK press, very widely. This was a quote from the actual discussions that were going on between the US
40 and the UK.

As a result of that, the House Judiciary Committee of the House of Representative, like the Parliament of the United States, they were

very concerned and they set up this, yes, and they set up this Committee to look into this. And they looked at tens of thousands of documents, hundreds of media reports, articles, books including interviews with past and present administration employees and other confidential sources. They also looked at scores of government and non-profit reports, hearings and analysis, numerous letters and material, and so on; staff interviews, relevant case laws.

So for the final part of my submission, I'm therefore going to get the benefit, present the benefit, of this report and cite from this report to the Honourable Members of the Tribunal because they have done all that incredible work and it will be appropriate for us then to refer to that. As far as the main report itself is concerned, the whole report I will leave it with the Registrar for easy consultation by members of the Tribunal.

Now I refer to P3 at 396. What follows now is extracts from "The Constitution in Crisis", from 375 until 495, until the end. The report is called "The Constitution in Crisis". I'm going to page 396, yes. Or maybe before that, if I just refer to 393 because that's the chapter I'll be referring to. Chapter III is "Detailed Factual Findings". And the following page 395, the 1st paragraph,

"Determination to go to War before Congressional Authorization

There are numerous, documented facts now in the public record that indicate the Bush Administration had made a decision to go to war before it sought Congressional authorization or informed the American people of that decision. Our investigation shows that while the roots of this decision existed even before George W. Bush was first elected president, it became a foregone conclusion in the aftermath of the September 11 tragedy. Due to the release of the so-called "Downing Street Minutes" materials, we are now able to confirm that there were agreements between the Bush and Blair governments in the spring and summer of 2002 to go to war in Iraq. Further evidence of that agreement to go to war exists by virtue of the Bush Administration's marketing campaign to sell the war to the American people commencing in the fall," fall is autumn, the latter part, second half, "of 2002, and the efforts to use the United Nations as a pretext to go to war later in 2002 and early in 2003."

If I could invite your attention to the following page, right at the bottom [Page 396]

“Avenging the Father and Working with the Neo-Cons

5 *Our investigation has found, in retrospect, there were indications even*
before September 11, 2001 that President Bush and key members of
his Administration were fixated on the military invasion of Iraq,
regardless of the provocation. A key piece of the puzzle was revealed
10 *in a series of interviews between then Governor Bush and writer and*
long-time family friend Mickey Herskowitz when, according to
Herskowitz, Mr. Bush stated: “One of the keys to being seen as a
great leader is to be seen as a commander-in-chief. . . . My father,”
his father was President Bush, *“had all this political capital built up*
when he drove the Iraqis out of Kuwait and he wasted it. . . . If I have
15 *a chance to invade . . . if I had that much capital, I’m not going to*
waste it.”

The 1st accused, as narrated to his long-time family friend. And the source

20 **Mr. Jason Kay Kit Leon:**

I would invite the Tribunal to note down that this is quite a long strand of hearsay. This statement has a few levels of hearsay. The long line of hearsay. I just wish the Tribunal to record the long strand of hearsay for this.

25

Judge Abdul Kadir Sulaiman:

It’s excerpts of documents.

Mr. Jason Kay Kit Leon:

30 I would just like to point out that it... I just wish the Tribunal to make a record.

Judge Abdul Kadir Sulaiman:

35 Bear in mind that hearsay evidence is admissible, but he is referring to the document. Are you objecting to the document?

Mr. Jason Kay Kit Leon:

No I am not.

40 **Judge Abdul Kadir Sulaiman:**

Alright.

Professor Gurdial Singh Nijar:

I just want to very quickly say 2 things. First is our Charter allows for hearsay evidence. And secondly, this is not something unusual to our Charter because as I've submitted yesterday the International Criminal Tribunal for the former Yugoslavia has a precise provision that allows for a reference to a large number of documents. And the third point I want to make with regard to the weight of this is, as I said I will leave the whole document there, this is the Judicial Committee, investigation by the Judicial Committee of the House of Representative of the United States. And this report is published. My learned friend is free to controvert it by looking at any documents by looking at any documents that controvert any specific element of what we're suggesting.

So we would respectfully submit that the weight to be accorded should be duly taken into account, as far as this is concerned, yes. These are actual quotes, and if you look at the quote that I've just made, then we will see that this is footnoted, and the footnotes appear at the back of this, from pages 476 onwards to the end to 520. It's possible to check against that.

And then at page 397, they're trying to give the motivation, why this man, the 1st accused so fixated on attacking Iraq at all cost. So one of the things that they worked on is the question of the fact that he wanted what his dad did not, or would not, want to do. And at the 2nd paragraph, starting with the word "in addition to", the 2 lines from the bottom,

"Discussing Saddam Hussein, on September 26, 2002, Bush declared: After all, this is the guy that tried to kill my dad at one time."

These are quotes from the 1st accused. And where this comes from is at page 482, footnote 74.

Now this next point is very interesting. The next paragraph: Because this plan to establish the hegemony of America and in particular to get rid of people who were blocking the strategic as well as the political interest of America was something that had been hatched long before, it's now in the public domain, long before Dick Chaney, Rumsfeld and all these what they're called 'neo-cons' came into power. They had already, in writing, envisioned a plan that included the removal of people like Saddam. And the next paragraph makes it very clear. It says,

5 *"It is also significant that key members of the Bush Administration were part of a group of so-called "neo-conservatives" or "neo-cons" who were dedicated to removing Saddam Hussein by military force. The notion of toppling Saddam Hussein and his regime dates as far back as the 1990s, when it had been a priority of a circle of neo-conservative intellectuals, led by Richard Perle, a former Assistant Secretary of Defense under President Reagan, and Paul Wolfowitz, an Undersecretary of Defense for Policy under President George H.W. Bush. The neocons did not have the power to effectuate their goals during the Clinton Administration," because they were out of power, "but they remained tied to one another and to Dick Cheney through a number of right-wing think tanks and institutes, including the Project for the New American Century."*

15 So this is the project that they had already envisioned and put down in writing, the Project for the New American Century, and these guys, with respect, were then when President Bush came into power then they formed the key members of the Cabinet and continued with this
20 neo-con policy of hegemony, American hegemony. So the next paragraph says,

25 *"On January 26, 1998, the Project for the New American Century issued a letter to President Bill Clinton explicitly calling for "the removal of Saddam Hussein's regime from power"*

30 So if you look then at page 482 and footnote 76, the people who wrote this request are set out. It says letter from Elliot Abrahams and all these 16 people who include Donald Rumsfeld, Paul Wolfowitz, and so on. And the web page is indicated very clearly. It is the web page of this same organization that wrote this letter. So that's the strength of this report and its quotation.

35 Then we have, right at the bottom,

40 *"In September 2000," which is 1 year before the 9/11 attack, "a strategy document commissioned from the Project for a New American Century by Dick Cheney," who later became, of course the Vice President of the United States, "argued that A[t]he United States has for decades sought to play a more permanent role in Gulf regional security. While the unresolved conflict with Iraq provides the immediate justification, the need for a substantial American force*

presence in the Gulf transcends,” that means goes above independent of, “the issue of the regime of Saddam Hussein.”

5 So this is it. Long before that, they said that this is the higher objective that we have to do. So it’s a permanent role in the Gulf regional security. So that’s the whole point. There was a strategic interest in the Gulf which will bring other issues, of course, like oil and of course Israel, sitting right in the centre of the Gulf regional security area. And I think this is the backdrop that has been revealed
10 by the Americans themselves, the Judiciary Committee.

And then the next paragraph,

15 *“There is other evidence from within the highest levels of Bush’s cabinet of an early fixation on invading Iraq. On 60 Minutes,”* which is a TV programme, *“former Bush Treasury Secretary Paul O’Neill reported that as early as January 30, 2001, members of the Bush Administration were discussing plans for Saddam Hussein’s removal from power: “From the very beginning, there was a conviction that*
20 *Saddam Hussein was a bad person and that he needed to go. It was all about finding a way to do it. That was the tone of it. The president saying, “Go find me a way to do this.”*

25 Right, and this is an actual broadcast which at page 483, footnote 80 gives the whole broadcast itself. It’s available at cbsnews.com and so on. So I suppose if there is any doubt as to this, this can be ...

30 Now if we ... So this was the whole point. There was this regional interest. There was this oil, there was Israel. And this became an obsession almost. And to tie it up with the 2nd accused, if you could look at P4, and now I’m at page 43 of my submission, the 2nd paragraph at the top; we can look at page 561 of P4.

35 This whole letter, document starts at **page 558**. And it’s a letter from Richard Dearlove. Now Richard Dearlove according to the document I submitted which is headed Chronology which also includes the Principal Characters. At the second last page from the back you’ll see that Dearlove is head of the British Secret Intelligence Service known as MI6, and in official terminology he was known as “C” because you
40 know it’s a secret service so it’s kind of secret. So “C”, he’s referred to as “C”, but here it’s Richard Dearlove’s private secretary to Sir David Manning.

Sir David Manning was head of the Foreign Policy National Security Advisor and they were the ones who are running all this whole policy on the war on Iraq. So he says here, and this is downloaded from the Iraq Inquiry official webpage, this was the Chilcot Inquiry. So that's its authenticity. And it's marked "*Top Secret*" but it was declassified in April this year, that's how we are able to get this document otherwise it will remain secret to us. And it starts off by saying,

"I attach three papers produced by [SIS4]. The first is that paper you discussed with him last Friday, the second an expansion of it and the third some thoughts"

558 first, because the documents start at 558, and it says at the top there it says under Iraq that we are attaching 3 papers and he says what those 3 papers are. Now I refer to a part of this document which is at page 563. And this is from the 2nd attachment. So if you look at 561 the heading is attachment 2 to letter of 3rd December. So if you just quickly look at 561, Iraq, sorry sorry, I apologise. Let me start again. 558 is the start of the document. 558 says, "I'm attaching 3 documents." Yes. Now at 561 is the 2nd attachment, yes, sorry. I apologise. And it starts off with "*IRAQ – Further Thoughts*". And it says, item 1 says,

"At our meeting on 30 November," that's 2001, "we discussed how we could combine an objective of regime change in Baghdad with the need to protect important regional interest ..."

So this is the point, that they were discussing regime change related to protecting their regional interest in the Gulf. So this ties up, this is the British document. So the British document hand-in-glove completely with the US objective well before 9/11. That is the gist of my submission on this point.

And now that is why, now I come back to my submission at page 43. That is why in my paragraph (a), 5.3 – 9/11, so they already had this plan and 9/11 came and it provided according to the comments of the persons I've cited in (a) Professor Sands the international lawyer as well as the Centre for Constitutional Rights they say that it provided a "*perfect pretext*" to launch the illegal war. So it was quite incredible how they have been planning to advance their interest, regional interest, their economic interest, protect certain of their allies and lo and behold, there was this gift of 9/11 provided the perfect pretext, or

as the Centre for Constitutional Rights says, “*the cover for attacking Iraq.*” So this came.

Judge Alfred L. Webre:

5 May I ask a question? Yes, the “perfect pretext.” I’d like to ask this question, and it’s a serious question. We go to the particulars of the charge.

10 This is paragraph 4, Bush had contemplated waging war against Iraq as early as Sep 2001, then we go to Article 8 of our Charter, the Charter of the Tribunal, crimes against peace, the definition that you’ve read. A crime against peace refers to “*planning, preparation, initiation or waging of war of aggression ... or participation in a common plan or conspiracy for the accomplishment of any of the*
15 *foregoing.*”

Now you have just been referring to, for example, the letter of January 28th, 1998 for the Project for the New American Century and contemporaneously with that the Project for the New American
20 Century which included the Secretary-to-be, Secretary of Defence Donald H. Rumsfeld on Sept 11, 2001. We’re speaking about a new Pearl Harbour which would have manifested as 9/11, and you spoke of the patterns that dove-tailed, that is the plans for invading Iraq, prior to 9/11 and then all of a sudden you say that George Bush had
25 contemplated waging war against Iraq as early as 15th Sept 2001.

Isn’t that a misleading statement? Doesn’t it appear that there are sufficient *prima facie* facts to indicate that there may have been a conspiracy to engage in by the principals for the Project for a New
30 American Century which became principals in the Bush administration to engage in a false-flag operation on 9/11 one of whose parallel tracks included the invasion of Iraq, and that just the propaganda was then rolled out and so that we’re actually trying, at least accused number 1, on the charge of conspiracy, of conspiracy
35 which may include conspiracy to create the pretext, namely the false-flag operation of 9/11. And I mean that as a serious question.

Professor Gurdial Singh Nijar:

40 Thank you for that question. If I understand you right, Judge, you’re saying that we should be proceeding on the basis of a conspiracy?

Judge Alfred L. Webre:

5 Yes. If you look at the Nuremberg; the Nuremberg proceeded on a number of major legs. Leg number 1 was the conspiracy to conspire to wage war of aggression. And then you went to all of the other steps. And it seems to me that we have an analogous situation here where a number of principals, that we can say are principals for the Project for a New American Century and others who then become cabinet members in the administration of George W Bush conspired in a number of parallel actions, one of which was a war on Iraq. Another
10 of which was a pretext action which we can call a false-flag operation called 9/11.

15 Now, that is not in the charges so we don't have evidence of that but we could schedule a future session of the Court to deal with that particular pretext. But I'm just saying that from the documents here to say that Bush had contemplated waging war since early as 15 September 2001 based on the evidence adduced and based on Article 8 of our Charter is misleading it and incomplete, and that we should look at the Project for a New American Century and its new Pearl
20 Harbour language in parallel with its calling for the regime change in Iraq in 1998.

Professor Gurdial Singh Nijar:

25 I think I'll let my colleague handle this because he's actually got the document that he can ...

Professor Francis A. Boyle:

30 Thank you for the comment, er question, Judge Webre. In fact, I have prepared a submission. The Bush administration was an ongoing criminal conspiracy under international law and US domestic law. I would ask the Registrar to provide this to the members of the Tribunal and also to the Defence. I won't go through all of that but I will be happy to answer your questions later on the submission itself.

35 But here, with respect to the defendant Bush, I wanted to draw to your attention as quoted in the submission US Army Field Manual 2710. Yes, I wanted to draw your attention, and specifically to answer Judge Webre's question.

40 US Army Field Manual 2710 – The Law of Land Warfare, that is still valid and binding in the United States and applies to the United States' Pentagon as well as to President Bush as Commander-in-Chief of United States' armed forces, Secretary of Defence and the other

civilian officials involved. And here let me quote Section 2, Crimes Under International Law, paragraph 498. Now this is the United States government's own field manual; and the British have a similar manual which I had not studied, but it's pretty much the same going back to the Nuremberg Charter, judgment, principles, the Tokyo judgment, and the subsequent prosecutions that came after. So this has been black letter international law since 1946. Let me quote paragraph 498 from the US government's own Field Manual – Crimes under International Law

“Any person whether member of armed forces or a civilian,” which in this case would include Bush, Rumsfeld and the rest of them, who permits an act which constitutes a crime under international law is responsible therefore and liable to punishment. Such offences in connection with war comprised ‘crimes against peace’”

Nothing could be clearer then that a crime against peace is war crime. It says crimes under international law. Even in accordance with the United States government's own official document binding troops in the field and civilian officials. It is quoted and mentioned in my written submission.

And then to get directly to paragraph 499, the term “war crime” is the technical expression for a violation for the law of war by any person or persons, military or civilians, which would also apply to Bush in his capacity as Commander-in-Chief of US Armed forces. Every violation of the law of war is a war crime. So a crime against peace is a war crime that can, and in this case, has been committed by the Defendant Bush and the others.

And finally, to get directly to your point Judge Webre, paragraph 500 says conspiracy, incitement, attempts and complicity; conspiracy which I argue in my submission, direct incitement and attempts to commit as well as complicity in the commission of crimes against peace are punishable. So you're perfectly correct to raise this conspiracy charge. And indeed that is in the Nuremberg definition of a war crime itself, if you look at the Nuremberg charges, there is conspiracy to wage an aggressive war. Thank you.

Professor Gurdial Singh Nijar:

Thank you. I'm at page 43 of my submission. And there's a great deal of information along the same line as I have been averting to. That there was a sustained programme of action before and after September

11. And at paragraph 5.3, I'm talking about September 11. After that there were these investigation showing attempts, or rather comments made, very directly on pursuing this war to get Saddam out.

5 And in my, under (b), I even refer to The Times story, if I could get the actual photocopy of but, but this is very famous because it was brought out in Times' story which was posted on March 23, where Bush, as he was walking around the corridor, he poked his head into Condoleezza Rice's room and she was having a briefing about strategy sessions' with 3 senators. When he asked what are we doing, she said I'm informing them about Iraq, and he says, his comment is there, Bush's infamous about F* Saddam,

15 "F** Saddam" he said, "we're taking him out". This very famous, it was posted in the Times' story and he in fact, this shows the extent of disregard, blatant disregard, you know it's almost abuse to talk about another Head and launching a war in these kind of terms. Such was the obsession and the arrogance of the 1st accused.

20 Look at this investigative report. I come back to this investigative report. They present and analyze the Downing Street Memos. And I invite your Honours to page 405, yes, at page, before that let me come back to page 403, so it's 403 we have the 2nd paragraph,

25 "White House officials were also telling Seymour Hersh that the decision to go to war had been made and that a process to support that determination had been created: By early March, 2002, a former White House official told me, it was understood by many in the White House that the President had decided, in his own mind, to go to war

30

...

35 Also, in March 2002, President Bush reportedly poked his head into the office of National Security Adviser Condoleezza Rice and said "F*** Saddam. We're taking him out."

40 Yes, 403. I just referred to the fact that decision to go to war had been made as early as March 2002. And then that famous quote that I quoted about Bush, very unfortunate rude remark is in the following paragraph. And then the following paragraph,

"By late March 2002, Vice President Cheney was telling his fellow Republicans that a decision to invade Iraq had been made:"

So this is already 2002, long before the Security Council resolution. And just to look at the highlighted part of that quotation,

5 *“The question was no longer if the U.S. would attack Iraq, he said. The only question was when.”*

And this is by the Vice President; comments attributed to the Vice President of the United States of America. And then,

10 *“By July of 2002, Condoleezza Rice was offering further confirmation that President Bush’s mind was made up regarding a decision to invade Iraq. At this time, State Department Director of Policy Planning Richard N. Haass held a meeting with Rice and asked if they*
15 *should discuss Iraq. Rice said, “Don’t bother. The president has made a decision.”*

And then at page 404,

20 *“We know that, in early August 2002, President Bush and Prime Minister Blair spoke by telephone and cemented the decision to go to war. A White House official who read the transcript of their conversation disclosed that war was inevitable by the end of the call. On August 29, 2002, after three months of war exercises conducted by*
25 *the Pentagon, President Bush reportedly approved a document entitled “Iraq goals, objectives and strategy.” The document cites far-reaching goals and the study refers to “some unstated objectives” including installing a pro-American government in Iraq and using it to influence events in the Middle East, especially in Syria and Iran.”*

30 And then the next 3 paragraphs show that actually bombing had already started as early as 2002. By May 2002, bombs were already being dropped. The New York Times report is quoted that they are concentrating the attention on a major air campaign and ground
35 invasion. So there was a release of the war plans already, and the New York Times article, Rumsfeld in his book says *“we tried to prevent that article from coming in”* but the New York Times only edited the article. So this, at the appropriate time, if there is any question about the authenticity of this we can make this book by Rumsfeld himself on
40 this issue available to the defence.

And then, if you look at the 2nd last paragraph from bottom,

“The step-up in bombing was incredible. In March-April of 2002, there were hardly any bombs dropped at all. By the time September came along, several hundred tons of bombs had been dropped. The war had really started.”

5

And this is, if you look at page 485, this is the testimony of Ray McGovern given at the hearing before this Commission itself.

And then, 405, at the top page,

10

“The United States and Britain initially attempted to justify these raids by claiming that “the rise in air attacks was in response to Iraqi attempts to shoot down allied aircraft.” However, in July 2005, in response to British MP Sir Menzies Campbell’s request for data, the British Ministry of Defence released figures that would indicate that the true reason for the raids was to put pressure on the Iraqis. The data shows that in the first seven months of 2001 the allies recorded a total of 370 provocations by the Iraqis against allied aircraft. But in the seven months between October 2001 and May 2002 there were just 32. The records show that the allies dropped twice as many bombs on Iraq in the second half of 2002 as they did in the whole of 2001.”

15

20

So there it was. The next paragraph is a quote by the Lieutenant-General involved in this secret. The magnitude of the bombs dropped, it’s quite incredulous. And then we come to the Downing Street Memos; and I’m at page 44 of my submission.

25

Now, so under the Downing Street,

30

“The Downing Street Minutes, which cover a time period from early March 2002 to July 23, 2002, provide the most definitive documentary evidence that the Bush Administration had not only made up its mind to go to war well before it sought congressional authorization to do so but that it had an agreement with the British government to do so. Collectively, the documents paint a picture of US and British officials eager to convince the public that war in Iraq was not a forgone conclusion, even as exacting plans for war were being laid. This section of the Report includes a description of each of the critical elements of these documents as they relate to that determination to go to war by the spring and summer of 2002 and details how the Downing Street Minutes have been confirmed and corroborated as accurate.”

35

40

So this part will not only show that there was this plan; this is revealed by the Downing Street Minutes but also how the Downing Street minutes dovetail with actual events that unfolded, for example, they said, *"ok the best time to attack is spring."* And yes, the 1st day of spring, the attack was launched on March 19. So all the documents, what they say and an analysis of how they fit to actual events is, forms the next part of this report.

And if you can quickly go to the page 406 to look at some of the minutes, the Downing Street minutes. I have also produced the actual Downing Street minutes, the actual minutes in my Bundle of Documents which form part of the evidence.

So if you look at page 406 under the first *Iraq: Options Paper (March 8, 2002)*, and if we keep a finger in this page, 406 and if you can look back, just to confirm the fact that all these minutes are there. If you look back at page 336 so if you just keep a finger in this, I'm sorry about this, ... this is the actual document that says, *"Secret for UK eyes only"* this is the actual document of the Downing Street minutes, that means the UK document. And we will see that if you look at the last paragraph of 336,

"A legal justification for invasion would be needed. Subject to Law Officers advice, none currently exists. This makes moving quickly to invade legally very difficult. We should therefore consider a staged approach, establishing international support; building up pressure on Saddam, and developing military plans. There is a lead time of about 6 months to a ground offensive."

So this was the option that was being planned, a ground offensive, means attack on Iraq. And then the document, if we now come back to 406, I think I'll just referred to this document, the final document, the 406, come back to 406. What I've suggested is that all the documents are at various pages, and you can find that, but the summary is here at 406. And then, so 406, under Iraq Options, the 2nd paragraphs, if you see line number, the highlighted part,

"The document also states, "[t]he U.S. has lost confidence in containment. Some in government want Saddam removed. The success of Operation Enduring Freedom [the military code name for the U.S.-led invasion of Afghanistan], distrust of UN sanctions and inspection regimes, and unfinished business from 1991 are all factors."

And then, there was a plan, the plan in the next paragraph. The plan to have initiate an inspections programme and then weave it such that this inspection programme will be rejected by Iraq and therefore they will have a nice justification which they can give to the world at large and this is that,

“A refusal to admit UN inspectors, or their admission and subsequent likely frustration, which resulted in an appropriate finding by the Security Council could provide the justification for military action.”

So they said, *“let’s try to wrongfoot Saddam. Let’s force him to something which we think he would not do.”* But then, they say, *“Saddam will try to prevent this. They said yes, we can try and do that but we gotta be careful because he might be smart enough and try to prevent us from wrong footing him,”* but they said never mind, *“he has miscalculated beofre [sic]. So we don’t know, you know. It could work,”* they said. *“Let’s try and do this manipulative manoeuvre.”*

And then we have the next paper, this *Iraq Legal Background* paper, the Downing Street Memos which appears at 366. I will leave that out for the moment, er it’s 346, sorry, not 366, that document was 346. And the highlight of this, at page 406, it has been summarized at 406, so it says at the 3rd line,

“The most significant aspect of this document is its revelation that the British government did not agree with the Bush Administration’s belief that any State can enforce United Nations resolutions. The Bush Administration ultimately relied on this view to justify pre-emptive war one year later.

One analysis of Security Council Resolutions suggests that, while the British hold the view that it is for [the Security] Council to assess whether any such breach of those obligations has occurred, the United States has a rather different view: they maintain that the assessment of breach is for individual member States. We,” that means the British, *“are not aware of any other State which supports this view.”*

The next memo is the **David Manning memo** and this is dated March 14, 2002, and the 2nd paragraph I’ll read,

“David Manning advises Prime Minister Tony Blair that President Bush had yet to find the answers to the big questions, such as: how to

5 *persuade international opinion that military action against Iraq is necessary and justified; what value to put on the exiled Iraqi opposition; how to coordinate a US/allied military campaign with internal opposition (assuming there is any); what happens on the morning after?*

10 *Manning also wrote, [t]he issue of the weapons inspectors must be handled in a way that would persuade European and wider opinion that the US was conscious of the international framework, and the insistence of many countries on the need for a legal base. Renwed refused [sic],” that means they also make typographical errors, not just the prosecution, so, “renewed refusal by Saddam to accept unfettered inspections would be a powerful argument.”*

15 *So there they are shaping up, they are saying, “Let’s do something that he will be forced to refuse because before that he has said he won’t allow people to enter palaces so let’s force the situation and then we know he will refuse, we hope he will refuse, we expect him to refuse and then we will say there, Saddam is not cooperating.” But as we*
20 *will see, this never came about.*

And then the next one is the Meyer, British Ambassador in Washington who had a meeting with Paul Wolfowitz and there, if you see the last paragraph, David Manning who was running the
25 *operations, he says, the 2nd line,*

“We backed regime change, but the plan had to be clever and failure was not an option.

30 *...
I then went through the need to wrongnfoot [sic] Saddam on the inspectors and the UN SCRs [Security Council Resolutions] and the critical importance of the MEPP [Middle East Peace Process] as an integral part of the anti-Saddam strategy.”*

35 *So here they want to wrongfoot Saddam, “Let’s trick him by a Security Council resolution that he cannot fulfil.”*

40 *...
Meyer goes on to note that Wolfowitz said that it was absurd to deny the link between terrorism and Saddam.*

*...
Mr. Meyer had previously recalled that in the fall of 2001, Blair told Bush he should not get distracted from the war on terror. As noted*

above, Bush replied, I agree with you Tony. We must deal with this first. But when we have dealt with Afghanistan, we must come back to Iraq”

5 And the **Ricketts Memo**, Ricketts is the Political Director of the Foreign and Commonwealth Office and this Foreign and Commonwealth Office sits in the Cabinet, in the Prime Minister’s office. And this interesting, at the 3rd line,

10 *“This memo is an early indication that at least the British were concerned that unmanipulated intelligence did not provide a strong case for Iraq possessing dangerous WMD that could target the United States.”*

15 So, they were worried. *“If we don’t tweak the intelligence, if we don’t manipulate the intelligence, the intelligence as it shows, there is no basis to say the weapons of mass destruction and that it will threaten the United States.”* And then they make a confession here, the last paragraph,

20 *“The truth is that what has changed is not the pace of Saddam Hussein’s WMD programmes, but our tolerance of them post-11 September ... attempts to claim otherwise publicly will increase scepticism about our case.”*

25 So they admit quite frankly that actually it is our, our view has changed about Saddam, why we want to get him out and not the reality on the ground in relation to Saddam’s programmes.

30 And then the **Straw Memo**, he again says, this is the Foreign Secretary,

[The Straw Memo (March 25, 2002) – page 409]

35 *“regime change per se is no justification for military action; it could form part of the method of any strategy, but not a goal. Of course, we may want credibly to assert that regime change is an essential part of the strategy by which we have to achieve our ends - that of the elimination of Iraq’s WMD capacity: but the latter has to be the goal.”*

40 So here he’s advising, *“Look don’t talk about regime change regime change because, you know, this is not going to go down well and then it is also illegal. So we say now the regime change is necessary not as a goal by itself but because to get rid of the weapons of mass*

destruction which is our main focus we also have to do some other thing, and that some other thing includes eliminating Saddam Hussein. So let's close it like this – the public relations exercise must be based on this kind of argument.”

5

But as I've shown this morning that their plan for regime change, their clear pronouncements on regime change, pre-dated this particular memo itself. So that was their real plan.

10

And then the ***Cabinet Office Paper (July 21, 2002)*** – page 409, at the bottom, again this is saying, this paper, 3rd line,

15

“The paper reiterates that Prime Minister Blair had already agreed to back military action to eliminate Saddam Hussein's regime at the April summit in Crawford, Texas and again confirms US determination to go to war.”

20

And then they, this is interesting, want to issue an ultimatum to Saddam that he will reject so they say, in that final paragraph,

25

“[I]t is necessary to create the conditions in which we could legally support military action. Otherwise we face the real danger that the US will commit themselves to a course of action which we would find very difficult to support ... US plans assume, as a minimum, the use of British bases in Cyprus and Diego Garcia” so they were part of the plan, the conspiracy, if you like, because their bases are going to be used,

30

“... [i]t is just possible that an ultimatum could be cast in terms which Saddam would reject (because he is unwilling to accept unfettered access) and which would not be regarded as unreasonable by the international community”

35

So this was the plan – an ultimatum which they wanted to cast in a way that Saddam will reject so that it will give an excuse of their already existing plan, pre-existing plan, to attack for regime change.

40

And then we have the famous ***Downing Street Minutes (July 23, 2002)***, the actual one, the explosive one, where in the final paragraph there, at page 410,

“Perhaps the most important passage in the July 23 Minutes is a report of a recent visit to Washington by Sir Richard Dearlove, head of MI-6 and known in official terminology as “C”:

5 So this head of the intelligence of Britain reported on its recent talks in Washington, and this is his quote,

“There was a perceptible shift in attitude. Military action was now seen as inevitable.”

10

This is July 23, 2002.

15

“Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC [National Security Council] had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime’s record. There was little discussion in Washington of the aftermath.”

20

And so, this is the point. Intelligence and facts were being fixed around the policy. In other words, they were going to **lie** in their intelligence, to, so that it will fit into the policy of attacking and achieving regime change. They were prepared to do that. Lie on that point, manipulate the intelligence.

25

And then, of course, that next highlighted part,

30

“We should work up a plan for an ultimatum to Saddam to allow back in the UN weapons inspectors. This would also help with the legal justification for the use of force.”

...

The Prime Minister said that it would make a big difference politically and legally if Saddam refused to allow in the UN inspectors.”

35

So this is the Downing Street Minutes, the whole of the minutes I’m going to rely on all appear at various parts of my document, the actual document for those who want to read it.

40

But the point then is that the whole idea, this is the setting, plan already in place, idea is to wrongfoot Saddam, to try and have a UN Resolution which he cannot fulfil, the 1441.

And the fact that they, this whole inspection regime was a cover-up, if you look at P4 at page 703. This is the "Decision Points", immediately at 704, the book that Bush wrote, his memoirs called "Decision Points". This is what Chaney said, the Vice President of the United States,

"Cheney recommended that we restate the case against Saddam, give him thirty to sixty days to come clean, and then disarm him by force if he refused to comply, "It is time to act," Dick said. "We can't delay for another year. ... An inspection regime does not solve our problem."

That means they don't want inspection. This is Vice President of the United States of America; and this is as quoted by the President of the United States of America. And when was this? When was this? If we could just come back just 1 page, 703; this was, right at the 2nd last paragraph,

"On Saturday, September 7, 2002, I convened a meeting of the national security team at Camp David to finalize my decision on the resolution. Fifty-one weeks earlier, we had gathered in Laurel Lodge to plan the war in Afghanistan. Now we sat in the same room trying to find a way to remove the threat in Iraq without war. I gave everyone on the team a chance to make their arguments."

Then Dick Chaney, then the quote follows. And then, at the 704, the 3rd paragraph,

"After listening to the options one last time, I made a decision; We would seek a resolution. "There's ambiguity in the international community's view of Saddam," so they had agreed to the 144, to go to the UN route, "I said, "and we need to clear it up. Either he will come clean about his weapons, or there will be war."

And then if you look few paragraphs down, just before the cut there in the page, the 3rd paragraph from the bottom,

"Tony Blair came to dinner that night at Camp David He was pleased when I told him I was planning to ask the UN for the resolution. 'Many opponents wish we would just be unilateral-then they could complain,' he said. "But you are calling their bluff." We both understood what the decision meant. Once we laid out our position at the UN, we had to be willing to follow through with the consequences. If diplomacy failed) there would be only one option left. "I don't want

5 *to go to war," I told Tony, "but I will do it." Tony agreed. After the meeting, I told Alastair Campbell, one of Tony's top aides, "Your man has got cojones." I'm not sure how that translated to the refined ears of 10 Downing Street. But to anyone from Texas, its meaning was clear."*

 Cojones means testicles. So, your man Tony Blair has got cojones. New word that I learned reading this memoirs. We learn everything new every time.

10

 I have set out then at page 412 onwards, I will not go through this but I will leave it for reference for those who wish to look at this, and this is how the confirmation, under 412 it says "*confirmation and corroboration of Downing Street minutes material*" and they go into
15 very great detail to show why these minutes cannot be disregarded because these minutes in fact dove-tail with the events that eventually unfolded leading up to the attack of Iraq. And yesterday I have already shown why these minutes are authentic because the Prime Minister himself in the document I've produced an extract from P2
20 shows very clearly a report from Hansard the Prime Minister himself has admitted that these documents existed and they are real.

 I come now to page 46 and I've got 6 points to make with regard to this. We refer to the Downing Street memos which make very clear
25 the fact that the 1st accused George Bush and his cohorts were planning to fix intelligence, manipulate intelligence. And Tony Blair himself, the 2nd accused was prepared to go along lines as one of the Downing Street Minutes said we need to justify this through, "*We don't have, not enough intelligence yet, implication being let's boost up, buffer, the intelligence.*"
30

 And so they started on this course of action. And if you look at page 436 what they did was they started leaning on CIA officials, the intelligence community, trying to pressure them, trying to get them to
35 change, sometimes by-passing the intelligence to try to get the intelligence to fit into their policy to justify the attack on Iraq. And if I could respectfully invite your attention to page 436.

 We will recall, you all recall Colin Powell making his rather dramatic
40 appearance that was telecast throughout the world, how he had got the smoking gun, you know, he had found that Saddam had the weapons of mass destruction; and this speech was made at the United Nations

to convince the whole community. And this is what Powell has to say about this at 437,

5 *"The eventual speech ... was still based on a hyped and incomplete view of U.S. intelligence on Iraq. Much of what was new in Secretary Powell's speech was raw data that had come into the CIA's possession but had not yet undergone serious analysis. Mr. Powell has admitted that he saw the incident as a blot on his reputation. On national television, Secretary Powell stated, 'It was painful ... [i]t's*
10 *painful now.'"*

So he had been, I'm reading at 437, the first paragraph under **"Eventual Speech" – 437 of P3**, the paragraph just above that, and the 3rd line. And this is his actual quote, *'It was painful ... [i]t's painful*
15 *now.'* He has been made to go through this unprocessed analysis, he was made to look, now with the benefit of hindsight, he was made to look like a real, large-scale individual was prepared to vary the truth and of course it's very painful when we are exposed in this manner. I can empathize with his pain, to some extent.

20 And if there is any doubt about the fact that he said or did not say this, at 499 is the footnote at 499, 302 and 303 is the version, he appeared on ABC News and so you can turn on to this ABC News to get the actual transcript or the page, 302 and 303 by Colin Powell, you can
25 see, I suppose, his expressions of pain, visually.

And then at page 434 at the same document, P3, and the 2nd last paragraph,

30 ***At P3, page 434***

35 *"It also appears that the Bush Administration engaged in an organized effort to selectively leak information to the media in order to help justify the case for war. As Knight Ridder reported: A Knight Ridder review of the administration's arguments, its own reporting at the time and the Senate Intelligence Committee's 2004 report shows that the White House followed a pattern of using questionable intelligence, even documents that turned out to be forgeries, to support its case often leaking classified information to receptive journalists and dismissing information that undermined the case for war."*

40 Now the, as I've said, I have 6 points to make with regard to this. That's the 1st point.

The 2nd brief point is: They tried to link Iraq to Al-Qaeda. Of course at that time that was very palatable. And this is at 437, **P3, 437**; I will not go through this in detail because it's not in the public domain, this whole 2 pages shows very clearly there were various attempts by Dick Chaney, by Secretary of State Powell, by the President saying that Iraq had trained Al-Qaeda to use chemical weapons and so on.

In fact Rumsfeld ... I think another about half an hour only.

So this part shows very clearly that this whole question of trying to link Iraq is absolutely incorrect and both the US and the UK intelligence later abandoned this because there was absolutely no basis, in fact it was antithetical of Al-Qaeda to be combining their efforts with Saddam – They were completely opposed to each other.

Then the 3rd point is that they were reconstituting their nuclear weapons programme, and if you look at page 447, starting with 446, that the Bush administration was seeking to acquire nuclear weapons. And they are basically they were saying that we have got 1st hand information from defectors, including Saddam's own son-in-law that they are developing or they are making efforts to acquire nuclear weapons.

And that at page 447, they said that President Bush declared that a new report of came out of the IAEA that the Iraqi were 6 months away from developing a weapon.

And next paragraph, this judiciary committee report said, makes very clear,

“These statements were all false and misleading. On October 2, 2003, David Kay reported that ‘we have not uncovered evidence that Iraq undertook significant post-1998 steps to actually build nuclear weapons or produce fissile material.’ In his January 28, 2004, testimony before the Senate Armed Services Committee, Dr. Kay reported that ‘[a]s best as has been determined . . . in 2000 they had decided that their nuclear establishment had deteriorated to such point that it was totally useless.’ He concluded that there was ‘no doubt at all’ that Iraq had less of an ability to produce fissile material in 2001 than in 1991. The July 7, 2004 report of the Senate Intelligence Committee concluded that the judgment in the National Intelligence Estimate (NIE), that Iraq was reconstituting its nuclear program, was not supported by the intelligence. The Committee

agrees with the State Department's Bureau of Intelligence and Research (INR) alternative view that the available intelligence does not add up to a compelling case for reconstitution."

5 And then if you look at page 448: Because they could not get hard evidence then the pressure started; trying to get the intelligence community to try to come out with something. And that's where Colin Powell found himself trapped.

10 We have evidence with regard to Saddam's son-in-law. He defected in 1995. They knew that the evidence of the son-in-law were in direct conflict with their intelligence reports but they still keep relying on it. In any event, he had defected in 1995 and they were using that for 2003.

15 And then if you look at the rest of 449, 450, 451 up to 459, we find that this was all, I would not labour this point, that there was no evidence and we will see very clearly that even the report by Blix and the report by El-Baradei was that there was no evidence and that in
20 fact Saddam after the resolution was actually cooperating, in fact they were furious that Saddam was cooperating with the resolution, 1441 resolution, because then their plan to wrong-foot Saddam was not coming up to their own plan.

25 And then the final aspect is, I won't touch on aluminium tubes, I just want to turn to the *uranium from Niger* because this became a very important point for the US. Bush announced to the United Nations at an address that he made. He said that, now we've got incredible evidence and from the complete evidence given by UK intelligence,
30 the British, we have got this, Saddam is acquiring uranium from Niger, Niger is a supplier of uranium to the world, and it is acquiring this from ... now why uranium? Because uranium is associated with the atomic bomb. So that was the whole idea. There you have it. The smoking gun. Why is he asking for uranium which is going to be
35 used, the link is with the atomic bomb, unless he wants to build this. So that became an incredible piece of evidence that was advanced and given to Bush which he announced to the United Nations.

40 The reality is, if you look at 460 to 461 of this same document, *page 460* right at the bottom of *P3*, this statement about these intelligence of the uranium was completely untrue because on March 7, the last paragraph says,

“... 2003, the head of the IAEA, Dr Mohammed Al-Baradei informed the UN Security Council that the Italian documents which form the basis of the reports of the recent uranium transactions between Iraq and Niger are in fact not authentic, March 7, 2003. 6 months after the President state of the Union’s speech on July 7 2003,” so this was before his speech he had been informed, “the White House finally confirmed that the President’s assertion that Iraq had tried to buy uranium from Africa was based on unsubstantiated and possibly false information.”

It’s very interesting that, you know, when they are caught out, then they say, “oh it’s possibly false information.”

Now, the thing is, there is the very famous incident, Joe Wilson, was an ambassador of the United States, he was actually asked by the CIA to go to Niger, well before this statement was made to confirm whether or not Saddam was trying to get uranium from Niger. And Joe Wilson made a complete report in which he said this is absolutely not true. He spoke with the ministers, he looked at all the documents and he submitted his report to the United Nations, er, to the US CIA to say this is absolutely untrue, no basis at all.

Joe Wilson then was shocked to find some months later that there was a leak from the White House to the New York Times suggesting that yes, their intelligence investigation had shown that in fact Saddam was acquiring uranium from Niger. That prompted Joe Wilson to correct this and say, “Not true, I was the guy.” He phone up and asked, “Was I the guy? Is this referring to that particular mission that I headed,” and they said “Yes”. He said, “Well I did it and I submitted a report which is no truth.” And so he wrote to the New York Times and said this is absolutely untrue.

What happened? Then there was a reprisal.

Then his wife Valerie Plame Wilson, now this has been made into a film called “A Fair Game”. It’s very interesting to see the whole thing, all the characters and all this. And his wife was then was vilified. His wife who was a CIA agent, her identity was revealed to the world at large; at that time she had to go to various places, putting her at risk as a result of which, finally, she filed an action against the US government that the information came from the White House itself, and the people who were identified as leaking it were then charged in the US court.

5 And Valerie Plame Wilson has written about this whole thing in this book called “A Fair Game”, how a top CIA agent was betrayed by her own government, and this was the revenge that was sought by the government. Why? Because her husband had dared to tell the truth that what Bush and his cohorts were saying to justify the war in Iraq was totally a lie. So this is the extent. This is what we’re talking about, the extent to which people will go.

10 Now, let’s see what Bush says, we have, I’ve already quoted the earlier speech that Blair said. He said, “*I apologise for the information about weapons of mass destruction that turned out the be wrong. That turned out to be wrong.*” That means...

15 **Mr. Jason Kay Kit Leon:**

I hope this is the final interjection, Mr. President, but this quote is extremely important. May I ask the panel to turn to P3, the ***Prosecution Bundle 1, P3***, from where this quote is taken from, ***page 366***. It’s the 6th paragraph from the top.

20

The sentence starts with “*And the problem is, I can apologise for the information that turned out to be wrong, but I can’t, sincerely at least, apologise for removing Saddam.*”

25 The missing word is “*I **can** apologise*”. In the prosecution’s submission, the word “**can**” is missing. The word “*can*” makes a big difference to the reading of the sentence. I believe it’s probably a typographical error. I hope the panel notes it. Thank you.

30 **Professor Gurdial Singh Nijar:**

For me, nothing turns on that ‘can’. In other words, it turned out to be wrong. This is my position, my submission, that, of course I will put the word in, this is why I said I must read from the original. And I have presented the original, 366, and I have already indicated to my

35 Learned friend that we’re going to go through this and we’re going to quote the actual document, and then ‘selaras’ it, and then tie it up with the actual thing. I thought that was the agreement.

40 Sorry? Mine, when I quote it here I said, “*I apologise for the information and even about the WMDs that turned out to be wrong but I can’t sincerely at least apologise*” ... but, like I said I was going to refer to the original ... but as I indicated before that I was going to

refer to the actual document and then during the interval when we have time I was going to go through and do all the correction

Mr. Jason Kay Kit Leon:

5 That was the understanding but I only raised to object when the prosecution, as he was reading, he did not say the word “can”, as he was ... yes I stood up exactly after it was read and that word “can” was not said because in my humble opinion that word “can” is extremely important in this quote

10

Judge Abdul Kadir Sulaiman:

Alright, ok, ok. Can we compromise on that? Why not you correct it immediately?

15 **Professor Gurdial Singh Nijar:**

Yes, yes, of course.

Judge Abdul Kadir Sulaiman:

Correct it immediately as we go along, once it's pointed out.

20

Professor Gurdial Singh Nijar:

Yes of course we can add this. But I'm going to do a kinda comprehensive look at the whole document.

25 **Judge Abdul Kadir Sulaiman:**

Not to say we can or we can't. Because some of us are truly reading from the submission.

Professor Gurdial Singh Nijar:

30 So, can we add the word, “I can apologise”

Judge Abdul Kadir Sulaiman:

Ah then, solve the problem. Like that. Only one word.

35 **Professor Gurdial Singh Nijar:**

I've no problem with that.

Judge Abdul Kadir Sulaiman:

Just add it.

40

Professor Gurdial Singh Nijar:

I can apologise for the information

Judge Abdul Kadir Sulaiman:

Why quibble about it? It's not going to be a paragraph or a page. It's one word. Insert 'can'. Solve the whole problem. Right, proceed.

5 Mr. Jason Kay Kit Leon:

My point was this. Without the word 'can', the quote would read as Tony Blair apologises. No. He says he can apologise but then he explains why ...

10 Judge Abdul Kadir Sulaiman:

No no. I see your point. I see your point. That's why I said why not do it immediately, because it's a matter of one word. Because no doubt he was referring to the document which say "I can", but when we look at the summary of submission, the word 'can' is missing. It's
15 a matter of one word. Why not we do it now? Insert the word can there. Solve the whole problem. Ok? So that is done I believe Mr. Nijar, Mr. Gurdial?

Professor Gurdial Singh Nijar:

20 Of course.

Professor Francis A. Boyle:

Mr President, if I may. I don't think we should get side-tracked by semantics.

25

The fact is Bush and Blair knew there were no weapons of mass destruction in Iraq. They knew it, and this apology is simply a cover-up in crocodile tears. El-Baradei had already reported that there were no nuclear weapons in Iraq. As for the chemical and biological
30 weapons, the weapons inspectors under UNSCOM and UNMOVIC had already reported there were no biological weapons or chemical weapons after the war of 1991. They had been destroyed.

So everyone at the time knew there were no weapons of mass
35 destruction in Iraq. Indeed in October of 2002, in the run up to the war, I publically debated on national radio programme "LIVE", David Rifkin, who was a top Republican administration lawyer for the Reagan administration and we argued this out at great length and I said there were no weapons of mass destruction in Iraq.

40

Judge Abdul Kadir Sulaiman:

It's well taken. What we are quibbling now is because of the appearance of certain passages in the summary of submission.

In there, the word “can” it was missing. And no doubt, Mr. Nijar was said, *“ok forget about it we try to redo everything but now we look at the document.”* Fair enough.

5

So we expect in all possibilities, I’m not suggesting anything, that you might come up with a clean summary of submission to replace the existing one. But that is forthcoming. But as we go along, as long as there is a valid objection raised ... but it’s just a matter of one word.

10

Just to put the word ‘can’. Is there a problem? So see that. See all your copies, put ‘can’ there

Mr. Jason Kay Kit Leon:

15

Mr. President, the reason I objected quite vehemently was because if without the word ‘can’, the *impression* that is given to the Tribunal from the submission is that Tony Blair apologise for the information about the weapons of mass destruction ...

Judge Abdul Kadir Sulaiman:

20

Alright, alright, alright. With all discussion it’s imprinted in our mind that “I can apologise ...”

Mr. Jason Kay Kit Leon:

25

but “I *can’t* sincerely apologise for removing Saddam.” He is not apologizing for removing Saddam.

Judge Abdul Kadir Sulaiman:

30

You have taken up your point. I accepted it.

30

So my advice is before the coming of the clean and properly done summary of submission, updated summary of submission, we are now, we just discover in the current sheet, the word ‘can’ is missing. So what’s the problem there? Add the word ‘can’ there. Unless Mr. Nijar objected, no ‘can’ was not there, shouldn’t be there. Then there’s going to be a problem; we have got to check.

35

While bearing in mind that Mr. Nijar is saying all this while we are looking at the original. If we look at the original, the word ‘can’ is there. But you must remember some, or later on, if it is not done immediately as we come along, someone will be reading the summary without the word ‘can’. You see? So you got point there. So what’s the problem? Add the word ‘can’.

40

And what Professor Boyle was saying, we take that, your submission later. But now we're quarrelling about the word 'can' only. So what the problem? Add in 'can'.

5

I'll add into my copy. What page? 47. Where is it? Below 6.6. Yes. Under item 3. Blair to his speech to a Labour Party conference on 28 September 2004 over a year after the invasion said, "*I apologise*". So you see, the word 'can' is missing. Now pointed out it should be 'can' there. Alright. Put 'can' there. Answers the whole question. Solves the whole problem. And why we have to take 15 minutes to argue on that? Alright. Don't waste anymore time.

10

Professor Gurdial Singh Nijar:

15

That's right. Can be done. No problem.

Judge Abdul Kadir Sulaiman:

Can be done is another thing. Immediately now.

20 **Professor Gurdial Singh Nijar:**

Is done.

Judge Abdul Kadir Sulaiman:

My copy already carries the word 'can'.

25

Professor Gurdial Singh Nijar:

But we are yes, we are entirely in agreement, of course. Because we have got the text which we are presenting actually.

30 **Judge Abdul Kadir Sulaiman:**

Yes, I know you're presenting the text. But your summary, still, omission of 'can'. So what's wrong? What's wrong? Now add 'can' there. You see I've done that? Then let us not make noise over this small small thing. We got a bigger thing to resolve. Ok, go ahead.

35

Professor Gurdial Singh Nijar:

Now the key about this quote, actually I want to come back to this, is that the information about weapons of mass destruction that turned out to be wrong. That is the essence of this quote. Whether he apologised or not I'm not interested ...

40

Judge Abdul Kadir Sulaiman:

I agree, I agree. But ...

Professor Gurdial Singh Nijar:

5 No no, I know. I know. I'm with you. But I'm reasserting the point ... no no, I agree with that. I'm already completely in agreement with that.

Judge Abdul Kadir Sulaiman:

So let us forget about it. Let us go on.

10 **Professor Gurdial Singh Nijar:**

Now this point about the fact that the information was completely wrong, if we look at Tony Blair's book, and I want to introduce a final exhibit, I hope for the part of our prosecution.

15 I would like to introduce it, this will be **P6**. Yes, this is "*Tony Blair - A Journey*". This is a year that came out this year, 2011. 2010. Marked as P6. That was P5. P6, and I again apologise, the Secretariat here, the photocopying machine is not so efficient.

20 **Mr. Jason Kay Kit Leon:**

Could I inquire from which chapter is this page taken from? Just the chapter.

Professor Gurdial Singh Nijar:

25 The chapter is, I've got the whole book here. I can show you during lunch time. But it's *chapter 13*.

Mr. Jason Kay Kit Leon:

Thank you.

30

Professor Gurdial Singh Nijar:

And I just want to quote, this is Tony Blair speaking, on this precise question, about the information, right or wrong. This is what he says, 2nd paragraph,

35

"I understand entirely why people take this view. The stated purpose of the [Iraq] conflict was to enforce UN resolutions on Saddam's WMD and we found no WMD after taking control of the country. We thought there was an active WMD programme, and there wasn't."

40

So he was wrong. And if you go to the last paragraph,

“The intelligence on Saddam and WMD turned out to be incorrect. It is said, even I have said, that how this came to be so remains a mystery.”

5 That’s why this book is such a thriller, *“Tony Blair - A Journey”*. Full
replete with mysteries. Even he doesn’t know how is it that something
upon which they based a war, they sent people to war, until now he
doesn’t know, you know; that was the intelligence, that was the
10 purpose he states, very clearly, but it turns out, and he doesn’t know.
And 2010, 7 years after, it still remains a mystery, because the book
was written last year.

Now, and then we look at some of these others who say this as well.
If you look at **P5**, this is the other exhibit I tendered this morning,
15 **Donald Rumsfeld’s**, yes P5, and the page is **435**, and this book
appeared this year, he says, the photocopying not so good,

*“Early in the war [Iraq war] while major combat operations were still
underway, I was asked on a news programme if I was concerned
20 about the failure to find WMD in Iraq. I had always tried to speak
with reserve and precision on intelligence matters. But on this
occasion,” one occasion only, the critical occasion, “I made a mis-
statement,” Mis-statement, not a lie, mis-statement, “recalling the
CIA’s designation of various suspect WMD sites in Iraq I replied, ‘We
25 know where they are’,” that means they even know where, “they are
in the area around Tikrit and Baghdad. I should have used the phrase
‘suspect sites’. My words have been quoted many times by critics of
the war as an example of how the Bush administration mislead the
public.”*

30 So there you have it. So it was a mere mis-statement. Unfortunate
mis-statement. He didn’t intend it. The most important statement.
Yeah, I think about another 10 minutes or 15 minutes. Because of that
15 minutes interlude there, that’s the problem.

35 And then, at the following page, the same document, this is at page
449, P5,

40 At the following page, the same document, at **page 449, P5**, he’s
referring to Colin Powell.

*“Colin Powell had spent decades in uniform and had become the most
senior military officer in our country and at every level he had spent*

5 *long hours dealing with intelligence. As President Reagan's national security advisor, he routinely had been exposed to reporting and analysis from the intelligence community. As Secretary of State, his department's own intelligence agency reported to him. There was no one else in the Administration who had even a fraction of his experience in intelligence matters, including CIA director Tenet. Powell was not duped or misled by anybody nor did he lie about Saddam's suspected weapons of mass destruction stockpile. The President did not lie. The Vice President did not lie. Tenet did not lie.*
10 *Rice did not lie. I did not lie. The Congress did not lie. The far less dramatic truth is that we were wrong."*

15 So they never lied. As I said earlier, we learn new vocabulary all the time.

And the final quote I want to make, or the 2nd final quote I want to make is at **P4, page 727, the final paragraph,**

20 *"Still, I knew the failure to find WMD would transform public perception of the war. While the world was undoubtedly safer with Saddam gone, the reality was that I had sent American troops into combat based in large part on intelligence that proved false. That was a massive blow to our credibility – my credibility – that would shake the confidence of the American people. No one was more shocked or*
25 *angry than I was when we didn't find the weapons. I had a sickening feeling every time I thought about it. I still do."*

30 So we have 2 of the officials, Powell in pain and Bush sick every time he thinks of it. 2 very wounded individuals from the war. So it's not just the Iraqis who have been affected by the deaths, also got 2 others.

35 Now, then I come to the 2nd last page of my submission. These declarations of innocence, they did not lie, something went wrong somewhere. They are quite, when I first read them, they are quite touching except for the fact that, as we know, the intelligence was contrived even fabricated. As I said, the intelligence agency was leaned upon, that was in the Conyer's report, they were by-passed, wrong intelligence was advanced or leaked ... 48, yes ... and it was, one classic example is a document put out by the UK prepared by MI6
40 which Blair released on February 2nd, 2003 and presented to Parliament the following day to justify going to war. It was entitled ***"Iraq Its Infrastructure Of Concealment, Deception And***

Intimidation". We'll supply the actual document for this. Blair presented it in these terms. He says,

5 *"It's obviously difficult when we publish intelligence reports but I hope that people have some sense of the integrity of our security services."*

10 Now he is the one who presented this, the false report on Niger. Now 3 days later Powell used it in his address to the Security Council, that report, calling it *"a fine paper,"* and this is what he said, *"while we are giving you, what we are giving you,"* I better the quote the actual,

15 *"what we are giving you are facts and conclusions,"* there's a spelling mistake, *"based on solid intelligence. I would call my colleagues' attention to the fine paper that the UK distributed which describes in exquisite detail Iraqi deception."*

20 So they presented this report, right, this report called **"Iraq, Its Infrastructure."** I have a quote here, what the truth was that actually this paper was based on plagiarism. It was, the report was based on a report, on a Ph.D student paper taken word for word and what I say here is that this paper was prepared by the UK Government's press relations officer officers: P. Hamill, J. Pratt, A. Blackshaw and M. Khan, their names initially, this paper was produced, it is plagiarised at page 49; this will definitely be the last document that I will be submitting.

30 This will be **P7**. This is a document written by **Glen Rangawala** who is a don at Cambridge University, it's called **"Intelligence Based On Plagiarism: The British "Intelligence" Iraq Dossier"**.

35 *"A close textual analysis of the British intelligence report quoted by Colin Powell in his UN address suggests that its UK authors had little access to first-hand intelligence sources and instead based their work on academic papers which they selectively distorted. US Secretary of State Colin Powell in his presentation to the Security Council on February 5th sought to reinforce this argument by referring to a British intelligence report. What he said, "What we are giving you are facts and conclusions based on solid intelligence. I would call my colleagues' attention to the fine paper that the UK distributed which describes in exquisite detail Iraqi deception activities." Powell is referring to this document "Iraq Its Infrastructure Of Concealment, Deception And Intimidation" released barely a few days prior to his*

historical February 5th address to the UN body. On 2nd February 2003 British Prime Minister Tony Blair released the report allegedly prepared by the secret intelligence service MI6 entitled “Iraq Its Infrastructure Of Concealment, Deception And Intimidation”. The following day the Prime Minister told the House of Commons on how grateful we should be to receive this information. It is obviously difficult when we publish intelligence reports but I hope that people have some sense of the integrity of our security services.”

Then the author continues,

“yet to me the document seemed oddly familiar. Checking it against 3 journal articles published over the past 6 years I discovered that most of the Downing Street report including the entire section detailing the structures of the Iraqi security services had been lifted straight from the online versions of these articles. The writing of 3 academics including that of a California based post-graduate student and primarily using information from 1991 had become caught up in the justification for war. The authors of the dossier are members of Tony Blair’s press relations office at Whitehall. Britain’s secret service either was not consulted or more likely provided an assessment that did not fit in with the politician’s arguments.

In essence, spin was being sold off as intelligence. The bulk of the 19-page document had been directly copied without acknowledgment from an article in the September ’02 Middle East Review of International Affairs entitled ‘Iraq’s Security & Intelligence Network’. The author of the piece is Ibrahim al-Marashi., a post-graduate student at the Monterey Institute of International Studies. He has confirmed to me that his permission was not sought by MI6. In fact he didn’t even know of the British document until I mentioned it to him. 2 articles from the specialist security magazine, ‘Jane Intelligence Review’, which is a very, well respected magazine, “were indirectly copied. Online summaries of articles by Sean Boyne in 1997 and Ken Gause in 2002 were on the globalsecurity.org website and these texts were also amalgamated into the dossier prepared to Prime Minister Tony Blair. Even the typographical errors,” everybody makes typographical errors, “and anomalous uses of grammar was incorporated into the Downing Street documents,” and he gives examples. And so on so forth.

But the fact then is, therefore, in my concluding, I say the submission therefore reveals a tale of the most dastardly action, I come to my page

49, committed through deceit, through chicanery, the disregard for international law, the arrogance and audacity with which it was disregarded is simply quite incredulous.

5 And that formed the basis of leading their country, committing their country to war, and committing their soldiers, young men and women to an area where they have died, and are dying and to the killings of the Iraqi people.

10 As at May 7, 2011, we need to update this, but as at that time, Iraq war had claimed the lives of more than 1.4 million Iraqis. 4,770 US soldiers. 2,445 personnel from other coalition forces.

15 We trust that we have established beyond reasonable doubt how Bush and Blair connived and conspired to achieved their common plan and so the verdict that we asked this court to return:

20 First is, of course in the name of peace loving people in the world, we humbly and respectfully ask the Tribunal to return a verdict of guilty against both the accused, George W Bush and Anthony L Blair.

25 Secondly, we also ask this Tribunal to exercise its powers under Article 31 of the Charter of the KL War Crimes Commission and recommend to the Commission to submit the Tribunal's findings to International Criminal Court and other bodies as that they deem fit for their further action.

30 Thirdly, we also ask that the record of this proceedings be posted on the webpage of KL War Crimes Commission so that other country may in their wisdom, if there is a verdict of guilty, exercise universal jurisdiction if ever these war criminals happen to arrive within their territorial shores.

35 Fourthly, we also ask this Tribunal to recommend to the Commission pursuant to Article 32 of the Charter of the KL War Crimes Commission to include the names of these 2 accused, if adjudged guilty of the charge, in the Commission's register of war criminals and publicize this fact.

40 Finally, let me say with all humility on behalf of the prosecution, your Honours, this Tribunal's verdict of guilt will be as important as it will be historic for the verdict will serve as a notice to the world that war criminals may run but can never ultimately hide from truth and justice.

5 Your Honours, on behalf of the prosecution team, for the moment, subject to my colleague wanting to address Your Honours, on behalf of the prosecution team we thank you for the kind and very patient hearing accorded to us.

Thank you very much.

Judge Shad Saleem Faruqi:

10 Mr. President, before Mr. Nijar takes leave and we all take leave for lunch, I wish to request the prosecution to address the Court after lunch about 1 possible contradiction in the submissions.

15 On page 19 of your submission on the issue of humanitarian intervention you have submitted that ... exceptional right. Humanitarian intervention subject to 3 conditions, you have outlined.

20 But later Professor Boyle in his very brief but learned presentation quoted the Nicaragua judgment and, if I heard you correctly Prof, you said the Nicaragua judgment clearly stated that neither regime change nor humanitarian intervention are allowed under international law.

25 So I would like to know what the stand of the prosecution is on humanitarian intervention. Is it an exceptional right, or is it contrary to international law?

Professor Gurdial Singh Nijar:

I can answer that very speedily in 1 or 2 lines.

30 The Nicaragua judgment was in 1986. But since then there was this Kosovo, intervention in Kosovo, by the British and other forces. And what they relied upon was this overwhelming humanitarian catastrophe. So they kind of introduced a new element.

35 But it's our submission that if at all there is going to be this new development then it is exceptional. It's only on humanitarian grounds, grounded in morality, not on political expediency. And actually this is an extremely exceptional ground.

40 And that, the further point is that the Attorney General of the, or rather, the papers of the Downing Street papers, acknowledged quite freely this was not, in any event, this was not a case of a humanitarian catastrophe.

Judge Shad Saleem Faruqi:

Prof Boyle say something on ...?

5 **Professor Francis A. Boyle:**

Yes, Your Honour. The International Court of Justice soundly rejected humanitarian intervention in the Nicaragua case and there is no authority under international law for a contrary conclusion.

10 The Kosovo intervention was clearly illegal. I will not take the time of this Court right now to go through it all since I know you want to break for lunch.

15 I have written an entire chapter on this issue that I can have the registrar Xerox and run off. It is from my new book, ***"Tackling the American Toughest Questions" 2009***, that brings this whole issue up to date. And it is ***Chapter 13, "No to humanitarian intervention as a pretext for aggression"***, and it has all this sources and authorities on this point up to its publication in 2009, so to spare you this time we
20 will have this chapter Xerox-ed and distributed to your Honours and also to the defence team.

Will that be acceptable at this time Judge Faruqi?

25 And then if you have more questions after you've had the opportunity to review this chapter, I be happy to address those question.

Judge Shad Saleem Faruqi:

Thank you very much.

30

Professor Francis A. Boyle:

I did have one more point to make before we break for lunch. I had one submission which I am not going to discuss here except to introduce.

35

This is to one case in the United States of America where we actually argued that the war against Iraq was a crime against peace. And this was for 1st Lieutenant ***Ehren Watada***, who was in the United States army, ordered to deploy to Iraq, studied everything there was about Iraq, he was ordered by his commanding officer to study it all, he
40 studied everything and concluded that Bush was lying and had lied through his teeth about everything concerning Iraq, including the fact there were no weapons of mass destruction.

5 In addition, as a military officer, he had studied US Army Field Manual 2710 and had concluded that this is a crime against peace, prohibited by this manual, and thus a war crime, and that he would not participate in crime against peace.

He was court marshalled for 4 or 5 different charges related to this facing close to 11 years.

10 What you have here, and I will introduce into the record, if you please, is testimony I gave at his court marshal proceeding that was under oath and subject to cross-examination by lawyers for the Pentagon establishing that this was a crime against peace, the war against Iraq, and please give it to the prosecution as well. And this was a crime
15 against peace, this was actual testimony I gave in a military court marshal proceeding, under oath, subject to cross-examination that this was a crime against peace ... pardon me ... I'm just gonna introduce the document, and that's it.

20 And what happened was the government was afraid that we would win this case at the full trial itself. So they declared a mis-trial and eventually they dismissed him from the military service.

25 This was a major victory in court for the notion that the war against Iraq was a crime against peace. And the reason why they declared the mis-trial and dismissed him from the service was that they knew they would lose at trial.

30 So I simply submit it as a precedent. I'm not suggesting you are bound by this as you would be bound by decision by the International Court of Justice in the Hague. But this is the only case in America, and I know of only one other case in Germany, in the entire world, where anyone has argued that the war against Iraq was a crime against
35 peace.

So I ask you to give it respectful consideration and that concludes all I have to say at this time.

40 Thank you.

Judge Tunku Sofiah Jawa:

Prof Nijar, there is one more exhibit I was just wondering whether you'll be tendering to the court ... On page 28 of your submission, which says that,

5

"Blair was also warned in an open letter that was produced on the front page of the UK national daily by a group of international lawyers on the illegality of going to war on the strength of the Security Council resolution 1441."

10

Where can I view this open letter?

Professor Gurdial Singh Nijar:

It has been referred to by Philip Sands in his book "Lawless World" and I will try during the break to access that and provide it to you immediately after the lunch break.

15

Thank you.

Judge Abdul Kadir Sulaiman:

We will come back at 2.45pm

20

25

20th November 2011 – Session 3 – Afternoon

Registrar Musa Ismail:

All Rise.

5

Judge Abdul Kadir Sulaiman:

Whose turn next?

Professor Gurdial Singh Nijar :

10 May it please the distinguished members of the Tribunal, in response
to Judge Tunku Sofiah, I presently am printing, I couldn't get the
original source which I will supply, but I have a secondary source
which actually quotes the relevant part of the newspaper report. It's
15 from the Guardian of 7th March. I have given it to the Secretariat and
I'm just waiting for them to give it to me and I will hand it to you.

And the 2nd point is, I've just downloaded from the internet a report
which is an official Dutch inquiry, Dutch government inquiry, the
Dutch David's Commission which I believe is dated *12th January*
20 *2010* which I would like to introduce into the record.

Judge Abdul Kadir Sulaiman:

What do you call this?

25 **Professor Gurdial Singh Nijar:**

This is, as it's indicated there, Dutch David's Commission of Inquiry.
I'll get the complete document. I was not able in a short time to
download all it.

30 **Judge Abdul Kadir Sulaiman:**

12th January, 2010?

Professor Gurdial Singh Nijar:

And I've only managed in short time to publish the conclusions.

35

Judge Abdul Kadir Sulaiman:

Marked?

Professor Gurdial Singh Nijar:

40 Marked as P8. Sorry, P9.

Judge Abdul Kadir Sulaiman:

So P8 is the ...

Professor Gurdial Singh Nijar:

5 Testimony by Francis Boyle. I think before we marked that one,
Professor Boyle also introduced his article "*No To Humanitarian
Intervention As A Pretext For Aggression*". So that should be marked
as P9.

Judge Alfred L. Webre:

10 Yes Counsel, we actually have 3 submissions by Professor Boyle and
I've gotten a bit mixed up here as to the exhibits because they were
introduced at different stages and so I wonder if we could go through
the exhibits once again and make sure that these 3 exhibits by
Professor Boyle are properly marked as evidence because they don't
square up with the numeration at this time.

Judge Abdul Kadir Sulaiman:

15 Let us go through.

Professor Gurdial Singh Nijar:

20 Yes, so, 1st one is..

Judge Abdul Kadir Sulaiman:

I think we have no problem up to P8.

Professor Gurdial Singh Nijar:

25 P8 is the testimony ... and the document

Judge Abdul Kadir Sulaiman:

Entitled US labour against the war. That is P8?

Professor Gurdial Singh Nijar:

30 That is P8. That's already been marked. And then we can mark the
other documents

Judge Alfred L. Webre:

35 There's one that's entitled "*The Bush Administration Was An Ongoing
Criminal Conspiracy*"

Professor Gurdial Singh Nijar:

40 Yes, this will be marked as P9

Judge Abdul Kadir Sulaiman:

So, let us do it again. Cancel off, forget David Commission first.
Forget about David Commission. What is P9?

Professor Gurdial Singh Nijar:

5 *P9* is the article entitled “*The Bush Administration Was An Ongoing Criminal Conspiracy Under International Law And United States Of America’s Domestic Law.*”

Judge Abdul Kadir Sulaiman:

So, marked as *P9*. Mr. Registrar, you are following?

10 **Registrar Musa Ismail:**

Yes

Professor Gurdial Singh Nijar:

15 And then we wish to introduce another document as exhibit, *P10*, and that’s this article which is headed “*No To Humanitarian Intervention As A Pretext For Aggression*” and this is a chapter from a book.

Judge Abdul Kadir Sulaiman:

20 Never mind, you can mention that in the course of your submission when you are touching on this very document. As of now, on “*No To Humanitarian Intervention As A Pretext For Aggression*” marked as *P10*. Now, anything else?

Professor Gurdial Singh Nijar:

25 We have also introduced a document which is known as the “*Dutch David’s Commission of Inquiry*” dated *12th January 2010* and it introduces *pages 529 and 533* which are the conclusion of this.

Judge Abdul Kadir Sulaiman:

30 You will come to that in your submission? Now for purposes of marking first. *P11*. All got it done?

Professor Gurdial Singh Nijar:

35 We have one final document.

Judge Abdul Kadir Sulaiman:

Now another document. “*Lawless World*”.

Professor Gurdial Singh Nijar:

40 *P12*

Judge Abdul Kadir Sulaiman:

Anymore?

Professor Gurdial Singh Nijar:

There are no other documents.

5 **Judge Abdul Kadir Sulaiman:**

So we have gone up to P12.

Professor Gurdial Singh Nijar:

10 Yes. And I just want to state that with regard to P11 that I introduced ...

Judge Abdul Kadir Sulaiman:

So, you are not sitting down yet?

15 **Professor Gurdial Singh Nijar:**

I just want to say with regard to P11, just to identify that it is paragraphs 18, 19 and 20.

Judge Abdul Kadir Sulaiman:

20 So it forms part of your submission? This is going to be your submission?

Professor Gurdial Singh Nijar:

25 Yes. So with regard to P11, I am inviting...

Judge Abdul Kadir Sulaiman:

30 One second, one second ... So we don't want to get it muddled up later, which is submission, which is exhibit. So, you are continuing to submit. Now you're going to submit on which document?

Professor Gurdial Singh Nijar:

P11

Judge Abdul Kadir Sulaiman:

35 What are you going to submit?

Professor Gurdial Singh Nijar:

40 I just want to draw the Tribunal's attention to paragraphs 18, 19 and 20 of P11

Judge Abdul Kadir Sulaiman:

Are you going to say anything on it or you want us to adopt it?

Professor Gurdial Singh Nijar:

Just want to draw your attention to the fact that these are the relevant paragraphs.

5 Judge Abdul Kadir Sulaiman:

So you are not going to elaborate or highlight anything on that paragraph?

Professor Gurdial Singh Nijar:

10 I am relying on those paragraphs and those paragraphs basically says that the Netherlands government statement that there was no need for a 2nd resolution was actually wrong that the war had to be based on the resolution. It was not and the conclusion is that the military action was therefore illegal. That's the conclusion I draw.

15 And then as regards the "Lawless World" as I promised Judge Tunku Sofiah Jewa, I said I will give a secondary source of that article that is reproduced as a lead article and I just want to draw the Tribunal's attention to page 187.

20 Judge Abdul Kadir Sulaiman:

Where?

Professor Gurdial Singh Nijar:

25 This is at page 187. Just the 3 last main lines of the text, "*We are teachers of International Law. On the basis of the information publicly available there is no justification under international law for the use of military force against Iraq neither Security Council Resolution 1441 ...*"

30 Judge Abdul Kadir Sulaiman:

And the rest of it?

Professor Gurdial Singh Nijar:

35 That paragraph. "Nor any prior Resolution," the whole quote.

"*Nor any prior Resolution authorises the proposed use of force in the present circumstances before military action can be lawfully undertaken against Iraq, the Security Council must have indicated its clearly expressed assent. It is not yet done so. A vetoed resolution could provide no such assent.*"

40 And if you look at 5th line after that, it says,

5 *“we also sent a copy to the Guardian which published it on the following day on March 7. The New York Times declined to publish the similar letter from America. It ran a lead story on the front page and was picked up by the BBC and the wire services.”*

10 And even as I was speaking, my industrious prosecution team has managed to locate the actual letter itself which we will then make available. I was looking at secondary sources. I couldn't find this but now we have found this and we will give it to the Secretariat to print and then at the appropriate time have it marked as an exhibit.

That then concludes the our submission.

15 **Judge Abdul Kadir Sulaiman:**

That means that concludes the Prosecution's submission? That means there is no more?

20 **Professor Gurdial Singh Nijar:**

No more.

Judge Abdul Kadir Sulaiman:

So, I will call the Defence to answer?

25 **Professor Gurdial Singh Nijar:**

Yes. That is the case.

Judge Abdul Kadir Sulaiman:

30 What about Mr. Boyle, are you going to say something?

Professor Francis A. Boyle:

With Your Honours' permission ...

Judge Abdul Kadir Sulaiman:

35 Let us not get it confused. You said you want to conclude. You're gonna put a full stop. That means I will open the door to the other side. Whereas you've left Mr. Boyle. So, which is which?

Professor Gurdial Singh Nijar:

40 We have completed. This is the case for the Prosecution.

Judge Abdul Kadir Sulaiman:

Including Mr. Boyle?

Professor Gurdial Singh Nijar:

We the whole Prosecution team including Mr. Boyle.

5 **Judge Abdul Kadir Sulaiman:**

Make it clear like that. That means there is no more as far as the prosecution's case at this stage, with no more coming from the Prosecution. Close the door.

10 **Professor Gurdial Singh Nijar:**

Yes. We have closed our case.

Judge Abdul Kadir Sulaiman:

15 And we are opening to the door to the defence now to reply. So, close of prosecution's submission. Right. Start your submission. Defence.

Mr. Jason Kay Kit Leon:

20 Mr. President, Learned members of Tribunal, for the defence may we request a brief adjournment for the day and if possible we would like to confer and prepare our submissions for tomorrow morning; with the Tribunal's leave, as there is ...

Judge Abdul Kadir Sulaiman:

25 So, you want to call off the day?

Mr. Jason Kay Kit Leon:

Yes, if it is acceptable to the Tribunal.

Judge Abdul Kadir Sulaiman:

30 That's why you must make it clear, you know.

Here, the Prosecution stage, there is a hurdle, you know, because Bush and Blair is presumed innocent until you prove them guilty. The standard of proof is beyond reasonable doubt.

35 Before you can go to that reasonable doubt, you have to cross the hurdle to make defence to answer. If at this stage of crossing the hurdle, if you have not made out a *prima facie* case, the 2 accused is entitled to be acquitted and discharged. So, at this stage, what do you feel you have done? Have you believe that you have made out a
40 *prima facie* case which entitles us to call the accused to enter his defence?

Professor Gurdial Singh Nijar:

Yes. In fact the thrust of our submission is that we have made out a *prima facie* case and that we have also established beyond reasonable doubt.

5

Judge Abdul Kadir Sulaiman:

Of course, of course. That is your target. But it's sufficient if you make out a *prima facie* case at this stage to enable you to cross the hurdle so that he's bound to answer. If he remains silent, they are committed. Because your *prima facie* case will become beyond reasonable doubt on the fact that they say there is no case to answer. They lose or they fail on that 3 words statement, "No case to answer." Four words.

10

15 **Professor Gurdial Singh Nijar:**

Yes, that is our contention.

Judge Abdul Kadir Sulaiman:

So now, that is what they say. You don't want them to cross the hurdle, okay? Now, what have you got to say?

20

Mr. Jason Kay Kit Leon:

We will submit that they have not made out a *prima facie* case and we wish the Tribunal to rule on that.

25

Judge Abdul Kadir Sulaiman:

In other words, you are going to rebut what they are saying. So you say you are now not ready. So you request that you be given this half day and you will do it first thing tomorrow morning. So, everything clear now.

30

Mr. Jason Kay Kit Leon:

Yes.

35 **Judge Abdul Kadir Sulaiman:**

Remember, first thing tomorrow morning, don't give the impression that prosecution has crossed the hurdle and it is your duty to adduce evidence. You are going to rebut them to say, "*No no no, you haven't made out a prima facie case.*"

40

You let us decide whether we agree with you or we agree with them. If we agree with them, defence called. If we agree with you, accused acquitted and discharged. You are at that stage now.

Prof Salleh Buang :

5 If I may seek clarification from the defence team. Are you asking for time to prepare your submission to submit to the bench that prosecution has failed to prove *prima facie* case, or is your intention that you have accepted that there is a *prima facie* case and you are asking time to prepare your defence? That is how I am a bit confused.

Mr. Jason Kay Kit Leon:

10 We wish to seek time to prepare a case to rebut the prosecution's submission that there is a *prima facie* case, and we will submit on that tomorrow morning, with the leave of the Tribunal

Judge Abdul Kadir Sulaiman:

15 And after that, they'll have the final say to reply, to wind up the whole thing. You need ...

Mr. Jason Kay Kit Leon:

20 Half a day.

Judge Abdul Kadir Sulaiman:

Half a day today. In other words you want to start the first thing tomorrow morning.

25 **Mr. Jason Kay Kit Leon:**

Yes. May I seek that it perhaps be at 9.30 because we may have to arrange with the Secretariat to photostat some new materials that we will be looking for today. May we apply for the Court to convene tomorrow morning at 9.30 instead of 9.00am?

30

Judge Abdul Kadir Sulaiman:

Application by the defence for a short adjournment to prepare our reply to prosecution's submission. Start at 9.30am.

35 **Professor Gurdial Singh Nijar:**

I have no objection.

Judge Abdul Kadir Sulaiman:

The Court stands adjourned to 9.30am tomorrow.

40

21st November 2011 – Session 1

Registrar Musa Ismail:

Court rise.

5

Judge Abdul Kadir Sulaiman:

There is one serious note which I'd like to bring out. Don't try to influence the judges. I stress: Don't influence the judges either way.

10

If you feel you want to voice out, come by way of evidence. If you want to be on the prosecution, approach the prosecution. Then you'll be sworn in, say what you want to say, provided it is relevant and acceptable, and we'll accept that as evidence before us. And not by trying to pass notes or something like that to the judges. This thing happened to me. I don't know about my brother judges, whether they ever received any notes. I won't say which way; and I didn't show it to my brother judges also, lest they be influenced.

15

20

We are here trying to do justice. Be warned. Don't influence the judges. If you want, you influence the judges by coming in and give valid evidence. We will consider your evidence either way. You want to come for the prosecution, or you want to come for the defence. Approach the counsel. Say, "*I want to be a witness*," and then we take your evidence. That's all for that one.

25

Now, ok, we go on.

Mr. Jason Kay Kit Leon:

30

Learned Members of the Tribunal. This morning has been fixed for submissions by the Amicus Curiae at the close of the prosecution's case. We would humbly seek an adjournment of 1 hour, to 10.30 as our written submission are in the process of being printed and we have just received our 4th bundle.

35

Judge Abdul Kadir Sulaiman:

But you know what is written, isn't it?

Mr. Jason Kay Kit Leon:

Yes. But it would be ...

40

Judge Abdul Kadir Sulaiman:

So you can sort of read up, and then officially tender your written submission

Mr. Jason Kay Kit Leon:

5 We feel that it would be more advantageous to the proceedings if all the members of the Tribunal including our learned opponents, the learned prosecution, have access to a written submission which would facilitate the proceedings.

Judge Abdul Kadir Sulaiman:

10 So you feel 1 hour ...

Mr. Jason Kay Kit Leon:

Should be enough. It is in the process right now, as I understand it. And I believe counsel for the prosecution has no objections to this.

15 **Judge Abdul Kadir Sulaiman:**

Prosecution?

Professor Gurdial Singh Nijar:

20 Thank you, your Honour. Yes, I indeed have no objections to this.

Judge Abdul Kadir Sulaiman:

25 Don't take this as a form of implicit advantage ... but we can understand, we can appreciate because now the ball is in your field. So you need this 1 hour. It is reasonable. But don't take this as an indication that the Court is lax, that if we apply the Court will give. Application granted. Adjourned to 10.30am. In the circumstances, we have got to adjourn for 1 hour as requested. So we'll come back at 10.30am today.

30 **Registrar Musa Ismail:**

Court rise.

35

21st November 2011 – Session 2

Registrar Musa Ismail:

Court rise.

5

Judge Abdul Kadir Sulaiman:

Yes, proceed.

Mr. Jason Kay Kit Leon:

10 Learned President, members of the Tribunal; the prosecution has closed its case. They have submitted that there is a *prima facie* case to answer. We will submit that there is none.

15 The golden thread that runs through any prosecution is that there is a presumption of innocence. Up to this point, as I stand here, the 2 accused, George Bush and Tony Blair, are presumed innocent. They are charged with the gravest of crimes.

20 It's very funny sometimes when we think, of people who say, for example, and this is an extremely cynical but true quote, "*A single death is a tragedy. A million deaths is a statistic*".

Judge Abdul Kadir Sulaiman:

In what way is it a statistic?

25

Mr. Jason Kay Kit Leon:

Sometimes, I believe the cynical point that was being made was, "one is bad but when you multiply it by many, or tens of thousand ..."

30 **Judge Abdul Kadir Sulaiman:**

It remains bad?

Mr. Jason Kay Kit Leon:

The impact is lessened.

35

Judge Abdul Kadir Sulaiman:

Oh

Mr. Jason Kay Kit Leon:

40 Sometimes that is hard to imagine. Our minds find it hard to comprehend war crimes. They are often in a distant land. In our own country, the last time we had something close to this nature was more than a half a century ago. There are, in this room, many who still

remember what happened during the Japanese occupation of World War II. I am fortunate enough to have never known that.

5 So I salute the prosecution for their efforts because they, in their research, in their receiving of the evidence from the Commission, have decided that there is a case to be brought before this Tribunal. But they have to prove it. They have to prove it beyond a reasonable doubt. That is the test.

10 I know there are many in this room who have strong emotions and strong opinions as to how the verdict should be. That must be suspended till this Tribunal makes a decision. For we have only heard one side. And the golden, the cardinal principle in any court is, "*Let the other side be heard*". And if we do not hear the other side before
15 we make our comments or we give opinions, then let us all disrobe, take a walk downstairs, find the nearest tree, the strongest rope and let's lynch someone. That's much faster. That's much cheaper.

Judge Abdul Kadir Sulaiman:

20 That's why this morning, as read out, judges should not be influenced. Leave it to us to make a decision. Go ahead please.

Mr. Jason Kay Kit Leon:

25 This is a civilized Tribunal. We are a civilized people. We do not, we do not decide until we have heard the other side. That's the very least that must be given to any accused.

Before I proceed further, may I just make a short point on the rules of evidence in this court?
30

Judge Abdul Kadir Sulaiman:

Go ahead. Go ahead.

Mr. Jason Kay Kit Leon:

35 The bundles have been marked. They have been received into evidence.

Judge Abdul Kadir Sulaiman:

40 Unfortunately yours have not been marked yet. As it happened, inadvertently, the case for the prosecution; so we did that, before it's too late.

Mr. Jason Kay Kit Leon:

May I request that our bundles be marked as well.

Judge Abdul Kadir Sulaiman:

5 Ah, ok. Now we formally mark.

Mr. Jason Kay Kit Leon:

The defence has 4 bundles. The last one was only prepared this morning.

10

The 1st is named "Defence Document A". May I request that it be marked as Defence Exhibit 1.

Judge Abdul Kadir Sulaiman:

15 Any "D" before? So we mark it as "D1"

Mr. Jason Kay Kit Leon:

The 2nd bundle is named "Defence Documents Volume 2 – Crimes against Peace". May I ask that it be marked as Defence Exhibit 2.

20

Judge Abdul Kadir Sulaiman:

D2

Mr. Jason Kay Kit Leon:

25 The 3rd bundle is named "Defence Documents Volume 3 – Crimes against Peace".

Judge Abdul Kadir Sulaiman:

So you request that this be marked as "D3"?

30

Mr. Jason Kay Kit Leon:

Yes. And the final bundle, is named "Defence Documents Volume 4 – Crimes against Peace". I ask that it be marked as Defence Exhibit 4.

35 **Judge Abdul Kadir Sulaiman:**

Alright, be it so marked.

D1 will be Defence Document A

D2 - Defence Document Volume 2

D3 - Defence Document Volume 3, and

40

D4 - Defence Document Volume 4

Mr. Jason Kay Kit Leon:

Thank you. All the bundles are marked. They are admissible. But with the basic law of evidence, admissible is only getting foot in the door. There are the 2 further questions. Is it credible? And what weight do we give it?

Admissibility, Credibility, and Weight.

All the bundles are in. They are admissible. Far be it from me to lecture or teach this learned Tribunal on the law, but I urge the Tribunal to give very serious consideration to the question of credibility and weight for all the documents. Of course, certain documents we cannot object to it, such as the Charters ... they are there in the public record. One would be a fool to object to such documents.

But a short note on the point of hearsay: Some of these documents would fall foul from the rules against hearsay. Now, the Tribunal's rules of evidence allow for secondary evidence – photocopies, they allow for hearsay evidence – alright. And these rules are almost the same in all tribunals of this nature. In the ICC, the ICJ, the ICTY and even the Tribunal for Rwanda, just to name a few. The rules are the same, or about the same. Secondary and hearsay evidence are in. That's the foot in the door. Credibility and weight – separate issues. Serious issues.

May I also point out one disadvantage this Tribunal has. In all the Tribunals aforementioned, they have received direct evidence from witnesses. This Tribunal did not have that opportunity to hear witnesses for the prosecution. I urge Learned Members of the Tribunal to consider this as they are deliberating over each and every piece of evidence.

We have prepared a rather rough written submission, which I hope I hope the members have received.

Judge Abdul Kadir Sulaiman:

Yes, we have it.

Mr. Jason Kay Kit Leon:

It's 32 pages, and by leave of the Tribunal, I will cede the podium to my co-counsels who will address the Tribunal, according to the

various portions as, that there is no case to answer. The first point will be taken by my co-counsel Mr. Soo Kok Weng.

Mr. Soo Kok Weng:

5

Your Honours,

10

The prosecution submitted 2 contradicting points on humanitarian catastrophe. First, the prosecution submitted that humanitarian catastrophe is one of the exceptions for prohibition against use of force. With the permission of your Honours, I would like to refer your Honour to the written submission by the prosecution, it is at page 18 of the document, the 1st paragraph of that page. In that paragraph it reads,

15

“There are two other situations when a country is justified in attacking another. This is when exercising the right of self defence; and in case of a humanitarian catastrophe.”

20

And in page 19 of that document, under the heading of 3.5, the first paragraph of that document reads,

25

“Another recent and highly contentious basis is the use of force to prevent an "overwhelming humanitarian catastrophe", ”

30

And the prosecution laid down 3 principles governing the use of force under the reason of humanitarian catastrophe, and I will not produce it here as it is already in the bundle, in the document. That was the 1st point submitted by the prosecution in the trial before us.

35

The 2nd contention by the prosecution on humanitarian catastrophe was made yesterday. They relied on the Nicaragua case which can be found at exhibit P4, at page 242 at exhibit P4 at paragraph 263. It reads,

40

“The finding of the United States Congress also expressed the view that the Nicaraguan Government had taken "significant steps towards establishing a totalitarian Communist dictatorship". However the regime in Nicaragua be defined, adherence by a State to any particular doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty, on which the whole of international law rests, and the freedom of choice of the political,

5 *social, economic and cultural system of a State. Consequently, Nicaragua's domestic policy options, even assuming that they correspond to the description given of them by the Congress finding, cannot justify on the legal plane the various actions of the Respondent complained of.*" And here comes the most important point, "The Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another on the ground that the latter has opted for some particular ideology or political system."

10 And then in paragraph 268, which could be found at page 246 at exhibit P4, it starts at "in any event",

15 *"In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect."* And here comes another important sentence, "With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ..."

20 **Judge Shad Saleem Faruqi:**

What's your point? I may be confused. You are basically putting what the prosecution said.

25 **Mr. Soo Kok Weng:**

My apology your Honours. My point is: The prosecution relied on the Nicaragua case to argue that humanitarian catastrophe, humanitarian intervention is not a ground to use of force against another State. It contradicts with the previous contention of the prosecution counsel. And in this regard, I would like to refer your Honours to exhibit P10, the prosecution's documents, P10.

30 **Judge Abdul Kadir Sulaiman:**

P10, yes, "No To Humanitarian Intervention As A Pretext For Aggression"?

35

Mr. Soo Kok Weng:

Yes. And in particular, to page 3 of the document, I'm sorry, page 159, the heading is, "Humanitarian Intervention – A Joke and a Fraud". In the last paragraph of that page, 2nd sentence, starts from,

40

"yet today this white racist great military powers have euphemistically ... the doctrine of humanitarian intervention into some evanescent responsibility to protect as if they had ever been anything

but rapacious and voracious when it came to their gross exploitation and degradation of the third world in order to steal their natural resources.”

5 The reason for me to cite the particular part in exhibit P10 is to show that the prosecution is indeed totally ignorant and denied the existence of humanitarian intervention as a ground to use of force.

Judge Abdul Kadir Sulaiman:

10 Ignorant of what?

Mr. Soo Kok Weng:

Ignorance and denied the doctrine of humanitarian intervention as a ground to use of force.

15

Judge Shad Saleem Faruqi:

Mr. Kok Weng, I'm not clear what your submission is. Whether humanitarian intervention is allowed on 4 limited grounds or not allowed at all? Either way, how does it help your clients because they were claiming that Iraq was ruled by a brutal dictator and therefore there is justification in the interest of democracy and human rights to move in? So demolishing the humanitarian intervention argument, how does that assist you?

20

25 **Mr. Soo Kok Weng:**

Thank you your Honours. It's this: We would like to justify the intervention on the ground of humanitarian intervention due to the situation in Iraq when Saddam Hussein was in power, and we will submit on that ground later after we point out the mischief of the prosecution counsels. May I proceed your Honours?

30

So based on the 2 points that we raised just now; it is a grave inconsistency for humanitarian intervention argued by the prosecution. This inconsistency will definitely lead to the breach of natural justice.

35

The rule of natural justice requires the accused to know the charges against him clearly, to understand the nature of the charges against him so that he has chance to defend himself. How could we say that both the accused persons have been accorded with natural justice when the charge framed by the prosecution is not clear?

40

To make it more precise, I would say that the ground of the charges laid down by the prosecution on the point of humanitarian intervention ...

5 **Judge Abdul Kadir Sulaiman:**

Misleading in what sense?

Mr. Soo Kok Weng:

Misleading on the point of humanitarian intervention

10

Judge Alfred L. Webre:

Yes counsel. Now, you're following this line of reasoning because you're asking us to rule that the prosecution has failed to meet the threshold of *prima facie* on this point. However, let me come back with this line of questioning to you.

15

If we go to, let's say, 2 points of view – A and B – the functional effect on your client of point of view “A” and point of view “B” is the same.

20

Point A is what we could call the ‘Limited Humanitarian Exception’ but the prosecution states, again on page 19 on their brief: “*Again, it is common ground that this situation did not exist to justify on such a ground,*” i.e. that it's clear what the prosecution says that you could not raise this as a defence because the situation on the ground was that the catastrophe was not established a well documented evidence. There were other means, short of force, available to prevent it and the measures were not proportionate. So that's “A”.

25

And with regard to point of view B – in other words that there is no right of humanitarian intervention.

30

So that the effect of option “A” or option “B”, or Defence “A” or Defence “B” is the same on your client. You're prohibited in either “A” or “B”. So I submit that you're raising a moot point. It's a moot point. You've made a distinction without a difference. It's a moot point.

35

Mr. Soo Kok Weng:

I appreciate your comment, your Honours. But there is a distinction between point “A” and point “B” here because it affects the root of argument that we are going to produce later.

40

Judge Alfred L. Webre:

Yes, no. I'm merely raising this ...

Judge Abdul Kadir Sulaiman:

5 You say you're going to produce later. Because now we're at the bridge already. We want to cross it.

Judge Alfred L. Webre:

10 Yeah. That's why I prefaced my remarks that my line of questioning goes to the issue of whether or not the prosecution has failed to meet the threshold of prima facie. Just within that context I'm saying you've raised a moot point. This is different as to the issue of beyond a reasonable doubt.

15 **Mr. Soo Kok Weng:**

I appreciate your comments, your Honours. We need to raise the defence of ...

Judge Abdul Kadir Sulaiman:

20 In other words you drive home the point. Don't keep us in suspense waiting for you to bring up later. Whereas you bring out the issue already now. Let us clear that first.

Mr. Soo Kok Weng:

25 So, your Honours, may I proceed?

Judge Abdul Kadir Sulaiman:

Yes.

30 **Mr. Soo Kok Weng:**

So, in the event your Honours are not with me on this, do allow me to continue by rebutting both arguments, point "A" and point "B", advanced by the prosecution.

35 **Judge Abdul Kadir Sulaiman:**

Go ahead. Proceed. You're on it now, actually. Go ahead.

Mr. Soo Kok Weng:

The reasons are as follow:

40

The 1st reason, if your Honour could refer to Defence submission at page 2 – Responsibility to protect now forms part of Customary International Law. In accordance with *North Sea Continental Shelf*

case, which can be found at page 150 of Defence Document D3, ...
you Honour please refer to page 229

Judge Abdul Kadir Sulaiman:

5 Which one now? 150 or

Mr. Soo Kok Weng:

150 is the cover of the case; and I would like to refer your Honours to
page 229

10

Judge Abdul Kadir Sulaiman:

Para 457? Is that the page that you want us to pay attention to?

Mr. Soo Kok Weng:

15 My apologies your Honours.

Judge Abdul Kadir Sulaiman:

What's the page?

20 **Mr. Soo Kok Weng:**

It's actually D2, not D4.

Judge Abdul Kadir Sulaiman:

You see. Please be concise about that. So 229?

25

Mr. Soo Kok Weng:

Yes your Honour.

Judge Abdul Kadir Sulaiman:

30 Start with paragraph 68?

Mr. Soo Kok Weng:

Yes your Honours.

35 **Judge Abdul Kadir Sulaiman:**

So wrong bundle altogether. Right, so should be bundle D2, not D3.

Mr. Soo Kok Weng:

D2. Defence document 2.

40

Judge Abdul Kadir Sulaiman:

But the page remain. Page 150 of D2?

Mr. Soo Kok Weng:

150 is the front cover of the case while page 229 of the document is the part

5 **Judge Abdul Kadir Sulaiman:**

No, we are resorting to the exhibit that you mentioned to us. You say D4 we look into D4. Now you mention 150 of Defence bundle, originally you say D3, but now you say, no, it is D2, but the page 150?

10 **Mr. Soo Kok Weng:**

Page 150 is the cover of the case. But the particular paragraph

Judge Abdul Kadir Sulaiman:

15 Yeah yeah yeah, in other words the page is correct? Fair enough. But the relevant provision is page 229. Fair enough. Go ahead.

Mr. Soo Kok Weng:

20 Paragraph 70 and 71 of page 229 denotes the requirement for a customary international law and the similar provision, or similar principle, could also be found at page 235 of the same at paragraph 77 and 78.

25 In essence: State practice and *opinio juris* are required to establish customary international law. While state practice could easily be proved by looking at the conduct of the States, *opinio juris* requires 2 conditions

Judge Abdul Kadir Sulaiman:

30 Where are you reading? Where are you reading?

Mr. Soo Kok Weng:

I'm actually reading from my submission.

Judge Abdul Kadir Sulaiman:

35 I see.

Mr. Soo Kok Weng:

40 But you can derive the same conclusion from the paragraph that I mentioned just now.

Judge Abdul Kadir Sulaiman:

Yeah. Go ahead. You are not highlighting to us the relevant paragraph you quoted?

Mr. Soo Kok Weng:

No your Honours. Because I just summarized the 4 paragraphs that I have mentioned.

5

Judge Abdul Kadir Sulaiman:

Alright, go ahead.

Mr. Soo Kok Weng:

10 So, the 2 requirements are: Not only must the acts concerned amount to a settled practice but they must also be such, or be carried out in such a way, as to be evidenced of a belief that this practice is rendered obligatory by the existence of a rule of law.

15 So in short, *opinio juris* is a requirement for the States to practice a certain act because they believe there exists a rule that govern that particular act.

20 We submit the doctrine of responsibility to protect is customary international law, and the example that we are going to use is the 1999 NATO intervention in Serbia in an effort to prevent a potential genocide of ethnic Kosovar Albanians.

25 Significantly, the situation unfolded just 5 years after the United Nations failed to take action to halt genocide in Rwanda. So when Russia and China prevented the Security Council from authorizing the use of force against Serbia, NATO proceeded to commence a 78-day bombardment campaign without United Nations approval. The near universal consensus was that the circumstances justified the intervention, leading commentators to label the situation as “*unlawful but legitimate*.” I will deal with this quotation in my 2nd submission later.

30
35 So the international reaction to the 1999 NATO intervention prompted the General Assembly and Security Council to endorse a new doctrine known as “*Responsibility to Protect*,” which would authorize humanitarian intervention in certain limited circumstances in the future.

40 And on this point I will define on how “Responsibility to protect” comes into play. It comes into play when people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to

disease. Such a transformation could also be discovered from article 4(h) of the Constitutive Act of African Union which expressly provides for the right of intervention of the Union pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity, as well as serious threat to legitimate order.

And on this juncture I would refer your Honours to Defence document D4 at page 466, and in particular paragraph 9 of the 2005 World Summit Outcome. It reads,

“We acknowledge that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. We recognize that development, peace and security and human rights are interlinked and mutually reinforcing.”

So in other words, the United Nations General Assembly Resolution on 2005 World Summit Outcome recognized the possibility to invoke humanitarian intervention because the United Nations is the pillar, the protector of the peoples of the world, and to protect their human rights and dignity.

Similarly, this could also be found in the *United Nations Security Council Resolution 1674* in 2006. Based on the documents and example of Kosovo crisis that I raised just now, we submit that the responsibility to protect is a customary international law because:-

One, there was a State practice in Kosovo crisis; and

Two, the passing of General Assembly resolution, Security Council resolution and also the subsequent States that recognized the intervention of NATO ...

Judge Shad Saleem Faruqi:

Security Council resolution, could you refer that to us. Where is it?

Mr. Soo Kok Weng:

My apology your Honours as the document is not in our Bundle. We are unable to produce the actual document to you. However ...

Professor Francis A. Boyle:

Excuse me your Honour. We object to a reference to a document not in the Bundle that we cannot see and examine ourselves and we stand by our position that there is no such doctrine by the Security Council or the General Assembly recognizing any evanescent right of humanitarian intervention. But we do object to the reference of the Security Council resolution.

Judge Abdul Kadir Sulaiman:

As I was saying, it's no use citing proposition and we ask for grounds, and you say, "*Wait, later we'll give you.*"

Mr. Jason Kay Kit Leon:

Mr. President. I deeply apologise for this oversight. I am responsible for the non-inclusion. I take responsibility ...

Judge Abdul Kadir Sulaiman:

Yeah, don't worry, don't worry about that one so much.

Mr. Jason Kay Kit Leon:

If the Panel is amenable, we will endeavour to make copies of that Resolution and provide it to the Panel during the next break ... after the next break.

Judge Abdul Kadir Sulaiman:

Yes.

Professor Francis A. Boyle:

Your Honour, until that resolution is introduced and we have an opportunity to examine it, we object to any reference at all to it and we maintain our position there is no legal authority for humanitarian intervention.

Judge Abdul Kadir Sulaiman:

We see your point. That's why as I was saying, you see, no point putting up proposition and then we ask to substantiate the proposition, "*Wait, later on we give you.*" It's no good. Please, go on.

Judge Shad Saleem Faruqi:

Yeah, you could still proceed with your Grotian moment argument. That's interesting.

Judge Abdul Kadir Sulaiman:

Yes, proceed with whatever you have. Go ahead.

Mr. Soo Kok Weng:

5 Your Honour, even if the argument of customary international law is
not accepted, we argue that the Kosovo crisis formed a Grotian
moment, a constitutional moment that created a customary
international law in a shorter time but fulfils the condition of State
10 practice and *opinio juris*, and in this regard, I would like to refer your
Honours to the document in exhibit D4

Judge Abdul Kadir Sulaiman:

What page?

15 **Mr. Soo Kok Weng:**

Document D4 at page 435, that is the title of the document; and the
paragraph that I would like to refer your Honours is at page 446, at the
last paragraph of that article in page 446. The author describes the
crisis in Kosovo and at the end, in particular the last sentence,

20 *“The near universal consensus, however, was that the circumstances
justified the intervention,”*

and in page 447, at the last sentence of the 1st paragraph, continued
25 from page 446, footnote 67, the author justifies his view on the
doctrine of responsibility to protect as a customary international law
on the basis that is was, sorry, the Kosovo crisis was endorsed by the
States and by the General Assembly resolution and Security Council
30 resolution. And this is also the footnote that can prove the existence
of Security Council Resolution 1674 which I mentioned earlier.

Professor Francis A. Boyle:

35 Your Honour, once again we object to any reference to a Security
Council resolution that has not been introduced for our examination
and we wish you strike it from the record until we have a chance to
look at this resolution along with the other judges in the Tribunal and
we maintain there is no authority for humanitarian intervention under
any General Assembly or Security Council resolution. Thank you.

40 **Judge Abdul Kadir Sulaiman:**

Objection sustained.

Judge Alfred L. Webre:

Counsel, you may recall that there was a ... with counsel for the prosecution yesterday when he began to introduce evidence that referred to correspondence by the Project for a New American Century dating back to February of 1998 as well as to a paragraph in the charge that stated that it was in September 14, 2001 was the 1st instance that George W. Bush stated that he intended to invade Iraq. And one of my concerns about your conflating the NATO intervention in Kosovo with 9/11 as you're attempting to do here with this 'seizing the Groatian moment', that's a reference to Grotius, the page that you referenced, 447, says,

"Finally, the systematic terrorist attacks against the World Trade Centre and Pentagon on September 11, 2001 and the international community's reactions to those attacks ..."

and then in your submission at page 3, you say,

"Alternatively, even if humanitarian intervention was not customary international law, the change of surrounding circumstances after 911 attack would now make it part of customary international law."

Well, in my country, Canada, in Toronto several months ago we had an international Tribunal attended by eminent scholars and researchers on the issue of whether the so-called attacks, terrorist attacks, on September 11, 2001 we in fact terrorist attacks or if they were a false-flag operation by, orchestrated by senior members of the Bush cabinet including George W. Bush himself and the evidence adduced there was that, such that, it did not fit in with a conclusion of terrorist attacks.

So you are attempting to read in here conclusions that go against the preponderance of evidence at citizens' tribunals and against evidence introduced by the prosecution and you're conflating it with the Kosovo intervention and I wish to point out, since this is a world Tribunal, that it is no longer acceptable, it is no longer acceptable in the world community to continue, to continue the lie that 9/11 was a terrorist attack, at least on any Tribunal that this judge is going to participate in because we can refer now to other sister Tribunals that have found otherwise; and I wish to bring that to your attention in your submission; because there is no reason to conflate 9/11 with the Kosovo intervention.

Mr. Jason Kay Kit Leon:

If I may address Judge Webre's points directly.

Judge Abdul Kadir Sulaiman:

5 Yes.

Mr. Jason Kay Kit Leon:

10 There has been nothing adduced by the prosecution thus far that suggests September 11 was anything more than a terrorist attack. Nothing. And we will stand by our assertion and we eagerly await the decision of the Tribunal on this point. We stand by assertion that September 11 was a terrorist attack.

Judge Abdul Kadir Sulaiman:

15 Of course we will have to consider your submission. But in the course of things, creating a doubt in us, so my Learned Brother ... ask a pertinent question. So just do answer. Do answer to the question raised.

20 **Mr. Jason Kay Kit Leon:**

I yield the podium back to my colleague.

Mr. Soo Kok Weng:

25 So we will argue that humanitarian intervention, or responsibility to protect, is morally and legally justified. I would omit the part

Judge Shad Saleem Faruqi:

30 Kok Weng, for my benefit, if you could assist me a little bit more on this. I'm very open to the suggestion that the law does not stand still; at international law it's developing and that there is now a new doctrine of responsibility to protect, as you are submitting. Surely a new doctrine with such massive implications cannot be said to exist unless there are some pre-requisites that are met.

35 So what are some of the requirements that must be met before we can safely conclude that there is such a doctrine of responsibility to protect which would enable one nation to intervene in the affairs of other nations. Are there any requirements?

40 **Mr. Soo Kok Weng:**

Yes your Honour. If you could refer to the definition of responsibility to protect which could be found in page 2 of my submission, at the last paragraph, line number 8 from the bottom.

Judge Abdul Kadir Sulaiman:

Elaborate on that.

5 **Mr. Soo Kok Weng:**

Responsibility to protect of every State comes to play when people suffering from avoidable catastrophe-mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease.

10

If you Honours look at the definition given here, 'responsibility to protect' will come into play when human rights, especially the right to life, is at stake. That is the condition for a country to intervene, based on responsibility to protect. And, may I refer your Honours to exhibit D4 at page 418. This article is written by Carsten Stahn entitled

15

"Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" In page 418 at the 1st paragraph, the last sentence,

20

"It identified three circumstances in which this "residual responsibility" of the broader community of states is activated:- when a particular state is either unwilling or unable to fulfil its responsibility to protect; when a particular state ... is itself the perpetrator of crimes or atrocities; or, where people living outside a particular state are directly threatened by actions taking place there"

25

Judge Abdul Kadir Sulaiman:

Does our fact fit into any one of this definition?

Mr. Soo Kok Weng:

30

The defence submit it as 'yes', and I will submit about it later.

Judge Abdul Kadir Sulaiman:

You see. You say 'yes', and you're going to submit later. So we are waiting. It's no good, no good. We want answer now, so the trend of our mind will be there, running.

35

Mr. Soo Kok Weng:

To assist your Honour on this point, I will go straight to the situation in Iraq, which can be found at page 4 of my submission.

40

Judge Abdul Kadir Sulaiman:

Don't keep us in suspense.

Mr. Soo Kok Weng:

The 1st is Saddam Hussein was a murderous tyrant. This was a comment made by an Iraq minister, the document at D4, page 375, the cover of the document, and 377 in the 4th paragraph is the part I am going to refer,

'Iraqi Foreign Minister Hoshyar Zebari told the United Nations that under Saddam Hussein, Iraq was "a murderous tyranny that lasted over 35 years." "Today we are unearthing thousands of victims in horrifying testament," Zebari said.'

And if your Honour could turn now to another paragraph,

'I walked across the sandy plains of Iraq and saw the mass graves that were just found and are beginning to yield their tragic secrets. The bones tell a story of horror and shame: arms bound together, skulls pierced from behind. Hundreds in one long trench.'

And in the next 2 paragraphs, it identifies the corpse in the mass graves,

"They are Kurds, killed because of their ethnicity. They are Shiites, killed because of their religion. They are Sunnis, killed for their political views. They are Egyptians, Kuwaitis, and Iranians, killed because their lives meant nothing to Saddam Hussein, his sons, and their followers."

This is the proof that Saddam Hussein committed genocide in Iraq.

Judge Abdul Kadir Sulaiman:

And if I hear that, if I hear someone telling me that, *"I bring my force there, go there."* Is that what you mean? Is that what you're trying to say?

Mr. Soo Kok Weng:

Your Honour, what we suggest here is when human rights, especially when the right of life is at stake, as the greater nation they bear the responsibility to protect. And this comes to my other point, which is responsibility to protect as legal and moral basis.

Judge Abdul Kadir Sulaiman:

We've been following you like that. Go ahead.

Judge Alfred L. Webre:

5 Counsel, you know, we're not trying to be hard on you, but we're
trying to just follow. So if I could, here on page 377 here you've given
us a document that's drafted by Andrew Natsios, Administrator U.S.
Agency for International Development – that's the agency of the
government that was headed up by accused No. 1. In the document,
the document states, "*British Prime Minister Tony Blair said on
November 20, 2003, that as many as 400,000 Iraqis lie in these mass
graves.*" That's the statement of accused No. 2. So you're giving us
10 the statements of accused No. 2 and the statements of the government
headed up by accused No. 1 as the exculpatory statements and as the
evidence for the justification for the humanitarian invasion. Don't you
have any independent evidence?

15 Judge Shad Saleem Faruqi:

Credibility of evidence. The issue you raised.

Mr. Soo Kok Weng:

20 Your Honour, although this document was prepared by US Agency for
International Development, but this document is substantiated by hard
facts in which the photos and the map and the location of mass graves
are identified. If you Honour could refer to page 376 to see the
location of mass graves in Iraq.

25 Judge Shad Saleem Faruqi:

UN documents rather than US documents. Nevertheless, go ahead
with whatever you have.

Mr. Soo Kok Weng:

30 In defence documents D2, at page 110, in the 2nd paragraph,

*"The so-called Butcher of Baghdad, who was president of Iraq from
1979 until he was deposed by Coalition forces in April 2003, was
convicted of the 1982 killings of 148 Shiites in the city of Dujail."*

35 So this is another evidence to show that Saddam Hussein committed
genocide in Iraq.

40 And, of course, humanitarian intervention is morally justified as in
accordance with natural law because wars fought for humanitarian
purposes are a good in themselves although there is a debate about
whether the key moral good is humanitarian intent or humanitarian
outcome.

Judge Abdul Kadir Sulaiman:

So you don't have to wait for the parent body if you associate yourself? You make a decision one way or the other?

5

Mr. Soo Kok Weng:

And this again brings me to the Kosovo crisis where the authorization of UN Security Council resolution come after the invasion of NATO to Kosovo. This shows that a morally good ...

10

Professor Francis A. Boyle:

Your Honour once again we object to any reference to a Security Council resolution justifying to any extent Kosovo. We want to see that resolution and we request the Court to ignore this comment and strike it from the record and instruct counsel for the defence to produce this resolution.

15

Judge Abdul Kadir Sulaiman:

Objection sustained.

20

Mr. Soo Kok Weng:

Your Honours, let me summarise my arguments now.

In a nutshell, for the 1st argument by the prosecution on humanitarian intervention, we submit that the proper term to describe the responsibility of states to uphold human rights in cross-border situation is '*responsibility to protect*' as it connotes moral and legal responsibility.

25

And for the 2nd argument by the prosecution, we submit that the times has changed. The unanimous State practice and *opinio juris* following the Kosovo crisis and the Libya crisis has opened the gates creating a new customary international law in order for the States to discharge their duties under the United Nations Charter which is to protect human rights and dignity as mentioned in the preamble of the Charter.

30

35

And that ends my submission.

Judge Alfred L. Webre:

So counsel, are you arguing that the intervention in Libya by NATO justifies, was legal and justifies the intervention in Iraq? Is that your argument?

40

Mr. Soo Kok Weng:

Your Honours, the Libya crisis is just another example of humanitarian intervention to protect human beings. This is a point that I would like to raise, and no further.

5

Judge Abdul Kadir Sulaiman:

We got your point. So, by Mr. Soo. Who's next.

Mr. Jason Kay Kit Leon:

10 Learned members of the Tribunal, may I seek your indulgence to request for a recess of about 20 minutes, if the Tribunal would indulge me. I do apologise for this application.

Judge Abdul Kadir Sulaiman:

15 Your ground?

Mr. Jason Kay Kit Leon:

I would like to confer with my co-counsels so that we may present a tighter case to the Tribunal and not waste this Tribunal's time.

20

Judge Abdul Kadir Sulaiman:

Fair enough. Fair enough. Ok, so we give you 20 minutes. Now that is the reason. Any objection? Alright, I think it's quite a reasonable request. No objection from the prosecution. So we allow your application. We adjourn to 12.15.

25

Mr. Jason Kay Kit Leon:

Thank you Mr. President.

30 **Judge Abdul Kadir Sulaiman:**

Court stand adjourned.

35

21st November 2011 – Session 3

Registrar Musa Ismail:

Court rise.

5

Mr. Jason Kay Kit Leon:

Learned members of the Tribunal the following part of our submission that there is no case to answer will be taken by my co-counsel Encik Mohd Zharif Shafiq.

10

Mr. Mohd Zharif Shafiq:

May it please this Tribunal. I will submit on point of self-defence. My submission will start from page 14 of the “Submission of AMICUS CURIAE at the end of the Prosecution’s case”.

15

This ground can be further divided into 2 parts – Firstly, that there is a valid category of anticipatory self-defence within the ambit of self-defence as provided under Article 51 of UN Charter. Secondly, that the elements of anticipatory self-defense had been fully satisfied by the accused.

20

The 1st part: Self defense is a right under Article 51 of the United Nations Charter. This can be found in Prosecution Bundle P3 at page 10 and 11,

25

“Nothing in the present charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of United Nations”

30

The prosecution has submitted this point in their submission at page 18 and 19, they relied on 2 documents. Subsequently they have also referred to the AG’s note at page 19 which state that

35

“The AG's note also states categorically that pre-emptive self defence is not a doctrine which exists or is recognized in international law” and the prosecution further stated that,

“an obvious rebuff to the basis which the US was seeking to invoke.”

40

However today we submit that the prosecution has erred by relying on this statement and we will submit 3 legal authorities, 3 legal reasons to justify that pre-emptive strike, or anticipatory self-defence, is within the ambit of Article 51 of the United Nations Charter.

The 1st authority: According to Dr. Louis-Philippe Rouillard in his article, in *“The Caroline Case : Anticipatory Self-Defense”* which can be found in D3, page 409, the 1st paragraph,

5

“Some commentators have argued that the expression “an armed attack occurs” must be construed in the contemporary international and technological context of limited reaction time. In particular, there is a growing tendency amongst American jurists to support exceptions to the principle of non-intervention because of failures of government to act on their international obligation, a need for protecting civilians against terrorist attacks and a need to uphold their sovereignty by striking first against those who menace the international community.”

10

15

at paragraph 4 of the same page, the 2nd line,

“broader interpretation of article 51 is far more convincing than a restrictive view because, according to her interpretation, the Charter of the United Nations was drafted in a way as to either expressively prohibit a behaviour or to preserve rights. Since article 51 states that nothing shall impair the right to self-defence and that there is no prohibition expressively stated on the matter of anticipatory self-defence, it cannot be said to have been extinguished by the Charter”

20

25

The 2nd authority, by Professor Antonio Cassese. He was the 1st President for the ICTY and the President of the Special Tribunal of Lebanon in his book *“International Law”* and this can also be found in our authority D4 at page 149, the 3rd paragraph,

30

“The rationale behind the doctrine of 'anticipatory' self defence. stressed by all those who advocate it, is a strong meta-legal argument: in an era of missiles and nuclear weapons and of highly sophisticated methods of reconnaissance and intelligence, it would be naive and self-defeating to contend that a State should await the attack by another country, in the full knowledge that it is certain to take place and likely to involve the use of very destructive weapons.”

35

and he further stated, at paragraph 4,

40

“This non-legal rationale has been given a legal foundation by claiming that Article 51 did not suppress the pre-existing international rule on anticipatory self-defence”

This argument has been supported by eminent American and British jurists. This can be found at the 3rd footnote, and if I may state 5 of them.

5 The first is by the judge of the International Court of Justice, R. Higgins in her book *“Problems and Process – International Law and How to Use It”*.

10 The second, in the dissenting opinion of Judge S. Schwebel in the case of Nicaragua vs. United States.

The third, by D.W. Bowett *“Self-Defence in International Law”*.

15 Fourthly, by C.H.M. Waldock, *“The Regulation of the Use of Force by Individual States in International Law”*.

And lastly, by J.Stone in his book *“Aggression and World Order”* 1958 at page 44.

20 The 3rd authority that will be used by the defence is the Israeli attack on the Iraqi nuclear reactor in 1981. In 1981, Israel applied this doctrine in the Security Council by declaring that the scope of the concept of self-defence had *“broaden with the advance of man’s ability to wreck havoc on the enemies. Consequently, the concept took*
25 *on new and far wider applications with the advent of the nuclear error. Anyone who thinks otherwise simply not face up to the horrific realities of the world we live today.”* At this can be found in our bundle D4 page 118, the last paragraph number 85.

30 For that statement, Mr. President, Israel relied on the views of another eminent international lawyer, Stephen Schwebel, who was elected to the International Court of Justice, and also the authority from Professor Myres McDougal of Yale law school. And these authorities can be found at the same page paragraphs 83 and 84.

35 The defence team concede and agrees with Professor Cassese in our bundle D4 page 152, the 3rd paragraph, it stated that,

40 *“An analysis of State and UN practice thus shows that the overwhelming majority of States firmly believe that anticipatory self-defence is not allowed by the UN Charter. However, a number of States (mentioned above) take the opposite view. Given the importance of the role of these States, one may not conclude that there*

is universal agreement as to the illegality under the UN charter of anticipatory self-defence.”

Judge Shad Saleem Faruqi:

5 Which are the States?

Mr. Mohd Zharif Shafiq:

The State would be United States of America, Britain, and Israel.

Judge Shad Saleem Faruqi:

10 So basically the 3 States you mentioned, 2 of them are the Defendants in this case?

Mr. Mohd Zharif Shafiq:

15 Indeed, your Honour.

However, we submit that the anticipatory self-defence based on the 3 authorities cited above can be applied by employing a broad interpretation when we examine Article 51 of the UN Charter. And if there is no further enquiries may I proceed with the second part of my submission? Much obliged, your Honour.

For the second part of my submission, it would be the elements of anticipatory self-defence. The elements can be found from the *Caroline incident* which can be found in D3, page 400. From 402 it provides the facts of the case. However I would like to point out the 3 elements which have been laid down from that *Caroline incident* can be found in D3, page 409, the 3rd paragraph.

Firstly, all alternative means must have been exhausted. Secondly, the exercise of the anticipatory self-defence must be proportional, and finally, there is a need to demonstrate the immediacy of the threat.

The defence team will rely on the memoir written by the first accused, George Walker Bush entitled “Decision Points” to justify all these elements. And this authority can be found in P4, page 687.

I shall now move on to the 1st element: All alternative means must have been exhausted by attempting to avert war or the threat of war until it is unavoidable and immediate. In our case today, there are 9 justification, but in order to save the Tribunal’s time, I will submit on the 6 most important ones with regard to this 1st point.

The first justification would be from page 968, the last paragraph, the same bundle, P4, ... sorry, 698.

5 *“In a small Oval Office meeting ... I was determined to make diplomacy work. I hoped he would help. I also assured him our words would not be empty. The military option was my last choice, but I would use it if necessary.”*

10 The second justification is from the same bundle at page 700, the 2nd paragraph,

15 *“We should remain optimistic that diplomacy and international pressure will succeed in disarming the regime. But we cannot allow weapons of mass destruction to fall into the hands of terrorists. I will not allow that to happen.”*

The third justification would be from page 702, the 4th paragraph,

20 *“I told the intelligence community to keep a close eye on the facility. For the time being, I decided to continue on the diplomatic track.”*

And the next justification would be from page 704, the 3rd paragraph,

25 *“After listening to the options one last time, I made a decision: We would seek a resolution. There’s ambiguity in the international community’s view of Saddam and we need to clear it up. Either he will come clean about his weapons or there will be war.”*

30 The fifth justification can be found at page 706, the 2nd and 3rd paragraph, and this paragraph is very important because it is to show that it is constitutionally legal in the United States of America as it has been passed by the Senate and also the highest house in the US Congress.

35 And lastly, the sixth justification would be at page 712, the 3rd paragraph,

40 *“Whenever I heard someone claim that we had rushed to war, I thought back to this period. It had been more than a decade since the Gulf War resolutions had demanded that Saddam disarm, over four years since he had kicked out the weapons inspectors, six months since I had issued my ultimatum at the UN, four months since Resolution 1441 had given Saddam his ‘final opportunity,’ and three months past*

the deadline to fully disclose his WMD. Diplomacy did not feel rushed. It felt like it was taking forever.”

Judge Abdul Kadir Sulaiman:

5 These are your 6 justifications?

Mr. Mohd Zharif Shafiq:

10 Indeed. Based on these justifications, it is sufficient to prove that the first element which was “*all alternative means must have been exhausted*”, which in our case today it would be the “*diplomatic way*”, by attempting to avert war or the threat of war until it is unavoidable were exhausted.

15 Now may I proceed with the 2nd element? Much obliged.

Secondly, the exercise of the anticipatory right of self-defence must be proportionate to the provocation. There are 2 parts to this element.

20 The first can be found in the same bundle, P4, page 693.

“*By early 2001, Saddam Hussein was waging a low grade war against the United States. In 1999 and 2000, his forces had fired seven hundred times at our pilots patrolling the no-fly zones.*”

25 **Judge Shad Saleem Faruqi:**

What is the legality of the no-fly zone?

Mr. Mohd Zharif Shafiq:

30 Your Honour, we submit that it is legal based on the UN resolution which have been passed earlier and we submit that in the no-fly-zone it cannot be, there cannot be no attack.

Professor Francis A. Boyle:

35 Objection your Honour. The no-fly-zone is clearly illegal. There is no Security Council resolution. I ask counsel for the defence to produce this Security Resolution for the Tribunal and for the prosecution to review, and unless and until they do, I move that this comment be stricken.

40 **Judge Abdul Kadir Sulaiman:**

On the same point, objection sustained.

Mr. Mohd Zharif Shafiq:

May I move on with the second part? On page 694, the last 2 paragraphs,

5 *“Before 9/11 Saddam was a problem America might have been able to*
10 *manage. Through the lens of the post-9/11 world, my view changed. I*
15 *had just witnessed the damage inflicted by nineteen fanatics armed*
 with box cutters. I could only imagine the destruction possible if an
 enemy dictator passed his WMD to terrorists. With threats flowing
 into the Oval Office daily- many of them about chemical, biological,
 or nuclear weapons- that seemed like a frighteningly real possibility.
 The stakes were too high to trust the dictator’s word against the
 weight of the evidence and the consensus of the world. The lesson of
 9/11 was that if we waited for a danger to fully materialize, we would
 have waited too long. I reached a decision: We would confront the
 threat from Iraq one way or another.”

20 It can be concluded that the invasion of Iraq was proportionate due to
 the fact that Iraq had attacked American pilots and there was a threat
 against America which could cause thousands of American lives as
 what happened in the 9/11 tragedy. It was essential to stop thousands
 of innocent lives being killed.

25 If there is no further enquiry from the tribunal I shall proceed with the
 3rd element of anticipatory self-defence.

 The 3rd element: There is a need to demonstrate the immediacy of the
 threat. There are 4 justifications to this element. Page 25.

30 According to the P4, page 693, the 3rd until the 5th paragraph; with
 regard to this point, it can be summarised that Iraq has a link with
 terrorism and at this point, my co-counsel, Mr. Muhammad Khairil
 will prove the link between Iraq and terrorism during his submission
 later.

35 And the next justification would be at page 701, the 3rd paragraph,

40 *“In the summer of 2002, I received a startling piece of news. Abu*
 Musab al-Zarqawi, an al Qaeda-affiliated terrorist who had
 experimented with biological weapons in Afghanistan, was operating
 a lab in northeastern Iraq. ‘Suspect facility in this area may be
 producing poisons and toxins for terrorist use,’ the briefing read. ‘Al-
 Zarqawi is an active terrorist planner who has targeted U.S. and

Israeli interests: Sensitive reporting from a [classified] service indicates that al-Zarqawi has been directing efforts to smuggle an unspecified chemical material originating in northern Iraq into the United States.”

5

Judge Alfred L. Webre:

You have that marked as 702 in your submission.

Mr. Mohd Zharif Shafiq:

10

I stand to be corrected. It should be 701.

And the next justification would be at page 704, the 5th paragraph,

15

“Once we laid our position at the UN we had to follow through with the consequences. I don’t want to go to war, but I will do it.”

And then the next justification would be at page 707, it is stated that,

20

“I had been receiving intelligence briefings on Iraq for nearly two years. The conclusion that Saddam had WMD was nearly a universal consensus. My predecessor believed it. Republicans and Democrats on Capitol Hill believed it. Intelligence agencies in Germany, France, Great Britain, Russia, China and Egypt believed it. As the German ambassador to the United States, not a supporter of war, later put it ‘I think all of our governments believe that Iraq has produced weapons of mass destruction and that we have to assume that they still have weapons of mass destruction.’”

25

And last but not least, the last justification would be page 727, the 3rd paragraph,

30

“They left trotted out a new mantra: ‘Bush Lied, People Died.’ The charge was illogical. If I wanted to mislead the country into war, why would I pick an allegation that was certain to be disproven publicly shortly after we invaded the country? The charge was also dishonest. The vast majority of Congress had all read the same intelligence that I had and concluded Iraq had WMD. So had intelligence agencies around the world. Nobody was lying. We were all wrong. The absence of WMD stockpiles did not change the fact that Saddam was a threat. In January 2004, David Kay said ‘It was reasonable to conclude that Iraq posed an imminent threat. What we learned during the inspection made Iraq a more dangerous place potentially than in fact we thought it was even before the war.’”

35

40

Therefore we humbly submit that the 3rd element has been well established in accordance with the justifications given by the accused.

5 To sum up: I have submitted 3 legal justifications in order to invite
this Tribunal to construe, to apply a broader interpretation when
reading Article 51 of United Nations Charter and 3 justifications and
12 circumstantial facts or evidence which justify the 3 elements of
anticipatory self-defence. In total we have 15 points with regard to
10 this point, and unless the Tribunal has any further question, that shall
conclude my submission. Thank you for your time and indulgence.
And I will pass the podium to my colleague, Mr. Auzan Syaidi.

Mr. Auzan Syaidi:

15 May it please the Tribunal,

I will address the Tribunal on the issue that the war in Iraq was
necessary based on 2 points: First, it was against the act of aggression
done by Saddam to his own people; and secondly, it was justified on
20 the basis of humanitarian intervention as has been submitted by my
colleague previously. And my submission shall start at page 7 of the
Defence submission.

25 The United Nations Charter established an institutional framework
regulating the use of force when certain situations of necessity arise.
This is by virtue of **Article 39** of the Charter that the Security Council
shall authorize such means and include a threat to the peace, a breach
of the peace, or an act of aggression.

30 And there are 3 United Nations Security Council Resolutions ...

Firstly the United Nations Security Council Resolution **660**, if I may
direct the Tribunal's attention to D3, page 1, passed in 1990 stipulates
in 1992,

35 *"Demands that Iraq withdraw immediately and unconditionally all its
forces to the positions in which they were located on 1 August 1990; ...
Decides to meet again as necessary to consider further steps with to
ensure compliance with the present resolution."*

40 Moving on to the 2nd Resolution, United Nations Security Council
Resolution **678** which can be found in D3 at page 2. This particular
resolution authorizes the use of all necessary means to enforce United

5 Nations Security Council Resolution 660 and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction and refusal or obstruction of United Nations weapons inspections in violation of United Nations Security Council resolution **687** [passed in 1991] as well as repression of its civilian population in violation of the United Nations Security Council resolution **688**.

10 Thus, for the invasion of Iraq the rationale was the United States relied on the authority of the United Nations Security Council Resolution 660, 687 and 678 to use “*all necessary means*” to compel Iraq to comply with its international obligations.

15 Moving on to the 3rd resolution which is United Nations Security Council Resolution **1441**, P3, page 56, paragraph 4 clearly stipulates this resolution’s intention,

20 “*Recalling that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area,*”

25 Summarising: This stipulates that this resolution does not constrain any member State from acting to defend itself against the threat posed by Iraq or to enforce relevant UN resolutions to protect world peace and security.

30 This “*use of force*” was justified in accordance to the act of aggression executed by Saddam against his own people and there are 4 incidents that shall show the act of aggression by Saddam.

35 Firstly, the event of ethnic cleansing against the Kurds in 1988, page 525 of D4

Professor Shad Saleem Faruqi:

If it happened in 1988 why did the defendant wait so long?

40 **Mr. Auzan Syaidi:**

Your Honour, this resolution was passed in 1988. But according to Resolution 1441 that Iraq must also comply to future resolutions in order to restore peace and security.

Judge Abdul Kadir Sulaiman:

Give the pages?

5 Mr. Auzan Syaidi:

Page 525 of D4. The particular paragraph entitled, *“Ongoing forced Arabisation and drainage of the marshlands,”* if I may quote this paragraph,

10 *“From 1991 to 2001, the regime continued its policy of Arabisation and ethnic cleansing in the Kurdish regions under its control. Tens of thousands of people were displaced, mainly in the regions of Kirkuk, Khanaqin and Mandeli, and also in the South.”*

15 This show the acts of aggression under the administration of Saddam – how these incidents have been executed.

Moving on to the chemical weapons deployed by Saddam against the Kurds, also in 1988; if the Tribunal may kindly refer to D3, page 311,
20 2nd paragraph, line 11,

“During the Anfal Campaigns, the Iraqi army—under the command of Ali Hassan alMajid (cousin of Saddam Hussein and secretary general of the Northern Bureau of the Ba’ath party)—deployed chemical weapons against civilian populations on at least 60 occasions. The attacks on the Kurds could be regarded as falling within the international law definition of genocide.”

Judge Alfred L. Webre:

30 Yes, counsel. Once again it is common knowledge, for example the 4 examples of these acts of aggression in 1988, 1991 occurred during the administration of George H.W. Bush, known as Bush Sr., and the acts of accused 1 was during the administration of Bush Jr., George W. Bush.

35 And for example it is common knowledge that chemical weapons against the Kurds were actually sold during the administration of George H. Bush Sr. to Saddam Hussein by one Donald H. Rumsfeld who then became secretary of defence under Bush Jr. and directed the war in Iraq, but at that time, in 1988, it was George H. Bush and
40 Donald H. Rumsfeld who sold these weapons to Saddam with the understanding they would be used against his population.

Now that case is not before us at this time. But I think you're bringing evidence which in fact implicates the father of your client and the future secretary of defence of your client in this alleged war crime of the invasion of Iraq in 2003. It was the Bush administration that sold these chemical weapons and it was the future Secretary of Defence, Donald H. Rumsfeld, that, there's even photographs of him with Saddam Hussein around this period delivering the chemical weapons so I fail to see how you can raise this as a defence. It's evidence that implicates your client.

Mr. Auzan Syaidi:

Your Honour, in addressing your concerns, it is the defence's submission that by that logic the scientists that created those weapons is liable; but I do not think that this is a reasonable logical leap, even if we include the factors of whoever has deployed these weapons.

Judge Alfred L. Webre:

Well, there's a presumption of agency here, is my point, and you have a common agency in the person of Donald H. Rumsfeld who sold the chemicals weapons to Saddam Hussein in 1988 with a certain policy provisions tagged to the use of those weapons and then you have the same individuals surfacing in 1998, if we are to believe the documents of the prosecution as a principal in the Project for a New American Century planning for the invasion of Iraq and then as an aggressive proponent of the invasion of Iraq as the Secretary of the Defence.

My only point is that you've raised here acts taking place during the administration of Bush Sr. that tie the 1st accused and his cabinet to the war crimes, members of his cabinet to war crimes in 1998; those war crimes are repeated in 2003, the only difference is that they used a pretext, the pretext to invade Iraq at that time.

So I'm just looking behind the face of your presentation here to say that the Secretary of Defence of the 1st accused was the person who supplied the chemical weapons. That's very different to say then, you know, doctors, as such Ph.D developed the chemical weapons at Fort Mead Maryland for the US Army. That's a different issue.

Mr. Auzan Syaidi:

Your Honour, first and foremost, Saddam has targeted his own people, which violates their rights, which he had done when he went against his own people. And it is so difficult to make generations and generations to be held accountable for his actions. This is a Tribunal

of law. The point is that Saddam had targeted his own people and therefore this kind of aggression, this kind of violation, should not be accepted in the name of peace and security.

5 **Judge Alfred L. Webre:**

If that were the case then, why didn't Bush Sr. invade Iraq and why did Bush Sr. sell him those weapons, and why didn't Bill Clinton, who was active in the Kosovo intervention take measures to invade Iraq? You know, it was because he was advised that it would not be legal.

10

So I think that these examples are questionable, is my point. To go back that far ... If this is what you're relying on your case, and I noticed on page 32 of your case "*it's our humble submission that the prosecution has failed to prove a prima facie case,*" and you're urging us to "*discharge the accused without calling for their defence,*" so we're being asked to say there's no prima facie case. That is why I'm bringing up this issue because of the posture of this document, and I'm saying that you're arguing immediacy here and if there was an immediacy, at least George W. Bush wouldn't have sold those weapons, he would have invaded immediately after, or Bill Clinton would have. So there.

15

20

Judge Abdul Kadir Sulaiman:

Yes. We need your explanation for that.

25

Mr. Auzan Syaidi:

Your Honour, on 3 justifications. Firstly, there was no instruction made by ex-presidents Bush Sr. or Bill Clinton. This war took place in 2003, during the administration of George W. Bush Jr., not George W. Bush Sr.

30

On the 2nd justification – that the implementation of the resolution 1441 was to give Saddam one final chance to comply and if he did not comply to the particular provisions related in previous resolutions then we would act if necessary by force to change the regime and aggression executed by Saddam.

35

And on the 3rd justification, the deployment of weapons which took place in 1988, if I may direct the Tribunal's attention to P4, page 694, paragraph 2, the last sentence, if I may quote the whole paragraph,

40

"Saddam Hussein did not just pursue weapons of mass destruction. He had used them. He deployed mustard gas and nerve agents against

the Iranians and massacred more than five thousand innocent civilians in a 1998 chemical attack on the Kurdish village of Halabja. Nobody knew what Saddam had done with his biological and chemical stockpiles, especially after he booted inspectors out of the country. But after reviewing the information, virtually every major intelligence agency in the world had reached the same conclusion: Saddam had WMD in his arsenal and the capacity to produce more. One intelligence report summarized the problem: ‘‘Since the end of inspections in 1998, Saddam has maintained the chemical weapons effort, energized the missile program, made a bigger investment in biological weapons, and has begun to try to move forward in the nuclear area.’’

This stipulates that even after 1998 Saddam continuously pursued these weapons of mass destruction as well as chemical weapons.

Moving on to the 3rd incident of aggression which is the Anfal campaign of 1988, D4, page 378, **‘‘Reports of Mass Killings,’’** line 4,

‘‘Human rights groups said 180,000 ethnic Kurds were rounded up and killed in the Anfal campaign in which hundreds of mountain villages were destroyed.’’

This is indeed an example of aggression ultimately executed by Saddam. And this is a major example on how the aggression has been done by Saddam against his own people.

Judge Shad Saleem Faruqi:

And what’s the source of this report?

Mr. Auzan Syaidi:

The source is the report made by ‘‘U.S. Agency for International Development - Iraq’s Legacy of Terror: Mass Graves.’’

Judge Shad Saleem Faruqi:

US source?

Mr. Auzan Syaidi:

Yes.

Moving on to the 4th incident of aggression by Saddam which is the killing of Marsh Arabs in 1991. If I may direct the Tribunal’s attention to D4, page 290, 5th paragraph,

5 *“At the end of the first Gulf war, the marshlands of southern Iraq were drained in what was widely seen as retaliation by Saddam Hussein for the failed uprising of the Marsh Arabs, around 200,000 of whom subsequently fled the region.”*

And this is a clear example of an occurrence of when Saddam went against his own people.

10 **Judge Shad Saleem Faruqi:**
May I know the source?

Mr. Auzan Syaidi:

15 Your Honour this is a working paper entitled *“What Happened To The Iraqi Marsh Arabs And Their Land?”* reported by Hanne Kirstine Adriansen by Danish Institute For International Studies.

20 Mr. President and members of the Tribunal, the war in Iraq by Bush and Blair was indeed justified under the principal of “necessity” in order to restore peace, stability and security. If I am of no further assistance to this Tribunal, that concludes my submission.

Judge Abdul Kadir Sulaiman:

25 Thank you.

Mr. Auzan Syaidi:

I shall now yield the floor to my colleague, Mr. Khairil Khalid

Judge Abdul Kadir Sulaiman:

30 Introduce yourself.

Mr. Muhammad Khairil:

35 My name is Muhammad Khairil. If I may refer members of this Tribunal to our submission at pages 9 up to 13.

40 Your Honours, do permit me to submit that the attack on Iraq is justified under the 2 Security Council resolutions namely UNSC **1368** and UNSC **1373**. These 2 resolutions can be found in D4. These 2 resolutions were passed subsequent to the 9/11 attack which had killed many innocent lives.

In UNSC 1368 dated 12th September 2001, the Security Council generally condemns the attack done on 9/11. If I may refer this

Tribunal to D4, page 407, one of the decisions passed by the security council is that they are,

5 *“Determined to combat by all means threats to international peace and security caused by terrorist acts,”*

This is in the preamble, and if I may quote paragraph 1,

10 *“Unequivocally condemns in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001”*

Professor Francis A. Boyle:

15 Excuse me you Honour, could we have a better reference so we know what he’s talking about? Where is this again?

Mr. Muhammad Khairil:

20 Your Honours this can be found in D4, page 407. UN Security Council resolution 1368, it’s at the preamble and paragraph 1. And after about 2 week after this resolution 1368 has been passed, the Security Council passed another significant resolution ...

Professor Francis A. Boyle:

25 I’m sorry your Honour, could he please repeat the language that he is citing in support of his proposition?

Mr. Muhammad Khairil:

30 Yes, very well. I would like to quote the Preamble of the Security Council resolution, the 3rd paragraph which is,

“The Security Council is ... Determined to combat by all means threats to international peace and security caused by terrorist acts,”

Judge Abdul Kadir Sulaiman:

35 You are reading the preamble

Mr. Muhammad Khairil:

 Yes, preamble 2, I stand to be corrected. And I would also like to quote paragraph 1, 2 lines below,

40 *“Unequivocally condemns in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York”* and it continues.

5 After about 2 weeks after the SC resolution 1368 has been passed, the
SC passed another significant Resolution numbered **1373** dated 28th
of September 2001 which can be found at D4, page 408, in this
resolution, in general, the Security Council reaffirms its stand in
condemning the attack on 9/11 and urge member states to combat “*by*
any means,” in accordance with the UN Charter, threats to
international peace and security caused by terrorist acts.

10 This can be found in preamble no. 2 and also preamble no. 5 in that
particular resolution referred.

Judge Shad Saleem Faruqi:

15 Both these resolutions were connected with the attack on the twin
towers in New York. What’s the connection with Iraq?

Mr. Muhammad Khairil:

20 Judge Shad, in this situation we submit that the attack on Iraq was
justified on the basis that the America, the United States, is fighting
against terrorism; to combat any acts of terrorism. And in this
situation I would like to submit that there is a link between the
government of Iraq under the regime of Saddam Hussein and also the
terrorist groups which is also involved.

Judge Shad Saleem Faruqi:

25 Any prove of this link anywhere?

Mr. Muhammad Khairil:

30 Indeed, Judge Shad. If I may refer this Tribunal to D4, page 1, this is
a report by the Institute of Defence Analysis authored by Kevin M.
Woods together with James Lacey.

Judge Abdul Kadir Sulaiman:

Americans right?

35 **Mr. Muhammad Khairil:**

Americans, but if I may refer this Tribunal to page 2 of this document
D4, 1st paragraph, 4th line,

40 “*The publication of this IDA document does not indicate the
endorsement by the Department of Defense, nor should the contents be
construed as reflecting the official position of that Agency.*”

Mr President, your Honours, in this situation I would like to save this Tribunal time to point out 5 justifications that link Saddam and terrorist groups.

5 First, if I may refer to D4 at page 21, 1st paragraph,

10 *“Under Saddam, the Iraqi regime used its paramilitary Fedayeen Saddam training camps to train terrorists for use inside and outside Iraq. In 1999, the top ten graduates of each Fedayeen Saddam class were specifically chosen for assignment to London, from there to be ready to conduct operations anywhere in Europe. A Fedayeen Saddam planner outlines the general plan for terrorist operations in the Kurdish areas, Iran, and London, to "His Excellency, Mr. Supervisor" (the title for the head of the Fedayeen Saddam, a position occupied by Uday Hussein, Saddam's oldest son). This memorandum (Extract 1)”*

15 at page 21 and page 22 of D4, the details are provided at the 2 pages for the Tribunal’s perusal. If I may proceed with the 2nd justification.

20 The 2nd justification may be found at page 33 of D4, the one titled *“State relationships with Terrorist Groups”,*

25 *“Iraq was a long-standing supporter of international terrorism. The existence of a memorandum (Extract 10) from the Iraqi Intelligence Service to Saddam, written a decade before OPERATION IRAQI FREEDOM, provides detailed evidence of that support. Several of the organizations listed in this memorandum were designated as international terrorist organizations by the US Department of State.”*

30

Judge Alfred L. Webre:

35 Counsel I’d like to point out that at least 1 of these organizations, the Palestine Liberation Front, has now morphed into the government of Palestine. This seems to me to be a document that is not objective in its designation as what is “terrorist” and what is “not terrorist”.

40 I have some experience with the state of Palestine, some professional experience, that I can draw upon and it seems to me that you’re attempting to bring to us tainted evidence. There is nothing that is terrorist about the state of Palestine. And to bring us evidence that the Palestine Liberation Front is terrorist is attempting to bring us propaganda rather than evidence. That really was my previous point with regard to bringing the statements of accused no. 2 as evidence of

what Saddam Hussein did. It seems like you're not bringing independent evidence. Do you have any response?

Mr. Muhammad Khairil:

5 I understand your concerns fully, Mr. Webre. In this situation, we submit to this Honourable Tribunal that to date, there are no specific definition as to what constitutes "*terrorism*". However, in this situation, this, other than maybe Palestinian Liberation Front, other groups have involved in the attacks around the world which had
10 created terror among the civilian populations.

However, in this situation again, we would like to submit to this Tribunal that this is the evidence that is being presented before the Tribunal and it depends on the Tribunal to decide whether or not such
15 document is credible or not. The Amicus Curiae team has tried our very best to provide with the most credible evidence and this has been mentioned earlier by virtue of page 2 at D4 ...

Judge Abdul Kadir Sulaiman:

20 We're trying to be with you to connect with Iraq. Terrorists are everywhere. How to connect it to Iraq?

Mr. Muhammad Khairil:

If I may provide other justifications ...
25

Judge Abdul Kadir Sulaiman:

How long will you take?

Mr. Muhammad Khairil:

30 I will take only around 5 minutes

Judge Abdul Kadir Sulaiman:

The whole submission?

35 **Mr. Muhammad Khairil:**

5-10 minutes at most

Judge Abdul Kadir Sulaiman:

40 Proceed

Mr. Muhammad Khairil:

If I may direct this Tribunal's attention to page 39 of the same document D4, the 1st paragraph,

“Evidence of Saddam's continuing interest and support for global terrorist activities is found in a 2002 annual report of the liS M8 Directorate of Liberation Movements. The first two-thirds of the report list all of the subjects of the 2002 intelligence reporting, ranging from commentary on various Western newspaper articles to information on the contacts with and support for various regional groups. But it is the last third of the report that is much more interesting. The IIS hosted thirteen conferences in 2002 for a number of Palestinian and other organizations, including delegations from the Islamic Jihad Movement and the Director General for the Popular Movement for the Liberation of al-Ahwaz. The same document also lists messages that various terrorist groups sent to Saddam (37 messages), Saddam's Deputy (22), and Tariq Aziz (6). The titles of the message range from simple best wishes on Saddam's birthday to the following:

- Information on the number of Palestinian martyrs killed vs. Zionists killed.
- Requests for military equipment and for help for the families of suicide bombers.
- Information on (1) the financial status of various terrorist organizations, (2) the volunteers for suicide operations, and (3) rumors of a plan to assassinate Saddam Hussein”

At page 52 of the same document; the last paragraph,

“Other documents show Saddam's terror organizations could be deadly. They were willing to target not only Western interests but also to directly attack Americans. Uday Hussein reports to his father the results of one such terrorist strike that specifically targeted American aid workers with the UN (Extract 22, next page).”

And lastly, if I may kindly draw this Tribunal's attention to page 65 for the last link,

“One question remains regarding Iraq's terrorism capability: Is there anything in the captured archives to indicate that Saddam had the will to use his terrorist capabilities directly against United States? Judging from examples of Saddam's statements (Extract 34) before the 1991 Gulf War with the United States, the answer is yes.”

And extract 34 can be found at page 65 for this Tribunal to decide.

5 You Honours, based on the legal justifications and the evidence that I have brought before this Tribunal, I humbly reiterate my earlier assertion that the attack made by the United States in Iraq is justified in order to combat threats against terrorism that can be linked to Saddam's regime as had been mentioned earlier all done in accordance with the Resolution numbered 1368 and 1373.

Judge Abdul Kadir Sulaiman:

10 So you're going not by direct evidence but you're going by circumstantial evidence. So you know what circumstantial evidence is?

Mr. Muhammad Khairil:

15 Circumstantial evidence is evidence which is not directly related but ...

Judge Abdul Kadir Sulaiman:

 Yes, then? Are there ingredients?

Mr. Muhammad Khairil:

20 I believe that these are the only evidence that we can prove to Court.

Judge Abdul Kadir Sulaiman:

 That's why I said. You've done your best.

25 **Mr. Muhammad Khairil:**

 If I can be of no further assistance to this Tribunal, that should end my submission.

Mr. Jason Kay Kit Leon:

30 Your Honours, if I may impose on the patience of the Tribunal for a few moments longer. We have a short submission by the final member of our team who should not take more than 5 minutes, if your Honours so pleases to ...

35 **Judge Abdul Kadir Sulaiman:**

 Go ahead.

Ms. Pan Shan Ping:

40 May it please this Tribunal, my name is Pan Shan Ping.

 Allow me to submit on the defence's final justification that the prosecution has not proved a prima facie case against both of the accused.

5 It is our submission that there is a resolution post-invasion of Iraq that shows that the UNSC has given its approval, its ex-post approval for the invasion. Before I move on to that, I shall draw a comparison with the other humanitarian intervention that has occurred before, and that was in Kosovo.

10 In 1998 there was mass atrocity that were going on in Kosovo and this was brought about by the leadership of Milosevic. During that time, the people of Kosovo, especially the Albanians, faced a lot of problems in that area and they wanted desperately independence from Milosevic. But nothing could be done and the only way that was possible – for the United States to lead an intervention into that area was to do so directly with force and without the Security Council resolution. Now this was because there was a political deadlock within the Security Council itself.

20 What happened was, the United States knew that Russia, being a permanent member of the Security Council and having a veto power, would veto that Security Council resolution if were to be brought forward by the United States. And therefore the United States launched the attack, launched the invasion, which we will submit was a humanitarian intervention into that area.

25 If I may invite your attention to page 504 of D4, it is the Resolution **1244** made in 1999 which was the post humanitarian intervention into Kosovo. Now reading all the preambular clauses of this Security Council resolution, it does not state in any way that the use of force was illegal, it did not condemn the humanitarian intervention that was led by the United States. In fact, it only condemned the acts of violence that had occurred in Kosovo under Milosevic leadership.

30 Now *that*, we submit, is a form of tacit approval by the Security Council resolution that the attack was a legal one.

35 Coming back to the invasion of Iraq. Bush led this invasion on the grounds of humanitarian intervention and this can be seen from his speech in front of a crowd in Cincinnati in 2002. That is prior to the invasion of Iraq, at page 591 of D4, 12 lines from the bottom. Bush had all along the knowledge and intention to suppress the dictatorial regime of Saddam and this can be seen,

40

“The dictator of Iraq is a student of Stalin, using murder as a tool of terror and control, within his own cabinet, within his own army and even within his own family.”

5 Now looking at the last line of the same page,

10 *“America is a friend to the people of Iraq. Our demands are directed only at the regime that enslaves them and threatens us. When these demands are met, the first and greatest benefit will come to Iraqi men, women and children. The oppression of Kurds, Assyrians, Turkomen, Shia, Sunnis and others will be lifted, the long captivity of Iraq will end, and an era of new hope will begin. Iraq is a land rich in culture and resources and talent. Freed from the weight of oppression, Iraq's people will be able to share in the progress and prosperity of our time,*
15 *if military action is necessary, the United States and our allies will help the Iraqi people rebuild their economy and create the institutions of liberty in a unified Iraq, at peace with its neighbors.”*

20 Now Bush knew this, from the beginning, the atrocities that were occurring within Iraq, and this is one of the justifications to enter.

Judge Abdul Kadir Sulaiman:

So there's nothing to do with 9/11?

25 **Ms. Pan Shan Ping:**

This is one of the justifications and on top of that would be on the grounds of humanitarian intervention.

30 Looking at the next resolution which is Resolution **1483** which was passed in May 2003, 2 months after the invasion of Iraq, page 513 of D4. Reading the preambular clauses of this Security Council resolution, we have come to a conclusion that this also amounts to a tacit approval by the United Nations Security Council that the use of force to enter Iraq was legal. With the Resolution **1244** regarding the
35 invasion into Kosovo, and comparing these 2 resolutions, we submit that this resolution itself amounts to tacit approval, ex-post tacit approval which occurred after the invasion into Iraq.

Judge Shad Saleem Faruqi:

40 Which aspect of 1483 do you feel ratifies or confirms or approves the Iraq invasion? Could you point out to me.

Ms. Pan Shan Ping:

5 Yes, Judge Shad. We submit that the mere fact that there was no condemnation on the use of force proves that there was tacit approval; and second, this resolution allows the US and the UK remain in the area to be the interim government until the Iraqi people can elect their own government.

10 So the occupation post-invasion as stated in the Security Council resolution amounts to tacit approval.

Judge Abdul Kadir Sulaiman:

Retrospective effect?

Ms. Pan Shan Ping:

15 Yes, your Honours. I shall yield the floor to our lead council.

Mr. Jason Kay Kit Leon:

20 Mr. President, learned members of the Tribunal. Kindly indulge me for just a few more moments.

The issue of hearsay. Hearsay is hearsay. We know why hearsay must be treated with caution. All we ask: The prosecution has documents that are hearsay, please treat them with caution.

25 **Judge Abdul Kadir Sulaiman:**

Even your document as well?

Mr. Jason Kay Kit Leon:

30 and our documents as well. Here, it is across the board.

Judge Abdul Kadir Sulaiman:

Hearsay is hearsay...

Mr. Jason Kay Kit Leon:

35 Yes, perhaps I could have said it much better. We have quoted Americans – undeniable. Americans are fellow citizens of George Bush, accused number 1. I pray the Tribunal takes judicial notice that there are Americans who hate George W. Bush, as there are Americans who love him unconditionally.

40

Judge Abdul Kadir Sulaiman:

Yeah. So you have 2 sides to everything.

Judge Shad Saleem Faruqi:

Some of these documents didn't come from American citizens, from this or that side of the divide. They came from official American agencies, Defence Department documents ...

5

Mr. Jason Kay Kit Leon:

But Professor, Judge Shad, I do believe that we are all aware that within governments itself there are factions and there are differences of opinions.

10

Judge Abdul Kadir Sulaiman:

Just like I said.

Mr. Jason Kay Kit Leon:

15

People are people. Evidence is evidence. Please treat them with caution. They are in the door. Admissibility, no problems. Credibility, kindly consider. Weight, kindly consider. And kindly consider the human condition.

20

Judge Abdul Kadir Sulaiman:

We know, we know. Under Best Evidence Rule...

Mr. Jason Kay Kit Leon:

Exactly.

25

Judge Abdul Kadir Sulaiman:

We should reject wholly the hearsay. But here, hearsay is permissible, with caution on the weight to be given. We are mindful of that.

30

Mr. Jason Kay Kit Leon:

With that, in toto, it is our humble submission that the prosecution has failed to prove a *prima facie* case against both the accused and we therefore urge the Court to discharge both accused without calling their defence. I thank you for the Tribunal's kind indulgence.

35

Judge Tunku Sofiah Jawa:

One question, Mr Jason Kay. I observe that you have in your Bundle of Document A the dissenting judgement of Justice Pal which was delivered in 1946 at the War Crimes Tribunal in Tokyo. You're not using ... this dissenting judgment is very extensive. It's 700 plus pages. Are you going to use it to support your case?

40

Mr. Jason Kay Kit Leon:

We had originally considered to use Justice Pal but upon further consideration and discussion with my team members, it was pre-UN Charter.

5

But the value of Justice Pal to us, which is still valid for any Tribunal which is concerned with high crimes, is that there's always the other side to the story. Justice Pal was one dissenting judgment that was written. He wrote this judgment. He took a lot of time to write down this judgment. And that judgment was in the face of blatant abuses done during World War II.

10

If your Honours would care to look at the preamble, the few pages, because this judgment comes in the form of a book and the author who discovered this judgment, and it had to be *discovered*, because for some 20-odd years it was ... the word is probably "*suppressed*". It was kept in the back because it was a dissenting judgment.

15

Professor Gurdial Singh Nijar:

Just a point of clarification. He has just prefaced his remark that the defence is not relying on this document. If he's not relying, then it forms no part of their submission, I think we should leave it at that. Thank you.

20

Mr. Jason Kay Kit Leon:

I'm just addressing the direct question. The foreword for the judgment is contained in our bundle A, which is Defence Exhibit 1, and it's from page 110 all the way to 114. It's quite short. It gives the background to how the judgment was discovered and had to be rediscovered. And it, well, the foreword itself makes for quite scintillating reading ...

25

30

Judge Abdul Kadir Sulaiman:

Go to your next ...

35

Mr. Jason Kay Kit Leon:

And with that we end the submission unless there are further enquires. For the documents that were requested by the prosecution during the submission of my co-counsel just now, we are in the process of making copies of it and will extend it after the break to the Tribunal and the prosecution.

40

Judge Abdul Kadir Sulaiman:

But anyway you have closed?

Mr. Jason Kay Kit Leon:

5 We have closed now.

Judge Abdul Kadir Sulaiman:

Mr. Nijar, you have something in rebuttal?

10 **Professor Gurdial Singh Nijar:**

Yes, we both have something in rebuttal.

Judge Abdul Kadir Sulaiman:

How long? If it's very long we'll adjourn here.

15

Professor Gurdial Singh Nijar:

I think we'll take between ourselves about 1 hour and a bit.

Judge Abdul Kadir Sulaiman:

20 Court stands adjourn to 3.30pm today.

25

21st November 2011 – Session 4

Registrar Musa Ismail:

Court Rise.

5

Judge Abdul Kadir Sulaiman :

You are giving it as exhibit or what?

Professor Francis A. Boyle:

10

Your Honour,

Judge Abdul Kadir Sulaiman:

I try to the answer here first. I give you the liberty.

15

Ms. Pan Shan Ping:

I would like to tender in the 2 Security Council resolutions which we have promised before the break.

Judge Abdul Kadir Sulaiman:

20

So, you tender this as your exhibit?

Ms. Pan Shan Ping:

Yes.

25

Judge Abdul Kadir Sulaiman:

If exhibit we regard this as exhibit, in the form of evidence. Otherwise we just take it as your submission.

Ms. Pan Shan Ping:

30

It's the exhibit. Security Council Resolution **1674** and **688**, it is written on the bottom left hand corner.

Judge Abdul Kadir Sulaiman:

Any objection?

35

Professor Francis A. Boyle:

No objection your Honour.

Judge Abdul Kadir Sulaiman:

40

Okay, no objection. I thought you want to raise objection. Mr. Registrar, mark as? The first one that is Security Council resolution **1674, D5**; and the other one, **688**, will be **D6**. Anything more?

Ms. Pan Shan Ping:

No, Mr. President.

Judge Abdul Kadir Sulaiman :

5 Are you ready to begin?

Professor Francis A. Boyle :

Yes, Mr. President, distinguished members of the Court.

10 We must remember that we are called here to stand in judgment on
Bush and Blair because they waged a war of aggression, a Nuremberg
crime against peace, against Iraq that exterminated 1.4 million Iraq,
tantamount to genocide. That is what is at stake here. Not all the
15 legal ... and hair-splitting that we have heard from defence counsel this
morning. This was a war of aggression, a crime against peace, in
violation of the Nuremberg Charter, judgment and principles and the
statute of this Court and even US Army Field Manual 2710 of 1956 as
I pointed out in my submission.

20 Now the Defence counsel said that there is a slight discrepancy
between my submission and my colleague, Professor Nijar on
humanitarian intervention and this is somehow unfair to the accused.
But the truth is what counts is in the Charge, not in the submissions.
And the Charge clearly gave them notice in advance that they were
25 going to be prosecuted for a crime against peace in accordance with
the sources of authority I have already mentioned to you today. And
again we have the Charge CP No. 1 and CP 211. It's quite extensive.
They have fair notice and an opportunity to respond.

30 What happened here, as established by my colleague, Professor Nijar,
is a war of aggression, a crime against peace. Weapons of mass
destruction were a joke, a fraud and lie. Humanitarian intervention
was a joke and a fraud and a lie. The plan for this crime against peace
goes back, at least, to the Project for the New American Century
35 which is the neo-conservative's equivalent to Hitler's Mein Kampf,
September of 2000, just before Bush was elected as President and as
he was elected President, he took all of these Zionist, neo-
conservatives and put them in power throughout the entire United
States's government and the Secretary and Treasury O'Neill said at
40 the 1st cabinet meeting they began to talk about invading Iraq.

It had nothing to do with weapons of mass destruction or humanitarian
intervention or anticipatory self-defence. Go back and read the

Project for the New American Century. It was all set out there. This is the Bush Mein Kempf. And that is what they did to Iraq.

5 We also know that 9/11 was used as a pretext for justifying an aggressive war against Iraq and shortly after waging an illegal aggressive war against Afghanistan, Bush then ordered his top general, Tommy Franks, to prepare to launch and wage an aggressive war against Iraq. And then we have the infamous statement, and vulgar statement by Bush, made in the White House, in the office of
10 Condoleezza Rice, in the presence of United States' Senators, and here I will use the vulgarity because Bush is a vulgar criminal, as is Blair, and it's critical to establish his criminal intention where he said, and my apologies to Your Honours, but we're all adults here, "*Fuck Saddam! We're going to take him out.*"

15 That had nothing to do with weapons of mass destruction. That had nothing to do with humanitarian intervention. And it was at the same time that the Head of British Intelligence then was in Washington and saw that Bush and his administration were fixing the facts to support the policy. These were all lies and propaganda being told as
20 established in the submission by my colleague, Professor Nijar and the war itself actually started in the summer of 2002 with the escalation of the bombing campaign against Iraq. The air war started in the summer of 2002. "*Shock and Awe*" started in March of 2003.

25 We just received a copy of the Security Council's Resolution of 688/1991 that defence maintains authorised these no-fly-zones in Iraq. That's clearly a misrepresentation of the text of this Resolution. It says nothing at all about a no-fly-zone. Indeed when the Security
30 Council wanted to authorise a no-fly-zone over Libya, not that I approve it, but they expressly used language to that effect. There's nothing in here about a no-fly-zone; there's nothing in here about the use of force. Those no-fly-zone were clearly illegal by Britain and the United States and at one point, France, to carve up Iraq into 3 pieces, preparatory to '*taking it out*', as Bush said, as a State.
35

And why were they going to take Iraq out as a State?

40 One, as Richard Pearl says distinguishing Iraq from North Korea that actually had nuclear weapons, he said, "*Well, Iraq swims on a pool of oil.*" It was all about Iraq's oil.

And second, as a favour to Israel. As Huntington pointed out in “*Clash of Civilizations*,” Iraq was the only Arab state capable of mobilizing any opposition to Israeli aggression and genocide against the Palestinians. And so Israel and the Zionist neo-conservatives running to Bush’s administration decided “*to take out Iraq*,” as President Bush put it.

Now, to go through these arguments made by Counsel for defence *in seriatim*, one at a time.

As I pointed out before, there were no weapons of mass destruction. I publicly debated this with a lawyer for the Republican party, David Rifkin who had worked for President Reagan, on a national radio programme, “LIVE”, where I said, October 2002, there were no weapons of mass destruction in Iraq. Everyone knew it. El-Baradei had reported for the IAEA that there were no nuclear weapons. Likewise the UNSCOM Inspector Scott Ritter and Ray Zeelinkus had reported that after Gulf War 1 by Bush Sr., in 1991, all the Iraq chemical and biological weapons had been destroyed.

And here, let me go back to the point made cogently by Judge Webre. Iraq and Saddam Hussein got these weapons, nuclear, chemical weapons and biological from the United States and the NATO states. Nuclear capability from the United States. Chemical weapons, US and NATO states providing them with chemical weapons. Biological weapons they got from the United States as documented my book “*Bio Warfare and Terrorism*”. They got all these from the United States starting with the Reagan administration in the hope and expectation that they could weaponize them all and use them against Iran.

Despite all that, in the Iran-Iraq war, despite all that, these weapons were completely destroyed.

After Gulf War 1, they did not exist and everyone who had been following this situation knew that this was true and that these were all lies. There was no intelligence failure. Bush and the highest level officials in his administration knew full well there were no weapons of mass destruction. This was all a pretext to propagandise a war and to scare-monger the American people and Congress into supporting a war of aggression and a crime against peace, against Iraq for its oil and for Israel. It was very simple what was going on and the citations for this also can be found in my book, the support by the Reagan

administration for Saddam Hussein's weapons of mass destruction in my book "*Destroying World Order.*"

5 Now as for this doctrine, this completely bogus doctrine of "*humanitarian intervention*" – once it was clear that Bush had lied to everyone – and the same arguments I'm making here apply to Tony Blair, and my colleague, Professor Nijar in his written submissions, has done an excellent job in combing the British press, let me here say a few more from the Bush American perspective.

10 Once it was clear that Bush had lied and there were no weapons of mass destruction, and this was not any intelligence failure, they then shifted on an *ex-post facto* basis the pretext for the war to humanitarian intervention. And as I've already pointed out in my submission from my book, "*No To Humanitarian Intervention As A*
15 *Pretext For Aggression,*" it's a completely bogus doctrine of international law.

20 And you'll note, in my book I predicted that the Obama administration would wage war in the name of humanitarian intervention and that's exactly what he did against Libya, murdering 50,000 Libyans once again to steal all the oil and gas of Libya.

25 Your Honours, if you recognise, to any extent, this bogus doctrine of "*humanitarian intervention*", the United States and the NATO states could do the same to Malaysia or any other 3rd World State, just as they recently did to Libya, and that shows you the dangers of this doctrine.

30 To repeat what I've said before, and even as quoted by Defence Counsel, the leading authority rejecting humanitarian intervention is the International Court of Justice in the *Nicaragua case* and I have cited the 2 paragraphs, defence counsel have cited the 2 paragraphs. I am not going to cite them and read them again to you and waste your
35 time. It is the opinion of the International Court of Justice that counts. Not the speculations of Professor Sharf or Professor Okano, both of them who are of Americans, or anyone else that counts. I respectfully submit this is the highest court in the world and this court is bound to obey the rulings of the International Court in the *Nicaragua case*.

40 Furthermore, the court made clear, in rejecting these 2 doctrines, that it violated the terms of the United Nations' Charter, which as the court said in the *Nicaragua case* was *jus cogens*, a pre-emptory norm of

5 International Law that cannot be changed even by contrary state practice in the future. And so, it doesn't matter for defence counsel to argue that "*humanitarian intervention*" is international law, customary international law. It still violates the terms of United Nations' Charter which is *jus cogens*, and therefore, by definition, cannot become customary or international law.

10 Indeed in the submissions that Defence Counsel made to you, their authorities have even called it "*unlawful but legitimate*." That's preposterous. Even those who support the doctrine of "*humanitarian intervention*" have admitted and conceded it is unlawful. This is a court of law. We apply law. And even the proponents of the bogus doctrine have conceded it is unlawful.

15 Counsel for the defence have invoked this UN General Assembly Resolution in support of the proposition of humanitarian intervention, the right to protect. They have recently tendered to us this Security Council's doctrine, **1674** – it does not authorise any use of military force at all. All it does is re-affirm paragraphs 138 & 139 of the 2005
20 World Summit Outcome document concerning the responsibility to protect.

25 Let us look at this document. It's in defence documents Volume 4. I won't go through the whole document. Let us first turn to page 486 Defence document 4.

30 The white-racist-western-colonial-imperialist powers tried to slip into this General Assembly resolution a doctrine authorising the use of military force in the name of responsibility to protect and all the other states of the world emphatically rejected this manoeuvre.

35 If you take a look, to begin with, page 486, paragraph 77, it's the UN General Assembly Resolution. It is clear in paragraph 77, I won't read it all here in the interest of time; the General Assembly made it quite clear that there was no justification or excuse to threaten or use military force in the name of human rights to violate the United Nations' Charter.

40 Likewise, paragraph 79, "*we reaffirm that the relevant provisions of the Charter are sufficient to address the full range of threats to international peace and security. We re-affirm the authority of the Security Council to mandate coercive action, to maintain and restore international peace and security.*"

And again, paragraph 80, “*we re-affirm the Security Council has the primary responsibility to maintain international peace and security.*”

5 That was put in there to prevent the effort by the United States, Britain, France and the others to slip in some bogus doctrine of “*humanitarian intervention*” to fully re-affirm the integrity of the Charter provisions.

10 Now let us turn to the critical paragraph 139 on paragraph [page] 495: And the General Assembly makes it very clear, and this is a paragraph referenced by the Security Council,

15 “*The international community, through the United Nations,*” not through vigilantes such as Bush and Blair, “*also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing,*” et cetera.

20 So, they’re making it clear there shall be no international vigilantism by Bush and Blair. It’s up to the United Nations to protect human rights. In this context, we the member States of the UN, not Bush and Blair, the vigilantes, are prepared to take collective action in a timely manner through the Security Council.

25 Notice it is the Security Council as required by the UN Charter that is given the authorisation here. This paragraph was very carefully drafted by the entire world to make it clear that this responsibility to protect is still subject to all the requirements of the United Nations Charter including the requirement of peaceful resolution disputes and including the requirement that only the Security Council could authorise the use of military force to protect human rights and not vigilantes such as Bush and Blair.

35 Through the Security Council, in accordance with the Charter, including Chapter 7. Bush and Blair never got a Chapter 7 authorization to use military force against Iraq. The 1st resolution, as my colleague Professor Nijar pointed out, did not have the language in there “*using all necessary means.*” There was to be a 2nd resolution; but when Bush and Blair realised they didn’t even have the votes at the Security Council for the 2nd resolution, they withdrew it.

40

And this *Article 139* provides no authority to the contrary for Bush and Blair to set themselves up as international vigilantes in the name of human rights which they could not even give a tinkers-damn about. Bush and Blair murdered and exterminated 1.4 million Iraqis. How dare defence counsel come here and say that they cared about human rights in Iraq? Tell that to the 1.4 million dead Iraqis, and their mothers, and their fathers, and their sisters, and their brothers, and their sons, and their daughters – they would laugh you out of court with this argument that Bush and Blair could care less about human rights in Iraq.

I won't go through the rest of paragraph here; but if you go back and read it carefully, you will see that the States of the General Assembly who spoke for the entire world took this bogus doctrine of "*responsibility to protect*" developed by white-racist-western-colonial-imperial powers and subjected it to the requirements of the United Nations Charter – including the Security Council, including Chapter 7, including the obligation for the peaceful settlements of disputes, all of which Bush and Blair completely ignored because they wanted to wage a war of aggression against Iraq to steal its oil, destroy Iraq as a State, and eliminate Iraq as a threat to Israel. That's what this war was all about and we must never forget it.

The Counsel for Defence cites the *North Sea Continental Shelf case* on their behalf. That's puzzling because the North Sea Continental Shelf case dealt with the principle whether or not the equidistance principle had risen to a level of customary international law and the court said "No". So, the North Sea Continental Shelf case cuts against what they were asserting. You can go back and read it if you want.

As for Kosovo, this was clear cut case of outright aggression by the United States and the NATO states. And I'm not speaking here as a friend of Serbia and Slobodan Milosevic. As you know, I was the lawyer for the Republic of Bosnia-Herzegovina and all of its citizen before the International Court of Justice in the Hague.

I single-handedly won 2 World Court orders against Serbia and Milosevic to cease and desist from committing all acts of genocide against the Bosnians. So I am certainly not a partisan of Milosevic and indeed I got Milosevic indicted by Carla Del Ponte on behalf of my clients, the mothers of Srebrenica and Gradina, for every crime in the statute book of the International Criminal Tribunal for the former Yugoslavia, including genocide.

That being said, the US-NATO war against Kosovo was clearly illegal. It was outright aggression. This article by Sharf, he points out in the footnote, he worked for the United States's government as a lawyer in the Clinton administration at the United Nations during the Kosovo war justifying it. How could you possibly believe that he is an objective scholar? It's ridiculous. Indeed, even worse, Sharf points out in his footnote that he was the lawyer for the US-UN mission in New York during the Bush Sr. war against Iraq where he justified every hideous atrocity that Bush Sr. inflicted on the Iraqi people, including exterminating 200,000 Iraqis. Sharfs, as a lawyer, aided and abetted the mass extermination of Iraqis. So of course you cannot attribute any significance at all to this article so-called article.

And indeed on the casualties from Gulf War 1, these are established in my book *"Destroying World Order,"* and in the book of my colleague, Ramsey Clark, the former Attorney-General of the United States called, *"The Fire This Time."* Sharf was part of aggressions against Iraq and Kosovo; so of course you can't listen to anything he said. And to the best of my knowledge, he has served as a lawyer advising the United States government in its current illegal military occupation policies in Iraq. So how can you pay attention to this person? I don't understand that and it's there right in the footnote if you read it carefully.

Counsel for the Defence cited Professor Okano. I know Professor Okano personally. She's a diehard bigot and racist against the Palestinian.

I gave a lecture at her university on one night on *"The Right of the Palestinians to their own State,"* for which I served as their lawyer, and Okano came over there just deliberately on purpose to thrash the Palestinians and to thrash their right to their statehood and publicly deny that the Palestinians have any right to a State and argued publicly with me on this issue.

How could you possibly give any credibility to a die-hard bigot and racist of the Palestinians who denies their very right to exist as a state, which is near genocidal in its implications?

We've had authoriuh, so-called facts introduced here from USAID, an agency of the United States's government. Everyone in America knows that USAID is a front-organization for the CIA. Everyone

knows this. It is a matter of common knowledge. Indeed, I once had lunch with the former director of USAID and I asked him about CIA penetration of USAID and he said to me, “*There were so many spooks in my organization that I lost track of them.*” How dare defence
5 counsel come to this court and produce so-called evidence manufactured by the CIA and its servants? It insults your intelligence. It insults the dignity of this court.

10 They cited sources from FOX News. Excuse me? FOX News? A sewer and a gutter and a toilet if anyone ever knew it. Owned by the Fascist-Zionist-war monger Rupert Murdoch. How could anyone cite to this court FOX News?

15 They cited the so-called Tribunal to try Saddam Hussein. That was a kangaroo court set up by the Americans run out of the State Department, sorry, run personally out of the White House. It was paid for by the Americans. It was run completely by American lawyers. It violated the 3rd Geneva Convention. It was a war crime and then they lynched Saddam Hussein. That Tribunal is entitled to no significance
20 at all. If you gave it any significance, you would be condoning American war crimes in Iraq and the murder of the President of Iraq. Please, don’t do that.

25 We next come to this doctrine ... alleged doctrine on “*anticipatory self defence*” and what I find amazing is it all go back to the *Caroline case* of 1837. Excuse me, 1837? The Caroline case? This honourable court is supposed to be paying attention to a pronouncement by a US Secretary of State made in 1837? Do the Americans make International Law for the rest of the world even going back to 1837?

30 Well if you read the American International Law literature, the answer is “Yes”. What America does and say prevails even if it is going back to 1837, prior to the United Nations Charter. Indeed, well over a hundred years before the United Nations Charter. It’s preposterous to
35 consider; even read the title to that article referring to the Caroline case. I hope when you go back and read the Caroline case, you laugh and snigger as much as I do.

40 What gives the United States of America the right to make the International Law in 2011 going back to 1837 with nothing more than a dicta by a US Secretary State? I guess Mrs. Clinton sees it that way too. Condoleezza Rice saw it that way too. I submit that it’s not the

way I see it. I submit I don't believe that's the way you will see it. America cannot make the law from the grave for the rest of the world.

5 Now, as for the terms in the *United Nations' Charter*, in their presentation, of course, they left out the critical language in *Article 51*,

10 *"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations ..."*

15 Iraq didn't attack anyone in 2002 and 2003. Iraq was attacked by the United States and Britain, by Blair and Bush. Iraq had a right to defend itself. This argument turns Article 51 on its head. Now why was that language *"if an armed attack occurs"* put in there? Precisely to close the door on any doctrine of anticipatory self-defence, and that was put in there by the United State's government.

20 It was the American State Department who did the first draft of the United Nations' Charter, and then took it up to San Francisco and there the state department legal advisor Hetworth objected to this language *"if an armed attack occurs"* because it would preclude expressly in those words, anticipatory self defence and the Deputy Head of the delegation said, Stasen, *"I don't care. That's what I want to do because the Japanese use the doctrine of anticipatory of self*

25 *defence to attack us at Pearl Harbour. So of course we do not want this doctrine in the Charter or in the post-UN Charter World"*.

30 So certainly in 2002, 2003; the bombing campaign started in 2002, *"Shock and Awe,"* and then the invasion in 2003. Iraq was not attacking anyone. Iraq was attacked. And that's what the Charter says and that is the negotiating history of the Charter. The Legal Advisor to the Department of State objected that this language would eliminate anticipatory self-defence and Senator Stasen said, *"Yes, that's exactly what I want to do. We can't have this doctrine lying around like a loaded gun for any fascist imperial power that might want to use it*

35 *like the Japanese did in World War II,"* and regretfully as the Americans have done today under Bush and, Blair, also the British.

40 Indeed, if you have a look at the National Strategy drafted by the Bush administration, the official document, September 2002, promulgated just before Iraq and drafted by the Neo-Conservatives. It said quite clearly, *"the best defence is a good offence."* Well, offensive war is clearly prohibited by the terms of the United Nations' Charter.

Nothing could be clearer. You cannot pervert defence under Article 51 by saying, “*Well, we’re going launch and wage an offensive war.*” Indeed, the lawyers for the Nazis made this argument at Nuremberg, and the Nuremberg Charter, judgment rejected it.

5

So notice we have the Bush administration and Blair making Nazi argument that were rejected when American, British, French, Russian judges sat in judgment of the Nazis starting in 1946. This is the deplorable situation but it is true. And so under this Nazi doctrine of “*preventive warfare*”, officially adopted by the United States government in September 2002, they went to war against Iraq and 1.4 million Iraqis are now are dead.

10

15

They cite Mr. Cassese in support of this proposition. As they conceded, Cassese was ... is, was, a judge for the American Special Tribunal for Lebanon. This is a kangaroo court, the Special Tribunal for the Lebanon, set up by the United States’s government, paid for by the United States’s government, and done on behest of Israel. And it has been used by the United States and the Israelis first to de-stabilise Syria, and now to de-stabilise Lebanon at the behest of the United States and Israel and the Zionists. And despite all that, and this is well known to everyone who follows the Tribunals, Cassese agreed to become the President of this American-Israeli-Zionist kangaroo court that was designed to de-stabilize Syria and Lebanon, and was paid massive sums of money for doing nothing absolutely at all. I respectfully submit that therefore this Court should pay absolutely no attention at all to anything this Cassese has said, a stooge for the Americans, and the Israelis, and the Zionists.

20

25

30

They mentioned that the dissenting opinion of Judge Schwebel in the Nicaragua case in support of anticipatory self-defence. That’s exactly right. It was the dissenting opinion. The court rejected this idea, right, that’s why Schwebel dissented. And who is Schwebel? My teacher, mentor and friend, the late, great Richard R. Baxter was on the World Court and died of cancer unfortunately. So the State Department under Reagan took their deputy legal advisor, Schwebel, and put him on the court to take Judge Baxter’s place. And there on the Court, in the Nicaragua case, he authored 3 completely shameless dissents that read as if they had been drafted by the US State Department. And indeed Schwebel was a State Department lawyer.

35

40

So remember, this is a dissent Schwebel and the State Department lost in the Nicaragua case. That was Nicaragua vs. The United States of

America. So of course they lost. So the Schwebel dissent simply confirms what I am saying, that's why it was a dissent. If the court agreed, it would be a majority, and it was not. And indeed, Schwebel was almost alone in his dissent on many of these issues. His opinions were so shameless – nothing more than a mouth-piece for the State Department.

The defence counsel cites the Israeli attack on Iraq. Excuse me? Israel is authority for anything before this Tribunal? Isn't this Malaysia? We're siding with the Zionist in support of any type of legality? I really can't take that at all. What sensitivity do they have to anyone citing Israel, the most lawless State in the world today that oppresses and destroys and exterminates Palestinians at will with the full support of the United States and Britain and they have the audacity to cite Israel?

What they don't point out is, of course, the Security Council itself even condemned this attack. Even the Americans went along with that. It was so lawless. And indeed the head of Israeli military intelligence at time, Segi, told the Prime Minister Begin, the Iraqi reactor here is no threat to Israel and in his opinion, Begin launched the attack because he was about to lose an election to Labour and thought it would boost him in the polls, which it did, and it won the election. The Israeli attack on the Iraqi reactor is just a clear-cut case of wanton aggression.

We also have to remember where does this concept of "*crime against peace*" come from? It was in the Nuremberg Charter. It was one of the charges against the major Nazi war criminals and it was drafted again substantially by the United States and US government lawyers. The crime against peace technically was based on a violation of ***Calabrian Peace Pact*** of **1928** to which the US and Germany were parties and still today the United States, Britain and Iraq are parties. And the Calabrian Peace Pact, which is still valid and binding International Law today specifically renounced war as an instrument of national policy and mandated the exhaustion of all means for the peaceful resolution of disputes. And it was that treaty then that was the technical legal basis for the charge "*crime against humanity*" against the Nazi leaders at Nuremberg.

Well, the United States, Britain and Iraq are, and were, all parties to the Calabrian Peace Pact. Bush and Blair waged a war of aggression, war as an instrument of national policy against Iraq in violation of the

1928 Calabrian Peace Pact. So just as the Nazis were found guilty of a crime against peace on the basis of a violation of the Calabrian Peace Pact, so too Bush and Blair are guilty of a crime against peace, in part, because they violated the Calabrian Peace Pact.

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And later, the Calabrian Peace Pact, these 2 articles would become **Article 2, paragraph 3** of the **United Nations Charter** requiring the specific resolution of international disputes, and Article 2, paragraph 4, prohibiting the threat and use of force. And Blair and Bush also violated both of those as well.

10

Counsel for the Defence cited the resolution by the United States' Congress authorizing war against Iraq. Excuse me? What authority does the United States' Congress have to violate international law? None! It's again a basic principle of Nuremberg Charter, judgment and principles that domestic laws cannot be used to excuse violations of international law, and that was put in there precisely to deal with Nazi laws that justified all sorts of illegal and reprehensible behaviour by the Nazi government.

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Indeed, it was the same US Congress that passed the *Iraqi Liberation Act* which called for regime change in Iraq which I've already pointed out violated the ruling by the International Court of Justice in the Nicaragua case. The United States' Congress is a paragon of lawless, violent and illegal action across the board. So again, how could anyone pay the least bit of attention to any authorization from the United States government to Bush to wage an illegal war against Iraq? Its entitled to no legal significance at all.

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The argument trying to tie Iraq to 9/11 is completely bizarre, as Judge Webre was pointing out. This was part and parcel of the original propaganda after the attack on 9/11 2001. Bush and his henchmen were doing everything they possibly could to tie Iraq to 9/11 including torturing Muslis, Arabs, Asians of colour in Guantanamo and elsewhere to somehow get them to implicate Iraq in 9/11 when everyone knew Iraq had nothing to do with 9/11. This argument made by defence counsel is so bizarre that even Bush and Blair and the United States government and the British government have not made this argument. So why and how could the honourable members of this Tribunal give it any significance at all?

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And indeed it was well established that they concocted whatever evidence they could to tie Iraq into 9/11 and it just wasn't there.

Indeed the citation of this defence intelligence report, again, it should violate the public policy of this court. This was concocted by the Pentagon. Look at the contract number. It's a Pentagon project. These are the same war-mongers who invaded Iraq and murdered and exterminated 1.4 million and now they, the defence counsel wants you to believe their account of Iraq's tie-in to terrorism. Once again I submit that you should not pay no attention at all to some piece of *ex-post facto* Pentagon propaganda trying to justify the Bush war against Iraq when all the other arguments disappeared, now they're relying on something so completely preposterous as this.

In addition, those UN Security Council resolutions that they cited post-9/11 never authorized the use of force by anyone. Go back and read them. All it called for was bringing the perpetrators to justice. There was no language in there in the operative provisions of those resolutions authorizing anyone to engage in the offensive use of military force. I've analyzed those resolutions at much greater length in my book "*Tackling America's Toughest Questions*" if you want to read it, we'll be happy to get you the copies.

The argument that Iraq committed aggression against its own people, of course, that's bizarre too, Saddam Hussein. A government cannot commit aggression against its own people. Aggression is committed by one State against another State, not by a government against its own people. So Iraq did not ... aggression against its own people. You can read the UN General Assembly's definition of aggression that the International Court of Justice in the *Nicaragua case* ruled was customary international law.

The "*revival argument*", of course, has already been dealt with by Professor Nijar and also by me in the testimony I submitted on behalf of Lieutenant Watada. That testimony was given under oath and subject to cross-examination by army lawyers, and you read through it there, and as I established in that testimony, those resolutions from 1991 clearly and solely apply to expelling Iraq from Kuwait.

There was no revival here. How do you revive resolutions in 2003 going back to 1991? In fact, what happened is that the head of the British Military told Tony Blair that because Britain was a party to the International Criminal Court Statute, he feared that his troops would be prosecuted by the ICC for invading Iraq, and that he wanted an opinion letter from Goldsmith saying it was lawful. And that then, that demand led to this completely bogus later opinion letter by

Goldsmith with the revival argument going back to the 1991 Security Council resolutions.

5 As for the atrocities against the Kurds and the Marsh Arabs; well yes, during Gulf War 1, Bush Sr. encouraged the Kurds to rise up against Saddam Hussein. And Bush Sr. encouraged the Shiite in the south to rise up against Saddam Hussein. So, of course, regretfully, they were repressed. This is not to excuse what Saddam Hussein did to the Kurds, the Shiite, but only to point out that Bush Sr. started it, and he
10 knew full well there would be massive repression against them and that's exactly what took place.

Well, I think, oh, I did want to deal with the Security Council resolutions on Kosovo on Iraq, the final submission. Notice Clinton
15 had no authority from anyone to attack Serbia. The Security Council. Clinton did not even have authority from the United States Congress to attack Serbia; and thus he violated even the terms of the United States Constitution. It was an impeachable offence, let alone the requirements of International Law.

20 In the case of Bush Jr., he lied to the American Congress about weapons of mass destruction and got, at least, approval, bogus approval by the American Congress, but he never got authorization from the Security Council to use military force against Iraq. That was
25 the 2nd resolution and they withdrew it. There was no support at all for it.

After Clinton had illegally attacked and invaded Serbia under the bogus pretext of humanitarian intervention, as documented in the
30 article I submitted to you with the footnotes, the Security Council was then faced with the situation with US and the NATO states had illegally attacked, invaded and occupied a UN-member State. And therefore they passed a resolution that tried to assert some degree of Security Council control over this lawless illegality, illegal
35 occupation. That Security Council resolution then, was no tacit admission of anything. They were just trying to bring the vigilante Clinton and the vigilante NATO States under some degree of international control and supervision. That's what that Security Council resolution was about.

40 Likewise, in the resolution on Iraq, once again, the Security Council was faced with a clearly illegal attack, bombardment and invasion of Iraq by the United States and the United Kingdom and its allies. And

the Security Council decided to try to exercise some degree of control of this completely lawless situation. So they passed this resolution and subsequent resolutions and these resolutions made it clear that the United States and the United Kingdom would be bound by the 4 Geneva Conventions of 1949 and the **1907 Hague Regulations on Land Warfare** in their occupation of Iraq. Those resolutions I analyzed in an essay entitled, "*Iraq and the Laws of War.*" You can find it published at coverpunch.org. Just use their search engine.

It is clear that the Security Council never authorized anything. They were confronted with a blatant illegal situation, a lawless criminal situation. And so they tried to bring it under some degree of control – to control these 2 international vigilantes and criminals, Bush and Blair. That's the appropriate interpretation of these resolutions, and it's ridiculous to assert, even reading the text of the resolutions and the negotiating history of these resolutions, that the Security Council was to any extent attempting to condone or approve what Bush and Blair had done in Iraq. They simply were not; and this is a gross misrepresentation of those resolutions.

Let me conclude my comments, and then I am going to turn this over to my colleague Professor Nijar for brief concluding overall summary of our case.

We have established more than a *prima facie* case against Bush and Blair for a crime against peace. We have established proof beyond a reasonable doubt that Bush and Blair have committed a crime against peace. So far, Bush and Blair because of the power of the United States and the United Kingdom have escaped any criminal accountability anywhere in the world, and that is why we have come to this Tribunal.

We tried to get Bush prosecuted in Switzerland. He heard about it and decided not to go. Three times we have tried to get Bush prosecuted in Canada, and 3 times Prime Minister Harper, who's a good buddy of Bush, intervened and prevented our legal process against Bush in Canada.

The prosecutor for the International Criminal Court refused, refused to prosecute Blair, even though a clear-cut complaint under the International Criminal Court statute had been filed against it, and Britain is a party to the ICC statute. He refused. And likewise, I filed a complaint against Bush and Chaney and Rice and Rumsfeld and

5 Gonzales, these will be part of our charge 2, for the policy of extraordinary rendition, kidnapping, and forced disappearance of human beings and torture that took place in ICC member States throughout Europe and the Middle East, clearly giving the ICC jurisdiction to prosecute Bush and his other confederates. And Moreno Ocampo has refused to do this. For obvious political reasons, he has refused to prosecute Blair; he has refused to prosecute Bush.

10 For this reason, we are now coming to this Tribunal, and we are asking for justice, for the State of Iraq and for the 1.4 million Iraqis who are exterminated by Bush and Blair, we ask you to find these 2 renegades, these 2 outlaws, these 2 fugitives from justice guilty as charged. Thank you.

15 **Judge Abdul Kadir Sulaiman:**

Thank you Professor Boyle. You're ready?

Professor Gurdial Singh Nijar :

20 Thank you Mr. President and member of the Tribunal. I will just add some meat to the very impassioned, erudite, and if I can say so, with respect, eloquent speech, submission by my colleague Professor Boyle.

25 We are dealing with *prima facie* case. Has a case been made out or has it not been made out? That is the point.

30 Now, we relied on Resolution 1441. The United States, Blair and Bush relied on Resolution 1441 to justify their attack. Now, we say that the clear terms of the resolution does not allow Bush and Blair to launch an attack. It requires a 2nd resolution. They tried a 2nd resolution – they failed, or they anticipated they were going to fail, so they withdrew it and launched an attack.

35 So we have shown, in our submission earlier, that to justify an attack you must rely on the resolution. What does the resolution say? Does it justify the attack? What my learned friends from the defence has said, not one word about Security Council 1441 – Does it allow us to attack? Does it allow Bush and Blair to attack Iraq. No justification whatsoever based on the terms of the resolution. Not one word. Not
40 one word about why a 2nd resolution was not required.

Not one word about why Bush's negotiator of Security Council Resolution 1441, Negroponte, said immediately after the negotiations,

“oh, don’t worry, there is no automaticity; this resolution does not allow an automatic attack, it has no hidden triggers.” There is not one word about what the meaning of that was – why we are wrong in concluding that therefore the United States had no right to proceed to attack Iraq without a 2nd resolution, there’s no explanation at all, and yet they say we’ve got no case.

Not one word about why Greenstock who was the negotiator for UK immediately after the resolution said, “don’t worry, we will come back for discussion, it will come back to the Security Council if Saddam does not comply.” There’s no explanation as to why Blair’s own negotiator, accused number two’s own negotiator said that. What is the meaning of that? Does it therefore not mean that you must come back and get Security Council resolution, you must get another 2nd resolution before you can attack? The silence with regard to that is deafening. There is no answer; and yet they say we have no case. It simply doesn’t make sense.

And then, of course, they relied on self-defence and the fact that say, “oh, we are justified.” They’ve completely ignored these resolutions. And then they skipped through – oh but we have the right under self-defence, we have the right under humanitarian intervention.

But look at what their own officials said, which I’ve already cited in the last 2 days. What did the Attorney-General for the 2nd accused Blair said. He said, “we have no right of self-defence, we are not even raising it in this case.” He’s not raising it. His legal advisor is not raising it. On what basis then do you rely on that? In the same tone, the Attorney-General in his advice that I quoted yesterday, and I can give the pages, said, “we’re not relying on this, this is not a case of humanitarian intervention at all, we’re not relying on this.”

And yet they tried, learned counsels for the defence say, no this is our justification and you have not made out a case. We who rely on their senior officials to make out a case, their own witnesses make out a case and they say we have no basis and they completely ignore what they themselves said is not the basis of intervention – self-defence and humanitarian intervention. So what’s the logic of that? And they say we have no case.

And I was just reading through. They then said that there is a concept of collective responsibility to intervene or something, oh, the new doctrine of “responsibility to protect”. You see, Blair was bleeding

because he saw this whole world, Saddam, Iraq, he's a tyrant, he's a murderer, he's this and that, and Blair just couldn't take it anymore. He had to intervene, you know. And so, that is the basis on which he intervened, so they say, and that is why we have no case.

5

Now, let me just quote you whether this was indeed the basis, and I will like to introduce this as a ... no, another page, this new doctrine of "responsibility to protect". This is from Tony Blair's book, "A Journey," and I read from page 400 in the 2nd paragraph. This is Tony Blair speaking to the world through his book,

10

"From my standpoint by this time I had resolved in my own mind that removing Saddam would do the world, and most particularly the Iraqi people, a service. Though I knew regime change could not be our policy, I viewed a change with enthusiasm not dismay. In my Chicago speech of 1999 I had enunciated the new doctrine of responsibility to protect," which my learned friends have cited, "that is that a government could not be free grossly to oppress and brutalise its citizens. I had put it into effect in Kosovo and Sierra Leone. That said, because of the difficulty such an act required, because war should be the last not the first resort I had come to a firm conclusion that we could only do it on the basis of non-compliance with UN resolutions. Tyrant though he was, Saddam could not be removed on the basis of tyranny alone."

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So their client is telling them, the second accused, that the only basis on which he could attack Iraq was non-compliance with the UN-resolution. So why are they relying on an extraneous ground which their own client says he is repudiating, this question of doctrine of responsibility to protect. It simply doesn't make sense. And yet, when we say that Blair has not conformed to the UN resolution, they say we are out of order, we have no case at all, that he has no case to answer.

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And so, we come back to the reason, as Professor Boyle has so eloquently elucidated a short while ago, that the real reason was a strategic interest – to secure an interest in the Gulf region. And I have already quoted, yesterday, and also dividing up the spoils and protecting their ally in the region. Now I've quoted yesterday, and I will just only quote and read it to add flesh to Professor Boyle's submission where at page 397,

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5 *“In September 2000, a strategy document commissioned from the Project for a New American Century by Dick Cheney, argued that [t]he United States has for decades sought to play a more permanent role in Gulf regional security. While the unresolved conflict with Iraq provides the immediate justification, the need for a substantial American force presence in the Gulf transcends the issue of the regime of Saddam Hussein.”*

10 And this is their plan. Goes beyond Saddam Hussein. Because they want to secure their strategic interest. And Saddam Hussein was the impediment, as Professor Boyle has so clearly stated. And he had to go. That is why they say, *“F*** Saddam, I will take him out.”* And their own papers, if you look at that same page,

15 *“In March of 2001, a Pentagon document titled, ‘Foreign Suitors For Iraqi Oilfield Contracts’ was circulated. The document outlines areas of oil exploration and includes a table listing 30 countries that have interests in Iraq’s oil industry. The memorandum also includes the names of companies that have interests and the oil fields with which*
20 *those interests are associated.”*

25 And the earlier part of this also talks about how the whole idea was about divvying-up, dividing up Iraq’s oil wealth, it’s a strategic interest, and Bush at the head of this. And Blair as we cited yesterday, also David Manning, the foreign policy advisor, these were the guys who were in charge of the war on behalf of Blair. Yesterday I quoted a secret Cabinet paper, one of the Downing Street Memos which made it explicitly clear that we are talking about securing our strategic
30 interest. Now they have said this. That was the reason. There is no explanation from the defense as to the value of the comments we have made with regard to this, citing ...

Judge Shad Saleem Faruqi:

35 Did President Bush have any interest in the oil industry?

Professor Gurdial Singh Nijar:

40 Well the Bush family, as is er, in the public domain, the Bush family has a great deal of interest in the oil industry, and we can furnish documents to that effect.

But even if he did not have an interest, this is it. He was there heading it, on behalf of all these companies that we are talking about. So that was then the interest. So you had David Manning talking about

strategic interests. And that is why we talked about the whole contrivance, manipulation of evidence. Yesterday we talked about how they used the 'clear-false' basis. Can you imagine? They sent out the CIA, commissioned the guy, paid him money to go and find out whether, to establish the fact that Saddam was acquiring uranium from Niger, he went there, he submitted a report to the Pentagon, er to the CIA, and the report was suppressed. He showed that there was no such thing as any attempt by Saddam to acquire uranium from Niger. This is their CIA, their own intelligence that has put a comprehensive report based upon their own chosen guy to go in and make an investigation, Joe Wilson, an ambassador of the United States. And yet, that was suppressed, Bush went proudly and spoke to the United Nations about, '*yes, we've got fantastic evidence about uranium being acquired from Niger*' knowing full well that by that time Joe Wilson had already reported to the CIA, as I quoted yesterday, that this was completely false, knowing full well that El-Baradei of the IAEA had said that this is based on unauthenticated and false Italian documents.

So these were all the manipulations. I have gone into it in chapter and verse yesterday, so I shall not labour this point anymore and how they manipulated and wrongfooted Saddam. So here, please – We have not made out a case? A *prima facie* case based on all the evidence, all the evidence that we have is based on their documentation. Their officialdom. Their UK ambassadors.

Whereas as Professor Boyle has indicated, the lead counsel for the defence said, "*oh you know, it is hearsay evidence, we must be credible,*" and so on so forth. And he has shown very clearly that they are relying even on the basis of the grounds that their own clients repudiate. Self-defence, humanitarian, collective responsibility – those are tainted documents. They are tainted documents. They are documents by partisans in this case; people commissioned by the Ministry of Defence, people who are trying to justify *ex-post facto* their attack and their continuing presence in Iraq.

So we respectfully submit that we have, as Professor Boyle has emphasized, we have had no clear indication, we have had no clear legal arguments to say why the defence should not be called.

Indeed, our arguments based on a mixed question of fact and law have gone unanswered. Defence of necessity was raised. If you look at that same article that is being quoted to justify defence of necessity 2 quotes down you will see they say this defence of necessity cannot

upstage a violation of a pre-emptory norm of international law, which “*crimes against peace*” is.

If you look at the article that they cite on Grotian moment, that too, further down, that particular article, it says it cannot excuse any action neither use of military force. There is no such development of a law which allows for the use of force outside the rubric of international law, outside of the United Nations’ Charter and the critical role of the Security Council.

So we respectfully submit that to accept their arguments is going to lead us down a very dangerous path. Already the drums of war are, the rumble of the drums of war we can hear to mount attacks on other nations? What is the signal that we send here? We accept these, with respect, specious arguments about basis which have no foundation in international law? That is the Grotian moment? To allow the United States and the gangster-like police authority that they want to arrogate to themselves? Is that the signal we want to send in international law? That is the Grotian moment? It is an insult to Grotius, father of international law, to suggest that that is what we are aiming for – let’s justify this arrogant, this brute force, Bush and his poodle Blair to carry out their nefarious activities. And that is a historic signal that this court can give.

And so we say, that not only have we made out a *prima facie* case, not only must their application that we have no case to answer, but we have established beyond reasonable doubt the illegality and criminality of these two international war criminals.

I thank you.

Judge Abdul Kadir Sulaiman:

We have a 15 minutes break for us to deliberate, and then we come back for a finding. In around 15 minutes. That’s around 5.15.

Registrar Musa Ismail:

Court rise.

21st November 2011 – Session 5

Registrar Musa Ismail:

Court Rise.

5

Judge Abdul Kadir Sulaiman:

We have heard both side in submission because the prosecution had closed the case. So what we did, we heard submission from both and so now comes a time for us to make a finding as to whether or not *prima facie* case had been made, what would happen after that.

10

Now having deliberated, we came to **unanimous decision** that *prima facie* case have been made out by the prosecution.

15

In the circumstances, defence is called. Both the accused is called in regard to the 1st charge. So, in the circumstances, which I am obliged, the panel is obliged to explain what will follow after this once the defence is called, the law provides 3 alternatives for the accused to choose.

20

No. 1, they can remain silent. Because the duty when defence is call is merely to create a reasonable doubt. Not on beyond reasonable doubt standard, but just to create a doubt as to the truth of the prosecution's case. So, they can choose to remain silent. So as we know if he remains silent, that means he accepts that prosecution had made out, and the *prima facie* crystallizes into beyond reasonable doubt.

25

No. 2, he can give evidence from the dock, like any other witness. They take oath and give the sworn evidence. Their evidence is only a balance of probability again.

30

The 3rd alternative is they can speak from the dock without the opportunity for the prosecution to cross-examine. He can say what he wants to say. But naturally, the weight of the evidence, it will be less than the step if he takes to speak on oath. But that doesn't mean that the Tribunal will disregard whatever he says at all just simply because they don't swear on oath.

35

Right. Now we give them to choose any of the 3 alternatives. And then I must not forget, remind, even though they are not here, they can still come and give evidence. Doesn't preclude them just simply because they are not here during the prosecution's case. They can

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choose to come to give evidence, either on oath or speaking from the dock.

Mr. Jason Kay Kit Leon:

5 Mr. President, as Amicus appointed by the Court, since the 1st day of proceedings has begun, I have still not received any instructions from either of the accused. I am therefore unable to inform the court as to their choice out of the 3 alternatives.

10 However, if I may assist the court, which I believe is my duty along with my team, I would like to be able to be afforded an opportunity to submit on behalf of the 2 accused.

Judge Abdul Kadir Sulaiman:

15 No, have they made their decision one way or the other. You say you have no instruction.

Mr. Jason Kay Kit Leon:

I have no instructions

20

Judge Abdul Kadir Sulaiman:

Do you need time?

Mr. Jason Kay Kit Leon:

25 I doubt I will be able to get instructions.

Judge Abdul Kadir Sulaiman:

You're sure? We leave it to you. You know, *amicus curiae*, as friend of the court.

30

Mr. Jason Kay Kit Leon:

I'm sure.

Judge Abdul Kadir Sulaiman:

35 You know, not an easy task for you. But you have done the job wonderfully. Or you like time to consult them?

Mr. Jason Kay Kit Leon:

40 I do not think that would bear any fruit to attempt. The two accused have, as the prosecution has so eloquently stated, written two memoirs, one each. It is them speaking to the world.

Judge Abdul Kadir Sulaiman:

So what is the decision first on any of the three? Are you able to make up the decision now?

5 **Mr. Jason Kay Kit Leon:**

I am able to. I can.

Judge Abdul Kadir Sulaiman:

So what is the choice?

10

Mr. Jason Kay Kit Leon:

The choice is to speak from the dock – unsworn statement.

Judge Abdul Kadir Sulaiman:

15

But you say they are not coming.

Mr. Jason Kay Kit Leon:

They are unable ...

20

Judge Abdul Kadir Sulaiman:

Then who is to speak from the dock?

Mr. Jason Kay Kit Leon:

25

If the Tribunal allows, I propose that their memoirs be tendered into evidence and ...

Judge Abdul Kadir Sulaiman:

Memoirs? That's already in.

30

Mr. Jason Kay Kit Leon:

Not in its entirety. And that shall be their statement to this Tribunal. One each.

Judge Abdul Kadir Sulaiman:

35

I see. So first speaking from the dock without being sworn or anything. So you're going to submit based on their memos.

Professor Gurdial Singh Nijar:

40

Members of the Tribunal, their memoirs talk about many things. There's only a small section about Iraq.

Judge Abdul Kadir Sulaiman:

Never mind. That's what he wants to say. We have to listen.

Professor Gurdial Singh Nijar:

If I could be of some assistance, but it does say here rules, Article 26,

5 *“In the event the Tribunal decides that there is a prima facie against the accused, the Tribunal shall proceed to receive evidence from the accused or his witnesses where present and available, or in absence to hear submissions from the amicus curiae.”*

10 Judge Abdul Kadir Sulaiman:

That's why, as of now, we do not know whether they are coming or not. The fact that they were not present here during the prosecution stage doesn't close the door for them to come during the defence stage. So we want to know that, is he coming or not? Are they
15 coming or not?

Mr. Jason Kay Kit Leon:

I do not have any indication whether it is a yes or a no.

20 Judge Abdul Kadir Sulaiman:

That's why you see, you must get instruction from them.

Mr. Jason Kay Kit Leon:

As the rules ...

25

Judge Abdul Kadir Sulaiman:

I know about the rules. Are you prepared to tell us on their behalf what stand they're going to take. Just to be fair to you.

30 Mr. Jason Kay Kit Leon:

We will be ready to tender a submission as amicus on behalf...

Judge Abdul Kadir Sulaiman:

So in other words, you have made a decision on behalf of your client.
35 That you client's instruction is he'll give evidence from the dock, in the form of ...

Mr. Jason Kay Kit Leon:

The book.

40

Judge Abdul Kadir Sulaiman:

In the form of the memoirs. Is that the instruction?

Mr. Jason Kay Kit Leon:

Mr. President, may I request a short adjournment?

Judge Abdul Kadir Sulaiman:

5 Please. By all means. You must be clear. Now comes to the crucial
stage where they got to give their defence. So the fact that they are
not here till now doesn't mean that the door is closed for them.
Because it's their right to give the defence. They may decide to come.
How long?

10

Mr. Jason Kay Kit Leon:

Just a few moments. 10 minutes.

Judge Abdul Kadir Sulaiman:

15 5.45, will that be alright?

Mr. Jason Kay Kit Leon:

Yes.

20 **Judge Abdul Kadir Sulaiman:**

But did I give you clear explanation as to the stand to be taken. If not
clear, you ask me, I'll tell you again. Clear?

Mr. Jason Kay Kit Leon:

25 It is clear.

Judge Abdul Kadir Sulaiman:

So stand adjourned till 5.45pm.

30 **Registrar Musa Ismail:**

Court rise.

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21st November 2011 – Session 6

Judge Abdul Kadir Sulaiman:

You're ready?

5

Mr. Jason Kay Kit Leon:

Mr. President, members of the Tribunal, the accused is not able to give evidence.

10 **Judge Abdul Kadir Sulaiman:**

Would you like to try the British High Commission or Embassy of America?

Mr. Jason Kay Kit Leon:

15 I believe the service was effected properly, and I doubt that that would yield any positive result

Judge Abdul Kadir Sulaiman:

20 Yes, I want to get it clear from you, to be fair to you. So what's the stand?

Mr. Jason Kay Kit Leon:

25 We have no witnesses for the defence. Therefore, if my reading of Article 26 of the Rules of Procedure is accurate, I believe the next and only available step will be submissions from the Amicus. I therefore apply that...

Judge Abdul Kadir Sulaiman:

30 You don't want to make available ... Another alternative, evidence can come in through the dock. Just now we got some inkling that you are trying to get the memoirs. You are not using the memoirs also?

Mr. Jason Kay Kit Leon:

35 We would plan to just introduce the memoirs as an exhibit, in the bundle.

Judge Abdul Kadir Sulaiman:

40 So you have to introduce the memoirs as an exhibit. You're going to do that?

Mr. Jason Kay Kit Leon:

Yes, tomorrow, during submissions.

Judge Abdul Kadir Sulaiman:

Full memos?

Mr. Jason Kay Kit Leon:

5 We will make available the full memoirs, but we'll make copies of the salient parts. Because of the shortness of time, we will make copies of the relevant pages ...

Judge Abdul Kadir Sulaiman:

10 Don't give short of time as an excuse.

Mr. Jason Kay Kit Leon:

We have a full memoir for each of them.

15 **Judge Abdul Kadir Sulaiman:**

So you intend to use the full memoirs?

Mr. Jason Kay Kit Leon:

Yes.

20

Judge Abdul Kadir Sulaiman:

When can you make that available?

Mr. Jason Kay Kit Leon:

25 We propose that submissions be heard tomorrow morning.

Judge Abdul Kadir Sulaiman:

What time? Usual time? How long you expect to take?

30 **Mr. Jason Kay Kit Leon:**

I think not more than an hour, give and take.

Judge Abdul Kadir Sulaiman:

Reply will take how long?

35

Professor Gurdial Singh Nijar:

I think about half an hour.

Judge Abdul Kadir Sulaiman:

40 Each?

Professor Gurdial Singh Nijar:

No, between us.

Judge Abdul Kadir Sulaiman:

5 If that be the case, the court stand adjourned to 9am tomorrow morning to hear the evidence by the 2 defendants and to be followed by the usual submission.

Registrar Musa Ismail:

Court rise.

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22nd November 2011 – Session 1

Registrar Musa Ismail:

Court rise.

5

Mr. Jason Kay Kit Leon:

Members of the Tribunal, I apologize. I'm somewhat embarrassed at this point. I had prepared a rough draft of written submission but they are still in the process of being printed. May I seek the Tribunal's indulgence for a short adjournment of half an hour?

10

Judge Abdul Kadir Sulaiman:

No, you can go on orally first. Then we know your shortfall and when the thing comes you just produce it. Just say what you've written there. Because what is there is your work. We don't have to waste our time. I'm not rushing with it but you see ... go ahead.

15

Mr. Jason Kay Kit Leon:

Could I have 5 minutes just to boot up the computer?

20

Judge Abdul Kadir Sulaiman:

At least you can go ahead and say something.

Mr. Jason Kay Kit Leon:

25

Yes, I'm calling up the file now ... Please excuse me. ...

Mr. President, I have just been informed that a portion of my submission cannot continue. There is some technical difficulties.

30

Judge Abdul Kadir Sulaiman:

In other words, you are not ready.

Mr. Jason Kay Kit Leon:

Yes, I am not ready at this point. May I ask for an adjournment of half an hour? I'm so sorry about this.

35

Judge Abdul Kadir Sulaiman:

Any objections?

40

Professor Gurdial Singh Nijar:

Mr. Chairman, I'm going to leave it to members of the Tribunal, but I just want to register my views that this is quite inappropriate to keep

5 asking for adjournments because we come here early. I don't even have to make a submission but I'm here by 7-7:30 and all my things are in order. So I think in this kind of laxity kind of affects the morale of the whole crowd, lawyers, judges and I think there should be some sense of disapproval of this. But I leave it entirely, of course to members of the Tribunal. Thank you.

Judge Abdul Kadir Sulaiman:

10 How long you need?

Mr. Jason Kay Kit Leon:

I suspect half an hour.

Judge Abdul Kadir Sulaiman:

15 I'll give you 15 minutes.

Mr. Jason Kay Kit Leon:

Thank you.

20 **Judge Abdul Kadir Sulaiman:**

9.20am. Alright, stand adjourned to 9.20.

Registrar Musa Ismail:

25 Court rise.

22nd November 2011 – Session 2

Registrar Musa Ismail:

Court rise.

5

Mr. Jason Kay Kit Leon:

Mr. President, members of the Tribunal, I thank you for your indulgence. I am ready with the submissions.

10

Honourable members of the Tribunal, I apply now to court to tender and have marked as exhibit the memoirs of George Bush entitled “*Decision Points*” and the memoirs of Tony Blair entitled “*A Journey*.” I’m tendering the whole book and I have made photocopies of the relevant passages for the easy ...

15

Judge Abdul Kadir Sulaiman:

So this forms your defence? Does this exhibit form your defence?

Mr. Jason Kay Kit Leon:

20

Forms part of my submission, yes.

Judge Abdul Kadir Sulaiman:

Which one first?

25

Mr. Jason Kay Kit Leon:

1st accused.

Judge Abdul Kadir Sulaiman:

30

What’s the marking? D6. Memoirs of 2nd accused marked as D7. And what is this?

Mr. Jason Kay Kit Leon:

The relevant excerpts from the book for the ease of reference of the court.

35

Judge Abdul Kadir Sulaiman:

Are you tendering these as well? Up to you.

Mr. Jason Kay Kit Leon:

40

Perhaps it would be wise ... I’m guided by Mr. President’s ...

Judge Abdul Kadir Sulaiman:

No, no, what I mean is you have already tendered the whole book. This except is already inside here, you just want to pay particular attention ... If you mark also it will be inside here. The most we can
5 do is if we have them marked, 7a & 7b.

Mr. Jason Kay Kit Leon:

May I have them marked?

10 **Judge Abdul Kadir Sulaiman:**

Very well. Carry on, please.

Mr. Jason Kay Kit Leon:

15 I also apply to the court to note on record that our earlier submission, the submission that there was no case to answer, for this stage of the proceedings.

20 As *amicus curiae* appointed by the Tribunal to assist this Tribunal I am but a friend of the court. Only a friend. Strictly speaking I am not a party, I do not represent the accused. I am here to humbly, if I may be so presumptuous as you use the word, educate the court on points of law that are in doubt, to gather or organize information, or raise awareness about some aspects of the case that the court might otherwise miss.

25 An *amicus curiae* must not be a party to the case nor an attorney in the case but must have some knowledge or perspective that makes his views valuable to the court. And I've tried to be a friend to this Tribunal. I've tried to speak the truth gently and politely even though
30 it may have hurt.

Judge Abdul Kadir Sulaiman:

Hurt who?

35 **Mr. Jason Kay Kit Leon:**

I'm leaving the sentence at a full stop.

Judge Abdul Kadir Sulaiman:

40 Don't be afraid to say.

Mr. Jason Kay Kit Leon:

Mr President, I will not name ... I am speaking very generally.

Judge Abdul Kadir Sulaiman:

"May have hurt someone," put it that way.

5 **Mr. Jason Kay Kit Leon:**

I put a full stop at the sentence.

Judge Abdul Kadir Sulaiman:

10 No, you must have the object which you have hurt. I think *"someone"* is very general.

Mr. Jason Kay Kit Leon:

With respect, Mr. President, I wish to leave the sentence hanging.

15 **Judge Abdul Kadir Sulaiman:**

Fair enough. I just ... For clarification, I'm not questioning you, putting words in your mouth.

Mr. Jason Kay Kit Leon:

20 Mr. President, I have prepared some written submissions which I intend to distribute at a slightly later minute, just in a few short moments. May I suggest that your Honours do not trouble yourselves to write down my submissions.

25 **Judge Abdul Kadir Sulaiman:**

30 So you see, one thing I can say. You have not hurt the Court. So to disturb the mind of the Court. That's why even in the beginning I was saying, we are not to put our feelings or sentiments ... We go by evidence, because we were not there. We do not know. It is for the parties to tell us, and we hear. Based on that, we decide.

35 I don't know about others. For me, I am not hurt at all. It's part of the *"game"*. But don't let the Court be seen to be siding with this side, siding with that side; then it becomes a mock trial, as I found somewhere somebody has written. Fair enough. So you have not hurt. You may have hurt someone else, not the court.

So you have prepared your written submission ...

40 **Mr. Jason Kay Kit Leon:**

Which I plan to introduce to the court at a later minute. May I please continue?

And for the times that it has hurt for the past 3 days, I apologize to all parties who may have been offended.

5 This Tribunal has found that the prosecution has made a *prima facie* case. With the Tribunal's leave, I wish render one final assistance and tender this submission on behalf of both the Accused. My colleagues have submitted on the law. The Tribunal has ruled. There is a *prima facie* case. That is that. I have adopted their submission and I would
10 like to add the following:-

No one, no one in this court, no one in this Tribunal, no one in this room, not one of us, save for one, knows what it feels like to have the weight of a nation upon his shoulders.

15

Judge Abdul Kadir Sulaiman:

Please can you go slow because I'm taking verbatim.

Mr. Jason Kay Kit Leon:

20 Mr. President, it is in my submission, which I have not distributed to the court.

Judge Abdul Kadir Sulaiman:

That's why I have to write down now. I'm recording verbatim.

25

Mr. Jason Kay Kit Leon:

Perhaps if the Tribunal and the prosecution is agreeable, I will distribute one copy to Mr. President only at this point. Thank you. It's only for your eyes, for now, it is only for your eyes. It will be
30 tendered eventually.

Both the Accused were heads of states, Bush for 8 years, Blair for 10. The United States of America is about 300 million people; the United Kingdom about 60 million. They took their respective nations to war.
35 That is a fact.

The question now is: Were their actions a "*crime against peace*"? Did they "*plan, prepared and invaded the sovereign state of Iraq on 19 March 2003 in violation of United Nations Charter and international law*?" This is the charge. Was there "*any just cause whatsoever*?"
40

9/11, September 11 ... We don't even have to say the year ...

Judge Abdul Kadir Sulaiman:

It's ok. Judicial notice.

5

Mr. Jason Kay Kit Leon:

We all know where we were on that day. 9/11 changed things. It really did. Those of us who were old enough to have lived through it, who saw it, who could understand it at the time ... We knew instantly that the world would forever be a different place. In our hearts, we knew things would never be the same and changed they did. Lest we forget

10

15

[A video clip starts playing]

Judge Abdul Kadir Sulaiman:

What is that?

20

Mr. Jason Kay Kit Leon:

There is a video presentation that is supposed to appear right now.

Professor Francis A. Boyle:

25

Your Honour, we object. Iraq had nothing at all to do with 9/11. This is simply an attempt to prejudice this court in favour of the defendants. We object in the strongest terms possible to the admission of this clearly irrelevant evidence. All evidence proves Iraq had nothing to do with 9/11. This is simply a continuation of ...

30

Judge Abdul Kadir Sulaiman:

From now on I'm taking down verbatim. It's very important.

Professor Francis A. Boyle:

35

This is a continuation of the Bush administration's propaganda campaign against Iraq.

Judge Abdul Kadir Sulaiman:

Slowly, be patient. Calm down. Irrelevant ya?

40

Professor Francis A. Boyle:

5 It's not simply irrelevant, it's pathetic. Pathetic for defence counsel to stir up emotions over 9/11 when Iraq had nothing to do with 9/11, not one thing. This video is completely irrelevant, immaterial, prejudicial to these proceedings and I respectfully request the Court to terminate it immediately. Thank you.

Mr. Jason Kay Kit Leon:

May I be heard?

10 **Professor Gurdial Singh Nijar:**

15 I just want to follow through and of course supporting my ... the application that has just been made. I just want to say that we appreciate that the *amicus curiae* is in a difficult position. He said that he tried to speak the truth, and this may have hurt someone; this may have hurt, sorry, full stop.

20 Now, the *amicus curiae* should, in our view, introduce facts that support the truth. That's his role. Facts introduced that are at variance with the truth ... These are fact that hurt truth, not someone.

25 Now, the intelligence that we have offered, the intelligence of the United States and the UK in our submission the last 2 days, 3 days, have shown very clearly that 9/11 provided no more than a pretext because this plan went back to 1998 to remove Saddam. 9/11 provided the perfect pretext to invade Saddam because the people who formed the administration of Bush had already indicated well in advance, even before they were in office that their objective is to get Saddam out.

30 So I would respectfully suggest first that this kind of video not be shown because, what is the purpose? You show planes attacking ... what is the purpose?

Judge Abdul Kadir Sulaiman:

35 What's your reply to that?

Mr. Jason Kay Kit Leon:

40 Thank you. Prejudice????!!! The prosecution feels prejudiced by a video that's going to last 5 minutes???!! The defence, amicus, the whole *amicus curiae* team is prejudiced ...

Judge Abdul Kadir Sulaiman:

5 Control, tone done, control. Please please please, don't create a scene. Don't be emotional. We are just doing are duty. That's all. Feel that way. We are just being entrusted to do that. So we are trying to carry out the trust in the best way that we can. If we cannot, then we surrender.

10 But if we feel that we can do, ya, you've heard even Mr. Nijar has said, it's not a pleasant job at all for an *amicus curiae*. See, it's not pleasant. So please, control the emotion. Because I, for one, I don't work for emotion. I just put aside my emotion, what my feeling about the matter. What I care is the evidence before me. So the prosecution feels what?

15 Mr. Jason Kay Kit Leon:

The prosecution feels prejudiced by a video presentation that is going to last not, about, 5 minutes?

Judge Shad Saleem Faruqi:

20 The issue is the relevance of this ...

Mr. Jason Kay Kit Leon:

I will continue. The sentence ... I will continue the sentence

25 Judge Abdul Kadir Sulaiman:

That's why I say. Control the emotion. Control the emotion.

Mr. Jason Kay Kit Leon:

30 The accused, both the accused, both the accused and the whole amicus team has been prejudiced from Day 1 of this Tribunal, even before Day 1 of this Tribunal, and I will give you my reason. Because of the exhibition one floor down, across the hall.

Judge Abdul Kadir Sulaiman:

35 I didn't see it. I don't know what is it. I know that there was going to be some organization. I didn't go. I can vouch for that. I didn't know about the others.

(indication given by other members of the Tribunal)

40

Mr. Jason Kay Kit Leon:

Professor Salleh did. Professor Webre did not go. Professor Shad passed by.

5 **Professor Gurdial Singh Nijar:**

Can I just say something about that?

Judge Abdul Kadir Sulaiman:

10 Why didn't you raise this at the appropriate time? Only at this hour you bring it out. You should have there and then said, "*Well, I think the panel is prejudiced because someone has gone there.*"

Mr. Jason Kay Kit Leon:

15 No. All I am doing is trying to mitigate the effect of the prejudice which happened.

Judge Abdul Kadir Sulaiman:

Tone down. Tone down.

20 **Professor Gurdial Singh Nijar:**

I think just speaking ...

Judge Abdul Kadir Sulaiman:

25 Please please. Ya, I'll give everybody. Now, you see; not only that, I've got to control the prosecution, defence and my brothers also.

Professor Gurdial Singh Nijar:

30 Yes. I think we do appreciate the invidious task you are placed in but I just wanna make 2 short, very short points, and hope the amicus can appreciate that in any trial the 2 questions when we talk about evidence, one is, "*Is it admissible and is it relevant?*" So it can be admissible, and it can be relevant.

35 Now when it's relevant, sometimes things are relevant, but the point is even if evidence is allowed in that is relevant, one other factor on which we can ask the court to exclude that evidence is that its prejudicial value outweighs its probative value. I mean, that's a fundamental principle. So it could be relevant, but the prejudicial effect outweighs the ... so we are basing it entirely on law. So don't
40 worry about the fact it is 5 minutes or 10 or 1 hour. So on that we are grounding our objection.

Judge Abdul Kadir Sulaiman:

Prejudicial effect outweighs the probative value.

Professor Gurdial Singh Nijar:

5 So that is the basis. It's a very clear basis. It is cardinal to trials and evidence. That's our 1st point.

10 The 2nd point is, with regard to the exhibition one floor down, the, as his opening statement this morning made clear, the fact that the war occurred is admitted. In fact this is what he said. So there is a war, and a war has taken its toll, a lot of atrocities, deaths, killings have occurred. But that is not the question here. That is admitted.

15 The question here is: Was the war that is admitted to have occurred, was it a crime committed by the 1st and 2nd accused? And I have looked very carefully at the exhibition myself. That issue is not determined at all in the exhibition. So there is nothing to do with the prejudice. Thank you.

20 **Judge Alfred L. Webre:**

Yes counsel. With regard to that iconic piece of film: Do you plan to call expert witnesses that will interpret the various interpretations of what is occurring in that iconic piece of film?

25 **Mr. Jason Kay Kit Leon:**

I just wish to present it as part of my submission.

30 **Judge Alfred L. Webre:**

It's common knowledge, for example, in the Journal of 9/11 Studies, that one interpretation, and there are books written on this, of that iconic piece of film, is that that is a secret US anti-gravity craft that is putting out a camouflage holographic image of a Boeing aircraft and that that is part of the exotic weaponry used in this false flag, and I can give you the citations on that ...

35

Mr. Jason Kay Kit Leon:

I believe if we look far enough we can find a theory that says that aliens from Mars brought down the Twin Towers.

40 **Judge Alfred L. Webre:**

Wait wait. Let me, please respect the bench. And so, you are raising, I think you've raised a very important issue. I think this is a very

important piece of evidence that I hope this court will address in a future session, and I've said that in the course of this trial.

5 However, I think that this piece of evidence is so important that both the prosecution and the defence would have to bring expert witnesses to interpret it, and that to appeal to the conventional sorta emotional tag that the evidence appears, what it appears to be, and that is an airplane hitting the Twin Towers is so misleading in the light of 10 years of research that I would find it that explanation misleading and 10 unacceptable for the purposes of this court

Judge Abdul Kadir Sulaiman:

I think let us, excuse me brother Webre. Let us not dwell into this. A decision will come out. That's why I'm recording verbatim. 15 Admittedly, one of my colleague has witnessed the exhibition. That's a fact. And we'll come to that when we come to the bridge. Anybody else seen the exhibition? Declare yourself.

Professor Francis A. Boyle:

20 Mr. President, if I may ...

Judge Abdul Kadir Sulaiman:

One second. One second. ... To be judge, if you have to plug you ears, you have to close your eyes, then it's very difficult. Everyday we see 25 things. That's why we are not concerned with what we heard, we saw, but we are concerned with your evidence which is admissible and credible.

Professor Francis A. Boyle:

30 Mr. President if I may. I'm the only American citizen involved in these proceedings. And this is simply outrageous that defence counsel would exploit the murder of 2,900 of my fellow American citizens in this proceedings that have absolutely nothing at all to do with 9/11 as correctly pointed out by Judge Webre. And I ask, on behalf my 2,900 35 fellow American citizens who were murdered on 9/11 that this video not be shown, and be stricken from the record, so that my fellow American citizens are not exploited by defence counsel in these proceedings, and in the memory of them, I ask this video to be suppressed completely. Thank you.

40

Judge Abdul Kadir Sulaiman:

Taken.

Mr. Jason Kay Kit Leon:

5 May I reply? On behalf of everyone, nations, who are representing different nations in this room – Hands up! – Who believe that 9/11 was a simple case of 2 Boeing jets hitting into 2 buildings? ... I know I cannot do this. But I have been prejudiced. ... If that is the case, I withdraw my submission for the last minute. I apply to this court to allow the video to be played. It is about 5 minutes. There are 4 separate clips.

10

Judge Abdul Kadir Sulaiman:

It's alright. But anyway you withdraw.

Mr. Jason Kay Kit Leon:

15

I withdraw my comments for the last minute.

Judge Abdul Kadir Sulaiman:

What comment?

20

Mr. Jason Kay Kit Leon:

The “hands up” part

Judge Abdul Kadir Sulaiman:

Oh, the trying to create emotion ...

25

Mr. Jason Kay Kit Leon:

Yes.

Judge Abdul Kadir Sulaiman:

30

Yeah. Let's get back to business. You admitted, it is, and I interjected by saying the 9/11 incident is judicially noticed. In other words you don't have to adduce evidence the court have seen it or not. It's a fact. Everybody saw on the TV that moment. But let us not go beyond that, expressing our feeling. Leave it at that.

35

Mr. Jason Kay Kit Leon:

I ask for a ruling of this court.

Judge Abdul Kadir Sulaiman:

40

I'm making a ruling. But as for now, it is judicially noticed an incident happened on 9/11 in American ground. That's it.

Objection sustained. 9/11 incident is judicially noticed. So, switch off. Don't bring in emotion.

Mr. Jason Kay Kit Leon:

5 Very well. Members of the Tribunal, I now wish to distribute my submissions.

Judge Abdul Kadir Sulaiman:

10 Let us go to business. Let us perform our duty.

Mr. Jason Kay Kit Leon:

This is a very very rough draft as is indicated on the front page of the submission itself.

15 **Judge Abdul Kadir Sulaiman:**

Fair enough. We accept your constraint. You are indeed doing your best, as *amicus curiae*. We understand. That's why yesterday I threw the hint have you checked with the American embassy or the British High Comm., at least if they say '*go to hell with it*' fair enough. But
20 you say, no, no need. I'm not here to teach you what to do.

So you have tendered your rough draft.

Mr. Jason Kay Kit Leon:

25 The full submissions will follow, after I've correctly formatted and checked them.

9/11 changed everything. People did unthinkable things on that day, illogical, insane, stupid and desperate things. Two planes flew into
30 two high rise towers. The two towers collapsed. People jumped out from buildings.

Judge Abdul Kadir Sulaiman:

35 Let us not go into that detail. What is in our mind here, the prosecution trying to say that apart from ... 9/11 has been used as a pretext. In other words, what Saddam did. So you are to cast a doubt on that. Saddam has nothing to do with it. A distinct and separate event. That's all. Your burden is just on reasonable doubt. Not
40 reasonable doubt, on balance of probabilities, more probable than not that prosecution's case is hopeless, that's all.

So you must remember, they say 9/11 is only a pretext, and they gave their ground. And now you are going to say, ... try to rebut that. That's how you should approach. In that case we won't become emotional. ... Go ahead.

5

Mr. Jason Kay Kit Leon:

Fear was the rule of day, from that day on. Fear and anger, oftentimes irrational, gripped the world for years after that day. Even till today. Judgment most assuredly fled to brutish beasts. "Havoc!" cried out.

10

How I wish that were not the case. How I wish Bush; maybe, just maybe, at the opportune moment would have said, "*We know who you are. We know you did this to us. And we forgive you.*" Makes me wonder sometimes what might have happened. I'd like to think that that may have made this world a much different place. A much better place.

15

But he did not.

20

What happened after that was, well, Afghanistan happened. Iraq happened. Guantanamo happened.

All because stupid people did stupid things.

25

We are who we are. Fallible human beings.

It is so easy for us to forget that human being are fallible. We make mistakes. We say the wrong things. We act the wrong way. We type the wrong things.

30

And we have ego. We have pride. And for a multitude of other reasons, we often choose not to say, "*I do not know. I am not sure. I am scared.*"

35

That is us. Even ordinary us, when looking at terror in the face still want to say, "*I am not scared of you! I will beat you. I can take you on.*"

40

Now, imagine what might have gone through the minds of Bush and Blair; leaders of large, rich and powerful nations to see before their very eyes the proof that someone, some group, could "get them", who could hit them where it hurts most: At the pride of America's

economy, the Twin Towers, in New York, once the tallest buildings in the world.

5 I cannot imagine. You cannot imagine. No one in this room can imagine, except for one.

Judge Abdul Kadir Sulaiman:

Is your defence insanity?

10 **Mr. Jason Kay Kit Leon:**

No. No. My defence is Bush and Blair are human beings.

Judge Abdul Kadir Sulaiman:

15 If insanity we will go along the insanity principle.

Judge Shad Saleem Faruqi:

Or if you are talking in terms of provocation, I think that's what you should have argued, temporary insanity or provocation ...

20 **Judge Abdul Kadir Sulaiman:**

Either provocation, insanity, those are you defences. If you say insanity

Mr. Jason Kay Kit Leon:

25 Professor Faruqi, as is very evident, I am human and that thought never had occurred to me.

Judge Abdul Kadir Sulaiman:

30 So no such thing. Only thing is the behaviour of a human beings.

Mr. Jason Kay Kit Leon:

Yes.

Judge Abdul Kadir Sulaiman:

35 So the issue is whether culpable or not. Ah, so that's where we are.

Judge Shad Saleem Faruqi:

40 Mr President, there's another problem. When you talk in terms of the tragedy, this brutality of 9/11, you are all along proceeding as if this was a defining moment in human history, as if this was the most horrendous moment.

With all due respect, you should know, all of us should know, people outside should know, there have been many other September 11s or worse ...

5 **Mr. Jason Kay Kit Leon:**

I agree

Judge Shad Saleem Faruqi:

... magnitude, and this is a vicious circle ...

10

Judge Abdul Kadir Sulaiman:

Listen to me. Be careful. That is just what I can say. Be careful what you utter. Discard emotion. You are in the Tribunal. Be careful. I'm warning you. ... Go ahead.

15

Mr. Jason Kay Kit Leon:

My short reply to Professor Shad – 9/11 was a special defining moment. I do not, I do not disregard all the other atrocities that have happened in the world: Stalin, Pol Pot, Sabra-Shatilla, Rwanda ... But 9/11 was special because it started a chain of events that haunt us till today.

20

Judge Abdul Kadir Sulaiman:

So we have heard how the two accused felt about the incident of 9/11. So they acted. So whether their action is culpable or not.

25

Mr. Jason Kay Kit Leon:

This is what the two of them have to say in their own words. I am now looking at page 5 of my submission. I am breaking it down between what Bush said and what Blair said. On the point of "Logic", Bush had said this at page 262 of his book, para 2,

30

"They left trotted out a new mantra: 'Bush Lied, People Died.' The charge was illogical. If I wanted to mislead the country into war, why would I pick an allegation that was certain to be disproven publicly shortly after we invaded the country? The charge was also dishonest. Nobody was lying. We were all wrong. The absence of WMD stockpiles did not change the fact that Saddam was a threat."

35

Blair, Tony Blair in his book, at page 371 ... It was supposed to be the last 2 paragraphs, I can't find it. I think ... this is an extremely rough draft. May I take some, may I ask for a short adjournment just to get

40

my paging numbers right or else it would waste a lot of time ... I have a lot of passages ... I have a feeling I have made ... may I ask for an hour, just to be safe?

5 **Professor Gurdial Singh Nijar:**

I hate to object, but I think I would like the Court to adopt the approach the court adopted in respect of my submission, I had a few pages wrong, and I undertook to supply the correct pages and which I've done already, so I think we can save that kind of time, we accept
10 typo errors, it is too important a trial, we are on the final day.

Judge Abdul Kadir Sulaiman:

So in other words you leave it to the Court.

15 **Professor Gurdial Singh Nijar:**

Yes, but I would like to suggest that we adopt the approach that the Court adopted when they suggest that we had got the pages mixed up.

Mr. Jason Kay Kit Leon:

20 As far as I'm aware, the passages are direct from the book, I know the pages are wrong. I have to read them. I cannot skip the passages ...

Judge Abdul Kadir Sulaiman:

I think in the interest of justice, with no emotion and nothing like that,
25 application granted. One hour adjournment. So we come back at 11.20. I am counting every minute.

30

22nd November 2011 – Session 3**Mr. Jason Kay Kit Leon:**

5 Mr. President, learned members of the Tribunal. I apologize for the outburst this morning. I will let the two accused, from their memoirs, speak to the Tribunal. I will only quote 5 passages now, in oral submissions. The rest are in the written form. I will not bore the Tribunal going on and on. I will just pick the 5 most pertinent ones.

10 The **1st** is from the memoirs of Tony **Blair**, at page 430 and 431, the last paragraph of 430,

15 *“I understood the importance of the second resolution in terms of political survival and so forth. I confess I always thought it a bit odd in terms of the moral acceptability of the course of action or not. It bestowed more legitimacy, it was true, but whether we got a second resolution or not basically depended on the politics in France and Russia,”* 2 other veto members of the Security Council, *“and their calculation of where their political interests lay. We had acted without*
20 *UN authority in Kosovo. It would have been highly doubtful if we could ever have got UNSC agreement for either Bosnia or Rwanda. I never ever thought about it for Sierra Leone. Yet it would be hard to argue that morally, in each of those situations, we should not have intervened. What’s more if the going got tough, as we have found in*
25 *Afghanistan, the mere fact of UN authority does not necessarily bind people in.”*

30 The **2nd quotation** is from the memoirs of George W. Bush, page 236, at the 3rd paragraph,

35 *“In the summer of 2002, I received a startling piece of news. Abu Musab al-Zarqawi, an al Qaeda-affiliated terrorist who had experimented with biological weapons in Afghanistan, was operating a lab in northeastern Iraq. ‘Suspect facility in this area may be producing poisons and toxins for terrorist use,’ the briefing read. ‘Al-Zarqawi is an active terrorist planner who has targeted U.S. and Israeli interests: Sensitive reporting from a [classified] service indicates that al-Zarqawi has been directing efforts to smuggle an unspecified chemical material originating in northern Iraq into the*
40 *United States.”*

The **3rd quote** is again from George Bush, at page 228 to 229, it's going to be a very long quote, at the 2nd paragraph,

5 *"For my first eight months in office, my policy focused on tightening the sanctions- or, as Colin Powell put it, keeping Saddam in his box. Then 9/11 hit, and we had to take a fresh look at every threat in the world. There were state sponsors of terror. There were sworn enemies of America. There were hostile governments that threatened their neighbours. There were nations that violated international demands.*
10 *There were dictators who repressed their people. And there were regimes that pursued WMD. Iraq combined all those threats.*

15 *Saddam Hussein did not just sympathize with terrorists. He had paid the families of Palestinian suicide bombers and given sanctuary to terrorists like Abu Nidal, who led attacks that killed nineteen people at an Israeli airline's ticket counters in Rome and Vienna, and Abu Abbas, who hijacked the Italian cruise ship Achille Lauro and murdered an elderly, wheelchair-bound American.*

20 *Saddam Hussein was not just a sworn enemy of America. He had fired at our aircraft, issued a statement praising 9/11, and made an assassination attempt on a former president, my father.*

25 *Saddam did not just threaten his neighbours. He had invaded two of them, Iran in the 1980s and Kuwait in the 1990s.*

Saddam Hussein did not just violate international demands. He had defied 16 UN resolutions, dating back to the Gulf War.

30 *Saddam Hussein did not just rule brutally. He and his henchmen had tortured innocent people, raped political opponents in front of their families, scalded dissidents with acid, and dumped tens of thousands of Iraqis into mass graves. In 2000, Saddam's government decreed that people who criticized the president or his family would have their*
35 *tongues slashed out. Later that year, an Iraqi obstetrician was beheaded on charges of prostitution. The woman's true crime was speaking out about corruption in the Iraqi health ministry.*

40 *Saddam Hussein did not just pursue weapons of mass destruction. He had used them. He deployed mustard gas and nerve agents against the Iranians and massacred more than five thousand innocent civilians in a 1998 chemical attack on the Kurdish village of Halabja. Nobody*

5 *knew what Saddam had done with his biological and chemical stockpiles, especially after he booted inspectors out of the country. But after reviewing the information, virtually every major intelligence agency in the world had reached the same conclusion: Saddam had WMD in his arsenal and the capacity to produce more. One intelligence report summarized the problem: Since the end of inspections in 1998, Saddam has maintained the chemical weapons effort, energized the missile program, made a bigger investment in biological weapons, and has begun to try to move forward in the nuclear area.*

15 *Before 9/11 Saddam was a problem America might have been able to manage. Through the lens of the post-9/11 world, my view changed. I had just witnessed the damage inflicted by nineteen fanatics armed with box cutters. I could only imagine the destruction possible if an enemy dictator passed his WMD to terrorists. With threats flowing into the Oval Office daily – many of them about chemical, biological, or nuclear weapons- that seemed like a frighteningly real possibility. The stakes were too high to trust the dictator’s word against the weight of the evidence and the consensus of the world. The lesson of 9/11 was that if we waited for a danger to fully materialize, we would have waited too long. I reached a decision: We would confront the threat from Iraq one way or another.”*

25 The **4th quote**, it is from Bush’s book, at page 247, 3rd paragraph,

30 *“Whenever I heard someone claim that we had rushed to war, I thought back to this period. It had been more than a decade since the Gulf War resolutions had demanded that Saddam disarm, over four years since he had kicked out the weapons inspectors, six months since I had issued my ultimatum at the UN, four months since Resolution 1441 had given Saddam his ‘final opportunity,’ and three months past the deadline to fully disclose his WMD. Diplomacy did not feel rushed. It felt like it was taking forever.”*

35 That is the end of my 4th quote. And my **final quote**, members of the Tribunal, it is from George Bush’s memoirs at page 248, paragraph 1,

40 *“I’ve always wondered why many critics of the war did not acknowledge the moral argument made by people like Elie Wiesel.”* Elie Wiesel, as we all know, is a Nazi Holocaust survivor, *“Many of those who demonstrated against military action in Iraq were devoted*

5 *advocates of human rights. Yet they condemned me for using force to remove the man who had gassed the Kurds, mowed down the Shia by helicopter gunship, massacred the Marsh Arabs, and sent tens of thousands to mass graves. I understood why people might disagree on the threat Saddam Hussein posed to the United States. But I didn't see how anyone could deny that liberating Iraq advanced the cause of human rights."*

Judge Abdul Kadir Sulaiman:

10 I wonder why he didn't wait for the Security Council Resolution?

Mr. Jason Kay Kit Leon:

If only he would be here to explain to us.

15 **Judge Abdul Kadir Sulaiman:**

That is the crux of the whole matter.

Mr. Jason Kay Kit Leon:

20 Exactly. And that's is the dis-benefit of not having a witness give evidence, oral evidence.

Judge Abdul Kadir Sulaiman:

25 Whatever it is, that is a fact. No need a witness to come. It's a known fact that there is no Security Council resolution. It would have or would not have, we would not know, authorize him to do the acts he did. My mind starts asking, "*Why didn't he wait?*" Go ahead.

Mr. Jason Kay Kit Leon:

30 I will end my submission at this point at page 16 of my submission. The last page.

35 There are a number of us in this room for whom the effects of World War II are still felt. Some have seen the brutality of war first hand. And they are, different people for that experience. Theirs is a generation that knew what hardship means. Some are here with us. They will be able to tell us how lucky we all are right now, to be here, to sit in comfortable chairs, to have the benefit of air-conditioning ...

Judge Abdul Kadir Sulaiman:

40 No, not all all. Not at all a comfort to me.

Mr. Jason Kay Kit Leon:

... to live unmolested lives.

5 This is a Tribunal of law. There is no need for name-calling. There is no need for grandstanding – unfortunately, I have been the most guilty party today.

10 I would urge this Tribunal, before returning a verdict, to carefully consider all the cases and authorities cited in the 4 defence bundles, amicus bundle, all the exhibits marked *in toto*, and this humble submission; and to return a verdict which accords with law, justice, and conscience. I will not read Latin, I am not proficient,

15 “*Let justice be done though the heavens fall.*”

Members of the Tribunal, I thank you.

Judge Abdul Kadir Sulaiman:

20 Thank you very much. Is that going to be your full submission?

Mr. Jason Kay Kit Leon:

I will extend a properly formatted and properly referenced copy to the Tribunal as soon as I can.

25 **Professor Gurdial Singh Nijar:**

Mr. President and distinguished members of the Tribunal ... We must all live unmolested lives as learned defence counsel has suggested. That is the point, the nub of the matter. Unmolested lives means you must go according to law – and law in this case is international law.
30 Then only we can all sleep in peace.

What defence counsel has suggested in the 5 quotes; look at the language of those quotes. Bush has said, “*I’m giving an ultimatum. I’m giving a final opportunity. Diplomacy does not work. I will take action.*” These are clear incriminating statements by a person who say
35 “*I don’t care about international law.*” It’s the gist, if you read through all that.

40 As you, Mr. President, have rightly observed, with respect – the point is, we have to follow treaties to which we are committed, United Nations Charter, to follow the dictates of that treaty that Security Council has to decide. Not you, not you.

5 This is a very important message that we have to send because even as we speak now, this same accused person is issuing the same ultimatum to different countries throughout the world. This is, in my respectful submission, a potential international war criminal gone berserk. Ultimatums. He says if the UN doesn't act, doesn't rise to the occasion, "*I will rise to the occasion,*" as we submitted.

10 So, in our respectful submission, the 5 quotes that have been given make it explicitly clear beyond peradventure that this man, this war criminal, these are incriminating words, not extenuating words.

15 Why did he not follow? Why did he put forward a second resolution and withdraw from it? He has to come and explain to us. He has given some kind of an explanation in his memoirs, but what do they amount to? So let's examine a little more closely, his *actus reus* is very clear. In law you must have both *actus reus* and *mens rea* – what it means is the act must be shown, and the act is conceded that he attacked, both the accused persons attacked. Now we have to look at
20 the *mens rea*, which is the intention. Was there an intention? Or do we accept these incriminating statements that he has made in his book?

25 I just have one final, as part of my submission, this is his chief, his defence chief, who was responsible for conducting the war.

Judge Abdul Kadir Sulaiman:

Do you want to mark it?

30 **Professor Gurdial Singh Nijar:**

Yes, please. If it could be marked as **P13**, at page 147,

35 "*In January 1998, I joined a group of former national security officials in signing a letter to President Clinton that called for stronger action against Saddam's regime. The only acceptable strategy our letter read, is one that eliminates the possibility that Iraq will be able to use or threaten to use weapons of mass destruction. For the short term, we endorsed military strikes on suspected weapons facilities. For the long term we called for removing Saddam and his*
40 *regime.*"

So this was a *mens rea* that had already formed before he even entered the arena.

Judge Abdul Kadir Sulaiman:

5 But this is the *mens rea* of Donald Rumsfeld.

Professor Gurdial Singh Nijar:

I'll come to that. So this is his chief defence secretary.

10 **Judge Abdul Kadir Sulaiman:**

We know, we know. But then, how that relate to Bush?

Professor Gurdial Singh Nijar:

15 Yes, I will relate immediately to Bush. At page 427 of P13, it's the 2nd or 3rd paragraph from the bottom.

20 *"I did not hear any more about Iraq for 2 months. Then, on November 21, 2001, a week after coalition forces had driven the Taliban from Kabul, the President called me aside at the end of an NSC meeting. He led me into a small unoccupied office a few street from the situation room, closed the door and sat down. He asked, 'where do we stand on the Iraq planning?' I told him I had been briefed on the existing plan and it was very much like the one for the Gulf War a decade ago. As I expected it was not what the President was seeking.*

25 *To make progress, I said, I need to engage others in the Pentagon and at CEN-COM to update the Iraq plan. It will need a good deal of work."*

30 Then over, in the next page,

"That's fine, Bush replied." This was in 2001. "I told him that CEN-COMM" the central command for military operations, "could update it in the normal order of things but they would need to work with intelligence officials as well. The latest intelligence on Iraqi military capabilities, suspected WMD sites and other targets would shape how CEN-COMM refashioned the plan. That meant I would need to talk to Tenet," Tenet is the CIA chief, "and senior military officials would need to have discussions at the agency. The President said he didn't want me to communicate with people outside of the Defence Department for the time being and that he would personally talk to Tenet and others at the right moment. Back at the Pentagon, I asked Myers to stop by my office. I knew his focus at that time was almost

40

exclusively on Washington. Once we were alone, I told him about our new guidance, 'Dick, the President wants to know what kind of operations plan we have for Iraq?' and so on so forth

5 So in other words, the President had already then was putting in place the war operations plan against Iraq – that is the *mens rea*, formed a long time ago.

10 And then, I don't know whether the page 450 is there, the 3rd paragraph, right at the top,

15 *"So it was somewhat unusual when Chaney asked me to come over to the White House for a confidential meeting on Jan 11, 2003. Joining us were Myers and Chaney's guest, Prince Banda the Saudi ambassador to the United States," so they're all in it together, "No voice in the region tended to be as crucial when it came to US interest as Saudi Arabia. At ease in American culture, Banda smoked, rooted for the Dallas Cowboys, and cited the founding fathers," this is the real hallmark, "He still retained the ear of the Saudi elite. Banda's diplomatic credibility was burnished by a colourful background that included service as a Saudi air force pilot. 'The President has made the decision to go after Saddam Hussein,' Chaney told the prince. Of course Bush would not irrevocably decide on war until he signed the execute order for operation Iraqi Freedom that would come only*
20 *hours before the first military action commence. But this is the first time I had heard a senior administration official speak with such certainty about imminent military action. The President had apparently asked Chaney to alert the Saudis that the United States was serious and would request their cooperation. The United States*
25 *needed several military facilities in Saudi Arabia to accommodate coalition forces that would be taking part in the invasion."*
30

35 So here we have very direct evidence of the President's clear *mens rea* in wanting and planning and initiating

Judge Abdul Kadir Sulaiman:

Yes, it was said by somebody outside court. So it's clearly hearsay. Though we are allowed to accept hearsay, but it's the weight. So you move us to give weight to what Rumsfeld has said?

40

Professor Gurdial Singh Nijar:

Yes I will. Now the final point I want to make is the fact if we look at page 430, the final paragraph,

5 *“On the operations side, Frank’s plan called for an invasion force build up of 145,000 troops over 6 months, which would be increased to 275,000 if and as needed. The President, the Joint Chiefs and I stood ready to muster whatever number of troops Franks determined would be necessary to get the job done.”*

10

It is very clear they needed 6 months preparation to plan for the war, that means they must get their troops ready in 6 months. Now they attacked in March 16. If we work backwards, 6 months means September 16, or 19th. September 19 means well before the Security Council resolution. Security Council resolution was November.

15

So here you have the Chief of the Defence saying we need 6 months to get our troops in position. So this takes us back to September 16, which means well before the Security Council Resolution **1441** which was in November 8. 2 months later there was already in place the military forces to launch the attack against Iraq. This is the clearest *mens rea* that the 1st accused had absolutely no intention of abiding by the United Nations’ Charter, the Security Council resolution, and international law.

25

Judge Abdul Kadir Sulaiman:

But my point is this. This is the voice of a 3rd person invoking the *mens rea* of somebody else. If Rumsfeld is here in the dock, then it would be very well so. As I see it, I get your point, but it is admittedly hearsay, technically admissible, but the weight ... show us the weight.

30

Professor Gurdial Singh Nijar:

The point about Rumsfeld is that he is the one directing the military operation, that means he gotta put in place, and Bush is the Commander-in-Chief, so the link, in our respectful submission is very clear: If you need 6 months, and it is admitted that he launched the attack on March 19, the 6 months is September, and he is the Commander-in-Chief.

35

So there was the clearest link that these forces were already in place. So therefore, although it’s secondary evidence, hearsay, the weight that should be accorded to the person who’s planning the military

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operation should, in our respectful submission, be duly accorded weight.

Judge Abdul Kadir Sulaiman:

5 I'm not in the least saying that you are misleading us. But the point here is the issue of hearsay where we have to attach weight. So give us something so as to make us give a weighty evidence aspect on this thing. It's somebody reading the mens rea of somebody else. I think you should concentrate more on the Bush ...

Professor Gurdial Singh Nijar:

10 Yes, yes, I'm coming to that. Our submission, our first submission have already clearly indicated ... Now if you turn to page 252 of the Bush "Decision Points", D7, page 253, the 2nd paragraph,

15 *"Others allege that America's real intent was to control Iraq's oil or satisfy Israel. Those theories were false. I was sending our troops into combat to protect the American people. ... I knew the cost would be high but inaction had a cost too. Given everything we knew, allowing Saddam to stay in power would have amounted to an enormous gamble. I would have had to bet that either every intelligence agency was wrong or that Saddam would have to have a change of heart. After seeing the horror of 9/11, that was not a chance I was willing to take. Military action was my last resort, but I believed it was necessary. The next day, Monday, March 17, 2003 Ambassador John Negroponte withdrew the 2nd resolution. That night I addressed the nation from the cross hall of the White House, 'The United Nations Security Council has not lived up to its responsibilities. So we will rise to ours, I said.'"*

20
25
30 So this is the clearest intention to act in defiance of Security Council resolution. The *mens rea* that we're looking for.

Judge Abdul Kadir Sulaiman:

35 That I won't argue with it.

Professor Gurdial Singh Nijar:

And then if we look at page 252, the page before,

40 *"On Sunday morning. March 16, I boarded Air Force One and winged my way to the Azores Islands, a Portuguese territory about two thirds of the way from Washington to Lisbon. I was headed to a*

5 *last minute summit on diplomatic strategy with Tony Blair, Jose Maria Aznar, and Prime Minister Jose Barroso of Portugal. With the French, Germans, and Russians opposed 10 the second UN resolution, and the Mexicans and Chileans unwilling to provide their votes, we an agreed the diplomatic track had reached its end. We planned to withdraw the second UN resolution Monday morning. That evening, I would give Saddarn Hussein and his sons forty-eight hours to leave the country, a final opportunity to avoid war.”*

10 So here, again, he’s saying that ‘*I know for a fact that the Security Council, I cannot get the vote from the Security Council, but I would give, I,*’ accused number 1, this is the clearest signal that he has absolutely no intention, no respect for international law. He has decided: I.

15 And then, if we skip that paragraph,

20 *“The flight home was long and quiet. After so much planning and waiting, the moment had arrived. Unless Saddam fled the country, we would be at war in three days. I was deeply disappointed that diplomacy had failed. But I had promised the American people, our allies, and the world that we would enforce the UN resolutions. I was not going to break my word.”*

25 **Judge Abdul Kadir Sulaiman:**
What is that UN resolution he was talking about?

Professor Gurdial Singh Nijar:

30 The one he is talking about is **1441**, and I believe the earlier resolutions. But as is clear, his own Secretary of State, Colin Powell had said, those resolutions had spent their force. They were about getting Iraq out of Kuwait, and the duration and time had ended for that.

35 So, if you look at the last paragraph, 3rd line from the bottom,

40 *“Others suggested that the threat wasn't as serious as we thought. That was easy for them to say. They weren't responsible for protecting the country, I remembered the shattering pain of 9/11, a surprise attack for which we had received no warning. This time we had a warning like a blaring siren. Years of intelligence pointed overwhelmingly to the conclusion that Saddarn had WMD.”*

So this was the basis, and I will not labour the point,

Judge Abdul Kadir Sulaiman:

5 When was the report by El-Baradei? After the event? El-Baradei said there is no evidence of ...

Professor Gurdial Singh Nijar:

10 This was March 7, 2003. Before the attack. The Head of the IAEA, Dr Muhammad El-Baradei informed the United Nations' Security Council that the Italian documents which formed the basis for the reports of recent uranium transaction between Iraq are in fact not authentic.

15 And we also have his own evidence, the evidence by Bush himself where he said we are basing, where he praised Colin Powell and said that he had made an "*eloquent speech*" in the United Nations, although he said that most of the statements that he made turned out to be false.

20

Judge Abdul Kadir Sulaiman:

25 That was his so-called admission later. But at that point of time, because he was talking about years of intelligence pointed overwhelmingly to the conclusion that Saddam had WMD, that prompted me to ask because I know of a report by El-Baradei, that's why I asked you when was the report by El-Baradei saying there is no weapon of mass destruction.

Professor Gurdial Singh Nijar:

30 I've provided the date.

Judge Abdul Kadir Sulaiman:

Is it before the event?

35 **Professor Gurdial Singh Nijar:**

Before the event, yes. So before the event, and as I submitted, I went through his own intelligence report had indicated very clearly that there were no weapons of mass destruction.

40 In my bundle P3, page 447, 2nd paragraph. Before that there were claims by Chaney and the President and the Prime Minister about Iraq

was reconstituting its nuclear programme. Now this is the report by the judicial committee,

5 *“These statements were all false and misleading. On October 2, 2003, David Kay reported that ‘we have not uncovered evidence that Iraq undertook significant post-1998 steps to actually build nuclear weapons or produce fissile material.’ In his January 28, 2004, testimony before the Senate Armed Services Committee, Dr. Kay reported that [a]s best as has been determined . . . in 2000 they had*
10 *decided that their nuclear establishment had deteriorated to such point that it was totally useless. He concluded that there was ‘no doubt at all’ that Iraq had less of an ability to produce fissile material in 2001 than in 1991. The July 7, 2004 report of the Senate Intelligence Committee concluded that the judgment in the National*
15 *Intelligence Estimate (NIE), that Iraq was reconstituting its nuclear program, was not supported by the intelligence. The Committee agrees with the State Department's Bureau of Intelligence and Research (INR) alternative view that the available intelligence does not add up to a compelling case for reconstitution.”*

20 So I will not labour the point except just to recount and invite your Honours to refer to my earlier submission where I went chapter and verse where, if I can just look at the headings, page 46 of my submission, just recount it very briefly, 6.1

25 Page 46 of my submission.

30 *“Decisions were made by pressurizing intelligence officers to ‘fix intelligence around the policy’ of attacking Iraq. This is confirmed by the now infamous ‘Downing Street Memo’”*

If we recall, this is what the second accused and his Cabinet was informed. Blair was informed. And this is July.

35 **Judge Abdul Kadir Sulaiman:**

 This is on the second accused?

Professor Gurdial Singh Nijar:

40 Second accused with reference to the first accused. So this was the Downing Street Memo of July 23, 2002 which is 5 months before the Security Council Resolution 1441 – Military action was 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 the facts were being fixed around the policy. That means the policy was there, now they are going to manipulate, now they are going to deceive, now they are going to lie.
5 And Blair went along.

So this was already there, clear evidence. And then, 6.2,

Judge Abdul Kadir Sulaiman:

10 This is to corroborate? To corroborate Blair?

Professor Gurdial Singh Nijar:

Indeed. Corroborate. Also to submit that Blair, the second accused had clear evidence of this fact, that there was intention, inevitable, to go to war, and they were going to manipulate, to churn out, to conjure up all kind of intelligence.
15

Judge Abdul Kadir Sulaiman:

Now again, this is the word of Blair. It may help to corroborate the intention of Bush.
20

Professor Gurdial Singh Nijar:

And then we have 6.2 linking Iraq to Al-Qaeda where they said there is absolutely no evidence, and 6.3 I have already dealt with, and so on, and of course, 6.6, the uranium from Niger. Now this must be made very clear. Bush in his memoir says, at page 262, 2nd last paragraph from the bottom,
25

“... the reality was that I had sent American troops into combat based in large part on the intelligence that proved false.”
30

So after the event we now discover that what his intelligence people were saying all the while was true: That there were no weapons of mass destruction. They were manipulating the intelligence around this obsession that they had right from the outset and even before Bush came into administration that Saddam was the impediment. Their strategic interest in securing a foothold in the Gulf to side with their ally, to shore up their ally, Israel, and to remove the one person who was preventing that policy from being implemented. I had already elaborated on that strategic interest through David Manning as well as in the United States through their appropriate officers.
35
40

So, and the uranium from Niger, and this is very clear. He was already, if we look at this to show the *mens rea* of Bush it becomes very clear because he said, he gave a speech in which he said, *'oh we have got this information. This information is uranium from Niger. And uranium means a bomb. So Saddam is now going to, trying to access material to launch a bomb so this is the threat.'*

But we find that his own CIA had sent Joe Wilson, an ambassador of the United States, to Niger to carry out a very thorough investigation, and he had carried out this investigation, and he had reported to the CIA that well before the Security Council resolution that it's absolutely untrue, and El-Baradei, well before the Security Council resolution also had informed the Security Council that this is absolutely untrue. So this is the clearest evidence of a man who was bent on attacking Iraq against every aspect of international law. This man must be stopped.

As far as Blair is concerned, the 2nd accused, D8, I respectfully invite your attention to page 378,

"My point here is not to persuade that we were right to remove him, but only to make those who adhere to the conventional wisdom at least pause and reflect. I don't claim that the thesis is an indisputable one, that had we failed to act in 2003 Saddam would have re-emerged stronger, a competitor to Iran, both in respect of WMD and in support of terrorism in the region. The opposite case can be made, but it is surely at least as probable as the alternative thesis, namely that he would have sunk into comfortable unmenacing obscurity and old age and his sons groomed to succeed him would have reformed."

Now the point he's making is very clear. He is saying, *'I have a thesis that if we had not removed him,'* so the intention to remove Saddam is very clear and he himself gives credence to this, because he says his own thesis is not indisputable.

Now if we go at page 381, I'll get the quote, but in it he said very clearly that he joined Clinton very much earlier, because Blair was there for 10 years, he had examined the intelligence received and that he had attacked Iraq to downgrade its military operations, its military capability. I'll get the quote in awhile. But that is the gist of it.

5 That means Blair was already on this course long before. He had already admit in this that he and Clinton attacked Iraq to downgrade their military capability, and this was well before 2002, before the Security Council resolution. So he had already committed a war crime. This is a double war crime.

And then, at 388, I come back to 381, I found the quote, 2nd paragraph from the bottom,

10 *“From the outset there had been obstruction. By March 2003 when conflict began there were no fewer than 17 separate UN resolutions on the Iraqi refusal to cooperate with the inspectors. In 1998 the inspection team had left in protest. As I said earlier, in December 1998, President Clinton and myself authorized an air attack on*
15 *Bhagdad with the aim of degrading their facilities”*

Judge Abdul Kadir Sulaiman:

Which paragraph? 381?

20 **Professor Gurdial Singh Nijar:**

381, 2nd last paragraph.

25 *“From the outset there had been obstruction. By March 2003 when conflict began there were no fewer than 17 separate UN resolutions on the Iraqi refusal to cooperate with the inspectors. In 1998 the inspection team had left in protest. As I said earlier, in December 1998, President Clinton and myself authorized an air attack on Bhagdad with the aim of degrading their facilities”*

30 It made the point, but no one was sure how effective it had been. He had already attacked in 1998. No Security Council resolution authorizing the attack. Admission, the clearest possible admission that he had been on this war course for years before that.

35 At 388, 1st paragraph,

40 *“However leaving this problems aside I had reached the same conclusion from a progressive stand-point as George had from a conservative one. The region needed a fundamental change.”*

They wanted to change the character of the region, the Middle East, and this change was to be of a different character.

5 *“In the 1980s we had armed Saddam as we had the Mujahideen and Afghanistan so as to thwart Iran in the one case, and the Soviet Union on the other. It was tactical move, but a strategic mistake. This time we would bring democracy and freedom. We would hand power to the people. We would help them build a better future. We would bring not a different set of masters but the chance to be the masters as our people are ...”*

10 Look at this man. He admits that he did all this nonsense before. He even armed Saddam before. Why? For political expediency and to do a re-ordering of the Middle East. This is his admission. He says we needed. So that one he say, *“We made a mistake. But this time we got a fantastic reason, we would bring democracy and freedom through*
15 *military action.”*

20 This is the nature of this beast. As Shakespeare said, *“Upon what meat does this man grow that he has gone so great?”* That he thinks that he is so great – Bush, Blair, first accused, second accused.

20 And then, moving on, 398, he says, at the top paragraph,

25 As the conspiracy theories abound in this area, it is assumed that the US took a decision to remove Saddam by military force in late 2001 and from then on war was inevitable. It wasn't. And it's just how politics works. All human beings. As we heard this morning. And in the end human beings take political decision. But here we are not taking about human beings and their emotion. We are talking about:
30 Did you follow the law?

30 Did you go by Security ... you have to make a decision but you can be emotional about some attack on your country, and that is not a defining moment, I mean, of course it's very sad what happened 9/11, but you know, what about Rwanda, what about Cambodia, what about
35 Vietnam. Did those people say, *‘ok, you have attacked our people, now we are going to start attacking America because we want to attack America in America because we take the view that for us it is a defining moment, of course it is a defining moment.’*

40 And as an aside, if you look at the exhibition, it's also a point that was raised, it's all about wars. There's not one face of Bush or Blair. There's no prejudice. It's all about wars. The Rwanda, the Cambodia,

the My Lai massacre. What about the My Lai massacre? So what do we do? South-East Asian countries get together and attack United States? If this is the logic, the logic of gangsters, then the logic of mafia, then of course we can do that.

5

But we are here urging this distinguished Tribunal that there is a law. There is an international law which we have all committed ourselves, including the United States, including Britain. And we must hold people to account when they breach this law.

10

And as we go on now, then he says what had happened, the next paragraph, as I say was the US attitude to risk had been turned upside down. Iraq was now definitely on the agenda. There was a pre-decision to believe that Saddam was incorrigible. There was the certainty that he had on-going weapons of mass destruction programme. There was a belief that the world would be better off with him out of power. These 2 people decide – The whole world is in accordance with our programme.

15

20

And earlier they talked about 16 some resolutions that Saddam did not adhere to. For that they want to re-order. Israel, as its common ground, there are 40 resolutions of the Security Council which Israel has not. So what shall we do? Shall we tomorrow get together and say we got to stop this Zionist nation?

25

We don't do that. Because we respect law, we respect order. There is a terrorist rogue state sitting right in the Middle East that is part of the problem. That is why Saddam would not allow that to continue and he had to go. This was the agenda. It's an open agenda.

30

And then, of course, coming back to this 2nd last paragraph, 5th line, he says, Blair says, (page 398)

35

“Of course now people point to the fact that there was military planning as showing that the diplomacy was all a show. Such planning was inevitable and right and not because war was inevitable but because it was an option and that option had to be planned for.”

40

So he admits that we had that military forces ready and as I've showed in Rumsfeld, the leading force conducting the war was the United States, he says very clearly we need 6 months clearance and 6 months clearance means well before Security Council resolution. So here we

have the link not only of Bush but also of Blair that they planned on a military strike.

And then, page 410, to complete this, at the top page,

5

“The UN resolution was duly debated and passed in November. And shortly after the weapons inspectors led by Hans Blix were allowed back into Iraq. Hans was a curious fellow. He was smart and capable and I liked him. But his problem was that he felt the weight of the politics of the inspection. This was quite natural but in truth he just needed to do his job. If Saddam was in compliance, fine; if not, fine. That was his judgment. But it was ours as to the consequences.”

10

15

Now the thing is, I just want to briefly say this, it is in my documents, so I won't labour this point where Hans Blix reported back that Saddam was cooperating, that he had given 1,200 page document disclosing everything. He had allowed access to his palaces. He had, in other words, given unfettered discretion and they could find nothing, and then they condemned Hans Blix. I won't go into it, but if you read Rumsfeld's book he says, *“This fellow is a looney. Hans Blix, we don't trust him. We don't trust inspectors even before the inspection started.”*

20

25

Now the quote I want to give, Blair is saying, *“By this time, in late 2002, our military was well alongside the United States.”* So 2003 these are the 2 military forces that have converged, well before Security Council resolution.

30

And the final quote is at page 411, top line,

“Saddam was a threat. He would never cooperate fully with the international community and the world, not to say Iraq, would be better off with him out of power. My instinct was with them. Our alliance was with them. I had made a commitment after 11th September to be ‘shoulder to shoulder’. I was determined to fulfil it.”

35

40

This then is the clearest voice of the fact that he was willing, ready and able to go along with the 1st accused to carry out this nefarious activities. And as I said, and I will conclude with that before Professor Boyle wraps it up, I would just say this: This is a very historic moment for this world tribunal. Already as you Mr. President correctly observed, the world is watching, the Washington Post, the

Indian Express, the UK papers, even Taiwan and a large number of they have already reported on this. And the world is also watching for a very clear reason because now, as I said yesterday, you can hear the distant drums of war already being played, being made to rumble by these same characters, the 1st accused and the 2nd accused. We have to send a clear signal. We have to say, *"This must stop."*

International war crimes are to stop international war criminals. And we humbly say that the defence has not made out, with respect,

Judge Abdul Kadir Sulaiman:

not cast a doubt

Professor Gurdial Singh Nijar:

an adequate case

Judge Abdul Kadir Sulaiman:

Defence has not cast a doubt

Professor Gurdial Singh Nijar:

Yes, they have cast no doubt and we have proved our case beyond reasonable doubt and we ask for a verdict of guilt on both the accused persons. The signal is there's no safe haven for international war criminals.

I thank you Mr. President and members of the Tribunal.

Judge Abdul Kadir Sulaiman:

Mr. Boyle, how long will you take? Don't worry, I'm not rushing you.

Professor Francis A. Boyle:

Mr. President, I will be very brief. 5 minutes.

Mr. President, distinguished members of the Tribunal, may it please the Tribunal – Bush and Blair murdered and exterminated 1.4 million Iraqis. We must never forget that is why we are here. 1.4 million completely innocent human beings like you and me and everyone in this room. These murdered Iraqis could have been our mothers, our fathers, our brothers, our sisters, our sons, and our daughters. And they were ruthless, criminally, needlessly exterminated by Bush and Blair.

Bush and Blair have silenced their voices. But these 1.4 million murdered Iraqis have asked me to serve as their spokesperson, as their lawyer; and I am here today to speak for them and to demand justice. They are here with me.

Judge Abdul Kadir Sulaiman:

Not so much appeal for emotion, please

10 **Professor Francis A. Boyle:**

They are here with me in spirit. They have asked for justice all over the world. We have tried to get Bush and Blair in Switzerland, in Canada, in Malaysia, at the International Criminal Court, and all these powers and authorities have illegally refused to give justice to the 1.4 million murdered Iraqis.

And so we have come here to Malaysia to ask for justice. In the name of God, the compassionate, the merciful, convict Bush and Blair as charged.

20 Thank you your Honours.

Mr. Jason Kay Kit Leon:

Members of the Tribunal, I have nothing to add. Only a question about the 1.4 million deaths? May I please have the citation that confirms that figure? I have asked my team to check that figure. May I please have the citation of where that figure comes from the prosecution? That is all I request.

30 **Professor Gurdial Singh Nijar:**

I think that figure might be understated. I have the citation in my submission. I also cited this figure in my initial submission. I have given the complete. Page 49 of my submission. In my documents page 372.

35 **Mr. Jason Kay Kit Leon:**

Members of the tribunal, no reply.

Judge Abdul Kadir Sulaiman:

40 So that concludes collecting of evidence part. We have conferred among ourselves and will come out with a verdict around 4pm today.

Thank you very much for now. Enjoy your lunch. We will come back at 4pm.

Registrar Musa Ismail:
5 Court rise.

22nd November 2011 – Session 4**Judge Abdul Kadir Sulaiman:**

5 First of all I must thank everyone for the patience you have undertaken
to bear with us over this very serious issues and we took a long time of
argument between us just for the sole purpose at arriving at justice. At
the end of the serious discussion that we have, we come to a
unanimous decision. Now today by way of extempore I will deliver
our views and findings, and the formal judgment will come out
10 officially in due course. Now I read the views and findings of the
Tribunal, unanimous views and findings.

15 The two accused, George W. Bush and Anthony L. Blair, at the
material times the Heads of Government of the United States of
America and the United Kingdom, have been charged by the Chief
Prosecutor of the Kuala Lumpur War Crimes Commission with having
committed CRIMES AGAINST PEACE, in that they have planned,
prepared and invaded the sovereign state of Iraq on 19 March 2003 in
violation of the United Nations Charter and international law. The
20 'Particulars of the Charge state, inter alia, that on 19 March 2003, the
two accused launched a war against Iraq without the sanction of the
United Nations and without just cause whatsoever.

25 The two accused were not present at the proceedings though duly
served. Nor were any attorneys or counsel present in their behalf.
Pursuant to Article 15 of the Charter of the Kuala Lumpur War Crimes
Commission & the Rules of Procedure and Evidence of the Kuala
Lumpur War Crimes Tribunal (hereinafter referred to as "the
Charter"), an Amicus Curia was appointed by the Tribunal to assist the
30 Tribunal by presenting an unbiased assessment of the charge and
evidence against the accused.

The Amicus Curia entered a plea of not guilty on behalf of both the
accused.

35

1. Recusal of Judges

40 At the commencement of the proceedings, the Tribunal had a full
bench of 7 Judges. However, Judge Prof Niloufer Bhagwat and Judge
Dato' Dr Zakaria Yatim later recused themselves, and the Tribunal
proceeded to hear the case with a quorum of 5 Judges.

2. Preliminary Objection on Jurisdiction

Amicus Curia Jason Kay Kit Leon raised a preliminary objection that the Tribunal has no jurisdiction to hear the case. After listening to arguments by the Chief Prosecutor and the Amicus Curia, the Tribunal ruled that it has jurisdiction and the proceedings then continued.

Under Article 7 of Part I of the Charter, the Tribunal shall have jurisdiction not only in respect of crimes against peace, but also in respect of crimes against humanity, crime of genocide and war crimes.

3. Facts

It is the undisputed facts of the case that the first accused had contemplated invading Iraq as far back as 15 September 2001 and had confided in the second accused of this intention. In 2002, the two accused, without the sanction of the United Nations Security Council, had directed air strikes against Iraq in order to degrade Iraq's air defences, in preparation for its invasion in 2003. A memorandum of the UK cabinet dated July 23, 2002 (known as the "Downing Street Memo") had recorded a meeting between the second accused and his intelligence officials.

On November 8, 2002, the United Nations Security Council passed Resolution 1441. The text of this Resolution clearly does not authorise the use of military action to compel its compliance. Both the accused are fully aware of the limitations of this resolution.

The second accused had admitted whilst giving his testimony at the Chilcot inquiry on 14 January 2011 that his Attorney General, Peter Goldsmith, had advised that a second Security Council Resolution is necessary under international law to authorise the use of military force against Iraq.

It is also an established fact that Iraq did not possess any weapons of mass destruction. The two accused had over the years since the Iraq war admitted that they knew or believed the intelligence reports on Iraq's weapons of mass destruction (WMD) to be unreliable. Yet both accused proceeded to wage war on Iraq based on a false and contrived basis.

More than 1.4 million Iraqis have been killed (and continued to die) as a direct and indirect consequence of the war waged by both accused against Iraq.

5

4. THE INTERNATIONAL LAW OF WAR –

4.1 General Prohibition Against Force

10

The Charter of the United Nations contains a general prohibition against force as a means of resolving disputes. The Charter insists that war can only be a last resort and that the decision to unleash the horrors of war on innocent populations can only be taken according to the duly established law itself. The Security Council and the General Assembly have consistently affirmed this principle. *Refer to Security Council Resolution 487/1981, 1981 ILM 965 and GA Resolution on Enhancing the Effectiveness of the Prohibition of the Use of Force (GA Res 42/22, 18 November 1987).*

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4.2 Where in Exceptional Circumstances Force is Allowed

Under the Charter as well as customary international law, there are some exceptions that make the use of force lawful.

25

First, legitimate self-defense under Article 51 of the Charter.

Second, specific Security Council authorization of force as a last resort to maintain peace and security under Chapter VII of the Charter.

30

Third, the Defence assertion that in customary international law there is a principle of pre-emptive or anticipatory self-defense when a threat of attack is imminent.

35

Fourth, the Defence assertion that there is a principle of humanitarian intervention or a “Right to Protect”.

5. WAS THERE A PRIMA FACIE CASE?

40

At the close of the case for the prosecution, we listened to the submissions by both sides, the Tribunal came to the unanimous conclusion that a prima facie case exists. Defence was, therefore, called.

6. THE CASE FOR THE DEFENCE

6.1. Nicaragua case –

5 The defence counsel Jason Kay Kit Leon states that the prosecution has submitted two contradicting points on humanitarian catastrophe. The defence states, “The rule of natural justice requires the accused to know the charges against him clearly, to understand the nature of the charges against him, so that he has a chance to defend himself.”

10 Yet, the defence in objecting to the prosecution’s submission of the Nicaragua case has made a moot point. Both of prosecution counsels’ interpretations of the Nicaragua case would prohibit Bush and Blair’s orders to wage aggressive war and invade Iraq.

15 The Nicaragua case, by the interpretation of prosecution lead counsel Gurdial Singh Nijar, prohibits the invasion of Iraq by Bush and Blair because that invasion was not in furtherance of “preventing an overwhelming humanitarian catastrophe” for which Saddam could be held responsible. No catastrophe had been established in Iraq through well documented evidence. There were many other means – including a second resolution at the United Nations – available to prevent the use of force. The measures taken by Bush and Blair’s aggressive war against Iraq were disproportionate.

20 The Nicaragua case, by the interpretation of prosecution co-counsel Prof. Frances Boyle, places an absolute bar upon any intervention by force for humanitarian reasons.

6.2. Responsibility to Protect

25 Similarly defence counsel argues that responsibility to protect is a doctrine that justifies an intervention by force on humanitarian grounds, and that the doctrine of responsibility to protect provides a legal rational for the aggressive war by Bush and Blair against Iraq. Defense counsel sites the 1999 NATO intervention in Serbia as precedent. Yet as prosecution counsel Francis Boyle noted, U.S. President Bill Clinton had no authority from the U.S. Congress to invade Serbia and the UN resolutions cited by the defence were after the fact of the illegal invasion by way of an attempt by the UN to control a rogue U.S. President. The 1999 invasion of Serbia was

illegal under the Nicaragua case as was the 2003 invasion of Iraq by the accused.

6.3. Use of U.S. government documents and statements of the accused

In arguing that the situation in Iraq justified Humanitarian intervention, counsel for the defence has submitted official documents predominately from one agency of the U.S. government, the U.S. Agency for International Development. These documents are biased presentations and unreliable, as they are prepared subsequent to the invasion for purposes of justifying the invasion of Iraq. Moreover, as counsel for the defence demonstrated, the director of USAID himself admitted his agency was filled with U.S. under cover intelligence agents and propagandists.

6.4. 9/11 & the invasion of Iraq

Counsel for the defence has interjected the events of September 11, 2001 into these proceedings in a number of ways.

A. 9/11 & the invasion of Iraq – Counsel for the defence has introduced no evidence that establishes a planning or operational connection between Saddam Hussein and 9/11. The prosecution established that Bush may have used 9/11 as a pretext for the invasion of Iraq.

B. 9/11 & the Project for A New American Century – The prosecution introduced evidence demonstrating that key principals in the cabinet of the first accused Bush were planning an invasion of Iraq as early as February, 1998 under the umbrella of the Project for a New American Century which at the same time was preparing public opinion for “a new Pearl Harbor”, an event that materialized on 9/11.

C. 9/11 “Grotian moment” – The defence cites authority contending that “September 11 attacks on the United States demonstrate a change in the nature of the threats confronting the international community, thereby paving the way for rapid development of new rules of customary international law” that would presumably authorize the invasion of Iraq.

Yet exactly what the events of September 11, 2001 are is still unsettled. This court takes judicial notice that competence evidence

exists that the events of 9/11 were in fact events of state terror orchestrated by high ranking officials in the U.S. government who were also responsible for the invasion of Iraq.

5 6.5 Saddam Hussein & acts of 1988-1991

10 Counsel for the defence introduced evidence of Saddam Hussein's ethnic cleansing and chemical weapons use against the Kurds and the Anfal campaign in 1988, as well as the killing of Shiites and Marsh Arabs in 1991. Counsel for the defence failed to explain why U.S. President Ronald Reagan and George HW Bush through agent Donald H. Rumsfeld sold Iraq chemical weapons and permitted their use and why President George HW Bush incited the Marsh Arabs to revolt in 1991 only to abandon them knowing they would face Iraqi government reprisals.

15

6.6. United States Joint Forces Command

20 Counsel for the defence introduced a document prepared by the Joint Center for Operation Analyses under official contract with the U.S. Department of Defense as justification for relationships between Saddam Hussein and international terrorism. Counsel for the prosecution established the bias of this document as that produced by the invading party after the invasion.

25 6.7. Anticipatory self-defence

30 Counsel for the defence raised the doctrine of anticipatory self-defence under Article 51 of the UN Charter as a justification for the invasion of Iraq by the two accused Bush and Blair. Counsel for the prosecution Frances Boyle noted that the clause "if an armed attack occurs" in Article 51 precludes its application to the case of Iraq. Counsel for the prosecution also noted that the 1981 attack by Israel on Iraq, cited by counsel for the defence as a justification for the invasion of Iraq by the accused, was condemned by the UN Security Council and had been ordered by Israeli Prime Minister Begin to improve his standing in the election polls in Israel in 1981.

35

40 Moreover, as stated above, all alternative means had not been exhausted by the two accused Bush and Blair to avert their aggressive war against Iraq. Secondly, the aggressive war launched by the two accused Bush and Blair is not proportional, in that said invasion has

led to the deaths of 1.4 million Iraqis. Thirdly, there was no immediacy of any threat by Iraq, nor did counsel for the defense adduce any credible evidence in this regard.

5 6.8. Memoirs of the accused Bush and Blair

Both the counsel for the defence and the counsel for the prosecution introduced relevant segments of the Memoirs of the accused Bush and Blair as evidence in this case. Said Memoirs did not provide
10 justification for the war of aggression against Iraq waged by the accused in violation of international law.

7. TRIBUNAL'S FINDINGS ON FACTS AND LAW

15 7.1 Right of Self-Defense Under the UN Charter

Article 51 of the UN Charter permits member states to defend their sovereignty and to exercise the "inherent right of individual or collective self-defense if an armed attack occurs". However, the
20 unilateral use of retaliatory force is subject to a number of limitations.

First, the right persists only till "the Security Council has taken measures necessary to maintain peace and security". Once the Council formally determines that there exists a threat to international
25 peace and security, individual states may no longer exercise the right of self-defense without the Council's express prior approval.

Sometime after the Allied invasion, the Security Council deliberated on the Iraq war. It did not expressly validate the invasion. Yet we all
30 know that the military occupation of Iraq by the Allies continues till today.

Second, Article 51 applies only in the event of an actual armed attack. Iraq had not attacked the USA or the UK. In fact, since 1991, it had
35 not attacked any country whatsoever.

Despite Defence submissions, there is no credible evidence that Iraq had any connections with September 11, 2001 or with Al-Qaeda. Nor is there any evidence of Iraqi preparation to invade or attack or
40 threaten any nation.

If by some stretch of imagination, there was such a threat, it was not imminent and it was entirely avoidable. The argument about self-defense is, therefore, not credible.

5 Third, the International Court of Justice has affirmed in the Nuclear Weapons Case that lawful defense must be both “proportional to the armed attack and necessary to respond to it”. [Nicaragua, ICJ Reports (1986) at 14, 94 and 103; Legality of the Threat Or Use of Nuclear Weapons, ICJ Reports (1996) at para. 41].

10 As there was no armed attack from Iraq, there was, therefore, no justification for the US or UK to invoke the Article 51 doctrine of self-defense to attack, invade and conquer Iraq. The justification, if any, must lie in the Defence Counsel’s disputed doctrine of anticipatory or
15 pre-emptive self-defense under customary international law which we shall deal with below.

7.2 Security Council Authorization

20 Except for the narrow exception of unilateral self-defense under Article 51, the Security Council of the United Nations is the only authority empowered by Chapter VII, Articles 39 to 42 to use force by air, sea or land against a nation that is guilty of a “threat to the peace, breach of the peace, or act of aggression”. This exceptional power is
25 subject to a number of limitations.

First, military action is permitted for maintaining or restoring international peace and security. However, on the basis of the Nicaragua decision, regime change is not a valid international law
30 objective. We are of the firm view that the exceptional powers of Chapter VII cannot be employed to declare war and resort to military action against a sovereign nation solely for the purpose of “regime change” or the removal of a dictatorial or unelected leader, no matter how unlikable he may be.

35 Second, military action under Article 42 must be resorted to as a matter of last resort. The Council must first attempt peaceful measures like sanctions under Article 41 of the Charter. Article 41 authorises
40 “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”.

Force can be authorized only after the Council determines that peaceful measures “would be inadequate or have proved to be inadequate” (Article 42). The Council has an obligation to exhaust all peaceful avenues before authorizing war (Article 39).

5

Except for the USA and the UK, the other permanent members of the Security Council were of the view that UN inspections were working and that Iraq was complying with the order to disarm. On the orders of the UN inspectors the Saddam regime had destroyed some proscribed weapons. Hans Blix, chief United Nations weapons inspector requested four months to complete his job and the majority of the members of the Council seemed agreeable to granting this time. But the US and the UK were not supportive of any extension of time. They lobbied hard to obtain a new Council Resolution to authorize immediate military operations against Iraq. The US forged documents to accuse Iraq of trying to purchase raw materials for WMD on the international market. The UK, on its part, lacking any substantial evidence against Iraq, plagiarized from a student thesis and tried to pass off an out-of-date student essay as an authoritative intelligence report!

10

15

20

US and UK attempts to force a new resolution ultimately failed. France, Germany, Russia and China wished to give to the inspectors the time they requested to complete their inspections.

25

Having failed to push a resolution through the Security Council, the US and the UK changed their tune and argued that no new resolution was needed to authorize military strikes as earlier resolutions were sufficient to allow any Council member to unilaterally use force in the event that Iraq was in material breach of its obligations.

30

This is the “revival argument” put forward by the Defence. It requires an examination of some of the UNSC resolutions on Iraq between 2 August 1990 and 8 November 2002 and will show that the US-UK argument of unilateral authority to invade Iraq suffers from several fatal flaws.

35

- *Resolution No. 678 (1990) did authorise UN member states to use “all necessary means” to bring Iraq into compliance. However, this Resolution was primarily about getting Iraq out of Kuwait.*

40

• *Resolution 687 (1991) terminated the force authorization of Resolution 678 (1990) and declared that “a formal cease-fire is effective”; and decided that the Council shall “remain seized of the matter” and shall “take such further steps as may be required...”*

5 *“This language places the future approval of force expressly within the mandate of the Council acting as a whole and not in the hands of any individual members”.*

• *Resolution 1154 (1998) warned of “severest consequences”.*

10

However, Resolution 1154 (1998) contains explicit language that the Council retains authority to “ensure implementation of this resolution and (of) peace and security in the region”. A majority of the members disputed the US-UK view that previous resolutions gave individual nations unilateral power to launch military strikes.

15

When the US and the UK ignored the plain language of Resolution 1154 (1998) and launched Operation Desert Storm air strikes to enforce “no-fly zones” over two-thirds of Iraq, France ceased its cooperation with the US-UK initiative and declared the air strikes to be an unauthorized military operation.

20

• *Resolution No. 1441 (2002) threatened “serious consequences”. This Resolution 1441 (2002), was the last UN resolution on Iraq before the March 2003 invasion. It nowhere contained any explicit reference to use of force. Surely, loss of thousands of lives (even if in American and British estimation they are useless Arab lives) requires unmistakable authorization. Resolution 1441 merely authorized “serious consequences” and was much weaker than Resolution 1154 (1998) that mandated “severest consequences”.*

25

30

France, Russia and China gave their consent to Resolution 1441 only on the clear understanding among the Council members that the Resolution did not authorize “automaticity in the use of force” and that any approval of force remained with the Council as a whole. This understanding was recorded in a written proviso by the three countries. In the light of this explicit proviso, and the failure of the US and UK to obtain a new resolution, and their explicit undertakings that there was no automaticity and no hidden triggers, it is extremely dishonest, dishonourable and undemocratic of the US and the UK to argue that earlier resolutions allowed unilateral strikes.

35

40

5 *The Defendants also argued that if the Security Council is helpless to act or if there is an unreasonable exercise by any permanent member of its right to veto, then any member state like the US and the UK may take it upon itself to act. We reject this audacious view. In our opinion it has no legal basis.*

10 7.3 Pre-emptive or Anticipatory Self-defense in Customary International Law

15 The UN Charter nowhere permits the declaration of war on a perceived threat of imminent attack. Some scholars argue that the Charter intended to abolish the pre-Charter customary right of pre-emptive self-defense. Despite this doubt it does appear that under
20 customary international law the doctrine of pre-emptive self-defense does exist. According to the seminal Caroline case the legitimate exercise of this right requires “a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation”.

25 The idea that the security of US & UK was threatened by Iraq’s alleged possession of weapons of mass destruction (WMD) was preposterous and is even more so today. Despite years of extremely intrusive intelligence gathering from the air and more than 550
30 inspections on the ground by UN inspectors in the last four months before the invasion, no credible evidence of WMD had surfaced. Some US documents alleging Iraq’s attempt to purchase proscribed weapons turned out to be crude forgeries. The UN Inspectors found no such weapons nor any long-range delivery system.

35 In these circumstances, the assertion by the Defendants of a right to engage in unilateral and “pre-emptive attacks” on Iraq was a blatant violation of international law. Their argument sought to give to powerful states the right to use military force against other states that are seen as hostile or that make moves to acquire weapons of mass destruction whether nuclear, biological or chemical.

40 It is our view that the doctrine of pre-emptive strikes “is a doctrine without limits, without accountability to the UN or international law, without any dependence on a collective judgment of responsible governments and, what is worse, without any convincing demonstration of practical necessity”. It repudiates the core idea of

the UN Charter that prohibits the use of force except for self-defense or pursuant to a decision of the Security Council. *“There is no precedent in international law for use of force as a preventive measure when there has been no actual or imminent attack by the offending state. The Security Council has never authorised force based on a potential, non-imminent threat of violence.”* In fact there is law indicating that preventive use of force is illegal. The International Military Tribunal sitting at Nuremberg rejected Germany’s argument that Germany was compelled to attack Norway in order to prevent an Allied invasion. It held that preventive war is unequivocally illegal and constitutes a war of aggression. Nuremberg’s condemnation of preventive war was incorporated into the UN Charter and affirmed by the General Assembly. In 1978 the Security Council condemned Vietnam’s invasion of Cambodia. In 1981 the Council unanimously condemned Israel’s “preventive” attack on Iraq’s nuclear plant as a clear violation of the Charter.

7.4 Humanitarian Intervention or the Right to Protect Victims of Human Rights Abuses

Counsel for the two Defendants gave convincing evidence of serious human rights violations by Saddam Hussein. However, they adroitly avoided admitting that both the USA and UK were complicit in most of these offence.

In the light of Saddam’s brutal record, the Defendants argued that the international community has the right and the duty to use military force for humanitarian purposes and for redressing gross abuses of human rights. As there was credible evidence that the unelected Saddam regime was guilty of serious human rights breaches, it was argued that military force could be used to bring about a regime change in Iraq.

We acknowledge that international law is not static. Eloquent arguments by the Defence of “Grotian moments” in international law are taken note of. However, growth and change has to be within the four corners of the UN Charter and not outside it.

The danger of the ‘humanitarian intervention’ argument is that it enables member states to circumvent well-established principles and procedures of the UN Charter on use of legitimate force. Decision-making on issues of peace and war is unlawfully transferred from

5 multilateral UN mechanisms to individual states. Relying on this argument member states may transgress legal limits on use of this exceptional power and not be accountable to anyone. There is no safeguard to prevent states from manipulating this argument to serve narrow political or strategic interests.

10 It must also be remembered that the UN is already empowered, under Chapter VII, to respond with force if necessary to uphold the UN's fundamental purposes, which, in Article 1 include "encouraging respect for human rights and fundamental freedoms".

15 We hold that when a country takes it upon itself to displace by force of arms a government or administration that it disapproves of, this is naked aggression and an international crime. Despite some scholarly dispute which we recognize, we hold that the principle of humanitarian intervention has dubious basis. International vigilantism has no legal validity. Even if it did, it should be applied subject to the preconditions outlined by the Prosecution Counsel. None of the conditions were satisfied in this tragic situation.

20 7.5 Possession of WMD

25 An attack on Iraq because of its alleged possession of weapons of mass destruction (WMD) had no legitimacy in international law.

First of all, claims regarding Iraq's pursuit or actual possession of weapons of mass destruction (WMD) were always highly suspect.

30 Secondly, enforcement of UN resolutions against Iraq's alleged possession of WMD should have been undertaken in accordance with international law and not in blatant disregard of it.

35 Thirdly, the US lacked clean hands on the issue of Iraq's possession of WMD because along with Britain and 150 or so Western companies (listed in Iraq's Report to the UN Inspectors), the US facilitated Iraq's acquisition and use of WMD in the 1980s

40 7.6 Was there pre-planning and preparation to mount the military operation?

The Prosecution has given us convincing evidence that the drums of war were being beaten long before the invasion. Facts were fixed to support the policy.

5 Regrettably the Defence rebuttal was based on highly dubious US Government or US Military evidence that is not credible. US laws or Congressional Resolutions are also not acceptable as the US, with all its might has no right to change international law.

10 Further many statements in the books authored by the two Defendants implicate them in the diabolical plan. The memoirs of the accused do not provide justification for the war against Iraq.

15 7.7 Individual Responsibility

15 On the issue whether an individual Head of State can be personally held criminally liable, we are of the opinion that the Nuremberg Judgment and the Tokyo Tribunals after World War II have settled the issue. For war crimes there is individual criminal responsibility on
20 serving or former Heads of States.

DECISION

25 “The essence of legality is the principled, predictable, and consistent application of a single standard for the strong and the weak alike. Selective manipulation of international law by powerful states undermines its legitimacy.”

30 The 2003 invasion of Iraq was an unlawful act of aggression and an international crime. It “cannot be justified under any reasonable interpretation of international law”. It violates “the outer limits of laws regulating the use of force”. It amounts to mass murder. Unlawful use of force in Iraq “threatens to return us to a world in
35 which the law of the jungle prevails over the rule of law, with potentially disastrous consequences for the human rights not only of the Iraqis but of people throughout the region and the world”.

40 The future of the UN and of the international law of war is also at stake. The unauthorized military action in Iraq undermines the system of collective security embedded in the UN Charter in order to protect humanity from a recurrence of the carnage of World War II.

5 The Defendants took the law into their own hands. They acted with
deceit and with falsehood. They acted in flagrant violation of
international law of war and peace. In the absence of any convincing
evidence, defence assertions lack credibility. They appear to be fig
leaves for hiding naked economic and political ambitions.

10 On all counts we find that the charges against the accused are proved
beyond reasonable doubt

ORDERS

1. The Defendants are guilty as charged.
- 15 2. The Tribunal in accordance with Article 31 of our Charter,
recommends to the Commission to file reports with the International
Criminal Court against the two accused.

20 The Tribunal in accordance with Article 32 recommends to the
Commission that the names of the 2 convicted criminals be included
in the Commission of War Criminals and be publicized accordingly.

PER CURIAM

25 *1. Nobody can deny that the murder of thousands of civilians on
September 11, 2001 was a moral outrage. But at the same time it must
be said that just as innocent Americans should not have been
sacrificed for their government's political follies, innocent Iraqis
should not have been held vicariously liable for the wrongs of their
30 former unelected President.*

*2. In the face of blatant disregard of international law by the Bush
& Blair regimes, the international community must confront this war of
aggression with courage and unity.*

Recommendation of this Tribunal.

40 First, it must invoke the Nuremberg law to report Bush, Blair and their
accomplices for crimes against peace, war crimes and crimes against
humanity under Part VI of the Charter of the Nuremberg Tribunal.

Second, it must file reports of genocide and crimes against humanity with the International Criminal Court (ICC).

5 Third, the General Assembly of the United Nations must be approached to pass a resolution to end the American occupation of Iraq.

10 Fourth, the findings of this Tribunal must be communicated to all countries that have acceded to the Rome Statute and are possessed of universal jurisdiction.

15 Fifth, the UN Security Council must reassert itself and ensure that true sovereignty is transferred to the Iraqi people as soon as possible with the assistance of a UN Peacekeeping Force. The autonomy of the newly installed Iraqi government must be ensured.

20 I thank my fellow judges for their patience to face this event put before us. Last but not least we take liberty to thank the parties. We fully appreciate the responsibility shouldered on the *amicus curiae* and say that he has done his best and the prosecution has performed very well indeed solely serving the cause of justice.

25 With that we end the proceedings of this Tribunal. Thank you very much.

30