



**MONASH** University

**Civil Society and Counter-Memories: The World Tribunal on  
Iraq and The Kuala Lumpur War Crimes Tribunal**

Nicole Ruslim  
Bachelor of Arts (Hon.)

A thesis submitted for the degree of Doctor of Philosophy

Criminology

School of Social and Political Science

Faculty of Arts

Monash University

June 2019

## Copyright notice

© Nicole Ruslim (2019).

*I certify that I have made all reasonable efforts to secure copyright permissions for third-party content included in this thesis and have not knowingly added copyright content to my work without the owner's permission.*

## Abstract

Citizens' tribunals arise out of social movements that emerge in contexts of institutional silence and denial of state crimes. Despite extensive literature on civil resistance to state crimes, little is known of citizens' tribunals and the 'counter-memories' of war they set out to construct. This research explores The World Tribunal on Iraq (WTI) and The Kuala Lumpur War Crimes Tribunal (KLWCT), and the counter-memories of the Iraq War they each strived to construct. Using critical discourse analysis, in which speeches from George W. Bush and Tony Blair are interrogated against the case transcripts from the WTI and KLWCT, this research explores how civil society is able to resist the 'public memory' of the Iraq War to contribute to addressing the impunities for state crimes associated with this event. Citizens' tribunals lack the legal power to enforce any sentences and have been labelled by critics as 'kangaroo courts'. While acknowledging these limitations and criticisms, this research explores whether these tribunals still contribute to global justice. The thesis engages with debates surrounding global justice, focusing in particular on a symbolic form of justice known as 'memory-justice'. This thesis explores the power of counter-memories and their ability to fill a gap in accountability whereby Western hegemonic states violate international laws with relative impunity. Through the analysis of the two citizens' tribunals on the Iraq War, this thesis explores how counter-memories of war are constructed by civil society, and the extent to which 'truth' in the form of counter-memories can become a form of global justice.

---

## Declaration

This is an original work of my research and contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

Signature: .....

Print Name: .....**Nicole Ruslim**.....

Date: .....**2<sup>nd</sup> Oct 2019** .....

---

## Acknowledgements

This thesis represents my life-long dream to reach the ‘limits’ of education. I would not have been able to do so had it not been for my supervisors, colleagues, family and friends, who have all shared in my PhD journey; in some way shape or form.

Firstly, I wish to thank my principal supervisor Professor Jude McCulloch for her ongoing support, guidance and re-directions in times of need that have been integral for the growth of this thesis. Without you I could never have seen this thesis through, and I am forever grateful for all that you have done as my supervisor over a very long time. I also wish to thank Dr Jarrett Blaustein, who became a secondary supervisor late in the project. As a fresh set of eyes, you have helped refine the thoughts that were already there, and your feedback and guidance over a short period of time, have been invaluable assets that have helped see through the completion of my ‘thesis baby.’

Thank you also to all the Monash administrative staff especially Sue Stevenson, Rebecca Wade and Melva Renshaw for their administrative assistance and support throughout the writing of this thesis.

To my family, especially my mum and dad- thank you for the unconditional love you have given me all my life. You have always taught me the importance of an education, and have laid the foundation through which this achievement could be possible.

I also need to thank my ‘significant other’ Tim for sharing in not only this PhD journey but also in life. You have been there from the start and have shared in all the PhD ups and downs I have had over the years. Thank you for all your love and support; I am forever grateful for everything you have done in helping me see this through.

Thank you also to Zac Randolph for his suggestions, and help with editing the thesis in such a short time frame. I would also like to express my overwhelming gratitude to Dr Kristen Davis, for not only reading through several draft chapters but also for her guidance, support and words of encouragement over the past year.

Finally, I wish to thank all the colleagues and friends who have become my Monash family. There are far too many to thank and name individually (you know who you are) but I would like to especially acknowledge my friends and ‘office buddies’: Ben, Andrew, James, Patrick, Calvin, Freya, Prabha, and Brit. We all know that completing a thesis is a hard slog; but the laughs, conversations, coffee breaks, and many other daily experiences, have helped enrich this long academic journey I have been on. Thank you also to all the friends I have made from the Monash Criminology Postgraduate family, especially Nicola, Siru, Ariel, Meg, and Chloe- thank you for helping me at various stages of the write-up, for providing me with an oasis away from the stresses of the PhD, and for being the most supportive group of peers, colleagues and friends anyone could ask for.

I dedicate this thesis to the memory of my grandfather's Jujento Juwono and Lim Kok Lian,  
who taught me the importance of learning and hard-work.

## Table of Contents

<b>Acknowledgements</b> .....	v
<b>List of Cases</b> .....	xi
<b>List of Treaties and Conventions</b> .....	xii
<b>List of Tables</b> .....	xiii
<b>List of Abbreviations</b> .....	xiv
<b>Chapter One</b> .....	1
<b>Introduction</b> .....	1
<b>Background</b> .....	1
<b>The Research Problem</b> .....	2
<b>Research Question</b> .....	5
<b>An interdisciplinary study of citizens’ tribunals and counter-memories</b> .....	6
<b>Citizens’ Tribunals: civil resistance against state crimes</b> .....	2
The role of civil society in response to denial .....	6
<b>Counter-memories: contesting the ‘discourse on the Iraq War’</b> .....	9
<b>Memory-justice: truth as a central component to global justice</b> .....	12
<b>Thesis structure</b> .....	14
<b>Chapter Two</b> .....	16
<b>Literature Review</b> .....	17
<b>The Dynamics of Resistance: A study of denial and transnational activism</b> .....	17
<b>2.1 Denial and silencing of state crimes</b> .....	18
<b>2.2 Resisting denial: the role of transnational activism</b> .....	20
2.2.1 Citizens’ tribunals: the intersection of transitional justice and transnational civil society .....	25
<b>2.3 Unpacking ‘justice’</b> .....	27
<b>2.4 Memory-justice: the importance of truth</b> .....	30
2.4.1 Recognition and memory as forgotten components of justice.....	32
<b>Conclusion</b> .....	36
<b>Chapter Three</b> .....	39
<b>Theoretical Framework</b> .....	39
<b>A study of power: action, ideology and discourse</b> .....	39
<b>3.1 A distinct space of resistance: the state versus civil society</b> .....	40
3.1.2 The legitimacy of states .....	40
<b>3.2 A macro analysis of hegemony: constructing a world order</b> .....	42
3.2.1 A hegemonic struggle between political and civil societies.....	46
<b>3.3 A micro analysis of hegemony: constructing knowledge and discourse</b> .....	48
<b>3.4 The Transformative Power of Social Movements</b> .....	50
<b>Conclusion</b> .....	56

<b>Chapter Four</b> .....	<b>58</b>
<b>Methods and Methodology</b> .....	<b>58</b>
<b>A study of discourse: power, knowledge and identity</b> .....	<b>58</b>
<b>4.1 Discourse: power and language</b> .....	<b>59</b>
4.1.1 Discourse and identity .....	60
4.1.2 Discourse and ideology .....	61
4.1.3 The discourse historical approach (DHA) .....	61
<b>4.2 Data collection and design</b> .....	<b>63</b>
4.2.1 An archive of speeches: George W. Bush.....	63
4.2.2 Tony Blair speeches: consolidating the threat of Iraq and Saddam Hussein .....	66
4.2.3 Memorialising testimonies: The Istanbul hearing.....	69
4.2.4 Published texts of the KIWCT.....	75
<b>4.3 Limitations of citizens’ tribunals and constraints on memory</b> .....	<b>76</b>
<b>4.4 The process: cycles of analysis</b> .....	<b>78</b>
4.3.1 Understanding counter-memories of the Iraq War: a comparative analysis .....	82
<b>4.5 A note on ethics</b> .....	<b>87</b>
<b>Conclusion</b> .....	<b>87</b>
<b>Chapter Five</b> .....	<b>89</b>
<b>Developing a taxonomy of citizens’ tribunals: The World Tribunal on Iraq and The Kuala Lumpur War Crimes Tribunal</b> .....	<b>89</b>
<b>5.1 The World Tribunal on Iraq</b> .....	<b>90</b>
<b>5.2 The Kuala Lumpur War Crimes Tribunal</b> .....	<b>90</b>
<b>5.3 Organizational goals- what do they do?</b> .....	<b>91</b>
<b>5.4 Mandate- How do they do it?</b> .....	<b>94</b>
<b>5.5 Organization- who is involved?</b> .....	<b>96</b>
<b>5.6 Identity- who are they?</b> .....	<b>99</b>
<b>5.7 The importance of context</b> .....	<b>103</b>
<b>5.8 The Kuala Lumpur War Crimes Tribunal: Questions of impartiality and judicial integrity</b> .....	<b>105</b>
5.8.1 Amicus Curiae.....	106
5.8.2 Trials of Absentia.....	108
<b>Conclusion</b> .....	<b>110</b>
<b>Chapter Six</b> .....	<b>112</b>
<b>The public memory of the Iraq War</b> .....	<b>112</b>
<b>6.1 Weapons of mass destruction</b> .....	<b>113</b>
6.1.1 War as a measure of last resort .....	117
6.1.2 Interpreting UNSC Resolution 1441 .....	121
<b>6.2 The global war on terror</b> .....	<b>124</b>
<b>6.3 Iraq’s ongoing threat to global peace and security</b> .....	<b>127</b>
6.3.1 Iraq as a ‘rogue state: us versus them’.....	130
<b>6.4 Regime change to save the Iraqi people</b> .....	<b>131</b>
<b>Conclusion</b> .....	<b>134</b>

<b>Chapter Seven</b> .....	<b>135</b>
<b>Making the case against war: a counter-memory to disseminate the truth about the Iraq War</b> .....	<b>135</b>
<b>7.1 The Role of International Law and Institutions</b> .....	<b>139</b>
7.1.1 Exposing the illegality of the Iraq War.....	140
7.1.2 The (Mis)conduct of the United Nations and the Security Council.....	143
7.1.3 Weapons of mass destruction: a narrative of deception.....	145
7.1.4 The neo-colonialist foreign policies of Western states .....	146
<b>7.2 The future of international law post-Iraq War</b> .....	<b>150</b>
<b>7.3 The responsibility of governments</b> .....	<b>152</b>
<b>7.4 A pattern of systemic and institutional human rights violations: recognizing victims of war</b> .....	<b>157</b>
7.4.1 Victims of state-facilitated torture .....	165
<b>7.5 The accountability of the media</b> .....	<b>168</b>
<b>Conclusion</b> .....	<b>173</b>
<b>Chapter Eight</b> .....	<b>175</b>
<b>A record of the Iraq War: exposing violations of international law and the criminal responsibility of George W. Bush and Tony Blair</b> .....	<b>175</b>
<b>8.1 Building a record of the Iraq War</b> .....	<b>176</b>
<b>8.2 An ‘illegal’ war under international law</b> .....	<b>177</b>
8.2.1 (Re)interpreting UNSC Resolution 1441 .....	177
8.2.2 International law, state sovereignty and an illegal war .....	180
<b>8.3 A campaign of misinformation</b> .....	<b>182</b>
<b>8.4 Exposing a joint conspiracy between the US and UK</b> .....	<b>185</b>
<b>Conclusion</b> .....	<b>188</b>
<b>Chapter Nine</b> .....	<b>190</b>
<b>Conclusion</b> .....	<b>190</b>
<b>Citizens’ tribunals: the role of civil society agents of accountability</b> .....	<b>191</b>
<b>Counter-memories: a war of position against hegemonic memories of states</b> .....	<b>196</b>
<b>Memory justice: contributing to global justice</b> .....	<b>202</b>
<b>Appendix 1</b> .....	<b>208</b>
<b>Appendix 2</b> .....	<b>211</b>
<b>References</b> .....	<b>214</b>
<b>Legislation</b> .....	<b>241</b>
<b>Speeches</b> .....	<b>241</b>
<b>Other</b> .....	<b>250</b>

## **List of Cases**

*Kuala Lumpur War Crimes Commission v George W. Bush & Anthony L Blair* [Case No.1 – CP- 2011]

*Chief Prosecutor of the Kuala Lumpur War Crimes Commission v. George Walker Bush et al.* [Chase No.2-CP-2011]

## **List of Treaties and Conventions**

Charter of the United Nations (26 June 1945)

International Covenant on Civil and Political Rights (16 December 1966)

Rome Statute of the International Criminal Court (17 July 1998)

## List of Tables

**Table 1:** George W. Bush speeches of the threat of Iraq and Saddam Hussein

**Table 2:** Tony Blair speeches on Iraq and Saddam Hussein

**Table 3:** Summary of Istanbul testimonies

**Table 4:** Summary of themes within the public memory of the Iraq War

**Table 5:** Resisting the historical record of the Iraq war within the Istanbul testimonies

## **List of Abbreviations**

**ICC:** International Criminal Court

**KLFCW:** Kuala Lumpur Foundation to Criminalise War

**KLWCT:** Kuala Lumpur War Crimes Tribunal

**UK:** United Kingdom

**UN:** United Nations

**UNSC:** United Nations Security Council

**US:** United States

**WMD:** weapons of mass destruction

**WTI:** World Tribunal on Iraq

# Chapter One

## Introduction

### Background

On the 15<sup>th</sup> of February 2003, between six and eleven million people turned out in at least 650 cities around the world to protest the United States' push to invade Iraq. These protests are considered to be the “largest anti-war protests [in history]” and remain, “the largest one-day global protest the world has ever seen” (Blumenthal, 2018). Despite this significant opposition the United States (US) led a coalition of allied states, including the United Kingdom (UK) into Iraq. The coalition justified the invasion as necessary to “tear down the apparatus of terror” and help “rebuild a free and prosperous Iraq” (Bush, 2003d). As part of this broad agenda, former Heads of State US President George W. Bush and British Prime Minister Tony Blair publicly stated that the threat of weapons of mass destruction (WMD), combined with the growing threat of terrorism post 9/11, led them to conclude that “the security of the world requires disarming Saddam Hussein now” (Bush, 2003d). In the lead up to the invasion, George W. Bush intimated that “the terrorists could fulfil their stated ambitions and kill thousands or hundreds of thousands of innocent people in our country or any other” (Bush, 2003d). The invasion and subsequent war initiated by the US-led coalition, was framed and promoted as being necessary to ensure the safety of Iraqi citizens and the global community.

The decision to unilaterally attack Iraq without pre-approval of the United Nations Security Council (UNSC) was contentious. Significant doubts were raised about the validity and accuracy of public statements made by George W. Bush and Tony Blair in support of military action. In the UK, for example, three years after the invasion former Prime Minister Gordon Brown initiated the Chilcot Inquiry (2006-2016) to investigate the nation's role in the Iraq War. As part of this, by then former Prime Minister Tony Blair was questioned on several issues- including the purported threat of WMDs. In addition to this, activists who participated in the anti-war demonstrations of 2002-2003 have been particularly outspoken in their criticism of the Iraq War. Prior to the March 2003 invasion, both George W. Bush and Tony Blair consistently promoted the dual threat of ‘terrorism’ and ‘WMDs’ to highlight the potential danger Iraq posed. In this way, the public statements made by both former Heads of

State constructed purposeful narratives that were used as justification for the invasion and legitimated the use of military force. Over time, alternative perspectives of the Iraq War have re-emerged where civil society has expressed concerns over a) the ability of states to initiate wars in violation of existing international laws, and b) the perceived limitations of the United Nations (UN) and the International Criminal Court (ICC) to pursue justice and accountability for state crimes that violate international laws.

## **The Research Problem**

International crimes including war crimes, crimes against humanity, crimes of aggression and genocide are “particularly serious violations [of] States” (Cassese 2003, p.19) that raise important questions on how state-led violations of international law could, and should be addressed in order to achieve justice for victims and impacted communities. In a post-Nuremberg context, and as has been codified into the Preamble of the Rome Statute (1998, p.1) pursuing justice for “the most serious crimes of concern to the international community” requires “every State to exercise its criminal jurisdiction over those responsible for international crimes.” Yet, as a number of scholars have identified in various studies on the topic of international criminal justice, the primacy of states to investigate and prosecute international crimes in lieu of the ICC has led to the emergence of impunities and gaps in accountability where political power and state sovereignty has compromised justice (see Bensouda, 2010; Kaul, 2007; Moghalu, 2008; Boas, 2011; Robertson, 1998). In the context of the Iraq War, national and international courts have failed to pursue justice, either unable and/or unwilling to hold individual state actors responsible for crimes of aggression and war crimes. The continued absence of accountability and justice for state-led violations of international law that occurred during the Iraq War suggests that “there [is] certainly no political advantage to be gained from focusing on the abuses” of states (Herman 1982, p.143). Against this backdrop, this thesis considers how state-led violations and impunities associated with the Iraq War can be addressed and responded to in contexts where states and the ICC have failed to publicly acknowledge the criminality of states involved in the Iraq War. In particular the thesis pursues three main themes: (a) how states and state actors continue to violate international laws with relative impunity, (b) the extent to which these impunities and denials can be addressed and responded to by transnational civil society, and (c) how truth-seeking mechanisms emerge to fill the gaps in accountability and provide justice for victims and communities impacted by state crimes.

State crime broadly refers to crimes involving the state acting against its own citizens, or against the citizens of another state as part of interstate conflict (see White, 2009; White & Perrone, 2010; Green & Ward, 2004, 2013). They involve harms to individuals and groups that “kill and plunder on a scale that no ‘robber band’ could hope to emulate” (Green & Ward 2004, p.1). Yet as has been noted throughout the literature on state crime, “the nature of the state crime event itself is a vital determinate” in shaping how they are responded to (Lasslett 2012, p.127; see also Green & Ward 2004, 2013). A key difficulty in how state crimes are to be identified and labelled can be attributed to the legitimacy of states to “make decisions and implement them, set goals and pursue them, follow rules and break them” (Green & Ward 2004, p.5). The legitimacy of state actors (or governments) to make decisions on behalf of a group of individuals is a form of power that has in practice created barriers to justice that perpetuates cultures of denial. Accordingly this thesis will explore how the complex language associated with denial has perpetuated impunities for state crimes. Focusing specifically on the Iraq War, this research will consider how denials of state crimes and the failure to acknowledge wrongdoing has had a pernicious effect on justice which has slowly eroded extant mechanisms of justice.

To explore how international laws and the mechanisms through which they are enforced have been eroded by the institutional silence and denial of state crimes, this thesis focuses on how the Iraq War has been responded to by civil society organizations (CSOs). It builds on the arguments of state crime scholars Penny Green and Tony Ward (2004, p.208) who argue that “to control the crimes of our rulers,” a strong transnational network of organizations from civil society is needed. Consequently this thesis will explore the emergence of two citizens’ tribunals – The World Tribunal on Iraq (WTI) and The Kuala Lumpur War Crimes Tribunal (KLWCT)- to explore how “the organized voice of ordinary working people” can “provide an effective sanction against the perpetrators” (Green & Ward 2004, p.208). The WTI was the first citizens’ tribunal to emerge after the Iraq War, and was active between 2003-2005. During this time the WTI held a total of twenty hearings around the world (see Appendix 1 for full list of hearings) including its final Istanbul hearing where all the testimonies and evidence collected were collated and publicly presented. Using a quasi-judicial format, the KLWCT was the second citizens’ tribunals that emerged to challenge and revise the record of the Iraq War. In identifying how non-state actors have mobilized to form a transnational network of activists opposed to the Iraq War, the thesis will explore the role of transnational

civil society as “an increasingly important piece of the larger problem of global governance” (Florini 2000, p.3). Through accumulation of written and oral evidence that exposes the illegality of the Iraq War, the WTI and KIWCT represent contemporary forms of resistance where CSOs are used as tools to address the “inadequacies of international law in regulating the behaviour of states” (Klinghoffer & Klinghoffer 2002, p.3).

This research begins with the questions: what are citizens’ tribunals, and why do they emerge? As will be explored in this thesis, the WTI and KIWCT are two contemporary tribunals that have emerged in specific contexts of silence and denial of state crimes. These Tribunals have each constructed a counter-memory of the Iraq War where testimonies and evidence of state crime could be documented. In doing so these Tribunals purposefully pursue accountability for state crimes where recognition of victims and impacted communities are central to the processes they adopt. As will be discussed in Chapter Two, this research draws on a rich discourse on state crimes, transnational civil society (TCS) and transitional justice. In the context of state crime, denial is one of a range of practices perpetrators can engage in to avoid responsibility. Owing to the states’ “privileged position to monopolize significant legal, financial and human resources”, they are able “to conceal their illicit practices from public scrutiny” (Lasslett 2012, p.126). Challenging the institutional structures that facilitate denial is a difficult and often dangerous process that demands action from movements of resistance. These movements are important because they are able to employ effective strategies and tactics against the state (Green & Ward, 2004; Lasslett, 2012). The heterogeneity of movements, the varying strategies they employ and measures of their efficacy has been well documented by a number of sociologists (see Campbell, 2005; Keck & Sikkink, 1988; Davis et al., 2005) and state crime scholars (see Green & Ward, 2004; Lasslett, 2012; Kramer & Michalowski, 2005). As will be discussed in Chapter Two, it is within this body of work that this thesis seeks to locate citizens’ tribunals. Through analysis of two case studies - the WTI and the KIWCT- this research explores the emergence of two movements of resistance that have each purposefully sought to publicly expose information and data to acknowledge the illegality of the Iraq War. It will address the gaps in knowledge where little is known of citizens’ tribunals, highlighting the varying methods through which legacies of denial can be addressed beyond those already known to scholars.

The collection and dissemination of evidence to highlight and acknowledge the illegality of the Iraq War offer important insights that broaden our understanding of the dynamic forces of

power and resistance. As “social memory is both an expression of and active binding force” (Bandlien 2013, p.356), control of a society’s memory largely conditions the hierarchy of power (Connerton 1989, p.1). Memories, according to Foucault (1996, p.124) are “important factors in struggle; if one control’s people’s memory, one controls their dynamism.” As institutions and states wield considerable power over those in civil society, it is important to explore how public memories are formed and used as a tool of domination by states and state actors. As March and Olsen (2008, p.691) state, “specific institutional settings provide vocabularies that frame thought and understanding and define what are legitimate arguments and standards of justification and criticism in different situations.” Accordingly this thesis will explore the fluidity and malleability of public memories that can be changed over time by different actors or organizations. It will present an analysis of the public memory of war constructed by states and state actors, contrasted against the counter-memories constructed by two citizens’ tribunals. Using the WTI and KLWT as case studies, this thesis will explore what Molden (2016, p.125) defines as “the politics of history and memory”, where “hegemonic master narratives” interact with “defiant counter-memories.” The malleability of memories or historical records suggests that as the past is not accepted as fixed or complete, and if the reading of events in the present is to become part of a memory, there is a potential for the past to be rewritten so as to reimagine and reconfigure the future (Eng and Kazanjian 2003). With this in mind, the thesis explores the construction and content of two counter-memories presented by the WTI and KLWCT that exposed and codified the illegality of the Iraq War. As states have a legitimate monopoly over the use of force and are able to initiate wars by disguising it as a national interest, the analysis of counter-memories presented in this thesis provides important insights on how societies can address legacies of human rights abuses beyond officially recognized mechanisms of justice like the ICC.

## **Research Question**

To better understand the significance of citizens’ tribunals and the counter-memories they have promoted, this research aims to answer three questions:

1. In what way do citizens’ tribunals attempt to address the limitations of the ICC
2. How are counter-memories constructed by the WTI and KLWCT to challenge the hegemonic memory of war constructed by states?
3. How, and to what extent do citizens’ tribunals and their counter-memories provide an alternative form of (global) justice?

## **An interdisciplinary study of citizens' tribunals and counter-memories**

To address these questions this thesis explores key issues that have been identified within the extant literature on transitional justice and resistance to state crime. Implicit within these broad fields of scholarship are several complex issues that are found in the fields of international relations, memory studies, social movements and global justice. The interdisciplinary approach taken in this research assists to understand how states attempt to influence and manage public discourses and memories associated with contentious events like the Iraq War. More specifically, this research will explore the politics of history defined by Molden (2016, p.125) as “political agency directed at the establishment of specific representations of the past.” Drawing on hegemonic theory that is discussed in Chapter Three, this thesis also explores how power can oscillate between the state and civil society in a way that leads to the emergence of defiant counter-memories. These counter-memories represent a form of resistance to state crimes, where non-state actors have engaged in a conflictual interaction with state actors to challenge denial in such a way that facilitates the re-interpretation of the history and memory associated with the Iraq War.

In adopting a fluid method of inquiry that is typical of interdisciplinary studies, this thesis seeks to explore citizens' tribunals in ways that builds upon, and develops the arguments of Klinghoffer and Klinghoffer (2002) in their studies of past citizens' tribunals. Studies that are interdisciplinary in nature adopt methods that are represented by different steps or stages. As will be discussed further in Chapter Four (the method and methodology), drawing on iterative stages of inquiry is beneficial for allowing the research to analyse data in a cyclical manner that oscillates between speech transcripts of two former Heads of State, and testimonies and transcripts relevant to proceedings at the WTI and KLVCT. This is a beneficial method that imbues each stage of analysis with the fluidity to let the theoretical frame guide this research. Selected as the foci of this thesis, the analysis of the WTI and KLVCT as case studies will address existent gaps in knowledge of citizens' tribunals. As will be explored in Chapter Two, Klinghoffer and Klinghoffer (2002) have made the only significant contribution to this body of work where their analysis of the 1967 Bertrand Russell Tribunal on the US' involvement in the Vietnam War, led the author's to conclude that these tribunals are expressions of 'citizen power' where individuals mobilize to promote human rights and justice. The context in which non-state actors mobilize to form citizens' tribunals is an

important determinative factor that shapes the strategies and aims of these tribunals. Klinghoffer and Klinghoffer (2002, p.3) for example note that the 1967 Bertrand Russell Tribunal emerged in a context where state sovereignty had not only “declined [to] usher in a new world order” but had also compromised human rights standards and international laws. Through official investigation and public exposure of human rights abuses, these tribunals are investigatory, truth-seeking bodies that claims to provide “a rite of political passage towards the creation of a liberal political order than embeds values such as the rule of law and the rights of individuals” (Kent 2012, p.4).

To develop a taxonomy of citizens’ tribunals capable of addressing the extant gaps in scholarship this research will draw on the key principles of justice embedded in transitional justice literature (see Kent, 2012; Waldorf, 2006; Moon, 2008; McEvoy, 2008). It will explore the organizational structure of the WTI and KLVCT, focusing specifically on identifying the transnational nature of its network, their aims and conclusions. In doing so this thesis sets out to contribute to what McEvoy (2009, p.17) refers to as a ‘thick’ exploration of transitional justice focusing on the “complex, multilayered and actor-oriented dimensions” of transitional justice research. This type of inquiry explores what Kent (2012, p.17) describes as the “messiness of transitional justice” where “globalised concepts and processes [associated with justice] are given meaning in specific places and times” so that they may be “reshaped in unexpected directions” (see Kent, 2012; Shaw & Waldorf, 2010). Using case transcripts outlining the KLVCT’s ‘prosecution’ of George W. Bush and Tony Blair in 2011 and testimonial transcripts from the WTI’s final Istanbul hearing in 2005 this thesis will explore how civil societies challenge, and respond to denial by publicly addressing legacies of state crime in quasi-judicial settings. The thick inquiry into transitional justice presented here will focus on three concepts relevant to developing our understanding of transitional justice and the form its mechanisms can take. These key concepts include: citizens’ tribunals, counter-memories, and memory-justice. Accordingly, the following sections will canvass these concepts.

## **Citizens' Tribunals: civil resistance against state crimes**

Accountability for international crimes can be defined as involving “the assurance that public officials are answerable for their behaviour, can be compelled to inform and justify their decisions, and may be subject to sanctions for those decisions (Peruzzoti 2012, p.246). Accountability is an important component of global justice that is rooted in a universal desire to protect human rights and to redress those who have been impacted by international crimes (see Arbour, 1997; Cassese, 1998; Colson, 2000; Scharf, 2000; Clapham, 2003). In his *American Society of Criminology Presidential Address*, William Chambliss (1989, p.196) proclaimed that “the law is a fundamental cornerstone in creating legitimacy...[and] it claims universal principles that demand some behaviours and prohibit others.” What can be inferred from this is that international laws profess to promote acceptable ethical and legal boundaries for states—delineating how they could, and should behave on a global scale. For example, ‘Article 1 of the United Nations Charter’ (UN Charter) (1945) stipulates that “to maintain international peace and security”, states shall “settle their international disputes by peaceful means in such a manner [where] international peace and security, and justice, are not engendered” (UN Charter 1945, p.3). Though such proclamations are considered universal and applicable to all states, the enforcement of international laws continues to be marred by jurisdictional issues surrounding state sovereignty (see Robertson, 1999; Simpson, 2004; Maogoto, 2004; Charney, 2011). The subservience of international laws to state sovereignty suggests that global justice continues to be compromised by complex issues embedded within international relations whereby accountability for state crimes are seldom achieved in practice.

As will be discussed in Chapter Two, studies of civil resistance to state crime (see Stanley & McCulloch, 2011) and social movements (see Gellner, 1996; Habermas, 2005; Della Porta & Diani 2006; McAdam, Tarrow & Tilly, 2001) have identified ‘civil society’ as a distinct space where resistance to the state can emerge. Civil society is broadly conceptualized as a “social arena in which citizens freely assemble, interact, and express opinions about matters of general interest and concern, without being subject to coercion [by the state]” (Banham 2017a, para. 14). This is important for shaping movements of resistance, that are defined by Schock (2013, p.277) as the “sustained use of methods of nonviolent action by civilians engaged in asymmetric conflicts with opponents not averse to using violence to defend their

interests.” At its core, acts of resistance against the state and repressive power structures are rooted in individual ethics and civic responsibility. The power of civil resistance then, is derived from its ability to undermine the authority and legitimacy of the opponent via collective action (Schock, 2013). In instances where states continue to deny criminality, it is often the mass mobilisation of civil societies that become “important variables” (Lasslett 2012, p.129)—determining the success of resistance movements.

One of this thesis’ research questions considers how citizens’ tribunals address the limitations of the ICC. It is thus important to briefly consider the wording of the ‘Rome Statute’ (1998) that informs how justice for international crimes has been conceptualized and how the ICC operates. *The Preamble of the Rome Statute* (1998, p.1) proclaims that it is “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” Article 17 of ‘The Rome Statute’ (1998, p.13) also known as the ‘complementarity principle’, states that the ICC is only able to intervene in situations where states have demonstrated an unwillingness or inability to prosecute within a national context. As international crimes are primarily perpetrated by states, the individuals who censured and held accountable are often former and/or current Heads of State, or other powerful state actors. Bergsmo (2000, p.99) argues that the complementarity regime of the ICC seeks to preserve the sovereignty of state parties whereby the actions of state actors that violate international laws are rarely investigated nor prosecuted by international courts. The Rome Statute (1998) establishes that any investigation or prosecution of international crimes the ICC is secondary to national prosecution, where the exercise of criminal jurisdiction of international crimes at the national level is a vital part of state sovereignty (Brownlie 1998, p.289) that places the ICC as a court of last resort. However, as states continue to demonstrate an unwillingness to prosecute individuals- often, their own citizens- for international crimes, this creates impunity that compromises global justice.

The analysis presented in this thesis will consider the types of strategies adopted by citizens’ tribunals, alongside a discussion of the aims they pursue. Chapter Five and Six will discuss the organizational structure of the WTI and KLVCT respectively, identifying their aims and the process of inquiry used. Within transitional justice discourse there is now a growing recognition that criminal trials and truth commissions are not in opposition with one another, able to positively complement each other in order to achieve justice (see Kent, 2012; references). By placing victims and whole communities impacted by state crime as centrally

placed actors in public inquiries on state-led violations of international law, these citizens' tribunals mimic truth commissions in that they have adopted a 'broad and flexible mandate' that is 'more 'victim-centred'; able to promote accountability, deterrence, reconciliation, truth and the rule of law more successfully than criminal tribunals (see Waldorf 2006). Drawing on a series of written texts detailing the organizational structure and aims of the WTI and KLVCT, this research attempts to build on what Kent (2012, p.17) has identified in the context of transitional justice as deeper relations of power, where "particular worldviews that underpin the so-called 'universal', values of justice" have compromised the achievement of justice for victims of state crime. Building on what Kent (2012, p.26) has argued in relation to "the universalist assumptions of international law," this thesis will argue that the assumptions and principles underpinning 'justice' enshrined in various multilateral treaties including the *Rome Statute* (1998) and the *United Nations Charter* (1945) has shifted the discourse on global justice, where trials and retributive models of justice have become synonymous with how global justice is conceptualized. The *Preamble of the Rome Statute* (1998, p.1) for example proclaims that it is "the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes." Article 17 of the Rome Statute (1998, p.13) also known as the 'complementarity principle' states that, the ICC is only able to intervene in situations where states have demonstrated an unwillingness or inability to prosecute within a national context. Because the law is concerned with the formal equality of all individuals, it lays particular claim to the qualities of "objectivity, abstractness and neutrality" (Charlesworth & Chinkin 2000, p.32). However as critical legal theorists have demonstrated, the law's supposedly universal values have supported particular elite interests – namely, the interests of Western affluent males (Kent 2012, p.26; see also Otto 1999; Stanley 2009; Mehta 1990). Similar critiques have been mounted of international law, the practice of which has tended to benefit affluent Western countries rather than poorer states (see Anghie 2005). It is on this basis that this research explores how narratives of the Iraq War have been constructed been state actors including George W. Bush and Tony Blair to promote a particular way of thinking about state-led violations of international law.

In the area of international criminal law the universal values associated with human rights is a rhetoric that all states claim to uphold. No state has openly repudiated the Universal Declaration of Human Rights, and as Green and Ward (2004, p.7) note, "the great majority of internationally recognized states have ratified" various multilateral treaties including for example, the International Covenant on Civil and Political Rights and the United Nations

Charter. In helping to develop international laws post-Nuremberg, these treaties codify that “human beings have certain needs that are fundamental in the sense that without them they cannot be effective purposive agents, able to pursue their chosen goals and participate in society” (Green & Ward 2004, p.7). As everyone has a “morally valid claim” to these rights by “virtue of being human” there is considerable pressure placed on states and state actors “to conform with some, but not all, human rights norms” (Green & Ward 2004, p.7).

To reflect on the growing disjuncture between the normative ideals of human rights, and the selective and hypocritical promotion of such rights by powerful states, this thesis will draw on the concept of global hegemony, used as an analytical frame to interrogate how and why international laws continue to be inequitable enforced against states and state actors. This issue has been debated amongst African states from the African Union who have argued that the ICC is ‘racist’ for its active pursuit of cases against African state actors that neglect other cases associated with more powerful states. Minister Sheriff Bojang from Gambia for example states that since the creation of the ICC in 1998, “there are many Western countries, at least 30, that have committed heinous war crimes against independent sovereign states and their citizens...[where] not a single Western war criminal has been indicted” (Durmaz 2016). The ICC’s record of pursuing investigations and prosecutions of non-Western states and its actors, led him to conclude that the ICC “is in fact an ‘International Caucasian Court’ for the prosecution and humiliation of people of colour, especially Africans” (Durmaz 2016). Growing tensions between the ICC and African states has created what Clarke, Knottnerus and Volder (2016, p.1) refer to as the ‘ICC’s Africa Problem’, sparking debate on the structural selectivity of international criminal justice, or, ‘the alleged neo-colonial and racial politics behind the Court’s investigations and prosecutions in Africa’ (Clarke, Knottnerus & Volder 2016, p.4; see also Mandani 2008; Tladi 2009).

The limitations of the ICC as a mechanism of global justice suggests that traditional approaches to criminal justice “neglect...the needs of those directly injured by a crime” but also fail to repair the “damage done to social relationships within an interconnected community” (Luna 2003, p.227). To address these limitations and fill the gap in accountability for state crimes, citizens’ tribunals can assume the role of ‘accountability agents’, able to “pay attention to the conduct and performance of powerful governmental and private institutions” and “make evaluative judgements about whether they [the state] has sufficiently respected of the rights of individuals” where required (Moore 2014, p.633). In

evaluating how the WTI and KLVCT have documented testimonies and evidence on the Iraq War, this thesis will argue that citizens' tribunals are alternative mechanisms of justice where TCS has played a significant role, able to, "monitor the state, contest governmental decisions, denounce the unlawful actions of public officials and expose governmental wrongdoing" (Peruzzotti 2012, p.249).

### **The role of civil society in response to denial**

To explore how citizens' tribunals might function as an alternative mechanism of justice, this research will explore how non-state actors have assumed a moral, ethical position that allows it to uniquely address and respond to denials of state crime. As will be explored further in Chapter Two, the influential role of civil society as a 'third system of agents' (Price 2003, p.580) has been well chronicled in the large and growing literature on TCS (see Florini, 2000; Burgerman, 2000; Clark, 2001; Evangelista, 1999; Higgott, 2000; Keck & Sikkink, 1988; Khagram, Riker & Sikkink, 2002). This body of work has explored the rise of non-governmental organizations (NGOs), informal associations and loose coalitions of actors who are increasingly "forming a vast number of connections across borders" to insert themselves into a wider range of decision making processes on issues from international security to human rights (Florini 2000, p.3). TCS is therefore an umbrella term used in this research that refers to "self-organized advocacy groups that undertake voluntary collective action across state borders in pursuit of what they deem [to be] the wider public interest" (Price 2003, p.580). In establishing the importance of TCs on a plethora of issues, Keck and Sikkink (1988, p.25) usefully summarize the range of goals these actors seek including: to get an issue on the international agenda, to get international actors to change their discursive positions and institutional procedures and to influence policy change of actor behaviour.

This research will therefore present an analysis of how TCS has attempted to fill extant gaps in accountability where powerful, Western states are able to violate international laws with relative impunity. Harnecker (2007) describes the context through which citizens' tribunals emerge as an 'a-legal space' that exists as a means of explaining various collective actions that are not legally binding yet can exert considerable authority as political facts. Citizens' tribunals according to Kampmark (2014, p.5) "may have legal flavour in terms of aspirations, but lack the formal status of law." These tribunals are therefore limited to symbolic forms of resistance where any findings of guilt are unenforceable against the state and its actors. Often

criticized for their lack of impartiality, citizens' tribunals are labelled as 'kangaroo courts' where judgements and conclusions are accused of being predetermined. However the use of this label neglects the specific contexts within which these tribunals have emerged, such as the institutional silence and denial of crimes committed by powerful actors. As will be explored in this thesis, my research of the WTI and KLVCT considers how these tribunals are located within resistive spaces of 'counter-hegemony' where a 'war of position' is initiated to challenge the public memory and historical record associated with the Iraq War (see Gramsci, 1971, 1995). These tribunals have emerged in situations where international institutions like the UN or ICC are perceived to have failed their responsibilities to enforce international laws for international crimes (see Klinghoffer & Klinghoffer, 2002). To address the failings and limitations associated with global justice, citizens' tribunals like the WTI and KLVCT have derived authority and legitimacy from "assumptions of responsibility and duty" where a form of "citizen activism has attempted to fill the breach [of international laws]" (Kampmark 2014, p.5-6). Taking this into consideration, citizens' tribunals are significant for two reasons. Firstly, they allow activists and all those opposed to war and state aggression an opportunity to voice their concerns in a symbolic way beyond that of protest and demonstration. Secondly to better understand how these tribunals emerge, it is necessary to consider the specific contexts that give rise to such acts of civil resistance. This thesis will argue that though citizens' tribunals are limited because they cannot enforce any verdict reached, they should not be dismissed but rather seen as alternative forms of accountability where non-state actors seek to challenge the power and dominance of states and state actors. The legitimacy of these tribunals is derived from the power of citizens and humanity, where the 'justice' they seek is one based on "primary justice [that] belongs first of all to civil society" (Christians 2015, p.52).

One important issue considered in this thesis is how hegemony has not only influenced international relations among states, but also how it can be used as an analytical lens to describe the relationship between civil society and the state (see Gramsci, 1971; Carroll & Ratner, 2010; Fraser, 2005). As will be explored in Chapter Three, hegemony is complex and incorporates issues of power and legitimacy to suggest that some dominant groups are able to maintain power over others. In emphasizing the importance of civil society as a site distinct from the state, Gramsci (1971) argues that power can oscillate between political society (the state) and civil society, where counter-hegemonic acts can emerge. These acts of counter-hegemony are important for constructing "a new alignment of class and popular forces to

challenge the dominion of the leading class across the state institutional networks and within the looser domains of civil society” (Carroll & Ratner 2010, p.11). For Gramsci, this entailed a strategic war of position where a struggle between civil society and states for “cultural recognition and social equality” (Fraser 1995, p.69). This is used throughout the thesis as an analytical lens to assess the emergence of citizens’ tribunals and counter-memories. Some scholars such as Bratton and Van De Walle (1994), and McIlwaine (2007) have argued that civil society is autonomous from the state. However, drawing from a Gramscian perspective of hegemony benefits the research because it suggests that hegemonic power is not static but rather fluid in nature, able to be contested between various groups over time. In this way the hegemonic power of state actors over its subjects within civil society is in a constant state of flux, where power can oscillate between the two realms. This is significant for two reasons. Firstly, a Gramscian understanding of hegemony can help explain the processes through which citizens’ tribunals are able to emerge in resistance against the state. Secondly, it is significant for understanding how memories can be contested by civil societies who engage in acts of ‘counter-hegemony’ in such a way that produces counter-memories. This suggests that civil societies can challenge and resist the state to reclaim some level of power against the ‘hegemony’ of the state and its actors.

To explore this further, we must revisit the history associated with citizens’ tribunals as was described by Klinghoffer and Klinghoffer (2002). Their published work on *International Citizens’ Tribunals* considered the 1967 Bertrand Russell Tribunal as an example of non-state actors actively resisting and responding to the perceived illegality of the Vietnam War where “state authority [was] challenged on the basis of human rights practices” (Klinghoffer & Klinghoffer 2002, p.1). During the 1960s and early 1970s millions of people demonstrated and protested against the US-led Vietnam War. The Bertrand Russell Tribunal concluded, the Vietnam War was unnecessary and illegal under international law (Klinghoffer & Klinghoffer, 2002). Accordingly, as has been explored by Klinghoffer and Klinghoffer (2002), the Bertrand Russell Tribunal helped to promote the dissenting opinions of those opposed the Vietnam War, that they argued had been suppressed by states and its actors. This earlier citizens’ tribunals has direct parallels with the WTI and the KLWCT. Richard Falk (2005 cited in Sokmen 2008, p.6), maintains, for example, that “the WTI continues and extends the trend of refusing to be silent or to be silenced” that began with the 1967 Bertrand Russell Tribunal on the Vietnam War.

## **Counter-memories: contesting the ‘discourse on the Iraq War’**

An important concept that will be explored in this thesis, are counter-memories of war that both Tribunals have constructed to challenge the public memory and historical record associated with the Iraq War. Drawing on Gramsci’s (1971, 1995) conceptualization of hegemony, this research will explore how counter-memories are formed in spaces of resistance where non-state actors from civil society challenge the public memory created and managed by states and state actors. To highlight how the power of states and state actors can influence the formation of memories, this research will explore how public memories are created through a process of contestation in which some memories are marginalized and isolated, while other memories that align with the interests of rulers can be sustained (Misztal 2003, p.65). They help “set the terms in which events are understood and issues discussed” whereby rulers are able “to formulate ideals and define morality...in ways that appear natural, ordinary, normal” to all (Donaldson 1993, p.645). As memories are malleable and can be revised over time, counter-memories seek to alter public memories by presenting “an alternative view of the past which challenges the dominant representation of the past” presented by states and state actors (Misztal 2003, p.156).

To establish the significance of counter-memories it is important to begin with a discussion of public memories. Public memories are also referred to as collective memories, and they are defined by Zelizer (1995) as the constructed memories of wealthy and powerful groups that promote the interests of that group. These collective memories are often publicly disseminated through various mediums including speeches, photographs, movies, the Internet, television, books, newspapers, monuments and word of mouth (Buffington & Waldner 2011, p.97). Collective memories are hegemonic in nature because their dissemination and reproduction often outweigh and eclipse individual stories, voices of dissent and other ways of knowing and remembering (Buffington & Waldner 2011, p.97). As will be explored in Chapter Seven, the combination of narratives promoted by George W. Bush and Tony Blair as justifications for the invasion, helped the US and their allies construct a discourse of the war that promoted one-way of thinking and remembering (see King, 2009; Keegan, 2004; Holsti, 2011; Bodansky, 2004; Jervis, 2010). The public memory of the Iraq War constructed by these former leaders is important because in the context of political discourse, speakers use discursive frames to create narratives that are used as

argumentative devices where dissenting opinions or criticisms are suppressed and/or ignored by states (Qaiwer 2016, p.63). Speakers therefore present narratives to “establish key information in a way that will provide a springboard for [the] main argument” (Charteris-Black 2014, p.17-18). Identifying how speakers use narratives is also important because “by telling a story, the speaker constructs a claim contextualizing it in the form of actions” (Qaiwer 2016, p.61). In other words, collective or public memories are formed through “people’s susceptibility to the rhetoric of a dominant group with power to circulate ideas” regardless of its accuracy (Buffington & Waldner 2011, p.96).

Counter-memories differ from hegemonic, collective memories because as Buffington and Waldner (2011, p.97) have argued, ‘they are more nuanced and may rely on the involvement of multiple stories to promote action or resistance against dominant groups.’ Giroux (1997, p.160) has defined counter-memory as a practice that “transforms history...[which] helps us to understand and change the present by placing it in a new relation to the past.” Thus, according to Stanley (2003), counter-memories often represent those who were silenced by the collective memory and they may provide another lens through which to view the past and present a story used as a vehicle through which to change the present. Counter-memories as constructed by citizens’ tribunals, are therefore meaningful ways through which civil societies can resist against denial of state crimes, and fill gaps in accountability for ongoing impunities like that associated with events like the Iraq War. It can help promote a form of justice where truth is pursued and framed in ways that can symbolically hold former Heads of State accountable for violating international laws. Counter-memories of the Iraq War can therefore be used by civil societies to contribute to how justice can be achieved globally; for these counter-memories aim to reach the truth about the war.

This thesis will explore how counter-memories of the Iraq War have been constructed by the WTI and KIWCT to challenge the socio-political structures that perpetuate denial.

Investigating the truth about atrocities and state crimes is a genuinely difficult task that is complicated by an “intricate circuit of claims and counter-claims made by governments” (Cohen 2001, p.4). Statements of denial – assertions that something did not happen, does not exist, is not true or is not known about- are common responses to atrocities where states and state actors seek to conceal their conduct (Cohen 2001). In situations where the negative effects of exposure are perceived as being substantial for the state and state actors, Lasslett (2012, p.128) argues that concealing state criminality will “hinge upon the particular

constellation of legal tools and administrative resources that are available for deployment, the discipline and organizational capacity of state managers, the unity of the power bloc they are a part of, and the configuration of civil society organs [that support] denial.” As many scholars have identified in their studies of resistance and denial of state crimes, laying siege to the fortifications that facilitate denial requires some form of acknowledgement or recognition of the state’s deviancy (see Lasslett 2012; Green & Ward 2004, 2013; Cohen 2001). In the context of justice, acknowledging state criminality is recognized as having a collective and individual benefit for victims where “coming to terms with the past” is to know (and admit to knowing) what exactly happened (Cohen 2001, p.222). Within transitional justice discourse, the need to acknowledge the past is informed by an underlying narrative of ‘transition’ or ‘progress’ that symbolises a shift from an illiberal to a liberal regime, or from violence to peace (Moon 2008, p.19). The proliferation of transitional justice mechanisms in recent years has seen accountability, acknowledgement and reform become central objectives to achieving justice for human rights violations. As one of “the first demands of victims is to obtain recognition of the fact they have been harmed”, acknowledging these victims and the harms they have suffered is an indispensable component of justice (UN Report 2012, p.10).

Counter-memories are argued to be by-products of resistance that expose state crime/s and acknowledge the truth associated with contentious events like the Iraq War. Truth is however too subjective a term, and my analysis of the truth memorialised in two counter-memories draws on the arguments of Banham (2017) and Booth (2006) on the importance of remembering as a central element of justice. According to Banham (2017, p.386) remembering international crimes goes against the general tendency for governments and societies to block traumatic and violent experiences. In international criminal trials, exposing the truth associated with state crimes must encompass a number of different perspectives because the unique objectives of global justice “go way above and beyond merely finding guilt or innocence of particular individuals” (Naqvi 2006, p.246). The merit of exposing the truth as Goldstone (1996, p.486) argues, is that it “enables a society to move beyond the pain and horror of the past.” Accordingly these counter-memories have been used to memorialise the dissenting opinions of the anti-war movement against the Iraq War. To show that the Iraq War was illegal and a violation of international and human rights laws, the counter-memories constructed by the WTI and KLWCT have acknowledged the truth associated with

the Iraq War by acknowledging and memorialising alternate, victim-centred perspectives that had been lost or forgotten over time.

To understand how counter-memories engage in a war of position against the public memory and historical record of the Iraq War, it is important to identify what has not been said or acknowledged within this record. Drawing on these ideas this research will explore how counter-memories have been constructed by the WTI and KIWCT. Owing to the anti-war stance taken by the WTI and KIWCT, these case studies can be used to develop our understanding of civil resistance to state crimes whereby these tribunals use counter-memories as a vehicle to expose and promote the truth associated with the Iraq War. Truth is however too subjective a term and my analysis of the truth memorialised in two counter-memories draws on the arguments of Banham (2017) and Booth (2006) on the importance of remembering as a central element of justice. According to Banham (2017, p.386) remembering international crimes goes against the general tendency for governments and societies to block traumatic and violent experiences. In international criminal trials, exposing the truth associated with cases of international crimes must encompass a number of different perspectives because the unique objectives of global justice “go way above and beyond merely finding guilt or innocence of particular individuals” (Naqvi 2006, p.246). The merit of exposing the truth as Goldstone (1996, p.486) argues, is that it “enables a society to move beyond the pain and horror of the past.” Accordingly, these counter-memories have been used to memorialise the dissenting opinions of the anti-war movement against the Iraq War. To show that the Iraq War was illegal and a violation of international and human rights, the counter-memories constructed by the WTI and KIWCT have acknowledged the truth associated with the Iraq War by memorialising alternative perspectives that had been lost or forgotten over time.

### **Memory-justice: truth as a central component to global justice**

As justice, is in part, a form of remembrance, “memory occupies a vital place at the heart of justice and its struggle to keep the victims, crimes and perpetrators among the unforgotten” (Booth 2001, p.777). Drawing upon the arguments of Booth (2001, 2008) and Banham (2017) on the relationship between memory and justice, this research will explore how counter-memories of war produce a form of ‘memory-justice’ where remembrance of the past is “a face of justice itself” (Booth 2001, p.777). The concept of memory-justice is defined by

Booth (2006, p.117) as a process of remembrance whereby pursuits of justice are not only “grounded in a debt to the past” but are “made in the name of the present and future.” As memory is constructed and not simply reproduced, memory-justice involves the active work of “individuals and groups from affected communities” (Banham 2017, p.387; see also Rothberg, 2009). Memory-justice is “inherently political” in nature where “the public testimonial articulation of memory is a site of political engagement and struggle” (Banham 2017b, p.387). This is particularly important for redressing contexts of silence and denial because counter-memories of war like that constructed by the WTI and KIWCT present “an accurate historical record” capable of “illuminating and acknowledging” (Booth 2001, p.778) state crimes. Drawing on some of the key ideas presented by memory scholars (see Booth, 2001, 2006, 2008; Banham, 2017; Rothberg, 2009), this research will conceptualize and connect the concept of memory-justice with the broader discourse associated with truth commissions where victims are centrally placed and given “a role that goes well beyond serving as an instrument to achieve conviction” (Findlay & McLean 2007, p.473). To explore the significance of memory-justice in redressing contexts of denial this thesis will argue that counter-memories (and citizens’ tribunals) are essential concepts to develop our understanding of the transitional justice tool-kit that is informed by the need to recognize and respond to human rights violations committed against individual victims and communities (see Franke, 2006).

Memory-justice is a concept that can broaden our understanding about the different forms global justice can take. It can also contribute to the scholarship on global justice and memory (see Booth, 2001, 2008; Banham, 2017b) where the two tribunals explored in this thesis and the counter-memories they construct, are conceptualised as products of counter-hegemonic acts where discourses of war can be challenged. A central component of memory-justice, is acknowledgement of the truth. In this way, citizens’ tribunals that pursue the truth associated with a historical event like the Iraq War, have codified alternate narratives to challenge the public memories constructed and managed by state actors. These tribunals have compiled archival records and evidence of international crimes associated with the Iraq War to pursue a form of memory-justice where “the work of memory is the core of doing justice” (Banham 2017b, p.386). In other words, remembering the international crimes associated with the Iraq War is a form of justice, and forgetting and/or neglecting these crimes are injustices (see Banham 2017b; Booth, 2006). This is a relevant contribution to global justice because it places truth as a central component of achieving justice that is often overlooked in

international criminal trials. While this does not accord with the standards expected of judiciaries like the ICC, acknowledging the truth of state crimes is important for civil society because it enables these non-state actors an opportunity to contribute, and perhaps improve the mechanisms through which global justice can be achieved. As will be explored with greater detail in this thesis, citizens' tribunals and their counter memories are able to address the limitations of the ICC in such a way that reforms our understanding of global justice, and the mechanisms through which it can be achieved.

## **Thesis structure**

Following this introduction, Chapter Two explores the existing literature relevant to the analysis of citizens' tribunals and counter-memories that draws on the extant literature on state crime, transitional justice and TCS. To explore the intersection of these broad scholarships, this chapter will identify the extant gaps in knowledge, where little is known of citizens' tribunals and the counter-memories they produce. Accordingly to fill this gap, this chapter will also discuss various elements of memory studies and civil resistance that have also informed this research. The literature review will specifically explore how the denials and silencing of state crimes has led to a growth of transnational activism where non-state actors from civil society have actively sought to label, investigate and censure state crimes. Importantly to locate counter-memories within the existent scholarship, the literature review will also draw reference to the debate on global justice; focusing specifically on how it is conceptualised and what form it can take. Chapter Two will explore the seminal works of Klinghoffer and Klinghoffer (2002) to discuss their conceptualisation of citizens' tribunals in relation to the two contemporary examples that are case studies to this research. To explore counter-memories this chapter will explore the scholarship on truth and memory as important components of justice, which draws on a body of literature - memory- that can be used to add and develop our understanding of justice.

Chapter Three outlines the theoretical framework that is to be employed within this research. Through use of a Gramscian perspective on 'hegemony', the theoretical framework considers how imbalances of power can influence the relationship between the state and civil society. Hegemony can be used to account for some of the issues associated with global justice, where states as hegemonies are able to influence the ways in which global justice is pursued. The theoretical framework will also explore ideas associated with 'mass mobilization theory'

and ‘political opportunity theory’ that can be used to assess how social movements like the WTI and KIWCT have emerged to resist state crimes.

Chapter Four accounts for the methods and methodology used within this thesis. It will explore critical discourse analysis (CDA) as it is beneficial for studies of language and text. This chapter will also explore how the analytical frame of ‘hegemony’ can be used to analyse collective memories and counter memories associated with the Iraq War. Chapter Four will also discuss the data and the methods used to assess both citizens’ tribunals, and their counter memories. It will conclude with a discussion of key themes to have emerged from the analysis of speeches and case transcripts, so as to build a foundation for the analysis presented in the following chapters.

Chapter Five presents an analysis of two citizens’ tribunals that include the WTI and KIWCT. To develop a taxonomy of citizens’ tribunals, this chapter will discuss two Tribunals, identifying important similarities and differences. Focusing on what has been stipulated within the written texts produced by the WTI and the KIWCT this chapter will explore the goals, mandate, organizational structure and identity of two citizens’ tribunals. It will identify what has emerged from the written texts published by the WTI and KIWCT that helps this thesis develop a taxonomy of citizens’ tribunals. Additional to this, the chapter will also identify various limitations of citizens’ tribunals that undermine their potential success. Drawing reference to the KIWCT specifically this chapter will discuss the quasi-tribunal format adopted by the KIWCT where trials of absentia are held using *amicus curiae*.

Chapter Six will discuss the public memory of the Iraq War constructed by former US President George W. Bush and former British Prime Minister Tony Blair. Drawing reference to transcripts of their public speeches where the Iraqi threat and/or Saddam Hussein were referenced, this chapter will explore how state actors participate in constructing discourses of denial able to “elaborate myths...which asserts that force is used only when morally justified for self-defence” (Cohen 2001, p.11). However the justifications for the Iraq War cited by these former Heads of State were not the only perspectives to have existed over time. To explore how state actors are able to draw on their hegemony over civil society, this chapter will also explore some counter-narratives that also existed at the time. Using a total of forty speech transcripts from both former leaders, this chapter will explore the key narratives that were consistently cited to justify the Iraq War. Importantly this chapter will draw on the key

ideas of Gramsci (1971) to explore the relationship between power and language, where discourses can be shaped by the arguments presented by state actors.

Chapter Seven will discuss the first counter-memory explored within this research that draws reference to the key narratives articulated within the public memory of the Iraq War. Using the published edited book by Sokmen (2008) where a total of fifty-five Istanbul testimonies have been documented by the WTI, this chapter will explore the testimonies presented at the final Istanbul hearing where various individuals from a Panel of Advocates spoke on six topics related to the Iraq War. The historical record presented by the WTI has importantly challenged the public memory of states to publicly recognize and document evidence of the US and UK violating international laws. Accordingly, this chapter will discuss various themes that have emerged from the WTI's counter-memory of the Iraq War. To show how memories of the Iraq War have been contested by the WTI this chapter will draw on some of the key principles associated with Gramsci's (1971) war of position where counter-narratives have been used to challenge denial of state crime.

Chapter Eight will outline the second counter-memory of the Iraq War constructed by the KWLCT. Drawing reference to the evidence and arguments presented by the KWLCT's Prosecution Team in Case No.1 and Case No.2, this chapter will explore the Tribunal's construction of a counter-memory where rules of evidence and procedure were utilised to symbolically prosecute George W. Bush and Tony Blair alongside other members of the Bush administration. Within these proceedings important pieces of evidence were presented to argue that the Iraq was illegal whereby states and actors can be held responsible, albeit symbolically, for state crimes. Noting that the KWLCT lacks enforcement powers, this chapter will accordingly document the record of state crimes compiled in Case No.1 and Case No.2.

The thesis concludes with a discussion that revisits the research questions, so as to demonstrate the contribution this thesis has made to contribute to the scholarship. As was introduced in Chapter One, it will re-visit key concepts including: citizens' tribunals, counter memories and memory justice as they have emerged within the specific case studies of the KWLCT and WTI. It argues that citizens' tribunals produce counter memories of war to promote a form of memory justice that can contribute towards global justice in alternative ways.

## **Chapter Two** **Literature Review**

### **The Dynamics of Resistance: A study of denial and transnational activism**

Drawing on the arguments of scholars who have contributed to the diverse scholarship on transnational civil society (TCS) this chapter discuss how the extant literature has conceptualized the role of civil society in contexts of denial. This will lay the foundation for developing our understanding of citizens' tribunals and their counter-memories that will be located as an element of the transitional justice tool-kit. This research is guided by an interdisciplinary approach that engages with the diverse scholarship associated with global justice. Scholars such as Boas (2012), Cassesse (1998, 2003) and Moghalu (2004), have identified key barriers and conceptual issues that impede global justice where international crimes are not responded to in an equitable manner. This body of work suggests that international laws and the mechanisms through which they can be enforced, have been stymied by states in such a way that creates a culture of impunity where powerful states are able to evade criminal investigation and/or prosecution for international crimes. It is in this context that citizens' tribunals have emerged as important spaces of resistance where organizations of TCS have actively opposed the denial of state crimes To understand citizens' tribunals and the specific contexts in which they emerge, this literature review examines the arguments of state crimes scholars (for example see Green & Ward, 2004; Rothe, 2009; Kramer & Michalowski, 2005) and social movement theorists (see for example Della Porta & Diani, 2006; McAdam, Tilly & Tarrow, 2001; McCarthy and Zald, 1973, 1977) who have emphasised the importance of civil society in providing a counterweight to such cultures of impunity. This chapter will explore the intersection of a diverse scholarship on denial, resistance and transnational activism that has informed this analysis of citizens' tribunals, counter-memories and memory-justice. It begins with a discussion of denial and silencing focusing on how states are able to shut down opportunities for truth. Importantly this chapter will also unpack the concepts of 'counter-memories' and 'memory-justice' identifying how these types of endeavours can be located within the extant tool-kit associated with transitional justice. To explore the role of civil society in resisting cultures of denial chapter will draw the ideas of criminologists and sociologists who have provided significant insights on the power of civil resistance to state crimes. It will conclude with a discussion that draws on various

studies of memory (see for example Halbwach, 1992; Zeribavel, 2003; Banham, 2017) that have been integral re-conceptualizing global justice in such a way where remembrance of past state crimes, and truth-telling can facilitate an alternative form of justice that can address the impunities associated with state crimes like the Iraq War. As memory-work is complex and multi-layered approach, this chapter will also consider how memory-justice can be undertaken by those who stand outside the state where a frenzy of transnational activism in the context of human rights has established TCS as important actors that shape how state crimes can be defined, labelled and censured.

## **2.1 Denial and silencing of state crimes**

State crime scholars such as Penny Green and Tony Ward (2004, p.1) have argued that it is difficult to sanction the state, let alone state actors because “states claim the power to determine what is ‘just’ ...and what is criminal” (Green & Ward 2004, p.1). The scholarship on how state crimes can be addressed has consistently questioned how justice can be achieved for these crimes (see Rothe, 2009; Kramer & Michalowski, 2005) highlighting that “a state can only be criminal on those rare occasions when it denounces itself for breaking its own laws” (Green & Ward 2004, p.1). The state crime literature suggests that pursuits of accountability and justice for state crimes are often stymied by various socio-legal challenges that must be overcome if states, or individual state actors, are to be held accountable for violating international laws (see Green & Ward, 2004; Rothe, 2009; Kauzlarich & Kramer, 1998). This body of work has broadened criminological understanding of criminality by highlighting the criminality of states and its actors who have increasingly been identified as capable of deviancy. Pursuing accountability and justice for state crimes has cultivated a broad range of perspectives that point to the role of various non-state actors that might be capable of censoring states. This section will explore the literature on state crime, with particular focus on how scholars within this field have understood denial and silencing of state crimes that open spaces of resistance where denials can be actively opposed. To develop a more nuanced understanding of resistance to state crime this literature review will also touch on some of the arguments of sociologists who study social movements (see Della Porta, 2005; Tilly, 2006) and ‘civil resistance’ (Stephan, 2008; Schock, 2015) and transnational civil society (see Burgerman, 2001; Clark, 2001; Evangelista, 1999; Florini, 2000; Keck & Sikkink, 1988; Khagram, Riker a& Sikkink, 2002).

When organizing and undertaking criminal activities, state officials are in the privileged position of being able to monopolize, and mobilize significant legal, financial and human resources to conceal their illicit practices from public scrutiny (Lasslett 2012, p.126). Therefore to overcome the fortifications that facilitate denial, movements of resistance and forms of mass mobilization offer a “powerful medium for collecting and disseminating data on state crime” (Lasslett 2012, p.126; see also Green & Ward, 2000, 2004, 2013). Even without today’s scepticism about objective knowledge “the games of truths” associated with state crimes are “highly volatile” where it is “genuinely difficult to find out the truth about atrocities within the intricate circuit of claims and counter-claims made by governments” (Cohen 2001, p.4). Denial of state crimes can take many forms including as noted by Cohen (2001): literal, interpretive and implicative. Literal denials are assertions that something did not happen or is not true, interpretive denials give different meanings to raw facts, and implicative denials minimize the psychological, political or moral implications that conventionally follow a crime (Cohen 2001, p.7-8). In any given context the state and state actors can employ a combination of these forms of denial able to articulate statements that assert “something did not happen, does not exist, is not true or is not known about” (Cohen 2001, p.3).

Who does the defining and what is defined as a state crime are intrinsically linked to issues of legitimacy and to the scope of analysis (see Green & Ward, 2004; Hillyard et al., 2004; Rothe & Friedrichs, 2006; White, 2008). The question of a states’ legitimacy is an important component of state crime research that influences how state crimes are defined, labelled and resisted. Green and Ward (2003, p.3) argue that a state is legitimate to the extent that (1) it acts in accordance with the rules that it sets for itself and its citizenry, and (2) those rules that are seen to be justified by shared beliefs. The arguments of Green and Ward (2004) have been informed by those of Gramsci (1971) who showed how capitalist states secure legitimacy through a process of hegemony. Hegemony is essentially a process by which those belief that support the status quo are instilled in the population at large so that they appear as matters of consensus and ‘common sense’ (Green & Ward 2004, p.3). As a consequence of state legitimacy, various studies of state crime have consistently identified the normalcy of denials as a common response in how states and state actors conceal their conduct (see Cohen, 2001; Green & Ward 2000, 2004, 2013; Stanley & McCulloch, 2013). As Lasslett (2012, p.128) argues, “when exposure is indeed expected to threaten the privileged position of a dominant power network within the state or excite a domestic/international reaction

which would frustrate the dominant power network's strategic aims, the desirability of hiding the state crime event will increase in proportion with the anticipated negative effects."

It is worth briefly noting that within the literature on international relations (IR), *realpolitik* is a term used by scholars of IR to describe "the pursuit of vital state interests in a dangerous world that constrains state behaviour" (Rathbun 2018, p.7). The existent IR literature on *realpolitik* is too diverse to canvass with detail here (see Keohane & Nye Jr, 1977; Johnstone, 1996; Donnelly, 2000). However, what can be drawn from this body of work that is relevant to this research is a consideration of how the "largely unregulated environment" of the international community can facilitate the "the egoistic pursuit of the national interest" (Rathbun 2018, p.12). The unwillingness of states to enforce international laws within its national judiciaries—as is required under the stipulations of the Rome Statute (1998)—suggests that *realpolitik* is an important concept to consider because it can help explain why "states have come to think only of themselves" (Rathbun 2018, p.12). *Realpolitik* within IR literature has come to be associated with a realist perspective, or realist theory, that argues states are only able to pursue their egoistic interests in light of structural constraints (see Rathbrn, 2018; Bueno, 2014). States, according to the realist perspective, behave (or should behave) as consequentialists that weigh costs against benefits (see Rathburn, 2018). In pointing to the restrictions placed on states by the international system, IR scholars such as Rathbun (2018, p.16) suggest that because of the existent international structures, states are able to "adjust [their] goals in light of the distribution of power and the likely responses of other states." From this, it can be inferred that to control or restrict the actions of states requires a functioning international system built upon "the moral rules of international conduct" (Rathbun 2018, p.16).

## **2.2 Resisting denial: the role of transnational activism**

Although criminologists have provided significant insight to develop our understanding how state crimes can be labelled and resisted by civil societies, sociologists—through their analysis of social movements—have also contributed to this growing body of work (see Schock 2013; Martin, 2009; Bond, 1994; Randle, 1994; Tilly & Wood, 2009). Civil society is a broad term that has been cited by a number of criminologists and sociologists and it is worth unpacking how it conceptualized in this thesis. Civil society has often been labelled a 'third sector', or, a social arena independent of the state and the economy where citizens and

organizations can freely assemble. Depending on whose version one follows, civil society is either “a specific product of the nation-state and capitalism” or “a universal expression of the collective life of individuals” (Edwards 2014, p.15). Civil society can also be distinguished into two broad categories that Foley and Edwards (1996) identify as ‘Civil Society I’ and ‘Civil Society II’. Drawing on a number of interwoven arguments, ‘Civil Society I’ is portrayed as fostering habits of civility, trust and civil engagement that cut across major social divisions to foster a sense of common interest (Green & Ward 2013, p.29). What can be inferred from this is that the social capital associated with ‘Civil Society I’ can have a positive impact on states, able to “bolster the performance of the polity and the economy” which in turn creates a strong functioning state (see Putnam 1993, p.167). Applied to studies of state crime, this suggests that civil society is conducive to a relatively non-suppressive, non-corrupt or, in other words, non-criminal type of state where citizens expect and trust officials to act in accordance with “publicly promulgated rules and consensual definitions of the public interest” (Green & Ward 2013, p.30). ‘Civil Society II’ on the other hand, is described as a sphere of action that is independent of the state capable of “energizing resistance to a tyrannical regime” (Green & Ward 2013, p.20; Foley & Edwards 1996, p.39). The independence of civil society emphasized by the ‘Civil Society II’ perspective is used to frame this research, where as Green and Ward (2004, 2013) and Kramer and Michalowski (2005) have identified, civil society is an important counterweight to state crime. Civil societies are therefore able to “counter-balance the central agency of order” (Gellner 1996, p.5) to influence how state crimes are responded to (see Green & Ward 2004, 2013). When civil societies mobilize and engage in forms of resistance against the state, citizens perform the role of ‘accountability agents’ able to “make public claims based sometimes on law, but often on morality, against powerful governmental institutions (Moore 2014, p.633). Drawing on these ideas, the analysis of two citizens’ tribunals presented in this thesis will capture the complex and dynamic relationship between civil society and the state. It will explore how movements of resistance like the WTI and KIWCT have emerged in specific contexts of silence and denial of state crimes to challenge the historical record, and memory associated with the Iraq war.

To determine whether or not a state has committed a crime requires the involvement of citizens as witnesses or audiences, in cases of acts or omissions that violate human rights (White 2008, p.36). As scholars of TCS have argued citizens are increasingly mobilizing and forming transnational organizations, or social movements, that seek to set agendas, develop

solutions, build networks and coalitions of allies and implement solutions. Social movements have been defined by Snow and Soule (2010, p.7) as the “sustained collective mobilization for social change” by civil society actors who use “extra institutional routes”. These social movements are important because they seek to broadly “achieve political and social change” (Bennett et al. 2008, p.286). As van Krieken et al (2014, p.340) discussed, through collective action, social movements attempt to “institutionalize changes that make the state more accessible to ever widening circles.” The existing scholarship—developed largely through sociological frames of inquiry—suggests that social movements constitute a unique space for the re-configuration of social identity (see Burgmann, 2003; Tilly, 2004; Tarrow, 2001, 2005). By promoting ideas of ‘citizenship’, scholarship on social movement has argued that citizens who partake in these movements perform a vital role of political activism (McAdam, 1982; Klandermans, 1984; McAdam, McCarthy & Zald, 1996). Resistance against state crimes is, as Schock (2013) argues, partially rooted in individual ethics and civil responsibility. Tsutsui et al (2012, p.368) argue that “social movements play critical roles both in elevating standards of human rights in international law and in leveraging these standards into better local practices.” They argue that social movements are key in understanding the puzzle of international human rights law, its widespread diffusion despite its potential to undermine state sovereignty, and its remarkable successes despite weak enforcement mechanisms (Tsutsui et al., 2012).

Movements of resistance like citizens’ tribunals stem from a profound sense of collective frustration and disappointment with how state crimes, or state-led violations of international law, are addressed through formal mechanisms of justice such as the ICC. The existence and reliance on such formal mechanisms suggests that ‘the great virtue of legal proceedings is that its evidentiary rules confer legitimacy on otherwise contestable facts’ and in this sense, ‘trials assist in the process of uncovering the truth’ (Ignatieff 1996, p.117-118). However as the legality of the Iraq War remains disputed and unsettled, how can victims and impacted communities come to terms with their victimization by the state? The answer to this broad question lies within the literature on ‘transitional justice’ where a set of mechanisms and tools are often used to help societies ‘come to terms with past human rights abuses’ (Kent 2012, p.3). The mechanisms associated with transitional justice may encompass a broad range of measures such as reparations policies, institutional reform, lustration (the vetting of public officials), memorialisation, reforms to police, prisons and judiciary, and truth commissions (Kent 2012). Transitional justice is however, more than just a collection of tools

or mechanisms and as Kent (2012, p.3) states, it is also a discourse that promotes ‘the liberal values of individual rights and liberties, the rule of law and democracy, and the achievement of peace and stability in post-conflict societies.’ Through the official investigation and public exposure of past human rights abuses mechanisms of transitional justice like truth commissions, offer a powerful medium for collecting and disseminating evidence of state crimes that can redress contexts of silence and denial (Lasslett 2012; Green & Ward 2004).

The power of social movements as forces capable of resisting state crimes is derived from their widespread transference, “across issues, and populations” that is increasingly being “used by ordinary people to express a variety of claims, grievances, and aspirations” (Calhoun 2012, p.43). Sociologists Tilly and Wood (2009) note that social movements are characterised by their contentious disposition and their engagement with politics. They argue that social movements are contentious “in the sense that [they] involve collective making of claims that, if realized, would conflict with someone else’s interest” and that they are inherently political because “governments of one sort or another” are actors that social movements seek to challenge (Tilly & Wood, 2009, p.3). Through analysis of how social movements have developed over time, Tilly and Wood (2009) set out the core structures and dynamics that are found within such movements. In the context of resistance to state crimes the contribution of sociologists highlight the role of social movements as important catalysts for social and political change. As these movements often associate themselves with broader processes of democratisation, individuals are able to make claims against the state to create just societies. These movements mobilize in contexts of denial to recognize “the personal dignity of all individuals” who must be “recognized as bearers of a distinctive identity” (see Honneth, 2001; Kent, 2012). Social movements can therefore function as a vehicle for the expression of collectively shared values, beliefs and ideologies (Blumer 1969, 1978). Moreover, these movements are often grounded in concern of the oppression or injustices observed by civil society against the state, allowing citizens to express their “social discontent” against the existing social order that they consider to be illegitimate (Blumer 1978, p.6).

A primary task of this research is, therefore, to establish that TCS matters. In contexts of denial, movements that investigate, expose and resist state crimes tend to be positions outside dominant power networks (Lasslett 2012, p.144). The manifestation of resistance against the state by TCS suggests that transnational social movements are able to increasingly engage in

forms of ‘contentious politics’; a term conceptualized by Tilly and Tarrow (2007, p.4) as “interactions in which actors make claims bearing on someone else’s interests.” The term contentious politics suggests that as part of the process associated with civil resistance are individual actors from civil society who emerge to actively “shape societal rules” (Scholte 2014, p.323). Social movements can therefore be defined as a “sustained campaign of claim making” (Tilly & Tarrow 2007, p.8). However it is important to recognize that civil resistance can take various forms ranging from individual acts of resistance, to acts of collective resistance that involve individual and organizational actors. Social movements that engage in forms of contentious politics, are distinguishable by four factors. According to Tilly and Tarrow (2007, p.8), these factors include: (a) sustained campaigns of claim making, (b) an array of public performances including marches, rallies, demonstrations, creation of specialized associations, public meetings, public statements, and lobbying, (c) repeated public displays of worthiness, unity, numbers and commitment, and (d) the organization, networks, traditions, and solidarities that sustain these activities- our social movement bases. Accordingly studies of social movements and citizens’ tribunals can be enriched through application of Tilly and Tarrow’s (2007) framework that helps to understand key elements embedded in the process of engagement with contentious politics.

Green and Ward (2004, p.208) argue that “to control the crimes of our rulers, we must look not to international courts- where only the defeated are ever likely to face trial- but to civil society: the organized voice of the ordinary working people.” Civil society is occupied by associations like pressure groups, voluntary associations, religious bodies, media outlets, journalists, and academic institutions. Rothe (2009) places importance on the role of the media, NGOs and social movements in preventing and responding to state crime. However, she also cautions against the reliance on these non-state actors, as they are often “non-formal [and] typically lack empowerment mechanisms” expected of international judiciaries. She argues that an effective way to provide checks and balances against state crime is to consider the “dialectic process” between national and international forms of constraint (Rothe 2009, p.204). Banham (2017) argues that civil society plays an important role in monitoring governments and pursuing accountability for state crimes. The arguments raised by state crime scholars point to the distinctiveness of civil society as a space for resisting state crime. In this context, Guinn (2008, p.5) argues that the process of accountability for crime of this nature often “runs afoul of pragmatic concerns [of the state] and the practices of realpolitik,” Although scholars such as Grunfield (2007) and Rothe (2009) have convincingly argued for a

dual system of resistance that brings together national and international forces within civil society and the state, their arguments may be seen to overlook the realities in which states continue to be “motivated by their own self-interests” (Moghalu 2008, p.141). Green and Ward (2004), however, have argued that it is the independence of civil society from states that make it an effective mechanism for highlighting and censuring state crimes.

The scholarship on state crime and resistance is diverse. As McCulloch and Stanley (2013, p.4) have noted, “resistance ranges from small, silent and personal through to the multitudinous, spectacular and momentous.” This suggests that the scope of activities that may be considered a form of resistance can take many forms. It may be violent or non-violent, passive or active, hidden or open, verbal or physical, spontaneous or strategic, local or global, and frequently a combination of some, or all (Pickering, 2003; White, 2010). Movements of resistance, as Lasslett (2012, p.126) argues, are more than just a force capable of controlling state criminals, but also “a powerful medium for collecting and disseminating data on state crime.” In attempts to hold states accountable for the violation of international laws, Banham (2017, p.381) argues that civil society plays “an important accountability role in checking governments by activating many of those different mechanisms of accountability.”

### **2.2.1 Citizens’ tribunals: the intersection of transitional justice and transnational civil society**

Citizens’ tribunals are a contemporary form of civil resistance against state crime. They are social movements that have emerged from the anti-war movement, and have pursued investigation of the Iraq War and prosecution of those responsible. The literature on these tribunals is scarce, with little scholarly acknowledgement of their existence or recognition of their attempts to “fill a void where existing legal institutions have fallen short” (Borowiak 2008, p.161). Klinghoffer and Klinghoffer (2002) provide the most comprehensive discussion of international citizens’ tribunals. They have analysed other citizens’ tribunals like the Bertrand Russell International War Crimes Tribunal into the Vietnam War, and have argued that they are unique trials where non-state actors are able to challenge what they perceive to be injustices—in this case, the Vietnam War—and make public, symbolic judgements of those responsible for violating international laws (Klinghoffer & Klinghoffer, 2002). They argue that the tribunals act as catalysts for legal action within recognised courts that possess

the legal power to enforce verdicts. Beyond this seminal work, however, the scholarship on these tribunals is underdeveloped. Other bodies of work, such as social movements and resistance studies, have explored key issues within citizens' tribunals; these literatures seldom directly address citizens' tribunals as examples of civil resistance against the state, however. In locating citizens' tribunals within the broader scholarship on civil activism or civil resistance, scholars such as Borowiak (2008), Keck and Sikkink (1998) and Falk (1985) argue that they are examples of transnational civil activism. Their discussions outline the ways in which these tribunals seek to garner widespread participation from various civil society actors.

Over the past few decades, a growing stream of social science literature has drawn attention to the expanding influence of transnational activism in world politics (see Colas, 2002; Keck & Sikkink, 1998; Lipshutz, 1992; Tarrow, 2005). For instance, Scholte's (2005) analysis of citizens' tribunals suggests that they are but one example of how civil society actors use symbolism to seek redress from global governance authorities. This analysis places emphasis on the roles played by civil society actors and the *symbolic* significance of these tribunals, but does not examine how they attempt to hold states accountable for their crimes. Pianta (2002) describes citizens' tribunals as precedents for further action in that they can spark criminal prosecution through judiciaries, but he does not elaborate on how or what action might be taken against the state to circumscribe their significant power. Citizens' tribunals have also been analysed within the context of human rights and war crimes. Beigbeder (1999, p.137) describes them as "provocative irritants" that can serve an ancillary role to international and national criminal courts. Similarly, Klinghoffer and Klinghoffer (2002, p.3) argue that the corrective work undertaken by citizens' tribunals could perhaps complement the current system of international criminal justice and address the deficiencies within the system. Thus, although the discourse on transnational activism has grown, there has been no discussion of citizens' tribunals as avenues of resistance to state crime. In particular, there is literature that focuses on the role of tribunals in contesting public memories associated with state crime.

Klinghoffer and Klinghoffer (2002, p.189) argue that international citizens' tribunals have a role to play in terms of "their ability to examine controversial issues in a broader contextual framework" than what is legally established in national and international prosecutions. In broadening the scope of their analysis beyond that practiced within national or international prosecutions, citizens' tribunals become attempts made by civil society to demand

accountability denied to them by states. It is through compiling evidence that these citizens' tribunals are able to bring to the fore state crimes by "undertaking the political work of creating counter publics where the stories of victims are given an enduring form" (Banham 2017b, p.394). Existing literature suggests that through acts of resistance against the state, citizens' tribunals undertake political work. It is no surprise then, that some scholars have characterised these tribunals as acts of civil disobedience. Blaser (1992, p.10) argues that these tribunals generally adopt an inflammatory rhetoric. Journalists and scholars have also questioned the tribunals' legitimacy, considering them "too partisan, too shrill, too anti-American, and too leftist" (Borowiak 2008, p.183). Klinghoffer and Klinghoffer (2002, p.189) hypothesise that because "the left" has been prominent in the organisation of these tribunals, the impression given is that the processes they adopt "serve ideological ends,"—giving preference to ideology over justice. Borowiak (2008, p.183) has argued that "the radicalism [associated with] citizens' tribunals has led to obscurity and therefore perhaps undermined the cause entirely." These criticisms are important as they highlight the lack of scholarship focused on memory studies dedicated to demonstrating the significance of citizens' tribunals. Nayat (2001) touched on this, arguing that citizens' tribunals are pivotal in disrupting the silencing of certain state crimes, however, falls short of examining the processes that could be undertaken.

### **2.3 Unpacking 'justice'**

The management of global justice today relies on the use of international criminal trials as a tool to achieve justice, where international laws are enforced in judicial settings to investigate and hold individuals criminally responsible for international crimes. Although global justice should rely on a system in which individuals are held criminally responsible in a court of law, Findlay and McLean (2007, p.471) point to the "many rules of evidence" that "are designed to circumscribe the fullest recount against the rights of the accused or prevailing probative conditions." As international criminal trials have the "potential...to distort the truth," (Findlay & McLean 2007, p.471) in a way that neglects the needs of victims and affected communities, it is important to draw on the literature on truth commissions, where truth and justice are inseparable. Truth commissions are official bodies established on a short-term basis. They typically have open access to official records to investigate the past and present a historical record of what has happened (King et al 2009, p.68). In accordance with the

principles of restorative justice, the public acknowledgement of the truth can validate the victims' position, something that is important in situations where state actors have denied past abuse. This an essential way of thinking that broadens our understanding of global justice beyond national and international prosecution of international crimes. Hayner (2000) argues that the work of truth commissions may be used to provide a historical record of evidence to ground prosecutions of perpetrators in the future. As King et al (2009, p.70) have argued, to do nothing to address international crimes and let "bygones be bygones... carries the risk of unresolved tension and conflict causing further problems in the future." As supporters of the restorative justice model have argued, justice should have a 'cathartic' effect for victims and communities impacted by international crimes (see Findlay & McLean, 2007; Dyzenhaus, 2003; Colson, 2000). Where victims and affected communities are denied justice, it is therefore important to "gather and disseminate information so that we might recognize and respond to suffering" (Stanley 2009, p.9) in a way that can break down cultures of silence and denial associated with state crimes.

As global justice relies on a two-tiered national and international system in which states are not compelled to enforce international laws, the management of global justice has been impacted in such a way that preferences state sovereignty over accountability and justice. As Melandri (2009, p.532) has argued, one of the fundamental problems in how global justice is currently managed is that there are no international customary rules that can be enforced to oblige states to prosecute international crimes by exercising their primary criminal jurisdiction. As states have "considerable leeway" in how they choose to implement and enforce international law, national judiciaries continue to exercise significant discretion in the prosecution of international crimes (Bekou 2012, p.691). States, therefore, have the power to dictate when its judiciaries will enforce international laws and to whom it is enforced upon. In this context, issues of realpolitik emerge where hegemonic states are able to draw on their global influence to protect its citizens against prosecution. The discretion afforded to states in these situations has led scholars to express concerns that the rhetoric of states on the prosecution of international crimes does not accord with practise (see Ferdinandusse, 2009; Bassiouni, 2006; Freeland, 2010). Bassiouni (2006), for example, states that the identification, application and enforcement of supposedly commonly shared values and interests in the international legal system, presupposes the existence of certain universal objectives and moral imperatives that require action. He does, however, argue that the

existent inconsistencies in national prosecution of international crimes suggest that “what the international community is willing to profess, is not necessarily what it is willing to act upon” (Bassiouni 2006, p.124).

An important consideration of this thesis is the retributive-restorative dichotomy of justice. Scholars such as Elton and Roybal (2003), Beloof (1999), and Dalton (1999), for example, have explored the origins and institutional development of international criminal justice. They have questioned the effectiveness of retributive justice for international crimes in light of other alternative mechanisms of justice. Beloof (1999, p.501-503) argues that “the retributive justice paradigm is characterized by a focus on the crime as a violation of societal rules and the notion that the perpetrator needs to be blamed and found guilty through an adversarial, confrontational battle.” As Elton and Roybal (2003, p.48) have argued, “in a retributive system, the focus of the court system is on what happened, who did it, and what we should do to them.” They contend that it is a “one-dimensional focus on the offender” that leaves “no role for the crime victim or the community to play within the justice system” (Elton & Roybal 2003, p.48). In contrast, restorative justice offers a lens for developing a more nuanced understanding of global justice that acknowledges the dual importance of truth and punishment associated with global justice. As Claassen (1996, p.302) has argued, in peacemaking and transitional situations like that of South Africa, seeking and acknowledging the truth surrounding international crimes, provides an opportunity to identify injustices and facilitate collective reconciliation that also helps to clarify a future so that all individuals “are more empowered to cooperate with each other.” For studies of global justice this is important because it acknowledges the importance of truth as a central component to justice, that is perhaps capable of addressing the impunities of Western states for violating international laws. As an alternative mechanism to facilitate global justice, TRCs help broaden our understanding of global justice to “promote a process of truth-finding in which a fuller picture of the truth emerges than would in a series of trials” (Dyzenhaus 2003, p.366).

The proliferation of transitional justice mechanisms has gone hand in hand with an expansion of the discourse regarding what these mechanisms can do. While this discourse has increasingly shifted away from a dichotomous debate between the value of restorative or retributive justice, the mechanisms that form part of the transitional justice ‘tool-kit’ are often dominated by debates over trials and truth commissions. Proponents of trials argue that criminal accountability for human rights abuses provide more ‘just’ outcomes for victims,

thereby creating a firmer basis for societal reconciliation (Kent 2012, p.4). By contrast advocates of truth commissions have argued that its “ broad and flexible mandate” have made them “more victim-centred than the adversarial and confrontational nature of judicial proceedings”, able to promote accountability, deterrence, reconciliation, truth and the rule of law more successfully than criminal trials” (Kent 2012, p.4). A number of other mechanisms associated with transitional justice have also developed based on local grassroots initiatives that include social movements. The enthusiasm for incorporating local justice practices into formal transitional justice processes is reflected in the UN sponsored truth commissions of both East Timor and Sierra Leone (see Shaw & Waldorf, 2010; Waldorf, 2006). In a different way, the renewed attention to local context is reflected in the UN’s growing embrace of ‘hybrid’ or internationalised tribunals that are “located within the country where the crimes were committed, and comprising both national and international staff and judges” (Kent 2012, p.4). These hybrid tribunals have now been established in Kosovo, Sierra Leone, Cambodia and East Timor, claiming to promise greater local legitimacy than international tribunals, be more economically sustainable, contribute to the capacity-building of domestic legal systems and to make justice more meaningful to victims due to their proximity to the community (see UNSC, 2004; OHCHR, 2006; Kent, 2012; Stanley, 2009). Therefore to contribute to the extant literature on transitional justice, this thesis will explore how citizens’ tribunals have been formed based on various elements of the transitional justice ‘tool-kit’ where “official investigations and public exposure of past human rights”, or recognition, is a central component of doing justice (Kent 2012, p.4).

## **2.4 Memory-justice: the importance of truth**

Justice can take many forms, and to respond effectively against international crimes, the Rome Statute (1998, p.1) identifies “punishment and “prosecution” as the primary medium through which it can be achieved globally. The use of international criminal trials in response to violations of international law began with the Nuremberg trials of 1945-1946. Since then, criminal prosecution of individuals has become the accepted medium through which global justice can be achieved. It is not the only form of justice that exists, however. Within transitional states such as South Africa post-apartheid, truth commissions served as alternative mechanisms through which justice could be achieved. Findlay and McLean (2007) have recognised that international criminal trials are a form of justice that is often placed in opposition to truth commissions. In support of international criminal trials, Colson (2000,

p.60) has argued that there is a “cathartic process” associated with these trials. Its purpose is to “clarify thought by removing ignorance”, allowing victims an opportunity to utilise the “medium of testimony” to “express their trauma and therefore relieve the stress attached to it” (Findlay & McLean 2007, p.472). Findlay and McLean (2007, p.473) have also argued that in criminal prosecutions, the experiences of victims can be distorted or “taken out of their hands completely and retold through the voice of professionals.” They present a strong case against the arguments of Colson (2000), to show that international criminal trials use an adversarial system that enforces “restraints [on victims] preventing the accurate telling of their stories, [that] will more likely lead to increased frustration and dissatisfaction for victims than it will to catharsis” (Findlay & Mclean 2007, p.473).

The lack of catharsis experienced by victims participant to international criminal trials is a noteworthy concern because it “relegates the victims and the power of their stories to truth commissions” (Findlay and MacLean 2007, p.473). Dyzenhaus (2003, p.366) points out that supporters of truth commissions claim that “in that process the victim has a role that goes well beyond serving as an instrument to achieve conviction.” This suggests that truth commissions, as its name suggests, are able to achieve a form of justice in which investigating and acknowledging the truth associated with a crime is a form of justice that can have long term benefits. Speaking to the purpose of memory and truth telling, Coakley (2001, p.233) states that “the process of truth telling is seen as an essential component of any attempt at healing and reconciliation” where “the truth of individual suffering is a vehicle to achieve both individual and collective healing.” Within the context of global justice, the truth telling process associated with justice has been superseded by the power of criminal prosecutions which continue to be the most accepted form of justice. Whilst truth commissions have proven to be effective in transitional contexts—being able to facilitate the reconciliation of a nation—it is yet to be applied in practice outside of such confines. To protect against gross violation of human rights, Grunfield (2007) suggests that ‘bystanders’ to state crimes—whether they be individual citizens, organisations or other states—have an important role to play in helping manage global justice. The most effective way that state crimes can be addressed, as Grunfield (2007) has asserted, is one where state actors, such as government officials, work alongside non-state actors to resist state crimes and address the impunities of state actors.

It is in this context that the Iraq War becomes a relevant case study to explore. It is a particularly interesting case study that can broaden our conceptualisation of global justice, and the form it can take. In response to the Iraq War, two citizens' tribunals have emerged to challenge the public memory and historical record associated with this event. Although these citizens' tribunals lack the power to legally enforce its judgements and conclusions, they "play a valuable role for victims in ensuring that the crimes against them do not fall into oblivion (Akhavan 2001, p.1). As citizens' tribunals have emerged in specific contexts of silence and denial of state crimes, they are arguably similar to truth commissions, where investigating the truth associated with international crimes is an alternative form of justice that goes beyond the need for criminal prosecution. Dyzenhaus (2003, p.366) argues that the South African TRC investigation of the truth, "achieved a kind of justice different from-even superior to- criminal or retributive justice." This suggests that in transitional contexts such as the post-apartheid period of South African history, truth commissions have been arguably successful for facilitating peace. As Findlay and McLean (2007, p.469) have argued, a comparative exploration of the objectives underlying "formal institutional attempts at international criminal justice" and the "informal community approaches" such as TRCs, shows that there "is significant scope for restorative themes to be incorporated into the procedural framework of international trials. Accordingly through investigation of citizens' tribunals, and the counter-memories of war they have promoted, this thesis builds upon the arguments of Findlay and McLean (2007) to explore how formal and informal mechanisms of justice can be harmonized together.

#### **2.4.1 Recognition and memory as forgotten components of justice**

A component of justice that is often overlooked in discussions of transitional justice is the notion of memory. To address this gap and explore the relationship between power and memory, this section will discuss the scholarship on memory work. Here the concept of memory-justice is useful in that it suggests the public memory of political events like the Iraq War can be contested to reach the truth. Memory-justice is defined by Booth (2006, p.117) as "the notion that the work of memory is the core of doing justice, where remembering is coupled with justice and forgetting with injustice." Banham (2017, p.386-387) builds on this, arguing that "even in the absence of trials of perpetrators," memory-justice allows non-state actors from civil society an opportunity "to reckon with past state crimes where official accountability is absent." In contribution to the scholarships on social movements and

resistance, Banham's (2017) conceptualisation of memory-justice offers important insights in to how global justice for international crimes can be achieved through alternative mechanisms that overcome cultures of silence and denial. Furthermore, as Assman (2010, p.98) argues, "producing memory justice in the context of international crimes goes against the general tendency for governments and societies to block traumatic and violent experiences." Scholars such as Bar-On (2001) and Clarkson (1996) note that citizen acquiescence, inaction, and silence often serve to legitimate brutal state policy and action. Moreover, the scholarship on memory studies suggests "the way that people make sense of everyday experience usually discourages them from thinking thoughts that might challenge the status quo" (Eliasoph 1998, p.232). In resistance against state crimes, civil society can participate in memory work—challenging the state by "making past crimes visible in the present" (Booth 2006, p.117 cited in Banham 2017b, p.386).

Memories, individual or collective, are dynamic. Studies on the variability of collective memories, like that conducted by Halbwach (1992), highlights the ways in which collective memories can influence and shape individual memories. Collective memories are important because they can serve as the basis of a group's identity and sense of community (Zerubavel, 2003). As some scholars have argued, by giving people a sense of how they became who they are, collective memory builds solidarity, guides decisions and actions, and legitimises and sometimes challenges the present (see Connerton, 1989; Schudson, 1992). However, it is unlikely that people within society would share the exact same memories of the past, as different social groups can recall past events in different ways (Devgan, 2013). Schudson (1997, p.348) argues that "memory is invariably and inevitably selective." In the context of collective resistance to state crimes, understanding memories is imperative as it is through acts of silence breaking that civil society can challenge long-held collective memories of socio-political events. In this fashion, collective memories can be negotiated and contested in accordance with the changing needs of the present and the interactions among stakeholders (Carlson, 2010; Zelizer, 1998). As the definition assigned to political events can be "deployed, defined, mobilized, resisted and used in pursuit of both interactional and political goals" (Tileaga 2010, p.364), social movements are able to resist the silence and denial associated with state crimes (see Cohen, 2001; Sutton & Norgaard, 2013) through the contesting of memory of past events.

Memory and truth-telling are important components of global justice that are essential to victims and communities affected by state crimes. Scharf (1999, p.513), for example, has argued, “the most authoritative rendering of the truth is only possible through a trial that accords full due process.” His arguments do, however, fail to capture the reality of global justice, whereby its management has been compromised by the power and legitimacy of Western states, who continue to draw upon their hegemony to influence when, and against whom international laws are enforced. To overcome the influence of Western states, it is important to look to alternative mechanisms that could be used to complement the existing system of justice. A combined model, as Findlay and McLean (2007, p.472) have convincingly argued, could “overcome many of the weaknesses of the two separate approaches” [between international criminal trials and truth commissions]. Speaking on truth findings, they argue that “this would arguably represent a more robust international criminal justice than is currently being achieved” (Findlay & McLean 2007, p.472). As a potential addition to international criminal trials, the restorative justice model seeks to promote a more comprehensive, inclusive, and satisfying resolution to international crimes perpetrated by states and its actors (King et al 2014, p.71). When this model has been successfully utilised to achieve justice for victims and affected communities, “it goes beyond what traditional responses can achieve, and as a result, the potential impact upon individuals, communities and society is substantial” (Larsen 2014, p.36).

Thelen (1989, p.1119) argues that “memory justice is social and collective action, carried out by individuals and groups from affected communities, done in the contexts of community, social dynamics and broader politics.” As Banham (2017, p.387) has asserted, “accountability and justice are linked by the societal dimensions of their efforts,” whereby concerned citizens are effectively “accounting to themselves and the justice they seek is for a future, a more just, society.” In situations in which impunities for state crime exist, social movements can undertake the work of pursuing accountability by “seizing the crime, keep[ing] it among the unforgotten” (Booth 2006, p.113). Through their recognition of memory as a face of justice, scholars such as Banham (2017), Booth (2001; 2006), and Lee and Chan (2016), among others, have deepened our understanding of justice. Furthermore, this scholarship reminds us that the construction of memories is “contestable and fallible” (Banham 2017b, p.387). The public space, which these memories are constructed, is also a “malleable discursive space” (Savlsberh & King 2005, p.589). In carrying out the work of ‘doing justice’, social

movements as part of civil society can undertake the work of remembrance—restoring, preserving and acknowledging past harms (Booth, 2001).

As Goldstone (1996, p.489) has argued, the public exposure of truth at the Nuremberg Trials of 1945-1946 has “made the work of Holocaust deniers far more difficult.” In the context of global justice, this suggests that an “appropriate public response to the harm that results when an offense is committed” requires some form of public acknowledgement of the truth (Bazemore & Umbreit 1997, p.16). Dyzenhaus (2003, p.366) has argued that through a process of truth telling, “victims might find not only that they can come to terms with the abuses...[but] that they can [also] develop a sense of agency appropriate for participation in a democratic society.” Social movements like citizens’ tribunals are forms of resistance to state crime where non-state actors are able to “enhance the protection of human rights” (Rothe 2013, p.199). Studies of civil resistance like that presented by Tsutsui et al (2012) suggest that social movements have played critical roles both in elevating standards of human rights in international law and in leveraging these standards into better local practices. Goodman and Jinks (2004), Murdie (2009) and Risse et al (1999) have concluded that through participation in various social movements, civil societies have been able to leverage human rights language and use it to pressure governments to address their human rights violations. These studies have often been grounded in discussions of transitional contexts where “the application of memory-justice [is] arguably of special importance to the restoration or creation of liberal and democratic regimes after the defeat of a dictatorship” (Booth 2001, p.780). What is needed is a broader discussion, like that offered by Banham (2017) that interrogates the role and power of memory-justice in situations where accountability mechanisms have failed to achieve global justice for state crimes.

Discussions of memory suggest that uncovering the truth is a necessary component in achieving global justice. Although the vast scholarship on global justice recognises the power of truth for victims and affected communities, these discussions have often concentrated on transitional justice in which discovering the truth behind international crimes is central to national healing (see Pham et al., 2010; Drumbl, 2016; Turner, 2013; Hughes & Kostovicova, 2018). Manning (2011, p.165) argues that “memory is central” to international criminal trials as it allows society to reckon with “past wrongs”, acknowledge “past sufferings” and reconcile “previously divided communities.” Memory is crucial in these processes and the

achievement of justice because it relies upon the widespread acceptance of a particular reading of past events (Manning 2011, p.165). Achieving justice in post-conflict, transitional contexts has led scholars, such as Booth (2001, p.777), to conclude that justice is closely linked with the “institutionalized remembrance of the past” whereby those who have survived have “a duty to the dead”, and recognition of the truth is a condition of national reconciliation. The institutionalised remembrance that Booth (2001) explores can be found in various examples such as that of South Africa, where the Truth and Reconciliation Commission convened after the fall of the apartheid regime and aimed “to come to terms with [the] past on a morally accepted basis...to advance the cause of reconciliation (Omar, 1996). Uncovering the truth to achieve justice was also institutionalised in Cambodia, where the ‘Extraordinary Chambers in the Courts of Cambodia’ was created not only to prosecute senior leaders and those responsible for the atrocities perpetrated by the Khmer Rouge regime, but also to reckon with past violence to heal victims and the state itself (see Manning, 2011; Ciorciari, 2006). Looking beyond these specific examples, it can be argued that acknowledging the truth behind victimisation at the hands of the state is a crucial component in achieving global justice. Although truth telling is placed within transitional, post-conflict contexts, truth remains absent from the scholarship on international justice. It requires further interrogation to improve our understanding of how justice can be achieved globally when mechanisms of accountability like the ICC and states fail to act.

## **Conclusion**

To locate citizens’ tribunals, counter-memories and memory-justice within the diverse scholarship on state crime, resistance and transnational activism this chapter has explored the literature relevant to understanding how transnational civil societies (TCS) are able to confront legacies of human rights abuses associated with state crimes. As was explored in this chapter, state crimes in liberal democracies are not aberrant or anomalous, and have no clear boundaries, but shapes imperceptibly into the routine, ‘legitimate’ activities of the state (Green & Ward 2000, p.103). This is important because states and state actors are able to conceal their conduct engaging in a range of practices that fall under what Cohen (2001) has described as a culture of denial. Therefore to define, label and censure states and state actors in a way that address cultures of denial associated with state criminality, state crime scholars such as Green and Ward (2000, 2004, 2013) point to the growing importance of civil society as a counterweight to the deviancy of states. To build on the arguments presented by these

scholars this chapter has also explored the literature on transnational civil society (TCS) and social movements that have each developed sociological perspectives to further our understanding of resistance. Social movement theorists such as McAdam and Scott (2005) have argued that social movements are increasingly important actors who emerge in specific contexts to challenge and destabilize established organizations and/or institutions. These conclusions have also been well established in the scholarship on transnational activism where TCS – ‘the emerging third force in global politics’ - have attempted to shape the evolution of international norms that include how governments, corporations and other groups ought to behave (Florini 2000, p.10-11).

Accordingly by drawing on the extant literature of resistance and state crime outlined in this chapter this research will provide an examination of the contemporary role of TCS, or movements of resistance in shaping how state crimes and cultures of denial are confronted. Central to this are broader questions that considers what, if anything, TCS *should* do- at whether, and under what conditions, it is desirable for TCS to play a significant part in making the decisions that shape the future for all of us. In understanding how movements of resistance are able to define, label and sanction state crimes this chapter has also explored the extant literature on transitional justice. Transitional justice mechanisms – including trials, truth commissions and hybrid tribunals- have become firmly entrenched in what scholars have described as a ‘tool-kit’ for successful post-conflict recovery (see Kent, 2012). It is now commonly assumed that, by establishing individual accountability for human rights violations, and initiating truth-seeking and reconciliation programmes, individuals and societies will be assisted to ‘come to terms’ with the violent past that in turn will aid states make the transition to a more peaceful, stable, liberal democracy (see Kent, 2012). Set against this backdrop, this research will explore the importance of truth, recognition and memory as key elements of justice that have been neglected in the extant scholarship. As was explored in this chapter, the extant scholarship on transitional justice suggests that truth-telling is an important component of justice. Accordingly this thesis seeks to fill the extant gaps in transitional justice discourse by exploring how victims, impacted communities and whole societies impacted by state crimes and cultures of denial are able to come to terms with the past through alternative mechanisms like citizens’ tribunals. Byrnes and Simms (2013, p.741) have argued, pursuits of truth “offer qualitatively different types of justice.” This suggests that by prioritising the search for truth and recognition as key elements of how justice is conceptualised, victims can experience contentment in ways that are arguably non-

existent in contexts of denial and silence. As Cohen (1995, p.19) argues, one of the driving factors underpinning truth telling is the centrality given to the “special sensitivity of victims.” This is particularly apt for victims who perceive themselves as having been silenced or unacknowledged. Finally this research will also explore how acknowledgement and recognition of past harms can potentially have “a deterrent effect that will weaken potential support for future repetition of the same abuses” (Cohen 1995, p.19). As these issues have seldom been explored in the criminological and sociological literatures on international criminal justice, this research will attempt to address these gaps. In doing so, it is necessary to adopt an interdisciplinary approach that draws on discussions of historical records and memory-justice to consider the role of memory, recognition and truth in fulfilling the needs and aims of justice.

## **Chapter Three** **Theoretical Framework**

### **A study of power: action, ideology and discourse**

Implicit within this analysis are key theoretical frames that can be used to explore contemporary manifestations of civil resistance such as citizens' tribunals. To address this thesis' research questions, a Gramscian (1971) perspective of hegemony was particularly beneficial to interrogate how citizens' tribunals are able to partake in acts of counter-hegemony to challenge the historical record of the Iraq War. This chapter will outline some key analytical frames and concepts that are integral to developing the study of civil resistance to state crime. In accordance to the arguments made by state crime scholars (see Green & Ward, 2000, 2004; Rothe, 2009; Kramer & Michalowski, 2005), analysing resistance to state crimes needs to consider the power, and potential of civil society to resist the state. To discuss power and explore how it has been used by states and its actors to help reinforce the depth of their decision-making powers and overall legitimacy, this chapter will explore a Gramscian perspective of hegemony (see Gramsci, 1971) which highlights how power can oscillate between the state and civil society in ways that generate counter-hegemonic acts of resistance.

This thesis presents a study of power that build upon the arguments of Fairclough (1989; 2000) where the relationship between power and language can be understood. To ascertain how "language contributes to the domination of some people by others [the state]," (Fairclough 1989, p.4), it is necessary to first discuss state legitimacy, power and authority. A Gramscian perspective of hegemony is a beneficial analytical frame to use in studies of civil resistance and counter-memories. Drawing on Gramsci's (1971) ideas on wars of position, this analytical lens can be used to explore the content and impact of counter memories and the emergence of citizens' tribunals. As counter-memories have emerged to resist the historical record and public memory of the Iraq War, this thesis will accordingly explore the relationship between power and language.

### **3.1 A distinct space of resistance: the state versus civil society**

To study how citizens' tribunals surface to resist states responsible for the Iraq war, this research has drawn upon various conceptualisations of the state and civil society. State crime scholars, such as Green and Ward (2000) and Rothe (2009), for example, have pointed to the legitimacy of states and its actors to make decisions on behalf of its subjects (civil society) as an important barrier in addressing the criminality of states. Also relevant to the civil society-state relationship is international relations. Dash (2001) and Muller (2006), for example, argue that the state exists within civil society—suggesting that there is a dialectic relationship between these two realms. To explore how counter-memories can emerge as expressions of counter-hegemony, the dialectic relationship between the state and civil society must first be understood. Scholars, such as Shockey (2015), who study civil resistance—including its forms and impacts—have suggested that it is through activism and reinforcement of democratic principles that social movements from civil society are able to emerge to challenge states. Accordingly, this section will begin with a discussion on how the state and civil society has been conceptualised within the thesis so as to consider the impact a dialectic relationship can have in creating spaces of resistance.

#### **3.1.2 The legitimacy of states**

The modern state is the accepted model of political order, wherein the state is represented by a central political organisation of actors who are given the power to set and enforce binding rules over its citizens. The legitimacy of a state to rule is the basis upon which modern states operate. The acceptance of a state's legitimacy by individual non-state actors, coupled with its promotion by state actors and state-affiliated organisations, has come to affect the global governance of justice. To understand how state actions, such as the waging of war, is understood, interpreted and collectively remembered, it is necessary to first begin with a discussion of the state. As a starting point, it is important to recognise the unique position that states occupy, especially in the context of waging wars. The capacity of states and their actors to make the decision to wage war on behalf of its citizens indicates that the state exists in a unique space characterised by their power over others. In the context of war, states are able use their hegemony over civil society to generate consent “which is secured by the diffusion and popularization of the world view of the ruling class” (Bates 1975, p.352). As the scholarship on state crime has consistently identified, it is the state's ability “to do things...that if anyone else did would constitute violence and extortion” (Green & Ward

2000, p.3). Using a Gramscian (1971) perspective of hegemony, this thesis will explore the interaction of power and language in considering how discourses of war can be used as a tool to maintain the consent of civil society. Because states occupy unique, dominant spaces, state actors and state-run organisations are conferred with the power, legitimacy and authority to make decisions on behalf of a collective—civil society. Consequently, this section will explore the legitimacy of states as it has been conceptualised within this thesis. Through use of a hegemonic lens, it will consider how states are able to maintain their domination over civil society to legitimate their decision to initiate war.

Legitimacy refers to “a quality that is conferred upon a political entity by those who are subject to it” (Bellina et al 2009, p.3). In this way, legitimacy assumed by states and its actors helps control “the people bound up [within its territory],” (Migdal 2001, p.15), and exercise “considerable control over the conduct of its citizens” (Silva 2014, p.16). States are also characterised by their monopoly of force, and the control they exercise over their ‘subjects’(Weber, 1964)<sup>1</sup>. Within the framework of state crime, monopolising the use of force has consequences rooted in how crimes of aggression are investigated and prosecuted. The scholarship on resistance to state crimes has identified ‘legitimacy’, as an issue that affects the labelling of states as criminal. States are in the unique position to be able to implement legislation on behalf of its citizens. The legitimacy assumed by state actors to make decisions suggests that wars, for example, could be permissible in specific situations in which these actors would not be prosecuted under international law. The legitimacy assumed by state actors, as representatives of a government, has led some state actors to operate in ways that may violate international laws, free from judicial censure (see Sorensen, 2001; Green & Ward 2004; Barak, 1990). States that use arguments of national security as a basis for violating international laws are rarely sanctioned by the international community. These actions can impact global justice in a way whereby the sovereign authority, and legitimacy of western states to act in ways it deems in the national interest is inherently respected, and not easily challenged.

---

<sup>1</sup> Though Weber (1964) is often quoted in regards to the states’ ‘monopoly of force’, prior observations that use these same words are also provided in the writings of Frederick Engels and V.I. Lenin (see ‘What is to be done’ (1902)).

<sup>2</sup> *Primus inter pares* is a Latin phrase meaning ‘first among equals’.

<sup>3</sup> The hegemonic powers assumed by the US can be traced back to the beginning of the Persian Gulf

From a normative perspective, legitimacy points to the validity of political decisions and political orders which in practice certifies and reinforces the superior position of state actors over its subjects (Zurn 2005, p.136). However it is when states fail to “act in accordance to the rules [and laws] it has established for itself and its citizens” (Green & Ward 2004, p.3), that the legitimacy of the state can be compromised leading to acts of civil resistance. Legitimacy is a complex issue and from the perspective of civil resistance it can be used to better understand how power is disseminated and concentrated in the hands of some actors over others. As Zurn (2005) has argued, legitimacy and the power of states is conferred upon it by civil society and it is civil society’s acceptance of the political decisions and orders, that imbues state representatives the power to act “under the guise of the state” (Zurn 2005, p.136). This in turn suggests that the political legitimacy of the state is underpinned by the social values and beliefs held by civil society. In this way, civil society imbues states and its actors with power and authority. As Weber (1964, p.382) has argued, “the basis of every system of authority” is founded upon society’s compliance to the state’s political decisions and actions; which can also enhance the “prestige” of those exercising authority. As the modern state operates on the basis of conferred legitimacy and authority it is therefore important for the state to establish rules and laws that accord to collective shared beliefs, for without this a state’s legitimacy and political authority can deteriorate.

### **3.2 A macro analysis of hegemony: constructing a world order**

Any discussion of hegemony must perhaps nearly always begin with the political theories of Karl Marx (1859) as they have influenced the writings of Antonio Gramsci (1971; 1995). Writing on revolutions and struggles between the bourgeoisie and proletariat classes, Marx (1859 cited in Suchting 1982, p.160) argued that “in the social production of life people enter into specific relations which are necessary and independent of their will.” The “relations of production” he argued, was “the real base on which a legal and political superstructure arises and to which specific forms of social consciousness respond” (Marx 1859 cited in Suchting 1982, p.160). In Marxist philosophy, the bourgeoisie (or ruling class) exercises power by accumulating capital wherein “the mode of production of material life” can be used to sustain the capital held by the ruling class (Marx 1859 cited in Suchting 1982, p.160). Importantly it was the ‘political superstructure’ identified by Marx (1859) that Gramsci (1971; 1995) reappraised to differentiate between two “floors” described as political and civil societies (Bates 1975, p.353). Civil society was conceptualised as comprising “private organisms-

schools, churches, clubs, journals and parties- which contribute in molecular fashion to the formation of social and political consciousness” (Bates 1975, p.353). Political society, on the other hand, is composed of those public institutions- the government, courts, police, and army- which exercise “direct dominion” (Turin 1966, p.9). Gramsci (1971; 1995) argued there are imbalances of power amongst actors where political society can maintain their dominance over civil society through exercise of hegemony. The performative function of hegemony can therefore influence ‘culture’ that is identified by Gramsci (1971; 1995) as a site through which powerful elites legitimise their power and secure consent from the subordinated.

Gramsci’s ideas on ‘hegemony’ has been interpreted in many ways within many different disciplines. His ideas are not only relevant for understanding the civil society-state relationship but also for studies of international relations where some powerful states are perceived to be global hegemons. Cox (1983, p.162) for example argued that “Gramsci geared his thought consistently to the practical purpose of political action.” This is relevant to studies of international relations - and world order more specifically-because culture is a space “where social conflicts can take place” or “where hegemonies of the social classes can be built” (Cox 1983, p.162). In the context of world order, Cox (1983, p.171) argues that states “become hegemonic” when they are able to establish and “protect a world order which was [accepted by other states] to be universal in conception.” Waltz (1979) uses the arguments of Gramsci in application to international relations to hypothesize the structural characteristics of world order in terms of the international system of states and the world/economy system. Gill (1993, p.22) argues that “in international studies the Gramscian approach is an epistemological and ontological critique of the empiricism and positivism which underpin the prevailing theorisations.” As he insists, the “historicism of Gramsci’s approach can be used to acknowledge “historical changes” that are a “consequence of collective human activity” (Gill 1993, p.22).

In broad terms hegemony can therefore be associated with qualities of leadership and dominance where power holders can “persuade the population to accept...[certain] values” (Gramsci 1999, p.504). The impunity associated with the Iraq War has created a situation where actors from civil society felt compelled to actively resist the injustices associated with the war. Where anti-war demonstrators expressed this dissent through protest and demonstration, citizens’ tribunals have instead chosen to adopt an organizational structure

allowing them to once again act in a collective way. For studies of the political role of memories, a Gramscian perspective of hegemony is also beneficial for its discussion of ‘common sense’. Defined as “an artificial construct that ultimately serves the purposes of the ruling class” (Walton 2016, p.11), Gramsci (1971) argues that ideologies can expand and transform into ‘common sense’ that is readily and widely accepted. The ability of hegemons to promote a specific ideology that transforms into ‘common sense’ ways of thinking or remembering is argued by Gramsci (1971, 1995), to be a significant power that only the ruling class possess.

On a macro level, hegemony can also be used to explain the existing world order that sees hegemonic power concentrated in Western states like the United States (US) and the United Kingdom (UK). Owing to the dominance of hegemonic states within international relations, a hierarchical world order has emerged where “one power is truly *primus inter pares*<sup>2</sup>” (Wallerstein 1984, p.3). A hegemonic state can therefore, “impose its rules and its wishes in the economic, political, military, diplomatic and even cultural arenas” (Wallerstein 1984, p.3). The imposition of these rules and wishes on other states in the international community helps hegemonic states promote ideas that are transformed into common sense. In accordance with this, other scholars such as Cox (1983), has argued that power is a product of ideas, institutions and material interests aligned with the states. Therefore, western states who assume the role of hegemon of the international community are able to construct a unique world order that is “universal in conception”, leading other, non-hegemonic states to perceive this order as one that “most [if not all] states find compatible with their interests” (Cox 1983, p.171-172).

Through management of the international system and the broader world order, a hegemonic state can utilize its power in malevolent and/or benevolent ways. When hegemonic power is used in a benevolent manner hegemons can generate stability within the world order; consistent with global peace and security. However, when hegemonic power is applied malevolently significant imbalances emerge within international relations and global governance. Understanding the complexity of this hegemonic world order is particularly crucial for the purposes of this research because it argues that the dominance and power of the US and UK during the time of the 2003 Iraq invasion has stymied global justice. Here, the

---

<sup>2</sup> *Primus inter pares* is a Latin phrase meaning ‘first among equals’.

“concentration of power” (Clark 2011, p.1424) in the hands of the US since 1990<sup>3</sup>, has created “a structure of values and understandings about the nature of order.” The promotion of a specific structure and order within international relations suggests that some ideas and values have been promoted as universal and therefore become accepted as a common sense way of thinking. The acceptance of this “natural order” (Cox 1996, p.151) has helped to sustain dominance and leadership of the US and UK within the international community whereby these states are able to act unilaterally and make decisions on behalf of all global citizens. In practice this has also skewed the international system in such a way that has consistently protected US and UK state actors from judicial censure.

The agency of hegemonic power in shaping the current world order of states can also be used as an analytical frame to explore the Eurocentric nature of international laws. Wojczewski (2018, p.37) argues that when international laws are enforced, they have imposed “a particular order on the world through the fixation of meanings and identities.” This suggests that hegemony exercised through powerful states like the US integrates different actors into a common political project by presenting their identities and interests as equivalent, thereby constituting a collective meaning-system and a hegemonic subject with seemingly universal experiences, values and interests (Wojczewski 2018, p.37). For example, international justice and human rights are today global issues that are universal in nature; that is all states, have to varying degrees promoted these issues both nationally and internationally. However as was explored within the literature review, the persistency of Eurocentric elements within international laws has served to protect powerful states from criminal prosecution for international crimes because of their hegemonic position. Accordingly, as a component of ‘hegemonic stability theory’ this perspective suggests that international justice is impacted by the fact that “the hegemon [have] the ability to shape norms, rules and institutions of the international system” (Knight 2014, p.293). In this way, as hegemony continues to be concentrated in the hands of a few states, these states can assume the intellectual and moral leadership of the international community. As Rupert (1995, p.43) has argued, “for that kind

---

<sup>3</sup> The hegemonic powers assumed by the US can be traced back to the beginning of the Persian Gulf Crisis of 1990. In justifying the US invasion of Kuwait in 1990, George Bush Snr warned that because “the test we face is so great,” “we must [act] together to defend civilized values around the world.” Recalling that “this is the first assault on the new world that we seek”, Bush Snr affirmed the US was pursuing its aggressive foreign policy in Kuwait because “America and the world must defend common vital interests; America and the world must support the rule of law” and “that there is no substitute for American leadership” (Bush Snr., 1990).

of leadership to develop in a world order setting there has to be a convergence of interests and attitudes” where elements of hegemonic power “become embedded in institutions of global governance.” Hegemony has therefore come to impact *how* and *when* international laws are applied, able to influence global justice in ways that sustains the power of hegemonic states. The permeation of US hegemonic power globally can be traced back to the end of World War II where the US, as victors were central players in the Nuremberg Trials. Wallerstein (1984) has argued that it was during this period that the US achieved hegemonic status because as central actors in the prosecution of the former Nazi regime, it was able to operate more efficiently than other powers. The absence of challengers has therefore allowed the US to “steer the international system a particular direction” (Knight 2014, p.295) that has had significant impact for global justice.

### **3.2.1 A hegemonic struggle between political and civil societies**

For studies of civil resistance against state crimes understanding the agency and impact of hegemony is crucial for exploring its significance on a macro-level where acts of resistance emerge to challenge hegemonic power. Scholars such as Bratton & Van de Walle (1994), Moore (2014) and McAdam, Tilly and Tarrow (2001) have argued that civil society can function as a check on state power. While such arguments are relevant to understanding how acts of civil resistance can emerge to challenge states, it is based on a simplistic understanding of civil society that promotes its autonomy as a sphere of influence overlooking the complex relationship that exists between the state and civil society. Gramsci (1971) conceptualised civil society as a ‘third sphere’ consisting of a wide variety of organizations, operating between the state and the market (Gramsci, 1999). From a Gramscian perspective acts of resistance and revolution emerge when intellectuals from the subject classes form a new ‘historic bloc’; that is when individuals form alliances with others to resist hegemonic capitalist rule (Gramsci 1971, 1995). Those using a Gramscian understanding of the state stress the fluidity of relations between political and civil societies, where political society (the state) plays a key role in shaping civil society and vice-versa. Viewed in this way hegemonic power adopts aspects of fluidity that suggests it can be challenged and negotiated through acts of resistance in specific contexts. Focusing on the fluidity of relations between political and civil societies opens up important insights for understanding the way power is exercised across and between these spheres. As hegemony and power is concentrated to those actors within the ruling classes of political society, acts of

counter hegemony emerge when civil societies rise up to challenge the state (see Gramsci, 1971). The anti-war demonstrations against the 2003 Iraq invasion, can be characterized as an act and expression of counter hegemony that saw millions of individuals attempt to resist the hegemonic power of the US to initiate a war.

The scholarship on state crime and social movements has understood civil society as a distinct space to that of the state (see Green & Ward, 2004; Della Porta & Diani, 2006; Colas, 2002; Tester, 1992). Adamson (1987, p.320) for example, defines civil society as a distinct “space between large bureaucratic structures of state and economy” and the “private sphere.” Building upon this, Colas (2002, p.9) notes that civil society has come to be associated with an “arena of our social and political lives that stand *outside* the control of the state” (*emphasis added*). It is the separation of civil society from the state that has led scholars to surmise that it is a “crucial battleground” (Cox 1999, p.27) for contestation, and acts of resistance against the state. However though these characterisations have merit for understanding civil resistance, conceptualizing civil society as entirely separate from the state is too simplistic and fails to take into consideration the modern-day complex and dialectic relationship between the state and civil society. As Walzer (1995, p.23) has argued, isolating civil society from the state is problematic because the “state can simultaneously create the sphere of civil society, whilst also occupying a separate space within the sphere.” In a modern context, the boundaries between civil society and the state are “blurred” (Nielson 1995, p.44), where the state and civil society have come to be inseparable realms that form a continuous whole. Here Migdal’s (1998) model of ‘state *in* society’ offers some useful insights that highlight the complex relationship between the state and its subjects. Through the ‘state in society’ approach the state is seen as a *part* of civil society, distinguished by its “special role that sets [it] apart from other social groups” (Lambach 2004, p.3). Most importantly as noted by Migdal, Kohli and Shue (1994, p.2), the ‘states in society’ lens highlights the process in which “states may help mould [civil society], but they are also continually moulded by, the societies within which they are embedded.” Migdal (1988, p.28) argued that society is not a monolithic entity, but “a melange of social organizations” such as families, clubs, companies or clans so that the state is but one organization among this multitude of communities. As Lambach (2004, p.12) reminds us, it is a “largely forgotten fact that the state does not exist outside or above society, but that it is a part of society, where these two institutions constantly influence and reshape one another.” To enrich studies of civil resistance and to acknowledge the complex interaction between the state and civil

society, it is important to re-conceptualize our understanding of the state versus civil society in ways that supports what Whitfield (2002) argues requires the simultaneous study of both.

To simultaneously study political and civil societies as envisioned by Whitfield (2002) this thesis will use a Gramscian lens of hegemony to consider how discourses of war and historical records constructed and managed by states can be resisted. Acts of civil resistance are hegemonic struggles that can emerge when civil societies initiate a war of position against states. The public and counter-memory associated with the Iraq War is arguably a contemporary hegemonic struggle marked by a war of position over memories and historical records between state and non-state actors (see Gramsci, 1971). This hegemonic struggle according to Bates (1975, p.360) emerges “on a mass scale” when non-state actors gain a “critical understanding of oneself... [that] comes through the struggle of political ‘hegemonies’, of opposing directions.” In the context of civil resistance it is “the awareness of being part of a definite hegemonic bloc” that leads civil society to use its “progressively higher self-consciousness” to act in resistive ways (Turin 1966, p.11). Public opinion is therefore strictly linked to political hegemony where, as Gramsci (1971) has argued, power oscillates between political and civil societies. The legitimacy of states to make decisions to initiate war can therefore be explored through use of a hegemonic lens. The oscillation of hegemony between the state and civil society is a complex interaction “between consensus and force” (Bates 1975, p.363). One way in which states maintain their domination over those within civil society is through use of discourse. As Turin (1966, p.158) has argued, when “the state... wants to initiate an unpopular action, [they] preventatively create the adequate public opinion” that serves to maintain their hegemony. In this way, to explore how power has interacted with language to create a public memory of the Iraq War this research will consider how states are able to “organize and concentrate certain elements of civil society” (Turin 1966, p.158).

### **3.3 A micro analysis of hegemony: constructing knowledge and discourse**

An important contribution of this research is the study of counter-memories and how it has been used as a vehicle through which civil society can resist the state. As part of this research understanding the influence of hegemony on discourse is another important analytical frame to outline here. This section will explore hegemony on a micro level, and study the discourse associated with the Iraq War. Central to this discussion of hegemony is again, the work of

Antonio Gramsci (1971; 1995) including his ideas on ‘wars of position’. A central component of this section is its discussion of power and language that builds on the arguments of Fairclough (1989, p.2) where critical discourse studies (CDS) must identify the “common-sense assumptions, which are implicit in the conventions according to which people interact linguistically.”

As counter-memories have emerged to resist the historical record of the Iraq War it is necessary to acknowledge the historical elements of this research. The manifestation of counter-memories suggests that memories and the way we remember an event like the Iraq War can be contested over time. To explore this we must begin with a brief discussion of memory, specifically collective memory that has served to reinforce the power of power-holders over a period of time. To assess how memories can be contested over time, it is beneficial to begin with Halbwach (1992) and his conceptualization of ‘collective memory’. He argues that all memories are formed and organized within a collective context. As Pennebaker and Banasik (1997, p.4) note, this understanding of memory leads to the conclusion that “virtually all events, experiences and perceptions [are] shaped by individual’s interaction with others.” In this way, collective memories are formed and shaped within social contexts, where memories are guided by the “social mechanism of language” (Pennebaker & Banasik 1997, p.4). As language is itself a social act (see Pennebaker & Banasik, 1997), translating events or images into language affects the ways they are thought about and recalled. Viewed in this way the use of language has the potential to shape discourses, including discourses of war that this research seeks to interrogate.

Hegemony is also relevant to understanding how discourses, or collective memories, are formed. For Gramsci, language is both an element in the exercise of power, and a metaphor for how power operates (Ives 2004, p.101). In this way power as it manifests within language or discourses can be seen in the ways in which debate is opened up or shut down in various contexts (see Donoghue, 2013), voices included or excluded (see Van Zoonen, 1994). Gramsci (1971, 1995) has argued that discourses play a role in helping to develop and maintain hegemonic power where discourse and language can be used by the ruling class as part of its broader hegemonic project to maintain control over civil societies. States and their governments are therefore able to use the power imbued on individual state actors by civil society to help it shape and manage how socio-political events like the Iraq War are remembered over time. Hegemony in the context of collective memories, therefore involves

the promotion and dominance of a particular set of ideas, where individual state actors are able to construct a united bloc characterized by consensus.

The ideas of Gramsci (1971, 1995) are beneficial to understanding how counter memories of war have emerged to resist against the power of states. As hegemonic power is performed in ways that help to sustain the dominance of state actors over civil societies, understanding how this manifests within constructions of discourses is important to understanding how discourses can be challenged. In resisting the discourse of war promoted by state actors civil societies act in counter-hegemonic ways highlighting that discourse, and memories can emerge as sites of counter-hegemonic action where power can be contested. As part of this counter-hegemonic process civil societies are able to transform “mere opposition into morally and politically meaningful acts” (Giroux 1983, p.106). By exploring how counter-hegemonic acts have emerged in the context of the Iraq War, counter-memories constructed by citizens’ tribunals are arguably contemporary site of resistance where memories and discourses are negotiated by state and non-state actors.

### **3.4 The Transformative Power of Social Movements**

The connection between resistance and civil society is neither alien nor new. Resistance is an oppositional activity that presupposes, “where there is power, there is resistance” (Foucault 1978 p.95). For Foucault (1984), resistance to power and hegemony can emerge discursively or, in terms of social practice. As civil society is widely accepted as an important counterweight to state crimes, or an arena of resistance, non-state actors are therefore able to oppose the state through various ways including militantly or other approaches that range between civil (non-aggressive) and aggressive (Green & Ward 2013, p.34). Drawing on what Stanley and McCulloch (2012) have identified as an important element of resistance-opposition- this section of the theoretical framework will discuss how the state and civil society have been conceptualized in this research. As citizens’ tribunals have been purposefully constructed to resist the silence and denial associated with the Iraq War, they are forms of resistance where movements or civil society organizations (CSOs) have inserted themselves into a wide range of decision-making processes on issues from international security to human rights to the environment (Florini, 2000). For studies of state crime, CSOs are often identified as having an important role in defining, labelling and resisting state crime (Green & Ward, 2004). The two examples explored in this thesis reflect what Risse (2000,

p.178) has identified as a “profound change in the underlying principles of international society.” Citing the arrest of Auguste Pinochet under principles of universal jurisdiction and the resignation of former Indonesian President Suharto as noteworthy signs of change, Risse (2000, p.178) argues that the norms and human rights standards activists promote, have “circumscribe[d] the power of governments and have “profoundly transform of national sovereignty.” Drawing on the key frameworks that have been used to study social mobilization, a primary task of this research is to identify how CSOs like citizens’ tribunals are able to further our understanding of transitional justice where societies come to terms with the past and counter denial by acknowledging and labelling an event like the Iraq War a state crime.

In seeking to develop a taxonomy of citizens’ tribunals this research explores the dynamic relationship between civil society and the state that give rise to movements of resistance. The role of civil society as a “force that can control state criminals” (Green & Ward 2004, p.186-7) has been well documented in studies of state crime (see also Green & Ward, 2013; White, 2008; Lasslett, 2012). Movements of resistance are potentially effective means to investigate, expose and resist crimes of the powerful because they are “*outside* dominant power networks” (Lasslett 2012, p.144). In *Social Movements and Organization Theory*, Davis et al (2005, p.2-3) present an overview of the divergence of two fields of studies- organizational studies and social movements. For instance, both fields have begun to emphasize analyses of context for studies of organizations, and social movements. In the case of organisational studies, analyses have shifted to institutional logics and the institutional fields in which organizations are embedded. In the case of social movements, the dominant focus has been on the role of the broader political environment in shaping the emergence and development of movements (see Davis et al., 2005). There are many similarities between organizational theory and social movement theory, where both have studied social change. Organization theory, for example, is concerned with explaining how organizational practices evolve in path dependent ways. Similarly social movement scholars discuss how the already existing repertoires and tool kits inherited from the past contribute to the evolution of movement structures and strategies (Campbell, reference?). A social movement according to McAdam, Tarrow and Tilly (1996, p.21) can be defined as a form of “sustained interaction between mighty people and others lacking might.” These interactions are forms of ‘contentious politics’ where those who lack power, (ie. non-state actors) “challenge existing powerholders

in the name of a population whose interlocutors declare it to be unjustly suffering harm or threatened with such harm” (p.21).

This research concentrates on what McAdam, Tarrow and Tilly (1996) label as ‘dominant-subordinate relations’ created by the presence of substantial inequality among protagonists. The relationship between civil society and the state is complex and can emerge in various ways in both local and global contexts. As civil society is an important counterweight that is able to regulate and control the behaviour of states, calculating the weight and effect of resistance movements is a complex task that must distinguish between local and global movements. Local or ‘grassroots’ movements are typically found in a national context. The Coalition for RECOM is an example of a local initiative implemented by civil society that sought to address the war crimes and other serious human rights violations committed in six countries (Slovenia, Croatia, Macedonia, Bosnia and Herzegovina, Serbia and Montenegro) (Rowen 2012, p.687). However it is on the global stage that movements are increasingly active, able to have some success.

A broad field of studies of global civil society, has seen the growth of ‘transnational civil society’ (TCS) defined here as “contacts, coalitions and interactions [form] across state boundaries that are not controlled by the central foreign policy organs of government” (Nye and Keohane 1971, p.331). The stories of how TCS has emerged has been well documented amongst scholars who have charted various shifts in advocacy and activism that are increasingly global in scope (see for example Price, 2003; Risse, 2000; Florini, 2000). Many different terms have been used to define TCS including non-state actors, non-governmental organizations (NGOs), transnational advocacy networks, transnational or global civil society and so on. Khagram, Riker and Sikkink (2002, p.580) usefully distinguish between transnational networks, coalitions and advocacy campaigns, and social movements, which respectively involve informal transnational contacts, coordinated tactics, and the mobilization of a large numbers of people in protest.” Much of the literature on TCS has been developed by investigating civil society one country at a time focusing on the status of national civil society (see Tarrow & Acostavalle, 1999; Newell, 2000). While these studies have made important contributions to exploring the organization of movements, including identifying their networks, aims and strategies, very few scholars have yet tackled the question of what, if anything transnational civil society should do- at whether, and under what conditions, it is desirable for TCS to play a significant part in making decisions that shape the future? In the

context of state crimes, attempting to answer these questions can have important implications in helping communities come to terms with the past. Importantly, it can also provide some insight on the role civil society could, and perhaps should have, in controlling the state. This research will accordingly address these questions, considering how TCS has resisted against the state, and what implications this can have in “circumscribing the power of governments” (Risse 2000, p.178).

Civil society has a significant regulatory role in controlling and circumscribing states. In particular where states and state actors act in a manner that egregiously violates socially accepted values and beliefs, civil society has demonstrated an ability to resist and challenge the state with significant impacts. An example of this can be seen within the revolutionary uprisings throughout the Middle East in 2010, colloquially referred to as the ‘Arab Spring’ where several civil uprisings emerged to challenge “sclerotic, illegitimate and brutal” (Byman 2011, p.9) states such as Libya, Egypt and others. In this example non-state actors from civil society has demonstrated the power of resistance (and of civil society more broadly) to directly challenge repressive policies, mass corruption and the unresponsive and stagnant social policies adopted by states and state actors (Friedrichs, 2013). The events of the Arab Spring, and other acts of civil resistance against the state supports what the scholarship on civil resistance and social movements have concluded; that civil society is a space where struggles, resistance and uprisings against the state can manifest (see Colas, 2002; Tester, 1992). As De Heredia (2012, p.80) has argued, civil society is a “fruitful site of resistance” where alliances and solidarities among all non-state actors can subvert and affect the domination of the state.” Moreover this suggests that civil society is focused on “overtly political concerns, such as relations between authorities and subjects, the dynamics of obtaining and exercising social power, and processes of constructing and embedding norms and rules” (Scholte 2014, p.323). Within the context of state crime this conceptual foundation can be used to analyse the regulatory role of civil society to define “state actions as illegitimate [when] they violate legal rules or shared moral beliefs” (Green & Ward 2004, p.4).

To measure the success of individual movements, studies of social movements have often focused their analysis on outcomes or changes in the socio-political landscape (see Della Porta & Diani, 2006; Lounsbury, 2005; McAdam & Scott, 2005). However it is important to acknowledge that resistance is not about a win or lose activity, and as Stanley and McCulloch

(2013) have argued, losses can be just as important as wins. As Margadant (1979, p.267) states “some innovations lead to dead ends, either because they fail to inspire people or because they are too easily repressed.” Even in situations where resistance is thought to have failed for its inability to initiate tangible change in socio-political structures, movements of resistance remain significant for they are able to “influence, mitigate or even constrain state policies and actions related to state crime” (Friedrichs 2010, p.9). Furthermore, Tilly and Tarrow (2007, p.128) suggest, social movements of resistance have three kinds of effects including: (1) direct impact of social movement campaigns on public policies, (2) effects of participation in claim-making campaigns on the lives of activists, and (3) outside campaigns, effects of involvement in the social movement base on political contention in general. In a contemporary context where hegemonic power continues to influence the application of international laws in ways that impede global justice, social movements seeking to resist state crimes can influence how historical events are remembered. Although citizens’ tribunals are restricted to symbolic outcomes, the absence of global justice for crimes of aggression like the 2003 Iraq invasion, allows these social movements to promote and advance global justice by making permanent evidence of state crimes. In doing so citizens’ tribunals, as a contemporary form of social resistance to state crime, can be assessed for its ability to initiate positive social, and political change in situations where it is perceived to be required (Santoro & McGuire, 1997) and/or how it changes “how audiences perceive and evaluate state actions” (Vasi & King 2012, p.591).

Social movements are also impacted by ‘political opportunity structures’ that can either “facilitate or inhibit a political actor’s collective action” (Tilly & Tarrow 2007, p.49). As social movements often emerge and operate within politicised and highly charged environments (see Vasi & King, 2012; Morris, 2000; McAdam et al., 1996; Giugni, 1998; Armstrong & Bernstein, 2008) the political environment within which these movements emerge, often “determines whether [they] are able to develop in the first place” (Vasi & King 2012, p.444). As Meyer (2004) argues, the actions of activists (or challengers) are dependent on the existence of a specific political opportunity. Della Porta and Diani (2006, p.196) argue that in protesting against the state, social movements are “eminently political.” As such, political opportunity structures are therefore important determinants that shape the potential success or failure of social movements. Through use of a sociologists’ conceptualization of ‘political opportunity’ (see Meyer, 2004; Tilly & Tarrow, 2007) studies of civil resistance to the state needs to consider the wider socio-political contexts that influence movements. The

contexts through which movements emerge can “provide incentives for people to undertake collective action by affecting their expectations for success or failure” (Tarrow 1994, p.85). Furthermore, Armstrong and Bernstein (2008, p.74) argue that for social movements, it is the political environment within which it emerges can either strengthen its position relative to states, or marginalize and devalue the movement, rendering them ineffectual in challenging state actors. As such social movements are simultaneously “influenced by, and influenced first and foremost [by] the political system” (Della Porta & Diani 2006, p.196). Studies of social movements have theorized that “the greater the number of actors who share political power (the greater the checks and balances), the greater the chance that social movements gain access to the system” (Della Porta & Diani 2006, p.196). What can be inferred from this is that social movements are also influenced by the availability of resources that can be drawn upon to solidify its networks, processes and overall messaging. Accordingly state institutions, government organizations, and the broader political context can have a significant role in shaping opportunities for action; able to influence not only the *form* of resistance that emerges, but also its overall impact (Piven & Cloward, 1979). To succeed social movements must therefore navigate a complex system in which external political factors shape movement impacts. The emergence of political opportunities are central considerations in the ‘political process model’ conceptualized by Giugni (1998). This approach considers the effect of external political factors can have in shaping movement impacts and therefore points to the system of alliances that can be formed within movements and the state itself. The political process model argues that the effectiveness of the movement depends on the ability to engage in bargaining activities within their allies and opponents within the state (Burnstein et al., 1995). Based on this, movements that are able to form relationships with the state or its actors are more likely to be successful in initiating changes in state thinking or policies.

Mass mobilization theory suggests that there is a process through which individual actors can be energized, perhaps mobilized to act in collective ways. Morris (2000, p.448) argues that movements have historically emerged within contexts of “mass enthusiasm and highly charged emotions” where feelings of enthusiasm and anger can be capitalized upon. Social movements that emerge within these contexts are able to engage the public more effectively, able to garner widespread support for change. Of particular interest to this thesis are the arguments of Meyer and Tarrow (1998) who contend that the institutionalization of social movements involves the transformation of contentious politics that involve tactics such as protest into more conventional forms of political action such as lobbying. By understanding

the processes associated with mass mobilization, this thesis will consider how social movements like the global anti-war demonstration of 2002-2003 against the Iraq War transition and develop to become institutionalized forms of resistance such as citizens' tribunals. These ideas suggest that citizens' tribunals are arguably by-products and outcomes of mass mobilization and institutionalization of movements.

Moreover as scholars studying social movements have argued, the bigger the network of actors, the greater the chance of movement success (see Della Porta & Diani, 2006; Davis et al, 2005). One crucial element that can impact the breadth of a movements' network is the framing of social and/or political issues that can be seized upon by movement actors to connect individuals and/or organizations to its cause. The concept of framing itself delineates the lens through which certain issues like that of global justice can be used to foster unity and cohesion within the movement's network. Goffman (1974, p.21) defines frames as "schemata of interpretation" that helps actors reduce sociocultural complexity in order to perceive, interpret, and act in ways that are socially efficacious. In particular, as Morris (2000) has noted, the use of moral frames that evoke universal ideas like human rights can allow movements to form wider networks of actors. Social movements use framing in a tactical manner to generate meanings intended to mobilize potential adherents, or to demobilize antagonists" (Kulakevich 2014, p.898). Benford and Snow (2000, p.614) argued "frames help to render events or occurrences meaningful and thereby function to organize experience and guide action." Social movement frames stress challenging ideologies and conflicting beliefs and values (see Stryker, 1994). These frames are typically conceptualized as malleable, highly strategic devices that facilitate collective mobilization (Lounsbury 2005, p.75). The choice of framing adopted by social movements, is therefore a crucial factor to consider because it fosters a shared understanding of the world that can have universal appeal amongst civil society (both nationally and internationally). In particular it is within a global context where movements pursue issues such as human rights, global justice, environmental protections etc., whereby framing can unite movement actors transnationally, and help to legitimate and motivate their collective action.

## **Conclusion**

As has been explored within this theoretical framework hegemonic power has shaped the world order and the global governance of justice in ways that give rise to impunity for

crimes of aggression. The hegemonic power exercised by the US and UK has served to insulate these states from judicial accountability for the crime of aggression perpetrated during the Iraq War. Moreover the power and legitimacy of the modern state has affected the formation of collective memories, which are often selectively constructed based on the interests of the state. The ability of states to construct and manage how political events like the 2003 Iraq invasion and war are remembered brings attention to the impacts of legitimacy and authority imbued within the state and its actors. Accordingly social movements that emerge to challenge state managed memories of events like the Iraq War are expressions of counter-hegemony where civil society opposes and challenge the state. In this way, the counter-memories constructed by tribunals including the WTI and KIWCT are doing the work of counter-hegemony, allowing resistance to manifest in this unique way. This chapter has also provided a discussion of social movement theories including: political opportunity theory, mass mobilization theory and framing, as useful guides to analyse the WTI and KIWCT. These theories have identified key characteristics embedded within all social movements that can be used as an analytical frame to assess the significance of citizens' tribunals.

## Chapter Four

### **Methods and Methodology**

#### **A study of discourse: power, knowledge and identity**

The analysis of civil resistance to state crimes presented in this thesis explores various memories of the Iraq War that have been presented by various groups over time. To explore how discourses and memories can be used to sustain the hegemony of states and state actors over those in civil society this chapter will discuss the analytical methods used to assess the public memory constructed by George W. Bush and Tony Blair, contrasted against the counter-memories presented by The World Tribunal on Iraq (WTI) and The Kuala Lumpur War Crimes Tribunal (KLWCT). This analysis of power and language draws on various other studies of this nature, like that of Riggins (1997), Fairclough (2000) and Wodak (2006). These scholars have explored how language and power interact within political discourses including, how “language contributes to the domination of some people by others” (Fairclough 1989, p.233). Using critical discourse analysis (CDA) as a primary tool of investigation this thesis will explore how language can be used as a vehicle through which non-state actors representing civil society have engaged in a counter-hegemonic struggle with the state and state actors. Discourse is defined by Wodak (2006, p.195) as a “complex bundle of simultaneous and sequential interrelated linguistic acts, which manifest...within and across the fields of action...very often [presented] as texts.” Drawing upon this definition of discourse this chapter will discuss three separate data sets of texts, and how they were analysed to assess the construction of public memories, and counter-memories of the Iraq War.

This chapter is divided into four sections. It begins with a discussion of the CDA and DHA approach utilised in other studies of power and language. By drawing on a Gramscian (1971; 1995) understanding of counter-hegemony in which wars of movement and wars of position are determinative factors that shape revolutions, this research will consider how citizens’ tribunals and counter-memories can be found within this paradigm. This chapter details the data used in this research to assess the construction of the counter-memories by the two tribunals. It explores the performative function of language whereby “spoken or written

utterances constitute the performance of speech acts such as promising or asking or asserting or warning” (Fairclough 1989, p.9). This research’s data set includes twenty-six transcripts of public speeches made by George W. Bush and fourteen made by Tony Blair. It also includes published works relevant to The World Tribunal on Iraq (WTI) and The Kuala Lumpur War Crimes Tribunal (KLWCT). These include:

1. Kuala Lumpur Foundation to Criminalize War (KLFCW) 2013?<sup>4</sup>, *Fact Book*, KLFCW, Kuala Lumpur
2. Kuala Lumpur War Crimes Tribunal (KLWCT) 2011, ‘*Reports of Judgements, Advisory Opinions and Orders (including noted of proceedings) Case No.1-CP-2011 Kuala Lumpur War Crimes Commission v. George W. Bush & Anthony L.Blair Judgement of 22 November 2011*, Kuala Lumpur Foundation to Criminalise War, Kuala Lumpur
3. Kuala Lumpur War Crimes Tribunal (KLWCT) 2012
4. Sokmen, M.G (ed) 2008, *World Tribunal on Iraq: Making the Case Against War*, Olive Branch Press, Massachusetts.

To study the language and discourse associated with the Iraq War, this research makes extensive use of the term ‘text’ that Halliday (1978) and Fairclough (1989) use to represent “written texts and ‘spoken texts’.” The term ‘spoken text’ refers to “what is said in a piece of spoken discourse”, and can also include “written transcription” (Fairclough 1989, p.24). Through use of the CDA and DHA approaches, by which discourse and language can be analysed, this chapter details the ‘steps’ taken in analysing textual data. It acknowledges that power within discourse allows language to be used as a tool to form ideologies and identities that, within civil society-state relationships, creates an imbalance of power.

#### **4.1 Discourse: power and language**

CDA has become a well-established field in recent decades (see van Dijk, 2006; Fairclough, 1989, 2000; Wodak, 2015), and has been a useful analytical tool used by scholars to interrogate language in both oral and textual forms. Power within discourse can be used to

---

<sup>4</sup> The exact year this ‘Fact Book’ was published is not clear. On the advice of Rod Rizzi (Librarian at Matheson Library) it was suggested that the referencing of this resource needed to me marked by a ‘?’ to represent the unknown year of publication. The year 2013 was identified as the latest year within this published book and therefore it was assumed that the Fact Book was at the very least published in that year. Accordingly all further reference to this Fact Book as a resource used in this thesis will show a year of publication with a ‘?’, as per advice given.

perpetuate imbalances of power amongst various groups including the ‘state’ and ‘civil society’. van Dijk (1993, p.249) describes CDA as the study of relations between discourse, power, dominance and social inequality. Fairclough (1995, p.1) builds on this, arguing that “CDA is a framework, theory and a method for exploring language in its relation to power and ideology.” In a recent study of the CDA approach, Fairclough et al (2011, p.357) argue that CDA may be best viewed “as a problem-oriented interdisciplinary research movement, subsuming a variety of approaches, each with different theoretical models, research methods and agendas.” This perspective of CDA is beneficial because it recognises the interdisciplinary nature of many CDA studies that often start with a social problem or a research topic (such citizens’ tribunals and counter-memories). This perspective uses the topic as a prompt for data collection and analysis. CDA studies generally draw on language-based data and can include textual, visual or auditory forms of data that can be used for studies of political discourse. This is relevant to this thesis as the CDA approach seeks to identify the complex ways in which language can be used to influence how discourse and knowledge is constructed and managed over time. Accordingly, this section will outline some key benefits the CDA approach offers to studies of political discourse. Consequently, it will ascertain how citizens’ tribunals and their counter-memories can challenge the hegemony and public memory of the Iraq War constructed by state actors.

#### **4.1.1 Discourse and identity**

Studying identity and how it is constructed is an important in the study of political discourse. As Chilton and Schnaffner (2011, p.304) have argued, political discourses use ‘rhetoric to engage in the art of persuasion. Language, according to Chilton and Schaffner (2011, p.303) is a means of doing politics that can lead to “the construction of social groups.” The aspects of political language, according to Fairclough (2000, p.6), are as follows:

1. Leaders’ communicative style
2. Discourse associated with a social or political group with which voters can align or dis-align
3. The way language is used in the process of governing, in relation to legitimating policies and decision-making processes.

As “political discourse [can be] based on the strategic use of political keywords for achieving political aims” (Qaiwer 2016, p.48) the CDA approach is a beneficial tool to understanding

how language is used by various actors to form ideologies, or ways of thinking about perceived social-political issues.

#### **4.1.2 Discourse and ideology**

Most narrative theorists emphasise that we live in a ‘story telling society’ (Denzin, 2000) and that every individual’s life is a story with important events; the sense of which is made clear through society. Through one’s own story-telling, an individual comes to define his/her own identity. In the context of political discourse, language can be used as an argumentative tool where specific narratives are actively promoted over others to create an ideology or way of thinking about an issue. Language is therefore an important strategic tool used by states and its actors as “the primary medium of social control and power” (Fairclough 1989, p.3). However as hegemony is not static and able to oscillate between the state and civil society over time, individuals from civil society can engage the state and state actors in a ‘war of position’ to promote a particular ideology that represents their interests and position. Described by Gramsci as “the only viable possibility [for radical change] in the West”, a ‘war of position’ is a term that refers to resistance to domination within culture (Gramsci 2007, p.168). Wars of position are important foundations for social change, that Cox (1983, p.165) describes as a process which “slowly builds up the strength of the social foundations of a new state” by “creating alternative institutions and alternative intellectual resources within existing society.” In this way understanding how language, discourses and narratives have been negotiated amongst political and civil society actors can be used to analyse the construction of ideology or ways of thinking of the Iraq War as they have been presented in the public memory of states, and the counter-memories of the WTI and KLVCT.

#### **4.1.3 The discourse historical approach (DHA)**

As ‘memory’ is a term that can be used to refer to history or a historical record, it is important to discuss the historical discourse analysis (DHA) approach as it holds great relevance to this analysis. Mythen (2014, p.34) states “the historical analysis...seeks to reveal fluctuations in knowledge, discourses, and power over time and space.” In the context of political discourses related to the Iraq War, the DHA is also beneficial for revealing the “persuasive, propagandist, populist, manipulative character of discursive practices” of states (Reisigl & Wodak 2001, p.32). In order to reflect on the memory of the Iraq War constructed over a period of time between 2002 to 2007 this research will use archives of texts where

public and counter-memories have been constructed by state actors, and non-state actors. The DHA was developed primarily by the work of Ruth Wodak (2009; 2015) and other scholars, who situate this approach within the broader fields of inquiry associated with CDS and CDA (see also Reisigl & Wodak, 2001, 2009). The first study for which the DHA was developed, analysed the constitution of anti-Semitic stereotyped images as they emerged in public discourses in the 1986 Austrian presidential campaign of former United Nations General Secretary Kurt Waldheim, who for a long time had kept secret his national-socialist past (Wodak et al., 1990 cited in Wodak 2015, p.1). The DHA created by Wodak et al (1990) is characterized by its problem-oriented interests where various theories and methods can be “combined wherever integration leads to an adequate understating and explanation of the research object” (Wodak 2015, p.2). Secondly, and most important is the interdisciplinary nature of the DHA that allows the research to “move recursively between theory and empirical data” (Wodak 2015, p.2). Interdisciplinary research of this nature has been defined by Klein and Newell (1998, p.393-4) as “a process of answering a question, solving a problem, or addressing a topic that is too broad or complex to be dealt with adequately by a single discipline or profession.” The fluid analytical approach of DHA enables this research to use any method, theory, technique or tool to illuminate the question or problem under review. To address this thesis’ research questions and simultaneously fill a gap in knowledge of citizens’ tribunals and counter-memories, this research adopts a fluid analytical approach that “draws on [various] disciplinary perspectives and integrates their insights through construction of a more comprehensive perspective” (Klein & Newell 1998, p.394).

Advocates of this approach highlight the existence of a dialectic relationship between certain discursive practices and fields of actions, situations, institutional frames, and social structures (Wodak et al. 1999, p.7-8). Using the DHA approach, Weis and Wodak (2003, p.22) have identified a dialectic relationship between discourse and action, whereby, as they have argued, “contextual settings form and influence discourses which [in turn] affects...social and political processes and actions.” Therefore, in order to understand the phenomena under scrutiny, CDA analysts responsible for developing the DHA perspective considered different sources of data from various analytical perspectives. As Wodak (2011, p.40) has argued, discourses are “primarily topic-related” and hybrid in that a “new sub-topic can be created at some points.” As the DHA approach has developed over time, and as scholars have contributed to the growing body of CDS within which the DHA is situated, advocates of this approach have established a set of criteria to guide data collection and analysis. In accordance

with this criterion, data is collected in a restrictive manner that focuses on the factors: specific periods of time, specific political units, specific actors and discourse, specific fields of political action, and specific semiotic media and genres (see Wodak, 2009). In this way, DHA can be used to account for a variety of context-dependent practices within specific fields of action.

## **4.2 Data collection and design**

This section will outline specific types of data—or texts—used and how they were obtained. It will be divided into three sections that speak to the groupings of texts used in this research. The first section discusses the use of online archives by which repositories of texts and transcripts of Presidential and Prime Ministerial speeches could be obtained. These speeches concentrate on two former Heads of State because they had been identified by these citizens' tribunals as principal actors responsible for the Iraq War. This will be followed by a discussion of an edited published book by Muge Gursoy Sokmen (2008) titled *World Tribunal on Iraq: Making the Case Against War*, in which the WTI has memorialised into text fifty-five testimonies and conclusions made by its Panel of Advocates and Jury of Conscience. It will end with a discussion of the KIWCT, focusing specifically on how this data was obtained and what key texts were used to study this specific tribunal.

### **4.2.1 An archive of speeches: George W. Bush**

To understand how power can influence discourse, public speeches made by former Head of State George W. Bush are relevant texts to consider in the framework of public memory. Using the arguments of Gramsci (1971) on hegemony and discourse, as well as the arguments of Fairclough (1989) and Wodak (2006) as advocates of the CDA, this section will outline the public speeches used, how they were obtained, and why they were selected.

A total of twenty-six public speeches made by George W. Bush were selected to assess the discourse constructed by state actors in promotion of the Iraq War. These speeches spanned a period of three years, from 20 January 2001 to 7 October 2004, where George W. Bush referenced the threat of Iraq and Saddam Hussein as a global concern that needed to be addressed. These were obtained from an archive of American Presidential Speeches.<sup>5</sup> This

---

<sup>5</sup> See <https://georgewbush-whitehouse.archives.gov/index.html> for full archive.

specific period of time was chosen for its relevancy to the Bush administration which led the Iraq military campaign. It was during this particular period that George W. Bush spoke about the global threat of Iraq under the leadership of Saddam Hussein. A broad search on the American Presidential Speeches Archive, using search parameters including keywords ‘Iraq’ and ‘Saddam Hussein’, yielded a total of twenty-six speeches. Table 1 details these speeches, when they were made, and the topic or context in which they were given.

**Table 1:** George W. Bush speeches on the threat of Iraq and Saddam Hussein

<b>Year</b>	<b>Date</b>	<b>Topic and/or contexts</b>
2001	20 January	Presidential Inaugural Address
	16 February	The President’s News Conference with President Vicente Fox of Mexico in San Cristobal, Mexico
	23 February	The President’s News Conference with Prime Minister Tony Blair of the United Kingdom at Camp David
	31 July	Notice to Congress on the Continuation of Iraqi Emergency
2002	2 October	President, House Leadership Agree on Iraq Resolution
	7 October	President Bush Outlines Iraqi Threat
	10 October	Remarks on House of Representatives Action on the Resolution Authorizing the Use of Military Force Against Iraq
	16 October	President Signs Iraq Resolution
	22 November	Joint US-Russia Statement on Iraq
2003	6 February	President Bush: ‘World Can Rise to this Moment’
	16 March	Statement of the Atlantic Summit: A Vision for Iraq and the Iraqi People
	17 March	Address to the Nation on Iraq
	18 March	War Ultimatum speech from the Cross Hall in the White House

	19 March	Address to the Nation on Iraq
	23 March	President Discusses Military Operation
	8 April	Joint Statement by President Bush, Prime Minister Blair on Iraq's Future
	10 April	President's Message to the Iraqi People
	11 April	Remarks Following a Visit with Troops Wounded in Operation Iraqi Freedom and an Exchange with Reporters in Bethesda, Maryland
	28 April	President Discussed the Future of Iraq: Remarks on Operation Iraqi Freedom in Dearborn, Michigan
	1 May	President Bush Announces Major Combat Operations in Iraq Have Ended: Address to the Nation on Iraq from the U.S.S. <i>Abraham Lincoln</i>
	22 May	President's Statement on U.N. Vote Lifting Sanctions on Iraq
	23 July	President Bush Discussed Progress in Iraq: Remarks by the President with the Secretary of Defence and the Presidential Envoy to Iraq
	20 November	US/UK Declaration on Iraq: Declaration on Iraq by President George W. Bush and Prime Minister Tony Blair
2004	19 March	President Bush Reaffirms resolve to War on Terror, Iraq and Afghanistan
	23 September	The President's News Conference with Prime Minister Ayad Allawi of Iraq
	7 October	President Bush Discussed Iraq Report

#### 4.2.2 Tony Blair speeches: consolidating the threat of Iraq and Saddam Hussein

In addition to the public statements of George W. Bush, the public statements of Tony Blair are also relevant to this research. A reason for this is that the counter-memories of the WTI and KIWCT have also identified Tony Blair as a responsible actor that should be held accountable for the Iraq War. Therefore it is important to acknowledge the type of language used by Tony Blair that helped to support and consolidate the war agenda expressed by George W. Bush. Each of the transcripts associated with these speeches were also obtained from an online archive associated with the British newspaper - *The Guardian*<sup>6</sup>. Using the same broad search parameters that was used to select the transcripts of George W. Bush's speeches, the second step of this analysis used keywords 'Iraq' and 'Saddam Hussein.' This search yielded a total of fourteen speeches where Tony Blair also spoke of the need for war. The texts contained within these fourteen speeches spanned from 22 April 1999 to 10 May 2007. In these transcripts, Tony Blair also expressed similar concerns to that of George W. Bush including for example, the threat of weapons of mass destruction in Iraq that needed to be confronted. To broadly interrogate how state actors have used language in specific ways to influence public memories it was important to utilise the speech transcripts of Tony Blair to interrogate how the 'perception and understanding [of events] is likely to be affected by others in the conversation' (Pennebaker & Banasik 1997, p.7). Table 2 outlines the specific speeches made by Tony Blair used for this research and details when, and in what context, they were made.

**Table 2:** Tony Blair speeches on Iraq and Saddam Hussein

Year	Date	Topic
1999	24 April	Prime Minister's Speech to the Economic Club of Chicago, Doctrine of the International Community

<sup>6</sup> See <https://www.theguardian.com/politics/tonyblair> for full archive.

2001	14 September	Speech to the House of Commons
2002	8 April	Speech at the George Bush Senior Presidential Library
	10 September	Speech to the Trades Union Congress in Blackpool
	1 October	Speech at the Labour Party Conference in Blackpool
2003	26 February	Tony Blair's Commons Statement on Iraq
	18 March	Emergency Motion on Iraq
	19 March	Prime Minister Tony Blair's speech opening today's debate on the Iraq crisis in the house of Commons, as released by 10 Downing Street
	18 July	Tony Blair's speech to the US Congress
	30 September	Prime Minister's Speech to the 2003 Labour Party Conference in Bournemouth
2004	5 March	Prime Minister's Speech on Iraq, Sedgefield
	24 September	Speech to the 2004 Labour Conference in Brighton
2006	26 September	Tony Blair's speech: text of the Labour leader's valedictory speech to the party conference
2007	10 May	Tony Blair resignation speech at Trimdon Labour Club, Sedgefield

Utilising a total of forty speech transcripts outlined in Table 1 and 2, this research considers how public memories are constructed and managed by state actors. Within these public speeches, George W. Bush and Tony Blair consistently spoke of specific issues that they argued warranted the use of military force against the sovereign state of Iraq. Building on other studies of political discourse (see for example Fairclough, 1989; Wodak, 2006; Bandlien, 2013), this analysis of the public memory associated with the Iraq War sets out to identify the 'sociolinguistic conventions' of state actors where 'power is exercised in conversation and other forms of talk.' Through analysis of the discourse of war presented in the speech transcripts of these former Heads of State, this analysis of public memories will consider the performative role of language that can reproduce a social and political order that

suits the interests of those in power. To explore the performative social role of language in constructing identities and ideologies this research engages in a study of political discourse to show how state actors use public speeches to shape social reality.

Identifying and analysing these speech transcripts is an important step in the analytical process of this thesis because it establishes a foundation upon through which the public memory constructed by state actors can be contrasted against the counter-memories of the Iraq War. To address this thesis' research questions, and identify how counter-memories are constructed by citizens' tribunals it is necessary to begin with a discussion of the discourse and memory that had already existed. As memory plays an important social role in constructing identities and ideologies this research will explore the politics of memory, where the past can be mobilized for political purposes (see for example Boyarin, 1994; Loytomaki, 2014). In this way, this research engages in a study of political discourse where the statements of state and non-state actors can be analysed to understand how language can be used to form ideologies and ways of thinking about events like the Iraq War. This approach sheds light on the fluidity of memories where a conflictual interaction between different actors can change how we should understand and interpret the past (see Molden, 2016; Loytomaki, 2014).

Unlike other studies of resistance, this research has purposefully included a discussion of public memory that prioritises the narratives of violating states. This was done for two reasons. Firstly, by reflecting on the perspective of states in this research has helped contextualize citizens' tribunals. To identify how citizens' tribunals have filled a gap in accountability vis-à-vis the ICC, it was important to acknowledge the influential role of context in shaping the organization, aims and strategies of these Tribunals. This context is one where denials of state crime have created gaps in accountability that these Tribunals attempt to address. Secondly, by drawing on what had been said by George W. Bush and Tony Blair in relation to the Iraq War this helps the research establish an understanding of public memory, and how this has helped frame the analysis of the War presented in two counter-memories. Identifying the extant historical record or memory of the Iraq War was also beneficial because it laid the foundation through which counter-memories could be explored in the context of resistance. In other words, what was being expressed by civil society could be measured against the statements of state actors. As has been discussed in the preceding chapters, this thesis focuses on how memories are used to resist legacies of state

crime. The concept of hegemony, discussed in Chapter Three, will be used to explore how power manifests in discourse and how these discourses can be used to legitimate the conduct of states. It was therefore important to consider what both former Heads of State had said about the Iraq War, and how their narratives suppressed, silenced and ignored dissenting opinions. However taking an approach that prioritises narratives of violating states is not without its deficiencies. Importantly its inclusion in this thesis undermines what Lasslett (2012, p.145) argues as a need for state crime researchers to “engage with and support movements that resist state criminality.” In the field of state crime studies, taking sides has both a moral and a practical dimension. From a moral perspective, allying oneself to movements that seek to oppose and constrain state criminals would appear a principle approach for state crime research which aspires to a form of partisan objectivity (see Lasslett, 2012; Gouldner, 1973; Tombs & Whyte, 2002). However the alliance between researcher and movement can also have a complementary practical advantage that extends to the heart of the research process. Thus developing tools and methods of inquiry that are complementary to movements is an important step for state crime scholarship. In going beyond voices of resistance that includes voices of state actors, this research seeks to develop a taxonomy of citizens’ tribunals that can fill existent gaps in the literature. To address this thesis’ research questions it was therefore important to draw upon the narratives of violating states, for without it, this research could not understand the importance of context in shaping when and how citizens’ tribunals emerge as active sites of resistance against denial.

#### **4.2.3 Memorialising testimonies: The Istanbul hearing**

Another important source of data, relevant specifically to the WTI, is the edited work of Muge Gursoy Sokmen (2008) titled *World Tribunal on Iraq: Making the case against War*. In this published book, there are a total of fifty-five testimonial transcripts in which different members of a Panel of Advocates spoke of different issues related to the Iraq War. This is a significant source of data as it memorialised the discourse of the Iraq War promoted by the WTI in such a way that acknowledged various dissenting opinions used to broaden the historical record of the war beyond that of state perspectives. Within the 562 page edited book, there were an additional four testimonial transcripts made by Richard Falk (a representative of the Panel of Advocates) and Arundhati Roy (speaking on behalf of the Jury of Conscience) at the beginning and conclusion of the Istanbul hearing. The Istanbul hearing was the culminating session of the WTI; after two years of localised hearings on various

topics associated with the historical record of the Iraq War, final testimonies and evidence were given by a Panel of Advocates. As the Istanbul hearing was the most important for the WTI network, it was the final opportunity for its participants to contribute to the counter-memory of the Iraq War they sought to construct. Owing to the importance of the Istanbul hearing, the WTI drew on the fifty-five testimonies given by a Panel of Advocates who purported to represent, and speak on behalf of civil society. How these individuals were selected is however not known which presents an obvious limitation to this research that must be acknowledged. This researcher simply does not know the selection process of how the Panel of Advocates and the Jury of Conscience were convened. Using the arguments they have presented in testimonies memorialized in the *World Tribunal on Iraq: Making the case against War* (Sokmen, 2008) this thesis will explore what these actors have said in relation to the Iraq War. Through use of a Gramscian lens of hegemony it will consider how the counter-memory of the Iraq War and the specific narratives identified within these texts reflects what Gramsci (1971) described as ‘counter-hegemony’ where discourses and memories are can be contested by civil societies opposed to the state. At the Istanbul hearing, the contest between civil society and the state was divided into six distinct topics of inquiry, that were identified and presented by the WTI’s Panel of Advocates as having been key issues of debate, relevant to the public memory and historical record of the Iraq War. Table 3 outlines each of the fifty-five testimonies given by the Panel of Advocates. It identifies when they were delivered, what topic they covered or the context of the speech, and by whom it was given. How these topics were chosen are also not known to this researcher. This a limitation to this research because it restricts the analysis to what has been written and memorialized within a single text. Given that there were nineteen other hearings attributed to the activism of the WTI, attempts were made to incorporate their conclusions into this analysis. However as these hearings had been conducted on the local, grassroots level, obtaining data pertaining to their proceedings was difficult to obtain. This helped inform the methodology of the research, where written texts that were publicly available were the primary sources of data that would be used in this analysis of resistance.

**Table 3:** Summary of Istanbul testimonies

Topic	Testimonies
<p><b>Opening Speeches</b> (23 June 2005)</p>	<p>Opening Speech of the Spokesperson of the Jury of Conscience <i>Arundhati Roy</i></p>
	<p>Opening Speech on Behalf of the Panel of Advocates <i>Richard Falk</i></p>
<p><b>The role of international law and institutions</b> (23 June 2005)</p>	<p>The Illegality of Preventative Attack and Unilateral Use of Force <i>Phil Shiner</i></p>
	<p>The conduct of the UN before and after the 2003 invasion <i>Hans von Sponeck</i></p>
	<p>The history of US and UK interventions in Iraq <i>Larry Everest</i></p>
	<p>The doctrine of humanitarian intervention and the neo-colonial implications of its revival in our unipolar world <i>Jim Harding</i></p>
	<p>Empire's law and human rights as swords of empire <i>Amy Bartholomew</i></p>
	<p>Law's empire and empire's lawlessness: Beyond the Anglo-American law <i>Issa Shivji</i></p>
	<p>The violation of the will of the global antiwar movement as a crime against peace <i>Anthony Alessandrini</i></p>
<p><b>The responsibility of governments</b> (24 June 2005)</p>	<p>Turkey's situation and politics in the US's assault on Iraq <i>Baskin Oran</i></p>
	<p>The responsibility of Arab governments <i>Khaled Fahmy</i></p>

	The responsibility of European governments <i>Guglielmo Carchedi</i>
	The role of the “Coalition of the Willing” in the violation of international law and universal human rights <i>Walden Bello</i>
<b>The accountability of the media</b> (24 June 2005)	Economic-political connections of media <i>Saul Landau</i>
	Media wrongs against humanity <i>David Miller</i>
	The moral responsibility of war journalism <i>Mete Cubukcu</i>
	Media wrongs against truth and humanity <i>Jayan Nayar</i>
	The quest for an alternative media <i>Omer Madra</i>
<b>The invasion and occupation of Iraq</b> (25 June 2005)	Testimony on war crimes and the recent situation in Iraq <i>Dahr Jamail</i>
	The use of depleted uranium (DU) weapons <i>Akira Maeda, Sayo Satura and Koichi Inamori</i>
	The health effects of DU weapons in Iraq <i>Thomas Fasy</i>
	The UN and its conduct during the invasion and occupation of Iraq <i>Denis Halliday</i>
	Gender-based violence <i>Hana Ibrahim</i>
	The ruin of daily life <i>Eman Khammas</i>
	The conduct of the US army <i>Tim Goodrich</i>
	Detentions and prison conditions <i>Amal Sawadi</i>

	<p>Collective punishment <i>Fadhil al-Bedrani</i></p>
	<p>“Shock and awe” Therapy: How the US is attempting to control Iraq’s oil and pry open its economy <i>Herbert Docena</i></p>
	<p>The Iraqi legal system under occupation <i>Mohammed al-Rahoo</i></p>
	<p>The transfer of power in Iraq <i>Abdul Ilah al-Bayaty</i></p>
	<p>The privatization of war <i>Niloufer Bhagwat</i></p>
	<p>The occupation as prison <i>Nermin al-Mufti</i></p>
	<p>Covert practices in the US war on terror and the implications for international law: The Guantanamo Example <i>Barbara Olshansky</i></p>
	<p>Testimony on Falluja <i>Rana M. Mustafa</i></p>
	<p>Human rights violations and the disappeared in Iraq <i>Abdul Wahab al-Obeidi</i></p>
	<p>Human rights and the US/UK illegal attack on Iraq <i>Johan Galtung</i></p>
<p><b>Cultural heritage, environment, and world resources</b> (26 June 2005)</p>	<p>The destruction of cultural heritage: A report from the Istanbul initiative <i>Gul Pulhan</i></p>
	<p>Testimony on the destruction of cultural heritage <i>Amal al-Khedairy</i></p>
	<p>The economic implications of the war <i>Joel Kovel</i></p>

	<p>Environmental damage of military operations during the invasion of Iraq (2003-2005)</p> <p><i>Souad Naji al-Azzawi</i></p>
<p><b>The global security environment and future alternatives</b> (26 June 2005)</p>	<p>Militarism and the culture of violence</p> <p><i>Ay e Gul Altinay</i></p>
	<p>Gender and war: the plight of Iraqi women</p> <p><i>Nadje al-Ali</i></p>
	<p>Creating racism and intolerance</p> <p><i>Liz Fekete</i></p>
	<p>The militarization of economy and the economy of militarization</p> <p><i>Samir Amin</i></p>
	<p>The relationship between Iraq, Palestine and Israel</p> <p><i>Ahmah Mohamed al-Jaradat</i></p>
	<p>Polarization and the narrowing scope of political alternatives</p> <p><i>Wamidh Nadhmi</i></p>
	<p>Collateral damage: the Mexican example</p> <p><i>John Ross</i></p>
	<p>Human security vs state security</p> <p><i>Christine Chinkin</i></p>
	<p>Next steps for the peace movement</p> <p><i>Ken Coates</i></p>
	<p>Towards a new political imaginary</p> <p><i>Corinne Kumar</i></p>
	<p>Alternatives for an Alternative Future</p> <p><i>Biju Matthew</i></p>
	<p>The WTI as an alternative: an experimental assertion</p> <p><i>WTI Istanbul Coordination</i></p>
<p><b>Closing Speeches</b> (27 June 2005)</p>	<p>Closing Speech on Behalf of the Panel of Advocates</p>

	<p style="text-align: center;"><i>Richard Falk</i></p> <p style="text-align: center;">Closing speech on Behalf of the Jury of Conscience</p> <p style="text-align: center;"><i>Arundhati Roy</i></p>
	<p style="text-align: center;">Declaration of the Jury of Conscience</p>

It is important to acknowledge that this research has only used one piece of key text relevant to the WTI, and that data related to the Tribunal’s earlier hearings could not be obtained. Due to the localised, grassroots nature of the other nineteen hearings <sup>7</sup>, there was little evidence available within the public domain that could be found. Sokmen’s (2008) edited book was the only accessible source of data and was chosen because of this. This book was purchased from BookDepository.com in November 2016, and was used specifically because it memorialised testimonial speech into textual form that could facilitate the study of the WTI and the counter-memory it constructed. This research has not drawn upon other sources of data relevant to the WTI for the sole reason that none exist that could be obtained through public, non-restricted avenues.

#### **4.2.4 Published texts of the KLWCT**

A final source of data used in this research is the published materials obtained that were relevant to the KLWCT. These books were published by the Tribunal’s commission arm, The Kuala Lumpur Foundation to Criminalise War (KLFCW), and were obtained through a contact at the KLWCT that was established early in the project. Through communication via email in 2016 with Dr Yaacob Hussain Merican, a member of the KLFCW’s Board of Trustees, arrangements were made for a number of published works to be sent to Melbourne, Australia via post. The data related to the KLWCT used in this research included four specific published books including:

1. Case No.1 – CP – 2011: Kuala Lumpur War Crimes Commission v George W. Bush & Anthony L. Blair. Judgement of 22 November 2011
2. Case No.2 – CP- 2011: Chief Prosecutor of the Kuala Lumpur War Crimes Commission v George Walker Bush et al. Judgement of 11 May 2012
3. Charter of the Kuala Lumpur Foundation to Criminalise War (2008)

---

<sup>7</sup> See Appendix 1 for full list of WTI hearings.

#### 4. Kuala Lumpur Foundation to Criminalise War Factbook (2013?)

Within these specific texts are a combination of case transcripts, legislation and a general factbook outlining key issues relevant to both the KLFCW and KIWCT. The Factbook (2013?) was particularly beneficial for this analysis because it outlined the organizational structure of the KLFCW, the broad objectives they sought to pursue, and a brief overview of the Panel of Judges and the lawyers involved in proceedings at the KIWCT. The written statements presented in other published texts has documented what was said by the Tribunal's prosecution team, its judges and the amici curiae during Case No.1 and Case No.2. In addition to this, the Charter of the KLFCW (2008) was another relevant piece of text to draw data from as it outlines key issues, such as their jurisdiction and the rules of procedure and evidence that were relevant to understanding the machinations of this specific Tribunal. Within this text are statements of the Tribunal's jurisdiction and aims, as well as the rules and procedures adopted to guide its proceedings. The *Kuala Lumpur Foundation to Criminalise War Factbook* (2013?) was used specifically as a supplementary source of data to add to the breadth of text relevant to assessment of the KIWCT. The analysis of the KIWCT presented in this thesis focuses predominantly on the case transcripts of Case No.1 alongside the Central Charter of the KLFCW (2008). The Central Charter (2008) proved to be a beneficial resource to identify the organizations, aims and strategies used by the KIWCT. Furthermore the case transcripts of Case No.1 were used to assess how the KIWCT had presented the Iraq War as illegal by introducing written evidence to detail specific counter-memories of war.

### **4.3 Limitations of citizens' tribunals and constraints on memory**

Citizens' tribunals are most often criticized for the way they assume authority to adjudicate on matters of justice despite lacking formal authorization to do so. In the context of state crimes this criticism "comes with the territory" as they often emerge "along the boundaries between state and non-state authority" (Borowiak 2008, p.181). Tribunals like the WTI and KIWCT have derived authority from the growing political voice where, "narratives of justice are being actively renegotiated and reconstructed from below" (Kent 2012, p.201). These tribunals and the practices they adopt promote a highly personalized form of justice in the wake of conflict (Booth 2001, p.777) where victims and whole communities harmed by the state are given recognition. For the WTI and KIWCT these personalized forms of justice were memorialized as counter-memories, where voices of dissent and opposition to the Iraq

War could be publicly recognized. In the context of transitional justice, these counter-memories reflect what Kent (2012, p.182-182) has described as an ‘overtly political’ process where “competing viewpoints about which events should be remembered and how they should be memorialised” emerge. Given the volatile and precarious nature of memories, they can be interpreted differently over time and by various actors. The WTI for example, did not emanate from a single location or organization, but rather originated nearly simultaneously in several places around the world (Borowiak 2008, page?). This Tribunal described itself as a “horizontal network of local groups and individuals worldwide working together in a non-hierarchical system” (Borowiak 2008, p.177). As part of this network a series of autonomous national hearings were held around the world (see Appendix 1) that left considerable room for variation in the form, themes, size and procedures adopted at each hearing. This has important implications for the counter-memory they have constructed at Istanbul, because the loose oversight and minimal requirements to quality as a WTI session makes it difficult to know how the findings made by diverse tribunals with different agendas and standards of rigour were evaluated and collated (Borowiak 2008, p.178).

As the network of participants assembled by the WTI and KIWCT have varied in strength and scope this has important implications for the counter-memories of the Iraq War they have produced. The fact that these two citizens’ tribunals have purported to serve a public function where state crimes could be investigated and documented invites an array of questions about the soundness of their rationales and the credibility of their practices. As Borowiak (2008, p.178) pragmatically states, “merely calling [yourself] a tribunal and declaring that [you] work on behalf of humanity does not make such a group’s claims credible, any more than a state’s actions serve justice merely because a government says so.” Therefore to fully capture how counter-memories are able to confront denials of state crime in the context of the Iraq War it is important to identify some of the limitations of the WTI and KIWCT that has influenced what has been memorialized in their counter-memories. Firstly as these Tribunals have purported to speak on behalf of civil society the soundness of their rationales is to some degree shaped by the scope of their network of participants. The WTI for example was described by participant Richard Falk (2005 cited in Sokmen 2008, p.5) as “an initiative of, by, and for citizens to hold leaders accountable for severe violations of international law.” Similarly, the KIWCT drew authority and power to adjudicate cases of state crime from what they argued was a fundamental truth where, “the people, and the people alone who are clothed with the right to pass final judgement” (KIWCT Factbook 2013?, p.13). As will be

explored in Chapter Five the network assembled by each of these Tribunals included an eclectic mix of participants that can be broadly categorized as legal experts, academics, activists, and witnesses. Importantly as noted at the WTI, “everybody had different reasons to oppose this war” (Sokmen 2008, p.ix) whereby the counter-memory they have produced only memorializes the testimonies of those who participated at the final Istanbul hearing that neglect the testimonies and conclusions of nineteen other hearings.

A limitation of the KIWCT that will be explored in Chapter Five is its practice of holding *trials in absentia* that has undermined the credibility of its conclusions. As the KIWCT’s network of participants was hierarchical in nature, its participants had clearly defined roles as lawyers and judges. The adoption of a trial format where rules of evidence and procedure guided proceedings was argued to be credible based on the concept of ‘universal jurisdiction’ recognizing that “some crimes are so serious that any court anywhere is empowered by international law to try them and mete out the requisite punishment” (KIWCT Case No.1 2011, p.20). Universal jurisdiction is however seldom used by national courts as a justification for investigating and prosecuting state crimes, and its use by the KIWCT to symbolically prosecute George W. Bush and Tony Blair raises important questions regarding the legitimacy of their conclusions. Moreover it is widely accepted by scholars and legal practitioners that *trials of absentia* compromise the fairness of legal proceedings where defendants are absent and unable to mount an appropriate defence to charges. As will be explored in the chapters to follow, the one-sided nature of proceedings in the KIWCT’s Case No.1 and Case No.2 has compromised the strength of their counter-memory where no defence has been mounted to challenge the charges.

#### **4.4 The process: cycles of analysis**

This section provides a step-by-step description of the main procedures followed in conducting the present study. The CDA approach used in this research involves analysis that focuses on textual discourses of the Iraq War. More specifically, this research has been guided by the strategies developed by the DHA approach to discourse analysis, whereby positive and negative presentations (Reisigl & Wodak, 2001) can emerge through the analytical process. These strategies involve inclusion and exclusion, prediction, argumentation, mitigation, intensification, and discourse representation or strategies of framing (including, but not limited to reporting, narration and quoting of events and

utterances). This analysis focuses on the discursive construction of ideology and identity through the use of modality to express certainty or prediction. It also expresses the speaker's evaluation and degree of commitment to a particular proposition, evaluative and emotive adjectives, and other lexicogrammar markers used to justify a stance (Qaiwer 2016, p.90). Moreover, this thesis centres its analysis on the linguistic strategies and discursive frames used by state actors and non-state actors to legitimate a particular perspective on the Iraq War. It examines the presence of keywords in both George W. Bush and Tony Blair's public speeches on the Iraq War, as well as the keywords cited by the WTI and KIWCT within their respective counter-memories. It identifies how language can be used by state and non-state actors to negotiate the historical record on the Iraq War, as well as the overall discourse associated with this event. In doing so, this research aims to elicit a greater understanding of how language and words can be strategically used in contemporary context by non-state actors to promote a particular ideology and identity, which in some capacity was used, by the WTI and KIWCT to promote a form of resistance to the Iraq War. The following section will outline each of the steps used within this research to collect and analyse the aforementioned texts.

Like other scholars of CDS (see Fairclough, 1989), this research began with identifying a social problem, or phenomena in which knowledge was lacking. Using this as a starting point for data collection and data analysis, the analytical approach used was guided by key principles of the 'grounded theory' approach, by which the researcher is able to fluidly move "back and forth between collection, coding and analysis of data" (Emerson 1983, p.95). This broad, unrestricted approach was beneficial as it allowed the research to engage with a wide variety of academic literature to identify what other scholars had spoken of the phenomena of citizens' tribunals. The only piece of literature that could be identified in relation to citizens' tribunals was the published book by Klinghoffer and Klinghoffer (2002) titled *International Citizens' Tribunals: Mobilizing Public Opinion to Advance Human Rights*. Using this existent literature as a guide, the second step of the analytical process was to identify any and all relevant areas of study that could be used in an interdisciplinary manner to develop a nuanced understanding of citizens' tribunals. This research drew upon various other bodies of work, including social movements, civil resistance, state crimes, international criminal justice, international relations and discourse analysis. By engaging with various other disciplines beyond that of criminology, this research was able to identify the relevancy of

other published works that could be used to develop knowledge on the WTI and KIWCT specifically.

A third and critical step for this study of citizens' tribunals was obtaining data specific to the WTI and KIWCT. Once the published texts associated with these two citizens' tribunals were obtained, the next step was to code each of the transcripts. The coding process used a combination of two methods. The first involved using NVivo as a program that could help simplify the analytical process of identifying keywords within the texts. This program was specifically used as the starting point in identifying keywords, phrases or terms that were cited within the twenty-six speech transcripts of George W. Bush and fourteen of Tony Blair. Each of these individual speech transcripts were inputted into NVivo where specific keywords were identified. These included 'weapons of mass destruction'; 'terrorism'; 'terrorists'; 'terrorist networks'; 'Iraqi people'; 'global threat'; 'international security'; 'Saddam Hussein'; and 'Iraq'. At this point, a decision was made to overlook some of the keywords, including 'terrorists' and 'terrorist networks', so as to focus on the broad term of 'terrorism' that encompasses both actors and networks. It is important to note that NVivo's analysis of Tony Blair's speeches identified other keywords, such as "values of liberty, the rule of law, human rights" (Blair, 1999), WMD, and "the threat of chaos; disorder; instability" (Blair, 2003a).

The specific keywords identified through the NVivo process of coding was a significant moment that enabled this research to identify the discursive frames used by both former Heads of State to promote a particular way of thinking about the perceived threat of Saddam Hussein and Iraq. The use of these specific words, 'weapons of mass destruction', for example, helped build a discursive frame that, in the context of political discourse, was used to generate an ideology by which invasion and regime change was intimated as a necessity for global peace and security. Accordingly, to explore the process whereby language has been used as a tool by state actors to formulate ideologies, or ways of thinking about the Iraq War, this research will explore how keywords referenced by both George W. Bush and Tony Blair were used to promote a particular discursive frame. The identification of these discursive frames through the NVivo coding process led this research to identify specific narratives embedded within these speeches. These narratives were then analysed through oscillation back to the theoretical frame of hegemony as conceptualised by Gramsci (1971; 1995). The main reason for this choice draws upon the arguments of Fairclough (1989, p.2), who argued

that “the exercise of power in modern society, is increasingly achieved through ideology, and more particularly through the ideological workings of language.” Language and the specific narratives and ideologies promoted by state actors can facilitate consent of the masses that arguably leaves hegemony concentrated to political societies. Public opinion is, therefore, strictly linked to political hegemony. It is within the public domain that civil and political societies interact and where language and narratives are used to generate ‘consensus’ (Bates 1975, p.363). However, it is also a space in which acts of ‘force’ or revolutions (Gramsci 1971; 1995) can emerge in counter-hegemonic ways. Through use of this Gramscian lens, the narratives in support of the war expressed by George W. Bush and Tony Blair are examples in which political discourse can be used to maintain the domination of states over civil society.

Another important step to the analytical process of this research was its identification of specific themes or narratives, where George W. Bush and Tony Blair cited various reasons to justify the Iraq War. In going back to the extant literature on ‘social movements’, ‘resistance to state crimes’, and ‘international criminal justice’ it became clear that the keywords identified through NVivo coding, could be expanded further to formulate core themes or narratives that were central to the public memory associated with the Iraq War. This was an important step of the analysis that helped identify narratives that were used by George W. Bush and Tony Blair as argumentative devices in support of the war. As Charteris-Black (2014, p.17-18) state, speakers can use narratives “to establish key information” where the way facts are presented help frame whatever arguments might follow.” To identify the performative function of language, this analysis examines the way in which state actors use narratives and public memories as interpretive devices to maintain social control and power over others. In this way “specific narrative sequences” function “within wider narratives” to help storytellers make argumentative points (De Fine and Georgakopoulou 2011, p.97). The specific themes that were identified within the speech transcripts coded through NVivo are summarised in Table 4 below.

**Table 4:** Summary of themes within the public memory of the Iraq War

<b>George W. Bush (20 January 2001 – 7 October 2004)</b>	<b>Tony Blair (24 April 1999- 10 May 2007)</b>
Responsibility of hegemons	International security
WMDs	National interests
Ideals of freedom and liberty	Ideals of freedom and liberty
Global peace	Humanitarian concerns
Necessity	Links to terrorist organizations
Humanitarian concerns	WMDs
National security	Responsibility of hegemons
International Security	Global peace
Links to terrorist organization	

#### **4.3.1 Understanding counter-memories of the Iraq War: a comparative analysis**

This section will outline the analytical steps taken to assess the data obtained in relation to the WTI and KIWCT. It begins with an acknowledgement that counter-memories are inherently oppositional in nature and that they have specifically promoted alternative narratives to that identified within the speech transcripts of George W. Bush and Tony Blair. Therefore this research has selectively compared the speech transcripts of both former leaders measured against the published testimonial transcripts of the WTI’s final Istanbul hearing (and the KIWCT as will be discussed with greater specificity below). In doing so, it developed the research beyond a study of public memories to also consider how counter-memories are constructed as by-products of a growing consciousness of exploitative social relations (see Fairclough, 1989).

As was explored in Chapter Two, there are a number of gaps in the literature on global justice and social movements that this research serves to fill. In doing so, a key assumption made within the analytical process drew on the arguments of critical discourse scholars such as Fairclough (1989), Fowler (1996), van Dijk (1986) and Teubert (2010) on the relationship between power and language. As language and discourse are a component of social life many studies of CDA have identified some ways in which language can be used to sustain unequal relations of power (Fairclough 1989, p.1). Using the arguments of Gramsci (1971) on wars of

position, this research will explore how counter-memories allow civil societies to engage in a struggle over ‘knowledge’—including ideas and beliefs—to create a new form of hegemony. The idea of a counter-hegemonic struggle envisioned by Gramsci (1971) was an important basis for this part of the analytical process that led to a comparative analysis of a struggle between the public memory of the Iraq War pre-2005, and the counter-memory of the WTI (and KIWCT).

To present a comparison between the historical record of the Iraq War pre-2005 and the counter-memory of the WTI which emerged in 2005, the first step was to identify specific areas in the textual data where the aforementioned themes in Table 4 are referenced in the fifty-five WTI transcripts outlined in Table 3. In doing so, the analysis was restricted to themes outlined in Table 4, in order to emphasise the resistance and opposition of citizens’ tribunals and their counter-memories. Using a cyclical process of analysis by which the data and theoretical frame have interacted, the analysis of the WTI went beyond the six clearly defined Istanbul hearing topics, allowing the results to guide the analytical process. This permitted the research “to make sense and interpret phenomena” (Denzin & Lincoln 1994, p.1) where knowledge of counter-memories remains “shallow, fragmentary, incomplete or non-existent” (Punch 2009, p.123). Using the identified themes from the transcripts of speeches, and the 562 pages of text contained within Sokmen’s (2008) edited book, a number of specific testimonies were identified as having been in direct opposition to the narratives promoted by both former leaders. These testimonies are outlined in Table 5 below:

**Table 5:** Resisting the historical record of the Iraq War within the Istanbul testimonies

Theme	Testimonies
<p style="text-align: center;"><b>Global peace or International security</b></p>	<p style="text-align: center;">The Illegality of Preventative Attack and Unilateral Use of Force <i>Phil Shiner</i></p>
	<p style="text-align: center;">The conduct of the UN before and after the 2003 invasion <i>Hans von Sponeck</i></p>
	<p style="text-align: center;">The violation of the will of the global antiwar movement as a crime against peace <i>Anthony Alessandrini</i></p>

	The role of the “Coalition of the Willing” in the violation of international law and universal human rights <i>Walden Bello</i>
	Human rights and the US/UK illegal attack on Iraq <i>Johan Galtung</i>
<b>Responsibility of hegemons or National interests</b>	The history of US and UK interventions in Iraq <i>Larry Everest</i>
	Empire’s law and human rights as swords of empire <i>Amy Bartholomew</i>
	Law’s empire and empire’s lawlessness: Beyond the Anglo-American law <i>Issa Shivji</i>
<b>Humanitarian concerns</b>	The doctrine of humanitarian intervention and the neo-colonial implications of its revival in our unipolar world <i>Jim Harding</i>
	Testimony on war crimes and the recent situation in Iraq <i>Dahr Jamail</i>
	The use of depleted uranium (DU) weapons <i>Akira Maeda, Sayo Satura and Koichi Inamori</i>
	The ruin of daily life <i>Eman Khammas</i>
	Covert practices in the US war on terror and the implications for international law: The Guantanamo Example <i>Barbara Olshansky</i>
	Human rights violations and the disappeared in Iraq <i>Abdul Wahab al-Obeidi</i>
	The destruction of cultural heritage: A report from the Istanbul initiative <i>Gul Pulhan</i>

Using these fifteen specific testimonies, the next step of the analytical process was to identify passages of text in which dissent and opposition to the actions and statements of George W. Bush and Tony Blair were expressed by these speakers. For example, where George W. Bush and Tony Blair had spoken of their concern for the Iraqi people as an argument used to justify

the initiation of the Iraq War, Jim Harding (2005) specifically challenged this in his testimony titled: ‘The doctrine of humanitarian intervention and the neo-colonial implications of its revival in our unipolar world.’ Although this stage of the analysis was beneficial in identifying points of difference between the speech transcripts and the testimonial transcripts of the WTI, it was complicated by the fact that the breadth of data contained in Sokmen (2008) went beyond the scope of narratives that had been identified within the public speeches of both former leaders. As is discernible from Table 3, there are a number of transcripts that were not used because they were irrelevant to this comparative analysis. Another important decision that helped to synthesise the breadth of data was to use the themes outlined in Table 4 as areas of analysis in relation to the WTI’s counter-memory. This is not to say that the data from the unused testimonies is not relevant to understanding how the WTI sought to broaden the historical record of the Iraq War, but rather, for practical reasons this research was unable to explore each and every narrative to have emerged in the WTI’s counter-memory of the Iraq War. Furthermore, as this was a Tribunal that emerged to document the history of the war from the perspective of the “vanquished” (Roy 2005a cited in Sokmen 2008, p.2), the intimation of this identity as having represented the WTI as a whole, reinforced the importance of their opposition to the extant historical record of the war. The analysis of the WTI’s testimonial transcripts was selective in nature, focusing only on testimonies that directly challenged the existent narratives from the speech transcripts of George W. Bush and Tony Blair. The results of this analysis will be presented in Chapter Eight below.

The final stage of the analytical process focused on the second case study of the KLWCT. Using the published books of Case No.1 and some passages from Case No.2, the texts analysed were case transcripts. These transcripts included everything said by the prosecution team, the KLCT judges, and the *amici curiae* who were all involved in the Tribunal’s symbolic prosecution of individual state actors. Case No.1 was specifically against George W. Bush and Tony Blair for war crimes and crimes against humanity. Case No.2 was against George W. Bush and members of his administration, including Donald Rumsfeld, Richard Cheney, Alberto Gonzalez, David Addington, William J. Haynes II, Jay Bybee and John Yoo who facilitated the use of torture couched as an enhanced interrogation technique. Although the prosecution of torture by the KLWCT in Case No.2 was important in addressing the impunities associated with the Iraq War, the decision was made to omit the entirety of this published text to focus and ground the comparative discussion of the counter-memory on the

discourse constructed by both former leaders. In doing so, this research is grounded within the space of counter-hegemony and resistance, where emphasis is given to understanding the counter-memory and the specific ways it challenges the existent discourse or historical record of the Iraq War. Importantly, the analysis of this third set of textual data was guided by the extant results that had already emerged from the speech transcripts of both former leaders as well as the testimonial transcripts memorialised within Sokmen (2008). Therefore, it is important to acknowledge that the analysis of texts in Case No.1 was conducted in two stages. It began with a focus on the phenomenon of the counter-memory by analysing the specific issues the Tribunal challenged in relation to the Iraq War. The evidence presented in Case No.1 was able to highlight the specific narratives that this Tribunal sought to challenge.. By reading these transcripts with the existent themes in mind, it can be concluded that there were five key issues that were central narratives to the arguments of the KWLCT:

1. The power of the KWLCT, as one derived from the civic responsibilities of civil societies
2. The illegality of war under existent international laws
3. The Iraq War as a war crime and crime against humanity
4. A state-run campaign of misinformation and lies
5. The criminal culpability of George W Bush and Tony Blair.

Implicit within these five narratives are other issues relevant to the themes identified within the speech transcripts of George W. Bush and Tony Blair. For example, when both former leaders argued that there was a legal justification for the March 2003 invasion, the KWLCT's prosecution published in Case No.1 presented evidence to show that there was, in fact, no legal basis for the war.

The second stage through which the data in Case No.1 was analysed involved a comparative analysis with the WTI and the narratives it promoted at the Istanbul hearing. As these citizens' tribunals had emerged at different periods of time to resist the Iraq War specifically, it was important for the thesis to consider the similarities between the counter-memories produced by these two tribunals. Although these two counter-memories shared similarities in relation to the narratives they promoted, there were also some significant differences between the two. Drawing upon the frames of 'political opportunity structures' and 'mass mobilisation theory', the subsequent step of analysis focused on the structure of these two citizens' tribunals. These analytical frames are important because they have been identified as key concepts that can both facilitate and stymy social movements. Because citizens' tribunals

have emerged from the social movement against war, it is important to acknowledge that context and ideology are integral in shaping the potential success of these movements.

Another important source of data relevant to understanding the KLVCT as a citizens' tribunal is the Charter of the Kuala Lumpur Foundation to Criminalise War (2008) and the Kuala Lumpur Foundation to Criminalise War Factbook (2013?). The Charter (2008) was beneficial in understanding the jurisdiction of the KLVCT, its organisational aims, and the evidence and procedure it used within its symbolic prosecutions. The Factbook (2013?) was used to identify other relevant data, such as written speeches from its founder Tun Dr. Mahathir Mohamad, which could supplement the existing knowledge on this tribunal. The results of the textual analysis of these works will be outlined in Chapter Six below.

#### **4.5 A note on ethics**

When undertaking research, it is essential that ethical standards and approaches are understood and adhered to at all times. Research and ethical issues are seldom inseparable and the researcher needs to consider this matter when conceptualising their research design. As identified above, this research has used publicly available statements, presented in the form of published books, case transcripts and testimonial transcripts. This is data that has been made readily available to the public that greatly broadens the scope of this research. It is not bound by ethical considerations, such as confidentiality, which are paramount to qualitative research that involves human participants. This research adopts a CDA approach, whereby texts are analysed through an iterative, cyclical process, and are accessible to all. As a consequence, however, this means there are very few ethical considerations in the way the research is conducted.

#### **Conclusion**

This chapter has discussed the methods and approaches of CDS, through which discourse can be analysed to explore the interaction of power within language. It has provided an overview of the CDA and DHA approach to language analysis via its use in this study of two citizens' tribunals and their counter-memories. The interdisciplinary nature of this inquiry is one that began with identifying a social problem or phenomena. Using this as a starting point, a number of steps were taken to identify relevant methods, literatures or theories that could be

used to develop a nuanced understanding of the issue. Drawing on various bodies of work across multiple disciplines, this research draws upon the literature on social movements, resistance to state crimes and international criminal justice. This chapter has also outlined the specific sources of data used. This included twenty-six transcripts of speeches made by George W. Bush and fourteen transcripts of speeches made by Tony Blair. These texts were used to examine how language can be used to facilitate particular ideologies that were beneficial to the arguments of these powerful speakers. A second source of data is the published and edited book of Muge Gursoy Somen (2008) in which texts from the WTI's final Istanbul hearing were memorialised. In addition to the data on counter-memories obtained from this particular book, this research also drew upon published books from another citizens' tribunal: the KIWCT. Through use of NVivo as an initial tool of analysis, key themes and narratives central to this thesis were identified. These themes were then used as an analytical guide to show how the language and discourse of these two counter-memories differed from that presented by George W. Bush and Tony Blair. In doing so, the following chapters will outline the results of this comparative analysis. It will showcase how counter-memories have been constructed by these two citizens' tribunals, and the specific narratives of the Iraq War that were challenged and debated through a process of counter-hegemony, whereby, as Gramsci (1971) argues, ideas and knowledge can be contested.

## Chapter Five

### **Developing a taxonomy of citizens' tribunals: The World Tribunal on Iraq and The Kuala Lumpur War Crimes Tribunal**

The growing interconnectedness of people, organizations and states across territorial boundaries has had important consequences for the growth of civil society where networks of activists and advocates are being formed across territorial boundaries. Through a process that Price (2003, p.580) identifies as the '*transnationalization* of civil society' local forms of activism grow across 'territorial boundaries' becoming international in scope and focus. Transnational civil society (TCS) can include non-governmental organizations (NGOs), informal associations and loose coalitions. Importantly, they are distinguished from other forms of movements because they connect "across national borders", and are able to "insert themselves into a wide range of decision making processes on issues from international security to human rights" (Florini 2000, p.3). Many scholars have identified TCS as mechanisms of control, able to define, label and resist state crimes (Green & Ward 2004, 2013; see also Lasslett, 2012). This chapter will explore the emergence of two citizens' tribunals - The World Tribunal on Iraq (WTI) and The Kuala Lumpur War Crimes Tribunal (KLWCT)- exploring specifically what Price (2003) has identified as the transnationalization of civil society where various national movements such as the anti-war demonstrators of 2002-2003 have forged networks that cross national boundaries. To build on what Klinghoffer and Klinghoffer (2002) have developed on citizens' tribunals this research will explore two examples where organizations – citizens' tribunals - have made claims that challenge the power of states and state actors. In the context of state crime, the emergence of these two Tribunals reflects the growing role of TCS in shaping how we respond to state crime. The following section will discuss the organizational structure, network of participants and aims that the WTI and KLWCT have pursued. First, the chapter will present an overview of the WTI and KLWCT to establish some key facts. It will then be followed by a discussion of the organizational structure, organization, aims and legitimacy of the WTI and KLWCT. While there are many similarities between these two citizens' tribunals it is the different strategies adopted by the KLWCT that are particularly important to developing a taxonomy of citizens' tribunals. This chapter will accordingly explore the rules of evidence and

procedure adopted by the KLWCT to consider their legitimacy as a quasi-judicial Tribunal able to make symbolic judgements of guilt regarding the conduct of states and state actors.

## **5.1 The World Tribunal on Iraq**

In 2005 a ‘Jury of Conscience’ acting on behalf of all global citizens concluded that the voices of “millions of people [who had] protested the streets of the world” against the Iraq War has gone “unheeded” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.492). The WTI was formed to resist the unilateral attack on Iraq by the US and its allies. The Jury of Conscience declared that the Iraq War was an “attack on justice, on liberty, on our safety [and] on our future.” The WTI was active from 2003-2005 and was the first citizens’ tribunal that emerged to address the institutional silence and denial of state crimes associated with the Iraq War. Across this period a number of hearings were held in local national contexts where various activists opposed to the Iraq War conducted public inquiries into various aspects of the Iraq War. A full list of these hearings can be found in Appendix 1. The final Istanbul hearing is the most important, and the data presented here was obtained from the edited works of Muge Gursoy Sokmen (2008). The Istanbul hearing is important because the evidence and testimonies given by a Panel of Advocates was used to document the voices of “hundreds of people from around the world” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.492) who had all resisted and challenged the Iraq War in some capacity.

## **5.2 The Kuala Lumpur War Crimes Tribunal**

Another citizens’ tribunal that emerged in response to the institutional silence and denial of state crimes is the KLWCT. It was established in 2003 by Malaysian Prime Minister Tun. Dr Mahathir Mohammad to work alongside The Kuala Lumpur Foundation to Criminalise War (KLFCW). The two arms of the Foundation- including its Commission, and the Tribunal- exists and operates independently from the state and other established courts in Malaysia. The KLFCW was established “to investigate cases of war crimes that have been neglected by established institutions” (KLFCW Factbook 2013?, p.11). They purposefully pursued investigations and symbolic prosecutions of states and state actors, “to hold perpetrators of war crimes accountable for their actions especially when relevant international judicial organs fail to do” (KLFCW Factbook 2013?, p.11). In response to the failings of the

International Criminal Court (ICC) the KLFCW had the power and authority to investigate cases including war crimes, crimes against humanity, crimes against peace and genocide (Charter of the KLFCW 2008, p.8). Importantly the KLVCT purported to be a tribunal where laws could be mobilized by citizen's that would help victims and impacted communities address legacies of state crime.

### **5.3 Organizational goals- what do they do?**

An important aim pursued by citizens' tribunals is to create a documentary record of state crimes. The WTI had a broad aim "to record not only the crimes against the Iraqi people, but also crimes committed against humanity and against all other inhabitants of this planet" (Sokmen, 2008). A central aim they pursued was, therefore, "to document the history of the war not from the point of view of the victors", but of those victims who were characterized as being "temporarily...anguished" (Roy, 2005a cited in Sokmen 2008, p.2). To correct the record associated with the Iraq War, spokesperson for the Jury of Conscience Arundhati Roy (2005a cited in Sokmen 2008, p.2) argued that the central task carried out by the WTI was "to examine a vast spectrum of evidence about the motivations and consequences of the US invasion and occupation." Given its opposition to the Iraq War, the evidence presented by the WTI was used to show that the Iraq invasion was illegal under international law and that "British and American officials understood fully that the Iraq was unlawful, and...they fabricated evidence to build a completely dishonest legal case" (Falk 2005a cited in Sokmen 2008, p.7). The public dissemination of these opinions helped the WTI to construct a counter-memory of the Iraq War. This counter-memory challenged the memory of the Iraq War, arguing how it has been presented and remembered in history was biased and false.

To develop solutions and change how we remember the Iraq War, the WTI argued that it was necessary to expose the lies told by the US and UK governments and confirm the truth about why military aggression was pursued in spite of the global opposition to it at the time in 2003. In seeking to expose the true motivations for the Iraq War the WTI was said to be necessary initiative because "the US and its allies, who waged a war of aggression mobilizing everything at their disposal including lies and coercion, would not hesitate to rewrite history" (Sokmen, 2008). Consequently the investigation of the Iraq War conducted by the WTI was vast, and at the final Istanbul hearing the WTI's Panel of Advocates presented testimonies

based on their experiences and expertise to help contribute to the “unprecedented process of truth-telling” (Falk 2005a cited in Sokmen 2008, p.9).

The power of civil resistance and of citizens’ tribunals lies within the alternative renditions of events that they generate and promote. Accordingly, a central component embedded within the KLFCW Charter is its acknowledgement of documentary evidence compiled through the course of its investigations and prosecutions can facilitate and promote justice outside of the institutionalised mechanisms of international criminal justice. Article 29 of the Charter states that where “the Tribunal [is] satisfied beyond reasonable doubt that the charge has been proven, [it] shall provide a full and reasoned written verdict after adjournment and deliberation” (Charter of the KLFCW 2008, p.45). This written verdict summarises all the evidence presented by the KLWCT’s Prosecution and Defence legal teams, providing a transcript of Tribunal proceedings, and also a *comprehensive* judgement of the guilt of the accused and, in turn the criminality of states. Through judicial-like interrogation and presentation of evidence countering the version of events promoted by states, the documentary evidence compiled by the KLWCT is significant for the counter-memory it constructs. Within this counter-memory explored in Chapter Nine below, were specific narratives that were selectively promoted by the KLWCT. The evidence presented by the Prosecution Team against George W. Bush and Tony Blair was used to show that these former Heads of State were ‘guilty’ of war crimes and were therefore ‘war criminals’. While this label and judgement is unable to be legally enforced by the KLWCT, this limitation should not however define this citizens’ tribunal. It is the information collected by the Tribunal over the course of its two prosecutions that is a significant feature of citizens’ tribunals, which demonstrates its potential as an alternative mechanism of global justice.

In addition to constructing a record of state crimes where evidence would be collated, the Charter of the Kuala Lumpur Foundation to Criminalise War (2008) establishes that the core main objectives of the KLFCW include:

1. To undertake all necessary measures and initiatives to criminalize war and energize peace;
2. To provide relief, assistance and support to individuals and communities who are suffering from the effects of war and armed conflict wherever occurring and without discrimination on the grounds of nationality, racial origin, religion, belief, age, gender and other forms of impermissible discriminations;

3. To promote the education of individuals and communities suffering from the effects of war and armed conflict;
4. To foster schemes for the relief of human suffering occasioned by war or armed conflict, and;
5. To provide for mechanisms of procedures in the attainment of the above purposes.

(KLFCW Fact Book 2013?, p.4)

In conjunction with these broad aims, Article 2 of the KLFCW Charter establishes a series of specific principles that speak to the general objectives of the KLFCW and the KLVCT.

These include:

- i. To receive and investigate complaints from victims of war and armed conflicts in relation to crimes against peace, war crimes, crimes against humanity and other like offences as recognized under international law;
- ii. To put an end to all war crimes and crimes against humanity currently perpetrated by any government in any part of the globe;
- iii. To bring any war criminals of any nationality to justice, and;
- iv. To prevent recurrence of war crimes, crimes against peace, crimes against humanity in the future.

(Charter of the KLFCW 2008, p.3)

With these broad and specific objectives in mind, the Charter also outlines specific investigations that are to be undertaken by the KLFCW and the KLVCT where alleged war crimes and violations of international law/s have been committed by hegemonic states as part of the state's foreign policies. These include: war crimes committed in Iraq, Palestine, Afghanistan and Lebanon. The KLFCW's orientation towards these specific cases is significant because there is a perception that the ICC and states have neglected to investigate and/or prosecute in these contexts to the detriment of global justice. Furthermore as the KLFCW argues, the failure to investigate allegations of war crimes and crimes against humanity in these situations has perpetuated injustices and impunity.

Notwithstanding the broader objectives of the KLVCT, the way these two Tribunals has documented the Iraq War through promotion of alternative narratives that oppose the arguments of George W. Bush and Tony Blair is understood in this thesis as a counter-memory of war. As has been explored within the preceding chapters, the counter-memory constructed by citizens' tribunals is perhaps a form of global justice where the truth and

evidence of state crimes can be acknowledged and documented. In the context of state crimes this is particularly important given that states and its actors are able to violate international laws with relative impunity. Through its active resistance to historical record associate with the Iraq War, the WTI and KLCWCT have represented “broad public interests that do not readily fall under the purview of individual territorial states or that states have shown themselves wont ignore” (Florini 2000; p.4). This has important implications for developing our understanding of how state crimes can be controlled and the various mechanisms through which they can be defined, labelled and censured. The WTI and KLCWCT have both sought to fill an existent gap in accountability focusing specifically on the Iraq War, which was perceived to have been initiated in blatant violation of international laws. By acknowledging this alternate perspective, the WTI’s counter-memory sought to complete and contribute to the historical record on the Iraq War. This historical record would later be built upon by the KLCWCT who would pursue a symbolic prosecution of state actors they perceived as being criminally responsible for the Iraq War.

#### **5.4 Mandate- How do they do it?**

A key distinguishing characteristic of citizens’ tribunals is that they purport to represent civil society. The WTI did “not pretend to be a normal court of law with powers of enforcement” (Falk 2005a cited in Sokmen 2008, p.6) presenting themselves as a Tribunal for, and created by citizens within civil society. The WTI was described as being an “initiative of, by, and for citizens,” where individuals from civil society could attempt to actively “hold leaders accountable for severe violations of international law” (Falk 2005a cited in Sokmen 2008, p.5). Their legitimacy was therefore derived from the broader principles of democratic societies, where citizens are able to investigate and critique the Iraq War to “tell the truth as powerfully and fully as possible” (Falk 2005a cited in Sokmen 2008, p.7). Similarly, Article 31 of the Charter of the KLCWCT (2008, p.45) identifies it as a “tribunal of conscience” that is constructed by the people, for the people. As stated in the Commission’s 2012 report, “when authority entrusted to further truth and justice betrays that trust,” one avenue for recourse lies in citizens being able to “reclaim that power and hold authority accountable” (KLCWCT Fact Book 2013?, p.13). Furthermore as the KLCWCT has acknowledged, “responding to the betrayal of states and international organizations to further justice and truth” is difficult (KLCWCT Fact Book 2013?, p.13). What can be inferred from these statements is that in situations where accountability and justice for state crimes are neglected, civil society is able

to assume their rights to make claims for justice and accountability that addresses contexts of denial. The power and legitimacy they derive is therefore grounded in the liberal legal tradition, which stresses the importance of acknowledging individuals as rights-bearing subjects (see Kent 2012, p.34; see also Douzinas, 2002; Stanley, 2009). Thus these tribunals argue that the rule of law and principle of equality before the law provide fertile ground for recognizing individual victims as rights-bearers, able to make claims (Halderman, 2007).

The rights and responsibilities assumed by civil society to intervene in cases of state harm and denial is a fundamental tenet underpinning the creation of these two citizens' tribunals. As case studies, the WTI and KIWCT demonstrate the growing significance of TCS actors for world politics who are able to "simply identify and put on the public agenda issues [that have] been ignored by governments and corporations" (Price 2003, p.584). These Tribunals draw authority and power from "softer instruments of power, such as moral authority or the ability to shape how others see their own interests" (Florini 2000, p.10). For example, the KIWCT argues that when states and institutions neglect to investigate and prosecute war crimes, "it is the people, and the people alone who are clothed with the right to pass the final judgement" (KIWCT Fact Book 2013?, p.13). The power and authority the KIWCT has derived "to further justice and truth" (KIWCT Factbook 2013?, p.13) suggests that a precondition for a just society, is the recognition of the personal dignity of all individuals (Honneth 2001, p.43). The moral authority assumed by citizens' tribunals to investigate and censure states and state actors is a prime factor in the influence of transnational activists where decision makers and/or citizens often believe that activists are not only (objectively) right in the sense of providing accurate information but also morally right in the purposes for which such knowledge is harnessed (Sikkink 2002 cited in Khagram, Riker and Sikkink 2002, p.312-313). Taylor (1994) has described the harnessing of knowledge as a form of recognition that is a vital human need for societies. In the context of the WTI for example, its public investigation onto the Iraq War gave recognition to the unacknowledged victims of the Iraq War. As the WTI sought to purposefully capture the voices of dissent expressed by anti-war protestors who were active between 2002-2003, it was stated to be a "continuing legal, moral and political expression to this antiwar opposition" which following the 2003 invasion, had entered into a "new phase" of opposition (Falk 2005a cited in Sokmen 2008, p.6).

The legitimacy of TCS actors can also be derived from the claims they make to represent affected communities, to represent a domestic constituency, or to be official participants in

institutionalized political processes (Nelson 2002 cited in Khagram, Riker and Sikkink 2002, p.141). Richard Falk, an expert on international laws and a prominent activist against the Iraq War who participated in both the WTI and KLCWCT described the importance of the WTI as a “war of liberation being waged in resistance to the illegal occupation of the country by the greatest military power in the history of the world” (Falk 2005a cited in Sokmen 2008, p.5). In line with these sentiments the KLCWCT argues that “where the perpetrators hold the leverage of formal power and close all avenues for recourse to justice, then an alternative forum must emerge” (KLCWCT Fact Book 2013?, p.13). As a contemporary form of civil resistance against the state alternative forums like citizens’ tribunals emerge in contexts where concerned non-state actors seek action. The power these Tribunals and their actors derive hinges on their legitimacy as agents addressing democratic deficits (Price 2003, p.590). As such, citizens’ tribunals are built upon the collective “conscience and condemnation of the people of the world” (KLCWCT Fact Book 2013?, p.13) against events like the Iraq War. In actively responding to address democratic deficits in existing institutions like the ICC, the WTI and KLCWCT are characterized by their claims to represent the ‘public interest’ or the ‘common good’ rather than ‘private interests’ (Risse 2000 cited in Florini 2000, p.186). The moral authority these Tribunals have claimed is beneficial for developing our understanding of how state crimes can be addressed where TCS actors like those participant to the WTI and KLCWCT view themselves as representatives of a collective conscience, able to challenge the power and hegemony of states.

## **5.5 Organization- who is involved?**

To better understand the WTI as a citizens’ tribunal it is important to consider the composition of the Panel of Advocates as well as the Jury of Conscience. As the Istanbul hearing brought together several individuals and groups from multiple countries, cultures and backgrounds, this helped to strengthen the idea that the WTI was an initiative born directly out of feelings of disenfranchisement and anger felt within civil society. The individuals chosen to sit on the Panel of Advocates and the Jury of Conscience had diverse backgrounds and specific areas of expertise. The Panel of Advocates was overwhelmingly composed of scholars and academics. Additionally, politicians, journalists and media personalities, judges, lawyers, army personnel and activists were also asked to present testimonies. The diverse nature of the Panel also extended to the Jury of Conscience, which also brought together fourteen individuals from diverse backgrounds and expertise including, lawyers, journalists,

scholars and activists. The Jury of Conscience included individuals from ten different countries including: India, Turkey, Malaysia, the US, Belgium, South Korea, Mexico, Israel, Iraq and Afghanistan, which helped to re-affirm their representation of civil societies conscience against the Iraq War.

The composition of the Panel of Advocates allowed a particular political subjectivity to emerge from within the Istanbul testimonies that was both a limitation, and a strength of the Tribunal. On the one hand, the opinions of these experts were used as evidence to expose the truth behind the Iraq War from the perspectives of those actors, however the implicit bias within their testimonies also served to strengthen the criticisms made against the WTI. The presence of only six judges and/or lawyers on the Panel of Advocates of experts in the sphere of international law, undermined the WTI in a way where these testimonies could be seen as individual opinions rather than matters of fact. The inclusion of a number of scholars into the Panel of Advocates was also a limitation of the WTI because the final Istanbul hearing resembled an academic forum rather than a Tribunal. Proceedings at Istanbul were not adversarial in nature and though invitations were extended to George W. Bush and Tony Blair to appear before the Tribunal, there was no defence or other perspectives presented that would have gone against the version of truth that the WTI was promoting in its counter-memory. As a result of this the Istanbul hearing resembled an academic conference where individuals sitting on the Panel of Advocates could present their expertise and discuss the evidence as they understood it related to the six issues that were the focus of the Istanbul hearings.

Where the WTI managed to attract a wider range of international participants personified in the Panel of Advocates and Jury of Conscience, the KIWCT was not able to engage the services of a wider range of participants. The difference between the transnational network of participants assembled by the WTI and KIWCT can be attributed to the use of specific 'frames' that are defined by Snow et al (1986, p.464), as a mode of interpretation that enables individuals "to locate, perceive, identify and label occurrences within their life space and the world at large." Frame analysis allows us to capture the process of the attribution of meaning which lies behind the explosion of any conflict to ascertain how individual actors have mobilized in collective ways (Della Porta & Diani, 2006). The framing practices used by movements is therefore an important determinative factor that can shape their ability to mobilize a wide range of participants. Frames are considered by Williams (2004, p.105-108)

to be successful in conditions where they “resonate not only with their targets but with the broader cultural structure in which a movement develops.” As Della Porta and Diani (2006, p.81) have also argued, “frames should be credible, both in their content and their sources” where any “incoherent messages, or messages coming from actors with a shaky reputation” can stymie the movement’s ability to mobilize a wide range of participants. In this context mobilization does not depend so much on the values and identities of movement participants, but instead relies on a process of “‘frame alignment’ that takes place between movement activists and the populations they intend to mobilize” (Della Porta & Diani 2006, p.82). As a tribunal of conscience the KIWCT represents the interests of “the people to announce loudly and clearly” their unwillingness to “be complicit and remain silent when evil blots the international rule of law” (KIWCT Case No.1 2011, p.19). Through use of a quasi-judicial format akin to international criminal trials, the KIWCT is different from the WTI because it combined the “moral force of all human beings” (KIWCT Case No.1 2011, p.20) with elements of international jurisprudence associated with global justice. Where international criminal trials play “a significant role in...stigmatizing delinquent leaders through indictment, as well as apprehension and prosecution” (Akhavan 2011, p.1) the KIWCT was a Tribunal that could not legally enforce the conclusions it reached in Case No.1 and Case No.2.

Citizens’ tribunals like the WTI and KIWCT are characterized by their ability to bring together a transnational network of non-state actors collectively organized to pursue global justice. It is in this context where global justice for specific state crimes are absent that various organizations of transnational actors, including for example legal personnel and judges from various nationalities have organized under the broad banner of the KIWCT. Similarly at the WTI, individuals including renowned experts in international law, people who worked for the United Nations on varying levels, peace activists, philosophers, political scientists, conscientious objectors, anti-globalization activists, and others were brought together to “raise [their] voices to resist and to find creative ways of resistance” against war (Sokmen 2008, p.x). Like other citizens’ tribunals that had preceded it, the WTI and KIWCT both argued that its members and participants were collectively outraged by serious violations of international law perpetrated by hegemonic states including the US and UK. This is important because it reinforces the importance of context in shaping when and how movements can emerge to resist the state. A Gramscian perspective of counter-hegemony is particularly important here, because through their investigation and ‘prosecution’ of

hegemonic state actors, those involved in these proceedings have actively expressed their resistance that represent contemporary acts of counter-hegemony.

## 5.6 Identity- who are they?

To ascertain the identity of the KLFCW, one perhaps needs to begin with a discussion of its founder Tun. Dr Mahathir Mohamad (Mahathir) as an influential actor within the KLFCW's Board of Trustees. It is important to acknowledge the anti-war stance of Mahathir because it influenced the anti-war stance adopted within the Central Charter of the KLFCW (2008) where specific cases against powerful Western states have been pursued. In an anti-war speech made on February 24 2003, Mathir (2003) stated that:

“War must be outlawed...[and] we must struggle for justice and freedom from oppression, from economic hegemony.... No single nation should be allowed to police the world, least of all to decide what action to take, [and] when”

In this way the identity of the KLFCW as Mahathir's long-term project was one that was undoubtedly influenced in some way by his anti-war stance, where to eradicate all wars they must be prosecuted when they occur. The KLFCW also has the broad aim of energizing global peace efforts through the criminalization of all acts of war. Implicit within this are aspirations held by its members to “criminalize war and banish it as an option in the settlement of disputes and conflicts between nations” (Charter of the KLFCW 2008, p.v.ii). The aim speaks to the underlying justification for the creation of the KLFCW itself. It is the continued absence of accountability and justice for crimes of aggression like the 2003 Iraq War that the KLFCW considers to be its fundamental rationale for acting. It sets out that its efforts are driven by its desire to “hold [all] perpetrators of war crimes accountable for their actions” (Charter of the KLFCW 2008, p.v.ii). Accordingly the ambitious aims pursued by the KLFCW and the KLWCT reflect what Klinghoffer and Klinghoffer (2002, p.10) note about citizens' tribunals: it has “become a weapon of the radical left in its battle” for justice.

The KLFCW has the broader aim of energizing global peace efforts through the criminalization of all acts of war. Implicit within this are aspirations held by its members to “criminalize war and banish it as an option in the settlement of disputes and conflicts between nations” (Charter of the KLFCW 2008, p.v.ii). In accordance with this the KLFCW has also argued that its creation in 2003 was in direct response to the neglect of international organizations and states that had failed to legally acknowledge and prosecute the harms and

victimisation caused by the destructive military actions of states. It is within this context that an aspect of this Tribunal's identity emerges. This identity is one defined by its active opposition to the initiation of war that in the opinion of its founder Tun. Dr Mahathir Mohamad, was a tool to "satisfy the crazy ambitions of lying leaders of powerful countries" (Charter of the KLFCW 2008, p.v.ii). The statement speaks to the underlying justification for the creation of the KLFCW itself. It is the continued absence of accountability and justice for crimes of aggression like the 2003 Iraq War that the KLFCW considers to be a its fundamental rationale. It sets out that its efforts are driven by its desire to "hold [all] perpetrators of war crimes accountable for their actions" (Charter of the KLFCW 2008, p.v.ii). This rhetoric is also significant because it highlights the uniqueness of the KLFCW and its objectives to work around the ICC and states to pursue global justice in a symbolic form. Furthermore the decision to specifically investigate and prosecute individuals over the 2003 Iraq War highlights that the KLFCW perceived itself to be an organization unperturbed by the power and hegemony of the US and UK determined to actively pursue cases that are politically charged and that the international community has neglected. Accordingly, the efforts made by the KLFCW to pursue global justice in lieu of the ICC and other nation states allows it to demonstrate to the world how destructive and criminal the foreign policies of states can be, and how gaps in accountability can undermine international laws and efforts to maintain global peace and security that all states claim to uphold.

As "neither governments, nor the UN, nor most of the media will tell [the] story of deception, destruction and criminality" the WTI established itself as a network of actors who represented "the peoples of the world to uphold respect for international law" (Falk 2005a cited in Sokmen 2008, p.7). The identity of this citizens' tribunal was therefore one that was defined by their active resistance to the Iraq War which originated in the earlier anti-war protests of 2002-2003. As their opinions and voices of dissent had been ignored by the US and UK prior to the March 2003 invasion, the testimonies presented at the Istanbul hearing suggested that this renewed resistance to the Iraq War was one that was based on the perceived moral and ethical responsibilities of civil society to address the impunities associated with this illegal war. Tribunal participants argued that their voices and dissenting opinions had been silenced prior to the 2003 invasion, and to ensure that states could not "erase from view the history of the dissent" (Sokmen 2008, p.ix), they would actively resist the historical record associated with the Iraq War. The Tribunal argued that the existent

record on the Iraq War only showed the perspective of the invading states thus neglecting to consider how the Iraqi occupation had impacted Iraq and its people.

The WTI was described as being an “initiative of, by, and for citizens,” where individuals from civil society could attempt to actively “hold leaders accountable for severe violations of international law” (Falk 2005a cited in Sokmen 2008, p.5). Individuals who participated in this movement argued that their judgement of the Iraq War and key actors and/or organizations involved in its facilitation was derived from the civic responsibilities of those in civil society. The Tribunal was transnational in character and had wide spread support because they were acting on behalf of civil society, as “a global subject”, to leave “a record for history” (Sokmen 2008, p.x) that would extend the memory of the Iraq War beyond the perspective of states. The WTI held a number of hearings including some in New York, London, Tokyo, Stockholm, Germany and Istanbul, among many others (see Appendix 1 for full list of hearings), crossing geographical and cultural boundaries. From a geographical perspective, the diversity of these hearings is important to note, because it suggests that the WTI actively sought to engage a wide range of perspectives “to include, rather than silence or exclude, debates and divergent views” (Sokmen 2008, p.x). In adopting this specific structure of inquiry to help guide its proceedings, the WTI helped bring about a transformation of the anti-war movement, where localised acts of resistance morphed to become a global network of resisters.

The stated objectives of the WTI and KIWCT are often tied to the identities of those involved where participants have emerged to purposefully undertake forms of collective action against perceived injustices associated with state crimes. How these identities form transnationally “corresponds to the emergence of new networks of relationships of trust among movement actors, operating within complex social environments” (Della Porta & Diani 2006, p.94). The complex environment in which citizens’ tribunals emerge is directly linked to the institutional silence and denial of state crimes where action is facilitated by what Della Porta and Diani (2006, p.87) have identified as “frame alignments” where movement activists adopt an interpretation of reality to solidify their identity as a collective. As the aim of these tribunals is to change international law so that global justice will be based on giving voice to the weak and oppressed, the identity of movement activists is one that is inherently counter-hegemonic in nature where non-state actors engage in forms of collective action to challenge the domination of states and its actors. According to Gramsci’s theory of

hegemony, “the function of great intellectuals in the organic life of civil society or of the state” is to build consensus amongst the masses (Turin 1966, p.201; see also Gramsci, 1971; 1995). However in contexts of silence and denial of state crimes the consensus of the masses is eroded in such a way that facilitates action, whereby “the worker...[is] freed [from] the ideological fetters imposed...by the cultural organizations of the ruling class” (Bates 1975, p.360). As social movements emerge in specific political and cultural contexts, their ‘identity’ is one that tells a story of “personal change” where individuals strengthen their understanding of themselves, which originates “from collective action” (Della Porta & Diani 2006, p.91). Identity here is a term that does not refer to an autonomous object nor to a property of social actors, but rather “the process by which social actors recognize themselves- and are recognized by other actors- as part of broader groupings, and develop emotional attachments to them” (Della Porta & Diani 2006, p.91). It is through action that certain feelings of belonging come to be either reinforced or weakened (Della Porta & Diani, 2006). Noting the continuity of activists between the anti-war demonstrations of 2002-2003 and the WTI’s transnational network highlights the importance of identity in shaping the collective action of social movements. In resisting the historical record of the Iraq War constructed and managed by the US-led coalition, the collective identity of these movement activists’ have connected and assigned “some common meaning to experiences of collective action dislocated over time and space” (Della Porta & Diani 2006, p.95; see also Lumley, 1990; Farrell, 1997).

The importance of this identity for citizens’ tribunals like the KLFCW can also be analysed through use of a Gramscian perspective on the role of intellectuals. For Gramsci (1971; 1995) civil society is the sphere in which intellectuals operate whether in cooperation with the state or in opposition to it. In opposition to the state, the KLFCW has demonstrated what is described by Turin (1966, p.12) as an increasing awareness of being “part of a definite hegemonic force” that is “the first step” individuals take “towards a progressively higher self-consciousness in which theory and practice finally unite.” The ideological struggle envisioned by Gramsci (1971; 1995) is led by ‘intellectuals’ who represent a ‘historical bloc’ of actors by speaking for their collective interests. The political culture within which social movements like the KLFCW have emerged is relevant to understanding the interaction between the movement and institutions of the Malaysian state. In accordance to political opportunity theory, Scharpf (1989, p.295) argues that because “national strategies set the informal and formal rules of the game for the conflict between new social movements and

their adversaries,” it is political structures that are important determinative factors that can either strengthen or weaken movements. For the KLFCW the contribution and influence of its founder Mahathir within Malaysia cannot be ignored. It is within the extant political structure where Mahathir is considered to be a powerful state actor that the KLFCW has emerged to seek accountability for international crimes whereby their identity, is defined by its anti-war position.

The identity of the WTI and KLFCW as case studies of civil resistance and transnational activism suggests that this movement has engaged in a Gramscian ‘war of position’ against the decisions of states and its actors to initiate wars. The objective of these Tribunals accords with the broader objectives pursued by TCS to “not to replace governments or usurp their decision-making authority but to inform and persuade governments and businesses to adopt or abandon certain policies or positions (Johnson 2000 cited in Florini 2000, p.77). In actively resisting and responding to highly contentious historical events like the Iraq War these citizens’ tribunals have continued what Bates (1975, p.365) describes as a “struggle of individuals and groups to change what exists in each given moment.” Within the context of wars and how they are initiated by states the WTI and KLFCW have actively participated in a struggle against the impunities associated with some state crimes to also help maintain global peace and security.

## **5.7 The importance of context**

Another important feature of the WTI and the KLWCT that has significance for developing a taxonomy of citizens’ tribunals is the context from which they emerge. Research on the success or failure of transnational activism often turns to domestic structures and culture to explain variations in success when the targets are states (see Price, 2003; Florini, 2000; Khagram, Riker & Sikkink 2002). In describing the context through which the WTI has emerged, Richard Falk (2005a cited in Sokmen 2008, p.7) argued that it was a response to the silence of “governments and the UN” that had, not only failed to prevent the Iraq War but also neglected to take substantive action to address the impunities associated with this international crime. As a member of the Jury of Conscience concisely summarized, the WTI was a collective of actors brought together to show that the Iraq War was “one of the most cowardly wars ever fought in history” (Roy 2005a cited in Sokmen 2008, p.3). To address the impunities associated with this war and to fill the gap in accountability for crimes of

aggression the context within which the WTI has emerged is an important determinative factor that has shaped the Tribunal and its proceedings. This suggests that in situations where civil society has refused to remain silent, citizens' tribunals like the WTI and the KLWCT can emerge to reinvigorate democratic principles to hold governments accountable for violating international laws. The context within which the WTI has emerged is important in shaping how its participants have perceived themselves- their identity. In this way the identity of citizens' tribunals like the WTI is shaped by the perception that 'international human rights principles and laws can...provide ammunition for activists...to assist in organizing against, and pressuring governments' (Luban 2015, p.264).

The ability of citizens' tribunals to produce changes that shape how states conduct themselves is highly dependent on the political context in which they emerge. As Burgerman (2001, p.5) argues: "a violator state will comply with human rights norms only if a key element of its domestic political elite...perceives itself to be vulnerable to human rights condemnation or has concern for its country's international reputation as a violator state." Therefore the success of movements like the WTI and KLFCW will be influenced and shaped by the existent political opportunity structures they confront and attempt to re-shape. Political opportunity structures are defined by Campbell (2005, p.44) as, "a set of formal and informal political conditions that encourage, discourage, channel and otherwise affect movement activity." As these political structures can "constrain the range of options available to movements as well as to trigger movement activity in the first place (McAdam et al. 1996, p.3) they are able to affect the strategy, organizational structure and ultimate success of social movements (see Campbell, 2005). In this way to comparatively account for the variations between the strategies employed by WTI and KLFCW it is important to explore the influence of political opportunity structures and how they have shaped the strategies adopted by these citizens' tribunals. As the KLFCW case study illustrates, the creation of this Tribunal was directly influenced by its founder Mahathir, who was able to leverage the political resources at his disposal to strengthen his project to eradicate war as a means of settling disputes. The receptiveness of this political opportunity structures helped to develop the strategies employed by the KLFCW and the KLWCT that included the construction of its central Charter (2008). The positive influence of political opportunity structures in Malaysia at the time, also helped the KLFCW and KLWCT develop a hierarchical network of actors that increased the "degree of its coherence [by] internally coordinating" its participants in a professional manner" (Kriesi et al. 1995, p.31). In contrast to this, the WTI was unable to

capitalize on receptive political opportunity structures like the KLFCW, leading to an informal transnational network of activists who each had varying motivations for opposing the war. As Muge Gursoy Sokmen (2008, p.ix) stated, “the anti-war movement was not homogenous.” The divergent motives that brought activists under the broad banner of the WTI led to the formation of “informal transnational contacts” where “a large number of people in protest” were able to mobilize (Khagram, Riker & Sikkink 2002, p.7).

One of the most important aspects of mobilizing structures is the formal and informal networks that connect individuals and organizations (Tilly 1978, p.3). Networks are social structures defined by Campbell (2005, p.61) as “sets of social relationships that shape and constrain people’s behaviour and opportunities for action.” The mobilization of activists in these two case studies reflects a mixture of both formal and informal networks that has informed the strategies they have adopted. The KLFCW and the KLVCT have arguably formed formal networks where a hierarchical network of activists, judges and lawyers were convened with clearly defined roles. Contrastingly, the WTI’s network was characterised by its informal nature where activists had no clearly defined role beyond their opposition to the Iraq War. The diverse and informal network constructed by the WTI shaped the strategies they adopted where twenty localised hearings were held and independently conducted by local anti-war movements. As a result of these formal and informal networks, the strategies adopted by the WTI were not as clearly defined as those expressed in the Charter of the KLFCW (2008). The contrast of formal and informal strategies adopted by the KLVCT and WTI respectively highlights the diversity of social movement networks where individuals mobilize in different national and transnational contexts. Therefore understanding the importance of context in shaping how networks form is a critical component to all studies of social movements. Networks should not always be taken as a given, able to be cultivated differently and deliberately in order to obtain critical resources and new organizational models (Campbell, 2005).

### **5.8 The Kuala Lumpur War Crimes Tribunal: Questions of impartiality and judicial integrity**

The WTI and KLVCT differ in terms of strategies they have adopted. More specifically the rules of evidence and procedures adopted by the KLVCT are starkly different to the strategies used by the WTI. Where the WTI conducted public hearings where testimonies

were presented by a Panel of Advocates, the KIWCT adopted a quasi-judicial format where the power and authority to do so was derived from the central Charter of the KLFCW (2008). As the KLFCW's Charter draws inspiration from the stipulations contained within the ICC's Rome Statute (1998) there are specific similarities that can be identified between the Rome Statute and the Charter. These similarities highlight areas of jurisprudence that are considered to be fundamental to the pursuits of global justice, whether it occurs internationally through bodies such as the ICC or nationally. Therefore, to investigate cases of war crimes that have been neglected by established institutions, the KLFCW and KIWCT has purposefully drawn on the framework used by international judicial organs like the ICC. Yet this Tribunal has also adopted various rules of evidence and procedures that call into question the fundamental areas of jurisprudence they rhetorically uphold. These include the use of *amicus curiae* as a legal team representing the defendants, and the practice of *holding trials of absentia* that would typically be impermissible in judicial courts. Therefore to address one of this thesis' research questions and explore the potential of citizens' tribunals as alternative avenues to achieve global justice it is necessary to outline the practices adopted by the KIWCT that have differed to utilised by the WTI. To maintain its 'legitimacy' the KIWCT has implemented specific procedures intended to ensure a fair hearing is achieved. This section will outline specific issues embedded within the rules of evidence and procedure enshrined within the Charter (2008). It will also draw upon the wording of various international treaties that protect the rights of defendants in all international criminal trials to explore the judicial rigour of holding trials in *absentia* for those accused of international crimes evident at the KIWCT.

### **5.8.1 Amicus Curiae**

Appointed defence lawyers, or *amicus curiae* as they have been termed by the KIWCT, are important actors who impart some level of fairness within the Tribunal's proceedings. Article 2(e) of the KLFCW Charter (2008, p.31) states, "every person charged must be informed of his right to legal representation of his choice." To assist the Tribunal" and protect the impartiality of its proceedings, Article 18 of the KLFCW Charter (2008) states that "the Tribunal shall appoint one or more *amici curiae* from the Defence Division of the Legal Team...[to] present an unbiased assessment of the charge and evidence against the accused" (Charter of the KLFCW 2008, p.41). This practice accords to the stipulations of Article 14(d) of the ICCPR (1976, p.177) where all defendants have the right "to defend himself in person

or through legal assistance assigned to him, in any case where the interests of justice so require.” To protect the impartiality of judicial proceedings at the ICC the Rome Statute (1998, p.46) states that at a minimum, the accused shall “be entitled to raise defences and to present other evidence.” Impartiality of international criminal trials are therefore guaranteed by an important principle of due process where defendants must be given an opportunity to mount a defence by communicating “with counsel of his own choosing” (ICCPR 1976, p.177) and “have adequate time and facilities for the preparation of the defence” (Rome Statute 1998, p. 46). The Tribunal’s practice of appointing *amicus curiae* to represent the interests of absent defendants raises important questions on whether its proceedings were fair or impartial. While the ICCPR (1976) and the Rome Statute (1998) stipulates clear guidelines on the appointment, roles and functions assumed by defence lawyers, the KLFCW Charter (2008) does not specify what rights accused parties have, nor how these rights are to be maintained in proceedings where *amicus curiae* have been appointed. The Tribunal’s deviation from international and national judicial norms, and the absence of clear guarantees that protects defendants’ rights suggests that this Tribunal does not wholly subscribe to traditional judicial practices expected of courts or tribunals. This is a significant issue to consider because it is the lack of clarity and specificity guiding the use of *amicus curiae* that has served to perpetuate the criticisms made against this citizens’ tribunal. Yet it is important to note that these Tribunals have been constructed with the goal of addressing the impunity of states and fill gaps in accountability associated with international crimes. To serve the interests of justice the KLWCT has utilised inventive procedures that are not strictly guided by common judicial practices, suggesting that its procedures are akin to that seen at truth commissions where the sole aim of proceedings is to investigate the truth associated with a state crime like the Iraq War.

In cases where individuals have been accused of international crimes, they must be afforded every opportunity to communicate with their legal representative so as to mount a rigorous defence to the charges. At a bare minimum, all defendants must be given a genuine possibility to answer charges, challenge evidence and cross-examine witnesses. An important component of judicial fairness and equality are the rights of “the accused or his lawyer” (Human Rights Committee, 1984), which all Tribunals must guarantee and maintain throughout any criminal proceedings. To serve the interests of justice all courts and/or tribunals must take appropriate measures to ensure appointed defence lawyers “act diligently and fearlessly in pursuing all available defences” (Human Rights Committee, 1984). The

adversarial nature of international criminal trials requires the Defence and Prosecutor to argue their cases on an equal footing where the *amici curiae* needs to have some form of communication with the defendants they represent. However in Case No.1, it was evident that the appointed *amici curiae* had no communication or direction from George W. Bush and Tony Blair. The lead *amici curiae* Mr Jason Kay Kit Leon stated in Case No.1 that, “I have not received any instruction from the two accused to date regarding the conduct of their defence” (KLWCT Case No.1 2011, p.52). This had significant impact for the defence (or lack thereof) as throughout the proceedings in Case No.1 Mr Jason Kay Kit Leon displayed a lack of preparedness in response to the statements and evidence cited by the Prosecution Team. For example, when questioned by Judges on certain issues such as the service of charge, the absence of communication between the Tribunal’s Defence team and George W. Bush and Tony Blair meant that the *amicus curiae* “would not be able to answer for a client who has not given...instructions” (KLWCT Case No.1 2011, p.73).

### **5.8.2 Trials of Absentia**

A fundamental principle of the law of criminal procedure is that an accused must be physically present at the trial so that they can participate in “a meaningful and informed manner in the criminal proceedings instituted against him” (Cassim 2005, p.285). However at the KLWCT, neither George W. Bush nor Tony Blair were present for the Tribunal’s first prosecution in Case No.1. Case No.2 against George W. Bush, Donald Rumsfeld, Richard Cheney, Alberto Gonzalez, David Addigton, William J. Haynes II, Jay Bybee and John Yoo was also another case where the defendants had not been present at the Tribunal’s proceedings. The absence of all defendants from both cases has significantly undermined the impartiality of the Tribunal’s proceedings. To address this criticism, the Prosecution Team justified its practice of holding trials in absentia by arguing that it was in the interests of justice to proceed. Within the KLFCW Charter (2008, p.40) Article 13 states that “if the accused is not personally present before the Tribunal, [it] shall inquire into the circumstances of his absence...[and] will need to be satisfied on the evidence that the accused has been served with the charge or otherwise been sufficiently informed of the commencement of the proceedings.” In Case No.1 and Case No.2 the Tribunal judges were convinced of the evidence presented by the Prosecution Team that in their opinion satisfied the requirements of Article 13.

To serve the interests of justice and fill the extant gaps in accountability for the Iraq War the KLFCW Charter (2008) has legitimated the practice of holding trials in absentia, that are to some extent ‘fair’ because “in the absence of the accused or his counsel...the amicus curiae shall assist the Tribunal by replying to the Prosecution Team” (Charter of the KLFCW 2008, p.44). The investigations and prosecutions undertaken by the KLVCT have been marred by the consistent absence of accused parties where important principles of international human rights law enshrined within the ICCPR (1976) have not been met. The absence of George W. Bush and Tony Blair from Case No.1 undermined Article 14(d) of the ICCPR (1976, p.177) where defendants must “be tried in [their] presence and to defend [themselves] in person” to ensure the impartiality of proceedings. Acknowledging this limitation, the KLVCT’s prosecution team justified trials in absentia as a necessary step to fulfilling the principles of universal jurisdiction where any state or organization could claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accused’s nationality or country of residence. To address the impunities associated with the Iraq War, the KLVCT has purposefully drawn on principles of natural justice to derive “authority...from the vigilante jurisdiction that does not “come from the political authority of the states that sponsor them” (KLVCT Case No.1 2011, p.19). In the context of international human rights law, the KLVCT argued that war crimes like the Iraq War had violated the rights of all human beings within civil society. As chief prosecutor Professor Gurdial Singh Nijar stated, “some crimes are so serious that any court anywhere is empowered by international law to try them and mete out the requisite punishment” (KLVCT Case No.1 2011, p.20). In the context of citizens’ tribunals, the authority they derive is one where public opinions are harnessed to human rights (see Klinghoffer & Klinghoffer, 2002). Yet the form of justice achieved by these tribunals, is one that “unfortunately may be at the expense of due process” (Klinghoffer & Klinghoffer 2002, p.5).

An important question to emerge here is why or perhaps how, state actors like George W. Bush and Tony Blair are able to so easily ignore the KLVCT and the judgements and conclusions they have reached. To answer this one must first revisit the ideas of Klinghoffer and Klinghoffer (2002) who have identified some underlying problems with international citizens’ tribunals describing that:

“State authority was being challenged on the basis of human rights practices, and justice was being played out across national boundaries. Was such a process an

instructive exercise in democratic assertion, a triumph of liberalism's standards of objectivity, or was it...a new form of kangaroo court?" (Klinghoffer & Klinghoffer 2002, p.1).

The 'instructive exercise' in democracy described by these scholars, align with the ideas of Gramsci (1971, 1995) on 'hegemony' where the dialectic relationship between civil and political societies can generate consent as well as force from amongst the masses. When political societies are able to "convince others of the validity of its world view" they are able to secure the consent of civil societies, entering into "a period of relative tranquillity in which hegemony...is the prevailing form of rule" (Bates 1975, p.366). Gramsci (1971, p.176) argues that "any organic innovation in the social structure" has implications for shaping international relations amongst states. Hegemony at the international level is thus not merely an order among states, but as Cox (1983, p.171) describes, it "is an order within a world economy with a dominant mode of production which penetrates into all countries and links into other subordinate modes of production." One way in which states reinforce their hegemony is through use of international institutions and rules to sustain a particular ideology that reflects the interests of power holders. As the KIWCT's pursuit of global justice for the Iraq War has been inhibited by the hegemony of powerful Western states like the US and UK- who are able to dismiss the charges and conclusions made by the Tribunal- the absence of George W. Bush and Tony Blair is just one example where the hegemony of state actors has influenced the perceived legitimacy of the Tribunals like the KIWCT. This suggests that hegemony in the context of resistance to state crimes will result in "the great majority of the guilty will escape without penalty" (Goldstone 1996, p.491).

## **Conclusion**

The conclusions reached by the WTI and KIWCT regarding the Iraq War highlights the important role of TCS in labelling state crimes. The WTI for example concluded that "the invasion and occupation of Iraq was, and is illegal" (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.493). They argued that the historical record of the Iraq War was based on "blatant falsehoods about the presence of weapons of mass destruction in Iraq" where purported "link between al-Qaeda terrorism and Saddam Hussein's' regime were manufactured [by states] in order to create public support for a pre-emptive assault upon a sovereign independent nation" (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.493). The symbolic 'prosecution' of state actors by the KIWCT also reached similar

conclusions about the Iraq War, where George W. Bush and Tony Blair were found to be guilty of war crimes and crimes against humanity. These conclusions, however, were not new and had existed prior to the March 2003 invasion and prior to the WTI's conclusions in 2005. However, as has been explored in this chapter, the emergence of the WTI and KLWCT are significant moments for developing our understanding of the role assumed by TCS in defining, labelling and resisting state crimes. As has been discussed in relation to the WTI, this Tribunal was built on the existing opinions of dissent expressed by the anti-war demonstrations of 2002-2003. Similarly, the emergence of the KLFCW and the KLWCT in 2005 sought to build on the goals of the WTI to purposefully investigate highly charged political events like the Iraq War to not only uncover the truth behind it but also expose the criminal conduct of states. In this way, these citizens' tribunals reflect the growth of transnational activism where private citizens wanting "to effect change in [the] world" have mobilized to form networks and organizations pursuing clearly defined goals (Price 2003, p.581). The WTI and the KLWCT have been unique ventures of TCS against the impunity of hegemonic states for acts amounting to state crimes where their identity has been shaped and defined by the resistive contexts in which they emerge. Given the nature of their up-hill battle, it is unsurprising that they have utilized inventive and divergent methods that would allow it to have impact in helping victims and impacted communities achieve some form of justice. More importantly, the emergence of these two citizens' tribunals suggests that in contexts of institutional silence and denial of state crimes, TCS has an important role in acknowledging and memorializing direct evidence of state crimes.

## Chapter Six

### **The public memory of the Iraq War**

This chapter will discuss the public memory of the Iraq War that has been constructed and managed by states and its actors.<sup>8</sup> Public memory here is a term that refers to the “ongoing choices made when a group of people remembers a particular part of its history” (Allen, 2017). As public memories are often controlled and constructed by “nation states and their constituent social and cultural institutions” (Weedon & Jordan 2012, p.144) the content of these memories enables states to “reinforce systems of social power” where discourse can be mobilized to “function as ‘ideology’” (Stoddart 2007, p.193). Accordingly, this chapter will explore how hegemonic power can be used to shape ideologies that influence how we think and remember the Iraq War. Drawing on a Gramscian lens of hegemony this chapter will consider how state actors can use language, speech and written text “to maintain the necessary degree of ‘ideological unity’ [and] secure the consent of the governed” (Gramsci 1971, p.328). It will evaluate the material dimensions of hegemony by discussing the key themes and common narratives that have emerged from the analysis of forty speeches made by George W. Bush (Bush) and Tony Blair (Blair) during 2001-2004 and 1999-2007 respectively. In these speeches both former Heads of State actively spoke of the threat posed by ‘Iraq’ and ‘Saddam Hussein’ wherein the Iraq War was justified (and legally framed) through use of specific narratives that include: Iraq’s alleged possession of weapons of mass destruction (WMD), Saddam Hussein’s purported threat to global peace and security, the global war on terror, and the plight of the Iraqi people. In unpacking these narratives this chapter will detail what has been said by two former Heads of State in regards to the Iraq War. These narratives offer an important lens to exploring the hegemonic power of states and state actors where discourses are used to generate “common sense” ways of thinking and remembering that guides [citizen’s] everyday, mundane understanding of the world (Stoddart 2007, p.201). Accordingly, this chapter will explore how state actors are able to use their

---

<sup>8</sup> Although the focus of this thesis is on counter-memories, it is important to begin with a discussion of what they resist against, and against whom they critique. We should note that the criticisms of the Iraq War had long existed prior to the emergence of the WTI in 2005. It had been expressed by the anti-war movement of 2002-2003 where millions of non-state actors protested against the proposed war agenda of the US-led coalition.

hegemonic power to influence and shape public memories, and discourses of the Iraq War. Through analysis of the discourse of the Iraq War constructed and managed by states and state actors, it will explore how states are able to “serve as gatekeepers facilitating [a] process of remembering and forgetting” (Weedon & Jordan 2012, p.15).

This chapter is divided into four sections that each explores key narratives used by Bush and Blair to frame the Iraq War. Using twenty-six speeches made by Bush and fourteen by Blair as data for understanding the role of hegemonic power in language, this chapter will accordingly discuss the key words that were identified through the analytical process. It will draw on the specific statements, words or texts that have emerged from speech transcripts to highlight how public memories are constructed and shaped by state actors seeking to legitimate their conduct in contexts such as war.

## **6.1 Weapons of mass destruction**

The word ‘weapons of mass destruction’ (WMDs) was consistently identified within a number of speeches. Prior to the March 2003 invasion, when Bush and Blair spoke publicly on the topic of Iraq, the threat of WMDs allegedly in the possession of Saddam Hussein was identified as a significant issue of concern. “The threat of Saddam Hussein” was established by Bush and Blair (2001) as an issue that “needed to be contained in any way possible” so as to ensure that “he is not able to develop [or use] these weapons of mass destruction.” In the period between 2001 to 2003, the speech transcripts of Bush and Blair consistently presented the argument that WMDs in the hands of a dangerous Iraqi regime was a serious concern. Historically the Bush administration maintained from 2001 that it would “confront weapons of mass destruction, so that a new century is spared horrors” (Bush, 2001a). This statement created the ideological foundation for the foreign policies of the US on Iraq that was used to facilitate the pursuit of military action and regime change in 2003. Speaking to the historical record of WMDs in Iraq, Bush (2001b) for example stated that Saddam Hussein was “a man with a record,” who had used WMDs to “murder thousands of his own people.” Moreover, Bush and Blair stated that:

We recognize the existence of a common threat stemming from the growing proliferation of weapons of mass destruction and increasingly sophisticated missiles for their delivery... [and] the growing threat from WMD-armed adversaries in regions of vital interest. We need to obstruct and deter these new threats with a strategy that

encompasses both offensive and defensive systems, continue nuclear arms reductions where possible, and strengthen WMD and missile proliferation controls and counter proliferation measures”

(Bush & Blair, 2001)

In the context of political discourse and the one-sided ways of thinking they often promote, statements like these were used at the time, to create a dichotomous and morally charged contrast between rogue states such as Iraq that were presented as being markedly different to hegemonic states like the US and UK. In their attempts to establish the threat of WMDs as a justification for regime change in Iraq the statements by Bush and Blair reflects how discourses can be mobilized “to convince individuals and social classes to subscribe to the social values and norms” of states (Stoddart 2007, p.201). As Saddam Hussein was identified by both Bush and Blair as a rogue actor, they issues public ultimatums indicating that they were “going to watch...carefully”, and if they caught him “developing weapons of mass destruction” they would “take appropriate action” (Bush & Blair, 2001).

Within public speeches made by both former leaders in the lead up to the March 2003 invasion, WMDs were consistently cited as the underlying justification for taking unilateral military action against Iraq. To solidify the argument that Iraq under Saddam Hussein’s leadership was an ongoing threat to US interests, the Bush administration declared on July 31, 2001 that the Iraqi situation was an emergency that needed to be taken seriously by the international community. In a public declaration, the Bush administration emphasized that the Iraqi emergency that began during the 1990 Gulf War was to be extended because of the ongoing threat of WMDs within Iraq. The continuation of “a national emergency” related to Iraq was stated to be in the national interests, because it would allow the US “to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq (Bush, 2001c). Declarations such as this helped accentuate the threat of WMDs in the eyes US citizens and the world, whereby the existence of these weapons in Iraq was suggested to be a key reason for the use of military force as a means of bringing about regime change in Iraq and neutralising the threat.

In addition to threat posed by stockpiles of WMDs in Iraq, the speeches of both Bush and Blair also promoted a narrative that inferred Iraq was “rebuilding the facilities to make [these] weapons (Bush, 2002a). This was a particular concern to Bush in 2002, where it was

stated that “UN inspectors believe that Iraq could have...enough biological and chemical agents to kill millions of people” (Bush, 2002a). Contributing to this narrative, Blair stated that despite the various sanctions handed down by the United Nations Security Council (UNSC)<sup>9</sup> to peacefully disarm Iraq, “we know that Saddam has been trying to buy significant quantities of uranium from Africa” (Blair, 2002). Within this particular speech, reference was made to a report made by the British Joint Intelligence Committee where Blair concluded that:

“Iraq has chemical and biological weapons...Saddam has continued to produce them, he has existing and active military plans for the use of chemical and biological weapons, which could be activated within 45 minutes...and that he is actively trying to acquire nuclear weapons capabilities.”

(Blair, 2002)

The public promotion of this key narrative by Bush and Blair helped construct a discourse where Iraq came to be closely associated with a present and future danger of WMDs. As Saddam’s WMD programme was presented as “active, detailed and growing” (Blair, 2002), this narrative was used as a discursive frame to develop support for a military campaign that could simultaneously address the existing stockpile of WMDs in Iraq, and also fight nuclear proliferation.

At the time where there was some debate on the proposed invasion, Saddam Hussein consistently denied that he had a stockpile of WMDs, or was attempting to rebuild the infrastructure to create such weapons. The absence of this perspective in the discourse of war constructed by Bush and Blair, points to the power and credibility of these former Heads of State over Saddam Hussein, whereby they were able to dismiss alternate narratives that could undermine their arguments. In the speeches of Bush and Blair there were several references made to the historical record of the Iraqi regime. Arguing that the world could not trust the words of Saddam Hussein, Bush for example argued that:

“We know the methods of this regime. They buy time with hollow promises. They move incriminating evidence to stay ahead of inspectors. They concede just enough to

---

<sup>9</sup> In between the conclusion of the Persian Gulf War on the 28 February 1991 and the Allied occupation of Iraq in 2003, the UNSC has voted on fourteen Resolutions on the Iraqi situation. These resolutions have been used by the international community to censure the actions of Saddam Hussein’s regime, and to also, facilitate a process of disarmament where Iraq was required to destroy all of its WMDs and allow UN weapons inspector’s entry for on-site inspections of their weapons program.

escape punishment and then violate every pledge when the attention of the world is turned away” (Bush, 2002a).

Echoing this, Blair (2002) cautioned that Saddam could not be trusted because his leadership was characterized by consistent flouting of the UN where a pattern of “obstruction, defiance and denial”, has undermined all peaceful attempts at disarmament. As a dominant and recurring narrative within the public speeches made by Bush and Blair, their dismissal of Saddam Hussein’s’ assertion that he did not have any WMDs, codified into the public memory a way of thinking that implied Saddam Hussein could not be trusted. Therefore, as all other avenues to disarmament- as described by Bush and Blair- had been exhausted, the position of the US and UK was one where they were no longer willing to be sit back and wait. As peaceful attempts to inspect and disarm Iraq’s weaponry via the UNSC had stalled, military action and invasion was promoted as being necessary to compel Iraq’s disarmament. The recurrence of this narrative in the speeches made by both former leaders in the lead up to the March 2003 invasion substantiates what Crook, Pakulski and Waters (1992) have argued. They maintain that to shore up support for the pursuit of state aggression and war, states often accentuate certain political issues that seem to “always [be] contextualized and linked with the global issues and general values” that promote specific “doom scenarios”. The promotion of these scenarios within the public memory of the Iraq War, “dramatizes them, adds a sense of urgency and generates mass anxiety which proves to be an exceptionally potent propellant for action” (Crook, Pakulski & Waters 1992, p.156).

In the speeches made by Bush in the lead up to the 2003 invasion, it is evident that he was able to construct and promote the doom scenarios identified by Crook, Pakulski and Waters (1992), where military action was endorsed as the only remaining action available to the international community. In a televised 2002 ‘Address to the Nation on Iraq’, Bush re-affirmed the urgency of the WMD threat stating that:

“Iraq’s weapons of mass destruction are controlled by a murderous tyrant who has already used chemical weapons to kill thousands of people. By its past and present actions, by its technological capabilities, by the merciless nature of its regime, Iraq is unique.”

(Bush, 2002b)

In the same speech, Bush made reference to the opinions of others including a former chief weapons inspector of the UN who was quoted to have said that “the fundamental problem with Iraq remains the nature of the regime itself [where] Saddam Hussein is a homicidal

dictator who is addicted to weapons of mass destruction” (Bush, 2002b). Quoting the opinions of others like this to strengthen the narrative of WMDs within the state constructed discourse of the Iraq War is a beneficial linguistic tool that Hamilton (1998, p.63) argues, helps politicians construct an identity “in which the narrator shows not only what is said, but how it was said.” As a narrator presenting an argument to justify the war, the statements made by Bush on the threat of WMDs also referenced the conclusions made by UN weapons inspectors who were quoted as having discovered “that Iraq had an advanced nuclear weapons development program, had a design for a workable weapon, and was pursuing several different methods of enriching uranium for a bomb” (Bush, 2002b). The future threat of nuclear proliferation in Iraq was said to be an immediate concern because as Bush (2002b) stated, “surveillance photos reveal that the regime is rebuilding facilities that it had used to produce chemical and biological weapons” (Bush, 2002b). In combination with the “massive stockpile of biological weapons that has never been accounted for” Bush (2002b) argued that “every chemical and biological weapon that Iraq has or makes is a direct violation of the truce that ended the Persian Gulf war in 1991.” By drawing on Iraq’s historical record of non-compliance to “international sanctions and UN demands” Bush argued that Saddam Hussein had “chosen to build and keep these weapons” that justified his “isolation from the civilized world” (Bush, 2002b). Accordingly to ensure that Iraq was unable to reconstitute “its nuclear weapons program” as was suggested by Bush (2002b), the US and UK positioned themselves as actors who would “not shrink from...doing what is necessary and right” (Blair, 2002). This enabled Bush and Blair to capitalize on the growing fears surrounding Iraq and Saddam Hussein that they had promoted, to create a narrative that justified invasion because “to ignore him as he grows even stronger and develops more dangerous weapons” was a “terrible line [that should not] be crossed” (Bush, 2002b).

### **6.1.1 War as a measure of last resort**

During 2002 to March 2003 where the invasion of Iraq was heavily debated by states within the UNSC and the broader public, various state and non-state actors were of the opinion that invasion should be a measure of last resort.<sup>10</sup> As the UNSC was still in the process of pursuing peaceful, non-militarised avenues to disarmament through enforcement of its

---

<sup>10</sup> It is important to note that to legally pursue their military campaign to overthrow Saddam Hussein’s regime, the US-led coalition required pre-approval from the UNSC. The UNSC had not given their approval for the invasion to be initiated, and at the time there were various dissenting opinions within the UNSC.

Resolutions <sup>11</sup>, the position taken by the US and its Allies was seen by some states within the UNSC as being too aggressive in nature. Former French President Jacques Chirac for example argued that “war is the proof of failure and the worst of solutions, so everything must be done to avoid it” (The Guardian, 2003). These sentiments were also echoed by former German Chancellor Gerhard Schroder who stated that Germany would not “approve a resolution legitimising war” (The Guardian, 2003). Despite the dissenting opinions of other states and the lack of universal support for military aggression more broadly, the public statements of Bush and Blair failed to acknowledge these alternative perspectives in meaningful ways that could generate debate on the proposed war. Instead the public statements made by these former leaders was one sided in nature where the use of force was argued to be justified based on the power and responsibility of the US and UK- as global hegemony- to intervene and address the threat posed by Iraq. Therefore in accordance with the public statements presented by Bush and Blair, this section will explore how the unilateral decision to invade Iraq was framed within their discourse of the war.

Bush and Blair argued that the decision to unilaterally invade Iraq was not one that they reached lightly, and that the present situation compelled them to act. As attempts to peacefully disarm Iraq via UNSC Resolutions had spanned a number of decades, and with each failing to assess the true extent of Iraq’s weaponry, it was concluded that invasion was the *only* remaining option left that could compel Iraq to disarm. As the extant scholarship on the Iraq War has shown, Saddam Hussein’s flagrant manipulation and obstruction of the diplomatic processes initiated and pursued by the UNSC, makes it difficult to ascertain the true extent of Iraq’s weaponry prior to the March 2003 invasion (see Massing, 2004; Whitney, 2005). However at the time when the invasion was being debated, Bush and Blair made a series of conclusive statements where intelligence and evidence was cited to substantiate their arguments. For example in 2002, Bush stated that “satellite photographs reveal that Iraq is rebuilding the facilities at sites that [had] been part of its nuclear program in the past” where the intelligence gathered by the US showed that Saddam Hussein had also “attempted to purchase high-strength aluminium tubes and other equipment needed for gas centrifuges, which are used to enrich uranium for nuclear weapons” (Bush, 2002b).

---

<sup>11</sup> A final resolution handed down against Iraq by the UNSC was that of Resolution 1441. It was adopted unanimously by all members of the UNSC (including the US) on 8 November 2002 and gave Iraq and Saddam Hussein a final opportunity to comply with its disarmament obligations.

To create a climate of fear that was to be associated with Iraq and Saddam Hussein, Bush also referenced “firsthand witnesses [who] have informed [the US] that Iraq has at least seven mobile factories for the production of biological agents, equipment mounted on trucks and rails to evade discovery [by the UN]” (Bush, 2003b). US intelligence agencies were said to “have sources that tell us that Saddam Hussein recently authorized Iraqi field commanders to use chemical weapons, the very weapons the dictator tells the world he does not have” (Bush, 2003b). In citing intelligence such as this, Bush was able to further and legitimate the state constructed narrative regarding the Iraqi threat. Here intelligence gathered by the US and UK was introduced into the public memory of the Iraq War to substantiate the claims made by Bush and Blair that Iraq was an ongoing threat for its possession and planned proliferation of WMDs. To show the one-sided perspective promoted by Bush and Blair within their public speeches, it is important to acknowledge the existence of contradicting expert opinions that had it been publicly available at the time, would have undermined the discourse of war constructed by Bush and Blair. Hans Blix, the Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) for example had concluded that “it would take months...to verify sites and items, analyse documents, interview relevant persons, and draw conclusions” regarding the true extent of Iraq’s weaponry (United Nations Security Council, 2003). This conclusion was supported by Mohamed Elbaradei, Director General of the International Atomic Energy Agency (IAEA) who stated to the Security Council that “at the current stage...there was no indication of resumed nuclear activities...nor any indication of nuclear-related prohibited activities at any inspected sites” (United Nations Security Council, 2003).

The lack of acknowledgement given to the judgements made by Hans Blix and Mohamad Elbaradei within their speeches allowed Bush and Blair to rationalise the need for unilateral military action that drew attention to Iraq’s historical record of non-compliance to the UNSC and its Resolutions. In 2002 for example, Blair stated that from the long history of diplomacy pursued by the international community, an established pattern of Saddam Hussein’s defiance could be identified. He argued that Saddam Hussein’s actions over the course of an 11-year history of UNSC Resolutions, showed that he was determined to “maintain the programme [of WMD]; to risk war, international ostracisms, sanctions, the isolation of the Iraqi economy, [all] in order to keep it” (Blair, 2002). Additional to this, Blair publicly stated in 2002, “Saddam Hussein is playing the same old games, in the same old way” (Blair, 2002). To reinforce this argument Blair also warned against trusting the word of Saddam Hussein

stating, that although Saddam claims to have “unilaterally destroyed these weapons” he could not be trusted for “such a claim is palpably absurd” (Blair, 2002). Within the public statements presented by Bush Iraq was stated to have “uniformly defied Security Council resolutions demanding [its] full disarmament” where Saddam Hussein was described as having actively undermined these peaceful efforts of diplomacy by threatening and “electronically bugging, and systematically deceiving UN inspectors time and time again” (Bush, 2003b). The consistent use of this warning by both Bush and Blair highlights that Iraq’s record of non-compliance to the UNSC helped to strengthen the war agenda proposed by the US and UK. More specifically it helped shaped the public memory in such a way where the invasion was framed as a policy of last resort as all other peaceful attempts at disarmament had been exhausted. They argued that Iraq’s prolonged history of non-compliance shows Saddam Hussein’s defiance and indifference to the will of the UNSC, and the international community more broadly. In the public memory of the Iraq War, the failures of the UN and its Security Council more specifically, were common themes. Iraq’s non-compliance to the UNSC was also used to publicly shame the UN and the international community, where Bush (2002a) argued, the “delay, indecision and inaction” of this representative body “could lead to a massive and sudden horror.” In doing so, Bush and Blair were able to position themselves in opposition to the UNSC.

Many critics who were opposed to the war, argued that under international laws, war could only be conducted on the approval of the United Nations (see Cox, 2003). According to this position, all states had a legal obligation to adhere to the United Nations Charter (1945) and other international treaties, where exercising in violation of international laws was tantamount to ‘vigilantism’ on an international scale (see Cox, 2003). The decision to unilaterally invade Iraq in 2003 without the pre-approval from the UNSC demonstrates the power of hegemonic states to initiate wars. It suggests that international laws do not have universal reach whereby states are able to selectively conform to some, but not all laws. As Franck (2002, p.616) has argued, “in essence, the Iraqi crisis was not primarily what do, but rather, who decides.” The UNSC is a representative body made up of select states with the power to authorise war. However, there are strict guidelines stipulating when and how wars can be initiated by states. As scholars of international relations have argued, throughout the centuries, military force has been justified and criticized with reference to narratives framed from multiple normative spheres: politics, morality and law (see Benjamin, 1978; Bull, 1995; O’Connell, 2014; Lesaffer, 2015). At the heart of international law of war is the concept of

*jus ad bellum*, or the right to war, where a set of criteria must met before engaging in a military conflict to determine whether entering into war is permissible. The theory of just wars and how it is defined can be divided into three parts including: *jus ad bellum* (the justice of resorting to war); *jus in bello* (just conduct in war) and *jus post bellum* (justice at the end of the war). The body of literature on just war theory within international relations is diverse and beyond the scope of this thesis. However as was noted in Chapter Two, this literature has concluded that understanding “the history of war is also a history of its justification” (Simon 2018, p.113). To understand the dynamic influence of state power, and how it is played out through legitimized forms of state violence it is important to identify how states and state actors have justified crimes of aggression like the Iraq War. Within the speech transcripts of Bush, a clear narrative that emerged was the irrelevance of the UNSC where the US was able to use its veto powers to take unilateral action. As part of this argument, Bush (2002c) drew attention to the perceived failures of the UNSC whose efforts to “disarm the Iraqi regime ha[d] failed again and again.” The danger of inaction was presented by both former leaders as one that needed immediate action. As Blair argued, Saddam Hussein’s defiance of the UNSC demonstrated that “the only persuasive power to which he [Saddam Hussein] responds to is 250,000 allied troops on his doorstep” (Blair, 2003). This was an important narrative embedded within the discourse of the Iraq War because it helped frame the decision of the US to take unilateral action as a measure of last resort.

### **6.1.2 Interpreting UNSC Resolution 1441**

The content and consequences associated with UNSC Resolution 1441 has been an important subject of debate associated with the Iraq War. Passed by the Security Council on 8 November 2002 it was stated to be the final attempt in diplomacy. At the time prior to the March 2003 invasion, there were significant questions asked of the UNSC and its ability to achieve a peaceful avenue for disarmament Iraq. Where Bush and Blair argued that UNSC Resolution 1441 was the final opportunity for Saddam Hussein to disarm and comply to the demands of the UNSC, various groups and actors in the US and UK argued differently. In the US for example, members of the Joint Chiefs of Staff opposed the invasion because they believed that the policy of containment was working (Ricks, 2002). Furthermore in the UK, leader of the House of Commons Robin Cook expressed his opposition to the war by resigning stating that, “the reality is that Britain is being asked to embark on a war without agreement in any of the international bodies of which we are a leading partner- not NATO,

not the European Union and, now, not the Security Council” (House of Commons 2003). Like many other Resolutions that had come before, UNSC Resolution 1441 stated that:

“The fact that Iraq has not provided an accurate, full, final and complete disclosure...of all aspects of its programmes to develop weapons of mass destruction and ballistic missiles...and of all holdings of such weapons, their components and production facilities and locations”

(UNSCR 1441, 2002).

It also stated that in order for Iraq to “begin to comply with its disarmament obligations...the government of Iraq shall provide UNMOVIC and IAEA <sup>12</sup>, and the [Security] Council, no later than 30 days” an “accurate full and complete declaration of all aspects of its programmes to develop chemical, biological and nuclear weapons, ballistic missiles and other delivery systems...as well as other chemical, biological and nuclear programmes, including any which it claims are for purposes not related to weapon production or material” (UNSCR 1441, 2002). The resolution did not explicitly authorize war, however it was clear to Security Council members that the drafters intended to “use it as a warrant to invade Iraq” (Kramer & Michalowski 2005, p.450).

Identifying what was stated within UNSC Resolution 1441 is important because there are varying interpretations of it. Resolution 1441 was also an important point of debate with both the KLRCT and WTI challenging the US’ interpretation. It is therefore important to identify how UNSC Resolution 1441 was interpreted in a way that helped facilitate the unilateral invasion. A central argument made by Bush and Blair within their public speeches on the war agenda, was the existence of a clause embedded into Resolution 1441 where the US- acting as hegemon- were able to initiate military force, if Iraq failed to comply within the mandated 30 day period. For example, on February 6, 2003 Bush stated that the 30 days given to Iraq by UNSC Resolution 1441 had “elapsed”, and in accordance to its foreign policy, “the US was required to pursue a more active, aggressive means to compel Iraq’s compliance to the demands of the international community” (Bush 2003b). To reinforce this argument, Bush also drew attention to Iraq’s historical record of non-compliance with the Security Council.

---

<sup>12</sup> The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and International Atomic Energy Agency (IAEA) are two organizations tasked with the duty of inspecting Iraq’s WMD program. The UNSC argued within Resolution 1441 that these organizations had been denied entry into Iraq and therefore were unable to complete the mandatory site inspections within Iraq.

In a national speech outlining the ‘Iraqi Regime’s Noncompliance with United Nations Resolutions’, Bush stated that:

“The Iraqi regime’s violation of Security Council Resolutions are [sic] evident and they continue to this hour. The regime has never accounted for a vast arsenal or deadly biological and chemical weapons.”

(Bush, 2003b)

The consistent articulation of issues related to Iraq’s non-compliance to the UNSC, and the finality of Resolution 1441 was used by Bush and Blair as a form of political discourse where narratives are used to construct and manufacture risk, where Saddam Hussein was stated to be pursuing “an elaborate campaign to conceal its weapons materials and to hide it, to intimidate key experts and scientists, all in direct defiance of Security Council Resolution 1441” (Bush, 2003b).

The US’ unilateral pursuit of war in 2003 circumvented the clear stipulations of UNSC Resolution 1441. In the discourse presented by Bush and Blair, the hegemony of the US as a state with veto powers on the UNSC was another narrative that emerged to legitimate the war. This suggests that the hegemony assumed by the US as leaders of a global world can be used to facilitate and legitimate the act of initiating a war. In the context of CDS, the use of specific language by Bush demonstrates the performative power discourses can have in shaping the identity associated with the actors involved, and the ideology of how the war was to be framed publicly. For example, Bush argued in his speeches that the UNSC had “not lived up to its responsibilities” (Bush, 2003d). He also spoke of other actors within the UNSC that lacked the political will to take action despite these governments shar[ing] our assessment of the danger” (Bush, 2003d). The UNSC was therefore presented within the public discourse of war as ineffective actors that did not have “our [the US’] resolve to meet it [the threat of Iraq]” (Bush, 2003d). The use of such language adopts a clear ‘us vs them’ approach that delineated the US and its Coalition of states as the only actors willing to address the threat of Saddam Hussein’s regime in Iraq. The identity of global hegemon assumed by the US in this context also helped construct an ideology of Iraq War that was framed by a narrative where some actors had failed to act; thus creating a gap that the US- as hegemon- was able to fill. The critique of the UNSC presented in the public speeches of Bush and Blair, positioned the UNSC- as key actors in the decision-making process of initiating wars- in a subordinate position relative to the US. This helped to reinforce the global hegemony of the US who “had pursued patient and honourable efforts to disarm the

Iraqi regime without war” (Bush, 2003d). Therefore as was presented within the public speeches of Bush and Blair, it was the failures of the UNSC as a representative body that strengthened the political will of the US to use their veto powers within the UNSC to assume the role of protector of the international community as is expected of hegemonic actors.

## 6.2 The global war on terror

There is no doubt that the terrorist attacks of September 11, 2001 changed the world. It is a notable event because this terrorist attack, on US soil, helped engender a global climate of fear that had significant impact for the foreign policy on Iraq that was presented, and pursued by the US and UK. This foreign policy capitalized on the fears within and beyond the US, wherein the discourse of the Iraq War constructed by Bush and Blair referenced the global war on terror as a justification for the war. Within the speeches analysed here, specific keywords were identified including: ‘terrorists’, known ‘terrorist networks’ and ‘terrorism’ more broadly. The presentation of this language by both former leaders within the discourse on the Iraq War framed military action as a crucial factor for winning the US-led global war on terror in a post-9/11 world. This section will explore the narrative of the global war on terror as it has been articulated within the speeches of Blair and Bush.

Iraq was stated to be “a gathering threat to the security of America and to the future of peace” because “it ha[d] sponsored and sheltered terrorists” (Bush, 2003b). The gathering threat of Iraq cited by Bush, conflated the threat of Saddam Hussein’s purported WMD stockpile with that of terrorism, and generated within the public memory an argument that to do nothing would seriously compromise the global war on terror pursued by the US. For example, in his remarks announcing a ‘Bipartisan Agreement on a Joint Resolution to Authorize the Use of Force in Iraq’, Bush (2002a) explained that:

“Countering Iraq’s threat is also a central commitment to the war on terror. We know Saddam Hussein has longstanding and ongoing ties to international terrorists. With the support and shelter of a regime, terror groups become far more lethal. Aided by a terrorist network, an outlaw regime can launch attacks while concealing its involvement. We must confront both terror cells and terror states, because they are different faces of the same evil.”

Regime change in Iraq was therefore stated to be necessary because the US-led global war on terror compelled it to act in decisive ways to combat terrorists wherever they are. The threat

of terrorism was also mentioned by Bush in his 2002 'Address to the Nation', where he stated that "the source of our urgent concern [was] about Saddam Hussein's links to international terrorist groups" (Bush, 2002b). To substantiate this argument, Bush cited specific examples where US intelligence agencies had evidence that the Iraqi regime had "provided a safe haven to terrorists including Abu Nidal and Abu Abbas" (Bush, 2002b). This evidence was used by Bush to conclusively show "that Iraq is continuing to finance terror and give assistance to groups that use terrorism to finance terror and gives assistance to groups that use terrorism to undermine Middle East peace."

In a post-9/11 climate, the public statements of Bush and Blair promoted a distinct climate of fear and concern that correlated the threat of Saddam Hussein, with the global war on terror. Bush for example declared in 2002, that intelligence gathered by US agencies proved that "Iraq and Al-Qaida have had high-level contacts that go back a decade" (Bush, 2002b). As Iraq and Al-Qaida were stated to "share a common enemy- the United States of America," Bush (2002b) intimated that the threat of Iraq and Saddam Hussein was not only global in scope but had important ramifications for the national security of the US. Noting the context in which these statements were presented were post-9/11, is important because the presentation of these statements helped solidify a narrative that played on the ideals of American patriotism and the fears of another potential terrorist attack on US soil. However it is also important to acknowledge the existence of other opinions like that of Brent Scowcroft, a former National Security Advisor to President Bush. He argued that the "war would distract from the broader fight against terrorism and the Israeli-Palestinian conflict, which should be the US's highest priority in the Middle East" (Scorcroft, 2002). Others opined that the war in Iraq would be a distraction from the war on terrorism (see Graham, 2002), yet these opinions were overshadowed by the public statements presented by Bush and Blair. By stating that "Saddam Hussein's regime [had] gleefully celebrated the terrorist attacks on America" Bush intimated that Saddam Hussein had supported known terrorists, and importantly was continuing to do so in a way that threatened global peace and security (Bush, 2002b). Owing to the influence of language in shaping discourses, a statement like this can be used to demonize Saddam Hussein in such a way that can generate ideologies that strengthens the arguments expressed by state actors that would overshadow other opinions that were circulating at the time. It has specifically generated a way of thinking about the Iraq War where Saddam Hussein and terrorist were enemies of the US, and therefore significant threats to its interests.

Another theme that emerged from an analysis of Bush and Blair's public statements on the Iraq War conflated the threat of WMD and terrorism. The amalgamation of these two narratives was used by Bush and Blair to help make a compelling argument where military action could simultaneously address both threats. Within their speeches, the dual threat of WMD with terrorism that had amassed in Iraq under the leadership of Saddam Hussein was first described in 2002. In a speech made on October 7, Bush (2002b) stated that:

“Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group or individual terrorists. Alliance with terrorists could allow the Iraqi regime to attack America without leaving any fingerprints...Confronting the threat posed by Iraq is crucial to winning the war on terror. Saddam Hussein is harbouring terrorists and the instruments of terror, the instruments of mass death and destruction. And he cannot be trusted. The risk is simply too great that he will use them or provide them to a terror network.”

This was also echoed by Blair (2002) when he stated that:

“Terrorism and WMDs are linked dangers. States, which are failed, which repress their people brutally, in which notions of democracy and the rule of law are alien, share the same absence of rational boundaries to their actions as the terrorist. Iraq has used WMD...And terrorism and WMD have the potential, at least, to be directly linked.”

Notwithstanding the existence of other interrelated issues within these passages, the references made to ‘WMD’ and ‘terrorists’ by Bush and Blair made inferences to the historical record on the threat posed by Iraq to show what the future could look like if the US and UK failed to take immediate action. In addition to these specific statements, Blair (2002) also warned of the dangerous future ahead, where rhetorical questions including: whether “Al-Qaida [would] buy WMD if it could?”; “Do they have the financial resources?” and “would they use them [WMD]?”, were expressed to highlight the need to immediately address the Iraqi threat. In this way the references made by both former leaders to the past and present threat posed by WMDs was used as a discursive frame by state actors to promote their vision of a dangerous future.

Despite the lack of agreement amongst the international community on what action should be taken against Iraq and Saddam Hussein, the references made to ‘terrorism’ and ‘terrorists’ within the speeches of Bush and Blair, suggests that the 9/11 terrorist attacks was a

significant event that galvanized much of the world under one banner- the global war on terror (see Massing, 2004; Whitney, 2005). The manifestation of this perspective within the legitimating narratives cited by Bush and Blair in their statements, highlights how states are able to construct discourses of risk where “aspects of existence are *problematized*” by states “through an array of discursive practices” that can be mobilized to achieve the political goals of states and its actors (Teghtsoonian 2016, p.334)(*emphasis* in original). In the context of the Iraq War, it is the way in which the global war on terror has been problematized in relation to the combined with the threat of WMDs in the possession of Saddam Hussein, that legitimated the Iraq War as one that would be beneficial “to help make the world more peaceful and just” (Bush, 2002b).

### **6.3 Iraq’s ongoing threat to global peace and security**

The public memory constructed and managed by Bush and Blair was also influence by their concerns that Iraq under the leadership of Saddam Hussein, posed a major threat to the global peace and security of the Middle East- and the world more broadly. Iraq’s ongoing threat to global peace and security was a narrative presented by Bush and Blair in response to other issues including WMDs and terrorism. In bringing together the dangers of WMD and terrorism under a broad banner of global peace and security, the US and UK were able to construct a narrative that was wide reaching in nature where the need to act and intervene was framed as a global issue that the international community needed to address.

Bush first cited Iraq’s threat to global peace and security in 2002, where he stated that the US remains “absolutely determined to make that part of the world a more peaceful place by keeping this guy [Saddam Hussein] in check “ (Bush & Blair, 2001). Furthermore in a joint statement, both leaders reaffirmed that the US and UK’s foreign policy on Iraq was to benefit the entire international community because “it is in all of our interests to create a more stable and peaceful world” (Bush & Blair, 2001). The global threat posed by Iraq and Saddam Hussein’s regime was further solidified into the public memory, when Bush inferred that Iraq was not only a “gathering threat to the security of America” but also, “to the future of peace” (Bush, 2002a). Related to this was the threat of Saddam Hussein and his connection to known terrorists. Echoing the public statements presented by Bush, Tony Blair spoke of a “dilemma that confronts” the international community in the post 9/11 world (Blair, 2002). Here he infers that:

“The year 2002 is different. These dangers can strike at any time, across any national boundary and in pursuit of a cause with which there can be little or no rational negotiation.”

(Blair, 2002)

In this way Blair echoed Bush, re-affirming that the maintenance of global peace and security was to be contingent on how the international community responds to Iraq. Both former leaders argued that this was a crucial moment for the international community, where to do nothing to confront the Iraqi threat was to undermine all efforts to maintain global peace and security. Within the UK, the discourse presented by Blair with regard to the Iraq invasion was one that drew on feelings of hope that heightened the responsibility of the international community to respond appropriately. In a speech made to the Labour Party conference in Blackpool, Blair spoke of the threat of Iraq, cautioning that:

“If at this moment having found the collective will to recognise the danger, we lose our collective will to deal with it, then we will destroy not the authority of America or Britain but of the United Nations itself. Sometimes and in particular dealing with a dictator, the only chance of peace is a readiness for war.”

(Blair, 2002)

The presentation of this issue within the public memory constructed by Bush and Blair was significant because it helped frame a narrative where the need to confront the danger of Iraq and Saddam Hussein was something the international community needed to do. The particular framing used by both former Heads of State suggests that this messaging was not only directed towards citizens within the US and UK, but also to the international community whose interests are to maintain global peace and security. Despite the presentation of this hegemonic narrative where the US and its allies framed themselves as protectors of global peace and security, all in the international community did not accept this. Former President of South Africa Nelson Mandela for example argued that the US’s attitude on Iraq was “a threat to world peace...that must be condemned in the strongest terms (BBC News, 2002).

The unilateral invasion of Iraq in 2003 by the US and UK highlights the impact of hegemonic power in the context of wars and state aggression. Importantly given the vocal opposition expressed by a number of actors, including state actors from around the world, the March 2003 invasion highlights the influence of legitimacy in maintaining a state’s monopoly over the use of force. Acting without authorization from the UNSC, the military action pursued by the US, the UK and their Allied Coalition demonstrates the hegemonic power of states like

the US. In this scenario, the circumvention of the UNSC and of international laws can be explained through understanding the influence of global hegemony. Global hegemony is “shaped and systematized by international organizations and regimes that enable the hegemon, with the support of its alliance of core states...to lead and shape the development of world systems” (Xing 2016, p.31). Importantly to maintain their global hegemony states like the US, are able to “contain emerging crises” so as to sustain their leading position in the global order (Xing 2016, p.32). Global hegemony can also be used to explain how states like the US are able to act in ways where state power has no limitations. The power exercised by hegemonic states has far-reaching impacts for how the Iraq invasion has been justified and remembered within the public memory of the invasion. Here it is beneficial to draw upon the arguments of Antonio Gramsci (1971) who argued, that dominant groups in society (state actors) are able to maintain their power because of two reasons. Firstly state actors are able to use force and initiate wars and secondly they are able to secure collective consent on political and social issues. This argument is significant for its relevance to the Iraq invasion, where dominant states within the international community – the hegemons- were able to initiate a war and pursue military aggression despite the absence of universal support.

Furthermore analysis of the public speeches made by Bush and Blair highlight how state actors are able to reinforce their power and legitimacy by securing a level of collective consent that Gramsci considered vital to the maintenance of state power. Here Gramsci (1992, p.137) is careful to distinguish between coercion and consent where hegemonic power is established and maintained through the voluntarism and participation of civil society to the state (see Stoddart, 2007). In other words, hegemonic power can be maintained when dominant groups such as state actors or governments are able to secure the consent of its subjects. Consent according to Stoddart (2007, p.203) is embodied in “everyday common sense” ways of thinking that can be “expressed through the mundane activities connected with work, school, the family and the church.” For example, in explaining the rationalisation behind the invasion, Bush stated that it was a decision that re-affirmed the US commitment “to freedom for all”, allowing them “to protect human dignity” (Bush, 2002b). The responsibilities assumed by the US as global hegemons was cited by Bush in his ‘War Ultimatum’ speech made on 18 March, 2003. In this speech, made on the day of the invasion, Bush explained that:

“We are now acting because the risks of inaction would be far greater. In one year, or five years, the power of Iraq to inflict harm on all free nations would be multiplied

many times over. With these capabilities, Saddam Hussein and his terrorist allies could choose the moment of deadly conflict when they are strongest. We choose to meet that threat now, where it arises, before it can appear suddenly in our cities and skies.”

(Bush, 2003e)

The responsibility to protect the world and maintain global peace and security was a consistent issue publicly discussed by Bush and Blair that helped reinforce their hegemonic power over decisions such as initiating wars. Embedded into the public memory, this issue helped frame how the invasion was justified. This way of remembering highlighted the responsibilities of the US and the UK, who were positioned as the protectors of global peace and security. The pursuit of military aggression in Iraq was therefore suggested to be a necessary act that would contribute to the global war on terror and in turn, help the US and UK maintain global peace and security.

### **6.3.1 Iraq as a ‘rogue state: us versus them**

As Iraq and Saddam Hussein were presented as global threats, Bush and Blair constructed an ‘us vs. them’ way of thinking that singled out Iraq as a rogue state that needed containment. To reinforce this perception, in an ‘Address to the Nation’ made on March 19, 2003 a day after the invasion, Bush stated that the invasion was carried out because:

“The security of the world requires disarming Saddam Hussein now...As we enforce the just demands of the world, we will also honour the deepest commitment of our country...The United States, with other countries will work to advance the liberty and peace in that region...Free nations have a duty to defend our people by uniting against violence...America and our allies accept that responsibility.”

(Bush, 2003)

“To defend our freedom”, Bush claimed that the military action pursued by the US and its Allies would help them “carry on the work of peace” (Bush, 2003). In this way, the public memory of the Iraq invasion constructed by Bush and Blair singled out Iraq as a significant threat that they were willing to counter because they were the global defenders of peace and security. From the perspective of the US and UK in conjunction with the Coalition of States<sup>13</sup> the invasion of Iraq was therefore justified and legitimated because, it was pursued to help “the cause of peace” re-affirming that these states were committed to bringing “freedom to

---

<sup>13</sup>Also referred to as ‘Operation Iraqi Freedom’, the March 2003 invasion of Iraq was led by the US, working in a Coalition with other states including: the UK, Australia and Poland.

others” (Bush, 2003). This was significant because it codified into the public memory a comparative way of thinking where the US, UK and the allied Coalition were representing the interests of freedom, peace and security against, the threat of Iraq and Saddam Hussein’s regime. It solidified the hegemonic power of the US who were consistently positioning themselves and their Allies as “free nations” who were acting in response to the “new and undeniable realities” of the growing threat of Iraq (Bush, 2003).

#### **6.4 Regime change to save the Iraqi people**

To justify the invasion, the US and UK consistently argued that regime change was necessary to save the victimised Iraqi people. Within the public speeches made by Bush and Blair a clear humanitarian narrative emerged that was used by both former Heads of State to help build support for the invasion. The public presentation of this humanitarian narrative helped frame regime change as necessary for re-establishing human rights norms in Iraq. As human rights are inalienable, they have the advantage of being almost universally accepted by all (Green & Ward, 2004). Understanding how this narrative was presented by Bush and Blair is therefore important for establishing how “hegemonic power works to convince individuals and social classes to subscribe to the social values and norms of an inherently exploitative system” (Stoddart 2007, p.201). In 2001 for example, Bush and Blair stated that the US and UK remained determined “to protect the Iraqi people from the brutality of Saddam Hussein and his indifference to their humanitarian needs” (Bush & Blair, 2001). The suffering experienced by the Iraqi people was however, not a dominant justification cited by Bush and Blair prior to 2002. In 2001, statements made within their speeches suggested that the threat of WMD and terrorism was of greater significance. Although Bush and Blair did mention the experiences of Iraqi citizens in speeches in 2001, it was not until October 2, 2002 that this was emphasized (see Bush, 2002a). In his remarks ‘Announcing Bipartisan Agreement on a Joint Resolution to Authorize the Use of Force Against Iraq’, Bush stated that:

“We...know the nature of Iraq’s dictator. On his orders, opponents have been decapitated and their heads displayed outside their homes. Women have been systematically raped as a method of intimidation. Political prisoners are made to watch their own children being tortured. The dictator...[uses] murder as a tool of terror and control within his own cabinet, within his own army, even within his own family.”

(Bush, 2002a)

At the time of the invasion, however, Human Rights Watch concluded that political killings in Iraq were not of the exceptional nature that would justify such intervention”, nor was invasion “the last reasonable option to stop Iraqi atrocities” (Roth 2004, p.9). In overlooking these conclusions, Bush and Blair sought to stymie the debate on war by emphasizing the role of hegemonic states to protect the world against brutal dictatorships. Bush for example, spoke of “the innocent men, women and children” (Bush, 2002a) who would be liberated as a result of regime change. He publicly explained that:

“In accepting this responsibility, we also serve the interests and the hopes of the Iraqi people. They are a great and gifted people, with an ancient and admirable culture, and they would not choose to be ruled by violence and terror. The people of Iraq are the daily victims of Saddam Hussein’s oppression. They will be the first to benefit when the world’s demands are met.”

(Bush, 2002a)

Furthermore the decision to unilaterally invade Iraq was explained by Bush as being symptomatic of America’s vigour in spreading human rights and freedom throughout the world. Bush stated in 2002 that:

“America believes that all people are entitled to hope and human rights, to the nonnegotiable demands of human dignity...America is a friend to the people of Iraq...The long captivity of Iraq will end, and an era of new hope will begin.”

(Bush, 2002b)

Yet as Kauzlarich and Kramer (2005, p.450) have noted in their criminological analysis of the Iraq War, “contrary to its humanitarian rhetoric, the US government had a long history of supporting human rights violations by Saddam Hussein.” The Reagan and first Bush administrations for example, provided Iraq with loans and satellite intelligence during the Iran-Iraq war and despite Iraq’s use of chemical weapons against Iran, the US continued to provide support to Saddam Hussein (Kauzlarich & Kramer, 2005).<sup>14</sup> Like the other issues

---

<sup>14</sup> The hypocrisy of the US in justifying the Iraq War on humanitarian concerns is also reflected in statistics detailing the human devastation of Iraq following the March 2003 invasion. Simons (2002) estimates that nearly a million Iraqis died as a result of US sanctions and bombing campaigns in Iraq which calls into question the Bush administration’s claim that concern for the Iraqi people was the primary reason for invasion. Amnesty International (2004) has also estimated that over 10,000 civilians were killed during the invasion and first year of occupation. According to Human Rights watch (2003), the widespread use of cluster bombs and numerous attempted ‘decapitation’ strikes targeting senior Iraqi officials- often based on scanty or questionable intelligence- were responsible for the deaths of hundreds of Iraqi civilians during the early days of the invasion.

discussed above, the statements made by Bush and Blair on the experiences of Iraqi citizens are significant for its reinforcement of US hegemony. In this way, the global hegemony of the US is being reinforced through reference to “universal norms, institutions and mechanisms which lay down general rules of behaviour for states” (Cox 1993, p.62; Green & Ward 2004, p.9). The emphasis both leaders gave to the suffering and victimization of Iraqi people by Saddam Hussein’s brutal dictatorship helped to solidify a particular way of thinking where the US and their Allies were pursuing invasion to initiate changes within Iraq that would lead to a freer, more prosperous country that would fundamentally benefit Iraqi citizens. In promotion of this Bush released a statement outlining the US’ ‘Vision for Iraq and the Iraqi people’ on March 16, 2003 just days prior to the invasion. The dissemination of this vision within the public domain is a crucial point that provided a vision of how regime change was to be pursued to benefit the interests of Iraq citizens. As part of the US vision for Iraq, Bush explained that:

“The Iraqi people deserve to be lifted from insecurity and tyranny, and freed to determine for themselves the future of their country. We envisage a unified Iraq with its territorial integrity respected. All the Iraqi people...should enjoy freedom, prosperity and equality in a united country. We will support the Iraqi people’s aspirations for a representative government that upholds human rights and the rule of law as cornerstones of democracy.”

(Bush, 2003c)

The future envisaged for Iraqi citizens by the US and their Allies was simple- liberation. Bush argued that “to realize a better future for the Iraqi people” it was the responsibility of the entire international community “to join with us” to remove Saddam Hussein’s regime (Bush, 2003c). The role that this human rights narrative has had in shaping the conduct and strategies of states and institutions, can be best understood in terms of hegemonic power. Green and Ward (2004) argue that although state agencies face real pressure from domestic and/or international society to conform with human rights norms this pressure is “inconsistent and inequitably” applied. The presentation of a humanitarian narrative to justify the Iraq War suggests that the hegemonic concept of world order has an influential role in shaping the discourses and conduct of states (see Cox, 1993). In promoting a narrative of liberation that would re-establish human rights norms in Iraq, the US and UK have reinforced a form of structural power “to decide how things shall be done [and how] to shape frameworks within which states relate to each other” (Strange 1998, p.125). In this way, the public memory of

the Iraq invasion managed by Bush and Blair promoted the suffering of the Iraqi people, allowing the US and UK to characterize themselves as global defenders of freedom and democracy. To bring greater attention to the brutality of Saddam Hussein's regime, Bush stated that the invasion was justifiable because the US was determined to "tear down the apparatus of terror, and help...build a new Iraq that is prosperous and free" (Bush, 2003d). He explained that "the tyrant will soon be gone..." and that "liberation is near" (Bush, 2003d). This particular narrative helped to frame the US (and its Allies) as "paramount defenders of human rights and freedom" (Sutton & Norgaard 2013, p.514). In emphasizing the need to liberate Iraq and save Iraqi citizens from Saddam Hussein's brutal dictatorship, Bush was able to promote himself (and the US) as protectors of human rights and individual freedoms. This imbued the invading states with greater legitimacy to act in Iraq because through the lens of 'liberation' the US was able to argue that there were humanitarian concerns within Iraq that required it to invade to protect the inalienable human rights for all people.

## **Conclusion**

As explored in this chapter, the public memory of the Iraq invasion and subsequent war, promoted specific narratives to promote issues including: WMDs, the global war on terror, global peace and security and humanitarian concerns for Iraqi people. The promotion of these issues, cited by Bush and Blair as justifications for war helped to solidify a particular way of thinking that helped to advance the perceptions and positions assumed by the invading Coalition of States. This position emphasized the combined threat of WMDs and terrorism that was concentrated on the growing concerns on Iraq and Saddam Hussein's brutal dictatorship, where military aggression was framed as being necessary. Understanding how these narratives have been presented and substantiated by Bush and Blair within their public speeches is important because in contexts of political discourse as Brockling, Krasmann and Lemke (2011, p.13) have argued, "governing means creating lines of force that make certain forms of behaviour more probable than others." The discursive practices used by Bush and Blair are therefore important markers to delineate how language can be used to construct a discourse and public memory of the Iraq War that suits the interests of the invading Coalition of states.

## Chapter Seven

### **Making the case against war: a counter-memory to disseminate the truth about the Iraq War**

International crimes perpetrated by powerful states like the United States (US), are often hidden from view where what we ‘see’ of international crimes, is often presented and interpreted based on a state’s perspective. Human rights violations, according to Stanley Cohen (2001, p.5) are frequently subject to denial, where “knowledge about atrocities... is easily rendered invisible” by states. They act in ways that deny the reality of their criminality by legitimating military aggression and war as part of its foreign policies. Story-telling, as argued by Stanley (2009, p.14) is therefore important for its “capacity to reveal truths that have previously been silenced or denied.” In the context of state crimes, these truths are often “right before our eyes” and as Scheper-Hughes (1996, p.889) notes, they exist in spaces that are “hitherto unrecognized.” In response to international crimes like the Iraq War, it is the lack of recognition given to the truth and the absence of story-telling from the viewpoint of victims and affected communities, that has led to the creation of resistive spaces, where citizens’ tribunals can be located. Therefore in locating citizens’ tribunals within such distinct spaces of resistance, this chapter will explore a Gramscian (1971) perspective of counter-hegemony where “new alignment of class and popular forces” can “challenge the domination of the leading class across the state institutional networks” (Carroll & Ratner 2010, p.12). Central to this process, is Gramsci’s elocation of a ‘war of position’ where those in civil society can actively contest the hegemonic power of states and its actors. A ‘war of position’ is therefore postulated to be an act of resistance to domination within culture (Gramsci 2007, p.168) and, can include memories. Culture, according to Gramsci (1971) lies at the heart of any revolutionary project. Memories are one component of culture that can influence how people see the world and how they manoeuvre within it. Importantly as will be discussed in this chapter, the presentation of a counter-memory of the Iraq War by the World Tribunal on Iraq (WTI or Tribunal) in 2005 demonstrates how a specific culture can influence how civil societies remember events like the Iraq War, and how historical records ‘might be changed’ (Crehan 2002, p.71).

At the heart of this are questions on “how might a more equitable and just order be brought about”, and what is it about “how people live and imagine their lives in particular times and places that advances or hampers progress” to this more equitable just order (Crehan 2002, p.71). A ‘war of position’ between political and civil societies is described by Cox (1983, p.165) as a process which “slowly builds up the strength of social foundations” whereby “alternative institutions and alternative intellectual resources” emerge. With these ideas in mind, this chapter will explore the how a ‘war of position’ has emerged in response to the institutional silence and denial of state crimes like the Iraq War. It focuses on the emergence of one counter-memory of the Iraq War, focusing specifically on narratives that have been brought to the fore by non-state actors within the WTI who have sought to reconstruct the public memories and the historical record of this contentious war.<sup>15</sup>

The counter-memory constructed by the WTI is a significant case study. More specifically as will be explored in this chapter, counter-memories are examples of story-telling where truth is centrally placed to “reveal how far the state has degraded the ideal of human rights” (Rolston 2000, p.xv). In contexts of silence and denial about international crimes, acknowledging and responding to “human suffering in all its forms” is important for alleviating “its causes and conditions” (Stanley 2009, p.9). Consequently, “breaking the silence and calling...atrocities...by the name they deserve” (Becker 2005, p.9) is an important first step to not only redressing the harms of victims and affected communities, but to also expose the structural and institutional conditions that underlie most state crimes. Accordingly this chapter will outline the process of story-telling pursued by the WTI. Embedded within the WTI’s process of story-telling are specific narratives that have been promoted by the Tribunal to construct “a record not only of the crimes against the Iraqi people but also crimes committed against humanity” by the US and UK (Sokmen 2008, p.ix). The record of the Iraq War constructed here is an important example of Gramsci’s (1971) war of position where civil society has sought to rewrite the historical record of the Iraq War in ways that challenge the hegemony of states and its actors. This counter-memory is therefore important for its’ acknowledgement of the truth associated with the Iraq War, where the lies and coercion of the US and UK have been exposed and given enduring form.

---

<sup>15</sup> Owing to the breadth of data obtained from the WTI and KIWCT, the counter memories of the Iraq War they have each constructed will be discussed across two chapters. The first, discussed in this chapter focuses on the counter-memory of the WTI, which will be followed in Chapter 9 by the KIWCT’s counter-memory.

In response to this the WTI emerged as an expression and solidification of the broader social movement against the Iraq War where Tribunal actors, sought to revise the historical record of the Iraq War to expose what they perceived to be the truth. Engaging in a ‘war of position’ (see Gramsci 1971) the record of the Iraq War constructed by the WTI has challenged some specific issues or narratives presented by the US and UK. As part of this the WTI constructed its own counter-memory to present “a record not only of the crimes against the Iraqi people but also crimes committed against humanity” by the US and UK (Sokmen 2008, p.ix). In doing so this record sought to rewrite the memory of the Iraq War in ways that exposed the aggression of the US and its Allies, as well as the “lies and coercion” used by the US and UK to build global support for the war. The truth and the story of the Iraq War told by the WTI was one that argued against a number of key issues that were used by the Panel of Advocates as evidence to substantiate their own arguments. In the context of resistance to state crime, the counter-memory of the WTI occupied a space located squarely within the realm of counter-hegemony. Neo-Gramscian theorist Nicola Pratt (2004) has described counter-hegemony as a creation of an alternative hegemony on the terrain of civil society in preparation for political change. In this way, counter-memories like that constructed by the WTI can be used as a record of evidence of state crimes capable of challenging the historical record constructed and managed by states. While the WTI’s counter-memory is not without its limitations in that their judgements made on the Iraq War could not be legally enforced, their pursuit of truth in contexts of silence and denial have facilitated positive outcomes associated with transitional justice initiatives such as truth commissions. These outcomes are identified by Stanley (2009, p.151) as including: “exposing denials, shaming and holding perpetrators to account, deterring future offenders, healing victims and their families, reforming institutions, and redefining societal norms and conditions around respect and dignity for all.”

To understand how a counter-memory of the Iraq War was constructed by the WTI at its final Istanbul Hearing (23-27 June 2005) this chapter will draw on various themes and issues as they have been presented within the testimonies of a Panel of Advocates and the judgements made by the Jury of Conscience. In line with the Tribunal’s broader resistance against the Iraq War, the presentation of these alternate narratives was stated to be “a means of resistance to the forces that render our world unliveable” (Sokmen 2008, p.ix). As memories have the capacity to rebuild the object of perception, the counter-memory of the

Iraq War constructed by the WTI helped to solidify existing criticisms that argued the invasion and war was illegal under existent international laws. Going beyond this and through use of the testimonies given at the Istanbul hearing, the Tribunal's counter-memory also sought to chronicle the pervasive manipulation of the international community by the US and UK to show that Iraq had been completely destroyed as a result of the aggressive military campaign. At the Istanbul hearing, these issues were explored in three ways. Through use testimonies given a Panel of Advocates, the WTI addressed the memory of the Iraq War by exploring topics including: 'Bearers of the Responsibility of the War', 'the Concrete Details of the War and Occupation' and 'The Effects of the War on the Future of our World'. To examine every aspect of the Iraq War including the motivation of the US and UK to invade Iraq and the impact the war has had for Iraqi citizens, the counter-memory constructed by the WTI represented the opinions and dissenting voices from within the global anti-war movement against the Iraq War and the US-led Coalition that participated in the war. This chapter explores the testimonies given by the Tribunal's Panel of Advocates who were presented to be experts on the issues explored within its counter-memory. Divided into six distinct sessions, the Istanbul hearings introduced evidence and counter narratives on various topics that explored the Iraq War from the perspective of international laws, the culpability of states and the media who had acquiesced to the war agenda of the US, and also canvassed other associated issues such as the physical and cultural devastation of Iraq as a result of the war.

Through analysis of these topics as they were presented at Istanbul this chapter aims to enrich our understanding of memory and how counter-memories can confront and challenge the existing public memory of the Iraq War. Here the WTI's counter-memory - like that of the KIWCT's explored in Chapter Nine below- exists within spaces of resistance where alternative perspectives that critique the Iraq War are solidified and given enduring form through the memorialisation and publication of these testimonies. As was briefly explored in Chapter Five the transnational network of participants to the WTI, originated with some key activists who actively opposed the Iraq War during the anti-war demonstrations 2002-2003. Therefore the counter-memory constructed at the Istanbul hearing was significant because it has memorialised the opinions of anti-war protestors in such a way that could not be as easily dismissed by states and its actors. Exploring the WTI's counter-memory of the Iraq War, is therefore relevant to understanding how and in what context counter memories can be constructed and used as a tool to challenge the historical record associated with this event

The specific narratives promoted within this counter-memory is particularly important because to address the existent gaps in impunity for the Iraq War, counter-memories are used by citizens' tribunals to confront contexts of silence and denial of state crimes. In this way, this chapter will explore how a 'war of position' has manifested to generate counter-memories that in the context of civil resistance can be used by citizens' tribunals as means to pursue an alternative and symbolic form of global justice. In disputing the historical record associated with the Iraq War, the WTI has participated in the social practice of story-telling which is important for its "capacity to undermine illusions of an objective naturalised world [that] often sustains inequality and powerlessness" (Ewick & Sibley, 1995, p.198-199).

## **7.1 The Role of International Law and Institutions**

A dominant narrative of the Iraq War that was presented to demonstrate the illegality of the Iraq War was the failure of international law and institutions to control and circumscribe the behaviour of states. Within these broad parameters were various testimonies that each spoke to different issues related to international laws regarding the initiation of war, and the role that transnational institutions such as the United Nations (UN) should have in preventing the initiation of war. As part of its active resistance against the historical record on the Iraq War, these testimonies neglected to include nor acknowledge opposing perspectives in support of the war, memorializing within its counter-memory the narratives of victims and impacted communities. The WTI's counter-memory has presented an alternative way of documenting and remembering the Iraq War that exposed the falsified and illegal bases upon which the war was initiated. Speaking to this argument, Panellists in the first session of the Istanbul hearings presented testimonies to demonstrate and publicly re-affirm, that the invasion of a sovereign state is prohibited under international law. This section will outline the testimonies presented by a Panel of Advocates to explore how the WTI has participated in a 'war of position' against states and institutions. Building on the arguments of scholars such as Young (1990, p.14) on the role that "major economic, political and cultural institutions" can have in systematically reproducing structural injustices that often lead to violence and suffering, this section will consider the ways in which the WTI's Panel of Advocates has sought to address the structural inequalities embedded within international law and organisations that perpetuate impunities for crimes of aggression.

### 7.1.1 Exposing the illegality of the Iraq War

The decision of the US to unilaterally invade Iraq in 2003 without the pre-approval of the United Nations Security Council (UNSC) is a key area of concern that was raised at the first session of the Istanbul hearing. The testimony of Phil Shiner (2005 cited in Sokmen, 2008) for example concluded that the Iraq War was illegal because the invading forces did not have pre-approval from the UNSC. To demonstrate the illegality of this decision, Shiner's (2005 cited in Sokmen, 2008) testimony on the 'illegality of preventative attack and the unilateral use of force' presented an alternative narrative to the Iraq War that directly challenged the arguments and legal justifications cited by the US and its Allies. He testified that, "international law is surprisingly clear and easy to understand on whether the Iraq war was lawful" (Shiner 2005 cited in Sokmen 2008, p.14). Article 2(4) of the United Nation Charter (1945) (UN Charter) for example, was identified within Shiner's (2005 cited in Sokmen 2008, p.14) testimony as a "peremptory norm of international law from which states cannot derogate." This peremptory norm is quoted by Shiner (2005 cited in Sokmen 2008, p.14) as having stipulated that:

"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 any other manner inconsistent with the Purposes of the United Nations."

As was articulated within his testimony, Shiner (2005 cited in Sokmen 2008, p.15) explained, "the use of force can only be justified" in specific situations where states have the "right to [use force in] self-defence" or "where the Security Council has authorized the use of force." Arguing that "this war did not have legal authorization from the Security Council", Shiner (2005 cited in Sokmen 2008, p.17) concluded that in the response to the Iraq War, "we are dealing with the crime of aggression."<sup>16</sup>

Another important narrative to have emerged from within the opening testimony presented by Shiner (2005 cited in Sokmen, 2008) was the perceived hypocrisy of the US and its Allies, who had rhetorically supported international laws, yet knowingly violated them to pursue their unilateral use of force in Iraq. The ability of the US and its Allies to circumvent the UNSC and international laws that circumscribes the use of force, was presented as a key

---

<sup>16</sup> It is important to note that at the time of the Istanbul Hearings in 2005, the 'crime of aggression' had not been officially ratified into the Rome Statute (1998) of the International Criminal Court. As of 2018 the International Court can now pursue investigation and prosecution of crimes of aggression.

issue of concern for the future of international laws because it was evident that “Bush and Blair wanted to restructure international law to make it weaker [and] more flexible, and less concerned with the peaceful resolution of disputes” (Shiner 2005 cited in Sokmen 2008, p.14). This narrative is important to note for two reasons. Firstly, it directly critiqued the legal justifications cited by the US-led Coalition, and secondly, draws attention to potential future dangers where international laws are rendered irrelevant. In the context of story-telling, Shiner’s (2005 cited in Sokmen 2008) testimony on the potential irrelevance of international law in the future is significant because as Stanley (2009, p.14) has stated, story-telling is not only about “relating the past” to the present, but also “look[ing] to the future” (Stanley 2009, p.14). As “the Iraq War and occupation challenges us all to face the threat to international law by the actions of the US, UK and other members of the coalition” Shiner (2005 cited in Sokmen 2008, p.28) argued that non-state actors should, “be resolute in our determination to make international law stronger and more concerned with peace” More specifically Shiner (2005 cited in Sokmen 2008, p.28) proposed that to address the impunities associated with the Iraq War, there must “be an independent investigation to establish who is responsible for what acts and how far up the chain of command should responsibility lie.”

The legal argument for war presented by the US-led Coalition justified the invasion on the basis of preventative measures where regime change in Iraq was being pursued as a crucial factor to the global war on terror that was initiated following the 9/11 terrorist attacks on the US. Noting this is important because as the counter-memory of the Iraq War constructed by the WTI has argued, there was no legal justification for the use of force. To substantiate this perspective on the Iraq War, Shiner’s (2005 cited in Sokmen, 2008) testimony drew on and quoted the opinions of others who had also shared his assessment of the Iraq War. For example, Shiner (2005 cited in Sokmen 2008 p.18), referenced the opinions of 16 international legal experts who had written a letter prior to the invasion, stating that:

“Before military action can lawfully be taken against Iraq, the Security Council must have indicated its clearly expressed assent. It has not yet done so...A decision to undertake military action in Iraq without proper Security Council authorisation will seriously undermine the international rule of law.”

In addition to this, Shiner (2005 cited in Sokmen, 2008) also presented evidence to show that the pursuit of the Iraq War was not universally supported by all in the US and UK. The resignation letter of Elizabeth Wilmshurst, a former deputy legal advisor to the Foreign Office of the United Kingdom (UK), was presented as evidence to show that there were a

number of concerns with the proposed war agenda of the US and UK. Here, Wilmshurst is quoted to have resigned because she could not “in conscience go along with the advice... which asserts the legitimacy of military action without such a [Security Council] Resolution, particularly since an unlawful use of force on such a scale amounts to a crime of aggression” (Shiner 2005 cited in Sokmen 2008, p.16). The presentation of these written opinions as evidence to substantiate his testimony, allowed Shiner (2005 cited in Sokmen, 2008) an opportunity to expose the one-sided perspective promoted by the US and its Allies where the advice of legal experts and state actors had been wilfully ignored by George W. Bush and Tony Blair. The codification of this testimony and evidence into the WTI’s counter-memory, sought to correct the historical record by highlighting the illegality of the Iraq War as it had violated existent international laws. It also helped document the voices of dissent that had been suppressed or neglected prior to the March 2003 invasion, highlighting that George W. Bush and Tony Blair had selectively presented arguments that would favour regime change in Iraq.

A final issue of debate cited within Shiner’s (2005 cited in Sokmen, 2008) testimony were questions on how UNSC Resolution 1441 was interpreted and used to facilitate and justify the Iraq War. The UK and US, as Shiner (2005 cited in Sokmen 2008, p.15) testified, “argued that the wording of Resolution 1441 allowed them to rely on [previous] Security Council Resolution[s] that entitled them to interpret Iraq’s behaviour post 1441 as constituting a further material break.” Where the US-led Coalition had interpreted UNSC Resolution 1441 as the final opportunity to disarm, where Saddam Hussein “was warned of the serious consequences of non-compliance” (Shiner 2005 cited in Sokmen 2008, p.15). However, drawing on his opinions as an expert on international laws, Shiner (2005 cited in Sokmen 2008, p.15) argued that the US interpretation of Resolution 1441 embodied “revival doctrine...that is not the way international law works post the UN Charter.” More specifically, Shiner (2005 cited in Sokmen 2008, p.15) testified that the only way the unilateral use of force *could* be legal as per peremptory norms of international law, was “if the Security Council wish[ed] to authorize force” where they would do so in clear terms “latterly using the phrase ‘all necessary means’ or ‘all measures necessary’ (Shiner 2005 cited in Sokmen 2008, p.15). Therefore the absence of these key terms within UNSC Resolution 1441 was used to challenge the interpretation of the US and its Allies, that embedded within the WTI’s counter-memory was clear evidence to show that the Iraq War

had violated the clear stipulations within international laws on when, and how wars can be initiated.

### **7.1.2 The (Mis)conduct of the United Nations and the Security Council**

In correcting the historical record associated with the Iraq War, the WTI's counter-memory also included testimonies and narratives to show how the United Nations (UN) and the UNSC more specifically had failed to intervene and prevent the war. These representative bodies were singled out and presented as having failed their oversight responsibilities to control the conduct of states, whereby Panellists that testified on this topic argued the Iraq War occurred because the UN and UNSC had dangerously yielded to the political will of the US and UK. Hans von Sponeck (2005 cited in Sokmen 2008, p.29)- a former UN Assistant Secretary-General and UN Humanitarian Coordinator for Iraq- for example, argued that these international institutions had failed "to make a humanitarian, ethical and legal difference" as it should, and must, in contexts related to war. Speaking directly on the role of the UN in facilitation of the Iraq War, von Sponeck (2005 cited in Sokmen 2008, p.31) testified that, in doing nothing to prevent the unilateral attack, the UN had "acquiesced [to] the US and UK" to the detriment of the Iraqi people. The acquiescence of the UN, was described by von Sponeck (2005 cited in Sokmen 2008, p.30) as yet another example, where the existent historical record showed that for "over a decade...[the UN Security Council had] condoned what two permanent members, the US and UK, were doing to pursue first, the Iraq containment policy and later their regime replacement agenda." Drawing on this historical record led von Sponeck (2005 cited in Sokmen 2008, p.32) to conclude in his testimony that "the history books of the United Nations" will show that "the handling of the Iraq conflict...will be recorded as a massive failure of oversight responsibility." The presentation of this argument helped the WTI solidify existing criticisms made against the UN, and the UNSC more specifically, highlighting that in the context of war, it is not only states but also institutions who have significant powers to restrict or facilitate the use of force.

In addition to the oversight failures of the UN, another institution identified within the testimony of von Sponeck (2005 cited in Sokmen, 2008) was the UNSC who were particularly culpable for failing to intervene. Where the UN had been presented as having acquiesced to the US and UK, the UNSC was instead argued to have been manipulated and used as "a convenient tool for the pursuit of bilateral policies" (von Sponeck 2005 cited in

Sokmen 2008, p.31). Owing to the veto powers of the US and UK within the Security Council, von Sponeck's (2005 cited in Sokmen, 2008) testified that these states were able to exert their power and dominance to control the UNSC in a way that was detrimental to preventing the Iraq War. A specific example of this manipulation cited within von Sponeck's (2005 cited in Sokmen 2008) testimony drew attention to the aggressive policies of the US and UK regarding the installation of no-fly zones over Iraqi airspace in the days prior to the invasion on the 18 March 2003. Where the US and UK had justified these no-fly zones as integral to protecting the "ethnic and religious groups" within Iraq from potential bombings by Saddam Hussein's forces, von Sponeck (2005 cited in Sokmen 2008, p.30) instead argued that this policy was used to destabilize Iraq, laying the foundation for invasion. Through use of this specific example, von Sponeck's (2005 cited in Sokmen 2008, p.30) testimony presented a narrative to show that the Security Council had "access to air-strike reports when such reports were prepared by the UN in Baghdad." However, as was stated in his testimony, the failure of the Security Council to "debate the legality of the no-fly zones to challenge two of its members" led him to conclude that this representative body had some level of culpability for the "destruction of civilian life and property" that resulted from the implemented policy of no-fly zones (von Sponeck 2005 cited in Sokmen 2008, p.30).

In addition to this von Sponeck (2005 cited in Sokmen, 2008) took direct aim against the UN Secretariat, who had allowed events to worsen in Iraq. He states in his testimony that the UN Secretariat had also "...acquiesced when the US and UK, two founding members of the UN, insisted in the Security Council on an economic sanctions regime that caused human tragedy" (von Sponeck 2005 cited in Sokmen 2008, p.31). Therefore in remaining "mute when these... governments dropped out of the international community to unilaterally mount an illegal invasion into Iraq" led him to conclude that, the inactions of the Security Council and the UN Secretariat was evidence that these institutions were also culpable for facilitating the Iraq War (von Sponeck 2005 cited in Sokmen 2008, p.31). Through presentation of evidence such as this, von Sponeck's (2005 cited in Sokmen, 2008) testimony demonstrated that in pursuit of invasion, the US -a state with veto powers in the Security Council- had exploited their influence within the Council to implement destructive and illegal policies associated with the war. Another narrative that emerged from within the Istanbul testimonies pointed to existent power imbalances within the Security Council, that was suggested to be an influential factor that stymied any form of debate on the proposed war agenda. The ability of the US and UK to leverage its veto powers and dominate the Security Council, was therefore

presented as yet another example where powerful states could manipulate the world. Within the broader counter-memory constructed by the WTI, the testimonies of von Sponeck (2005 cited in Sokmen, 2008) was used to substantiate the Tribunal's argument that the Iraq War had occurred because the US and UK had manipulated their power within the UNSC to push through a specific agenda. This was a significant inclusion into the counter-memory because it extended the topic the 'bearers of responsibility' beyond that of individual states, to include representative bodies with the duty to uphold international laws and intervene in situations where global peace and security are or may be compromised.

### **7.1.3 Weapons of mass destruction: a narrative of deception**

The counter-memory of the Iraq War constructed at the Istanbul hearing included some testimonies that refuted the validity and immediacy of the WMD threat promoted by George W. Bush and Tony Blair. Hans von Sponeck (2005 cited in Sokmen 2008, p.31) for example, argued that the threat of WMDs was not immediate, and the UN was of the opinion that UNSC Resolution 1441 was working in the lead up to the invasion. He stated that "Dr Hans Blix, chief UN arms inspector, had reported progress in verifying Iraq's lack of WMD and was pleading for more time to complete the inspection process" (von Sponeck 2005 cited in Sokmen 2008, p.31). However, as was stated in his testimony, the UN Secretariat "chose not to" use this evidence "to confront the two governments about their war plans", von Sponeck (2005 cited in Sokmen 2008, p.31). The suppression and disregard shown to the Hans Blix's recommendation, was therefore suggested to have been an important moment that helped elevate the perceived threat of WMDs where "without protest, the UN Secretariat withdrew the UN arms inspectors in March 2003" (von Sponeck 2005 cited in Sokmen 2008, p.31). The premature removal of UN arms inspectors from Iraq was therefore presented as evidence by von Sponeck (2005 cited in Sokmen, 2008) that all other peaceful options had not been exhausted whereby the UNSC was shown to have failed its responsibility to prevent unjustified wars. The counter-memory constructed by the Tribunal suggested that the immediacy of the WMD threat in Iraq was false and that the impatience of the US and UK led to "the sidelining of a world body created to prevent wars" (von Sponeck 2005 cited in Sokmen 2008, p.31).

The testimonies of Phil Shiner (2005 cited in Sokmen, 2008) and Hans von Sponeck (2005 cited in Sokmen, 2008) helped solidify a narrative within the WTIs counter-memory to show

that the unilateral invasion of Iraq was illegal under international law. One unique aspect of this narrative suggested that the unilateral initiation of the Iraq War was a direct result of the acquiescence and manipulation of the UN, UNSC and the UN Secretariat who were all culpable actors that bore some responsibility for the Iraq War. They were presented as having acted obediently to the will of the veto powers and dominance of the US and UK where, as von Sponeck (2005 cited in Sokmen 2008, p.31) inferred, “this amounted to nothing less but the de facto bi-lateralization” of these oversight bodies. Moreover the inability of the UN and its UNSC to provide meaningful checks and balances on the proposed war agenda indicated that they too were culpable and responsible for the Iraq War. Therefore, as there was evidence to refute the immediacy of WMDs promoted by George W. Bush and Tony Blair, the failure of these institutions to question nor debate the proposed invasion, led von Sponeck (2005 cited in Sokmen 2008, p.30) to conclude that “there was a severe shortage of political will to take timely steps to redress the situation.”

#### **7.1.4 The neo-colonialist foreign policies of Western states**

A dominant narrative that was expressed throughout the Istanbul hearing promoted various untold reasons for the war that were argued to be vital considerations that needed to be made in the WTI’s investigation of the Iraq War. To determine the truth and establish why it occurred, the counter-memory constructed by the WTI introduced testimonies to suggest that the unstated reasons for war were fundamental issues of concern that needed to be confronted. The justifications cited by George W. Bush and Tony Blair were therefore presented by Panellists as having been a one-sided narrative that failed to acknowledge the historical patterns of Western intervention in Iraq. For select Panellists speaking on the first topic of the Istanbul hearing, to understand why the Iraq War was initiated despite a clear lack of consensus amongst the Security Council, it was important to explain how the foreign policies of the US and UK on Iraq had developed over time. For example, Larry Everest (2005 cited in Sokmen 2008, p.35) testified that as “Iraq was created in the interests of British imperialism,” it was therefore important to use “well documented historical facts” to help understand the “events of today.” The history of UK and US invention in Iraq was described as having gone back “at least 100 years, [where] US and British actions in Iraq and the Persian Gulf have been guided...by [the] cold-blooded and ruthless calculations of global empire, regional dominance, and control of Persian Gulf oil” (Everest 2005 cited in Sokmen 2008, p.36). Therefore to refute the historical record of the Iraq War, and to show that the US

and UK had not acted for “lofty concepts of freedom, democracy, self-determination, justice, human rights and international law” Everest’ (2005 cited in Sokmen 2008, p.36) testimony argued that the Iraq War was yet another example of “the grand ambitions of conquest and control.”

More specifically the counter-memory of the WTI included testimony that promoted previous criticism of the Iraq War, where the invasion and regime change was argued to be a pursuit “to help ensure British control of the Middle East for its strategic location...and its vast oil reserves” (Everest 2005 cited in Sokmen 2008, p.37). In pursuit of their self-interests, Everest (2005 cited in Sokmen 2008, p.36) stated that “Washington and London have acted covertly and overly, wielding the carrot of aid and the stick of military assault.” Therefore in accordance to the long history of Western intervention in Iraq described within Everest’s (2005 cited in Sokmen 2008, p.36) testimony, was said to include actions such as the “installing and overthrowing [of] governments, exerting economic, political, and military pressure, waging wars, even threatening the use of nuclear weapons [and] committing enormous crimes.” By promoting this historical record, Everest’s (2005 cited in Sokmen, 2008) testimony helped revise the extant historical record on the Iraq War to show that the justifications cited by George W. Bush and Tony Blair in support of the invasion camouflaged the real motivations of the US and UK. The acknowledgement of this narrative within the WTI’s counter-memory has not only directly challenged the arguments for war cited by George W. Bush and Tony Blair, but has importantly established a way of remembering the actions of the US and UK in 2003 as one of “staggering duplicity, unfathomable hypocrisy and cold-blooded betrayal” (Everest 2005 cited in Sokmen 2008, p.36).

In resistance to the Iraq War, a central narrative acknowledged within the WTI’s counter-memory emphasized the destructive impacts of the foreign policies of US and UK. The public articulation of this narrative was a particularly dominant element of the WTI’s counter-memory whereby the 2003 invasion of Iraq was framed as a continuation of Western intervention in the Middle East. These foreign policies were argued to have contradicted the arguments for war put forward by the US and UK, so that instead of bringing freedom and liberation to Iraq they have “instead inflicted enormous suffering and perpetuated oppression” (Everest 2005 cited in Sokmen 2008, p.36). The foreign policy of the US was

described by Panellist Larry Everest (2005 cited in Sokmen 2008, p.46), as having been designed to specifically:

“Cripple Iraq by preventing it from rebuilding its industry, economy and military; block other global rivals from making strategic inroads in Iraq; and make life so miserable that Iraqis would rise up (preferably via a military coup) and topple the Hussein regime.”

Therefore the foreign policies described within the WTI’s counter-memory developed an alternative way of remembering the Iraq War as one that was pursued for the self-interests of the US (and UK). Speaking on some of the national interests of the US in the region, Everest (2005 cited in Sokmen 2008, p.45) stated that at the time, the Bush administration wanted to crush “Iraq as a regional power.” As part of their effort to regain “US regional control”, they had to overthrow Saddam Hussein, and would “demonstrate its power in the process” (Everest 2005 cited in Sokmen 2008, p.45). The introduction of this testimony at the Istanbul hearing, codified within the WTI’s counter-memory that the pursuit of regime change in Iraq was not for the benefit of Iraqi citizens, but for US and UK national interests. In drawing on Gramsci’s (1971) ideas on ‘wars of position’, this particular narrative is important to note, because the arguments made by these Panellists warned of a dangerous future ahead for international law and global justice. The classical model of revolution through military insurrection (‘war of manoeuvre’) was according to Gramsci, supplanted within advanced capitalism by a cultural struggle of much longer duration and complexity (war of position) (Egan 2014, p.522). In this way, the investigation of the Iraq War presented within the Istanbul testimonies, has been used by the WTI to warn of a future where states are held accountable for pursuing aggressive and destructive policies. The Iraq War was therefore presented as yet another example, where a pursuit of “regional dominance and control of Persian Gulf oil” has perpetuated the historically “cold-blooded and ruthless calculations of global empire” (Everest 2005 cited in Sokmen 2008, p.36). Therefore this narrative was used to show that the Iraq War was not pursued for the reasons cited by the US and UK, but rather for the self-interests of these states who were motivated to exert their power within the region.

Panellist Larry Everest (2005 cited in Sokmen 2008, p.36) also testified that the perceived crisis in Iraq was a situation that “the imperial powers themselves have engendered in the region.” Drawing on the historical record of Western intervention in Iraq, Everest (2005 cited in Sokmen 2008, p.35) testified that it was “the US government [that] helped bring the

Hussein regime to power,” and the human rights violations they accused him of demonstrated their hypocrisy in that they were “directly complicit in the very crimes for which it [Iraq] was indicted.” Challenging the arguments and statements of George W. Bush directly, Everest (2005 cited in Sokmen 2008, p.41) stated that:

“During the build-up to the 2003 invasion, George W. Bush condemned Saddam Hussein for invading Iran, for accumulating weapons of mass destruction, and for using them against Iranian troops and Iraqi Kurds. What Bush did not say however, was that these crimes took place when Hussein’s regime was closer to Washington than ever before- or since- and the US directly facilitated every [crime].”

To further chronicle the hypocrisy of the US in having facilitated the crimes of Saddam Hussein, Everest (2005 cited in Sokmen 2008, p.42) also testified that “the story of how Washington fuelled the Iran-Iraq War and helped turn it into one of the longest and bloodiest conventional wars of the twentieth century.” The presentation of this narrative extended the historical record of the Iraq War beyond questions on the legality of invasion to also consider the future efficacy of international laws where states are seemingly able to circumvent established laws and norms by drawing on the guise of national security to help achieve their interests. As “the US never stopped waging war against Iraq even after the 1991 Gulf War formally ended” (Everest 2005 cited in Sokmen 2008, p.45), the 2003 invasion and initiation of the Iraq War, was characterized as yet another example where the US was attempting “to resolve the Iraqi problem that had plagued American rulers.” Iraq, under Saddam Hussein was described by Everest (2005 cited in Sokmen 2008, p.47) as having been “a major irritant in US relations” in the region. This argument acknowledged the existence of a historical pattern of Western intervention and aggression, where “the story of how Washington- including Donald Rumsfeld, the man later put in charge of destroying Saddam’s regime for the Bush II administration- helped Iraq obtain and use the very weapons of mass destruction that provided the alleged case...for war in 2003” (Everest 2005 cited in Sokmen 2008, p.42). In referencing the historical relationship between the US and Saddam Hussein, the Tribunal’s counter-memory challenged the way of thinking promoted by states, to show “the US and its European allies were directly complicit in many of Iraq’s worst wartime atrocities, including its use of chemical weapons” (Everest 2005 cited in Sokmen 2008, p.42). In this way, the testimonies that spoke on the historical record of Western intervention in Iraq were used to memorialise into the WTI’s counter-memory a narrative to show that the US and its Allies had facilitated the crimes for which they held Saddam Hussein accountable and were

therefore acting and speaking in hypocritical ways by failing to acknowledge the role they had placed in developing the crisis in Iraq.

## **7.2 The future of international law post-Iraq War**

To address the institutional silence and denial associated with the Iraq War, the counter-memory constructed by the WTI emphasised the erosion of international laws which had allowed this crime of aggression to occur, and go unanswered. In this context, the failure to pursue 'justice' for victims of the Iraq War was suggested as having ushered in a state of lawlessness where the efficacy of international law has been eroded through the persistent denial and silence of state crimes. The state of lawlessness described within some Istanbul testimonies, was attributed as having emerged following the Iraq War where the US had violated international laws against crimes of aggression, and human rights, in such a way where international laws could in the future be obsolete, unable to control the conduct of states.

Harding (2005 cited in Sokmen 2008, p.65-66) argued that the Iraq War should be recognized as an example where the US was "thumbing its nose at the rule of law and human rights...grant[ing] license to others to commit abuse with impunity and audacity." Amy Bartholomew (2005 cited in Sokmen 2008, p.77) stated that the advent of the 'Bush Doctrine' posed a revolutionary challenge to the project of international law: "it is an international constitutional moment in which the American empire attempts to establish a new world order based on absolute security for itself." This was a particular concern to the some Panellists because the impunities associated with the Iraq War was suggested to have been a precedent where hegemonic powers like the US are able to shape, and re-shape international laws that could compromise global justice in the future. Moreover, in pursuit of unilateral military action in Iraq, Bartholomew (2005 cited in Sokmen 2008, p.76) testified that this could lead to a future where "war as an instrument of policy" could be legitimated under the guise of the state. The principle of 'preventative war' as embodied within the Bush Doctrine, was described by Bartholomew (2005 cited in Sokmen 2009, p.76) as having set a dangerous precedent where "the US defends its right to decide upon and wage war *unilaterally* [that] explicitly violates both the letter and spirit of the UN Charter." Therefore the failure to address the impunities of the Iraq War, was suggested by Bartholomew (2005 cited in Sokmen 2009, p.76) as having established a new norm where "preventative war, and

the legality of it, would be available to all states.” In this way the story told within the counter-memory of WTI was one that recognised the lawless actions of the US-led Coalition during the Iraq War. This was an important element of the WTI’s counter-memory because it exposed how the UK and US were attempting “to establish an order whose law is not yet entirely visible” (Bartholomew 2005 cited in Sokmen 2008, p.77). The dangerous precedent set by the Iraq War was a crucial narrative promoted within the WTI’s counter-memory. Here the WTI’s Panellists argued that the failure of institutions and states to investigate or prosecute those responsible had compromised and undermined international laws, where to do nothing in response to these state-led violations would lay the foundation for other states to initiate wars based on their underlying self-interests. In exposing the underlying self-interests of the US-led Coalition, the WTI’s counter-memory documented that “the fate of Iraq” described by these states, was merely “a sideshow” whereby “the terrorist threat...[is] a red herring, and the radical Islamist dream of a worldwide jihad against the west a fantasy” (Harding 2005 cited in Sokmen 2008, p.75).

In exposing the flexibility of international law and the circumvention of such laws by hegemonic states, the Tribunal’s counter-memory warned that this was an issue that needed to be addressed. Within the context of humanitarian law for example, Harding (2005 cited in Sokmen 2008, p.74) testified that “as the surviving superpower of the Cold War, the US now flaunts the export of democracy while, at the same time, acting outside of international and domestic law.” The concern he had for the future of international law and global justice, was that “states could escalate a humanitarian crisis in the name of humanitarian intervention” (Harding 2005 cited in Sokmen 2008, p.74). “The Bush Doctrine” was a particular concern for Bartholomew (2005 cited in Sokmen 2008, p.77) because it signalled a revision of international law where “the law that will now rule the globe is Empire’s Law- that is, a form of unilaterally constituted and imposed, illegitimate, unaccountable rule by a global power that attempts to perform the role of a global sovereign declaring itself to be the exception.”

As part of the WTI’s counter-memory, there were two factors identified as having marked the regression of international law. One factor was that the US-led-Coalition had unilaterally attacked Iraq without approval from the Security Council, and the second was that the impunity of these states for crime of aggressions, crimes against humanity and torture meant that international laws could not be enforced to achieve global justice. According to the Tribunal, the actions of the US and its allies in waging an aggressive war definitively raised

questions of whether international law is to remain a medium for the regulation of problems between states (Bartholomew 2005 cited in Sokmen 2008, p.81). The normalisation of war as a means to settling disputes amongst states such as the US and Iraq for example, was suggested by the WTI to be a dangerous concern for the international community because it allowed states to initiate wars based on false arguments of necessity and global peace and security. To respond to this dangerous precedent, an appropriate response to the Iraq War was suggested to be criminal prosecution of state actors. Recognizing that difficulties of pursuing criminal prosecution against hegemonic states and its actors, Bartholomew (2005 cited in Sokmen 2008, p.81) argued that to effectively address the impunities of the US and UK, it was “Tony Blair [who] must be held legally as well as politically accountable,” and “those at the pinnacle of the American empire who have aimed at the creation of a new world order through criminally culpable behaviour.” Codified into the WTI’s counter-memory, this helped to promote a narrative of the Iraq War, where the US, as rhetorical supporters and defenders of international law, has not upheld existent laws. This was particularly concerning for the WTI as the unilateral invasion and human rights violations perpetrated by the US-led Coalition had signalled a significant shift within the global governance of justice where powerful states can evade censure for international crimes.

### **7.3 The responsibility of governments**

The second session of the Istanbul tribunal heard testimonies to extend the responsibility for the Iraq War beyond states within the US-led Coalition to include other states within the international community that failed to prevent the March 2003 invasion. For helping the US and its allies to lay the groundwork for the unilateral attack, a number of states were identified by the Tribunal’s Panellists as having been complicit. The testimonies presented within this session identified Turkey, Arab governments and select European governments as each bearing some responsibility for having acted to support the US-led Coalition and/or having failed to intervene to stop the Iraq War. This section will canvass the testimonies presented on this second topic to show how other governments beyond the US were presented as complicit parties within the WTI’s counter-memory. This helped the Tribunal highlight the existence of a broader network of states involved in the Iraq War beyond that recognized in the historical record.

Turkey was identified within the WTI's counter-memory as another state that was responsible for facilitating the Iraq War because of the assistance they gave to the US-led Coalition during the initial 2003 invasion. It is important to note that this responsibility was not one framed by Turkey's willing participation, but that it was a "strategic medium sized state" that failed to overcome the power and dominance of a hegemonic state such as the US (Oran 2005 cited in Sokmen 2008, p.105). Emphasizing the importance of Turkey's geographical location in relation to Iraq, Panellist Bakin Oran (2005 cited in Sokmen 2008, p.98) testified that its strategic position was used by the US to "attack [Iraq] from both the south and from the north." Turkey's manipulation by the US was suggested to have stemmed from economic considerations where it "owed much to the United States" because of its "internal debt of \$100 billion [and] external debt of \$150 billion" (Orin 2005 cited in Sokmen 2008, p.103). The presentation of this evidence within Orin's (2005 cited in Sokmen 2008, p.103) testimony was used to show that because "Turkey's relationship with the IMF [was] in the hands of the US" it was compelled to assist the US-led Coalition in the Iraq War. Unable to say "no to everything the US [had] asked for," Turkey's role in facilitating the invasion was one where they were used as a pawn to help the US invade Iraq (Orin 2005 cited in Sokmen 2008, p.105). Therefore the WTI's counter-memory argued that Turkey's participation in the invasion should be seen from the perspective of a "power struggle between two unequal parties" (Orin 2005 cited in Sokmen 2008, p.105). This helped to shine a light on the influence of US hegemony within the international community, promoting a narrative where the US had manipulated other states through use of its hegemonic power as a means of pursuing regime change in Iraq.

Panellist Khaled Fahmy (2005 cited in Sokmen 2008, p.108) built on this counter-memory to argue that "the war would not have been possible without the complicity and active involvement of various Arab regimes." These Arab governments were therefore argued to be responsible for the Iraq War for having provided significant logistical, diplomatic and intelligence support to the US war effort" (Fahmy 2005 cited in Sokmen 2008, p.108). The role played by these Arab regimes was described as one of servitude, where a complex relationship between the US and Arab regimes had developed "a long time before the war actually started" (Fahmy 2005 cited in Sokmen 2008, p.108). In helping to facilitate the Iraq War, Fahmy (2005 cited in Sokmen, 2008) also acknowledged the self-interests of these Arab regimes whose foreign policies were somewhat aligned with that of the US. To recognize the role played by these Arab regimes and acknowledge this within the WTI's counter-memory,

Fahmy's (2005 cited in Sokmen, 2008) testimony described the oscillating position taken by these Arab regimes who had opposed and supported the Iraq War at various stages. Focusing on the position taken by these Arab regimes before, and after it became clear the US was going to pursue invasion at all costs, Fahmy (2005 cited in Sokmen 2008, p.110) testified that these Arab regimes were described as being "terrified after it became clear that the Bush administration was intent on launching the war with or without legal sanctions." Further, when it became clear that the "war was not about finding WMD or freeing the Iraqi people from Saddam's yoke, but rather, was about regime change and redrawing the map of the region," Fahmy (2005 cited in Sokmen 2008, p.110) argued that this was a significant shift in position where "the Arab regimes rushed to see how they could be of assistance to Washington in its bellicose stance." Many Arab regimes were presented as having "devised ingenious ways to lend a helping hand to the US's war in Iraq" and it was for this very reason that they were identified as culpable actors in the Iraq War (Fahmy 2005 cited in Sokmen 2008, p.111). Focusing specifically on role played by Egypt in facilitating the 2003 invasion, Fahmy (2005 cited in Sokmen 2008, p.111) intimated in his testimony that the Egyptian government had interpreted international customary laws in a way that benefited the interests of the US. Prior to the invasion, there were repeated calls from the Egyptian government to close access to the Suez Canal. This would have prevented US warships heading towards Iraq. Despite the existence of these opinions amongst some in the Egyptian government, Fahmy (2005 cited in Sokmen 2008, p.111) explained that "the Constantinople Treaty of 1899 governing navigation in the Suez Canal" that was "a very narrow reading of its obligations according to the treaty." Yet, "when it came to other international statutes, the Egyptian government showed remarkable imagination and resourcefulness in its desire to help Washington conduct its war in Iraq" (Fahmy (2005 cited in Sokmen 2008, p.111). The testimony of Fahmy (2005 cited in Sokmen, 2008) was used as of a narrative within the WTI's counter-memory that recognized that "nearly all Arab regimes assumed...a servile stance...during the war" (Fahmy 2005 cited in Sokmen 2008, p.113). The counter-memory highlighted that the complicity of these Arab regimes in helping perpetuate the historical pattern of Western dominance within the Middle East, where "the US has managed to control this part of the world for over half a century" (Fahmy 2005 cited in Sokmen 2008, p.112).

Any state that had participated whether actively or passively in the Iraq War, were identified within the WTI's counter-memory as culpable actors. European governments were also identified and argued to have been responsible for providing support to the Iraq War.

Panellist Guglielmo Carchedi (2005 cited in Sokmen 2008, p.114) argued that as the Iraq War was illegal under international laws, “then any kind of support by these [European] governments, from active military involvement to logistical assistance and political backing, is also illegal.” However Carchedi (2005 cited in Sokmen 2008, p.115) was careful to distinguish that there were various “positions between interventionism and non-interventionism” within the European Union at the time. As such he argued that there were varying degrees of culpability that could be attributed to the relevant European governments. France and Germany, as prominent supporters of the non-intervention position, were identified by Carchedi (2005 cited in Sokmen, 2008) as having acquiesced to the demands of the US in the lead up to, and during the Iraq War. Though France and Germany had not actively participated in the war by sending military troops, the Tribunal’s counter-memory argued that they share responsibility for providing the foundation through which the US was able to pursue its invasion of Iraq. An example of this cited in Carchedi’s (2005 cited in Sokmen 2008, p.117) testimony stated, “the German government should have applied the German constitution, forbidding the use of German airspace and of Allied military bases on German soil for the pursuance’s of wars of aggression.” Additional to this, Germany was described by Carchedi (2005 cited in Sokmen 2008, p.117) as culpable because it had freed “up US troops for the war against Iraq by taking responsibility for security in Afghanistan, and by agreeing to organize the protection of US bases in Germany.”

Noting that France was opposed to military intervention in Iraq, Carchedi (2005 cited in Sokmen 2008, p.117) argued that it had given political and logistic support to the war including “permitting the coalition to use French airspace that was stated to be customary in alliances.” Italy and the former Berlusconi government were also identified as complicit parties for taking an active military role in support of the Iraq War. Carchedi (2005 cited in Sokmen 2008, p.115) testified that Italy had sent “3,000 troops and the fourth military contingent to Iraq as a principled stance against terrorism while at the same time depicting it as an escort for humanitarian convoys.” The active participation of the Italian government was framed within Carchedi’s (2005 cited in Sokmen 2008, p.115) testimony as one based on the Berlusconi government “not wanting to displease the Bush administration.” Carchedi (2005) argued that the involvement of Italy’s military in the Iraq War, was similar to that of other states where the US was able to exert its hegemonic power over other states. Taking these testimonies into consideration, the counter-memory presented by the Tribunal identifies some European governments as responsible for having made it easier for the US to wage war

against Iraq. Whilst the involvement of each of these states varies in terms of their level of culpability, they were presented within the WTI's counter-memory as having provided some form of support to help the US pursue its aggressive invasion of Iraq.

Another dominant narrative that emerged from the WTI's counter-memory drew attention to the special relationship between the US and UK that influenced their pursuit of military action and regime change in Iraq. In highlighting the existence of a long-standing, special relationship between the US and UK, the WTI's counter-memory presented the Iraq War as a direct consequence of two states pursuing their mutually beneficial interests. In other words, the Iraq War was argued to have been beneficial to the national and international interests of the invading states who were able to purposefully capitalize on the special relationship they had with one another. To help solidify this way of thinking, the counter-memory constructed by the WTI took direct aim against the British government who was identified as being "the most determined and subservient supporter of Iraq's invasion" (Carchedi 2005 cited in Sokmen 2008, p.115). As part of this special relationship, the WTI's counter-memory also promoted a narrative to show that the UK had also been responsible for "supinely reproducing all the themes of US war propaganda." Tony Blair was presented as responsible for having reinforced the propaganda constructed by the US and George W. Bush where Iraq and Saddam Hussein were publicly identified as threats that needed to be urgently addressed. The presentation of this narrative within the WTI's counter-memory helped expose the role played by the UK and Tony Blair who had legitimated the one-sided perspective presented by the US and George W. Bush more specifically. Owing to the special relationship between the US and UK, Panellist Walden Bello (2005 cited in Sokmen 2008, p.124) testified that for its active participation in shaping how the Iraq War was presented and justified to the public, "the government of the United Kingdom...clearly must bear the burden of guilt." They had not only helped facilitate the war, but were active participants in constructing the plan that was carried out during the invasion. Bello (2005 cited in Sokmen 2008, p.124) testified that "despite the fragility of the evidence for the existence of weapons of mass destruction...Prime Minister Tony Blair beat the drums for war on the WMD argument." Evidence cited in Bello's (2005 cited in Sokmen, 2008) testimony identified the 50 page dossier released by the Blair government on Saddam's alleged WMD program, that in combination with the arguments of the US and George W. Bush was argued to have obscured the reality behind the rationale for war. The campaign of misinformation that the UK and Tony Blair had actively participated in, was suggested by Bello (2005 cited in Sokmen 2008,

p.125) to have also included “the doctoring of” or “the sexing up” of intelligence and evidence cited in support the war. In amplifying the special alliance between the US and UK, the WTI’s counter-memory drew attention to the similarities in how the Iraqi threat was framed by both George W. Bush and Tony Blair. The important strategic alliance between the US and UK could not be overlooked by the WTI because as Carchedi (2005 cited in Sokmen 2008, p.116) testified “a disassociation from the Iraq War would have jeopardized this special relationship,” that the UK could not afford to weaken because its ally was “the pillar upon which British foreign policy rests.”

To show that the UK was criminally responsible for the Iraq War, the counter-memory constructed by the Tribunal explored the British government’s conduct before and during the war. Bello (2005 cited in Sokmen 2008, p.127) argued that the conduct of the UK during this time, showed “its disregard for international law and universally recognized human rights.” In exploring the specific role played by the UK government led by Tony Blair as principal actors involved in Iraq War, the WTI’s counter-memory promoted a narrative where “the Blair government’s role cannot be reduced to that of being a reluctant partner of the Bush administration” (Bello 2005 cited in Sokmen 2008, p.130). Bello (2005 cited in Sokmen 2008, p.131) argued in his testimony that the Blair government, had “actively participated in the preparations and conduct of the war” and “by committing a third of the British army to the invasion and occupation,” showed that the UK had gone “to war willingly.” As “Mr Blair’s behaviour went beyond that of a cheerleader”, the WTI’s counter-memory suggested that he, like Bush, was equally responsible for “trying to convince the world that an immoral and illegal act was a moral one (Bello 2005 cited in Sokmen 2008, p.131).

#### **7.4 A pattern of systemic and institutional human rights violations: recognizing victims of war**

As has been explored within the preceding chapters, responding to the international crimes of states, is a complex issue where pursuits of justice is often compromised by issues of realpolitik which serves to sustain the impunities of powerful states and state actors. To address international crimes in recognition of victims, Goldstone (1996, p.489) argues that justice must “bring public and official acknowledgement to the victims, [that is] usually the first step in their healing process.” However in the context of the Iraq War where pursuits of justice through the established judicial mechanism of the ICC is non-existent, an important

question to consider is to what extent victims of the Iraq War have been given public and official recognition as legitimate victims of state crime? To address this question, it is important to acknowledge the humanitarian concern for the Iraqi people cited by the US and UK in justifying their pursuit of regime change. Within the public memory constructed by George W. Bush and Tony Blair explored in Chapter Seven, the Iraqi people were described as victims of human rights violations under the regime of Saddam Hussein. With this in mind, this section will explore how the WTI and its counter-memory has recognized Iraqi citizens as victims of the Iraq War, which according to Hoffman (2003, p.280), “can provide at least a symbolic redress which can allow some healing to take place.”

To challenge the humanitarian justifications cited by the US and UK, various testimonies were presented between 23-27 June 2005, to show the devastation caused by the Iraq War. In its resistance to the historical record of the Iraq War, these testimonies were used to recognize and highlight the victimisation of Iraqi citizens at the hands of the US-led Coalition. In acknowledging the devastating impacts of the Iraq War, an important narrative promoted by the WTI’s counter-memory gave recognition to victims and impacted communities of the Iraq War. This is particularly important because the recognition given to these voices has purposefully provided “a more supportive place for victims to share their painful memories of violence than is possible in criminal trials” (Kiss 2000, p.69; see also Kent, 2012; Minow, 1998). Despite the obvious similarities between the WTI and truth commissions that claim to be “more effective at providing a ‘victim-centred form of justice’” (Kiss 2000, p.71) the participation of direct victims to proceedings at Istanbul was limited in nature. To present a holistic investigation of the Iraq War, some testimonies also spoke of the cultural devastation of Iraq resulting from the war, yet many Panellists who spoke on this topic had not directly experienced nor witnessed the devastation. In acknowledging that there have been a number of direct and indirect impacts of the War, the counter-memory of the WTI accentuated the destructive foreign policies of states to show that the Iraq War was a state crime that needed some acknowledgement. However the failure of the WTI to capture the voices of direct victims impacted by the military aggression suggests that the content of the its counter-memory is limited in scope. In this sense the limited range of victims’ narratives captured within the WTI’s counter-memory demonstrates “the limits of institutional forms of recognition” (Kent 2012, p.35) and “that shaping individual’s experiences to conform to broader institutional imperatives may subsume them under the “larger principles which their testimony helps establish” (Franke 2006, p.281).

One way in which the WTI's counter-memory has directly challenged the arguments cited by the US-led Coalition in favour of the war, was to resist the "righteous excuse for the invasion and occupation of Hussein's Iraq" (Harding 2005 cited in Sokmen 2008, p.55). Taking direct aim at the 'humanitarian concerns' for Iraqi citizens cited by the US and UK, Panellist Jim Harding (2005 cited in Sokmen 2008, p.51) stated that "the doctrine [of humanitarian intervention] came to imply that whenever the human rights of a population of a given state are violated by its very government, another state or group of states has the right to intervene in the name of the so-called international community." In noting the historical record of when the humanitarian intervention doctrine has been cited over time, Harding (2005 cited in Sokmen 2008, p.50) argued that this history was one where "the legalistic reasoning, purportedly based on humanitarian motives, has to be squarely placed in the context of the imperial agenda." In the context of imperialism, "intervening states" who had cited his doctrine, "had their own geopolitical goals" that was couched within the notion of human rights and humanitarian laws (Harding 2005 cited in Sokmen 2008, p.51). The revival of this doctrine to justify the 2003 Iraq invasion, was therefore presented as yet another instance where "human rights" has become an "accessory motive for intervention" (Harding 2005 cited in Sokmen 2008, p.52). As was explored within Chapter Seven, the narrative of humanitarian intervention promoted by George W. Bush and Tony Blair imbued a moral and righteous foundation to legitimate the war where the US-led Coalition was suggested to be liberators and champions of human rights throughout the world. This was argued by Panellists to be a dangerous precedent that would allow the US to continually "flaunt the export of democracy" and human rights to achieve their national interests (Harding 2005 cited in Sokmen 2008, p.74). Furthermore Panellist Amy Bartholomew (2005 cited in Sokmen 2008) also presented testimony that called into question the humanitarian reasons cited in support of the Iraq War. To show that "war waged on Iraq was never a humanitarian war" (Bartholomew 2005 cited in Sokmen 2008, p.79) she testified that on reflection of what has happened in Iraq since the 2003 invasion, it is clear to see that the invasion was not "unleashed ostensibly in the name of extending freedom, human rights and liberation to the Iraqi people", where "neither its aims nor its most likely consequences were to be humanitarian" (Bartholomew 2005 cited in Sokmen 2008, p.79).

Looking beyond the immediate impacts of the Iraq War post the 2003 invasion, Larry Everest (2005 cited in Sokmen 2008, p.43) testified that because "the US and UK ha[d]

systematically lied about the decade of the 1990s” there were significant questions to be asked on “the nature, terms and purposes of UN sanctions.” Despite these questions, Everest (2005 cited in Sokmen 2008, p.43) testified that what we do know, is that these “sanctions...have been responsible for staggering levels of deaths and suffering inflicted on the Iraqi people.” As part of this counter-memory, von Sponeck (2005 cited in Sokmen 2008, p.30) also testified on the devastating impacts of UN sanctions that he argued were “known to all members of the Security Council” at the time. Within his testimony, “the people of Iraq” were portrayed as having been made “to pay a heavy price in terms of life and destitution” as a result of the “comprehensive economic sanctions” that were imposed in an attempt to disarm Iraq of all WMDs. In addition to this, the inadequate allocations given to “the oil-for-food program” coupled with the refusal to “allow the transfer of cash to Iraq’s central bank needed to run the nation” was also identified by von Sponeck (2005 cited in Sokmen 2008, p.30) as having laid the foundation for a crisis in Iraq. The series of sanctions imposed on Iraq following the conclusion of the Gulf War in 1991, was used by the UNSC as a tool to compel Iraq’s disarmament. However the enforcement of these sanctions prior to the Iraq War in 2003 was presented within the WTI’s counter-memory as having worsened the humanitarian crisis in Iraq. As these UN sanctions were argued to have been spearheaded by the US and UK, Larry Everest (2005 cited in Sokmen 2008, p.35) testified that this has “resulted in more Iraqi deaths than anything attributed to Saddam Hussein.” To substantiate this narrative within the Tribunal’s counter-memory, Von Sponeck (2005 cited in Sokmen 2008, p.33) testified that “crimes against humanity” had been perpetrated in Iraq “by those who maintained economic sanctions with total disregard for the human costs.”

Going beyond the impacts of UN sanctions, von Sponeck (2005 cited in Sokmen 2008, p.43) also cited the Iran-Iraq War as an example where “US manoeuvres [had] contributed mightily to the war’s murderous toll.” The “Machiavellian twists and turns in US policy” where they “first supported Iraq, then Iran, then Iraq, and then back to Iran again”, was presented within von Sponeck’s (2005 cited in Sokmen 2008, p.42) testimony as “a voluminous record of US complicity” in the Iran-Iraq conflict. In this specific example the support given by the US to Iran, and Iraq at various stages of the conflict was stated to have led to “the death toll [of] 367,000 - 262,000 Iranians and 105,000 Iraqis” (von Sponeck 2005 cited in Sokmen 2008, p.42). The 1991 Gulf War was another example identified within the testimony of von Sponeck (2005 cited in Sokmen 2008, p.44) as yet another instance where US intervention had victimised the Iraqi people. In their attempts to radically escalate their intervention in the

region, and “to usher in a ‘new world order’” von Sponek (2005 cited in Sokmen 2008, p.45) stated that the US was culpable for an estimated “100,000 Iraqi soldiers killed and 300,000 wounded” alongside “158,000 Iraqis [who] were killed in the war and its immediate aftermath.” The devastation of the 1991 Gulf War was also described as having included “88,500 tons of bombs” that were dropped on areas of Iraq’s military but also on its economic and social infrastructure as well” (von Sponeck 2005 cited in Sokmen 2008, p.45). The extensive bombing campaign of the US where power-generating stations needed to pump water were either destroyed or damaged, was argued to have “directly contravened Article 54 of the Geneva Convention, which prohibits attacks on essential civilian facilities.” This was therefore “a war crime” that had long-term impacts that would “contribute to the deaths of hundreds of thousands of Iraqis in the decade after the war” (von Sponeck 2005 cited in Sokmen 2008, p.45). The history of US intervention in Iraq was therefore used as evidence to substantiate a narrative within the WTI’s counter-memory that recognized past victims of state crimes.

In the context of global justice, the recognition given to the Iraqi and Iranian victims who were casualties of US intervention is important because, it has challenged the “dominant discourse of legitimate statehood” (Reus-Smit 2001, p.522). To challenge the legitimacy and power of states in situations of war, the WTI’s counter-memory has engaged in a Gramscian ‘war of position’ against the US where acknowledging a litany of forgotten victims has drawn attention to “the ways in which political space and global systems tend to insulate powerful actors from critique and control” (Fraser 2005, p.78 cited in Stanley 2009, p.49). As Jamieson and McEvoy (2005) illustrate, state officials may use tactics to hide their affiliations, engage in collusion, hire private mercenaries, militias or military firms. These use of these strategies in contexts of war, are argued to make “it harder for bystanders to connect violence with state activity” (Stanley 2009, p.49). In exposing “the nature and extent of human rights violations” that have occurred as a result of US intervention in Iraq, the WTI’s counter-memory has revised the historical record on the Iraq War that “reveals a systematic and institutional pattern of gross human rights violations” (Goldstone 1996, p.490).

Iraq was presented within the WTI’s counter-memory as having suffered from long-term impacts of instability brought about by the war, that needed to be addressed so as to minimize the humanitarian crisis. Jamail (2005 cited in Sokmen 2008, p.183) for example, testified that

“although the Iraq Ministry of Health is claimed to have gained its sovereignty [from the US-led Coalition]” the failure to secure “over \$1 billion of US funding” that was promised has led to Iraqi hospitals facing “on-going medicine, equipment and staffing shortages.” The crisis of the Iraqi Health System was also attributed by Jamail (2005 cited in Sokmen 2008, p.187) within his testimony, as being the result of ongoing shortages in oil, water and electricity within Iraq. The water crisis in Iraq was framed by Panellist Joel Kovel (2005) as a humanitarian crisis that stemmed directly from the Iraq War. Recounting an interview with Dahr Jamail, a US official involved in the reconstruction projects within Iraq, “the water situation is just as bad and probably worse” than what was initially reported around “January/February 04” (Kovel 2005 cited in Sokmen 2008, p.349). In Fallujah for example, “everyone has been instructed to boil their water, and even in parts of Baghdad, particularly Sadr City, there are cholera, hepatitis-E and Typhoid outbreaks.” In support of this perspective, Panellist Denis Halliday (2005 cited in Sokmen 2008, p.217) testified that the US-led occupation of Iraq has led to the complete “breakdown of personal security, social services, healthcare, education and basic needs.” As all occupations, “even unlawful occupation comes with obligations”, Halliday (2005 cited in Sokmen 2008, p.216) testified that the situation within Iraq, and the daily experiences of the Iraqi people, showed that “the occupying US and UK forces [have] blatantly failed to meet these obligations.” The complete regression of all Iraqi institutions following the March 2003 invasion, was used as evidence by Halliday (2005 cited in Sokmen 2008, p.216) to conclude that “the occupying military forces have failed in all aspects of meeting their responsibilities under international law.” In pursuit of regime change within Iraq, the WTI’s counter-memory promoted a narrative to show that the US-led Coalition had failed their legal responsibilities as ‘occupiers’ of Iraq. The Tribunal argued this coalition of states was responsible for maintaining the day-to-day operations of the state and its institutions, and their failure to do so suggests that they were ill-prepared for what was to come after Saddam Hussein was removed from power.

A holistic account of human rights violations as they have occurred in Iraq post-2003, was presented in the testimony of Panellist Abdul Wahab al-Obeidi (2005 cited in Sokmen 2008, p.318) who described a state-facilitated campaign of:

“Mass arrest and detention without charge or trial; maltreatment; torture and abuse of detainees’ excessive use of force; use of weapons of mass destruction; dropping massive bombs on civilian areas; severe damage to towns and villages; bombing of farms and orchards; displacement and forcible repatriation of civilian population by

conducting lethal military operations on cities, towns and villages; restricting freedom of worship; desecrating places of worship and insulting religious sensitivities by deliberately damaging copies of the Qur'an.”

The use of depleted uranium (DU) against the Iraqi citizens was a specific issue chronicled within the testimonies of Panellists' Akira Maeda, Sayo Saruta and Koichi Inamori (2005 cited in Sokmen 2008). They stated that “US and UK troops” had started using “DU weapons during the battles at various places in Iraq.” The use of DU weapons by the US-led Coalition was presented as having led to the physical destruction of buildings and infrastructure within Iraq, and more importantly detrimental and dreadful long-term negative health impacts on people. Describing the long-term health dangers of DU bombs, Maeda, Saruta and Inamori (2005 cited in Sokmen 2008, p.189) stated that:

“Once the uranium particles are inhaled into the body, the particles attack first to the trachea, and the respiratory system. Because the particles are practically insoluble, they do not dissolve easily in the blood and stay there for a long period of time. These clinging particles continue to expose the neighbouring organs to radiation. In this way, they cause the cell and the gene to mutate, and cause cancers, including leukaemia and lymphoma, as well as congenital disorders and defects.”

As the effects of DU bombs will extend beyond the Iraq War, Maeda, Saruta and Inamori (2005 cited in Sokmen 2008, p.189) warned the effects would remain for “an unimaginable length of time of 4.5 billion years.” Maeda, Saruta & Inamori (2005 cited in Sokmen 2008, p.189) argued that it was the “people of Iraq [who] will have to bear the burden of living in this vastly polluted land”, and that they would have to learn “how to survive with this grim reality” caused by the bombing campaign the US-led Coalition.

The civilian casualties of a US-led bombing campaign, and use of DU weapons were also explored within the testimony of Eman Khammas (2005 cited in Sokmen 2008). Describing this bombing campaign, as one that “usually start[s] with aerial and missile attacks that will last from one hour to several days”, Khammas (2005 cited in Sokmen 2009, p.225) argued that the danger for civilians was in the “indiscriminate” nature of bombardment, where no distinction is made “between schools, hospitals, houses or government buildings.” The indiscriminate nature of the bombing campaign, coupled with the use of DU, was labelled within the Tribunal's counter-memory as having amounted to ‘crimes against humanity’ that need to be prosecuted under international law. These testimonies were used to promote an alternative historical record on the Iraq War that showed the US-led Coalition of states had

not conducted the war in accordance to peremptory norms of international law, which exist to protect civilians during times of war. In this way, the counter-memory promoted by the Tribunal, highlighted the devastating civilian impacts of the war, where the recognition given to Iraqi victims and their experiences was used as evidence to show that the US-led Coalition had pursued the war in such a way that completely disregarded human life. Therefore, the story of the Iraq War codified within the counter-memory, told a narrative where forgotten victims became centrally placed to acknowledge that all Iraqi citizens were legitimate victims of state crime.

Emphasizing the disproportionate aggression of the US-led Coalition against the Iraqi state and its citizens, Amal al-Khediary's (2005 cited in Sokmen 2008, p.337) testimony presented a first-hand witness account of how everyday life in Iraq had changed following the March 2003 invasion. The "atrocious aggression" of the US-led Coalition was described as having been pursued "against a country that is not even the size of California and with less population" (al-Khediary 2005 cited in Sokmen 2008, p.336). As a result of the US-driven "embargo of the oil-for-food program," al-Khediary (2005 cited in Sokmen 2008, p.337) recounted her experience during the Iraq War, where "through arbitrary dissection and bisection of Iraq into zones...by destroying [Iraqi] infrastructure," the US-led occupying forces in Iraq had pushed "Iraqi people into the Dark Ages...and "cornered them into a cocoon." From her first-hand experience, al-Khediary (2005 cited in Sokmen 2008, p.337) argued that the Iraq War had impacted the "spiritual, social and intellectual life" of all Iraqi people in ways that needed to be acknowledged within the historical record. In addition to this, "the collapse of economic and political life" as well as the complete disintegration of "intellectual and educational life" was also identified as significant, long-term consequences that had been overlooked within the historical record on the Iraq War (al-Khediary 2005 cited in Sokmen 2008, p.337).

To complete their comprehensive record of the Iraq War, another issue explored at the Istanbul hearing was the complete and widespread devastation of Iraq's culture. Speaking to this issue, Panellist Gul Pulhan (2005 cited in Sokmen 2008, p.330) testified that "sites ie. ancient mounds, that bear all evidence of [Iraq's] past are being looted and destroyed" as a result of the instability caused by the invasion, and regime change more specifically. His testimony chronicled how the US invasion had led to a "loss of knowledge and the destruction of the record of a very crucial period of human history" (Pulhan 2005 cited in

Sokmen 2008, p.330). To support this argument, Pulhan (2005 cited in Sokmen 2008, p.333) described the “pillage, theft and destruction” of the National Museum in Baghdad that had fallen victim to “various types of looters...[that] continued for three full days.” The theft of several cultural artefacts and national treasures was used as evidence to show that another long-term impact of the war was that it had led to the loss of Ancient Sumerian culture. Attributing the “lack of protection” given to these sites by the US-led occupation, Pulhan (2005) inferred within his testimony that the cultural neglect seen during the Iraq War had violated international treaties such as the 1949 Geneva Conventions and the 1945 Hague Conventions. The 1945 Hague Convention was said to be relevant because it treats the “confiscation, destruction and damage to cultural property” as a war crime that is “subject to prosecution and punishment” (Pulhan 2005 cited in Sokmen 2008, p.334). Acknowledging that these historical sites could have been neglected “due to pure ignorance and negligence,” Pulhan (2005 cited in Sokmen 2008, p.335) concludes that in situations of war, all “political and military parties” involved have a responsibility to conduct the war within the confines of international laws. Therefore the US-led Coalition that occupied Iraq following the March 2003 invasion “are responsible for the looting, burning and destruction of museums, archaeological and historical sites, libraries, archives and universities in Iraq” (Pulhan 2005 cited in Sokmen 2008, p.335).

#### **7.4.1 Victims of state-facilitated torture**

An important narrative codified into the WTI’s counter-memory, was that the US was responsible for human rights violations committed during the occupation, where torture became a practice used by the US against detainees at Abu Ghraib. This particular narrative was not new, and the use of torture by the US had already been substantiated within the public domain.<sup>17</sup> In June 2003 Amnesty International published reports to expose the extent of these human rights abuses, where the international crime of torture has been legitimated as a state practice couched in a policy of enhanced interrogation. To build on this and to show that the US had knowingly violated international laws, the WTI’s counter-memory drew upon

---

<sup>17</sup> The use of torture at Abu Ghraib and Guantanamo Bay was brought to public attention in April 2004, where photographs of abuse were released by the media. Scholars such as Keller (2006), Macmaster (2004) and Sharrock (2010) have written on the use of torture by state actors. While these bodies of work provide a scholarly interpretation of Abu Ghraib, it is perhaps the reports published by non-governmental organizations such as Amnesty international (2003) and Human Rights Watch (2014) that have presented the most comprehensive detailed account detainee abuse at Abu Ghraib.

the testimonies of Dahr Jamail, Barbara Olshansky and Abdul Wahab al-Obeidi who were presented at the fourth session of the Istanbul hearings. As there had been no accountability for the use of torture at Abu Ghraib, the WTI's counter-memory argued that these human rights violations needed to be addressed.

Panellist Dahr Jamail (2005 cited in Sokmen 2008, p.180) testified that “on-going violations of international law [were being] committed by the occupiers of Iraq on a daily basis” and that the “rampant torture” seen at US-controlled sites such as Abu Ghraib and Guantanamo Bay should be prosecuted. His testimony described the stories of two victims including: from Ali Shalal Abbas, a victim of torture and Sadiq Zoman who was identified as a victim of US military aggression. Within his testimony, Jamail (2005 cited in Sokmen 2008, p.180-181) describes that Abbas was “detained...despite not being charged with any crime” and that he was transferred “to Abu Ghraib where he was held for over three months” and “forced to strip naked [and] remained that way for most of his stay in prison”; “doused in cold water” by soldiers’ “was not provided water and food for extended periods of time” and that “sleep deprivation was the norm” (Jamail 2005 cited in Sokmen 2008, p.181). In addition to this, Sadiq Zoman had also been presented within Jamail’s (2005 cited in Sokmen 2008, p.182) testimony as a victim of US military aggression where following a US-led raid on his house, he was left in a “persistent vegetative state.”

To substantiate that the narrative that the US had knowingly used torture as an enhanced interrogation technique, the personal anecdotes of these victims was supplemented by other conclusions made by various state and non-state organizations. For example, Jamail’s (2005 cited in Sokmen 2008, p.183) references the conclusions of “a Human Rights Watch report released on 27 April” 2005. Here the report is quoted to have concluded that “Abu Ghraib was only the tip of the iceberg [where] it is not clear that abuse of detainees has happened all over – from Afghanistan to Guantanamo Bay to a lot of third-country dungeons where the United States has sent prisoners” (Jamail 2005 cited in Sokmen 2008, p.183). In addition to this, the “report of Major General Antonio Taguba”<sup>18</sup> on the use of torture by members of the

---

<sup>18</sup> The US military launched an official inquiry into the Abu Ghraib prisoner abuse, where the ‘US-Army 15-6 Report of Abuse of Prisoners in Iraq’ was released in 2004. The report’s principal author, Major General Antonio Taguba, concluded that “between October and December 2003, at the Abu Ghraib Confinement Facility...numerous incidents of sadistic, blatant, and wanton criminal abuse were inflicted on several detainees” (Taguba, 2004).

US military was quoted as having found “numerous incidents of sadistic, blatant, and wanton criminal abuses” (Jamail 2005 cited in Sokmen 2008, p.183). By giving voice to these victims of torture and state aggression, the counter-memory of the WTI has participated in a process of story-telling where to address the crime of torture, “moral claims can be made against coercive social institutions” (Pogge 2002, p.46). The recognition of two specific victims and the moral claims against torture and aggression made on their behalf, enabled the WTI contribute to what is termed as ‘recognition-based justice’ where victims have an “opportunity to have their experiences heard and for there to be an official denigration of the perpetrators of the institutional framework that facilitated violence” (Stanley 2009, p.58).

A particular concern of some Panellists testifying at the Istanbul hearing, was the future of international law following the Iraq War, where it was argued that the US had knowingly circumvented human rights laws to legalise acts of torture. To allow this torture to continue without any formal sanctions against those responsible was concerning to Barbara Olshansky (2005 cited in Sokmen 2008, p.309), who testified that the use and existence of Abu Ghraib and Guantanamo Bay has allowed the Bush administration to revise “all existing laws” against torture, demonstrating their “utter disregard for the rule of law altogether.” Guantanamo Bay was singled out within Olshansky’s (2005 cited in Sokmen 2008, p.310) testimony as having been created out “of a desire expressed at the highest offices in our country by the president and his chief counsel Alberto Gonzalez, to create a prison beyond the law.” Moreover as Panellist Eman Khammas (2005 cited in Sokmen 2008, p.224) testified, “there are cities and towns that [have been] labelled [by the US] as insurgency strongholds” that has resulted in “these cities are suffering terrible human rights abuses with tacking terrorism being used as a pretext.” The practice of torture normalised by the US, was suggested to be an important precedent that needed to be addressed because the legal framework constructed by the Bush administration had created “a black hole into which the United States could place people in order to hold them indefinitely and to interrogate them under torture” (Olshansky 2005 cited in Sokmen 2008, p.310). In these ‘black holes’ detainees had no legal rights or ways of recourse. At Abu Ghraib, Olshansky (2005 cited in Sokmen 2008, p.311) testified that the US had used “dogs to instil fear in detainees, force people to strip naked and remain that way for days and in front of others.” They subjected detainees to various “sexual humiliation techniques, engag[ing] in religious degradation” and had also “manipulate[d] the conditions of confinement” that did not abide by international human rights law (Olshansky 2005 cited in Sokmen 2008, p.311). The analysis of Abu

Ghraib and Guantanamo Bay presented within the WTI's counter-memory is significant to note because it has challenged the way in which these detainees have been framed and labelled as terrorists or suspected terrorists. As some individuals or groups, according to Fraser (2005 cited in Stanley 2009, p.48), are denied "an opportunity to make justice claims on the basis of misframing," the narrative presented within the Tribunal's counter-memory on victims of torture helps overcome issues of misframing so that those detained and tortured move from the "criminalized margins" (Bauman 1995, p.216) delineated by application of a 'terrorist' label or identity. In this way the narrative of torture described within the WTI's counter-memory has made moral claims on the legal and human rights of all individuals, helping to also pursue a symbolic form of justice where the human rights violations of the US are acknowledged as a key component of the Iraq War's historical record.

### **7.5 The accountability of the media**

The third session of the Istanbul hearing extended responsibility beyond governments and institutions, to also acknowledge the media's role in sustaining and disseminating the arguments for war cited by the US and UK. As part of this, the WTI's counter-memory argued that the media, at the time, had sidelined dissenting opinions. In this way, the narrative presented within the WTI's counter-memory exposed how states were able to use the media as a tool to influence how the Iraq War was portrayed within the public domain prior to, and after the March 2003 invasion. Therefore by challenging the discourse of the Iraq War presented by media outlets at the time, the WTI argued that the lack of recognition given to the dissenting opinions of others, facilitated the one-sided narrative presented by states. This one-sided narrative of the Iraq War promoted by the media was suggested to have been misguided, where testimonies on this topic highlighted that the lack of debate on the proposed war facilitated the unilateral aggression of the US-led Coalition. Therefore this section will explore various testimonies delivered by Panellists at the Istanbul hearing that spoke to this topic.

Panellists testifying at the Istanbul hearings third session spoke of the complicity of the media in facilitating the unilateral invasion on March 2003. David Miller (2005 cited in Sokmen 2008, p.141) for example, testified that "the conduct and role of the media in the case of Iraq must be understood in terms of the underlying interests and politics of both the media institutions themselves and of the US and UK governments." In order to understand

how the “media have performed” in the lead up to, and during the Iraq War, Miller (2005 cited in Sokmen 2008, p.141), stated that it was important to “understand the philosophy, administration, and practice of the propaganda apparatus” so as to expose the culpability of the media. A key assumption underlying this narrative of the Tribunal’s counter-memory was identified within the testimony of Saul Landau (2005 cited in Sokmen 2008, p.137) who identified the media as a “fourth estate” whose role was “to serve the citizenry with information and analysis needed for a crucial decision: war or peace.” In their failure to fulfil this role, an important narrative embedded into the WTI’s counter-memory therefore recognized that dissenting opinions and voices - that existed prior to the 2003 invasion- had been overlooked, neglected or actively suppressed. More specifically it was the way in which these media outlets framed and promoted the ‘threat’ of Iraq and Saddam Hussein that was described as having “contributed to the creation of a climate of fear” (Miller 2005 cited in Sokmen 2008, p.141). As part of this were specific issues including the threat of WMDs which is worth noting here briefly. The testimony presented by Landau (2005 cited in Sokmen 2008, p.136) has quoted the August 2002 statements of Vice President Cheney as having said:

“Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction. There is no doubt he is amassing them to use against our friends, against our allies and against us.”

Reporters who had failed “to challenge such statements, had also failed to demand hard evidence” to substantiate the threat of WMDs. Instead of asking “sceptical questions about Saddam Hussein’s supposed deadly weapons and how they constituted a threat to the US and its allies”, the media were presented as having made the decision to accept “the unsupported word of the White House” (Landau 2005 cited in Sokmen 2008, p.137). As was stated in Landau’s (2005 cited in Sokmen 2008, p.136) testimony, “they [the media] wittingly or unwittingly allowed the administration to repeat such nonsense without investigating or questioning it.” The absence of a debate with regard to how the Iraq threat was discussed within media reports, was argued to have led to a one-sided perspective that served only the interests of the US. The failure to ask “tough questions of administration officials” led the media to “consistently ignore elementary logic” (Landau 2005 cited in Sokmen 2008, p.137). As a result of this, the media were identified within the WTI’s counter-memory as bearing some level of responsibility for the crimes associated with the Iraq War. The fourth estate was therefore argued to have “beat[en] the war drums in the months before the invasion”,

where “reporters and editors [had] aided and abetted Bush in committing war crimes by giving validity to his false claims” (Landau 2005 cited in Sokmen 2008, p.137). Therefore, as Landau 2005 cited in Sokmen 2008, p.137) concluded in his testimony, the (in)action of the media prior to and during the war had validated “illegal state policies” by distracting their “readers, listeners, and viewers”(Landau 2005 cited in Sokmen 2008, p.137) from the truth.

As was explored in Chapter Five, the WTI can be seen as a continuation of an anti-war movement specifically against the Iraq War that first emerged between 2002-2003. Owing to this another narrative that emerged on this topic, was the suppression of the anti-war movement itself. The “preeminent wrongs against the citizens of the coalition” was stated by Miller (2005 cited in Sokmen 2008, p.141) to have included the “marginalizing, ignoring and undermining [of] dissent.” This is an important issue identified at the Istanbul hearing as it highlights some important ways in which a ‘war of position’ has manifested. This ‘war of position’ is one where the WTI has emerged to actively resist against the historical record of the Iraq War, to show how “alternative views almost never made the mainstream” whereby a “climate of fear” was constructed by states, and managed by the media (Miller 2005 cited in Sokmen 2008, p.142). Central to this argument was the “philosophy of information control” that Miller (2005 cited in Sokmen 2008, p.141) argued was based on a concept called ‘information dominance’...where information is a weapon of war.” Therefore, as part of his testimony on ‘media wrongs against humanity’ Miller (2005 cited in Sokmen 2008, p.142) argued that the information disseminated by the media combined with a broader “apparatus of propaganda” led to the dissemination of “lies and disinformation on Iraq” (Miller 2005 cited in Sokmen 2008, p.142). The “overwhelming bulk of mainstream media (including the ‘liberal’ and ‘left’ mainstream press)” were therefore argued to be responsible for giving “false credibility to the notion that Iraq posed a threat to the West” (Miller 2005 cited in Sokmen 2008, p.144). As a result of this deliberate strategy where states and the media were argued to have controlled the narrative on the Iraqi threat, the WTI’s counter-memory recognized that the voices of the anti-war movement of 2002-2003 as well as other dissenting opinions, that had been suppressed. Therefore the presentation of this narrative within the WTI’s counter-memory, helped extend responsibility beyond states and institutions to the media, who were “culpable for subverting the democratic rights to information and truth” (Miller 2005 cited in Sokmen 2008, p.151).

Another central component to the truth presented within the WTI's counter-memory, was the recognition it gave to the anti-war movement of 2002-2003 who were identified by Panellists as unrecognized victims of the Iraq War. The need to recognize these victims and acknowledge the harms they have experienced as a collective is grounded in the liberal legal tradition that stresses the importance of acknowledging individuals as rights-bearing subjects who are able to make claims (see Douzinas, 2002; Halderman, 2007). One of the broad claims made in the WTI's counter-memory was that civil society had fallen victim to the "so called fourth estate" (Nayar 2005 cited in Sokmen 2008 p.164). As the media were "bearers of truth" they perform a crucial role in the democratic process providing the ideas and knowledge link between the worlds of [state] power and the worlds of citizenry" (Nayar 2005 cited in Sokmen 2008, p.164). Panellist Jayan Nayar (2005 cited in Sokmen 2008, p.164) argued that the failure of the media to tell the truth about the Iraq War had compromised the democratic process that was essential to making decisions regarding war. Telling the truth should acknowledge competing opinions and perspectives which Nayar (2005 cited in Sokmen 2008, p.164) argues is the "intrinsically social function" of truth-telling where citizens are able to make "informed understandings of the realities of the world." Therefore in acknowledging that "individuals and institutions" have failed to "uphold the very basic collective promises that have been made by humanity, for humanity," Nayar's (2005 cited in Sokmen 2008, p.162) testimony illuminates some key aims pursued within the WTI's counter-memory. One of these aims as was stated by Nayar (2005 2005 cited in Sokmen 2008, p.162), was to reinvigorate the "spirit" underpinning "people's claim to action and judgement" where the WTI could actively resist the historical record constructed and managed by states to participate in making justice claims (see Fraser, 2005). This was an important narrative that emerged from the WTI's counter-memory because it exposed the silence of the media who were argued as having acquiesced to the political rhetoric of state actors. Recognizing the failure of the fourth estate was therefore important for reimagining "resistance and directions for human futures" (Nayar 2005, cited in Sokmen 2008, p.162).

As Stanley (2009, p.49) has identified, "individuals and groups are more likely to be excluded from positive recognition or from processes of structural improvement if they occupy a position in which they cannot make a claim." Therefore a determinative factor in shaping the claims made by the WTI in its counter-memory, was how civil society, or humanity more broadly was framed as victims of the Iraq War. As the WTI had assumed "responsibility of voicing [the] people's demand for justice" on the Iraq War, this inferred

that citizen within civil society had also been victimised as a result of the war (Nayar 2005 cited in Sokmen 2008, p.163). Therefore “despite the many ideas for a better world...[and] despite the everyday demands that take place throughout the world to eliminate the impunity of power,” the absence of action and resistance has failed to redress the victims of civil society. An important narrative that emerged in the testimonies presented on the role of the media helped revise the extant historical record on the Iraq War, where the failings of the media had suppressed the voices of dissent in the anti-war movement of 2002-2003. As individuals and groups can be excluded from making claims, it is important to briefly note the relevance of this narrative for it perhaps embodies the ‘spirit’ of the WTI and its counter-memory. As “justice means giving everyone in society their appropriate due” (Christians 2015, p.43) an important narrative of the WTI’s counter-memory were the claims made within the testimonies of some Panellists seeking a future where justice could be achieved for violations against humanity. The wrongs of the media, were therefore framed as having undermined the truth associated with the Iraq War in such a way that was detrimental to the ability of citizens to “rise and speak against the violent desires of power” (Nayar 2005 cited in Sokmen 2008, p.162).

To reinvigorate the “spirit” underpinning “people’s claim to action and judgement,” the WTI was described by Nayar (2005 cited in Sokmen 2008, p.166) as a space for “people’s law.” Central to such laws was “a language capable of expressing violation from the perspective of the violated” (Nayar 2005 cited in Sokmen 2008, p.163). As Fraser (2005, p.73) has argued, perspectives of justice should acknowledge the “political dimension of representation” where to understand the importance of the WTI’s counter-memory, it is important to recognize “who is included in and who excluded from” the historical record on the Iraq War. In other words, as has been argued within the WTI’s counter-memory, it is the absence of dissenting voices, particularly those from within the anti-war movement of 2002-2003 that has led to the marginalisation of civil society that must be redressed as part of the ‘justice’ they sought for the Iraq War. People’s law, was described within Nayar’s (2005 cited in Sokmen 2008, p.167) testimony as a means to create “a different authority for judgement and action altogether [that was] based on other ‘word-worlds’ of law that are authored by people in action.” This was centrally placed within the WTIs ethos where the “process of reclaiming histories and futures” could also lead them to “reclaiming of the people’s rights to ‘truth’” (Nayar 2005 cited in Sokmen 2008, p.167). The oscillation of power between political and civil societies as envisioned by Gramsci (1971) is therefore an important analytical frame to

understand how the counter-memory constructed by the WTI was used as a tool to oppose “power” to reclaim “the right [of citizens] to act” (Nayar 2005 cited in Sokmen 2008, p.167). This is described by Nayar (2005 cited in Sokmen 2008, p.168) as a “people-oriented perspective of law action”, that is underpinned by the fundamental principles of a democracy where the power and legitimacy granted by citizens to states and its actors can be reclaimed in symbolic ways.

## **Conclusion**

On the 27 June 2005- the final day of the Istanbul hearing- the WTI’s Jury of Conscience concluded that “the invasion and occupation of Iraq was, and is illegal” and that the “reasons given by the US and UK governments for the invasion and occupation of Iraq in March 2003 were false” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.492). The threat of WMDs, and the “link between al-Qaeda terrorism and the Saddam Hussein regime” were presented within the WTI’s counter-memory as having been manufactured “blatant falsehoods” used to justify the unilateral use of force (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.493). Therefore it was concluded that the US and UK governments were responsible for “planning, preparing and waging the supreme crime of war of aggression in contravention of the United Nations Charter and the Nuremberg Principles” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.493). In using the testimonies delivered by the Panel of Advocates, the WTI’s counter-memory extended the existent historical record on the Iraq War to include the six broad topics that were discussed at the Istanbul hearing. As has been explored in this chapter, the WTI has engaged in a ‘war of position’ to challenge the story and truth of the Iraq War told by the US and its Allies, where criticisms and dissenting opinions against the war have been memorialised into its counter-memory. This counter-memory is complex in nature, and as has been discussed in this chapter, included narratives to show that states, institutions and organizations all bore responsibility for facilitating the Iraq War either through active participation or acquiescence to the hegemony of the US. More importantly the WTI’s counter-memory acknowledged that war crimes and crimes against humanity have been committed during the Iraq War where victims have been given recognition. As the WTI had emerged from the anti-war movement of 2002-2003, an important narrative within their counter-memory embodied the voices and opinions of “the millions of people [who had] protested in the streets of the world” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.492). The suppression

of these voices was described as “an attack on justice, on liberty, on safety” that would have ongoing consequences for “a peaceful future” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.492-493). Therefore to “tell and disseminate the truth about the Iraq War” that underscored “the accountability of those responsible” the counter-memory constructed by the WTI was used as a tool to demand justice for the Iraq War and for the Iraqi people as victims of state crime.

While these conclusions are not new and had existed amongst anti-war activists and protestors prior to the Istanbul hearing in 2005, the WTI’s counter-memory is significant for memorialising clear evidence of state crimes where hegemonic states like the US and UK were presented as manipulative and hypocritical actors pursuing their own self-interests. As “no international institution had the courage or conscience to stand up to the” US-led Coalition, it was therefore the duty of the WTI as “people of conscience...to stand up” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.492). Owing to this, the WTI’s counter-memory explored in this chapter has perhaps demonstrated what Christians (2015, p.43) has identified as an “ethics of social justice” where “justice is grounded in the inherent dignity of the human species.” Through use of ‘people’s law’ where citizens seek to reclaim some power against the state, the WTI’s counter-memory has given recognition to the moral wrongs associated with the Iraq War. This is a form of ‘memory-justice’ where through active resistance to an existent historical record, the WTI has challenged the state and its actors in a way where impunities associated with the Iraq War can be addressed in symbolic ways. As Hamber (1998, p.98) has argued, while establishing the truth of events is undoubtedly important in contexts of institutional silence and denial like that surrounding the Iraq War, “truth, for truths sake is a pretty pointless exercise...unless it is coupled with some form of social transformation.” Measuring the social transformation brought about by the WTI’s activities between 2003-2005 is difficult and perhaps it has failed to bring about tangible changes to international law and global justice that it sought. However as was stated in the Declaration of the Jury of Conscience (2005 cited in Sokmen 2008, p.501), it is “the scope and specificity of” their counter-memory that would “lay the groundwork for a world in which international institutions will be shaped and reshaped by the will of people.” The counter-memory explored within this chapter, is therefore significant because it suggests that “what we conventionally consider history...is not a truly comprehensive record of everything that has happened, but only a small part of what we have come to preserve as public memory” (Zerubavel 2004, p.2).

## Chapter Eight

### **A record of the Iraq War: exposing violations of international law and the criminal responsibility of George W. Bush and Tony Blair**

The Kuala Lumpur War Crimes Tribunal (KLWCT or Tribunal), like the WTI, has contributed to constructing a counter-memory of the Iraq War. Prior to the Tribunal's symbolic prosecution of George W. Bush and Tony Blair for war crimes and crimes against humanity in 2011, the historiography of the Iraq War was predicated on a state-constructed discourses of 'necessity' that actively promoted specific narratives where the threat of WMD and terrorism had gathered in Iraq. Saddam Hussein was therefore presented as a threat to a) national interests of the United States (US) its Allies, and b) global peace and security more broadly.<sup>19</sup> To explore the construction of a second counter-memory on the Iraq War, this chapter draws on a Gramscian perspective of 'counter-hegemony' where civil society is posited to be a distinct space where "an expanding array of social and political identities are forged and social struggles organized" (Urry, 1981). Civil society here is represented by a number of lawyers and judges who carried out a symbolic prosecution of George W. Bush, Tony Blair and select members of the Bush administration for war crimes, crimes against humanity and torture. In much the same way as the WTI's counter-memory has been used to engage in a 'war of position' against the state, so too has the KLWCT. However this Tribunal is different to the WTI because of the way in which evidence of state crime and guilt has been presented through use of quasi-judicial procedures. Drawing on the arguments of Colson (2000, p.58) that the pursuit of international criminal justice "has significance no matter what the expected outcome of the process are" this chapter will explore how the KLWCT has symbolically prosecuted former Heads of State and other state actors to achieve justice for the Iraq War.

---

<sup>19</sup> It is also important to acknowledge that, as was discussed in Chapter Eight, a counter-memory of the Iraq War had already been constructed by the WTI in 2005. This counter-memory was conceptualised by the WTI as a meaningful tool through which the state constructed historical record could be corrected so as to acknowledge the illegalities and criminalities associated with the war. However the extent to which the WTI's counter-memory has achieved its aim is unclear, and beyond the scope of this research.

The counter-memory explored in this chapter has a number of similarities with that constructed by the WTI. One fundamental similarity, is the resistance bound up within its counter-memory of the Iraq War. It argued that the Iraq War was illegal because the invasion had been initiated on falsified assertions that had no legal foundation. However where the WTI has presented this argument through use of testimonies from a Panel of Advocates, the KIWCT has presented evidence to substantiate their symbolic prosecution of state actors.

Drawing on case transcripts from the KIWCT's Case No.1 and Case No.2, this chapter discusses the various narratives embedded within its counter-memory. In Case No.1 evidence was presented by the KIWCT Prosecution Team to highlight the illegality of the 2003 Iraq War in order to hold George W. Bush (Bush) and Tony Blair (Blair) criminally responsible for the war of aggression. To identify how the KIWCT has told a story about the Iraq War where the aim is to pursue justice this chapter will discuss some themes that have emerged through the identification of keywords. Using the discourse of war constructed by Bush and Blair as a point of comparison, this chapter will highlight how resistance manifested through the KIWCT. In pursuit of prosecution as the accepted norm through which justice manifests, the KIWCT constructed its own counter-memory where evidence was presented through rules of evidence and quasi-judicial procedures. This evidence has promoted narratives that directly challenge the statements and actions of Bush and Blair to reinvigorate international laws, complementing International Criminal Court (ICC). To challenge the inaction of the ICC in relation to the Iraq War, the KIWCT contributed to the anti-war movement, creating another moment of "silence breaking" (Zerubavel 2006, p.2) through civil resistance.

## **8.1 Building a record of the Iraq War**

To identify the war of position expressed by the KIWCT against the state constructed discourse of the Iraq War, this section will explore the evidence introduced in Case No.1 where the Prosecution Team has made a case to highlight the illegality of the Iraq War. Within these proceedings, the Prosecution Team introduced several issues to the Tribunal judges to show that the Iraq War had violated international laws prohibiting wars and that Bush and Blair had knowingly participated in a campaign of misinformation that indicative of a joint conspiracy between the US and UK. For these reasons, the counter-memory of the Iraq War constructed by the KIWCT highlighted existing criticisms of Bush and Blair. The Tribunal's counter-memory solidified these criticisms into an enduring form to bring to light

issues that had been denied by states. The construction of this counter-memory is another significant example where citizens' tribunals have emerged to construct a record of state crimes. Through symbolic prosecution of Bush and Blair where the Prosecution Team and *amicus curiae* engaged in an adversarial battle where the true story of the Iraq War could be determined by a Panel of Judges. This section identifies specific sections within the case transcripts to show how the KIWCT supported the case against the Iraq War. In doing so it explores how the Tribunal constructed a counter-memory as a tool to substantiate its symbolic prosecution of Bush and Blair.

## **8.2 An 'illegal' war under international law**

To determine the criminal responsibility of George W. Bush and Tony Blair for initiating the Iraq War, the KIWCT's Prosecution Team presented an array of written evidence to show that the Iraq War was illegal under international law. As part of this the Prosecution Team also sought to establish the 'guilt' of both former Heads of State by showing the US and UK had no legal bases for the March 2003 invasion where George W. Bush and Tony Blair had knowingly violated these laws. This section explores the 'evidence' introduced by the Prosecution Team in Case No.1 where specific questions and concerns were raised with regard to the immediacy of the threat posed by Iraq.

### **8.2.1 (Re)interpreting UNSC Resolution 1441**

A central component of the Prosecution Team's case against George W. Bush and Tony Blair in Case No.1 was its interpretation of UNSC Resolution 1441 that they argued "did not authorize the use of military action to compel compliance with the resolution" (KIWCT Case No.1 2011, p.9). As was stated by chief prosecutor Professor Gurdian Singh Nijar, a "straight reading of the resolution" made it "abundantly clear that" if Iraq failed to comply with the demands stated within UNSC Resolution 1441, "the Security Council would [re]convene to decide on the next course of action, if any..." (KIWCT Case No.1, p.128). As the Tribunal's interpretation of Resolution 1441 contradicted those made by the US and UK the Prosecution Team substantiated their interpretation further by citing the opinions of other experts who were quoted in the transcripts of Case No.1. To show that there were other interpretations of Resolution 1441 beyond those presented by the US and UK prior to the March 2003, the Prosecution Team drew upon the statements of John Negroponte, a former US Ambassador

to the United Nations (UN). He is quoted as having said that Resolution 1441 contains no “hidden triggers” and no “automaticity with respect to the use of force and if there is a further Iraqi breach...the matter will return to the Council for discussions” (KLWCT Case No.1 2011, p.124). This was supplemented by the statements of Jeremy Greenstock, former UK Ambassador to the UN, who is quoted to have said that “we should not rush to military action; that on a decision so crucial any Iraqi violations should be discussed by the Council” (KLWCT Case No.1 2011, p.121). Through presentation of written evidence such as this the Prosecution Team argued that other similar interpretations of Resolution 1441 could be used to support the Tribunal’s reading of it. More specifically the statements by Negroponte and Greenstock were particularly important to establishing the criminal responsibility of George W. Bush and Tony Blair who had knowingly violated international laws by circumventing the interpretation of Resolution 1441 by other state actors. As chief prosecutor Professor Gurdial Singh Nijar stated, “the only plain reading of the resolution” was one where “the Security Council must resolve the question” on whether to initiate a war that was a decision “not any one or two member states” could make on their own (KLWCT Case No.1 2011, p.121).

While the US and UK had argued their unilateral invasion was legal because of the US’ veto powers that could over-ride and circumvent the UNSC, the Tribunal countered this by arguing that Bush and Blair had deceived the public. Iraq’s sovereignty was argued to be protected under international laws where “there was no automatic right of unilateral military action” (KLWCT Case No.1 2011, p.9). Transcripts from Case No.1 shows that in support of this argument, evidence obtained from the UK’s Chilcot Inquiry was used to prove that Blair had knowingly lied to the public. Peter Goldsmith was said by chief prosecutor Professor Gurdial Singh Nijar to have advised Tony Blair directly that “a fresh [UNSC] resolution was obligatory for reasons of international law” that was also substantiated by the “earlier paper prepared by the [UK] Cabinet Office [that] had reached the same conclusion” (KLWCT Case No.1 2011, p.122). The Prosecution also described how state actors including Ambassadors “of both the US and UK” had understood that “after the passing of SCR1441...there was no automatic right of unilateral military action in the event that Iraq failed to comply with SCR1441” (KLWCT Case No.1, p.58). The decision made by Bush and Blair to unilaterally invade despite the opinions of their own advisors, was presented as clear evidence that both leaders had knowingly violated international laws. As “the US and UK leaders...[were] aware that the Security Council would not support this resolution to go to war,” this was

taken as evidence that both Bush and Blair were guilty of the charges brought against them by the KIWCT (KIWCT Case No.1 2011, p.121).

To demonstrate how Bush and Blair had deceived the public, the Prosecution Team questioned why the US and UK had changed “their stance” on how UNSC Resolution 1441 was to be interpreted. They described how Bush and Blair had initially supported UNSC Resolution 1441 but grew increasingly impatient. The “desperate acts of [these] desperate persons” were argued by chief prosecutor Professor Gurdial Singh Nijar as amounting “to a war of aggression and a crime against peace”, because “any use of force without a further Security Council resolution would fly in the face of the plain language of Security Council Resolution 1441” (KIWCT Case No.1 2011, p.124). Bush and Blair were also argued to be guilty of international crimes because they had knowingly circumvented international laws to suit their interests. Former UK Ambassador to the UN Jeremy Greenstock was again quoted as having said:

“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.”

(KIWCT Case No.1 2011, p.127)

This was described by chief prosecutor Professor Gurdial Singh Nijar as clear evidence of “the arrogance” and the “ultimatum given to the world body” by the US and UK (KIWCT Case No.1 2011, p.127). Intimating that this was an example of “brute force” and “imperialism”, chief prosecutor Professor Gurdial Singh Nijar stated that under international laws restricting the initiation of war, there is “no automatic right to use force” where only the UNSC could approve such decisions (KIWCT Case No.1 2011, p.128). In offering a different understanding of the past, the story told about UNSC Resolution 1441 presents an ‘active mode of resistance’ that Furtado (2015, p.75) has described as a process where “resistance can be challenged via modes of memorialisation that challenge the...security and coherence of official narratives” constructed and managed by states.

### **8.2.2 International law, state sovereignty and an illegal war**

To show that the Iraq invasion was illegal under international laws, the Prosecution Team presented an interpretation of the laws that they believed proscribed the use of force against a sovereign state without just cause. Drawing on written evidence obtained from the United Nations Charter (1945)(UN Charter) the Prosecution Team argued that international laws clearly stipulated that “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” (KLWCT Case No.1 2011, p.4). As the US and UK had argued that the Iraq War was legal because it was initiated under the guise of ‘preventative attack’ post-9/1, the Prosecution Team pointed out that Iraq had not directly attacked the US or the UK where the argument of self-defence “has no application to the facts here” (KLWCT Case No.1 2011, p.54). Article 42 of the UN Charter, Chapter VII was cited as particularly relevant for demonstrating the illegality of a unilateral attack. Chief prosecutor Professor Gurdial Singh Nijar stated that Article 42 stipulates:

“Should the Security Council consider that measures be provided for... 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.”

(UN Charter 1945 cited in KLWCT Case No.1 2011, p.111)

Therefore the Prosecution Teams reading of this was used as evidence that the power to initiate war legally was not one that “ a single member, not a collective group of the willing” could make on their own, where the “Security Council” had to reach a consensus (KLWCT Case No.1 2011, p.111).

Another piece of evidence cited by the Prosecution Team to highlight the illegality of war draws upon Article 2(4) of the UN Charter (1945) to show how the sovereignty of Iraq has been breached by the US and UK. Article 2(4) was quoted by chief prosecutor Professor Gurdial Singh Nijar as stipulating:

“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 in any other manner inconsistent with the Purposes of the United Nations”

(KLWCT Case No.1 2011, p.111).

Therefore the sovereignty of a state could only be legally violated in specific conditions that the KIWCT argued did not exist at the time. To directly challenge the arguments of preventative attack as a form of self-defence cited by the US and UK prior to the invasion, the Prosecution Team in Case No.1 presented evidence that this justification had no legal standing in relation to the Iraq War. Under the Tribunal's interpretation of international laws, chief prosecutor Professor Gurdial Singh Nijar argued that "there must be an actual armed attack upon a state or there must be clear evidence that attack is imminent" (KIWCT Case No.1 2011, p.112). It is worth noting that on this issue of the 'preventative attack' argument cited by the US and UK debated in Case No.1, the appointed *amicus curiae* Mr Jason Kay Kit Leon argued that the US took a broad interpretation of existing laws centred on an argument of anticipatory self-defence. Under this interpretation, the US was described as having acted in self-defence because the purported relationship between Saddam Hussein and al-Qaeda allowed it to pursue military aggression as part of a broader global war on terror. Yet as chief prosecutor Professor Gurdial Singh Nijar stated "there [is] no credible evidence that Iraq had any connections with September 11, 2001 or with Al Qaeda" (KIWCT Case No.1 2011, p.33). In critiquing the foundation of this reasoning where a climate of fear was used as a tool to facilitate the Iraq War, the Prosecution concluded, "the argument about self-defence, is therefore not credible" (KIWCT Case No.1 2011 p.34) as there was no evidence to substantiate the claims made by Bush and Blair about the link between Iraq and terrorism. Chief prosecutor Professor Gurdial Singh Nijar concluded that based on the evidence and interpretations of international law presented it can be inferred that states "cannot use force, and it will constitute a crime of aggression" if they do (KIWCT Case No.1 2011, p.357). The codification of this into the counter-memory of the Iraq War constructed by the KIWCT promoted and solidified a narrative where the US and UK had knowingly violated the sovereignty of Iraq and had committed a war crime as a result of the aggressive military campaign. However the emphasis given to the wording of international laws within the KIWCT's counter-memory has produced a documentary record that is overly legalistic in nature that has the potential of reducing individuals' complex experiences of conflict to a series of isolated human rights violations (Ross, 2003). Furthermore by preferencing narratives that concentrate on the wording of international laws, the strength of the KIWCT's counter-memory is undermined by the reliance of subjective interpretations of established laws and norms associated with war.

### 8.3 A campaign of misinformation

As was explored in Chapter Seven, the Iraq War was justified based on a number of different concerns including that of WMDs in the hands of Saddam Hussein. The statements of fact and intelligence cited by both Bush and Blair helped to heighten the threat associated with Iraq. As stated by the Prosecution Team, over time, it has become “a well-established fact which is in the public domain that Iraq did not possess any weapons of mass destruction” nor was there any evidence to show that Saddam Hussein was rebuilding the facilities to make more weapons (KLWCT Case No.1 2011, p.198).

Drawing on the statements of UN weapons inspectors that had been in Iraq, the Prosecution Team presented evidence on the duplicity of Bush and Blair’s statements about the WMD. Chief prosecutor Professor Gurdial Singh Nijar stated that:

“Chief UN Inspector Scott Ritter made clear 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...the alleged threat posed by weapons of mass destruction was nil.”

(KLWCT Case No.1 2011, p.198)

Arguing that the US and UK would have had access to this statement, the Prosecution Team suggested that Bush and Blair actively chose to promote the threat of WMDs when they knew the claims about Hussein processing these were unsubstantiated. The lack of acknowledgement given to the indications that Hussein did not have such weapons in the arguments made by Bush and Blair for the invasion, were presented by the Prosecution Team as clear evidence that the legitimacy and power of these state actors was used as a tool to frame the threat of WMDs. In challenging the arguments for invasion cited by Bush and Blair, the evidence presented in Case No.1 supported the argument that the threat of WMDs presented in the public domain was at best one sided and at worst baseless. The emphasis given to WMDs coupled with the fact that none have been found since the 2003 invasion, led the Prosecution Team to conclude that “Bush and Blair knowingly contrived to use an utterly false basis to invade Iraq” (KLWCT Case No.1 2011, p.362). To tell this story of deception where state actors have seemingly lied to the public, the Prosecution Team identified key pieces of evidence that had existed at the time, yet had not been acknowledged by Bush and Blair. It was the absence of these dissenting opinions where Bush and Blair spoke of WMDs in Iraq, that the KLWCT argued was a crucial rationale for the Iraq War that needed to be

interrogated. In doing so the record of the Iraq War constructed by the KIWCT developed clear evidence to show that the March 2003 invasion had been pursued on a foundation of falsehood.

Another member of the Prosecution Team Professor Francis A. Boyle argued in Case No.1 that, “everyone at the time knew” that Iraq had no stockpile of WMD (KIWCT Case No.1 2011, p.199). The statements of El-Baradei, the former Director of the International Atomic Energy Agency was specifically cited as clear evidence to challenge the state constructed threat of WMDs. Here it was stated “El-Baradei had already reported that there were no nuclear weapons in Iraq.” (KIWCT Case No.1 2011, p.199). Furthermore other “weapons inspectors under UNSCOM and UNMOVIC” charged with the investigation of chemical and biological weapons in Iraq ” had already reported that there were no biological weapons or chemical weapons after the war of 1991”(KIWCT Case No.1 2011, p.199).<sup>20</sup> As was discussed in Chapter Six there are a number of issues with the evidentiary practices used by the Prosecution Team where secondary and/or hearsay evidence is admissible at the KIWCT. On the topic of WMDs, the Prosecution Team introduced evidence obtained from Tony Blair’s autobiography titled ‘Tony Blair- A Journey’ (2010). From this book, passages were quoted by the Prosecution Team and used to tell a story where Tony Blair’s reflective assessment of WMDs was one “full replete with mysteries” (KIWCT Case No.1 2011, p.203). Blair is quoted as having said “the stated purpose of the [Iraq] conflict was to enforce UN resolutions on Saddam’s WMD and we found no WMD,” however argued that “how this came to be so remains a mystery” (KIWCT Case No.1 2011, p.203). The Prosecution Team argued, “the intelligence [referenced by Blair on WMDs] was contrived, even fabricated” (KIWCT Case No.1 2011, p.205). A report on the threat of WMDs in Iraq, prepared by “MI6 which Blair released on February 2<sup>nd</sup> 2003” to justify going to war, was described by the Prosecution Team as having been “based on plagiarism...[that was based] on a Ph.D. student paper taken word for word (KIWCT Case No.1 2011, p.206). In this way the Prosecution Team argued that the consistent promotion of a WMD threat coming from Iraq and Saddam Hussein’s regime was baseless, and that “spin was being sold off as intelligence” (KIWCT Case No.1 2011, p.207). By arguing this, and presenting evidence to substantiate its claims,

---

<sup>20</sup> In this statement the Prosecution draws attention to the opinion of Mohamad El-Baradei who was the Director General of the International Atomic Energy Agency (IAEA). Along with the United Nations Special Commission (UNSCOM) and The United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), these organizations were tasked with the responsibility of inspecting Iraq’s weaponry and all associated sites.

the record of the Iraq War presented by the KIWCT was one that revealed “a tale of the most dastardly action committed through deceit, through chicanery [and] the disregard for international law” (KIWCT Case No.1 2011, p.207).

To emphasize that the US and UK had knowingly disseminated misinformation on the true extent of Iraq’s weaponry, the Prosecution Team also presented other pieces of written, secondary and/or hearsay evidence such as an article published in *The Guardian* in which Blair was interviewed. The statements made by Blair were interpreted by the Prosecution Team as clear evidence that the March 2003 invasion would be inevitable. In this article, Blair discusses the motivations to invade Iraq and is quoted to have said that:

“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.”

(KIWCT Case No.1 2011, p.157)

A crucial passage drawn from this interview used by the Prosecution Team argued that Blair would “still have thought it right to remove [Saddam Hussein]”, even “if [he] had known that there were no WMDs” in Iraq (KIWCT Case No.1 2011, p.157). This evidence was used to show that the UK and US had promoted the threat of WMDs knowing that the intelligence and evidence they cited was uncorroborated and falsified. They were therefore responsible for knowingly violating international laws against the use of force against another sovereign state without just cause. Drawing on the statements given to the Chilcot Inquiry, the Prosecution Team argued that the ‘Whitehall document’ presented to the inquiry showed that “the UK would support military action to bring about regime change provided that...efforts had been made to construct a coalition/shape public opinion” (KIWCT Case No.1 2011, p.158). This was used by the Prosecution Team as clear evidence to highlight that Bush and Blair had manipulated the public. It inferred that the UK were willing to go along with the position of its’ ally- the US- as long as they could construct a discourse that legitimated their actions. Interpreted by the Tribunal as a significant piece of evidence, it showed that Bush and Blair were selectively using the threat of WMDs as a tactic of misinformation to deceive the public. By promoting an argument to show that some underlying rationales for the Iraq War were false, the Prosecution Team held Bush and Blair accountable for the lies they told to the public. This calls into question the legitimacy of state actors. The Prosecution Team also questioned the statements made by former US Secretary of Defence Donald Rumsfeld, who is quoted to have said “the CIA had intelligence that there were various WMD sites around Tikrit and Baghdad” (KIWCT Case No.1 2011, p.204). Noting that this intelligence

was proven inaccurate, the Prosecution Team criticized the political discourse on WMDs constructed by US state actors. In exposing the tactics employed by Bush and Blair in Case No.1, the Prosecution Team presented evidence to show that they had acted deceitfully; solidifying a particular way of remembering the Iraq War as one that was initiated on false pretences. In reaching this conclusion the Prosecution Team argued that based on the publicly available evidence, it was clear “beyond reasonable doubt [that] Bush and Blair connived and conspired to achieve their common plan” through promoting a baseless narrative of WMDs in Iraq (KLWCT Case No.1 2011, p.208).

#### **8.4 Exposing a joint conspiracy between the US and UK**

In support of the Tribunal’s broader aim to make all wars illegal, the record of the Iraq War constructed by the Tribunal drew attention to the aggressive nature of the foreign policies of the US and UK. To begin the “world-wide sustained effort to criminalise war” (Charter of the KLFCW 2005, p.viii) it hoped to inspire, the Tribunal’s Prosecution Team argued that the Iraq War was initiated to fulfil the national and international interests of the US and UK. This was an integral component of the KLWCT’s prosecution in Case No.1 where the Prosecution Team acknowledged the existence of a close relationship between the US and UK that was argued to be evidence of a ‘joint conspiracy’ to initiate the Iraq War to serve their national interests in the Middle East.

To support this, the Prosecution Team presented evidence to suggest that Bush and Blair had conspired to invade Iraq prior to the 9/11 terrorist attacks of 2001. Using facts contained within publicly available documents, the Prosecution Team used ‘The Iraqi Liberation Act’ (1998) as evidence that US foreign policies on Iraq was inherently aggressive in nature and were a significant motivating factor for the war. Chief Prosecutor Professor Gurdial Singh Nijar argued that “the Iraq Liberation Act declared [that] the goal of US foreign policy on Iraq was to remove the regime headed by Saddam Hussein from power” (KLWCT Case No.1 2011, p.195). The “key part” of this legislation he argued, was that its codification into the “official [foreign] policy of the United States” meant that from then the US was always going to pursue its policy of regime change as it was considered in its best interests. To substantiate the charged made against Tony Blair, the Prosecution Team also presented evidence to show that regime change in Iraq was also part of his “policy” (KLWCT Case No.1 2011, p.195). It introduced evidence obtained from an article published in the UK *Guardian* newspaper titled

‘Tony Blair admits I would have invaded Iraq anyway.’ Chief prosecutor Professor Gurdial Singh Nijar stated that this article showed that “Tony Blair...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” (KLWCT Case No.1 2011, p.157). As part of its recording of the Iraq War, the Prosecution Team presented clear evidence that regime change in Iraq had become embedded into the foreign policies pursued by Bush and Blair. This evidence was used by the Prosecution Team to show that Bush and Blair had presented a united front in support of the Iraq War, conspiring to coordinate their efforts to shape how the threat of Iraq was presented to the public. The Prosecution Team argued that the intelligence and evidence cited by the US and UK were unsubstantiated and that they acted unilaterally to invade Iraq to serve their foreign policy interests.

In its criticism of the aggression as part of US foreign policy on Iraq, the Tribunal described the policy as one that relied on coercion. In the context of international relations, the US was argued to have pursued a dual track strategy including:

“One...to rally a coalition of nations to make clear that Saddam’s defiance of his international obligations was unacceptable, [and] the other...to develop a credible military option that could be used if he failed to comply.”

(KLWCT Case No.1 2011 p.159)

This two-track method discussed by the Prosecution was used to show that Bush, and the US were criminally responsible for initiating a joint conspiracy amongst states to deceive the public and commit a ‘crime against peace’. Within the counter-memory this solidified a way of remembering the war as one that showed the willingness of the US and its Allies to circumvent international law. This was particularly concerning to the Prosecution Team because it showed that the “most powerful nations in the world [are able to] arrogate to itself the right to be the policeman of the world in total disregard of international law” (KLWCT Case No.1 2011, p.159). To link back to the theoretical framework that draws on ideas of hegemony and power, the counter-memory of the Iraq invasion constructed by the Tribunal presented a warning about the dangerous precedent that had been set. The Tribunal argued that there was clear evidence to “show beyond reasonable doubt” that Bush and Blair had “launched this war” and had “planned to launch this war without any...regard for international law” (KLWCT Case No.1 2011, p.159). The conclusions on the Iraq War reached by the Tribunal helped to consolidate a way of remembering the invasion as a violation of international laws. While this opinion had already existed prior to the 2003

invasion, the Tribunal's close interrogation of the US-led campaign of aggression in Iraq was used to uncover the truth behind the war that acknowledged that it was a crime against peace.

To strengthen its case against Bush and Blair, the Prosecution Team relied on the 2002 Downing Street Memo authored by Matthew Rycroft- a foreign policy aide associated with the Blair administration. This publicly available evidence was considered to be "the most definitive documentary evidence that the Bush administration had not only made up its mind to go to war long before it sought congressional authorization...but that it had an agreement with the British government to do so" (KLWCT Case No.1 2011, p.183). This memo was revealed in 2005 by a British journalist and as it was "confirmed and corroborated as accurate" the Prosecution Team used it as evidence of a joint conspiracy between the US and UK. At the time of its release in 2005, the Downing Street Memo proved damning for Bush and Blair, undermining the justifications they had cited in support of invasion and regime change. It also called into question the accuracy and truthfulness of their public statements regarding the threat of Iraq and Saddam Hussein, coupled with terrorism and WMDs. Building on these existing criticisms, the Downing Street Memo was presented as a 'smoking gun' to show that Bush and Blair had knowingly deceived the public. A passage drawn from this memo by the Prosecution Team stated that:

"Saddam's regime was tough and based on extreme fear. The only way to overthrow it was likely to be by massive military action."

(Downing Street Memo, 2002)

This was used by the Tribunal's Prosecution Team to show that the opinion of British intelligence agencies at the time was that any peaceful attempt to disarm and remove Saddam Hussein was futile and that the *only* viable option was to pursue an invasion.

Additionally, the Downing Street Memo also made reference to United States policy, which was classified at the time. It stated that based on their discussions with the former Bush administration in Washington:

"There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and the facts were being fixed around the policy."

(Downing Street Memo, 2002)

As the ‘smoking gun’ of the Prosecution’s case against Bush and Blair, the Downing Street Memo was used to show that all other options had not been exhausted and that the US “had no patience with the UN route, no enthusiasm for publishing material on the Iraqi regime’s record” (Downing Street Memo, 2002). This evidence was integral to the broader counter-memory of war because it solidified a way of remembering the war as not an option of last resort as was suggested by Bush and Blair. As the Prosecution Team argued that there was a joint conspiracy between Bush and Blair, both former leaders were shown to be willing to take military action in Iraq despite the lack of reliable supporting intelligence or evidence to substantiate the purported threat. Through exposure of this joint conspiracy, the Tribunal’s counter-memory also made a strong argument to undermine the public memory constructed by the state. This is a significant act of silence breaking that allowed Tribunal actors an opportunity to acknowledge information and perspectives that had been suppressed by states prior to the 2003 invasion. The exposure of these suppressed perspectives, embodied within evidence such as the Downing Street Memo, was used to show that “they [the US] were going to lie in their intelligence too, so that it will fit into the policy of attacking and achieving regime change” (KLWCT Case No.1 2011, p.189). This argument presented an alternative way of thinking about the Iraq invasion as one where Bush and Blair had lied to the public, knowingly “manipulating the intelligence” to suit their interests (KLWCT Case No.1 2011, p.189).

## **Conclusion**

In light of this and other evidence presented by the Prosecution Team, the Tribunal argued and concluded as part of its counter-memory that Bush and Blair “had a clear programme for regime change and they were going to effect it come what may” (KLWCT Case No.1 2011, p.190). The Tribunal argued that because of the joint conspiracy between the US and UK to institute regime change in Iraq, Bush and Blair were criminally responsible for their role in helping to deceive the public. Judge Abdul Kadir Sulaiman concluded his judgement that both defendants in Case No.1 had “committed crimes against peace in that they...planned, prepared and invaded the sovereign state of Iraq...in violation of the United Nations Charter and international law” (KLWCT Case No.1 2011, p.355). The Tribunal judges concluded in Case No.1 that the “absence of any convincing evidence [where] defence assertions lack credibility” led them to “find that the charges against the accused are proved beyond reasonable doubt” (KLWCT Case No.1 2011, p.371). The defendants had taken “the law into

their own hands...[acting] with deceit and falsehood” to flagrantly violate international laws of war and peace (KLWCT Case No.1 2011, p.371). In exposing this fact, the Prosecution Team helped to break a “conspiracy of silence” around the true motivations for the invasion, and also participate in a process that “involves acknowledging the presence of the elephant in the room” (Zerubavel 2006, p.6). It is through the process of publicly acknowledging narratives and criticisms that had already existed concerning the Iraq War, that citizens’ tribunals like the KLWCT have sought to resist the state. By bringing attention to what is being ignored within the public memory associated with wars, citizens’ tribunals have performed an act of resistance that challenges the memories constructed and managed by the state. These alternate versions of the truth have been codified into the counter-memory of the Iraq War to show that the invasion violated international laws, and on that basis Bush and Blair should be held criminally accountable for their actions.

## Chapter Nine

### Conclusion

The introduction of crimes of aggression into the Rome Statute (1998) in July 2018 was meant to be a significant step towards the eradication of wars between states. Although the reform empowers the International Criminal Court (ICC) to investigate and prosecute those responsible for initiating illegal wars of aggression, global justice for international crimes via the ICC continues to be marred by complex issues of realpolitik and hegemony. This suggests that state sovereignty will arguably continue to supersede the interests of global justice whereby crimes of aggression, like the Iraq War, are unable to be investigated, or prosecuted by states or the ICC. This thesis has explored how citizens' tribunals fill the absence in accountability for crimes of aggression by contesting the public memory and historical records associated with the Iraq War. Citizens' tribunals are social movements that emerge to "uncover what is hidden [by] seeing what is already there-and acting on it" (Rothberg 2009, p.222). This is a contemporary form of civil resistance to state crimes in which non-state actors from civil society have engaged in a Gramscian 'war of position' against the public memory constructed by the United States (US) and the United Kingdom (UK). As has been examined in this thesis, The World Tribunal on Iraq (WTI) and The Kuala Lumpur War Crimes Tribunal (KLWCT) have each constructed a counter-memory of the Iraq War to engage in a struggle with the state in what McAdam, Tilly and Tarrow (2001, p.5) label as 'contentious politics'—that is collective political struggle involving episodic, public interaction among makers of claims.

To summarise the analysis in this thesis, it is important to first revisit the research questions that have guided this analysis of citizens' tribunals and counter-memories. To fill the gaps in accountability for the Iraq War, the WTI and KLWCT have each constructed a counter-memory of the Iraq War that draws "from the memories of victims...[and] witnesses," and includes "texts that already exist but are "made newly visible in a political and moral way" (Banham 2017, p.386). As states have a legitimate monopoly over the use of force, able to initiate wars like that seen in Iraq, the WTI and KLWCT have both made concerted efforts to expose the illegality of the war and the criminogenic role of state actors. This conclusion will be divided into the three distinct contributions that this research has made in developing the scholarship on civil resistance to state crimes. It revisits the three issues identified in Chapter

One, exploring the concepts: citizens' tribunals, counter-memories and memory-justice. The discussion will then examine how each of the thesis' research questions have been addressed and analysed in Chapter Five through to Nine to explore the significance of citizens' tribunals and the counter-memories they construct.

### **Citizens' tribunals: the role of civil society agents of accountability**

As has been explored in this thesis, the WTI and KIWCT emerged in contexts of silence and denial of state crimes where state actors were able to purposefully construct narratives to conceal the criminality of their conduct. As the nature of the state crime event is a vital determinate that shapes cultures of denial and acts of resistance (see Lasslett, 2012) this research has purposefully interrogated the role of non-state actors from civil society to address perceived injustices associated with state crimes like the Iraq War. The concerted action these Tribunals have taken on a global level to counter denial of state crimes and acknowledge state-led violations of international law accords with what state crime scholars have consistently argued to be civil society's important role as a force capable of controlling the conduct of states (see Green & Ward 2004, 2013). To address the first research question and consider how citizens' tribunals can address the limitations of the ICC, this thesis has presented an analysis of two case studies. As was reviewed in Chapter Five and Six, the WTI and KIWCT were organisations that sought to complement existent mechanisms of global justice such as the ICC. Through their analysis of the Iraq War, these citizens' tribunals have resisted the historical record associated with this event to construct a counter-memory that they believe could be used as a blueprint to guide how crimes of aggression can be investigated and prosecuted in lieu of the ICC. Ideally, we would see states working in collaboration with the ICC and the UN, equitably applying international law to pursue justice and hold state actors responsible for international crimes. As has been explored in this thesis, this, however, is not the case.

In the context of the Iraq War, the hegemony and power associated with the US and UK has stymied global justice in a way that facilitates acts of civil resistance like that seen at the WTI and KIWCT. Chapter Two, the literature review, has explored how scholars of state crime (see Green & Ward, 2004; Stanley & McCulloch, 2011) and scholars of social movements (see McAdam, Tilly and Tarrow, 2001; Della Porta & Diani, 2006) have identified the role that can be assumed by civil society to circumscribe the absolute power of states. Drawing on

these arguments, this thesis has considered how citizens' tribunals are able to overcome a culture of silence and denial where crimes of aggression like the Iraq War can be addressed. Through the use of two case studies, this research has explored how citizens' tribunals resurrect and utilise the Nuremberg principles that underpin international laws of war and has applied the jurisprudence of atrocity to the conflict in Iraq. The taxonomy of citizens' tribunals established in this thesis highlights the importance of truth-seeking processes for justice where "honouring these truths in a public and officially sanctioned report represents for many [victims] the first acknowledgement...that their claims are credible and that the atrocities were wrong" (reference, p.13). As explored in Chapter Five a key limitation of the WTI and KIWCT was that they had neither the strength nor the means to legally enforce their judgements on the Iraq War and the actors responsible. However, this limitation cuts both ways in that it can give these Tribunals "considerable flexibility in what it could garner and what it could dictate" (Kampmark 2014, p.6), whilst also undermining their legitimacy as a quasi-judicial forum. These quasi-judicial settings have many similarities with truth commissions including: having fewer powers than courts, unable to put anyone in jail, they cannot independently enforce their recommendations, and have no power to compel anyone to appear for questioning (p.13). Despite its lack of formal judicial status, the actions taken by the WTI and KIWCT to address the impunities and injustices associated with the Iraq War continues what Risse (2000, p.178) describes as a "decade-long struggle" where transnational human rights activists have mobilized to establish norms and laws able to circumscribe the power of states. In recognizing the illegality of the Iraq War, the WTI and KIWCT have constructed a "full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them" (reference, p.25). In doing so, these citizens' tribunals have demonstrates the existence of "a hunger on the part of international citizenry to engage the justice system at the elemental level, tackling alleged high crimes through unofficial means" (Kampark 2014, p.6). Where states and the ICC have remained silent, refusing "to institute domestic or international prosecution for alleged crimes," it is arguably citizens who can intervene, albeit symbolically, and fill the gap in global justice (Kampark 2014, p.6).

The WTI and KIWCT have sought to complement the ICC who they argue have been reluctant to investigate all allegations of state crimes. As pursuits of global justice often neglect cases in which dominant states have violated international laws, citizens' tribunals are

able to address cultures of silence and denial that can serve to address the absence in accountability for state crimes.<sup>21</sup> To acknowledge that the Iraq War was illegal and an international crime of aggression, the WTI and KIWCT have each engaged in a struggle with both the state and state actors to provide a space through which victims of the Iraq War can be recognised. The WTI, as discussed in Chapter Five, had specifically attempted to address the institutional silence associated with the Iraq War, to aid the ICC, and “help restore the authority of international law as a vehicle of global justice and as an instrument for truth telling (Falk 2005a cited in Sokmen 2008, p.489). This act of civil resistance is crucial as it suggests that civil society has an important role to play in holding states and state actors accountable for violations of international law. As representative of the Jury of Conscience, Richard Falk (2005b cited in Sokmen 2008, p.489) states that the WTI has “drawn unmistakable red lines that identify zones of criminal conduct, that will offer political guidance and facilitate moral clarity” to improve global justice for international crimes of aggression. Much like the WTI, the KIWCT has contributed to global justice for international crimes. It took direct inspiration from the ICC and the Rome Statute (1998) that allowed it to derive power and authority to act. As a citizens’ tribunal of conscience, the KIWCT argued that because “the future of the UN and of the international law of war [was] at stake” it was essential to “file reports of genocide and crimes against humanity with the International Criminal Court” (KIWCT Case No.1 2011, p.371-2). This complements the ICC in that clear evidence of international crimes associated with the Iraq War could be compiled in a quasi-judicial format to empower states or the ICC to conduct further investigation and/or prosecution.

Citizens’ tribunals are contemporary manifestations of civil resistance against state crimes. They are unique forms of social movements that operate transnationally allowing alliances and coalitions to form across the territorial boundaries of nation states. As has been explored in Chapter Five of this thesis, the emergence of the WTI and KIWCT in response to the Iraq

---

<sup>21</sup> The ICC’s unwillingness and inability to investigate and prosecute international crimes of hegemonic Western states is a troubling concern for the future of global justice. Just recently in April 2019, the ICC announced it was dropping its investigation of war crimes in Afghanistan. While the Court’s investigation would mainly focus on large scale crimes against civilians attributed to the Taliban and Afghan government forces, it would also examine alleged cases of military abuse perpetrated by individuals from the Central Intelligence Agency (CIA) and American military. In response to this development, and in light of the US policies regarding its (non)co-operation with the ICC, this example arguably demonstrates how states continue to exercise significant power that can be leveraged to influence the ICC.

War reflects the growth of transnational civil society (TCS) in helping establish normative standards of behaviour that seeks to control the conduct of states. The mobilization of two transnational networks of non-state actors purporting to represent civil society, accords to what Sunstein (1995, p.61) describes as a growth of a “rights-bearing culture” where citizens can “take serious personal risks by challenging powerful people [to insist] that their rights are at stake.” As explored in Chapter Five, for example, the WTI stated to have been acting on behalf “of the peoples of the world” (Falk 2005a cited in Sokmen 2008, p.7). Similarly, the KIWCT argued that in situations in which official accountability mechanisms like the ICC have neglected their responsibilities, “it is the people and the people alone who are clothed with the right to pass final judgement” on the guilt of state actors (KIWCT Fact Book 2013?, p.13). These statements suggest that Tribunals derive power and legitimacy from democratic principles in which non-state actors are cognisant of their individual rights to seek “remedies” to challenge “patterns of illegitimate [state] authority” (Hartog 1987, p.1014). As state crime scholars Green and Ward (2004, p.208) conclude, it is the “organized voice of ordinary working people” that can “oppose and denounce state crimes by any means consistent with human rights” to “provide an effective sanction against the perpetrators.” This statement challenges complex issues of realpolitik and hegemony that have thus far stymied justice and accountability for the Iraq War. Civil society’s separation from the state allows it to function as a check on state power. To break the cycle in which state actors are able to “avoid punishment by an international tribunal...[by] staying in power at all costs” (Green & Ward 2004, p.209), citizens’ tribunals, like the WTI and KIWCT, have engaged in a Gramscian ‘war of position’ to challenge the public memory and historical record of the Iraq War constructed and managed by states and state actors.

Citizens’ tribunals like the KIWCT belong in a category of transitional justice mechanisms known as hybrid tribunals. The growing emphasis given to formulating transitional justice mechanisms specific to local context is reflected in the 2004 report of the Un Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, which calls for greater attention to indigenous and informal processes for administering justice or settling disputes on the basis that this will help to make transitional justice processes more meaningful to informal populations. Drawing from the WTI and KIWCT as case studies of analysis, these two citizens’ tribunals have confronted legacies of denial in a way that preferences the official and public acknowledgement of state crimes. As transitional justice mechanisms gradually shift away from a ‘one-size fits-all’ perspective citizens’

tribunals provide a fertile ground to study movements of resistance, able to broaden how resistance is conceptualized in an increasingly transnational world. The two citizens' tribunals explored in this thesis have demonstrated the importance of 'recognition' for victims of state crime where TCS form organizations to construct counter-memories that helps societies deal with legacies of state crime. How these Tribunals do this is described in this thesis as a form of 'memory-justice' which involves the active work of transnational organizations who have increasingly drawn on inventive methods to 'mobilize for human rights' (Risse 2000, p.179).

Accordingly, this is significant in developing the scholarship on civil resistance; it points to the arguments of Gramsci (1971, 1995), who argued that hegemony is in a complex state of flux, where power can be contested amongst rulers and subjects. Gramsci (1971, 1995) argues that civil societies' attempt to challenge the hegemony of political societies is a form of 'counter-hegemony'. Civil societies that participate in acts of counter-hegemony are able to challenge the power of political actors and resist the actions and/or rhetoric of states. This is relevant to understanding citizens' tribunals because these acts of resistance allow civil societies to engage with processes of 'counter-hegemony'—challenging the hegemony of political actors and states. In the context of the Iraq War, where the invasion and occupation is argued to have violated international laws, non-state actors have joined together to challenge the power and influence of political actors like George W. Bush and Tony Blair. Accordingly, as explored in Chapter Five, the WTI initiative was stated to be one based on the anti-war movement of 2002 to 2003, which was used as a foundation to help formulate its global "non-hierarchical" and "horizontal network" of actors joined organisationally because of their collective opposition to the Iraq War (Sokmen 2008, p.x). Chapter Five has also explored the organisational structure of the KIWCT, which was described by its chief prosecutor, Professor Gurdial Singh Nijar, as being "a people's tribunal" and a "tribunal of conscience" (KIWCT Case No.1 2011, p.19) that was "inspired by the highest ideals of natural law and justice" (p.22). In this way, the emergence of the WTI and KIWCT has actively promoted the idea that civil societies can question and resist the power of political societies in meaningful ways.

As organizations, the WTI and KIWCT have pursued similar aims that have each promoted the voices of individual citizens. The WTI for example was stated to be a means to "demand justice and a peaceful future" for civil society (Declaration of the Jury of Conscience 2005

cited in Sokmen 2008, p.492). Similarly, the KLWCT was established “to investigate cases of war crimes that have been neglected by institutions such as the International Criminal Court” (KLFCW Factbook 2013? , p.11). These voices and cases of state crimes have produced what has been explored in this thesis as a ‘counter-memory’ where memories and historical records can be actively resisted through forms of contentious politics. These citizens’ tribunals represent the growth of TCS, who are increasingly organizing and mobilizing to form movements of resistance against the denial of state crimes.

### **Counter-memories: a war of position against hegemonic memories of states**

Justice can be broadly defined as a “need to recognise and respond to human rights violations committed against individual victims” (Franke 2006 cited in Kent 2012, p.34). The question of how societies address legacies of human rights violation or, ‘come to terms with the past’ is a difficult task many scholars of social movements, state crime, transnational civil society (TCS) and transitional justice have attempted to tackle. In the course of establishing that TCS actors do matter, scholars have produced a large menu of what such activists do and how they do it (Price 2003, p.583). Social movement scholars Keck and Sikkink (1988, p.25) have for example identified that TCS seek to get an issue on an international agenda, to get international actors to change their discursive positions and institutional procedures, and to influence policy change and actor behaviour.” In the context of state crimes, citizens’ tribunals are purposeful forms of resistance that emerge to document and record the Iraq War from the perspective of victims and impacted communities who have been harmed by states and state actors. As has been explored in this thesis, the record these Tribunals have developed were nuanced including many different topics. The WTI’s final Istanbul hearing for example saw fifty-five testimonies on six different topics including for example the role of international law and institutions, the responsibility of governments and the accountability of the media. The sum of these testimonies was used to form a counter-memory of the Iraq War where voices of dissent were publicly acknowledged and memorialized through published text. Simply enabling victims to tell their stories – for example, through a truth commission process- is a commitment to recognizing past harms committed against them, acknowledging their dignity as individuals and recognizing them as citizens with rights (Kent 2012, p.34). The emphasis on recognition within the transitional justice literature draws on a broader body of work where “the denial of recognition can be experienced as an acute form

of injustice, which can become an important source of political mobilization, resistance and conflict (Kent 2012, p.34; see also Markell, 2007). It is within this body of work that this research has been located, and to develop a taxonomy of citizens' tribunals the construction of 'counter-memories' are important elements in understanding what citizens' tribunals do. In other words, like truth commissions and trials, a key contribution of citizens' tribunals are the "historical records" of state crimes they construct (Kent 2012, p.34).

As was explored in Chapter Two, the literature on transitional justice has often been overwhelmed by a dichotomous debate between restorative and retributive justice. Where restorative justice has come to be associated with truth commissions, advocates of retributive justice consistently point to the significance of laws and criminal trials in framing how justice is conceptualized. Yet as the KLVCT has demonstrated, mechanisms of justice can include a mixture of retributive and restorative components where a hybrid tribunal format. When criminal trials merge with truth commissions, a hybrid tribunal- citizens' tribunals- emerges. In symbolically 'prosecuting' state actors responsible for war crimes, crimes against humanity and torture, the KLVCT has made claims that seek to reinforce the rights of individuals to "establish individual responsibility for human rights violations" and "bring those responsible to legal account" (Kent 2012, p.33). The extent to which the KLVCT was able to achieve the latter is without question the most significant limitation of citizens' tribunals. They are simply unable to enforce their conclusions or findings that raise the obvious question of why and how these individual citizens have mobilized to form citizens tribunals, and what impact they are ultimately able to have in controlling states? Drawing on the WTI and the KLVCT as case studies to address these questions, this thesis has explored the role of TCS actors in shaping justice. The conceptualization of justice presented in this thesis is a form of 'memory-justice' (see Booth, Banham) where memories and historical records are mobilized by 'civil society organizations (CSOs)' to investigate, label and resist denial of state crimes (Green & Ward 2004, 2013). This record for the WTI would chronicle not only "the crimes against the Iraqi people, but also crimes committed against humanity and against all other inhabitants of this planet" (Sokmen, 2008). The WTI would utilize a public hearing format where the KLVCT would construct a record through a clearly defined set of rules of evidence and procedure outlined in the central Charter of the KLVCT (2008). The way these Tribunals have each sought to handle wrongdoing and confront the denials of state crime are noteworthy differences that have consequences for shaping our taxonomy of citizens' tribunals. As was discussed in Chapter Five and Six, the WTI was an informal

network of anti-war activists who viewed the “problem as one of the whole community” and through use of a public inquiry they were “interested in rebuilding broken relationships and restoring community” (Huyse 2003, p.111). The counter-memory constructed by the WTI sought to encapsulate voices of dissent expressed by millions of people who had protested the Iraq War between 2002-2003. Through the testimonies of fifty-five individuals who sat on the Panel of Advocates, and the Declaration of the Jury of Conscience (2005 cited in Sokmen, 2008) the WTI has provided a more ‘victim-centred form of justice’ that restores the dignity of victims than criminal prosecutions (see Kent 2012, p.33). However the KIWCT discussed in Chapter Five and Seven has reinforced the importance of bringing individuals to legal account, establishing their individual responsibility for human rights violations in courts of law. As Kent (2012, p.33) describes, “prosecutions are claimed to benefit the broader society by deterring criminality, preventing a repetition of violations in the future and instilling public confidence in the rule of law.” The inherent problem with drawing on the rule of law is that trials of this nature seek to establish the criminal responsibility of individual perpetrators. In the context of state crime, the strict requirements of establishing the requisite level of proof to show a state actor had violated national or international laws is an up-hill battle the KIWCT was unable to overcome.

In these case studies, civil society organisations and actors have demonstrated their willingness to intervene as part of a broader anti-war movement. The WTI and KIWCT have challenged the unilateral attack on Iraq’s sovereignty and “insist[ed] on the relevance and applicability of international law to every use of force” (Falk 2005a cited in Sokmen 2008, p.6). However calculating the weight and effect of these forms of resistance is a complex task that requires further investigation. The analysis of these two citizens’ tribunals and their respective counter-memories presented in this thesis suggests that civil societies are able to contribute to global justice through implementing public inquiries that acknowledge and expose denial of state crimes. The counter-memories, in particular, have helped promote a way of thinking and remembering the Iraq War that has helped solidify the criticisms expressed by the anti-war movement. For example, the public memory constructed by George W. Bush and Tony Blair argued that the invasion was necessary to save Iraqi citizens from the brutality of Saddam Hussein’s dictatorship; the WTI’s counter-memory presented testimonies to show that the invasion and occupation of Iraq had exacerbated the humanitarian crisis. Furthermore, where the public memory constructed by George W. Bush and Tony Blair had argued the invasion was necessary to maintain global peace and security,

the counter-memory constructed by the WTI concluded that the Iraq invasion was initiated to help the US and UK pursue their “agenda of empire” in the Middle East, and that “the Bush and Blair governments [had] blatantly ignored the massive opposition to the war expressed by millions of people” (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.493). The counter-memories constructed by the WTI and KIWCT have both helped solidify the way of thinking and remembering the Iraq War as one that was initiated in pursuit of the national interests of the US and UK. These counter-memories have contributed to a broader anti-war movement seeking to create new perspectives of global justice in which the meaning given to justice is one that places victims and storytelling as a central component. This has helped construct a record of US and UK state crimes, and has added to a broader movement where non-state actors make justice claims in response to perceived injustices.

An important aspect of the research that contributes to the scholarship on how global justice is conceptualised are counter-memories of war that can be used as a tool to facilitate accountability for international crimes of aggression. These counter-memories can help inform our understanding of the transitional justice ‘tool-kit’ where various mechanisms like criminal trials and truth mechanisms have often dominated the conversation. This thesis will build on the extant literature to explore another mechanisms of justice where justice is achieved through a process of publicly recognizing the voices of victims and whole communities who have been impacted by state crimes. In the context of the Iraq War, citizens’ tribunals have emerged as expressions of resistance where organizations of TCS actively work to oppose the historical record and memory of the Iraq War. Through the analysis of two specific counter-memories of the Iraq War produced by the two Tribunals, this thesis has considered how these alternative ways of remembering are important expressions of counter-hegemony whereby non-state actors from civil society make claims of truth in opposition to the state. These truths are important in how counter-memories are formed, where through a process using testimonies and evidence, the WTI and KIWCT were able to construct a record of state crimes. As a vehicle for expressions of civil resistance these counter-memories challenge the hegemonic memory of war constructed by states. As explored in Chapters Eight and Nine, the counter-memories of the Iraq War produced by the WTI and KIWCT, have directly challenged the justifications for war cited by George W. Bush and Tony Blair respectively. Both Tribunals have publicly stated that the Iraq War was

initiated on false bases and have constructed counter-memories in which dissenting opinions of non-state actors are recognised and acknowledged.

Using a variety of evidence existent within the public domain—both post and pre-2003—these citizens' tribunals have engaged in a Gramscian 'war of position' whereby evidence and matters of fact are used to challenge the historical record and public memory constructed and managed by states. More specifically, the analysis of testimonial transcripts from the WTI's final Istanbul hearing, and the case transcripts from the KIWCT's Case No.1 and Case No.2 presented in Chapter Eight and Nine respectively, highlight how counter-memories of war are constructed to pursue accountability for state crimes like the Iraq War. The WTI's counter-memory pieced together the testimonies of the Panel of Advocates on six broad topics relevant to their investigation of the Iraq War. To "comprehensively and unconditionally" (Falk 2005b cited in Sokmen 2008, p.487) show that the dominant way of remembering the Iraq War was biased and only served the interests of the US and UK, the fifty-five testimonies presented at the final Istanbul hearing acknowledged the dissenting opinions and criticisms expressed by activists opposed to the war. Where the US and UK had argued that the Iraq invasion was necessary to address the growing threat of Saddam Hussein's dictatorship, the WTI concluded that "the reasons given by the US and UK governments for the invasion and occupation of Iraq in March 2003 have proven to be false" (Declaration of the Jury of Conscience 2005 cited in Sokmen 2008, p.492). Additionally, the counter-memory constructed by the KIWCT in Case No.1 came to the conclusion that "the absence of any convincing evidence" on the threat of Iraq confirmed that the justifications for war cited by Bush and Blair were "fig leaves for hiding the naked economic and political ambitions" of these former leaders (KIWCT Case No.1 2011, p.371). In this way, the Tribunal's interrogation of the foreign policies of the US and UK was used to argue that "the drums of war were being beaten long before the invasion [where] facts were fixed to support the policy" (KIWCT Case No.1 2011, p.370). In addition to this, the documentary evidence introduced by the Prosecution Team led Tribunal judges to determine that "the 2003 invasion of Iraq was an unlawful act of aggression and an international crime" and that George W. Bush and Tony Blair were guilty of crimes against peace (KIWCT Case No.1 2011, p.371).

Gramsci's (1999) understanding of 'hegemony' is also relevant for assessing the two counter-memories discussed in Chapter Eight and Nine. Through use of critical discourse analysis, this research has demonstrated how 'hegemony' can influence discourses and memories

associated with historic events, such as the Iraq War. Here, ‘hegemony’ is an apt term that can be used to “capture regimes of power, which dominate by combining coercion and consent” (Kioupkiolis 2017, p.100). The public memory and historical record of the war constructed and managed by George W. Bush and Tony Blair presented a way of thinking that suggested Saddam Hussein was in possession of weapons of mass destruction, and was, therefore, a global threat that needed to be addressed immediately. This way of thinking helped to justify the invasion and occupation that was pursued by the US-led Coalition of states in spite of the criticisms expressed by the anti-war movement at the time. Importantly, in the context of counter-memories, hegemonic practices are inherently processes of representation—they mobilise a particularity which takes up universal tasks in the name of an entire bloc of forces (Kioupkiolis 2017, p.101). To enact principles that “break decisively with hegemony” (Beasley-Murray 2010, p.234), actors, such as those participant to the WTI and KLWCT, have engaged in a struggle with the state and its actors to “collective self-organize, [and] cultivate new habits and change history” (Kioupkiolis 2017, p.101). Based on these key ideas, citizens’ tribunals are argued to occupy spaces of counter-hegemony, characterised by struggle and resistance. As citizens’ tribunals have surfaced to challenge the institutional silence and denial of state crimes, it is important to acknowledge the uneven distribution of power between civil societies and the state. These Tribunals are able to make claims of justice—bringing recognition to victims that help construct a record of state crimes. In doing so, their legitimacy as a potential alternative mechanism of global justice is one “grounded in the inherent dignity of the human species,” where “the ethics of justice shifts from the political domain to civil society” (Christians 2015, p.43).

For studies of memory, it is the power and legitimacy imbued within state actors that allows them to construct and manage a discourse that serves their interests. According to Gramsci’s (1995) ideas on hegemony, the language used by George W. Bush and Tony Blair can be seen as an “exercise of power and a metaphor for how power operates” within discourses (Ives 2004, p.101). As Donoghue (2017) has also argued, power in language can be seen in the ways in which a debate can be opened up or shut down in various situations. This suggests that hegemonic political power can shape discourses and debates to create “a collective will” (Ives 2005, p.458) where a ‘common sense’ and collective way of thinking can generate collective. This is useful in understanding the counter-memory of the Iraq War because it shows how the hegemonic power of political societies can be used to construct and manage discourses of war in ways that sustain the power of political actors. To challenge

state-constructed discourses, civil societies need to engage in acts of ‘counter-hegemony’ by which dominant ways of thinking and remembering the Iraq War can be contested to contribute to the pursuit of justice and accountability for crimes of aggression.

Counter-memories of war have been used by civil societies to challenge the public memory constructed by states. These counter-memories have solidified criticisms of the war’s illegality whilst also promoting the idea that the state-constructed public memory of the war was misleading and false. This was particularly evident in Chapter Nine, where the KIWCT’s counter-memory directly challenged the narrative of weapons of mass destruction that was consistently cited by George W. Bush and Tony Blair in their statements. Although these former leaders had argued that “intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal” these weapons (Bush, 2003c), the evidence presented by the Tribunal’s Prosecution Team led Tribunal judges to conclude that both George W. Bush and Tony Blair “knew or believed the intelligence reports on Iraq’s WMD [were] unreliable,” and that they “proceeded to wage war on Iraq based on a false and contrived basis” (KIWCT Case No.1 2011, p.27). This argument was used to disseminate a broader message to states and civil society: that the initiation of war is illegal under international laws, and in situations where states knowingly violate these laws it is important to censure them and their actors. In challenging the public memory associated with the Iraq War, citizens’ tribunals like the WTI and KIWCT have sought to resist state crimes in a way that can symbolically address the limitations of the ICC. These counter-memories provide an alternative form of global justice; by acknowledging the truth behind the Iraq War, an avenue for addressing the impunities of states and state actors is made available.

### **Memory justice: contributing to global justice**

The legal maxim of ‘justice delayed, is justice denied’ suggests “that for a person seeking justice, the time taken for resolution of their issue is critical to the justice experience of this person and can render their treatment wholly unjust in circumstances where finalisation of a dispute takes too long” (Sourdin & Burstyn 2014, p.46).<sup>22</sup> Notwithstanding the issues of

---

<sup>22</sup>The meaning associated with this legal maxim has been articulated in many different ways for thousands of years. It is said to have first been expressed in the biblical writings of Pirkei Avot 5:8, a section of the Mishnah (1<sup>st</sup> century BCE-2<sup>nd</sup> century CE) in which it is stated ‘Our Rabbis taught...[t]he sword comes into the world, because of justice delayed and justice denied.’

timeliness associated with international criminal trials, another important question central to this research is how global justice can be achieved for international crimes when states and the ICC are unwilling and/or unable to investigate or prosecute those responsible. As has been established in this thesis, achieving global justice for the Iraq War is a multi-faceted and complex entanglement of issues in which realpolitik and state sovereignty continue to supersede the interests of justice. To understand how, and to what extent, citizens' tribunals and their counter-memories can provide an alternative form of global justice in lieu of the ICC and states, this research has argued for a revision of how global justice is conceptualised when truth and justice are inseparable. As explored in Chapter Two, international criminal justice relies on a two-tiered system by which "the most serious crimes of concern to the international community" are prosecuted "by taking measures at the national level and by enhancing international cooperation" between states and the ICC (Rome Statute 1998, p.1). However, an important impediment to the efficacy of this system is that accountability in international criminal law traditionally focuses on individual responsibility for state crimes. This is important because in the context of international crimes of aggression, the legitimacy of state actors to make decisions to initiate wars often impedes pursuits of accountability and justice. Thus, in their attempts to address the impunities associated with the Iraq War, the WTI and KIWCT have sought to progress human rights and improve the equity of international laws in a way that could affect the decision-making and behaviour of states in the future. These forms of civil resistance are important because "progress on human rights begins with a build-up of domestic pressures" whereby "mobilized groups in domestic civil society pressure for greater democracy...to vigilantly defend and protect these rights" (Risse & Sikink 2013, p.295).

Drawing on the analysis presented in Chapter Eight and Nine, this final section will consider how counter-memories are able to symbolically censure states and state actors in order to fill the gap in accountability created by the inaction of states and the ICC. This has been argued as a form of 'memory-justice' (see Booth, 2001, 2006; Banham, 2017) in which recognition of the truth and remembrance of the Iraq War's illegality is a form of justice. As explored in Chapter Two, Booth (2006) has argued that memories are central to the pursuit of justice because it is pivotal to processes of reconciliation and reconstruction after conflict. Accordingly, memories for Booth (2006) hold a defining place in determining how justice is administered. The conceptualisation of 'memory-justice' is important in understanding how alternative forms of accountability, like citizens' tribunals, can pursue justice beyond the use

of international criminal trials. ‘Memory-justice’ as a concept reminds us that memories are at the core of doing justice (Banham 2017, p.386), whereby civil societies actively participate in a process of challenging and reconstructing memories associated with cases of state crime. Memory-justice is inherently political. These Tribunals’ public articulation of a counter-memory of war, in and of itself, is a site of political engagement and struggle. Thelen (1989, p.1119) has argued that “memory-justice is social and collective action, carried out by individuals and groups from affected communities, done in the context of community, social dynamics and broader politics.” In current, morally-grounding international crimes committed by the US and its Allies, the counter-memories of the WTI and KIWCT have contributed to the work of memory-justice that can be viewed as an attempt by non-state actors “to restore integrity to a community that has deviated from its core values” (Booth 2006, p.127). Memory-justice is, however, a term that challenges our understanding of global justice and the form it can take. Within the confines of the Iraq War, where impunities and gaps in accountability exist, “addressing historic injustices involves a struggle against absence” whereby unacknowledged victims of international crimes can become “claimants on justice” (Booth 2011, p.750). In these circumstances, counter-memories are arguably fitting instruments that can tap “into [the] public consternation” of state crimes (Kampark 2014, p.9) to broaden the focus of justice in a meaningful way that bypasses cultures of silence and denial.

To explore how memory-justice can contribute to global justice, this thesis has studied two counter-memories of the Iraq War constructed by the WTI and KIWCT. These counter-memories have documented alternative narratives to those presented by states and state actors, and has endeavoured “to do what no court and no agency of the UN has yet dared to do” (Falk 2005b cited in Sokmen 2008, p.487). Where the public memory of war constructed by George W. Bush and Tony Blair claimed the Iraq War as a necessary step to countering the perceived threat of Iraq and Saddam Hussein, the counter-memories of the WTI and KIWCT documented a different story. The story of the Iraq War presented in the WTI’s counter-memory was described by Arundhati Roy (2005b cited in Sokmen 2008, p.490) as a story of “blood” and “destruction” that highlights the “brutality and darkness” of war. In the case of the KIWCT, its counter-memory has used written evidence to highlight that the public memory constructed by George W. Bush and Tony Blair to legitimate the Iraq War was falsified and based on misinformation. The two counter-memories constructed by the WTI and KIWCT offer things that victims of state crime both want and need: accountability

and justice. In its attempt to address the impunities and injustices associated with the Iraq War, these counter-memories “provide fertile ground for spreading the values of human rights, the rule of law, and social justice as a way of connecting people of all cultures and places” (Giroux 2002, p.160).

Importantly, as these counter-memories of the Iraq War have emerged in specific contexts where states and the ICC remain silent, either unable and/or unwilling to investigate and prosecute those responsible, they establish a historical precedent in which a process of remembrance can facilitate a form of memory-justice. Central to this discussion, is the idea that pursuits of justice rely upon the responsibilities assumed by a political community of state and non-state actors to make claims of justice that have a “moral-temporal dimension...[that] ground ideas of attribution and responsibility, for deeds past and for the future” (Booth 1999, p.249). Concisely, justice is a form of remembrance where “a duty to keep crimes and their victims from the oblivion of forgetting” exists to “restore, preserve, and acknowledge the just order of the world” (Booth 2001, p.777). From this vantage point, the two counter-memories explored in Chapter Eight and Nine contribute to global justice in two ways. They have identified absences in the public memory of states to make claims of justice that can improve the enforcement of international laws. In the context of the WTI and KIWCT, what is missing from these public memories is an important determinative factor that has shaped how these movements of resistance have emerged. These counter-memories also “progress the stance that the first act to take against human rights violations is one of identification” in which victims of state crime and “the broader social and structural contexts in which violations are allowed to thrive” are recognised (Stanley 2009, p.157). In this way, counter-memories are important expressions of resistance whereby non-state actors from civil society have engaged in a struggle “to overcome and invert” historical injustices as a means of answering the call of global justice (Booth 2011, p.761).

Acts of civil resistance against state crimes, like that expressed by the WTI and KIWCT, are particularly important because they offer alternative ways through which global justice can be achieved in lieu of the ICC. Within this context these citizens’ tribunals have been purposefully designed to fill a void where denial of state crimes can be confronted through a rigorous public assessment of the policies and effects of invasion and occupation. In doing so these tribunals act as alternative sites where accountability and justice are pursued in symbolic ways and have undoubtedly made it more difficult to deny the crimes of aggression,

war crimes, and crimes against humanity perpetrated by the US and UK in Iraq. This, in turn, makes it harder for others to write a revisionist history and harder for civil society to forget. Therefore, these counter-memories are a form of justice against the Iraq War that reiterates the arguments of Banham (2017, p.387) who contends that through acts of civil resistance, “accountability and justice are linked by the societal dimensions of their efforts.” Here, concerned citizens, like those participating in the WTI and KIWCT, are members of a democratic society that pursue justice, a future, and a society, that is more righteous (Banham 2017, p.387). This form of memory-justice can address the impunities associated with state crimes like the Iraq War because it exposes denials and shames perpetrators, deterring future offenders, healing victims, reforming institutions and redefining societal norms and conditions around respect and dignity (Stanley 2009, p.151).

Ultimately, it is essential to recognise that the counter-memories constructed by the WTI and the KIWCT are only *symbolic* judgements reached by a consensus of individuals from civil society actively opposed to the Iraq War. Through a series of public hearings where testimonies and evidence were presented and documented to form a counter-memory these Tribunals have demonstrate the power of transnational civil society (TCS) in confronting cultures of denial. As has been explored throughout this thesis, the WTI and KIWCT have emerged in specific contexts where cultures of denial have been confronted through a process described by Cohen (2001, p.11) as ‘consciousness raising.’ For studies of state crime the relationship between civil society and the state is an important element in forming how they are socially controlled. As Green and Ward (2000, p.107) describe social controls as anything including “legal sanctions...the reactions of international audiences, social movements, and the media.” Though citizens’ tribunals like the WTI and the KIWCT lack the power to enforce their judgements and conclusions they are a form of social control where state crimes can be documented to initiate a form of ‘consciousness raising’ where movements of resistance form transnationally to actively oppose the public memory of war constructed by state and state actors. More specifically these Tribunals have purposefully sought to shape how events like the Iraq War have been documented in historical records where counter-memories can be mobilized to achieve a form of memory-justice. In constructing a record of the Iraq War where victims and dissenting voices were publicly recognized and documented, these counter-memories symbolize the importance of recognition that must inform our understanding of how justice is conceptualized.

Despite the limitations of citizens' tribunals, their extra-institutional or extra-legal character is not a problem so much as it is the condition of possibility for the type of crucial activity they are undertaking (Borowiak 2008, p.185). Through their performance of public judgement, citizens' tribunals can "sharpen issues, focus discussion on salient points, and shed light on matters in a broader way that bypasses self-interested states" (Kampark 2014, p.9). They are able to confront cultures of denial by initiating a process of truth seeking where the voices of victims and whole communities impacted by the Iraq War are documented. Citizens' tribunals and the counter-memories they construct are therefore argued to be important additions to include in the transitional justice 'tool-kit'. As transitional justice mechanisms – including trials and truth commissions – have become firmly entrenched as part of the United Nations 'toolkit' for successful post-conflict recovery, citizens' tribunals should also be included as an alternative mechanism that helps societies come to terms with the past. The taxonomy of citizens' tribunals developed in this thesis highlights the importance of establishing individual accountability for human rights violations, truth-seeking and reconciliation. Citizens' tribunals are in these ways efforts to demand accountability that confront cultures of denial to apply effective censure and sanction of the state (Green & Ward, 2000). Despite the obstacles they face, citizens' tribunals like the WTI and KIWCT should not be discounted as mere acts of civil disobedience, but rather, seen for their potential as an alternative site of accountability in which justice can be pursued equitably. In identifying and publicly recognizing the illegality of the Iraq War the WTI and KIWCT argued that their public articulation of testimonies and evidence to investigate, label and censure state crimes, would provide some closure for victims and whole communities that have been impacted. The counter-memory of the Iraq War explored in this thesis is argued to be a form of memory-justice where political expressions made outside formal national governmental channels (see Samana et al., 2011) can remedy injustices associated with crimes of aggression. Accordingly, truth becomes a central component in achieving justice—able to symbolically hold former and/or current Heads of State and other state actors accountable for crimes of aggression in lieu of states and the ICC. As one strategy among others, citizens' tribunals like the WTI and KIWCT have specifically contributed to global justice by contesting hegemonic memories of states to amend the history books and alter the way civil societies remember the Iraq War. In this way, citizens' tribunals should be conceptualised as a mechanism of transitional justice where the impunities of states and cultures of denial can be confronted through recognition and truth-seeking.

## Appendix 1

### List of WTI Sessions Held Worldwide

London, November 2003

- Have war crimes been committed during the military occupation on and the occupation of Iraq?

Mumbai, January 2004

- World Court of Women on US War Crimes held at the World Social Forum, Mumbai, India.

London, February 2004

- A legal inquiry into the invasion and military occupation of Iraq.

Copenhagen, March 2004

- The privatization of Iraqi public establishments and resources; the arbitrary detention of more than 20,000 civilians.

Brussels, April 2004

- Project for a New American Century and the ideological background of the war on Iraq.

New York, May 2004

- War crimes and crimes of occupation; the violation of international law, of the United Nations, and of the will of the global anti-war movement.

Germany, June 2004

- The violation of international law and the complicity of the German government in the sanctions, the war, and occupation.

Istanbul, June 2004

- The destruction of cultural heritage.

New York, August 2004

- The declaration of the WTI findings worldwide; testimonies from US soldiers who refuse to fight.

Japan, October 2004

- The use of depleted uranium and the complicity of the Japanese government.

Stockholm, November 2004

- The social, economic, and cultural effects of the occupation on the Iraqi society.

Japan, 2004

- Series of sessions held throughout the year in different cities.

Seoul, December 2004

- The complicity of the South Korean government in the war and occupation.

Rome, December 2004

- The illegality of the war on Iraq and the complicity of the Italian government.

Frankfurt, January 2005

- Third session held in Germany

Rome, February 2005

- Media crimes against truth and humanity; politics of disinformation.

Lisboa, March 2005

- The responsibility of the Portuguese government, institutions and individuals on the uplead to the war on Iraq, during the war and during the occupation.

Genoa, March 2005

- The role of the media in the war and occupation.

Barcelona, May 2005

- The colonial domination project of the US and the Iraqi society: How to regain sovereignty?

Istanbul, June 2005

- Culminating session where the Jury of Conscience reached its conclusion on the Iraq War.

## Appendix 2

### Full List of George W. Bush Speeches

#### 2001

20 January 2001: Presidential Inaugural Address

16 February 2001: The President's News Conference with President Vicente Fox of Mexico in San Cristobal, Mexico

23 February 2001: The President's News Conference with Prime Minister Tony Blair of the United Kingdom at Camp David

31 July 2001: Notice to Congress on the Continuation of Iraqi Emergency

#### 2002

2 October 2002: President, House Leadership Agree on Iraq Resolution

7 October 2002; Address to the Nation: President Bush Outlines Iraqi Threat

10 October 2002: Remarks on House of Representatives Action on the Resolution Authorizing the Use of Military Force Against Iraq

16 October 2002: President Signs Iraq Resolution

22 November 2002: Joint US-Russia Statement on Iraq

#### 2003

6 February 2003: President Bush: 'World Can Rise to this Moment'

16 March 2003: Statement of the Atlantic Summit: A Vision for Iraq and the Iraqi People

17 March 2003: Address to the Nation on Iraq

18 March 2003: War ultimatum speech from the Cross Hall in the White House

19 March 2003: Address to the Nation on Iraq

March 20 2003: Message to the Congress Reporting on Confiscation and Vesting of Certain Iraqi Property

23 March 2003: President Discusses Military Operation

8 April 2003: Joint Statement by President Bush, Prime Minister Blair on Iraq's Future

10 April 2003: President's Message to the Iraqi People

11 April 2003: Remarks Following a Visit with Troops Wounded in Operation Iraqi Freedom and an Exchange with Reporters in Bethesda, Maryland

28 April 2003: President Discussed the Future of Iraq: Remarks on Operation Iraqi Freedom in Dearborn, Michigan.

1 May 2003: President Bush Announces Major Combat Operations in Iraq Have Ended:

Address to the Nation on Iraq from the U.S.S. *Abraham Lincoln*

22 May 2003: President's Statement on U.N. Vote Lifting Sanctions on Iraq

23 July 2003: President Bush Discussed Progress in Iraq: Remarks by the President with the Secretary of Defence and the Presidential Envoy to Iraq

20 November 2003: US/UK Declaration on Iraq: Declaration on Iraq by President George W. Bush and Prime Minister Tony Blair

#### 2004

19 March 2004: President Bush Reaffirms resolve to War on Terror, Iraq and Afghanistan

23 September 2004: The President's News Conference with Prime Minister Ayad Allawi of Iraq

7 October 2004: President Bush Discussed Iraq Report

### **Full List of Tony Blair Speeches**

#### 1999

24 April 1999: Prime Minister's Speech to the Economic Club of Chicago, Doctrine of the International Community

#### 2001

14 September 2001: Speech to the House of Commons

#### 2002

8 April 2002: Speech at the George Bush Senior Presidential Library

10 September 2002: Speech to the Trades Union Congress in Blackpool

1 October 2002: Speech at the Labour Party Conference in Blackpool

#### 2003

16 February 2003: Tony Blair's Commons Statement on Iraq

18 March 2003: Emergency Motion on Iraq

19 March 2003: Prime Minister Tony Blair's speech opening today's debate on the Iraq crisis in the house of Commons, as released by 10 Downing Street

18 July 2003: Tony Blair's speech to the US Congress

30 September 2003: Prime Minister's Speech to the 2003 Labour Party Conference in Bournemouth

#### 2004

5 March 2004: Prime Minister's Speech on Iraq, Sedgfield

24 September 2004: Speech to the 2004 Labour Conference in Brighton

2006

26 September 2006: Tony Blair's speech: text of the Labour leader's valedictory speech to the party conference

2007

10 May 2007: Tony Blair resignation speech at Trimdon Labour Club, Sedgefield

## References

- Adamson, W 1987, 'Gramsci and the Politics of Civil Society', *Praxis International*, vol.7, no.3-4, pp.320-339.
- Akhavan, P 2001, 'Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?', *The American Journal of International Law*, vol.95, no.1, pp.7-31.
- Arbour, L 1997, 'Progress and Challenges in International Criminal Justice', *Fordham Internaitonal Law Journal*, vol.21, no.2, pp. 531-540.
- Aslandis, P 2012, 'Populist Social Movements of the Great Recession', *Mobilization* , vol.21, no.3, pp.3010321, viewed 18 November 2018,  
[https://www.researchgate.net/publication/304489550\\_Populist\\_Social\\_Movements\\_of\\_the\\_Great\\_Recession\\_Mobilization\\_An\\_International\\_Quarterly](https://www.researchgate.net/publication/304489550_Populist_Social_Movements_of_the_Great_Recession_Mobilization_An_International_Quarterly).
- Assman, A 2010, 'Canon and Archive', in A. Erll & A. Nunning (eds.), *A Companion to Cultural Memory Studies*, De Gruyter, Berlin, pp.97-107.
- Bandlien, B 2013, 'Hegemonic Memory, Counter-Memory, and Struggles for Royal Power: The Rhetoric of the Past in the Age of King Sverrir Sigurðsson of Norway', *Scandanavian Studies*, vol.85, no.3, pp.355-377.
- Banham, C 2013, 'Legitimising war in a changing media landscape', *Australian Journal of International Affairs*, vol.67, no.5, pp.605-620.
- Banham, C 2017a, *Liberal Democracies and the Torture of their Citizens*, Hart Publishing, Oxford.
- Banham, C 2017b, 'Alternative Sites of Accountability for Torture: The Publication of War on Terror Books as 'Memory-Justice'', *International Criminal Law Review*, vol.17, no.2, pp.378-397.

Bassiouni, C 2005, *The legislative history of the International Criminal Court*, Transnational Publishers, New York.

Bassiouni, C 2006, 'International Recognition of Victims' Rights', *Human Rights Law Review*, vol.6, no.2, pp.203-279.

Bassiouni, C (ed.) 2008, *International Criminal Law, Volume 3: International Enforcement*, 3<sup>rd</sup> ed, Martinus Nijhoff Publishing, Leiden, Netherlands.

Bates, T.R 1975, 'Gramsci and the Theory of Hegemony', *Journal of the History of Ideas*, vol.36, no.2, pp.351-366, viewed 2 February 2018, <https://www-jstor-org.ezproxy.lib.monash.edu.au/stable/pdf/2708933.pdf?refreqid=excelsior%3A166022ef518f18f67904704bb58adcf4>.

Beigbeder, Y 2011, *International Criminal Tribunals: Justice and Politics*, Palgrave Macmillan, New York.

Bekou, O, 2012. 'The Impact of International Prosecutions on Domestic Trials and Cooperation', in F. Medjoub (ed.), *Building Peace in Post-Conflict Situations*, British Institute of International and Comparative Law, pp.193-209

Bennett, W.L 1998, 'The uncivic culture: Communication, identity, and the rise of lifestyle politics', *PS: Political Science and Politics*, vol.31, no.4, pp.740-761.

Bennett, W.L 2005, 'Social movements beyond borders: Organization, communication and political capacity in two eras of transnational activism', in D. della Porta & S.Tarrow (eds.), *Transnational protest and global activism*, Rowman & Littlefield, Colorado, pp.203-226.

Bennett, W.L., Bruenig, C and Givens, T 2008, 'Communication and political mobilization: digital media and the organization of the anti-Iraq War demonstrations in the U.S.', *Political Communication*, vol.25, no.3, pp.269-289.

Benwell, B. and Stokoe, E. 2006., *Discourse and identity*, Edinburgh University Press, Edinburgh

Beyeler, M and Kreisi, H 2005, 'Transnational Protest and the Public Sphere', *Mobilization*, vol.10, no.1, pp.95-109.

Bimber, B 2003, *Information and American Democracy: Technology in the Evolution of Political Power*, Cambridge University Press, Cambridge & New York.

Blaser, A 1992, 'How to Advance Human Rights Without Really Trying: An Analysis of Nongovernmental Tribunals', *Human Rights Quarterly*, vol.14, no.3, pp.339-370.

Blumenthal, P 2018, 'The Largest Protest Ever was 15 Years Ago. The Iraq War Isn't Over. What Happened?', *Huff Post*, 16 February, viewed 20 February 2018, [https://www.huffingtonpost.com.au/entry/what-happened-to-the-antiwar-movement\\_us\\_5a860940e4b00bc49f424ecb](https://www.huffingtonpost.com.au/entry/what-happened-to-the-antiwar-movement_us_5a860940e4b00bc49f424ecb).

Blumer, H 1969, *Symbolic interactionism: Perspective and Method*, University of California Press, Berkeley.

Blumer, H 1978, 'Social Unrest and Collective Protest', in N.K Denzin (ed.), vol.1, *Studies in Symbolic Interaction*, JAI Press, Connecticut, pp.1-54.

Boas, G, Schabas, W and Scharf, M (eds.) 2012, *International Criminal Justice: Legitimacy and Coherence*, Edward Elgar Publishing, Massachusetts.

Bond, P 1994, 'Money, Power and Social Movements: The Contested Geography of Finance in Southern Africa', in S. Corbridge, R. Martin & N. Thrifts (eds.), *Money, Power and Space*, Basil Blackwell, Oxford, pp.383-405.

Bohman, J 2016, 'Critical Theory', in E.N Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, viewed 1 March 2019, <https://plato.stanford.edu/archives/fall2016/entries/critical-theory/>.

Booth, W.J 1999, 'Communities of Memory: On Identity, Memory, and Debt', *American Political Science Review*, vol.93, no. 2, pp. 249-263.

Booth, W.J 2001, 'The Unforgotten: Memories of Justice', *American Political Science Review*, vol.95, no.4, pp.777-791.

Booth, W.J 2006, *Communities of Memory on Witness, Identity, and Justice*, Cornell University Press, Ithaca.

Booth, W.J 2008, 'The Work of Memory: Time, Identity, and Justice', *Social Research*, vol.75, no.1, pp.237-263.

Boyalin, J (ed.) 1994, *Remapping Memory: The Politics of Time Space*, University of Minnesota Press, Minneapolis.

Bratton, M and Van de Walle 1994, 'Neopatrimonial regimes and political transitions in Africa', *World Politics*, vol.46, no.4, pp.453-489.

Buffington, M.L and Waldner, E 2011, 'Human Rights, Collective memory, and Counter Memory: Unpacking the Meaning of Monument Avenue in Richmond, Virginia', *Journal of Cultural Research in Art Education*, vol.29, pp.92-108.

Bull, H 1995, *The Anarchical Society: A Study of Order in World Politics*, 2<sup>nd</sup> ed, Macmillan Publishers, London.

Burgerman, S 2001, *Moral Victories: How Activists Provoke Multilateral Action*, Cornell University Press, Ithica, New York.

Burgmann, V 2003, *Power, Profit and Protest: Australian Social Movements and Globalisation*, Allen & Unwin, Sydney.

Byrnes, A and Simm, G 2013, 'Peoples' tribunals, international law and the use of force', *University of New South Wales Law Journal*, vol.36, no.2, pp.711-744.

Calhoun, C 2012, *The Roots of Radicalism: Tradition, The Public Sphere and Early Nineteenth-Century Social Movements*, The University of Chicago Press, Chicago.

Campbell, J.L 2005, 'Where do we stand? Common mechanisms in organizations and social movements research', in G.F. Davis, D. McAdam, W.R Scott & M.N Zald (eds.), *Social Movements and Organization Theory*, Cambridge University Press, New York, pp.41-68.

Carlson, M 2010, 'Embodying deep throat: Mark Felt and the Collective Memory of Watergate', *Critical Studies in Media Communication*, vol.27, no.3, pp.235-250.

Cassese, A 1998, 'Reflections on International Criminal Justice', *Modern Law Review*, vol.61, no.1, pp.1-10.

Cassese, A 2003, *International Criminal Law*, Oxford University Press, Oxford.

Ciorciari, J 2006, *The Khmer Rouge Tribunal*, Documentation Centre of Cambodia, Phnom Penh.

Chambliss, W 1989, 'State-Organized Crime- The American Society of Criminology, 1988 Presidential Address', *Criminology*, vol.27, no.2, pp.183-208.

Charney, J.I. 2001, 'International Criminal Law and the Role of Domestic Courts', *The American Journal of International Law*, vol.95, no.1, pp.120-124, viewed 9 November 2018, <http://www.jstor.org/stable/2642041>.

Charteris-Black J, 2014, *Analysing political speeches: Rhetoric, discourse and metaphor*, Palgrave Macmillan, London.

Chenowith, E 2014, 'Civil Resistance: Reflections on an Idea Whose Time Has Come', *Global Governance*, vol.20, no.3, pp.351-358, viewed 4 November 2018, <http://go.galegroup.com.ezproxy.lib.monash.edu.au/ps/i.do?ty=as&v=2.1&u=monash&it=DI&url&s=RELEVANCE&p=AONE&qt=SN~1075-2846~TI~%22Civil+Resistance+Reflections+on%22~VO~20~SP~351~IU~3&lm=DA~120140000&sw=w>.

Clapham, A 2003, 'Issues of complexity, complicity and complementarity: from the Nuremberg trials to the dawn of the new International Criminal Court', in P. Sands (ed.), *From Nuremberg to The Hague: The Future of International Criminal Justice*, Cambridge University Press, Cambridge, pp. 30-67.

Clark, A.M 2001, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms*, Princeton University Press, Princeton.

Clark I 2011, *Hegemony in international society*, Cambridge University Press, Cambridge.

Clarke, K.M, Knottnerus, A.S and Volder, E (eds) 2016, *Africa and the ICC: Perceptions of Justice*, Cambridge University Press, New York.

Coakley, V 2001, 'Towards Justice and Reconciliation in East Timor', *Alternative Law Journal*, vol.26, no.5, pp.229-236.

Cohen, S 1995, 'State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past', *Law & Social Inquiry*, vol.20, no.1, pp.7-50.

Cohen, S 2001, *States of Denial: Knowing about Atrocities and Suffering*, Blackwell Publishers Inc., United States of America.

Cohen, J and Arato, A 1992, *Civil Society and Political Theory*, MIT Press, Cambridge.

Colas, A 2002, *International Civil Society*, Polity Press, Cambridge.

Colson, A.J 2000, 'The Logic of Peace and the Logic of Justice', *International Relations*, vol.15, no.1, pp.51-62.

Connerton, P 1989, *How Societies Remember*, Cambridge University Press, Cambridge.

Costain, A.N 2000, 'Women's movements and nonviolence', *PS: Political Science & Politics*, vol.33, no.2, pp.175-180.

Cox, R.W 1983, 'Gramsci, Hegemony and International Relations: An Essay in Method', *Millenium: Journal of International Studies*, vol.12, no.2, pp.162-175, viewed 13 August 2018, <https://journals-sagepub-com.ezproxy.lib.monash.edu.au/doi/pdf/10.1177/03058298830120020701>.

Crehan, K 2002, *Gramsci, Culture and Anthropology*, 1<sup>st</sup> ed, Pluto Publishing, London.

Crook, S, Pakulski, J and Waters, M 1992, *Postmodernization: changes in advanced society*, Sage Publications, London.

Dai, X 2014, 'The conditional effects of international human rights', *Human Rights Quarterly*, vol.36, no.3, pp.569-589.

Daldal, A 2014, 'Power and Ideology in Michel Foucault and Antonio Gramsci: A Comparative Analysis', *Review of Historical and Political Science*, vol.2, no.2, pp.149-167.

Dash, S.P. 2001, 'The State, Civil Society and Democracy: A Note', *The Indian Journal of Political Science*, vol.62, no.2, pp.241-252.

De Fina, A 2003, *Identity in narrative: A study of immigrant discourse*, vol.3, John Benjamins, Amsterdam.

De Fina, A and Georgakopoulou, A 2011, *Analysing narrative: Discourse and sociolinguistic perspectives*, Cambridge University Press, Cambridge.

De Heredia, M.I 2012, 'Escaping Statebuilding: Resistance and Civil Society in the Democratic Republic of Congo', *Journal of Intervention and Statebuilding*, vol.6, no.1, pp.75-89.

Della Porta, D 2005, 'Making the polis: social forums and democracy in the global justice movement', *Mobilization*, vol.10, no.1, pp.73-94.

Della Porta, D and Diani, M 2006, *Social Movements: An Introduction*, 2<sup>nd</sup> ed., Blackwell Publishing, Oxford.

Denzin, N.K and Lincoln, Y.S. 1994, *Handbook of qualitative research*, Sage Publications, Thousand Oaks, California.

Devgan, S 2013, 'From the 'crevices in dominant memories': virtual commemoration and the 1984 anti-Sikh violence', *Identities- Global Studies in Culture and Power*, vol.20, no.2, pp.207-233.

Doherty, R 2007, 'Chapter 13: Critically Framing Education Policy: Foucault, Discourse and Governmentality', *Counterpoints*, vol.292, pp.193-204.

Donaldson, M 1993, 'What is Hegemonic Masculinity?', *Theory and Society*, vol.22, no.5, pp.643-657.

Donoghue, M 2017, 'Beyond Hegemony: Elaborating on the Use of Gramscian Concepts in Critical Discourse Analysis for Political Studies', *Political Studies*, vol. 66, no.2, pp.392-408, viewed 10 December 2019, <https://journals.sagepub.com/doi/abs/10.1177/0032321717722362#articleCitationDownloadContainer>

Drumbl, M.A 2016, 'Transitional Justice Moments', *International Journal of Transitional Justice*, vol.10, no.2, pp.203-210.

Durmaz, M 2016, 'Is the International Criminal Court racist?', *TRT World*, 1 November, viewed 10 June 2019, <https://www.trtworld.com/in-depth/is-the-international-criminal-court-really-racist-218836>.

Dyzenhaus, D 2003, 'Judicial Independence, Transitional Justice and the Rule of Law', *Otago Law Review*, vol.10, no.3, pp.345-369.

Egan, D 2014, 'Rethinking War of Maneuver/War of Position: Gramsci and the Military Metaphor', *Critical Sociology*, vol.40, no.4, pp.521-538, viewed 10 February 2019, <https://journals.sagepub.com/doi/abs/10.1177/0896920513480222?journalCode=crsb#articleCitationDownloadContainer>.

- Eliasoph, N 1998, *Avoiding Politics*, Cambridge University Press, Cambridge.
- Emerson, R.M 1983, *Contemporary Field Research: A Collection of Readings*, Waveland, Illinois.
- Eng, D.L and Kazanjian, D 2003, 'Introduction', in D.L Eng and D. Kazanjian (ed.), *Loss: The Politics of Mourning*, University of California Press, Berkeley, pp.1-25.
- Evangelista, M 1999, *Unarmed Forces: The Transnational Movement to End the Cold War*, Cornell University Press, New York.
- Fairclough, N 1989, *Language and Power*, Longman Inc., New York.
- Fairclough N, 1995, *Critical Discourse Analysis: The Critical Study of Language*, 1<sup>st</sup> ed., Longman Publishing, London.
- Fairclough N, 2000, *New Labour, New Language?*, Routledge, New York.
- Fairclough N., Mulderrig J and Wodak, R 2011, 'Critical Discourse Analysis', in T. van Dijk (ed.), *Discourse Studies: A Multidisciplinary Introduction*, Sage, London, pp.357-378.
- Falk, R 2015, 'Horizons of Global Governance', in S. Gill (ed.), *Critical Perspectives on the Crisis of Global Governance: reimagining the future*, Palgrave Macmillan Publishing, New York, pp.24-44.
- Fentriss, J and Wickham, C 1992, *Social Memory*, Blackwell Publishing, Cambridge.
- Ferdinandusse, W 2009, 'The Prosecution of Grave Breaches in National Courts', *Journal of International Criminal Justice*, vol.7, no.4, pp.723-741.
- Findlay, M and McLean, C 2007, 'Emerging International Criminal Justice', *Current Issues in Criminal Justice*, vol.18, no.3, pp.457-480.

Flanagin, A, Stohl, C and Bimber, B 2006, 'Modelling the structure of collective action', *Communication Monographs*, vol.73, no.1, pp.29-54.

Florini, A (ed.) 2000, *The Third Force: The Rise of Transnational Civil Society*, Japan Centre for International Exchange and Carnegie Endowment for International Peace, Tokyo and Washington.

Foakes, J 2011, *Immunity for International Crimes? Developments in the Law on Prosecuting Heads of State in Foreign Courts*, viewed 10 November 2018, <https://www.chathamhouse.org/publications/papers/view/179865>.

Foucault, M 1978, *The History of Sexuality, Volume I: An Introduction*, trans. R. Hurley, Pantheon Books, New York.

Foucault, M 1984, 'On the genealogy of ethics: an overview of work in progress', in P.Rabinow (ed), *The Foucault reader*, Pantheon, New York, pp.340-372.

Foucault, M 1996, *Foucault Live: Collected Interviews 1961-1984*, in S. Lotringer (ed), 2<sup>nd</sup> edn., translated by L. Hochroth and J. Johnston, Semiotext(e), New York.

Fowler K 1996, 'On Critical Linguistics', in C.R Caldas-Coulthard and M. Coulthard (eds.), *Tests and Practices: Readings in Critical Discourse Analysis*, Routledge, London, pp.3-14.

Franck, T 2003, 'What Happens Now? The United Nations after Iraq', *American Journal of International Law*, vol.97, no.3, pp.607-620.

Fraser, N 2005, 'Reframing Justice in a Globalizing World', *New Left Review*, vol.36, pp.69-88.

Friedrichs, D 2010, *Trusted criminals: white collar crime in contemporary society*, Wadsworth Cengage Learning, Belmont.

Freeland, S 2010, 'A Prosecution Too Far?: Reflections on the Accountability of Heads of State Under International Criminal Law', *Victoria University of Wellington Law Review*, vol.41, no.2, pp.179-204.

Gamson, W.A 1990, *The strategy of social protest*, 2<sup>nd</sup> edition, Wadsworth Publishing, California.

Germain, R and Kenny, M 1998, 'Engaging Gramsci: International Relations Theory and the New Gramscians', *Review of International Studies*, vol.24, no,1, pp.3-21.

Giroux, H.A 1983, *Theory and Resistance in Education: A Pedagogy for Opposition*, Heinemann, London.

Giroux H.A 1997, *Pedagogy and the politics of hope: Theory, culture and schooling: A critical reader*, Westview Press, Oxford, England.

Gramsci, A 1971, 'Introduction', in Q. Hoare, G.N Smith (eds.), *Selections from the Prison Notebooks*, International Publishers, New York, pp.xvii-xcvi.

Gramsci, A 1995, *Further selections from the prison notebooks*, Translated and edited by D. Boothman, Lawrence and Wishart, London.

Gramsci, A 1999, *Selections from the Prison Notebooks of Antonio Gramsci*, translated and edited by W. Hoare and G.N Smith, ElecBook, London, viewed 3 January 2019, <http://abahlali.org/files/gramsci.pdf>.

Goldstone, R.J., 1996, 'Justice as a Tool for Peace-Making: Truth Commissions and International Criminal Tribunals', *New York University Journal of International Law and Politics*, vol.28, no.3, pp.485-403.

Goldstone, D.E 2009, 'Embracing Impasse: Admissibility, Prosecutorial Discretion and The Lessons Of Uganda for the International Criminal Court', *Emory International Law Review*, vol. 22, no.2, pp. 761-798, viewed 14 April, 2018, <http://www.heinonline.org.ezproxy.lib.monash.edu.au/HOL/LuceneSearch?specialcollection>

[=&terms=creator%3A%22%20Goldstone,%20Danielle%20E.%20%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search&base=js&all=true](https://search.proquest.com/docview/115444444?pq-origsite=scholarlink&terms=creator%3A%22%20Goldstone,%20Danielle%20E.%20%22&yearlo=&yearhi=&subject=ANY&journal=ALL&sortby=relevance&collection=journals&searchtype=advanced&submit=Search&base=js&all=true)

Goodman, R and Jinks, D 2004, 'How to influence states: Socialization and international human rights law', *Duke Law Journal*, vol.54, no.3, pp.621-703.

Gozzi, G 2007, 'History of International Law and Western Civilization', *International Community Law Review*, vol.9, no.4, pp. 1-25, viewed 7 November 2018, [https://brill.com/abstract/journals/iclr/9/4/article-p353\\_4.xml](https://brill.com/abstract/journals/iclr/9/4/article-p353_4.xml).

Green, P and Ward, T 2000, 'State Crime, Human Rights and the Limits of Criminology', *Social Justice*, vol.27, no.1, pp.101-115.

Green, P and Ward, T 2004, *State Crime: Governments, Violence and Corruption*, Pluto Press, United States of America.

Green, P and Ward, T 2013, 'Civil society, resistance and state crime', in E. Stanley & J.McCulloch (eds.), *State crime and resistance*, Routledge, Oxon, pp.28-40.

Grunfeld, F. and Huijboom, A. 2007, *The Failure to Prevent Genocide in Rwanda: The Role of Bystanders*, Martinus Nijhoff Publishers, Leiden.

Guinn, D 2008, 'Human Rights Education: The Third Leg of Post-Conflict/Transitional Justice', Working Paper, International Human Rights Law Institute, Legal Scholars Research Network.

Hajdin, N 2017, 'The Nature of Leadership in the Crime of Aggression: The ICC's New Concern?', *International Criminal Law Review*, vol.17, no.3, pp.543-566.

Halbwachs, M 1992, *On Collective Memory*, University of Chicago Press, Chicago.

Harnecker, M 2007, *Rebuilding the Left*, Zed Books Ltd., London.

Hayner, P.B. 2000, *Unspeakable Truths: Confronting State Terror and Atrocity*, Routledge, New York.

Heller, K.J 2007, 'Retreat from Nuremberg: The Leadership Requirement in the Crime of Aggression', *European Journal of International Law*, vol.18, pp.477-197, viewed 4 January 2019, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=956466](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=956466).

Henkin, L 1979, *How nations behave: law and foreign policy*, 2<sup>nd</sup> ed, Columbia University Press, New York.

Higgot, R, Underhill, G & Bieler, A, *Non-State Actors and Authority in the Global System*, Routledge, New York.

Honneth, A 1995, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, Polity Press, Cambridge.

Honneth, A 2001, 'Recognition or Redistribution: Changing Perspectives on the Moral Order of Society', *Theory, Culture and Society*, vol.18, no.2, pp.43-55.

Houdek, M and Phillips, K 2017, 'Public Memory', *Oxford Research Encyclopedia of Communication*, viewed 1 January 2019, <http://oxfordre.com/communication/view/10.1093/acrefore/9780190228613.001.0001/acrefore-9780190228613-e-181?print=pdf>.

Hughes, J and Kostovicova, D 2018, 'Introduction: rethinking reconciliation and transitional justice after conflict', *Ethnic and Racial Studies*, vol.41, no.4, pp.617-623.

Human Rights Watch 2005, *Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees*, viewed 23 April 2013, <http://www.hrw.org/reports/2005/us0405/us0405.pdf>.

Ives, P 2004, *Gramsci's politics of language: Engaging the Bakhtin circle and the Frankfurt school*, University of Toronto Press, Toronto, Ontario.

Jenkins, J.C 1983, 'Resource Mobilization Theory and the Study of Social Movements', *Annual Review of Sociology*, vol.9, p.527-553.

Johnson, M.C 2010, 'International Peacemaking and the Anti-War Movement', *Fellowship*, vol.76, no.7-9, pp.28-29, viewed 5 November 2018, <https://search-proquest-com.ezproxy.lib.monash.edu.au/docview/815407576/fulltext/168751F5302341DCPQ/1?accountid=12528>.

Kampark, B 2014, 'Citizens' war crimes' tribunals', *Social Alternatives*, vol.33, no.2, pp.5-10.

Kauzlarich, D and Kramer, R.C. 1998, *Crimes of the American nuclear state: At home and abroad*, Northeastern University Press, Boston.

Keck, M and Sikkink, K 1998, *Activists beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, United States of America.

Kent, L 2012, *The Dynamics of Transitional Justice: International Models and Local Realities in East Timor*, Routledge Publishing, Oxon.

Khadduri, M (ed.) 2017, *Major Middle Eastern problems in international law*, American Enterprise Institute for Public Policy Research, Washington.

Khagram, S, Riker, J.V & Sikkink, K (eds.) 2002, *Restructuring World Politics: Transnational Social Movements, Networks, and Norms*, University of Minnesota Press, Minneapolis.

King, M, Freiberg, A, Batagol, B & Hyams, R 2009, 'Restorative Justice', *Non-adversarial Justice*, The Federation Press, Sydney, pp.39-64.

Klandermans, B 1984, 'Mobilization and participation: Social-psychological expansions of resource mobilization theory', *American Sociological Review*, vol.49, no.5, pp.583-600, viewed 3 November 2018, <http://dx.doi.org/10.2307/2095417>.

Klein, J & Newell, W 1998, 'Advancing Interdisciplinary Studies', in W. Newell (ed.), *Interdisciplinary: Essays from the literature*, College Board, New York, pp.3-22.

Klinghoffer, A.J and Klinghoffer, J.A 2002, *International citizens' tribunals: mobilizing public opinion to advance human rights*, Palgrave Publishing, New York.

Knight, J 2014, 'The limits of soft power in higher education', *University World News*, no.305, viewed 23 January 2017,

<https://www.universityworldnews.com/post.php?story=20140129134636725>.

Kramer, R.C and Michalowski, R.J 2005, 'War, aggression and state crime- A criminological analysis of the invasion and occupation of Iraq', *British Journal of Criminology*, vol.45, no.4, pp.446-469.

Kuala Lumpur War Crimes Tribunal (KLWCT) 2011, '*Reports of Judgements, Advisory Opinions and Orders (including noted of proceedings) Case No.1-CP-2011 Kuala Lumpur War Crimes Commission v. George W. Bush & Anthony L.Blair Judgement of 22 November 2011*', Kuala Lumpur Foundation to Criminalise War, Kuala Lumpur.

Lacewing, M, *Just War Theory*, Routledge Taylor & Francis Group, A level philosophy, Oxford, United Kingdom, [http://documents.routledge-](http://documents.routledge-interactive.s3.amazonaws.com/9781138793934/A2/Political/JustWarTheory.pdf)

[interactive.s3.amazonaws.com/9781138793934/A2/Political/JustWarTheory.pdf](http://documents.routledge-interactive.s3.amazonaws.com/9781138793934/A2/Political/JustWarTheory.pdf)

Lambach, D 2004, 'State in Society: Joel Migdal and the limits of state authority', paper presented at the conference "Political concepts beyond the nation state: cosmopolitanism, territoriality, democracy", Danish Political Theory Network Conference, 27-30 October, Copenhagen, viewed 3 January 2019,

[https://www.researchgate.net/profile/Daniel\\_Lambach/publication/283855645\\_State\\_in\\_Society\\_Joel\\_Migdal\\_and\\_the\\_limits\\_of\\_state\\_authority/links/594103e4aca2726c285227f9/State-in-Society-Joel-Migdal-and-the-limits-of-state-authority.pdf](https://www.researchgate.net/profile/Daniel_Lambach/publication/283855645_State_in_Society_Joel_Migdal_and_the_limits_of_state_authority/links/594103e4aca2726c285227f9/State-in-Society-Joel-Migdal-and-the-limits-of-state-authority.pdf)

Larsen, J.J 2014, *Restorative Justice in the Australian Criminal Trial*, Australian Institute of Criminology, Canberra, viewed 20 April 2019, <https://apo.org.au/sites/default/files/resource-files/2014/02/apo-nid38143-1183831.pdf>

Lasslett, K 2012, 'Power, Struggle and State Crime: Researching through Resistance', *State Crime*, vol.1, no.1, pp.126-148.

Lattanzi, F 2001, 'ICC and Universality', in M. Politi & G. Nesi (eds.), *The Rome Statute of the International Criminal Court: A Challenge to Impunity*, Ashgate Publishing, United States of America, pp.177-196.

Lee, F and Chan, J.M. 2016, 'Collective memory mobilization and Tiananmen commemoration in Hong Kong', *Media, Culture & Society*, vol.38, no.7, pp.997-1014.

Lipshutz, R.D 1992, 'Reconstructing World Politics: The Emergence of Global Civil Society', *Millennium: Journal of International Studies*, vol21, no.3, pp. 389-420.

Lorca, A.B 2012, 'Eurocentricism in the History of International Law', in B.Fassbender & A.Peters (ed.), *The Oxford Handbook of the History of International Law*, Oxford University Press, London, pp.1034-1057.

Long, M.G (ed.) 2011, *Christian Peace and Nonviolence: A Documentary History*, Orbis Publishing, New York.

Loytomaki, S 2014, *Law and the Politics of Memory: Confronting the Past*, Routledge, New York.

MacLeod, J 2012, Civil Resistance in West Papua (Perlawanan tanpa kekerasan di Tanah Papua), PhD thesis, Social of Political Science and International Studies, University of Queensland.

Manning, P 2011, 'Governing memory: Justice, reconciliation and outreach at the Extraordinary Chambers in the Courts of Cambodia', *Memory Studies*, vol5, no.2, pp.165-181.

Maogoto, J.N. 2004, *War Crimes and Realpolitik: International Justice from World War I to the 21<sup>st</sup> Century*, Lynne Rienner Publishers, London.

Margadant, T.W 1979, *French Peasants in Revolt: The Insurrection of 1851*, Princeton University Press, New Jersey.

Martin, B 2009, 'Managing outrage over genocide: case study Rwanda', *Global Change, Peace & Security*, vol.21, no.3, pp.275-290.

Martin, B 2010, 'Theory for activists', *Social Anarchism*, vol.44, pp.22-41.

Marx, K 1904, *A contribution to the critique of political economy*, trans. N.I. Stone, International Library Publishing Co., Chicago.

Massing, M 2004, *Now they tell us: the American press and Iraq*, New York Review Books, New York.

McAdam, D 1982, *Political Process and the Development of Black Insurgency, 1930-1970*, University of Chicago Press, Chicago.

McAdam, D, McCarthy, J and Zald, M 1996, *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*, Cambridge University Press, New York.

McAdam, D, Tarrow, S and Tilly, C 2001, *Dynamics of Contention*, Cambridge University Press, New York.

McCarthy, J.D and Zald, M.N 1973, *The Trend of Social Movements in America: Professionalization and Resource Mobilisation*, General Learning Press, New Jersey.

McCarthy, J.D and Zald, M.N 1977, 'Resource Mobilization and Social Movements: A Partial Theory', *American Journal of Sociology*, vol.82, no.6, pp.1212-1241.

McEvoy, K 2008, 'Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice', in K. McEvoy and L. McGregor (eds.), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, Hart Publishing, Oregon, pp.15-46.

McIlwaine, C 2007, 'From Local to Global to Transnational Civil Society: Re-Framing Development Perspectives on the Non-State Sector', *Geography Compass*, vol.1, no.6, pp.1252-1281.

Meernik, J 2003, 'Victor's Justice or the Law? Judging and Punishing At The International Criminal Tribunal For The Former Yugoslavia', *Journal of Conflict Resolution*, vol.47, no.2, pp.140-162, viewed 2 November 2018, <https://doi.org/10.1177/0022002702251024>.

Melandi, M 2009, 'The Relationship between State Sovereignty and the Enforcement of International Criminal Law under the Rome Statute (1998): A Complex Interplay', *International Criminal Law Review*, vol.9, no.3, pp.531-545.

Michalowski, R 2010, 'Keynote Address: Critical Criminology for a Global Age', *Western Criminology Review*, vol.11, no.1, pp.3-10, viewed 2 November 2018, <https://web-b-ebscohost-com.ezproxy.lib.monash.edu.au/ehost/pdfviewer/pdfviewer?vid=1&sid=d7d272a0-1468-4c4a-909f-77fc6eca8669%40pdc-v-sessmgr02>.

Migdal, J.S, Kohli, A and Shue, V (ed.) 1994, *State Power and Social Forces: Domination and Transformation in the Third World*, Cambridge University Press, United Kingdom.

Misztal, B 2003, *Theories of Social Remembering*, Open University Press, Berkshire.

Mitchler, J 2015, 'Discourse Analysis and Memory Work: Creating a Counter-Hegemonic and Counter-Ethnocentric Practice', *Reconsidering Development*, vol.4, no.1, pp.85-99.

Moghalu, K.C. 2008, *Global Justice: The Politics of War Crimes Trials*, Stanford University Press, California.

Molden, B 2016, 'Resistant pasts versus mnemonic hegemony: On the power relations of collective memory', *Memory Studies*, vol.9, p.2, pp.125-142.

Moore, M.H 2014, 'Accountability, legitimacy, and the court of public opinion', in M. Bovens, R.E. Goodin & T. Schillemans (eds.), *The Oxford Handbook of Public Accountability*, Oxford University Press, New York, pp.1-16.

Moreno-Ocampo 2006, 'Keynote Address: Integrating the work of the ICC into Local Justice Initiatives', *American University International Law Review*, vol.21, no.4, pp.497-503.

Muller, K.B, 2006, 'The Civil Society-State Relationship in Contemporary Discourse: A Complementary Account From Giddens' Perspective', *British Journal of Politics & International Relations*, vol.8, pp.311-330.

Murdie, A 2009, 'The impact of human rights NGOs on human rights practices', *International NGO Journal*, vol.4, no.10, pp.421-440.

Mythen G, 2014, *Understanding The Risk Society: Crime, Security and Justice*, Palgrave Macmillan, New York.

Naqvi, Y 2006, 'The right to the truth in international law: fact or fiction?', *International Review of the Red Cross*, vol.88, no.862, pp.245-273.

Nayar, J 2001, 'A People's Tribunal Against the Crime of Silence?- The Politics of Judgement and an Agenda for People's Law', *Law, Social Justice & Global Development*, vol.2, viewed 10 November 2018, [https://warwick.ac.uk/fac/soc/law/elj/lgd/2001\\_2/nayar/](https://warwick.ac.uk/fac/soc/law/elj/lgd/2001_2/nayar/).

O'Connell 2014, 'Peace and War', in B. Fassbender and A. Peters (eds), *Oxford Handbook of the History of International Law*, Oxford University Press, Oxford, pp.272-293.

Paige, G.D, Satha-Anand, C and Gilliatt, S (eds.) 1993, *Islam and Nonviolence*, Centre for Global Nonviolence Planning Project, Matsunaga Institute for Peace, University of Hawaii.

Palmer, A 1995, 'Hearsay: A definition that works', *University of Tasmania Law Review*, vol. 14, no.1, pp. 29-62, viewed 8 May 2019, <http://www.austlii.edu.au/au/journals/UTasLawRw/1995/2.pdf>.

Pennebaker, J.W and Banasik, B.L 1997, 'On the Creation and Maintenance of Collective Memories: History as Social Psychology', in J.W Pennebaker, D. Paez and B. Rime (eds.), *Collective Memory of Political Events: Social Psychological Perspectives*, Lawrence Erlbaum Publishers, New Jersey, pp.3-20.

Peruzzotti, E 2012, 'The societalization of horizontal accountability: Rights advocacy and the Defensor del Pueblo de la Nación in Argentina', in R. Goodman and T. Pegram (eds.), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, Cambridge University Press, New York

Pham, P, Vinck, P and Weinstein, H 2010, 'Human rights, transitional justice, public health and social reconstruction', *Social Science & Medicine*, vol.70, no.1, pp.98-105.

Pianta, M 2002, 'Parallel Summits: An Update', in H.K Anheir, M. Glasius & M. Kaldor (eds.), *Global Civil Society*, Oxford University Press, Oxford, pp.371-377.

Pickering, S 2005, *Refugees and State Crime*, Federation Press, Sydney.

Punch, K 2009, *Introduction to Research Methods in Education*, Sage Publications, Thousand Oaks, California.

Price, R 2003, 'Transnational Civil Society and Advocacy in World Politics', *World Politics*, vol.55, pp.579-606.

Randle, M 1994, *Civil resistance*, Fontana Publishing, Michigan.

Rathbun, B 2018, 'The Rarity of Realpolitik: What Bismarck's Rationality Reveals about International Politics', *International Security*, vol.43, no.1, pp.7-55.

Reiff, D 1998, 'Court of dreams: a nice idea that won't work', *The New Republic*, vol.219, no.10, pp.16-18, viewed 2 November 2018,

<http://search.proquest.com.ezproxy.lib.monash.edu.au/docview/212944328/fulltextPDF?accountid=12528>.

- Reisigl, M and Wodak, R 2001, *Discourse and Discrimination*, Routledge, London.
- Reisigl, M and Wodak, R 2009, 'The Discourse-Historical Approach', in R.Wodak and M.Meyer (eds.), *Methods of Critical Discourse Analysis*, Sage, London, pp.87-121.
- Reiter, D and Stam III, A 1998, 'Democracy, War Initiation, and Victory', *The American Political Science Review*, vol.92, no.2, pp.377-389.
- Riggins, S 1997, 'The Rhetoric of Othering', in S.H Higgins (ed.), *The Language and Politics of Exclusion: Others in Discourse*, Sage, London, pp.1-30.
- Risse, T 2000, 'The Power of Norms versus the Norms of Power: Transnational Civil Society and Human Rights', in A. Florini (ed.), *The Third Force: The Rise of Transnational Civil Society*, Japan Centre for International Change and Carnegie Endowment for International Peace, Tokyo and Washington, pp.177-210.
- Risse, T, Ropp, S.C & Sikkink, K (eds.) 1999, *The Power of human rights: international norms and domestic change*, Cambridge University Press, New York.
- Risse, T and K, Sikkink 2013, 'Conclusions', in T. Risse, S.C.Ropp and K.Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance*, Cambridge University Press, New York, pp. 275-295.
- Robertson, G 1999, *Crimes against humanity: the struggle for global justice*, Allen Lane Publishing, London.
- Ron, J and Crow, D 2015, 'Who trusts local human rights organizations? Evidence from three world regions', *Human Rights Quarterly*, vol.37, pp.188-239.
- Rose N, 1996, 'The Death of the Social? Refiguring the Territory of Government', *Economy and Society*, vol.25, no.3, pp.327-364.
- Rose N, 2000, 'Government and Control', *British Journal of Criminology*, vol.40, pp.321-329.

Rothberg, M 2009, *Multidirectional memory: Remembering the Holocaust in the age of decolonization*, Stanford University Press, California.

Rothe, D 2009, *State Criminality: The Crime of all Crimes*, Lexington Books, Plymouth, United Kingdom.

Rupert, M 1995, *Producing Hegemony: The Politics of Mass Production and American Global Power*, Cambridge University Press, Cambridge.

Sands, P (ed.) 2003, *From Nuremberg to The Hague: The Future of International Criminal Justice*, Cambridge University Press, Cambridge.

Savelsberg, J and King, R 2005, 'Institutionalizing Collective memories of Hate: Law Enforcement in Germany and the United States', *American Journal of Sociology*, vol.111, no.2, pp.579-616

Schabas, W 2001, *An introduction to the International Criminal Court*, Cambridge University Press, Cambridge.

Scharf, M.P 2000, 'The Tools for Enforcing International Criminal Justice in the New Millennium: Lessons from the Yugoslavia Tribunal', *International Criminal Justice*, vol.49, pp.925-1041.

Schiffrin, D 2006, 'From Linguistic Reference to Social Reality', in A. De Fina, D. Schiffrin and M. Bamberg (eds.), *Discourse and Identity*, Cambridge University Press, Cambridge, pp.103-131.

Schock, K 2013, 'The practice and study of civil resistance', *Journal of Peace Research*, vol.50, no.3, pp.277-290.

Scholte, J.A 2005, *Globalization: a critical introduction*, Palgrave Macmillan, New York.

Schreiber, E.M 1976, 'Anti-war demonstrations and American public opinion on the war in Vietnam', *British Journal of Sociology*, vol.27, no.2, pp.225-236, viewed 7 November 2018, [https://www-jstor-org.ezproxy.lib.monash.edu.au/stable/590029?sid=primo&origin=crossref&seq=1#metadata\\_info\\_tab\\_contents](https://www-jstor-org.ezproxy.lib.monash.edu.au/stable/590029?sid=primo&origin=crossref&seq=1#metadata_info_tab_contents).

Schudson, M 1997, 'Dynamic Distortion of Collective Memory', in D.L. Schacter (ed.), *Memory Distortion: How Minds, Brains, and Societies Reconstruct the Past*, pp.346-364, Harvard University Press, Cambridge.

Simpson, G 2004, 'Politics, Sovereignty, Remembrance', in D. McGoldrick, P. Rowe & E. Donnelly (eds.), *The Permanent International Criminal Court: Legal and Policy Issues*, Hart Publishing, United States of America, pp.47-61.

Smelser, N.J 1962, *Theory of Collective Behaviour*, Free Press, New York.

Snow, D.A and Oliver, P.E 1995, 'Social Movements and Collective Behaviour', K.S. Cook, G.A. Fine & J.S. House (eds.), in *Sociological Perspectives on Social Psychology*, Allyn and Bacon Publishing, Boston.

Snow, D.A and Soule, S.A 2010, *A Primer on Social Movements*, Norton Publishing, New York.

Sokmen, M.G (ed) 2008, *World Tribunal on Iraq: Making the Case Against War*, Olive Branch Press, Massachusetts.

Solomonow, A (ed.) 1981, *Roots of Jewish Nonviolence*, Jewish Peace Fellowship, New York.

Sourdin, T and Burstyn, N 2014, 'Justice delayed is justice denied', *Victoria University Law and Justice Journal*, vol.4, no.1, pp.46-60.

Stanley, E 2009, *Torture, Truth and Justice: The case of Timor-Leste*, Routledge Publishing, New York.

Stanley, E and McCulloch, J (eds.) 2013, *State Crime and Resistance*, Routledge Publishing, Oxon.

Stanley, T.J 2003, 'Creating the 'space' for civic dialogue', *The Phi Delta Kappan*, vol.85, no.1, pp.38.

Stoddart, M.C.J 2007, 'Ideology, Hegemony, Discourse: A Critical Review of Theories of Knowledge and Power', *Social Thought & Research*, vol.28, pp.191-225.

Subedi, S.P. 1999, 'Are the Principles of Human Rights "Western" Ideas? An Analysis of the Claim of the "Asian" Concept of Human Rights from the Perspectives of Hinduism', *California Western International Law Journal*, vol.30, no.1, pp.45-69.

Suchting, W 1982, "'Productive Forces" and "Relations of Production" in Marx', *Analyse und Kritik*, vol.4, no.2, pp.159-181.

Sutton, B and Norgaard, K.M. 2013, 'Cultures of Denial: Avoiding Knowledge of State Violations of Human Rights in Argentina and the United States', *Sociological Forum*, vol.28, no.3, pp.495-524.

Tarrow, S 1988, 'National Politics and Collective Action: Recent Theory and Research in Western Europe and the United States', *Annual Review of Sociology*, vol.14, pp.421-440.

Tarrow, S 1998, *Power in Movement: Social Movements and Contentious Politics*, 2<sup>nd</sup> ed., Cambridge University Press, Cambridge.

Tarrow, S 2005, *The new transnational activism*, Cambridge University Press, New York.

Taylor, C 1994, 'The Politics of Recognition', in A.Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition*, Princeton University Press, Princeton.

Teubert, W 2010, *Meaning, Discourse and Society*, Cambridge University Press, Cambridge.

Thelen, D 1989, 'Memory and American History', *Journal of American History*, vol.75. no.4, pp.1117-1129.

Thiesmeyer, L (ed.) 2003, *Discourse and silencing: Representation and the language of displacement*, John Benjamins, Amsterdam.

Tileaga, C 2010, 'Political accountability, public constitution of recent past and the collective memory of socio-political events: A discursive analysis', *Journal of Community & Applied Social Psychology*, vol.20, no.5, pp.363-376

Tilly, C 2004, *Social movements, 1768-2004*, Paradigm Publishers, Colorado.

Tilly, C and Wood, L.J 2009, *Social Movements: 1768-2008*, Paradigm Publishers, Colorado.

Tsuitsui, K, Whitlinger, C and Lim, A 2012, 'International Human Rights Law and Social Movements: States' Resistance and Civil Society's Insistence', *Annual Review of Law and Social Science*, vol.8, pp.367-396.

Turner, R.H and Killian, L.M 1957, *Collective Behaviour* Prentice-Hall Publishing, New Jersey.

Turner, C 2013, 'Deconstructing Transitional Justice', *Law and Critique*, vol.24, no.2, pp.193-209.

Turns, D 2004, 'Aspects of National Implementation of the Rome Statute: The United Kingdom and Selected Other States', in D. McGoldrick, P. Rowe & E. Donnelly (eds.), *The Permanent International Criminal Court: Legal and Policy Issues*, Hart Publishing, United States of America, pp.337-387.

Van Dijk, T.A 1986, 'What is political discourse analysis?', in J. Bommaert and C. Bulcaen (eds), *Political linguistics*, John Benjamins, Amsterdam, pp.11-52.

- Van Dijk, T.A. 1993, 'Principles of Critical Discourse Analysis', *Discourse and Society*, vol.4, pp.249-283.
- Vellacott, J 2000, 'Nonviolence: A road less travelled, in L.J Fisk & J.L Schellenberg (eds.), *Patterns of Conflict, Paths to Peace*, Broadview Publishing, Ontario, pp.103-142.
- Vora, J.A and Vora, E 2004, 'The Effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans', *Journal of Black Studies*, vol.34, no.3, pp.301-322.
- Wallerstein, I 1984, *The Politics of the World-Economy: The States, the Movements and the Civilizations: essays*, Cambridge University Press, Cambridge.
- Walton, G.W. 2016, 'Gramsci's activists: How local civil society is shaped by the anticorruption industry, political society, and translocal encounters', *Political Geography*, vol.53, pp.10-19.
- Weis, G and Wodak, R 2002, 'Introduction: Theory, interdisciplinarity and critical discourse analysis', in G. Weiss and R. Wodak (eds.), *Critical Discourse Analysis: Theory and Interdisciplinarity*, Palgrave Macmillan, New York, pp.1-32.
- White, R 2008, 'Depleted uranium, state crime and the politics of knowing', *Theoretical Criminology*, vol.12, no.1, pp.31-54.
- White, R 2010, 'Environmental Victims and Resistance to State Crime through Transnational Activism', *Social Justice*, vol.36, no.3, pp.46-60.
- Whitfield, L 2002, *Civil Society as idea and civil society as process: The case of Ghana*, Queen Elizabeth House & St Antony's College, London.
- Whitney, C.R 2005, *The WMD mirage; Iraq's decade of deception and America's false premises for war; featuring the report to the President from the Commission on the intelligence capabilities of the United States regarding weapons of mass destruction*, Public Affairs, New York.

Wodak, R, 2006, 'Mediation between discourse and society: Assessing cognitive approaches', *Discourse Studies*, vol.8, no.1, pp.179-190.

Wodak, R, 2011, *The Discourse of Politics in Action*, Palgrave Macmillan, Basingstoke.

Wodak, R, 2015, 'Critical Discourse Analysis, Discourse-Historical Approach', in K. Tracy, C. Ilie and T. Sandel (eds.), *The international encyclopedia of language and social interaction*, John Wiley & Sons, Chichester, pp. 20-29.

Wojczewski, T 2018, 'Global power shifts and world order: the contestation of 'western' discursive hegemony', *Cambridge Review of International Affairs*, vo.31, no.1, pp. 33-52

Wrbouschek, M 2009, 'Discourse Analysis and Social Critique', *Psychology and Society*, vol.2, no.1, pp.36-44, viewed 3 May 2019,  
[http://www.psychologyandsociety.org/\\_assets/\\_original/2009/03/3.ikusarticle.wrbouschek.final.pdf](http://www.psychologyandsociety.org/_assets/_original/2009/03/3.ikusarticle.wrbouschek.final.pdf).

Xing, L 2016, 'From Hegemony and World Order to Independent Hegemony and World Re-order', in S. Christensen & L. Xing (eds.), *Emerging Powers, Emerging Markers, Emerging Societies*, Global Responses, pp.30-54.

Zelizer, B 1995, 'Reading the Past against the Grain: The Shape of Memory Studies', *Critical Studies in Mass Communication*, vol.12, no.2, pp.214-239.

Zelizer, B 1998, *Remembering to Forget: Holocaust Memory Through the Camera's Eye*, University of Chicago Press, Chicago.

Zerubavel, E 2003, *Time Maps: Collective Memory and the Social Shape of the Past*, The University of Chicago Press, Chicago.

Zerubavel, E 2006, *The Elephant in the Room: Silence and Denial in Everyday Life*, Oxford University Press, New York.

## Legislation

Charter of the Kuala Lumpur Foundation to Criminalise War (2005) (Malaysia).

International Covenant on Civil and Political Rights 1976, (resolution 2200A (XXI)), opened for signature 16 December 1966, entered into force 23 March 1976.

International Criminal Court, 1998, *Rome Statute of the International Criminal Court*, viewed 6 November 2018, [http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf).

United Nations Charter 1945, (resolution 2625 (XXV)), opened for signature 26 June 1945, entered into force 24 October 1945.

United Nations General Assembly 1998, *Rome Statute of the International Criminal Court*, 17 July 1998, available at [https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf).

United Nations Security Council 2002, *Resolution 1441*, S/Res/1441, 8 November, viewed 17 November 2018, <https://www.un.org/Depts/unmovic/documents/1441.pdf>.

## Speeches

Alessandrini, A 2005, 'The Violation of the Will of the Global Antiwar Movement as a Crime', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.90-96.

Al-Khediary, A 2005, 'Testimony on the Destruction of Cultural Heritage', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.336-339.

Al-Obeidi, A.W 2005, 'Human Rights Violations and the Disappeared in Iraq', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.317-320.

Bartholomew, A 2005, 'Empire's Law and Human Rights as Swords of Empire', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.76-83.

Bello, W 2005, 'The Role of the "Coalition of the Willing" in the Violation of International Law and Universal Human Rights', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.120-132.

Blair, T 1999, 'Prime Minister's Speech to the Economic Club of Chicago, Doctrine of the International Community', transcript, *The National Archives*, April 24, viewed 5 February 2019, <https://www.globalpolicy.org/component/content/article/154/26026.html>.

Blair, T 2001, 'Speech to the House of Commons', transcript, *The Guardian*, 14 September, viewed 3 February 2017, <https://www.theguardian.com/politics/2001/sep/14/houseofcommons.uk1>

Blair, T 2002a, 'Speech at the George Bush Senior Presidential Library', transcript, *The Guardian*, 8 April, viewed 3 February 2017, <https://www.theguardian.com/politics/2002/apr/08/foreignpolicy.iraq>.

Blair, T 2002b, 'Speech to the Trades Union Congress in Blackpool', transcript, *The Guardian*, 10 September, viewed 3 February 2017, <https://www.theguardian.com/politics/2002/sep/10/speeches.iraq>.

Blair, T 2002c, 'Speech at the Labour Party Conference in Blackpool', transcript, *The Guardian* 1 October, viewed 3 February 2017, <https://www.theguardian.com/politics/2002/oct/01/labourconference.labour14>.

Blair, T 2003a, 'Tony Blair's Commons statement on Iraq', transcript, *The Guardian*, 26 February, viewed 3 February 2017, <https://www.theguardian.com/politics/2003/feb/26/foreignpolicy.speeches>.

Blair, T 2003b, 'Full text: Emergency motion on Iraq', transcript, *The Guardian*, 18 March, viewed 3 February 2017,

<https://www.theguardian.com/politics/2003/mar/18/foreignpolicy.iraq2>

Blair, T 2003c, 'Full text: Tony Blair's speech', transcript, *The Guardian*, 19 March, viewed 3 February 2017, <https://www.theguardian.com/politics/2003/mar/18/foreignpolicy.iraq1>

Blair, T 2003d, 'Transcript of Blair's speech to Congress', transcript, *The Guardian*, 18 July, viewed 4 February 2017, <https://www.theguardian.com/politics/2003/jul/18/iraq.speeches>

Blair, T 2003e, 'Speech to the 2003 Labour Party Conference in Bournemouth', transcript, *The Guardian*, 30 September, viewed 3 February 2017,

<https://www.theguardian.com/politics/2003/sep/30/labourconference.labour2>

Blair, T 2004a, 'Speech given in Sedgefield justifying military action in Iraq', transcript, *The Guardian*, 5 March, viewed 3 February 2017,

<https://www.theguardian.com/politics/2004/mar/05/iraq.iraq>.

Blair, T 2004b, 'Speech to the Labour Party Conference', transcript, *The Guardian*, 24 September, viewed 4 February 2017,

<https://www.theguardian.com/politics/2004/sep/28/labourconference.labour6>

Blair, T 2006, 'Speech to Labour Party Conference', transcript, *The Guardian*, 26 September, viewed 15 March 2018,

<https://www.theguardian.com/politics/2006/sep/26/labourconference.labour3>

Blair, T 2007, 'Speech to Labour party leadership at Trimdon Labour Club in Sedgefield', transcript, *The Guardian*, 10 May, viewed 3 February 2017,

<https://www.theguardian.com/politics/2007/may/10/labourleadership.labour2>.

Bolton, J 2018, 'Speech to the Federalist Society, Washington', transcript, *Al Jazeera*, 11 September, viewed 24 February 2019, <https://www.aljazeera.com/news/2018/09/full-text-john-bolton-speech-federalist-society-180910172828633.html>.

Bush, G.W 2001a, 'Inaugural Address', transcript, *The White House Archives*, January 20, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/inaugural-address.html>

Bush, G.W 2001b, 'The President's News Conference with President Vicente Fox of Mexico in San Cristobal, Mexico', transcript, *The White House Archives*, February 16, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/02/20010216-3.html>.

Bush, G.W & Blair, T 2001, 'The President's News Conference with Prime Minister Tony Blair of the United Kingdom at Camp David', transcript, *The White House Archives*, February 23, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/02/20010226-1.html>.

Bush, G.W 2002a, 'Remarks Announcing Bipartisan Agreement on a Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq', transcript, *The White House Archives*, October 2, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/10/20021002-7.html>.

Bush, G.W 2002b, 'Address to the Nation on Iraq from Cincinnati, Ohio', transcript, *The White House Archives*, October 7, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/10/20021007-8.html>.

Bush, G.W 2002c, 'Remarks on House of Representatives Action on the Resolution Authorizing the Use of Military Force Against Iraq', transcript, *The White House Archives*, October 10, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/10/20021010-5.html>

Bush, G.W 2002d, 'Statement on Signing the Authorization for Use of Military Force Against Iraq Resolution of 2002', transcript, *The White House Archives*, October 16, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/10/20021016-1.html>.

Bush, G.W 2002e, 'Joint US-Russia Statement on Iraq', transcript, The White House Archives, November 22, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/11/20021122-1.html>.

Bush, G.W 2003a, 'Remarks on the Iraqi Regime's Noncompliance with United Nations Resolutions', transcript, *The White House Archives*, February 6, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030206-17.html>.

Bush, G.W 2003b, 'Statement of the Atlantic Summit: A Vision for Iraq and the Iraqi people', transcript, *The White House Archives*, March 16, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030316-1.html>.

Bush, G.W 2003c, 'Address to the Nation on Iraq', transcript, *The White House Archives*, March 17, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030317-7.html>.

Bush G.W 2003d, 'War ultimatum speech', transcript, *The New York Times*, March 18, viewed 25 March 2018, <https://www.nytimes.com/2003/03/18/politics/text-bushs-speech-on-iraq.html>.

Bush, G.W 2003e, 'President Bush Addresses the Nation', transcript, *The White House Archives*, March 19, viewed 25 March 2018, <https://www.nytimes.com/2003/03/18/politics/text-bushs-speech-on-iraq.html>.

Bush, G.W 2003f, 'President Discussed Military Operation', transcript, *The White House Archives*, 23 March, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030323-1.html>.

Bush, G.W 2003g, 'Joint Statement by President Bush, Prime Minister Blair on Iraq's Future', transcript, *The White House Archives*, April 8, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/04/20030408-1.html>.

Bush, G.W 2003h, 'President's Message to the Iraqi People', transcript, *The White House Archives*, 10 April, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/04/20030410-2.html>.

Bush, G.W 2003i, 'President Visits Soldiers at Army and Navy Medical Centers', transcript, *The White House Archives*, 11 April, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/04/20030411-13.html> .

Bush, G.W 2003j, 'President Discusses the Future of Iraq', transcript, *The White House Archives*, 28 April, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/11/20031120-1.html>.

Bush, G.W 2003k, 'President Bush Announces Major Combat Operations in Iraq Have Ended', transcript, *The White House Archives*, 1 May, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/05/20030501-15.html>.

Bush, G.W 2003l, 'President's Statement on U.N. Vote Lifting Sanctions on Iraq', transcript, *The White House Archives*, 22 May, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/05/20030522-11.html>.

Bush, G.W 2003m, 'President Bush Discussed Progress in Iraq', transcript, *The White House Archives*, 23 July, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/07/20030723-1.html>.

Bush, G.W 2003n, 'US/UK Declaration on Iraq', transcript, *The White House Archives*, 20 November, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/11/20031120-1.html>.

Bush, G.W 2004a, 'President Bush Reaffirms Resolve to War on Terror, Iraq and Afghanistan', transcript, *The White House Archives*, 19 March, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2004/03/20040319-3.html>.

Bush, G.W 2004b, 'President Bush and Prime Minister Allawi Press Conference', transcript, *The White House Archives*, 23 September, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2004/09/20040923-8.html>.

Bush, G.W 2004c, 'President Bush Discusses Iraq Report', transcript, *The White House Archives*, 7 October, viewed 25 March 2018, <https://georgewbush-whitehouse.archives.gov/news/releases/2004/10/20041007-6.html>.

Carchedi, G 2005, 'The Responsibility of European Governments', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.114-119.

Declaration of the Jury of Conscience 2005, 'Declaration of the Jury of Conscience', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.492-501.

Everest, L 2005, 'The history of US and UK interventions in Iraq', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p. 35-49.

Fahmy, K 2005, 'The Responsibility of Arab Governments in the War on Iraq', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.108-113.

Falk, R 2005a 'Opening Speech on Behalf of the Panel of Advocates', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.5-11.

Falk, R 2005b, 'Closing Speech on Behalf of the Panel of Advocates', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.486-489.

Halliday, D 2005, 'The UN and its Conduct during the Invasion and Occupation of Iraq', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.212-220.

Harding, J 2005, 'The Doctrine of Humanitarian Intervention and the Neocolonial Implications of its Revival in our Unipolar World', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p. 50-75.

International Military Tribunal (Nuremberg) 1946, *Judgement of 1 October 1946*, available at [https://crimeofaggression.info/documents/6/1946\\_Nuremberg\\_Judgement.pdf](https://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf).

Jamail, D 2005, 'Testimony on War Crimes and the Recent Situation in Iraq', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.180-187.

Khammas, E 2005, 'The Ruin of Daily Life', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.224-227.

Knight, W.A 2014, 'Challenges to US Hegemony: Keynote address to the LIRDS think tank, Georgetown, Guyana', transcript, *SCRIBD*, 11 April, viewed 3 January 2019, <https://www.scribd.com/document/288910953/Challenges-to-US-Hegemony-Professor-Andy-Knight>.

Kovel, J 2005, 'The Ecological Implication of the War', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.340-352.

Landau, S 2005, 'Economic-Political Connections of Media' in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.134-140.

Maeda, A, Saruta, S & Inamori, K 2005, 'The Use of Depleted Uranium (DU) Weapons', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.188-208.

Miller, D 2005, 'Media Wrongs against Humanity' in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.141-155.

Nayar, J 2005, 'Media Wrongs against Truth and Humanity', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.162-173.

Olshansky, B 2005, 'Covert Practices in the US War on Terror and the Implications for International Law: The Guantanamo Example', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.308-313.

Omar, D 1996, 'Opening Address', paper presented at 'Reporting the Truth Commission' Conference, Applied Broadcasting Centre, Johannesburg, March 1-2.

Oran, B 2005, 'Turkey's Situation and Politics in the US's Assault on Iraq', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.98-107.

Pulhan, G 2005, 'The Destruction of Cultural Heritage: A Report from the Istanbul Initiative', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.330-335.

Roy, A 2005a, 'Opening Speech of the Spokesperson of the Jury of Conscience', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p. 2-4.

Roy, A 2005b, 'Closing Speech on Behalf of the Jury of Conscience', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p. 490-492.

Shiner, P 2005, 'The Illegality of Preventative Attack and Unilateral Use of Force', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.14-28.

Shivji, I 2005, 'Law's Empire and Empire's Lawlessness: Beyond the Anglo-American Law', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.84-89.

Simons, M and Specia, M 2019, 'U.S. Revokes Visa of I.C.C Prosecutor Pursuing Afghan War Crimes', *The New York Times*, April 5, viewed 18 March 2019, <https://www.nytimes.com/2019/04/05/world/europe/us-icc-prosecutor-afghanistan.html>.

Von Sponeck, H 2005, 'The Conduct of the UN before and after the 2003 invasion', in M.G. Sokmen (ed.), *World Tribunal on Iraq: Making a Case Against War*, Olive Branch Press, Massachusetts, p.29-34.

## **Other**

Bensouda, F 2013, 'The ICC: Out of Steam, and losing credibility fast!', *New African*, pp.24-27.

Kuala Lumpur Foundation to Criminalize War (KLFCW) 2013?, *Fact Book*, KLFCW, Kuala Lumpur.

Rycroft, M 2002, *The Secret Downing Street Memo*, 23 July, viewed 10 May 2018, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB328/II-Doc14.pdf>.