

Why an Iraq War Inquiry Is More Necessary Than Ever

By [James O'Neill](#)

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There has been a flurry of activity caused by the comments made by Green's parliamentarians Adam Bandt and Richard di Natale over recently installed Liberal Senator Jim Molan. The facts relate to the Australian situation, but the issue has wider ramifications.

The ostensible reason for the attack on Molan was his sharing of two videos originating from a Neo Nazi far right group in the United Kingdom.

Bandt, who later withdrew his remarks, called Molan a "coward" and said that Molan should be prosecuted for his service in the Iraq war. In the Senate di Natale accused Molan of overseeing a "humanitarian catastrophe" nearly 15 years ago during the assault on Fallujah, Iraq.

Di Natale said that there was "a question that needs to be answered, and the only way with answer that is through an enquiry."

Liberal politicians, from the Prime Minister downward, came to Molan's defence, claiming that he was a "great Australian soldier" who "stood up for freedom."

Lost among all the expostulations and threats of legal action were two key issues behind the remarks of both Bandt and Di Natale: were there war crimes committed in Iraq by Australian forces; and whether or not there should be an enquiry (as has happened in Canada, the Netherlands, and the United Kingdom) into the precise circumstances surrounding Australia's involvement in that disastrous war.

Instead we have seen sustained attempts two divert from legitimate questions surrounding this issue. It has been variously suggested that Molan is not racist; that it is somehow scurrilous to question the conduct of Australia's servicemen; and that Bandt and Di Natale had a view "that anyone who goes to war is a war criminal." That simply does not address the real issues.

To answer the first of those questions one needs to go no further than the assaults on Fallujah, the first of which occurred in April 2004 and the second, codenamed Operation Phantom Fury, in October 2004.

Before the second attack began, citizens were instructed to leave, but that did not extend to men aged 15-45 who were prohibited from leaving. Once the bombing began, all exits from

the city were sealed off. According to the Washington Post, electricity and water were also cut off. The Red Cross and other agencies were denied access to the city to deliver humanitarian aid and render medical assistance.

A United Nations special rapporteur, Jean Ziegler, described these action as a

“flagrant violation” of the Geneva Conventions. Mr Zeigler was unquestionably correct. Cutting off water and electricity and denying access to humanitarian aid is prohibited under Article 54 (Protocol 1) of the Geneva Conventions.

The attacking forces also seized the city’s only hospital, taking its staff prisoner, and also bombed to destruction two other medical clinics. Eyewitness accounts described Red Cross workers being denied entry to the city, and ambulances trying to enter the city being fired upon. This is also a breach of Article 8 of the Geneva Conventions (Protocol 1).

There were further eyewitness accounts of snipers shooting women and children in the street, and unarmed men carrying a white flag were also shot. The United States also admitted using chemical weapons, including white phosphorus, napalm and depleted uranium weapons. The use of such weapons are banned under Protocol III of the United Nations Convention on Certain Weapons that Australia ratified on 29 September 1983. The United States has refused to ratify this Convention.

General Molan has admitted his role in planning and directing the attacks in Fallujah in October 2004. It is a matter of public record that Molan was seconded from the Australian defence forces to US forces in April 2004 and served as chief of operations through 2005. An article in the Australian emphasized that Molan not only planned, but directed the 2004 assault on Fallujah.

The horrific consequences for civilians of this assault have also been documented, with extraordinarily high levels of birth defects, infant and maternal mortality, and various cancers. Patrick Cockburn in the Independent described the results reported by Busby and his co-researchers as worse than Hiroshima and Nagasaki.

There can be no serious argument therefore, that war crimes were committed in Fallujah (and elsewhere) in October 2004. Who then might be held responsible? Under the legal doctrine of common purpose, senior Australian officials are responsible for these attacks. Those individuals would include the defence Minister Robert Hill, the foreign minister Alexander Downer, and at the Prime Minister John Howard.

Under the doctrine of command responsibility Government and military officials can be held liable if they knew, or should have known, anyone under their command was committing war crimes and failed to prevent them from doing so. These principles are incorporated in the Statute of the International Criminal Court that Australia ratified on 27 June 2002 and which came into effect in Australian law on 1 September 2002.

Before persons alleged to have committed war crimes can be referred to the International Criminal Court however, the accused’s own State must take action against them, and only if that State is “unable or unwilling” to act will the ICC become involved.

There is legislation on the Australian statute books that is designed to provide a means off prosecuting alleged war criminals. The Howard government introduced a raft of legislative

changes to the Criminal Code (Commonwealth) beginning in 2002 before the Iraq invasion. Part 5.3 of s100 of the Criminal Code, for example, creates the offence of a “terrorist act”. This is defined as being when there is serious harm to property or death caused with the intention of advancing a political, religious or ideological cause, and with it the intention of coercing, or influencing by intimidation, the government of a foreign country, or intimidating the public or a section of the public.

It is submitted that this precisely describes the actions of the Australian government and its officials, including military personnel, in the conduct of the Iraq War in general, and in specific instances of which Fallujah is a prime, but far from only example.

Successive Australian governments have refused to prosecute anyone involved in the events described above. The ICC’s requirement of a State being “unable or unwilling” to prosecute alleged war crimes has therefore been met. In these circumstances there is nothing to prevent a direct referral to the ICC Public Prosecutor who must then initiate their own inquiry.

It is this history that probably accounts for the reaction to questions raised about General Molan’s alleged responsibility for war crimes committed in Iraq. The politicians and mainstream media coming to his defence with frankly ridiculous and irrelevant claims are fully aware of their own potential liability for the events arising out of the original illegal invasion of Iraq in 2003.

Di Natale was simply stating the obvious: there should have been a proper inquiry, there should be one now, and Australia’s persistent refusal to do so only undermines its frequently professed claims to being a strong supporter of the “rules based international order.”

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James O’Neill is an Australian-based Barrister at Law, exclusively for the online magazine [“New Eastern Outlook”](#).

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