

The Warfare Code

What decision makers need to know
about the laws of armed conflict

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The Peace Strike

Contents

	<u>Page</u>
Why publish this booklet ?	4
Introduction	5
A short history of war law	6
The Laws prohibiting war	7
The General Treaty for the Renunciation of War [Kellogg-Briand Pact]	8
The Nuremburg Judgement	9
The United Nations Charter	11
The Nuremburg Principles	12
The Rome Statute of the International Criminal Court	13
The International Criminal Court Act 2001	14
Laws governing the conduct of war	16
The Geneva Conventions	17
The Chemical, Biological and Toxin Weapons Conventions	17
The Landmines Convention	17
The Convention against Torture	17
The Universal Declaration of Human Rights	17
The law prohibiting Conspiracy	18
The Offences against the Person Act 1861	19
The Accessories and Abettors Act 1861	19
The Warfare Code – A summary of war law	20
Enforcing War Law	21
Holding Government to account for war crimes	22
Approaching your MP	22
Impeachment	23
Reporting crimes to the Police	23
Reporting crimes to the International Criminal Court	24
Private Criminal Prosecution	24
Obtaining an Injunction	24
Applying for Judicial Review	24
Conscientious Objection	25
Refusing tax	25
Refusing Orders	26
The False Legal Advice on the legality of the war with Iraq	27
Correct Legal Advice – What the Attorney General should have said	28
Memorandum to the Prime Minister	28
The legal grounds underpinning the advice	29
The Implications	34
Recommendations	35
Bibliography and Acknowledgements	36

“I deeply believe that no individual can experience true happiness or tranquillity until we turn humankind away from its obsession with war. War has held us in its irrevocable grip throughout history; it is the source of all evil. War normalises insanity, destroying human beings like so many insects, tearing all that is human and humane to shreds.”

Daisaku Ikeda - Buddhist leader

Why publish this booklet ?

This booklet sets out to explain the laws of armed conflict to political decision makers in a simple, straightforward format so that if they are ever again asked to support warfare or military conflict, they can identify whether their actions are lawful.

The need for this material arose in March 2003 when Britain's Prime Minister took the nation into a war with Iraq on the false assertion that it would be legal. Because so few of us in Britain know or understand the laws that prohibit war, we failed to recognise the dishonest nature of the legal advice provided by the Prime Minister and the Attorney General. As a result of their deception and the fictitious claim that Saddam Hussein was about to use weapons of mass destruction, Parliament voted in favour of war and Britain joined America in invading and occupying Iraq. The result of the decision to wage war is that at least 1,000,000 totally innocent Iraqi men, women and children have been killed. These killings not only breach international treaties and the laws of war but constitute the most serious crimes known to mankind. It should never have happened.

It should not be possible in a democracy for a Government to deceive the people over such a fundamental issue as war. Having given firm undertakings to the world that Britain would never wage a war of aggression, never use armed force to threaten or attack another country, never kill or harm human beings, settle international disputes peacefully, respect human rights, uphold and enforce the rule of law and act towards one another in a spirit of brotherhood and co-operation, our government ignored every one of these solemn and binding promises and embarked on the world's worst crime, a war of aggression.

Citizens expect MPs to operate lawfully at all times, especially when making life and death decisions. The decision to use armed force or take a nation to war is the most important an elected representative will ever have to take. He or she is personally responsible for the consequences of the decision and the deaths and injuries that take place. With the lives of thousands of men, women and children in their hands, politicians must be able to uphold the laws of war and explain to the families of those killed in a conflict why they had to die and what cause is so important that it overrides their right to life. It is therefore essential that political, civil and military leaders have a faultless understanding of war law before they take decisions pertaining to war and armed conflict.

I hope that you find this material useful and that having read it you will do all you can to compel British Governments to uphold and enforce the laws prohibiting the use of armed force and concentrate solely on upholding the values of justice, equality and the rule of law espoused by the United Nations.

Introduction

There is perhaps no better introduction to the laws against war than these extracts from the judgement of The Nuremburg War Crimes Tribunal in 1946 when Germany's leaders were tried and convicted for waging wars of aggression.

In the opinion of the Tribunal, those who wage aggressive war are doing that which is equally illegal, and of much greater moment than a breach of one of the rules of the Hague Convention. In interpreting the words of the [Kellogg-Briand] Pact, it must be remembered that international law is not the product of an international legislature, and that such international agreements as the Pact have to deal with general principles of law, and not with administrative matters of procedure. The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practiced by military courts.

Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world. To initiate a war of aggression therefore, is not only an international crime, it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.

Nuremburg War Crimes Tribunal 1946

A short history of war law

"War between nations was renounced by the signatories of the Kellogg-Briand Treaty. This means that it has become throughout practically the entire world an illegal thing. Hereafter, when nations engage in armed conflict, either one or both of them must be termed violators of this general treaty law.... We denounce them as law breakers."

Henry Stimson, USA Secretary of State 1932

The horrors of the First World War were such that statesmen were determined to end warfare once and for all. The General Treaty for the Renunciation of War was signed in 1928 and eventually ratified by 62 States including France, America, Britain, Germany, Japan and Italy. It became known as the Kellogg-Briand Pact after its main proponents the American Secretary of State Frank Kellogg and France's foreign minister Aristide Briand. This was the first treaty prohibiting the waging of war and it formed the legal basis for the convictions of Germany's leaders at Nuremberg after World War II.

In 1945 The United Nations was founded to eliminate warfare, promote human rights, uphold justice and international treaties and advance the economic and social interests of humankind. One of its first actions was to set up an International Law Commission to draw up statute war laws based on the judgments of the Nuremberg and Tokyo War Crimes Tribunals. In 1950 the General Assembly accepted the Commission's proposals and enacted seven new war laws to be known as the Nuremberg Principles. In 1948 the Genocide Convention was enacted, to prevent a repeat of the Holocaust and ensure that no-one would ever again attempt to destroy a national, ethnic, racial or religious group. But for the persistence of Senator William Proxmire the USA might never have ratified this law, but eventually in 1988 under President Reagan the Genocide Convention Implementation Act [The Proxmire Act] became law in America.

The fifty year period after the signing of the Genocide Convention saw the signing of several important war laws with additions to the Geneva Conventions, a treaty outlawing torture, conventions governing the manufacture, trading and use of chemical, biological and toxin weapons; and in 1998 the world outlawed the use of landmines. In 2002 with the ratification of the Rome Statute of the International Criminal Court, the world's first international law enforcement authority was set up in The Hague with jurisdiction over the crimes of genocide, crimes against humanity and war crimes.

Although the world community has made strenuous efforts to outlaw war, it encounters great difficulty in enforcing the law. National leaders, particularly those of the permanent members of the Security Council, tend to ignore and violate war law as and when it suits their interests. Only when a leader of a major nation is convicted of war crimes in court will the world be in a position to eradicate warfare and armed conflict once and for all.

The Laws Prohibiting War

“the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing.”

Nuremburg War Crimes Tribunal

INTERNATIONAL LAW

The General Treaty for the Renunciation of War [Kellogg-Briand Pact]

The Nuremburg Judgement

The United Nations Charter

The Nuremburg Principles

The Rome Statute of the International Criminal Court

DOMESTIC UK LAW

The International Criminal Court Act 2001

Just or unjust war

The legal terms *jus ad bellum* and *jus in bello* which distinguish between laws governing the resort to war and laws governing the conduct of war are not used in this volume to avoid any inference of a ‘just war’. Since 1928, when warfare was made illegal, there has been no such thing as a ‘just war’. All armed conflict, with the sole exception of self-defence when under attack, is illegal.

The General Treaty for the Renunciation of War 1928 (The Kellogg-Briand Pact)

This solemn and binding treaty unconditionally condemned and renounced recourse to war as an instrument of national policy, and promised that henceforth all international disputes would be settled peacefully. This treaty is still in force and together with the London Charter provided the legal basis for the trial of Germany's leaders at Nuremburg after the Second World War.

ARTICLE I The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

ARTICLE II The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Comment

The main purpose of this treaty was to outlaw warfare as a method of conducting international affairs. The horrifying effects of the First World War in which millions were killed and maimed had convinced public opinion that such a war must never happen again. It was no longer acceptable for civilised nations to use armed force to achieve their objectives. Although the terms of this treaty were crystal clear, it included no enforcement method or punishment for those who violated it. Later this loophole in law enforcement enabled the leaders of Germany, Italy and Japan to initiate what was to become the Second World War in which nearly twenty million people were killed.

Fortunately for the rule of law, President Roosevelt refused to bow to the demands of Churchill and Stalin for the summary executions of the Axis nations' leaders, and insisted on holding them to account for their crimes in court. As a result Germany's leaders were convicted of waging wars of aggression in violation of the Kellogg-Briand Pact at the Nuremburg War Crimes Trials in 1946.

The Judgement of the Nuremburg War Crimes Tribunal.

As the world's first major war crimes trial, the Nuremburg Tribunal confirmed the principles and tenets that now form the bases of customary international war law. Germany's leaders were convicted in 1946 of crimes against peace and humanity for waging wars of aggression against eleven nation states in violation of the Kellogg-Briand Pact. The judgement highlighted the principles governing conflict between nations, and the responsibilities of individuals in preventing war.

"After the signing of the Pact, any nation resorting to war as an instrument of national policy breaks the Pact. In the opinion of the Tribunal, the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such war is illegal in international law; and that those who plan and wage such a war with its inevitable and terrible consequences are committing a crime in so doing..."

It was submitted [by the defendants] that international law is concerned with the action of sovereign states, and provides no punishment for individuals; and further, that where the act in question is an act of state, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon States has long been recognised..."

The very essence of the [London] Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State, if the State in authorising action moves outside its competence under international law..."

That a soldier was ordered to kill or torture in violation of the international law of war has never been recognised as a defence to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible..."

Comment

The Nuremburg War Crimes Tribunal was the first occasion in modern history when political leaders were held to account for their crimes in a court of law. The essence of the trials was that individual political, civil and military leaders and officials could not shelter behind their duty to the state, when the state was in breach of international law. As Germany had ratified the Kellogg-Briand Pact, its leaders, by breaching the Pact, had committed serious crimes for which they were personally responsible and for which they were convicted and punished.

The reason why the Nuremburg trials are so important is that they provide the first example of the rule of international war law in action and the judgment gave a lucid account of the laws against war and the principles which underpin relations between states. The International Law Commission used the Nuremburg judgment as the basis for the statutory laws against war agreed in 1950 by the UN General Assembly which were then entitled the Nuremburg Principles in recognition of their source.

The single most important development derived from the Nuremburg judgment is the focus on the responsibility of the individual in matters of international warfare. Individuals who start or support war are criminally liable and are to be held to account for the crime in court. Up to that moment national leaders such as Kaiser Wilhelm or Napoleon Bonaparte who were responsible for waging wars causing the deaths of millions had escaped the ultimate penalty for their crimes. The Nuremburg judgement made it clear that it was not only Heads of State who could be indicted, tried and convicted as war criminals, but all those individuals who were responsible for planning, supporting, condoning, funding or taking part in aggressive war.

The main legal principle derived from Nuremburg is that every citizen has a duty to humankind to exercise a moral choice and to take action to prevent their leaders and governments from violating the laws of war and waging a war of aggression.

The United Nations Charter.

The United Nations Charter sets out to prevent war and promote peace, justice and the rule of law throughout the world. Its articles clearly prohibit the use of armed force:

2.3 All members shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered.

2.4 All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

41 The Security Council may decide what measures not involving the use of armed force¹ are to be employed to give effect to its decisions, and it may call upon members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

42 Should the Security Council consider that measures provided for in Article 41 prove 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. Such action may include demonstrations, blockade and other operations by air, sea, or land forces.

Comment

The main legal principles in the UN Charter relating to warfare are that (1) International disputes must be settled by peaceful means, (2) Member States must never threaten or use force against the territorial integrity or political independence of any State, (3) The Security Council must keep the peace and may not use armed force, (4) The only legal use of armed force is individual or collective self defence.

As the United Nations does not possess a law enforcement body it cannot enforce its rules on its members, especially the permanent members of the Security Council. Member States are therefore responsible for policing their own actions and holding their own representatives to account for breaches of the rules. British Governments are amongst the worst in breaching the UN Charter and interpreting the rules to suit themselves. The latest example of British Government duplicity was the false claim that the 2003 Iraq war was authorised by UN Security Council resolutions 678, 687 and 1441. The Security Council can never authorise the use of armed force and must always adopt a peacekeeping approach. By invading and occupying Iraq and killing tens of thousands of innocent civilians, America, Britain and their Coalition allies violated the rule that disputes must be settled peacefully and breached the prohibition on the threat or use of force.

¹ Author's emphasis

The Nuremberg Principles

These are the seven fundamental principles of international war law derived from the Nuremberg and Tokyo War Crimes Tribunals by the International Law Commission which were adopted as statute war law by the United Nations General Assembly in 1950.

I. Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

II. The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

III. The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

IV. The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

V. Any person charged with a crime under international law has the right to a fair trial on the facts and law.

VI. The crimes hereinafter set out are punishable as crimes under international law:

*(a) **Crimes against peace:***

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

*(b) **War crimes:** Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.*

*(c) **Crimes against humanity:** Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.*

VII. Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

The Rome Statute of the International Criminal Court.

In July 1998 Britain became a founding signatory to the inter-governmental treaty known as the Rome Statute. This treaty set up the world's first permanent international criminal court in The Hague, and ceded ultimate jurisdiction over the universal crimes of 'genocide, crimes against humanity and war crimes' to the Court. This new system of international criminal law came into force in July 2002 when Australia became the sixtieth state to ratify the treaty, and for the first time in 1600 years British citizens became subject to international criminal law and an external law enforcement authority.

25.3 In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime [genocide, a crime against humanity and a war crime] within the jurisdiction of the Court if that person:

- (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;*
- (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;*
- (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;*
In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose...

27.1 This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself constitute a ground for reduction of sentence.

Comment

This treaty is the culmination of fifty years of efforts by the world community to introduce an international system of war law enforcement. As wars are started by political leaders and never by a nation's citizens, it was held to be essential that the world possessed law enforcement processes strong enough to hold the most powerful leaders to account for their war crimes in court. Although to date the USA has refused to ratify this treaty, 102 nations have done so, making it the most important treaty against warfare and the mistreatment of human beings yet devised. As this is the first attempt to set up a system designed to hold world leaders to account for their war crimes, it behoves us all to do everything in our power to support its operation and compel political, civil and military leaders to pursue the interests of humanity rather than the illusory and limited benefits of wealth, power and world domination.

The International Criminal Court Act 2001.

In 2001 Britain's Parliament ratified the Rome Statute by enacting The International Criminal Court Act. This new law incorporated the crimes of 'genocide, crimes against humanity, and war crimes' into domestic UK law whilst ceding ultimate authority over these crimes to the International Criminal Court in The Hague. In summary the Act holds that:

It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity or a war crime, or to engage in conduct ancillary to such an act. This applies to acts committed in England or Wales or outside the United Kingdom by a UK national, resident or person subject to UK service jurisdiction.

"Genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group : killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part...

"Crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population: murder, extermination, enslavement, deportation, forcible transfer of population, imprisonment or deprivation of physical liberty, torture, rape, persecution against any identifiable group or collective on political, racial, national, ethnic, cultural, religious, gender or other grounds impermissible under international law, the crime of apartheid and inhumane acts of a similar character intentionally causing great suffering, or serious injury to mental or physical health.

"War crime" means grave breaches of the Geneva Conventions and includes: Wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health. Causing incidental loss of life or injury to civilians or extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. Attacking or bombarding towns, villages, dwellings or buildings which are undefended and which are not military objectives. Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war. Employing poison or poisoned weapons, asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices.

"Conduct ancillary" means: aiding, abetting, counselling or procuring the commission of an offence, inciting a person to commit an offence, attempting or conspiring to commit an offence, assisting an offender or concealing the offence. A person is regarded as committing such an act or crime if the material elements are committed with intent and knowledge. A person has 'intent' where he means to engage in the conduct or where he means to cause the consequence or where he is aware that it will occur in the ordinary course of events. 'Knowledge' means awareness that circumstances exist or will occur in the ordinary course of events.

Implications

For the first time in English law we have an Act of Parliament that takes precedence over the Royal Prerogative and binds the Crown and everyone in the public service of the Crown. By enacting this Act, Parliament attempted to block the legal loopholes that have enabled past British leaders to commit such crimes with impunity. Criminal responsibility for the crimes of genocide, crimes against humanity and war crimes now lies with those who commit them, those who commission them and those who condone or support them, and all such persons can be held to account for these crimes in court.

Article 25 of the Rome Statute and sections 51 and 52 of the International Criminal Court Act 2001 not only place criminal responsibility for the deaths caused by war on the Monarch, the Prime Minister, members of the Cabinet, senior civil servants, MPs and the military commanders responsible for commissioning acts of war; but equally place criminal responsibility on the servicemen and women, arms manufacturers, suppliers and taxpayers who aid, abet, incite or facilitate the commission of these crimes. No longer can individuals evade joint responsibility for crimes committed by our political leaders.

All military personnel, taxpayers and ordinary citizens who support, obey or condone the orders of their government or Parliament to wage aggressive war in which people are killed, are not only criminally liable for a crime against peace under the Nuremburg Principles, but under this new legislation they become accessories to the crimes of genocide, crimes against humanity and war crimes and render themselves liable to prosecution in Britain or The Hague.

It is a common error in Britain to believe that the law is different or somehow suspended in times of war. This is not the case. That the nation is at war provides no legal protection, excuse or defence to these crimes. This means that since 2002, if one or more persons is injured or killed through the deliberate action of Britain's military forces against a national, ethnic, racial or religious group, then a crime of genocide has been committed and those responsible for it are criminally liable and may be indicted and tried for the offence. So for example if an RAF officer under orders fires a rocket or drops a bomb that causes death or injury to men, women and children in Iraq, then they together with the political, civil and military commanders who commissioned the bombing can be charged with a war crime. If any member of HM armed forces intentionally kills or injures one or more persons who are members of a national, ethnic, racial or religious group, as part of a widespread or systematic attack on that group, then both the individual killer and all those in the chain of command responsible for giving the orders to attack, are criminally responsible for the crimes of 'genocide' or 'conduct ancillary to genocide'.

The principle of international law, which under certain circumstances protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these facts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings.

Nuremburg War Crimes Tribunal

Laws governing the conduct of war

The Geneva Conventions

The Chemical, Biological and Toxin Weapons Conventions

The Landmines Convention

The Convention against Torture

The law prohibiting Conspiracy

The Offences against the Person Act 1861

The Accessories and Abettors Act 1861

The Universal Declaration of Human Rights

This section provides a brief description of the main laws that have been adopted and ratified by Britain and a majority of the world's nation states to protect humanity and guarantee civilized non-violent peaceful behaviour between nation states.

The Geneva Conventions.

The first Geneva Convention protecting the sick and wounded in war was signed in 1864. In 1949 four further Conventions were signed followed by two Protocols in 1977. These consolidated the protections and prohibitions of earlier conventions and extended them to civilians. They govern the conduct of military affairs and regulate such things as the treatment of civilians, prisoners of war, wounded, sick and shipwrecked persons; free passage for the Red Cross, obligations to record deaths and inform relatives, prohibitions on attacks on hospitals, water supplies and water treatment plants and the types of weapons that may or may not be used. Many of these prohibitions are now incorporated as war crimes in the Rome Statute and the International Criminal Court Act 2001.

The Chemical, Biological and Toxin Weapons Conventions

These international treaties were ratified by Britain with the enactment of The Chemical Weapons Act in 1996 and The Biological Weapons Act in 1974. These Acts of Parliament incorporate the obligations arising from the treaties into domestic law and forbid the manufacture, possession and use of chemical, biological and toxin weapons.

The Landmines Convention

Stimulated by Princess Diana and the horrific deaths and injuries inflicted on children, the International Landmines Convention was agreed in 1997 forbidding the manufacture, possession or use of landmines and anti-personnel explosives. This treaty was ratified by Britain in 1998 with the enactment of the Landmines Act.

The Convention against Torture

The International Treaty Against Torture and other Cruel, Inhuman and Degrading Treatment which prohibits all forms of torture, came into effect in 1985 and was incorporated into British legislation in section 134 of the Criminal Justice Act 1988.

The Law prohibiting Conspiracy

The Criminal Law Act 1977 introduced conspiracy into Statute law:

“If a person agrees with any other person or persons that a course of conduct shall be pursued which amounts to or involves the commission of any offence or offences by one or more of the parties to the agreement, he is guilty of conspiracy to commit the offence or offences in question.”

The crime of conspiracy applies to all criminal offences. It therefore applies to the planning and preparation of wars of aggression, genocide, crimes against humanity, war crimes, murder and any of the other crimes associated with war and military conflict. If anyone takes part in the planning, commissioning or support of any of these crimes they become criminally liable for conspiracy to commit the crime.

The Offences Against the Person Act 1861

“Whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person, to murder any other person, whether he be a subject of Her Majesty or not, and whether he be within the Queen’s dominions or not, shall be guilty of an offence, and being convicted thereof shall be liable to imprisonment for life.”

This means that any MP, serviceman, journalist, political advisor, commentator, taxi driver, after dinner speaker or visitor to Britain who says or does anything in support of a war of aggression or an armed attack that results in the death of one or more persons, commits a serious crime. This applies at all times, and the fact that we are at war provides no legal excuse or defence to offenders.

The Accessories and Abettors Act 1861

Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted and punished as a principal offender.

This law applies to every adult in this country and to all domestic and international war laws. If anyone aids, abets, counsels or procures the commission of any of the offences mentioned in this volume, then they become an accessory to the crime and will be treated in exactly the same way as if they were the person who started the wars, dropped the bombs or committed the war crimes. They too will become war criminals.

The Universal Declaration of Human Rights

In 1948, the United Nations adopted and proclaimed the Universal Declaration of Human Rights. As the forerunner to the European Convention on Human Rights and Britain's Human Rights Act 1998, the Declaration recognised that the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world, and that basic human rights and freedoms must be protected by the rule of law.

"Whereas disregard and contempt for human rights result in barbarous acts which outrage the conscience of mankind, the advent of a world in which human beings enjoy freedom of speech and belief, freedom from tyranny and oppression, and freedom from fear and want has been proclaimed as the highest aspiration of the common people. To these ends we shall strive to promote respect for these rights and freedoms and progressively secure their universal recognition and observance amongst the peoples and nations of the world."

1. *All human beings are born free and equal. Endowed with reason and conscience, they should act towards one another in a spirit of brotherhood.*
2. *Everyone is entitled to rights and freedoms without distinction as to race, colour, sex, language, religion, nationality, politics, social origin, property, birth or status.*
3. *Everyone has the right to life, liberty and security of person.*
4. *No-one shall be held in slavery or servitude which are prohibited in all their forms.*
5. *No-one shall be subjected to torture or to cruel, inhuman or degrading treatment.*
6. *Everyone has the right to recognition everywhere as a person before the law.*
7. *All are equal before the law and entitled to the protection of the law...*

30. *Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or perform any acts aimed at the destruction of any of the rights and freedoms set forth herein.*

"Humanity has paid a heavy price for the lesson that nothing is more tragic and cruel than war. I believe that we have as our first priority an obligation to our children to open a clear and reliable path to peace in the twenty first century."

Daisaku Ikeda - Buddhist Leader

THE WARFARE CODE

The laws of war apply to everyone regardless of their official role or position and aim to prevent harm to human beings and ensure that international disputes are settled peacefully. The main laws governing warfare and the use of armed force are the General Treaty for the Renunciation of War [Kellogg-Briand Pact], the UN Charter, the Nuremburg Principles, the Genocide Convention, the Geneva Conventions, the Weapons Conventions and the Rome Statute of the International Criminal Court. These state that:

- *All international disputes must be settled peacefully without the use of armed force.*
- *War between nation states is prohibited and is illegal. The only circumstance in which the use of armed force is lawful occurs in defence of a state under attack.*
- *Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.*
- *That a person who commits a crime under international law acts as Head of State, a Member of Parliament or responsible Government official does not relieve him from responsibility under international law.*
- *That a person acts on an order of Government or a superior does not relieve him from responsibility under international law provided a moral choice is in fact possible to him.*
- *Planning, initiating or taking part in a war of aggression or an armed attack on another state is illegal and constitutes 'a crime against peace'.*
- *The wilful use of weapons, armaments or armed force, other than in self defence, which results in the death or injury of one or more persons is a crime.*
- *The action of wilfully killing or harming a person except in self defence is a crime.*
- *The action of torturing a person is a crime.*
- *Complicity in the commission of a crime against peace, a war crime, or a crime against humanity is a crime under international law.*
- *Taking part in co-ordinated attacks on members of a national, ethnic, racial or religious group in which one or more persons are killed is a crime of genocide.*
- *Ordering, financing or supporting fatal armed attacks on members of a national, ethnic, racial or religious group is a crime of conduct ancillary to genocide.*
- *The manufacture, possession or use of chemical, biological or toxin weapons is a crime.*
- *The manufacture, possession or use of landmines or anti-personnel explosives is a crime.*

Enforcing War Law

Holding Governments to account for their actions

Approaching your MP

Impeachment

Reporting crimes to the Police

Reporting crimes to the International Criminal Court

Private Criminal Prosecution

Obtaining an Injunction

Applying for Judicial Review

Refusing tax

Refusing Orders

Law is worthless if it is not enforced. The benefit derived from Nuremburg was the knowledge that leaders can be tried, convicted and punished as war criminals. At last it was possible to hold national leaders to account for their war crimes in court. So far however this principle has only been applied to a few leaders on the losing side.

If President Lyndon Johnson had been tried and convicted of war crimes for the bombing of Vietnam, Prime Ministers Anthony Eden for the Suez debacle, Margaret Thatcher for the sinking of the Belgrano, Saddam Hussein for gassing the Kurds and George Bush Snr for the Baghdad road massacre, it is unlikely that George Bush Jnr and Tony Blair would have contemplated waging war against Iraq.

The following section outlines preventive actions that can be taken by MPs, law enforcement authorities, servicemen and women and taxpayers to ensure that our political leaders and government officers uphold and enforce war law and never again involve Britain in an illegal war or the killing of innocent people.

Holding leaders to account for their actions

The Judgement of the Nuremburg War Crimes Tribunal propounded and reinforced the doctrine of individual responsibility. Every citizen has an overarching duty to mankind to prevent their government from waging a war of aggression.

“The very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State, if the State in authorising action moves outside its competence under international law.”

All wars are started by political leaders and never by the people. Since 1946 it has been a legal duty for citizens to disobey the orders of any political leader, military commander, law enforcement officer, judge or government official who violates the laws of war. Unfortunately few if any British citizens understand that they have a legal duty to disobey the British Government when it breaches the international laws against war.

If German citizens had stood up in numbers to prevent Hitler from waging wars of aggression, the Second World War would never have occurred. If Britons had refused to obey the illegal orders of Parliament and the Prime Minister in March 2003, then Britain would never have got involved in the war with Iraq. If MPs had known of and upheld the laws of war they would not have voted in favour of the illegal invasion and occupation. If the Parliamentary Foreign Affairs Committee had properly scrutinized the actions of the Foreign and Commonwealth Office and our representatives at the United Nations, the possibility of involvement in armed conflict would never have arisen. If taxpayers had refused to handover taxes to the British and American Governments to enable them to pay for the war, it would not have taken place.

The following suggestions are some of the non-violent ways in which MPs and citizens can prevent leaders from initiating or waging wars of aggression.

Approaching your MP

In a Parliamentary democracy the official channel open to citizens enabling them to challenge the actions or decisions of government is through their MP. MPs have a duty to represent the interests of all their constituents, regardless of their political persuasion or affiliation. In the event of a war or involvement in armed conflict, approach your MP and demand that they uphold the law and inform the government of the illegality of its actions. If an MP fails to do so, remind them of their duty under the Nuremburg law and let them know that should they condone or support the Government's plans, they render themselves criminally liable as an accessory to genocide and war crimes under section 52 of The International Criminal Court Act.

Holding Government to account

A primary duty of an MP is to hold the executive to account for their actions. When elected to Parliament, MPs with a role in government often discover that they have a conflict of interest between their duty to represent constituents' interests, their duty to revise and uphold the law, their duty to scrutinise government action, their duties in government, their duty to their political party, and their duty to their party leader. Unfortunately Britain's flawed governance system causes many of them to give their duties to their constituents a lower priority than their desire to acquiesce to Ministerial commands.

In matters of war and the use of armed force, Ministers may need to be reminded by MPs of their legal duties. If they forget those duties, they should be reminded that in war, thousands of human lives are at risk and that their primary duty to mankind under the Nuremburg law is to prevent their government from waging war and killing people.

The very essence of the [London] Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the State, if the State in authorising action moves outside its competence under international law...

It may be necessary for citizens to remind MPs and Ministers of the serious implications for them as individuals if they take part in or support a contravention of war law.

Impeachment by Parliament

It is more than 150 years since the last successful impeachment in Britain of a Minister of State. Despite recent valiant efforts by Plaid Cymru and Scottish Nationalist MPs the chances of successfully impeaching the Prime Minister for waging a war of aggression and crimes against peace are slim, but this should not stop MPs from the attempt. In theory no-one, even the Queen or the Prime Minister, is above the law. Unfortunately Britain's law enforcement authorities have become corrupt over the years and are refusing to investigate war crimes committed by The Prime Minister, the Queen, and members of Britain's political, civil and military establishment. This abject failure of law enforcement in Britain means that impeachment by Members of Parliament may be the only method available of holding our political leaders to account to the nation for their war crimes.

Reporting crimes to the police

The first act for MPs and citizens if they discover war crimes in preparation or taking place is to report their information to the police. This applies to war crimes in exactly the same way as it applies to offences such as burglary, assault or fraud. Unfortunately many Police are ignorant of war law and fail to handle complaints against Ministers of State. If this is the case then refer them to this document pointing out offences that are taking place or about to take place. It may help to remind the Police, the Crown Prosecution Service and the Courts that they have a duty under the Rome Statute and international law to enforce war law and to initiate criminal proceedings against all offenders regardless of their role, rank or position.

Reporting crimes to the International Criminal Court

The primary responsibility for initiating criminal proceedings for the offences of genocide, crimes against humanity, war crimes and conduct ancillary to such crimes lies with the law enforcement authorities of the State whose nationals have committed the offences. Only if domestic law enforcement authorities prove unwilling or unable to prosecute leaders responsible for the crimes, can the Prosecutor of the International Criminal Court in The Hague take over the proceedings. Police or private citizens wishing to initiate criminal proceedings against British leaders should approach the Attorney General for his consent to the proceedings, and only if he declines to give his consent should one approach the ICC in The Hague. Even though the chances of the ICC summoning up the courage to prosecute British war criminals are slim, it is important to persist. The world will never eradicate warfare if political leaders are able to violate these laws at will. When the day arrives that the International Criminal Court indicts, prosecutes and convicts a Head of State of the stature of Bush, Blair, Sharon or Putin, for a crime against humanity, the world will immediately become a safer place.

Initiating a Private Criminal Prosecution

If approaches to the Police and Crown Prosecution Service have failed, it is open to anyone to bring a private criminal prosecution in Britain. Although it is an unusual remedy, it is not impossible. It will depend upon the difficult task of finding a judge with both integrity and probity. For details of the steps in the process and the criteria that you will need to meet, consult a copy of Stones, the magistrates' 'bible'.

Obtaining an injunction

Another remedy open to citizens wishing to prevent ministers of state from taking illegal action, is to apply to the courts for an injunction preventing them from doing so.

Applying for a judicial review

A further remedy available to anyone wishing to prevent warfare is to request a judicial review of the relevant government decision(s). A judicial review is the process whereby government decisions are challenged in court. Unfortunately at present Britain's High Court judges are not prepared to grant permission for a judicial review of issues related to the legality of war and the country's foreign affairs, claiming incorrectly that such issues are non-justiciable and not open to challenge through the courts. This outdated and undemocratic support for warmongers, and abuse of the rule of law provides a substantial challenge to anyone wishing to pursue this route, but don't let that put you off. One day a judge with both integrity and probity will challenge the status quo and in doing so will bring Britain's outdated justice system striding forward into the 19th century.

Refusing Orders

All service personnel have a legal duty to refuse to obey manifestly illegal orders². Unfortunately because of widespread ignorance of war law only a few courageous individuals do so. If you do not know when an order is illegal, you cannot know which order to disobey. Ignorance of war law pervades every rank in Britain's Armed Forces. If Admiral Boyce had been better informed of domestic and international war law, it is likely that he would have refused to initiate the illegal invasion and occupation of Iraq, and the mass murder which ensued would never have occurred.

As the people most at risk and with the most to lose [their lives] from abuses of war law, servicemen and women as well as their families must be informed of war law so that they know and understand precisely when an order is legal or illegal. If they decide that what they are being asked to do could harm another individual or even put that person's life at risk, then they must refuse the order. Equally it is up to every member of society to support the individual serviceman or woman who takes the decision to refuse illegal orders. Unless they are rewarded for their courage in upholding the law and protected from prosecution by the government, society will never be able to uphold international war law against the forces of evil at the heart of Government.

Ordinary citizens also have a duty to refuse illegal orders. If for example you are working in an armaments factory manufacturing cluster bombs then it is your legal duty to refuse to do so. Not only is your company breaching the Landmines Act 1998, but any use of those landmines by Britain's Armed Forces in which innocent men, women or children are killed or injured, constitutes a criminal offence under the International Criminal Court Act and makes you an accessory to the offence. You may then be charged and convicted with 'conduct ancillary to genocide, a crime against humanity or a war crime'. Every individual has a duty to check that their activities or work responsibilities are entirely legitimate and in no way breach the laws of war.

² Manual of Military Law

Committing a minor crime to prevent a greater evil

It might seem extraordinary for a book advocating the rule of law to suggest committing a criminal offence, but the horrific nature of the crimes of waging war or committing genocide demand a forceful response. When all other approaches have failed it may be necessary to commit a non-violent criminal offence to attempt to prevent the government from waging war or committing serious crimes such as genocide, crimes against humanity or war crimes. It is a defence in law³ to use reasonable force to prevent crime. If a person commits what would otherwise be a crime in order to prevent 'a greater evil', the death or serious injury to a person, they have a valid defence of 'lawful excuse'. War and military conflict is a prime example of 'a greater evil'.

Not only are law-abiding citizens obliged under the Nuremburg law to disobey the instructions and commands of a government when it violates the laws of war, but we are obliged by the tenets of morality to breach lesser laws in the interests of preventing the deaths of innocent men, women and children. If by immobilising military equipment, breaking into a military base, disabling weapon delivery systems, or taking part in an unauthorized demonstration outside Parliament you do so with the purpose of halting or preventing war you have a valid defence in law should you be brought before a court.

Refusing to pay tax

An effective way of halting war is to stop the money that pays for war. Few people know that since July 1st 2002 [1/9/01 in Britain] it has been a criminal offence in every State that has ratified the Rome Statute, to provide the means for the commission of the offences of genocide, crimes against humanity and war crimes [Article 25]. This means that it is a crime of 'conduct ancillary to genocide' in Britain to handover tax payments to the Inland Revenue and thereby facilitate the commission of genocide. If as a taxpayer [individuals or businesses] you have evidence that members of the government are committing any one of the six ICCA crimes, you are duty bound to refuse to handover any taxes, duties, fines or loans that could be used by the government to facilitate the crimes. For many years courageous activists have made the moral choice to withhold a portion [10%] of their taxes from the government as a matter of conscience, now, with the ratification of the Rome Statute they have the criminal law on their side. Every taxpayer has a duty in law to refuse to handover tax to the Government, IF the Government uses it to facilitate the commission of genocide, crimes against humanity or war crimes.

³ Section 3 The Criminal Law Act 1967

False Legal Advice

on the legality of the war with Iraq

In March 2003 the Prime Minister received and passed on false legal advice on the legality of the proposed war with Iraq. Tony Blair's false assurances that the war would be legal deceived Parliament and the nation into supporting America in waging an illegal war of aggression. The subsequent armed invasion and occupation of Iraq, which killed and injured tens of thousands of innocent Iraqis, breached all the international laws against war and violated the world's most important treaties.

Not only was the legal advice false and wrong in law, but it omitted all mention of the international treaties, conventions and laws against war. Instead of warning MPs and Peers that military action would be illegal; the Attorney General provided a false legal rationale to the Prime Minister basing his claim on the spurious argument of the revival of a 12 year old Security Council Resolution relating to the expulsion of Iraq from Kuwait.

Deceptions in the legal advice included the lies that armed force can be authorised by the Security Council, that it can be used to avert overwhelming humanitarian catastrophe or even to pre-empt an attack. In their advice to the Foreign Affairs Committee, the FCO made the false claim that Security Council resolution 1441 revived an earlier authorisation for the use of force. This was another lie. Resolution 1441 did no such thing.

If in the future, Cabinet Ministers, MPs, Peers, military officers and others are to make legitimate decisions relating to warfare and military conflict, they must be briefed correctly on international war law and the rights and wrongs inherent in military conflict. To this end we have developed an example of the correct legal advice which should have been provided by government legal officers to the Prime Minister, and MPs prior to the war with Iraq. As we cannot trust the Prime Minister, the Attorney General or the Government's law officers to provide us with correct legal advice on the legality of war, we recommend that decision makers use this material to help them determine for themselves whether planned military conflict complies with or violates international law.

We recommend that this document or a similar publication becomes required reading for MPs, peers, military officers and senior civil servants prior to taking up their position. If they are to make valid decisions about waging war, which are the most important decisions a leader or government officer ever has to make, they must be fully and correctly informed on the law and the personal implications should they breach it. It would also help if the media publish this document in full in the event that Britain is ever again involved in preparations for war. No citizen or taxpayer should fund war or get involved in the use of armed force without fully understanding their legal position and the implications of unwittingly becoming an accessory to the world's worst war crimes.

Chris Coverdale

Correct Legal Advice

What the Attorney General should have said in his legal advice

To: The Prime Minister

From: The Attorney General

March 2003

Military action against Iraq

You asked me for advice on the legality of military action against Iraq.

Be advised that the proposed armed attack on Iraq is illegal in both international and domestic law, will violate major international treaties, and render all those involved with the decision liable to prosecution for the most serious criminal offences in law. Under no circumstances should you entertain such a course of action.

If Britain joins America and invades Iraq we will be operating illegally. The use of sophisticated weapons to attack Iraq killing its citizens violates the General Treaty for the Renunciation of War, the UN Charter, the Nuremburg Principles, the Geneva Conventions and the Rome Statute as well as constituting crimes of 'genocide, crimes against humanity and war crimes' under the International Criminal Court Act 2001.

I attach a report detailing the grounds on which this advice is based. I recommend that every member of the Cabinet, every MP, senior civil servant, judge and military officer reads it and understands its implications before making decisions or publishing statements associated with the use of armed force.

Finally, I have included recommendations for a lawful non-violent approach to solving the problem of Saddam Hussein and for escaping from the commitments you made to George Bush. I hope this is of help, and remind you that I cannot support the proposal for war under any circumstances.

Attorney General

THE LEGAL GROUNDS AGAINST WAR

1. All war is illegal.

Wars of aggression were outlawed by the General Treaty for the Renunciation of War in 1928. This treaty, known as the Kellogg-Briand Pact, was the result of a decade of negotiations to prevent war and was motivated by the tragedy of World War I. The world's major nations, including Britain, America, France, Germany and Japan signed and ratified the Pact, condemning recourse to war as an instrument of national policy and agreeing to settle all disputes by peaceful means. This treaty is still in force.

ARTICLE I The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

ARTICLE II The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

The proposed attack on Iraq will violate this solemn and binding treaty which formed the legal basis for the convictions of the German leaders at Nuremburg after the Second World War. Should you go ahead with the invasion of Iraq, we will all be personally liable for the same crime of waging a war of aggression for which Hitler's colleagues were convicted and hanged in 1946.

2. Armed attacks on another State are illegal.

When we signed and ratified the UN Charter we made a binding agreement with all UN Member States never to threaten or attack them and to settle all disputes peacefully. The main terms are laid out in the Preamble and Articles 1 and 2 of the Charter, of which 2.3 and 2.4 outline the main agreements forbidding the use of armed force.

2.3 All members shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered.

2.4 All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Both the Pact of Paris and the UN Charter were intended to eliminate the indiscriminate slaughter of human beings and to ensure that in future all international disputes would be solved peacefully through the application of the rule of law. An armed attack on Iraq would breach this agreement and put Britain's membership of the Security Council at risk.

3. Warfare is illegal in customary international law

The Judgment of the Nuremburg War Crimes Trials is the main customary international law relating to armed conflict between nations. When convicting the German leaders, the judges confirmed the illegality of war describing it as the supreme international crime.

“After the signing of the [Kellogg-Briand] Pact, any nation resorting to war as an instrument of national policy breaks the Pact. In the opinion of the Tribunal, the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such war is illegal in international law; and that those who plan and wage such a war with its inevitable and terrible consequences are committing a crime in so doing.”

“The charges in the indictment that the defendants planned and waged aggressive wars are charges of the utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world. To initiate a war of aggression therefore, is not only an international crime, it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”

These statements are crystal clear. The proposed armed invasion of Iraq will constitute a war of aggression, will be illegal and will comprise the supreme international crime.

4. The removal of Saddam Hussein by force would be illegal.

Action taken against Saddam Hussein or his regime must be conducted according to international law. If you wish to stop his repression and cruelty to his people, then do so by legal means. This can be done by supporting concerted non-violent action under Security Council auspices to arrest him and place him on trial for his crimes. As I have mentioned before, to threaten or use armed force to bring about ‘regime change’ is illegal under the terms of the UN Charter.

5. Unilateral or bilateral action is illegal.

Chapter VII (Articles 39 - 51) of the UN Charter governs the activities of the Security Council. Article 39 makes it absolutely clear that it is the Security Council that must determine the existence of a threat to the peace, not its individual members. The proposed Coalition with America breaches the terms of the UN Charter.

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

6. Pre-emptive attacks are illegal.

Pre-emptive attacks were made illegal 150 years ago as a result of Britain's underhand pre-emptive attack on an American vessel "The Caroline" at Niagara. Article 51 of the UN Charter also makes it quite clear that the only circumstance in which a State may use armed force is after it has been attacked and before the Security Council has implemented its own measures to maintain peace and security.

51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary to maintain or restore international peace and security.

The law is clear. A pre-emptive attack on Iraq would be illegal. The only legitimate use of armed force against Iraq would be to defend ourselves if we were under attack. Should this occur we may legitimately use proportionate force to defend ourselves, but we may do so only until the point at which the Security Council implements measures to resolve the conflict and keep the peace. Should you attack Iraq, Iraq is legally entitled to defend itself and to call upon the United Nations Security Council for help.

7. The UN Security Council cannot authorise war or the use of armed force.

The UN Security Council is a PEACEKEEPING body and it cannot authorise an armed military intervention into another country's affairs. Articles 41 and 42 govern Security Council affairs and specify the measures it can take to diffuse conflict.

41. The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

42. Should the Security Council consider that measures provided for in Article 41 would be inadequate or have 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. Such action may include demonstrations, blockade and other operations by air, sea or land forces of Members of the United Nations.

Be advised that in international law neither Britain nor America can decide the measures to employ against Saddam Hussein. Only the Security Council is authorised to decide such measures, and whatever they decide it must NOT involve the use of armed force.

8 Killing or injuring people is illegal

The wilful killing of any person is a crime and is never countenanced, condoned or 'right' in law. The Human Rights Act 1998 makes this clear and specifies that the only exception occurs when a person is accused of a capital crime, arrested and tried in a duly constituted court of law and convicted of an offence for which the pre-ordained sentence is death. Then and only then is it legal to kill that person.

2.1 "Everyone's right to life shall be protected by law. No-one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided in law."

In war, if a serviceman is attacked and their life is threatened then they may use a weapon to halt the attack and disable their attacker, but deliberately killing their attacker, even if that person is wearing a uniform and classified as an enemy, is a crime under the Rome Statute and the Geneva Conventions. It is never legal for members of HM armed forces to use a weapon to kill another person. Just as it is a crime for the IRA to set off a bomb in a pub, or for Al Qaeda to fly planes into the World Trade Centre, it is a criminal offence to cause the death of another human being by ordering armed forces to fire a cruise missile into Baghdad, drop a cluster bomb in Basra or shoot a suspected bomber.

If an Iraqi dies as a result of the actions of Coalition forces, then all those responsible for giving or transmitting the orders that caused the death commit a criminal offence and can be prosecuted for murder and conspiracy to murder. These are crimes under the Accessories and Abettors Act, the Offences Against the Person Act, the Criminal Law Act 1977, and the Criminal Attempts Act 1981. Law that applies to one applies to all even in times of war. It will be wise for anyone involved in a decision to use armed force, to acquaint themselves with the criminal offences contained in these Statutes and the sentences that can be imposed on those convicted of an offence.

9. Killing Iraqis will constitute an act of Genocide.

Genocide is the most serious crime in international and domestic law. Under Article 25 of the Rome Statute and Section 51 of the International Criminal Court Act 2001, any British resident who intentionally kills members of a national, ethnic, racial or religious group commits genocide. The legal definition of genocide is.

For the purpose of this Statute "genocide" means any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group*
- (e) Forcibly transferring children of the group to another group.*

When Britain enacted The International Criminal Court Act 2001 we incorporated the crimes of ‘genocide, crimes against humanity, and war crimes’ into British criminal law. A summary of sections 51 and 52 of the ICCA states that:

It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity or a war crime, or to engage in conduct ancillary to such an act. This applies to acts committed in England or Wales or outside the United Kingdom by a UK national, resident or person subject to UK service jurisdiction.

Should you go ahead with the decision to attack Iraq and thereby kill one or more Iraqi nationals, all those Britons involved in making the decision, supporting the decision or implementing the decision will be liable for crimes of ‘genocide’ or ‘conduct ancillary to genocide’ and subject to the sanctions of criminal law. The proposed invasion implies that you will almost certainly commit genocide. You may argue that you are not setting out with **intent** to destroy a national group, but as the legal meanings are clearly defined in the legislation you will find it difficult to escape culpability.

66. A person has intent in relation to ‘conduct’ where he means to engage in the conduct, and in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events.

You have acknowledged in public that casualties would be inevitable if the invasion goes ahead. This means that you are aware that deaths and serious injuries to Iraqi citizens [members of a national group] will ensue in the ordinary course of events. This public admission is proof of intent to destroy part of a national group. It makes no difference if American, British, Australian or Spanish forces do the killing. In law everyone in the Coalition will be jointly and severally responsible for every Iraqi death resulting from the violence. It is important to remember that although the Americans and Japanese have not ratified the Rome Statute and are not subject to its jurisdiction, Britain, Australia and Spain have ratified the Statute and their citizens can be held to account in The Hague for deaths caused by Coalition forces. If the ICC decides to prosecute us for one or more of these crimes, UK law enforcement authorities are legally obliged to arrest us and hand us over for trial in The Hague. Article 27 of the Rome Statute makes it quite clear that all of us will be criminally liable regardless of our position in Government or Parliament.

This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as Head of State or Government, a member of a Government or Parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it in and of itself, constitute a ground for reduction of sentence.

Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

All of us without exception are subject to this law. As well as you and I, The Queen, the Lord Chancellor, the Lord Chief Justice, the Cabinet, every MP, peer, military officer, civil servant, journalist or taxpayer who does anything to condone, support or take part in the invasion of Iraq, are all bound by this law and subject to the sanctions of the court. It is our duty to inform every person involved in the proposed war of the terms of this Act and the likelihood of their prosecution should any Iraqis be killed or injured.

[NB. It will be important to explain this law and its implications to Her Majesty Queen Elisabeth as I am reasonably certain that she is not aware of the serious implications it would have for her if she signs an order for HM Forces to take part military conflict, let alone an illegal invasion and occupation of a member state of the United Nations.]

10. Leaders are responsible for the crimes of their subordinates.

Sections 65 and 78 of the International Criminal Court Act 2001 make it clear that regardless of who launches the rockets, fires the cruise missiles, drops the cluster bombs or deploys depleted uranium shells, the ultimate responsibility for any resulting deaths, injuries or destruction lies with those who ordered the attack to take place.

65. Responsibility of commanders and other superiors

A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his effective command and control or his effective authority and control... A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.

78. Crown Application

This Act binds the Crown and applies to persons in the public service of the Crown.

IMPLICATIONS

As the proposed invasion and occupation of Iraq violates the laws against war, it will render all those involved with it criminally liable in both domestic and international law. In the event that you go ahead with the invasion and Iraqi casualties ensue, British residents involved in aiding, abetting, counselling or procuring the commission of offences against the Iraqi people are liable to be charged with 'conduct ancillary to genocide, crimes against humanity and war crimes' under Section 52 of the ICC Act 2001. Although it is never possible to arrest and try everyone responsible for war crimes, it is quite possible that up to 1000 political, civil and military leaders, including every member of the Cabinet and many of our colleagues in Parliament will be prosecuted for the world's most serious crimes.

RECOMMENDATIONS

I advise that you abide by this country's obligations and duties and confine international affairs to the legal and legitimate path outlined by the UN Charter. We must not allow the Bush Administration's illegitimate interventions on the international stage to drag this country into an illegal war.

I suggest that you turn down George Bush's invitation to join a coalition, informing him that as founding signatories to the General Treaty for the Renunciation of War and the UN Charter both our nations are constrained by international law to operate under the auspices of the Security Council and to settle the Saddam problem by legal and peaceful means. You might also remind him that under Article VI of the American Constitution international treaties are American law, and that if he invades Iraq he not only violates the Kellogg-Briand Pact, the UN Charter, the Nuremburg Judgement, the Nuremburg Principles and the Genocide Convention, but he violates the American Constitution as well as committing the world's most serious crimes. If he still insists on attacking Iraq, remind him that if Iraqi nationals are killed it will constitute an act of 'genocide' which is a crime in American domestic law under the Proxmire Act 1988.

I suggest that it will help Britain's international reputation, if at the same time that you refuse to support America's illegal proposal, you publicly reaffirm our determination to support the United Nations, assist the Weapons Inspectorate's efforts in finding and destroying Iraq's Weapons of Mass Destruction, uphold international treaties and support the International Criminal Court. As a lawyer, it will be in your interest to be seen to be upholding the rule of law. Turning down George Bush's illegal proposal provides excellent opportunities to reinforce our ethical foreign policy initiative and remind America and the world that warfare and military conflict have been outlawed for decades. Refusing George Bush at this stage may be difficult, but by repeating in public that we are committed to the maintenance of a fair, just and equitable world for future generations, you will appeal to the vast majority of world opinion and be seen as a statesman of integrity, probity and stature. By adopting this peacekeeping approach, your place in history will be assured as the leader who caused the world to eliminate war, rather than Britain's first convicted war criminal.

Attorney General

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