

Evidence of genocide

Reported to the Metropolitan Police on 20/12/07 by Simon Moore, Rob Little and Chris Coverdale of *We Are Change* and *The Campaign to Make War History*

- 1/ We assert that members of HM armed forces committed genocide against the Iraqi people, which conduct constitutes a serious crime in domestic criminal law under sections 51 and 52 of The International Criminal Court Act 2001.

Facts

Prior to September 2002 the Prime Minister of Great Britain decided to form a Coalition with the United States of America to greatly increase the number and ferocity of armed attacks against the State of Iraq with the intention of removing the regime of Saddam Hussein and destroying Iraq's Weapons of Mass Destruction. Subsequently members of HM Government gave orders for increased numbers of HM armed forces to be deployed to the Middle East in readiness for a full-scale armed invasion of Iraq. The invasion and occupation of Iraq began on March 20th 2003 and reliable sources (Iraq Body Count) indicate that to date at least 78,743 Iraqi civilians¹ have died violent deaths as a result of the actions of Coalition forces.

A crime of genocide against the people of Iraq

We contend that HM armed forces joined a Coalition of States and took part in the illegal armed invasion and occupation of Iraq and used illegal high explosive weapons such as cruise missiles, rockets, cluster bombs, mortars and depleted uranium artillery shells in thousands of attacks against villages, towns and cities in Iraq, and as such are jointly and severally responsible for killing tens of thousands of Iraqi men women and children. We contend that this act constitutes a crime of genocide in the law of England and Wales under section 51 of the International Criminal Court Act 2001.

The Rome Statute of the International Criminal Court

In July 2002 Australia became the sixtieth State to ratify the 1998 Rome Statute of the International Criminal Court and as a result the world's first international criminal law came into effect. The Rome Statute introduced the universal criminal offences of 'genocide, crimes against humanity and war crimes', and set up a permanent international criminal court in The Hague with jurisdiction over

¹ Certified authenticated violent deaths of Iraqi citizens

these crimes.

The international Criminal Court Act 2001

By enacting the International Criminal Court Act 2001 (ICCA), Parliament ratified this international treaty, introduced the criminal offences of 'genocide, crimes against humanity, war crimes and conduct ancillary to such crimes' into UK domestic criminal law, and at the same time ceded ultimate jurisdiction over these crimes to the International Criminal Court in The Hague. The following are relevant extracts from the ICCA:

OFFENCES UNDER DOMESTIC LAW

50 (1) In this part
“genocide” means an act of genocide as defined in Article 6,

ARTICLE 6 **Genocide**

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, ethnic, 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...

51 Genocide, crimes against humanity and war crimes

(1) 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.

(2) This section applies to acts committed –
(a) in England or Wales, or
(b) outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction.

By using high-explosive, indiscriminate weapons such as cruise missiles, rockets, cluster bombs, depleted uranium tipped artillery shells, and mortars against targets in Iraq, American and British armed forces knowingly and deliberately caused the deaths of at least 78,000 Iraqi men, women and children.

66 Mental element

(3) For this purpose
(a) a person has intent –
(i) in relation to conduct, where he means to engage in the conduct, and

(ii) 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; and

(b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

We contend that these killings were carried out with intent to destroy members of the Iraqi national group. The grounds for describing these deaths as intentional [as defined in Article 66.3(a) of the Act] are that officers of HM forces, gave orders to fire such weapons, knowing that by the nature of their design and purpose that the explosive power of these weapons when detonated or hitting the target would result in the deaths of individuals within the vicinity of the explosion; and that this awareness of the mortal consequences of their actions on Iraqi citizens constituted “intent to destroy members of a national group” and as such is a crime of genocide.

50 (2) In interpreting and applying the provisions of those articles the court shall take into account

(a) any relevant Elements of Crimes adopted in accordance with article 9.....

(3) The secretary of State shall set out in regulations the text of the Elements of Crimes referred to in subsection (2) as amended from time to time

The regulations shall be made by statutory instrument which shall be laid before Parliament after being made.

The relevant Elements of Crimes were adopted in accordance with Article 9 of the Rome Statute on the 4th May 2004 when the Secretary of State issued Statutory Instrument 2004 No 1080. The International Criminal Court Act 2001 (Elements of Crimes) Regulations. The relevant section states:

Genocide by killing

Elements

- 1. The perpetrator killed [4] one or more persons.**
- 2. Such person or persons belonged to a particular national, ethnic, racial or religious group.**
- 3. The perpetrator intended to destroy, in whole or in part, that national, ethnic, racial or religious group, as such.**
- 4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.**

Notes [4] The term killed is interchangeable with the term “caused death”

We contend that the intentional killing of Iraqi citizens, members of a national group, by means of high explosive weapons took place on thousands of occasions since March 20th 2003, and that such conduct taking place in the

context of the armed invasion and occupation of Iraq ordered by members of the British and American Governments created a manifest pattern of similar conduct throughout the State of Iraq and as such (Element 4) constitutes genocide by killing.

- 2/ We assert that the Prime Minister, Tony Blair, the Foreign Secretary, Jack Straw, the Defence Secretary, Geoff Hoon, members of the cabinet and other members of HM Government engaged in genocide and conduct ancillary to genocide against the Iraqi people, which conduct constitutes serious crimes in English law under sections 51 and 52 of The International Criminal Court Act 2001 (ICCA), and in international criminal law under Article 25 of the Rome Statute of the International Criminal Court.

Facts

Analysis of Governmental affairs shows that The Prime Minister decided in 2002 to form a Coalition with the Government of the United States of America to undertake the invasion and occupation of Iraq. In a vote in Parliament on March 18th 2003 412 MPs voted in favour of war knowing that armed attacks by Coalition forces using high-explosive weapons would result in the death and injury of Iraqi citizens.

Evidence of foreknowledge of the crime

Evidence of foreknowledge that the outcome of their decision would result in the deaths of innocent Iraqi civilians is contained in the final two paragraphs of the speech by Jack Straw in closing the debate in Parliament on March 18th 2003 (Hansard Vol 401 No.65 Page 902).

“But as elected Members of Parliament, we all know that we will be judged not only on our intentions, but on the results, the consequences of our decisions... Yes of course there will be consequences if the House approves the Government’s motion. Our forces will almost certainly be involved in military action. Some may be killed; so too, will innocent Iraqi civilians... I urge the House to vote with the Government tonight.”

We contend that the conduct of Tony Blair (former Prime Minister), Jack Straw (then Foreign Secretary now Justice Minister), Gordon Brown (former chancellor of the Exchequer and current Prime Minister), John Prescott, members of the Cabinet, the Attorney General, 412 Members of Parliament and others, in preparing for and planning the invasion and occupation of Iraq, and subsequently commanding HM armed forces to attack targets in Iraq, constitutes the crimes of genocide and conduct ancillary to genocide under sections 51 and 52 of the International Criminal Court Act 2001.

52 Conduct ancillary to genocide, etc. committed outside jurisdiction

(1) It is an offence against the law of England and Wales for a person to engage in conduct ancillary to an act to which this section applies.

(2) This section applies to an act that if committed in England or Wales would constitute -

- (a) an offence under section 51 (genocide, crime against humanity or war crime), or**
- (b) an offence under this section, but which, being committed (or intended to be committed) outside England and Wales, does not constitute such an offence.**

Ancillary conduct is defined in ICCA section 55

55. Meaning of “ancillary offence”

(1) References in this Part to an ancillary offence under the law of England and Wales are to -

- (a) aiding, abetting, counselling or procuring the commission of an offence,**
- (b) inciting a person to commit an offence,**
- (c) attempting or conspiring to commit an offence, or**
- (d) assisting an offender or concealing the commission of an offence.**

(2) In subsection (1)(a) the reference to aiding, abetting, counselling or procuring is to conduct that in relation to an indictable offence would be punishable under section 8 of the Accessories and Abettors Act 1861

Section 8 of The Accessories and Abettors Act 1861 states :

8. Abettors in misdemeanours

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.

Evidence of Genocide

Actus Reus

1. The Prime Minister (Tony Blair) gave the orders to join the armed invasion and occupation of Iraq thereby causing the deaths of tens of thousands of Iraqis. Whatever the final number of deaths, it is more than 1 person and therefore meets the first criterion for genocide by killing – **the perpetrator caused the deaths of one or more persons.**
2. The vast majority of the victims were Iraqis. The sole reason for killing these men, women and children is that they were Iraqis living in Iraq. This meets the second criterion for genocide by killing – **such persons belonged to a particular national group.**

Mens Rea

3. That Tony Blair set out with the intention of destroying part of a national group can be established from his (i) published statements, (ii) choice of conduct [course of action] and (iii) prior knowledge of the consequences of his decisions.

(i) The Prime Minister made numerous assertions over the past four years when being questioned about the war with Iraq that indicate his state of mind and his intentions. “it was the right thing to do”, “I had to make a hard decision”, “there will be casualties”. These and other statements made in TV and radio interviews prior to the start of the conflict confirm that he knew that his chosen course of action (the use of armed force) would cause the death of Iraqis thus demonstrating that he set out knowing that he would kill Iraqis. Perhaps none is more telling than the statement made to members of the Armed Forces at the Basra airbase during his ‘farewell’ tour of Iraq as reported by Martin Amis in the Guardian of 2nd June 2007 and repeated by Martin Bell in his book *The Truth That Sticks*.

“So we are killing more of them than they kill us..... You’re getting back out there after them. It’s brilliant actually.”

(ii) The Prime Minister chose to wage war and use armed force in the certain knowledge that Iraqis would be killed. Although he had at least 100 peaceful legal options open to him such as negotiating peacefully, continuing with the UNMOVIC weapons inspections, continuing the destruction of Iraq’s long range rockets, allowing the UN Security Council to find a peaceful solution, withdrawing totally from involvement with Iraq, disabling Iraq’s military communications systems, instigating anti-government sanctions or continuing UN sanctions, he chose to pursue the illegal action of waging a war of aggression in the certain knowledge that

the consequence would be injury and death to thousands of Iraqis. When a person is faced with a number of alternative courses of action and then deliberately chooses to pursue the path of death and destruction over the numerous paths of life, negotiation and assistance their free choice of the course of action that will result in causing death proves 'intent to kill'. Just as with the IRA bombings in London, Birmingham and Omagh, the Prime Minister deliberately ordered armed attacks on villages, towns and cities using cruise missiles, rockets, cluster bombs, mortars and depleted uranium tipped artillery shells knowing that HM armed forces' use of high explosives would kill thousands of Iraqis - members of a national group.

A person only chooses to use a cruise missile if they intend to kill people in the vicinity of the explosion; a person only chooses to use cluster bombs [an indiscriminate weapon of mass destruction containing 256 bomblets] if they intend to kill large numbers of men, women and children within three kilometres of the target; if a person chooses to use depleted uranium tipped artillery shells with a half life of a thousand years knowing that it will cause birth defects, cancers, deformities and miscarriages it demonstrates their intention to "**cause serious bodily or mental harm to members of the group and deliberately inflict on the group conditions of life calculated to bring about its physical destruction in whole or in part.**" Any person who makes the deliberate choice to use weapons of this nature does so with the intention of killing large numbers of people. If the Prime Minister and the other offenders had wanted to forcefully disarm or temporarily disable Iraqi nationals they could have ordered the use of tear gas or tazers or other non fatal options.

Further evidence of the PM's choice to destroy Iraqis is provided by his decision to vote in favour of war with Iraq when Parliament was given the choice on March 18th 2003. Clear evidence that the Prime Minister and 411 other MPs had both 'knowledge' and 'intent' that the outcome of their decision would result in the deaths of British troops and innocent Iraqi civilians, is contained in the final two paragraphs of the speech by Jack Straw in closing the debate in Parliament on March 18th 2003 (Hansard Vol 401 No.65 Page 902).

"But as elected Members of Parliament, we all know that we will be judged not only on our intentions, but on the results, the consequences of our decisions... Yes of course there will be consequences if the House approves the Government's motion. Our forces will almost certainly be involved in military action. Some may be killed; so too, will innocent Iraqi civilians... I urge the House to vote with the Government tonight."

(iii) Further evidence of the Prime Minister's intent to kill is provided in the Secret Legal Advice from the Attorney General to the Prime Minister of March 7th 2003 [2 weeks in advance of the invasion]. In the final section of his legal advice, the Attorney General draws attention to the potential

legal consequences of going ahead with the war without obtaining a second resolution.

“You will wish to take account of the ways in which the matter might be brought before a court... Two further, though probably more remote possibilities are an attempted prosecution for murder on the grounds that the military action is unlawful and an attempted prosecution for the crime of aggression. Aggression is a crime under customary international law which automatically forms part of domestic law...”

The Attorney General points out the possibility of facing prosecution for ‘murder’ and ‘aggression’. This means that two weeks before the debate in Parliament, both Tony Blair and the Attorney General knew full well that waging a war of aggression with Iraq was a crime and that by killing innocent Iraqis they would be committing murder. These three sections of evidence meet the third of the criteria for genocide by killing and make it clear that **the perpetrator intended to destroy, in whole or in part, the Iraqi national group as such.**

4. In relation to the fourth criterion for genocide by killing - **The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.** The nature of the conduct, waging a war of aggression and using overwhelming armed force against Iraqi conscripts and civilians was repeated on 40,000? occasions across Iraq and was thus **a manifest pattern of similar conduct directed against the group**, but every armed attack during both the invasion and armed occupation was designed to kill innocent people in the vicinity and as such was **conduct that could itself effect such destruction.**

Intent to commit genocide

We assert that by making public and private statements in support of an attack on Iraq, by voting in Parliament in favour of armed action, by agreeing in Cabinet to the policy, by signing or giving orders to others to conduct armed attacks against Iraq, by providing assistance with the invasion and occupation of Iraq in the knowledge that innocent men, women and children would be killed, the Prime Minister, members of the Cabinet, the Attorney General, 412 Members of Parliament, and others did aid, abet, counsel and procure the commission of genocide against the Iraqi people and as accessories to genocide are liable to be tried, indicted and punished as principal offenders for the crime under ICCA s. 51 and 52.

International Criminal Law

- 3/ We contend that the conduct of The Prime Minister, members of the Cabinet, the Attorney General, 414 Members of Parliament and others in commanding, HM armed forces to join a Coalition of states to attack Iraq in the knowledge that its citizens would be killed, constitutes a crime of genocide under Articles 6 and 25 of the Rome Statute of the International Criminal Court (RSICC) rendering the offenders criminally responsible and liable for punishment for such a crime within the jurisdiction of the International Criminal Court.

Article 25 Individual criminal responsibility

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a 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;**
- (d) 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. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or**
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;****

We assert that the actions of HM armed forces in using indiscriminate weapons such as cruise missiles, rockets, cluster bombs and depleted uranium shells against targets in built up areas in Iraq, in the knowledge that such attacks would kill Iraqi men, women and children constitutes genocide as defined in Articles 6 and 25.3(a) of the RSICC and as such renders the aforementioned leaders and commanders criminally responsible for ordering, soliciting and inducing such a crime, which itself is a crime under RSICC Article 25.3(b).

We draw your attention to RSICC Articles 27 and 28 which place responsibility

for the crime of genocide with those leaders and commanders responsible for its commission and negate the claims that the royal prerogative or parliamentary privilege take priority.

Article 27
Irrelevance of official capacity

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 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.***
2. ***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.***

Article 28
Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court :

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where :

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or were about to commit such crimes; and***
- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.***

The Nuremburg Law

[The duty to refuse to take part in or assist the state in waging illegal war]

1. We submit that every human being has a duty in international law under the Nuremburg Principles to refuse the orders, commands and laws of the State where that State is in violation of the laws against war.
2. As the world's first major war crimes trial, the Nuremburg Tribunal provided the principles and tenets that now form the basis of customary international war law.

In 1946 Germany's leaders were convicted 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 highlighted 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 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 [Nuremburg] 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...

3. The Nuremburg and Tokyo War Crimes Trials were the first occasions in modern history when political leaders were held to account for their crimes in court. 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 both Germany and Japan had ratified the Kellogg-Briand Pact, their leaders, by breaching the Pact, had committed serious crimes for which they were personally responsible and for which they were convicted and punished.
4. The reason why the Nuremburg trials are 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 then used the Nuremburg judgment as the basis for the statutory laws against war agreed by the UN

General Assembly which were entitled the Nuremburg Principles in recognition of their source.

5. The single most important legal development derived from the Nuremburg judgment is the focus on the responsibility of the individual in matters of international warfare. Those responsible for waging war are to be held to account in court. This is reflected in English law in Article 24 Section VI of the Manual of Military Law which states:-

“24. If a person who is bound to obey a duly constituted superior receives from the superior an order to do some act or make some omission which is manifestly illegal, he is under a legal duty to refuse to carry out the order and if he does carry it out he will be criminally responsible for what he does in doing so.”

6. Until 1946 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. Furthermore, the Nuremburg judgement made it clear that it was not only Heads of State that could be indicted, but all those individuals who together were responsible for planning, supporting, condoning, funding or taking part in aggressive war. This is also reflected in English law in Article 25 of Chapter VI of the Manual of Military Law which states:-

“25. The privileges of Parliament do not apply to criminal matters and the members of either House are subject to the same rules regarding criminal responsibility as any other citizen with the exception that they cannot be made criminally responsible in the ordinary courts for anything said by them while in their places in Parliament when it is sitting.”

6. The Nuremburg Principles became international statute criminal law when they were adopted by the United Nations General Assembly in 1950. As these seven principles are the world's primary international laws against war, it is the duty of every citizen of Member States of the United Nations to uphold and abide by these laws.

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.

7. We assert that in commanding the armed invasion and occupation of Iraq in March 2003, the Prime Minister, members of the Cabinet, 412 MPs, Peers, officers in command of HM armed forces and others committed crimes against peace, war crimes and crimes against humanity as they are defined under Principle VI of the Nuremburg Principles. This is the same crime [a violation of the Kellogg-Briand Pact] for which Germany's leaders were convicted and hanged at Nuremburg in 1946.
8. We submit that every citizen of Britain who knowingly hands over taxes to HM Government condones, supports and assists the British Government in waging the illegal war against the people of Iraq and as such is engaged in a crime of 'conduct ancillary to genocide, crimes against humanity and war crimes' and additionally commits a crime of 'complicity in a crime against peace' under Principle VII of the Nuremburg Principles.

Conduct ancillary to genocide committed by law enforcement officers

Finally we must point out that members of law enforcement authorities in Britain [the police, the CPS, the Judiciary, the Attorney General, the Law Officers Department and the Ministry of Justice] have a statutory duty in both English and International lawⁱ to investigate these crimes and to arrest, charge and prosecute offenders. I must also point out that deliberate repeated refusalsⁱⁱ to investigate, arrestⁱⁱⁱ or detain known genocide offenders [war criminals] for the indictable offences explained above is a criminal offence in England and Wales of 'conduct ancillary to such crimes' and renders those members of the law enforcement authorities who have repeatedly refused to investigate the crimes and arrest offenders liable to prosecution in England and Wales under section 52 of the International Criminal Court Act 2001 or in the ICC in The Hague under Article 25 of the Rome Statute of the International Criminal Court. Both are indictable crimes and both render convicted offenders liable to life imprisonment.

Chris Coverdale, Rob Little, Simon Moore
for ***We Are Change*** and ***The Campaign to Make War History***
London December 2007

ⁱ The Rome Statute of the International Criminal Court.

ⁱⁱ The Police, the CPS, the Judiciary and the Attorney General have all refused to initiate criminal proceedings against the perpetrators of the genocide of the Iraqi people on more than 120 separate occasions over the past four and half years. Each refusal is a crime of 'conduct ancillary to genocide' by the individual law officer.

ⁱⁱⁱ Recent refusals by the Metropolitan Police to assist members of the Peace Strike in making citizen's arrests of Cabinet Members for the indictable offences of 'genocide' and 'conduct ancillary to genocide' render the police officers concerned criminally liable for 'conduct ancillary to genocide'.

War Law and War Crimes

The armed invasion and occupation of Iraq is illegal in international and domestic law, violates treaties and renders those involved criminally liable for war crimes.

When Tony Blair and the Attorney General claimed that the war with Iraq was legal and authorised by the Security Council they lied. The use by Britain's armed forces of cruise missiles, rockets, cluster bombs and depleted uranium artillery shells to attack villages, towns and cities in Iraq killing Iraqi citizens violates the International Treaty for the Renunciation of War, the UN Charter and the Rome Statute and constitutes a crime against peace under Article VI of the Nuremburg Principles as well as genocide and a crime against humanity under the International Criminal Court Act 2001.

All war is illegal.

War was outlawed in 1928 by the International Treaty for the Renunciation of War [the Kellogg-Briand Pact]. Sixty three nations including Britain, America, France, Germany and Japan ratified the Pact condemning recourse to war and agreeing to settle disputes peacefully. 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 Kellogg-Briand Pact formed the legal basis for the Nuremburg War Crimes Trials. The attack on Iraq renders Britain's political, civil and military leaders liable for the same crime of waging aggressive war for which Germany's leaders were convicted and hanged in 1946. The judgement concluded:

"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."

"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."

The Nuremberg War Laws

These seven international war laws derived from the Nuremberg and Tokyo War Crimes Tribunals were adopted as universal 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.

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.

IV. The fact that a person acted pursuant to order of his Government or 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.

Armed attacks on another State are illegal

When Britain signed and ratified the UN Charter we made a binding agreement with every Member State never to threaten or attack them and to settle all disputes peacefully.

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.

Pre-emptive attacks are illegal. The only legitimate use of armed force is self defence. If an attack occurs a nation may legitimately use proportionate force to defend itself, but it may do so only until the UN Security Council implements measures to resolve the conflict.

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

The claim that the invasion and occupation of Iraq was authorised by Security Council resolutions 678, 687 and 1441 was a lie. The Security Council is a peacekeeping body and may not use armed force.

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 its members to apply such measures...

Intentionally killing a person is a crime

At least 80,000 Iraqis including 30,000 children have been violently killed since the war with Iraq began. Wilful killing is a crime and is never condoned or 'right' in law. The Human Rights Act 1998 specifies:

"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."

Deliberately killing a person because of their nationality is a crime under the Rome Statute of the International Criminal Court. It is never legal for a serviceman to wilfully kill an enemy. Just as it is a crime to explode a bomb in a pub or to fly a plane into the World Trade Centre so it is a crime to deliberately cause the death of another human being. When the first Iraqi citizen died as a result of the actions of Coalition forces those responsible for giving, transmitting, executing or condoning the orders to wage war committed a crime and became criminally liable for every violent death.

Killing Iraqi citizens constitutes genocide.

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 jurisdictionⁱⁱⁱ.

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 Coalition armed forces attacked Iraq causing the deaths of thousands of Iraqis every resident of Britain involved in aiding, abetting or executing the decision to wage war became criminally liable for the crimes of ‘genocide’ or ‘conduct ancillary to genocide’ and subject to the sanctions of domestic and international law. If a person did anything to aid, abet or assist the commission of the crime, even such things as paying tax, speaking in favour of executing Saddam Hussein or congratulating returning troops for a job well done they committed a crime of conduct ancillary to genocide. You may argue that you did not intend to destroy a national group, but as the legal meaning of intent is defined in the legislation you will find it hard to argue that you were not aware that anyone would be killed.

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.

Every resident of Britain who condoned, supported or took part in the invasion or occupation of Iraq is bound by the Rome Statute and criminally liable for genocide and conduct ancillary to genocide.

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.

Everyone has a duty to disobey illegal orders

24. If a person who is bound to obey a duly constituted superior receives from the superior an order to do some act or make some omission which is manifestly illegal, he is under a legal duty to refuse to carry out the order and if he does carry it out he will be criminally responsible for what he does in doing so.”

This article from Chapter VI of the Manual of Military Law applies to every British citizen and taxpayer as well as to servicemen and women. It was derived from the Nuremberg War Crimes Trials when Germany's leaders claimed that they were not responsible for the crimes of the German Government as they were following Hitler's superior orders. The judgement rejected their claim.

"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 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...

Leaders are responsible for the war crimes of their subordinates.

The International Criminal Court Act makes it clear that no matter who launches the rockets, fires the cruise missiles, drops cluster bombs or deploys depleted uranium shells, responsibility for the resulting deaths, injuries and destruction lies with those who ordered the attack to take place.

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

Although it is impossible to arrest and try everyone in Britain responsible for war crimes many of Britain's political, civil and military leaders may eventually be arrested, tried and punished as war criminals.

We all have a responsibility to act

All British residents must abide by their obligations and duties in law and confine their activities to the legitimate path outlined by the UN Charter and the laws of war. To do this you must disassociate yourself from any action that can be construed as aiding, abetting or assisting the British Government's use of armed force. Members of the Armed Forces and Civil Service must refuse all superior orders contributing to the wars with Iraq and Afghanistan. MPs and Peers must force the Government to end the use of armed force or resign from their seats in Parliament. Taxpayers [Individuals and employers] must withhold taxes from the Inland Revenue until the crimes have ceased

and others should report war crimes to the police. The wars with Iraq and Afghanistan in which thousands of innocent men, women and children have been killed constitute the worst atrocity ever committed by a British Government and they must be stopped. They continue today because too many of us condone or support the Government's illegal actions and fail to take active practical steps to end the killings.

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