



Institute for Law Accountability and Peace (INLAP)

Information and Discussion



No 20: September 2010

THE IRAQ INQUIRY AND THE CRIME OF AGGRESSION

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By the end of this year the Chilcot Inquiry into the 2003 Iraq War and its aftermath will make its report. What would be the appropriate political response if it concluded that the actions taken by UK armed forces in that conflict were, or arguably amounted to, a breach of international criminal law?

At the time of the invasion in 2003 much was made of the supposed threat that Iraq still possessed Weapons of Mass Destruction. However, the essential justification for invading and occupying Iraq was that it was "*in breach of its obligations*" under UN Security Council Resolution 1441, amongst others. The express purpose was to forcibly change the Government of Iraq to enforce compliance with the resolution.

Under the UN Charter the Security Council is exclusively responsible for the restoration and maintenance of international peace and security. The Chilcot report may well conclude that whether Iraq violated Resolution 1441 is a political decision which can only be made by the Council. It could not be made unilaterally by the UK Government, let alone the Prime Minister. Such a finding would imply that the force used against Iraq would amount to what the Nuremberg Tribunal classified as a *Crime Against Peace*,

now referred to as the *Crime of Aggression*.

Until now it has been impossible to deal with this crime in an English court. In 2006 the Law Lords in the case of *R v Jones et al* (2006), that whilst "a crime against peace" was certainly a crime under customary international law, it was not a crime in English law as no statute incorporating that offence into UK domestic law has been passed.

In addition, politicians and civil servants have regularly pointed out over recent years that there was no internationally agreed definition of the Crime of Aggression.

That has now changed. In June 2010 the Review Conference of the Rome Statute of the International Criminal Court unanimously agreed just such a definition. The UK was a leading party to this.

If the Iraq War Inquiry concludes that the invasion of Iraq was arguably an Act of Aggression the

foremost appropriate political response would be for Parliament to incorporate the new definition into our domestic criminal law as soon as possible. This could be done quite easily with an amendment of the International Criminal Court Act 2001. Our domestic criminal law courts could then consider the issues arising from the Crime of Aggression.

Such a response would make it quite clear that the Government of this country now recognises the supreme importance of this rule of international criminal law and pledges that it shall in future be upheld and enforced by the Government, answerable to the laws of this country. If a future British Prime Minister were to order military action he or she would know that British Courts could hold him or her permanently accountable for his actions, under the recognised supreme crime in international law.

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.

Geoffrey Lawrence L.J. when rendering the judgement of the International Military War Crimes Tribunal at Nuremberg in 1946

International Criminal Court Review Conference of the Rome Statute, Resolution RC/Res.4

Adopted at the 13th plenary meeting, on 11 June 2010, by consensus.

Annex I: Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression. (The operative paragraphs are shown here, but not the preamble)

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

- a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- c) The blockade of the ports or coasts of a State by the armed forces of another State;
- d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.