

The Right Honourable Tony Blair
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22 January 2003

Your ref:
Our ref: PS/SA/

Dear Prime Minister

The legality of the use of force against Iraq

We enclose a copy of a letter sent today to your Cabinet colleagues, the Secretaries of State for Defence and Foreign and Commonwealth Affairs.

We are sure that your lawyers will advise you as to its contents and implications. It deals with the consequences for you, and other leaders of the UK Government, if the UK decides to become involved in the further use of force in Iraq, and if that use of force violates rules of international humanitarian law (IHL). Specifically, we make clear that if the UK acts so as to bring any breaches of IHL within the definition of “war crimes” we, and others, will take steps to ensure that you, and other leaders of the UK Government are held accountable within International Criminal Law.

We wish to address an additional and important point. It concerns your personal responsibility for the crime of aggression and a crime against peace. It is our clients’ position that in present circumstances it appears likely that a decision by the UK Government to use further force against Iraq without a specific Security Council authorisation (which is as we write absent) will be a crime of aggression and, therefore, accordingly, a crime against peace. On the question of an authorisation from the Security Council we note that you told the House of Commons Liaison Committee on 21 January 2003 that the UK would be willing to use force against Iraq without a Security Council authorisation and specifically if one of the Permanent Members vetoed a resolution authorising force. Thus, as far as aggression is concerned, we wish to draw your attention to a specific passage of our attached letter to the Secretary of State for Defence in which we write:

“We wish to raise with you at the outset of this letter our clients’ concerns that the UK Government (and its leaders) are about to use force in circumstances where a “crime of aggression” is being committed and, thus, a “crime against peace.” Our reasoning on this is as follows:

1. You will be aware that the crime of aggression is included under Article 5 of the ICC Statute as one of the crimes along with genocide, crimes against humanity and war crimes, over which the ICC has jurisdiction. The ICC may not yet exercise jurisdiction over this crime, however, and will not be able to do so until an agreed definition of the crime is adopted in accordance with Articles 121 and 123 of the ICC Statute. There is nonetheless a broad consensus that the crime of aggression is a crime under international law.
2. Crimes against peace were punishable under Principle 6 of the Nuremberg Principles. Principle 6 defines crimes against peace as
 - 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).
3. The International Military Tribunal at Nuremberg described aggression as the ‘supreme international crime.’
4. The outlawing of aggressive war is reflected in Articles 1 and 2 of the United Nations Charter, and in particular in the prohibition on the use of force at Article 2(4). Article 1 (1) of the United Nations Charter states that the Purposes of the United Nations are (amongst other things)

“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”

Article 2 states

“(3) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

(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.”

5. On 9 September 2002 the Assembly of States Parties to the ICC Statute adopted a resolution proposed by the Preparatory Commission for the International Criminal Court in which it stated that it was desirous of continuing and completing the work on the crime of aggression and to that end established a special Working Group on the crime of aggression. The

discussion paper which was attached to the Preparatory Commission's Draft Resolution suggested the following basic definition of the crime:

“For the purpose of the present Statute, a person commits a “crime of aggression” when, being in a position effectively to exercise control over or to direct the political or military action of a State, that person intentionally and knowingly orders or participates actively in the planning, preparation, initiation or execution of an act of aggression which, by its character, gravity and scale, constitutes a flagrant violation of the Charter of the United Nations.”

6. Paragraph 2 of the discussion paper suggested that act of aggression be defined as an act referred to in United Nations General Assembly resolution 3314 (XXIX) (“**Resolution 3314**”) of 14 December 1974. Article 1 of Resolution 3314 states:

“Aggression is 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, as set out in this Definition.”

Article 3 provides as follows:

”Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, 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.

7. It is the widely held view of legal experts in the field that in the absence of the inherent right arising to take action in self-defence under Article 51 of the UN Charter, any military action taken by the United Kingdom against Iraq without a United Nations Security Council Resolution expressly authorising such force would be in clear violation of the UN Charter and international law.¹

Thus the purpose of this letter is to put you on notice of two consequences of an illegal use of force against Iraq by the UK. First, as it is you who exercises the prerogative power to wage war it is you who will ultimately be held responsible for the crime of aggression and “crime against peace” we refer to above; second you and other leaders of the UK Government will be held accountable to the ICC in the Hague as we make clear in the attached letter to the Defence Secretary.

Please acknowledge receipt of this letter.

Yours faithfully

Public Interest Lawyers

¹ See Opinion of Professor Colin Warbrick, 30 October 2002, at www.matrixlaw.co.uk, and Opinion of Professor Vaughan Lowe of 19 December 2002 at http://www.bbc.co.uk/radio4/today/reports/international/iraq_hearing.shtml; ; Opinion of Rabinder Singh QC and Alison Macdonald, 10 September 2002; Opinion of Rabinder Singh QC and Charlotte Kilroy, 15 November 2002.