

Was the Iraq war legal?

A submission for the Chilcot Inquiry

Chris Coverdale

The Campaign to Make Wars History

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“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... 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.”

Nuremburg War Crimes Tribunal Judgement 1946

Introduction

1. I am a British citizen, behavioural scientist and a 'war law' lawyer. I have carried out research into the laws governing warfare and armed conflict since 2002. Whilst researching the legality of the armed attacks on Afghanistan and Iraq I discovered that the Prime Minister, the Attorney General and others had deceived Parliament and the public over the legality of war and that law enforcement authorities were refusing to arrest or charge anyone with war crimes.
2. The consequences of the attacks on the Afghan and Iraqi people have been horrific. Coalition and ISAF forces have caused the deaths of 1.2m civilians, including 400,000 children, have injured and maimed 2.5m and driven 6m into exile and destitution. Not only have we destroyed two weaker nations, but by using depleted uranium munitions we have permanently poisoned huge swathes of the countryside causing cancers, miscarriages and malformed births. None of our victims had harmed Britain or British interests; were able to plead for their lives in court or were shown any mercy before they were massacred by vastly superior forces.
3. These atrocities are the worst in British history; yet no-one is willing to stop them. Why is it that although everyone knows that killing a child is a crime and that killing people because of their nationality is genocide, no-one in a position of power is willing to acknowledge their part in the crimes, accept responsibility for the consequences or order the troops to stop fighting?
4. The objectives of this submission are to draw attention to the requirements and prohibitions of war law, to expose the lamentable quality of legal advice provided to our political, civil and military leaders, to uncover the lies and deceptions of the Prime Minister and the Attorney General, and persuade the Inquiry to make an interim report on the illegal nature of the wars in Iraq and Afghanistan so that the fighting can be stopped and the troops recalled.

Misuse of terminology

5. One of the reasons why the public are so easily deceived over the legality of war is that Britain's leaders regularly conflate the terms 'force', 'armed force' and 'military force'. Where the UN Charter uses the word 'force' to mean the use of non-violent force to police the peace, UK lawyers interpret it to mean the use of violent 'armed force' to impose our will on others.

6. The most important misuse of terminology arises in the interpretation of Articles 41 and 42 [Chapter VII] of the UN Charter. By deliberately omitting the phrase '***not involving the use of armed force***' from their explanation of the law, our leaders deceived us into believing that the use of force had been authorised by the UN Security Council.

Which international laws govern the use of armed force?

7. The laws of war are the binding Treaties and Statutes agreed between nation states which outlaw violence and require all disputes, of whatever nature or origin to be settled peacefully. The main international Statutes and customary laws governing the use of armed force are:-

- **The Treaty for the Renunciation of War 1928 [Kellogg-Briand Pact]** prohibits resort to war and requires that all disputes are settled peacefully.
- **The UN Charter 1945** prohibits the threat or use of force and requires states to work together in conformity with the principles of justice and international law to maintain peace and security, uphold human rights and promote social progress, freedom and development.
- **The Nuremburg War Crimes Trials 1946** upheld the principle that waging aggressive war is a crime and that individuals rather than states can be held to account in court for war crimes.
- **The Geneva Conventions 1949, 1977** govern the conduct of warfare, the protection of civilians and prisoners of war whilst prohibiting wilful killing, attacks on civilians, destruction of property, unlawful weapons as well as designating 33 separate punishable war crimes.
- **The Genocide Convention 1948** prohibits the adoption of a policy to destroy members of a national ethnic racial or religious group as such.
- **The Nuremburg Principles 1950** introduced the concept of personal responsibility for the universal offences of a crime against peace [waging aggressive war], crimes against humanity, war crimes and complicity in such crimes.
- **The Chemical Weapons Convention 1992** prohibits the development production stockpiling and use of chemical weapons.
- **The Biological and Toxin Weapons Convention 1972** prohibits the development production stockpiling and use of biological and toxin weapons
- **The Landmines Convention 1997** prohibits the development production stockpiling transfer and use of landmines and anti personnel explosives.
- **The Rome Statute of the International Criminal Court 1998** gave the International Criminal Court power to prosecute genocide, crimes against humanity and war crimes.

Which British laws govern the use of armed force?

8. It is a common misconception in Britain that the criminal law doesn't apply to warfare. This is incorrect. All Britain's criminal laws apply to every UK citizen and resident all the time.
- **The International Criminal Court Act 2001** gives ultimate jurisdiction to the ICC and prohibits genocide, crimes against humanity and war crimes.
 - **The Terrorism Act 2000** prohibits acts of terrorism anywhere in the world.
 - **The Terrorism Act 2006** prohibits the encouragement of terrorism.
 - **The Chemical Weapons Act 1996.**
 - **The Biological Weapons Act 1974.**
 - **The Criminal Law Act 1977** prohibits conspiracy.
 - **The Criminal Justice Act 1988** prohibits torture.
 - **The Landmines Act 1998.**
 - **The Offences Against the Person Act 1861.**
 - **The Accessories and Abettors Act 1861.**

What are the main tenets of war law?

- **To act peacefully at all times.** The use of violence violates the laws of war and is universally prohibited.
- **To protect human life.** Every human being's right to life is protected by law. No-one shall be deprived of his life intentionally except when executing a prisoner convicted by a court of a capital offence¹.
- **Never to plan or wage aggressive war.** Attacking a nation state is always unlawful and renders aggressors criminally liable for crimes against peace and humanity, genocide, and war crimes.
- **Never to use armed force.** The use of armed force is always unlawful. The sole exception occurs when it is used to defend a nation from armed attack.
- **Never to commit genocide.** Pursuing a state policy to kill members of a national, ethnic, racial or religious group constitutes genocide and renders everyone involved criminally liable for punishment.
- **Never to harm, torture, rape or kill another person.**
- **Never to manufacture, possess, trade or use weapons, firearms, mines or explosives.**
- **Never to pay tax or fund a government preparing for or waging aggressive war.**
- **Support peacekeeping measures agreed by the UN Security Council.** The UN Security Council is prohibited from using or authorising the use of armed force.
- **Uphold and enforce the laws of war.** No-one can escape criminal liability because of their role or position as Head of State, Member of Parliament, Government official, law officer or taxpayer.
- **Disobey unlawful government orders.** Everyone has an international duty to disobey unlawful orders. Following unlawful orders renders a person liable for the consequences and prosecution for war crimes.

¹ The death penalty only applies in a few less civilised nations such as the USA and China.

When and in what circumstances is war lawful?

"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

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War is never lawful and there is no such thing as a just war or lawful armed conflict. War was outlawed in 1928 by the Treaty for the Renunciation of War [the Kellogg-Briand Pact]. Sixty three nations including Britain and America 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.

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The Kellogg-Briand Pact formed the legal basis for the Nuremberg War Crimes Trials. The attack on Iraq renders the Coalition's leaders liable for the same crime of waging aggressive war for which Germany's leaders were convicted and hanged in 1946. The Nuremberg 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."

Nuremberg War Crimes Tribunal Judgement 1946

When can the Security Council use armed force?

11. The UN Security Council is a peacekeeping body and may **never use armed force**. The claim that the invasion and occupation of Iraq was authorised by UN Security Council resolutions was false. When a nation state signs and ratifies the UN Charter it agrees never to threaten or attack another member state and to settle all international 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.

12. Security Council resolutions are the operating objectives of the Security Council, they are always non-violent and they apply solely to states involved in a conflict.

What was wrong with the Attorney General's advice?

13. Almost everything. Having been asked for "advice on the legality of military action against Iraq without a further resolution of the Security Council" the Attorney General provided advice on the "Possible legal bases for the use of force". These are two different legal issues. Instead of providing legal advice on the laws of war and the illegality of military action with or without a second resolution, the advice concentrated on providing a rationale for going to war, the opposite of that which had been requested.

14. The first deception contained in the advice is: "there are generally three possible bases for the use of force: (a) self-defence [including collective self-defence] (b) to avert overwhelming humanitarian catastrophe, (c) authorization by the Security Council acting under Chapter VII of the UN Charter." Parts (b) and (c) of this statement are wrong. The only occasion when it is lawful to use armed force is in self-defence. Article 51 allows individual or collective use of armed force if a state is under attack.

15. The claim that armed force can be authorized "by the Security Council acting under Chapter VII of the UN Charter." is false. Articles 39 to 51 [Chapter VII] govern the actions of the Security Council, and Article 41 prohibits the use of 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 the Members of the UN 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."

16. Article 42 authorises further non-violent actions to maintain or restore international peace and security. At no point does Article 42 authorise the use of violent armed force. All of its suggested measures are NON VIOLENT and apply solely to forces under its command.

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."

17. The legal advice contains another falsehood when it states: "Force may be used in self-defence if there is an actual or imminent threat of an armed attack... It is now widely accepted that an imminent armed attack will justify the use of force if the other conditions are met." Nowhere in current war law are there grounds or a justification for the use of 'pre-emptive' armed force to prevent an attack. On the contrary the pre-emptive use of armed force is illegal.

"Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization," this can only be overridden by "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation," and "the act must be limited by that necessity, and kept clearly within it."

'The Caroline' Agreement 1837

18. Resolution 678 authorized the Security Council to use 'all necessary means' to force Iraq to withdraw from Kuwait and ceased to apply when Iraq had been forced out of Kuwait and a cease fire [SCR 687] had been agreed. The 'revival' argument is based on false premises. No legal grounds for the use of force against Iraq could or did exist in March 2003. Even if the Security Council had passed a 'second resolution' it would only apply to Security Council forces and could not authorise the use of armed force.
19. A further error of law occurs when the A/G states that: "*The International Criminal Court at present has no jurisdiction over the crime of aggression and could therefore not entertain a case concerning the lawfulness of any military action.*" The underlined section of this statement is wrong in law. The ICC has jurisdiction over the crimes of genocide, crimes against humanity and war crimes. If anyone commits these crimes they become criminally liable and subject to arrest, trial and punishment.
20. Finally the A/G mentions the potential legal consequences of going ahead with the war. "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..." Although

he fails to mention the consequences of violating war law, the A/G points out the possibility of facing charges of 'murder' and 'aggression'. This means that two weeks before the war started both Tony Blair and the Attorney General knew that waging aggressive war was a crime and that killing innocent Iraqis constituted the crime of murder. Why were these crucial facts and consequences kept from MPs?

Conclusions

21. There is no doubt in my mind that the wars in Iraq and Afghanistan are unlawful. A cursory examination of Britain's involvement in the armed invasions and occupations of these two independent nation states indicates that all the main laws of war have been violated and Britain's political, civil, judicial and military leaders have committed numerous war crimes. It is imperative that active service orders to the troops are rescinded now and that criminal proceedings against UK war criminals are started.
22. It is also clear that these two wars would never have taken place if our political, civil, judicial and military leaders had had even a basic understanding of the laws of war. As a result of their derisory level of knowledge of war law our leaders failed to recognise when they were being deceived by Ministers and Law Officers and failed to hold them to account for their provision of false and misleading advice to Parliament, the armed forces and the public. It is imperative that every public official in Britain receives a comprehensive briefing on war law and its prohibitions within the next month.
23. That it is possible in a so-called civilised nation such as Britain for the Prime Minister to command the armed forces to take part in the unlawful invasion and occupation of two independent nation states murdering more than 1.5m innocent people in violation of the international laws of war indicates just how serious are the flaws in our system of government. It is imperative that an independent body is set up within months to review and report on the manner in which Parliament, the Monarch, the Foreign and Commonwealth Office, the Foreign Affairs Committee, the Ministry of Defence, the Chiefs of the Defence Staff, the Law Officers Department and the Cabinet Office repeatedly resort to the unlawful use of armed force, so that Britain's involvement in unlawful war is ended for ever.

2981 Words

Chris Coverdale

Make Wars History,

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● “As a citizen I regard it not only as a right but as a moral duty to help shape the destiny of my country, to uncover and oppose manifest evils. What I aimed to do was to rouse my students to an ethical understanding of the grave evils of our present political life; a return to definite ethical principles, to the rule of law, to mutual trust between man and man. This is not illegal rather it is the re-establishment of legality.”

● *Professor Huber, Munich University 1943*

Shortly before he was condemned to death with five of his students for spreading sedition

From 'Humanising Hell' by George Delf

Was the Iraq war legal?

“No. Not only did the invasion and occupation of Iraq violate all the international laws of war, but by causing the deaths of at least 1m Iraqi civilians, including 300,000 children, Britain’s political, civil, judicial and military leaders committed genocide, the worst crime known to mankind.”

Chris Coverdale