

The Iraq Deception

How the Prime Minister and the Attorney
General deceived Parliament over
the legality of the war with Iraq

“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 ‘For the Sake of Peace’

Chris Coverdale

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Action Against War

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Author: Chris Coverdale is an authority on war law and a founder member of *Action Against War* a new human rights group working to prevent war and promote peace.

Executive summary

On March 18th 2003 Parliament conducted one of the most important debates in its history when it took the decision to invade and occupy Iraq. The war of aggression that followed led to the destruction of Iraq and the massacre of tens of thousands of its citizens. We now know that the assurances given to Parliament that the war was legal were false. This report explains how the Prime Minister, the Attorney General and the Law Officer's Department, deceived MPs over the legality of the war.

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 without a second resolution would be illegal; the Attorney General provided a false legal rationale based 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 had the effrontery to claim that Security Council resolution 1441 determined that Iraq's possession of weapons of mass destruction constituted a threat to international peace and security and that in consequence of a violation of its legal obligations to disarm, it breached the conditions for the ceasefire thus reviving authorisation for the use of force. This is a lie. Resolution 1441 determined no such thing. MPs were deceived into believing that the war had been authorised by the Security Council.

The major flaw with the legal advice was the omission of all reference to the international treaties, conventions and statutes that form international war law. Over the past century Britain played a major part in ensuring that the world formulated and adopted laws against war and against the use of armed force. In 1928 we signed the General Treaty for the Renunciation of War (Kellogg-Briand Pact) and agreed never to go to war again; when we helped to set up the UN in 1945 we promised faithfully to settle all international disputes peacefully and never to threaten or use force against another state; in 1950 we helped the UN to formulate and adopt the Nuremburg Principles introducing three universal crimes against waging war; and in 2001 we ratified the Rome Statute of the International Criminal Court promising to arrest and prosecute any Briton involved in committing genocide, crimes against humanity and war crimes.

The fact that the Law Officers failed to draw attention to the world's main war laws when they were duty bound to do so and lied over the legality of the war, is a scandal and a major failure of governance in Britain. Unless MPs and citizens possess a clear understanding of the laws and rules of war, and the actions and behaviours that are forbidden in law, they cannot make legitimate decisions. We ask that Parliament halts the illegal war, investigates the deception of MPs and holds all those responsible for the deaths of innocent Iraqis to account for their crimes in court.

Introduction

1. In March 2003 Britain's Attorney General presented legal advice to Parliament, Government, the armed forces and the nation claiming that the proposed war with Iraq would be legal and was justified by the revival of UN Security Council resolutions. This report shows the Law Officers' legal advice to be both wrong in law and deceptive.
2. These conclusions are based on an analysis of
 - (i) The recently declassified secret legal advice presented to the Prime Minister on March 7th 2003, [Appendix 1]
 - (ii) The Memorandum sent by the Government to the Foreign Affairs Committee on March 17th 2003, [Appendix 2]
 - (iii) The Statement in the House of Lords on March 18th 2003 by the Attorney General in answer to a Parliamentary question, [Appendix 3]
 - (iv) Security Council Resolutions 678, 687, and 1441, [Appendix 4]
 - (v) The House of Commons debate March 18th 2003 [Hansard]

and a comparison with current international war law.
3. On March 18th 2003 Parliament conducted one of the most important debates in its history. Having been presented with incorrect and misleading legal advice, the majority of MPs, believing that the proposed war with Iraq would be legal in domestic and international law, voted in favour of the motion. The Government then ordered HM forces in concert with American forces to undertake the armed invasion and occupation of Iraq.
4. Using modern high-explosive weapons such as cruise missiles, rockets, cluster bombs, mortars and depleted uranium munitions against villages, towns and cities, Coalition forces overwhelmed the Iraqi opposition killing and injuring 100,000 innocent men, women and children in the process. These and subsequent illegal killings are the responsibility of Coalition Governments, and as such are jointly attributable to each and every person who aided, abetted, counseled or assisted in the war with Iraq.
5. The legal advice on which Parliament and Government based the decision to wage war with Iraq was flawed from the outset, in that it omitted all reference to the world's major war laws, and 90% of the advice that was presented was wrong in law. The first section of the report [paragraphs 6 – 35] gives examples of the errors contained in the legal advice and the debate in Parliament explaining in each case what is wrong in law. This is followed by an outline of the main laws pertaining to war [paragraphs 36 – 47]. A separate report explaining the war crimes committed by Britain's leaders will follow at a later date.

False Legal Advice

The abuse of language

6. It is clear that throughout the Iraq affair that words and phrases are given quite different meanings. The glib use of phrases such as ‘all necessary means’, ‘serious consequences’, or ‘material breach’ are used by warmongers to mislead people and provide a rationale for the use of violence; and phrases such as ‘civilian casualties’ and ‘unintended consequences’ are used to gloss over conduct such as murder or genocide. Where the UN Charter uses the word ‘force’ to mean ‘non violent force to keep the peace’, the Prime Minister, the Attorney General and the British Government interpret force to mean ‘violent armed force to impose our will’. When human lives are at risk it is essential to be crystal clear over the meaning attributed to every word and phrase.

The March 7th secret legal advice

7. The secret legal advice presented to the Prime Minister two weeks before the start of the war, reveals the extent of the deception played on the British people. The advice failed to respond to the requirement for

“advice on the legality of military action against Iraq without a further resolution of the Security Council”

and focussed on the ***“Possible legal bases for the use of force”***. This is a totally different legal issue and it is not what was requested. Instead of providing detailed legal advice on the laws against war and the illegality of military action without a second resolution, it concentrated instead on providing a rationale for going to war, the opposite of what was needed by Parliament, the Government, the Armed Forces and the nation.

8. The first major deceptive statement 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 and misleading. Under the UN Charter there is only one legal basis for the use of armed force and that is self-defence. Article 51 allows the individual or collective use of armed force if a state HAS BEEN ATTACKED, providing that its response is proportionate, and the Security Council is informed immediately so that it can take over responsibility for the reaction.

9. It is incorrect and deceptive to assert that armed force can be used

“to avert overwhelming humanitarian catastrophe.”

No international statute, convention or law exists anywhere authorizing the use of armed force for the prevention of humanitarian catastrophe. On the contrary, as the use of armed force is the major cause of humanitarian catastrophes, the United Nations was set up to avoid and outlaw the use of armed force and the harming of human beings. The only circumstance in which it is legal to kill another human being occurs in a few less civilised States when criminals have been tried and convicted in court of a capital offence.

10. The single most important error pervading all the legal advice is the Law Officers’ claim that (armed or military) force can be authorized

“by the Security Council acting under Chapter VII of the UN Charter.”

In law the United Nations Security Council can NEVER authorise the use of armed force to kill or harm another human being. The United Nations was set up as a reaction to the horrors of two world wars to prevent warfare, to keep the peace and to ensure that human beings were never again killed and injured as a result of armed conflict between nations. The 111 Articles of The UN Charter are the international law governing the actions of member states (including Iraq, Britain and America). Articles 39 to 51 [Chapter VII] are the laws that govern the actions of the Security Council, which is the body within the UN set up to deal with ‘Threats to the Peace, Breaches of the Peace and Acts of Aggression’. Article 41 states:

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.”

11. Article 42 authorises ‘such action by air, sea or land forces as may be necessary 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 and do not apply to states operating independently.

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.”

12. Paragraph 3. of 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, it is illegal. To say that it is ‘now widely accepted that an imminent armed attack will justify the use of force’ is false.

13. The accepted international standard for pre-emptive military action, cited by the judges at Nuremburg when they condemned Germany’s attack on Norway, was originally drawn up in response to Britain’s pre-emptive attack on an American vessel ‘The Caroline’ in 1837 at Niagara. This nineteenth century version of the 9.11 twin towers attack occurred when British forces crossed the river from Canada into American territory and attacked the vessel, setting it on fire and sending it over Niagara Falls killing passengers and crew. The matter was eventually resolved peacefully when Britain’s Foreign Secretary and America’s Secretary of State agreed a new ‘war law’ prohibiting pre-emptive attacks:

“Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization,” and that this can only be legally 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.”***

14. The majority of the March 7th document concentrates on the interpretation of Security Council resolutions 678, 687, and 1441 and the supposed revival of the right to use force contained in SC resolution 678. It must be made clear that Security Council resolutions are NOT international law; they are the operational decisions made at Security Council meetings and they do not and cannot apply to the armed forces of Member States acting independently of the Security Council. The 111 Articles of the UN Charter are the law and articles 39 to 51 [Chapter VII] govern the actions of the Security Council.
15. Resolution 678, which authorized the Security Council to use ‘all necessary means’ to force Iraq to withdraw from Kuwait, ceased to apply when Iraq had been forced out of Kuwait and a cease fire [SCR 687] had been agreed. The ‘revival’ argument, used by the British Government to justify the war with Iraq, is based on false premises. No legal grounds for the use of armed 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 peacekeeping forces and IT COULD NOT AUTHORISE THE USE OF ARMED FORCE.
16. Two further errors of law appear in paragraph 33 of the secret legal advice. The first 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. Although the A/G is correct in saying that the ICC at present has no jurisdiction over the crime of aggression, he is wrong when he says that it could not entertain a case concerning the lawfulness of any military action. The ICC has jurisdiction over the conduct of armed conflict in relation to the crimes of genocide, crimes against humanity and war crimes committed by any citizen from any of the 99 ratifying States. Regardless of whether or not the combatants believe a conflict to be just, the ICC has jurisdiction, and if anyone on either side commits these crimes they are criminally liable and subject to arrest, trial and punishment.

17. A further error of law concerning the International Criminal Court occurs when the A/G states that the ICC will have jurisdiction to examine whether any military campaign has been conducted in accordance with international humanitarian law. The ICC does NOT have jurisdiction over international humanitarian law; its jurisdiction is currently solely over the three crimes of genocide, crimes against humanity and war crimes.
18. Although the Rome Statute grants the ICC jurisdiction in relation to these crimes, under the 'complementarity' principle¹ Britain's law enforcement authorities have a prior duty to investigate and prosecute UK citizens engaging in, or aiding, abetting or assisting such crimes. It is the Attorney General's duty in law to ensure that the Rome Statute is upheld and enforced throughout Britain and its territories. If any British citizen or resident, including the Prime Minister, the Foreign Secretary, the Attorney General, the Queen or any member of the armed forces commits or assists the commission of genocide, crimes against humanity or war crimes anywhere in the world, it is UK law enforcement authorities' duty to investigate the crimes and arrest, charge and prosecute offenders.
19. In the final section of the 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...”

Although he fails to mention the consequences of violating the world's main war laws, he does point out the possibility of facing criminal charges of 'murder' and 'aggression'. The implications of this statement are immense. 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 the criminal offence of murder. Why then were these crucial facts and their punitive consequences kept from MPs? Why weren't MPs warned beforehand that by voting in Parliament and 'authorising' a war of aggression they would be committing a crime? Why weren't they told that the crime of aggression is not only a serious criminal offence, but it is 'the supreme international crime'?

¹ Rome Statute Article 17

20. The customary international law to which the Attorney General refers is the Nuremburg judgment of 1946 which includes the following statement on war:

“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.”

Justice Robert Jackson, Nuremburg War Crimes Tribunal

21. In paragraph 6 of his advice the Attorney General in referring to questions concerning the legitimacy of the ‘revival argument’ states:

If the answer to these two questions is “yes”, the use of force will have been authorised by the United Nations and not in defiance of it.

This statement is wrong. The only ‘force’ that the UN is authorised to use is NON VIOLENT force to restore peace and security. UNDER NO CIRCUMSTANCES CAN THE U.N. AUTHORISE THE USE OF ARMED FORCE. Peacekeeping never involves dropping cluster bombs, firing cruise missiles, rockets, mortars, sub machine guns and rifles or using depleted uranium munitions. All of these heinous actions cause death and injury to human beings, are illegal and are forbidden by the Preamble and Articles 1 and 2 of the UN Charter. Any nation adopting the use of armed force for the settlement of international disputes acts in defiance of the United Nations and of the General Treaty for the Renunciation of War.

Memorandum to the Foreign Affairs Committee

22. The Memorandum sent by the Foreign and Commonwealth Office to the Foreign Affairs Committee on March 17th 2003 is almost totally wrong in law. It starts by claiming that:

The legal basis for any military action against Iraq would be the authorisation which the Security Council, by its resolution 678 (1990), gave to Member States to use all necessary means to restore international peace and security in the area. That authorisation was suspended but not terminated by Security Council resolution (SCR) 687 (1991), and revived by SCR 1441 (2002).

The reasons why this statement are incorrect have been reviewed in the earlier material, but in summary they are that Security Council resolutions are operational objectives for the Security Council and they can never authorize the use of armed force; the statement ‘use all necessary means’ contained in resolution 678 applied to the ejection of Iraq from Kuwait in 1990 and could not apply to an armed attack on Iraq in 2003; and SCR 1441 does not revive authorisation to use armed force to restore international peace and security.

23. The memorandum to the Foreign Affairs Committee goes on to say:

“In SCR 1441, the Security Council has determined –

- (1) that Iraq’s possession of weapons of mass destruction (WMD) constitutes a threat to international peace and security;***
- (2) that Iraq has failed - in clear violation of its legal obligations – to disarm; and***
- (3) that in consequence, Iraq is in material breach of the conditions for the ceasefire laid down by the Council in SCR 687 at the end of hostilities in 1991, thus reviving the authorisation in SCR 678”***

This statement is false and totally untrue. Security Council Resolution 1441 determined nothing of the sort. Reluctantly agreed by the Security Council on the basis that it did not authorise an attack, the whole tenor of Resolution 1441 is to give Iraq a further chance of proving that it has complied with its disarmament obligations. THE SECURITY COUNCIL COULD NOT AND DID NOT AUTHORISE THE REVIVAL OF SCR 678. This statement was constructed to lead MPs to believe that it was the Security Council rather than the Prime Minister that had decided that Iraq possessed weapons of mass destruction, that they (WMD) were a threat to international peace and security, that by failing to disarm Iraq had violated legal obligations, and that as a consequence authorisation for an armed attack on Iraq had revived.

24. In summary the decisions in SCR 1441 are:

1. Iraq has failed to co-operate with UN inspectors or to complete the requirements of resolution 687 and is therefore in material breach of its obligations.
2. To set up an enhanced inspection regime to give Iraq a final opportunity to comply with its disarmament obligations.
3. Require Iraq to provide an accurate declaration of its weapons programmes and delivery systems.
4. Remind Iraq that false statements or omissions in the declaration will constitute a material breach of its obligations and will be assessed by the Council.
5. That UNMOVIC and the IAEA are to resume inspections; that Iraq must provide them with unrestricted access; with the results to be reported to the Council.
6. The contents of the letter from UNMOVIC shall be binding on Iraq.
7. UNMOVIC inspectors to be given additional authorities to be binding on Iraq.
8. Iraq must not take or threaten hostile acts against UN personnel or States.
9. Iraq must co-operate immediately with UNMOVIC.
10. Member States must assist UNMOVIC and the IAEA inspections.
11. UNMOVIC is to report any interference with inspections or failures of disarmament obligations by Iraq
12. The Security Council is to reconvene when a report is received in accordance with paragraphs 4 – 11 above
13. A reminder to Iraq that it will face ‘serious consequences’ if it continues to violate obligations.
14. The Security Council is to remain seized of the matter.

In line with United Nations Articles, these decisions are concerned with continuing the weapons inspectors work so that the Security Council could assure itself that Iraq no longer posed a threat. Nowhere in any Security Council Resolution was the decision taken to authorise the use of military force. It should be remembered that Iraq co-operated with these requirements despite the United States Government hijacking and holding a sizeable portion of the 14,000 pages of evidence that they had produced.

25. The next section of the FCO memorandum repeats the deception that

“Chapter VII of the UN Charter gives the Security Council the power to authorise States to take such military action as may be necessary to maintain or restore international peace and security.”

This section has been worded to persuade the Foreign Affairs Committee that the Security Council can authorise Member States to use armed force to restore peace and security. Correct legal advice should have identified the fact that Security Council measures must never involve the use of armed force in which people may be killed.

26. In paragraph 3 the advice falsely states that:

The phrase ‘all necessary means’ was understood then (as it is now) as including the use of force.

This is yet another example of the deliberate misinterpretation of language to favour war. The Security Council is forbidden by the Charter (The Preamble and Articles 1, 2 and 41) from using armed force. The phrase ‘all necessary means’ was intended to encompass all the options and ideas available to the Security Council as non-violent measures that could be adopted to halt the aggression, such as those listed in Articles 41 and 42.

“41.... 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... Such action may include demonstrations, blockade and other operations by air, sea or land forces of Members of the United Nations.”

Many other options have been used over the years such as sanctions, trading embargoes, cessation of sporting contacts etc; and as with all UN operations, the measures taken by the Security Council must always be NON VIOLENT. Only warmongers and nation states intent on waging war interpret the term ‘all necessary means’ to mean violent armed attacks. All warfare has been outlawed since 1928, when the world’s major states signed the General Treaty for the Renunciation of War [The Kellogg-Briand Pact]. The language of the UN Charter should be interpreted in the context that war is illegal and harm to human beings must be avoided at all costs.

27. For the FCO to suggest to the Foreign Affairs Committee that the Security Council had authorised military action is a criminal deception. This lie contributed to MPs’ confidence that an attack would be legal thereby causing them to vote in favour of a war which killed thousands of Iraqi men, women and children. These innocent victims had every right to expect Britain to uphold its legal obligations under the UN Charter and to assist them in

overcoming their difficulties with Saddam Hussein rather than violating binding international agreements and killing and injuring them in their tens of thousands.

28. At no point do the Law Officers provide the Foreign Affairs Committee with correct legal advice on the domestic and international laws pertaining to war and its conduct, and at no point do they present the correct advice on the meaning of the United Nations Charter or the standing of Security Council resolutions. The entire purpose of this document seems to be to make the case for war, and persuade MPs to support the Prime Minister's illegal aspiration for the military conquest of Iraq.
29. By falsifying the decisions and meaning of Resolution 1441 the Government (FCO) deceived the Foreign Affairs Committee, the House of Commons and the nation over the authorisation and legality of the war. As the Attorney General's rationale for attacking Iraq was based on the premise that it was authorised by Security Council resolutions, it is important to examine this pretext carefully, so that the true nature and extent of the legal deception becomes clear.

The Iraq Debate

30. The deception of Parliament and the nation was completed with the debate on March 18th 2003. The Government motion put to Parliament for debate incorporated carefully crafted lies, distortions and misrepresentations on the content and meaning of SCR 1441, the legality of military action, the threat posed by weapons of mass destruction, Iraq's compliance with Security Council resolutions, France's use of the veto as well as the role and authority of the Security Council.

The Prime Minister (Mr Tony Blair): I beg to move,

That this House notes its decisions of 25th November 2002 and 26th February 2003 to endorse UN Security Council Resolution 1441; recognises that Iraq's weapons of mass destruction and long range missiles, and its continuing non compliance with Security Council resolutions, pose a threat to international peace and security; notes that in the 130 days since resolution 1441 was adopted Iraq has not co-operated actively, unconditionally and immediately with the weapons inspectors, and has rejected the final opportunity to comply and is in material breach of its obligations under successive mandatory UN Security Council resolutions; regrets that despite sustained diplomatic effort by Her Majesty's Government it has not proved possible to secure a Second resolution in the UN because one permanent member of the Security Council made plain in public its intention to use its veto whatever the circumstances; notes the opinion of the Attorney General that, Iraq having failed to comply and Iraq being at the time of Resolution 1441 and continuing to be in material breach, the authority to use force under resolution 678 has revived and so continues today; believes that the United Kingdom must uphold the authority of the United Nations as set out in Resolution 1441 and many resolutions preceding it, and

therefore supports the decision of Her Majesty's Government that the United Kingdom should use all means necessary to ensure the disarmament of Iraq's weapons of mass destruction; offers wholehearted support to the men and women of Her Majesty's Armed Forces now on duty in the Middle East; in the event of military operations requires that, on an urgent basis, the United Kingdom should seek a new Security Council resolution that would affirm Iraq's territorial integrity, ensure rapid delivery of humanitarian relief, allow for the earliest possible lifting of UN sanctions, an international reconstruction programme, and the use of all oil revenues for the benefit of the Iraqi people and endorse an appropriate post-conflict administration for Iraq, leading to a representative government which upholds human rights and the rule of law for all Iraqis; and also welcomes the imminent publication of the quartet's roadmap as a significant step to bringing a just and lasting peace settlement between Israelis and Palestinian's and for the wider Middle East region, and endorses the role of her Majesty's government in actively working for peace between Israel and Palestine.

Throughout his speech the Prime Minister frequently reinforces the deceptions and lies contained in the motion. The author has underlined those statements that he knows are false, deceptive or wrong in law.

31. **The Prime Minister: "Resolution 1441 is very clear. It lays down a final opportunity for Saddam to disarm. It rehearses the fact that he has for years been in material breach of 17 UN resolutions. It says that this time compliance must be full, unconditional and immediate, the first step being a full and final declaration of all weapons of mass destruction to be given on 8 December last year. I will not go through all the events since then, as the House is familiar with them, but this much is accepted by all members of the UN Security Council: the 8th December declaration is false. That in itself, incidentally, is a material breach. Iraq has taken some steps in co-operation, but no one disputes that it is not fully co-operating. Iraq continues to deny that it has any weapons of mass destruction, although no serious intelligence service anywhere in the world believes it.**

.....

On that basis, I simply say to the House that, had we meant what we said in Resolution 1441, the Security Council should have convened and condemned Iraq as in material breach."

32. The Prime Minister then goes on to explain the failure to obtain a second resolution by laying the blame for the failure on France.

"Last Friday, France said that it could not accept any resolution with an ultimatum in it. On Monday we made final efforts to secure agreement. However the fact is that France remains utterly opposed to anything that lays down an ultimatum authorising action in event of non compliance by Saddam."

The point needs to be made that France was entirely correct in its refusal to lay down an ultimatum. Article 2.4 of the UN Charter outlaws the threat or use of force. Under the Charter both Britain and America made a firm and binding agreement never to threaten or use force against another Member State. The proposed resolution put forward by the UK and US Governments to Security Council members not only violated the Charter, but

would have rendered every member of the Security Council liable in law for the consequences of their actions. If any Iraqis were killed or injured as a result of the Security Council decision then the individual representatives of Member States voting in favour of the motion would be liable for the criminal offences of a ‘crime against peace’, ‘crimes against humanity’ and ‘war crimes’ as set out in the Nuremberg Principles adopted by the UN General Assembly in 1950, as well as for the crimes of ‘genocide’ ‘crimes against humanity’ and ‘war crimes as set out in Article 25 of the Rome Statute 1998.

33. To identify the full extent of the deception in the Iraq debate, it is important to analyse the meaning and implications of several of the interruptions and responses that followed the Prime Minister’s condemnation of France’s rejection of an ultimatum.

Hugh Bayley (City of York): “I am grateful to my honourable Friend. I took the view that Britain should not engage in military action without a second resolution, but the decision of some members of the Security Council to back away from the commitment that they gave in November to enforce resolution 1441 has made me change my mind. Does my right honourable friend agree that France’s decision to use the veto against any further Security Council resolution has, in effect, disarmed the UN instead of disarming Iraq?

The Prime Minister: “Of course I agree with my honourable friend. The House should just consider the position that we were asked to adopt. Those on the Security Council opposed to us say that they want Saddam to disarm, but they will not countenance any new resolution that authorises force in the event of non-compliance. That is their position – no to any ultimatum and no to any resolution that stipulates that failure to comply will lead to military action. ...”

The tenor of this response by the Prime Minister is aimed at dismissing France’s efforts to uphold international law as unreasonable. The French President, foreign minister and UN representative knew that the threat or use of force against Iraq was illegal and was a violation of Article 2.4 of the UN Charter. Quite correctly they as well as Russia and China refused to get involved in this joint Anglo American crime.

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.”

By failing to remind Parliament that the threat or use of force was illegal and by lambasting France for refusing to support a resolution in violation of the law, the Prime Minister persuaded MPs that military action was not only legal but that Britain would be upholding the authority of the United Nations.

34. *Llew Smith (Blaenau Gwent): What does the Prime Minister mean by an “unreasonable veto”? Were the 30 occasions on which the UK has used the veto and the 75 occasions on which the US has used the veto reasonable or unreasonable ?*

In responding to this question the Prime Minister took the opportunity to yet again reinforce the lies about resolution 1441. He responded:

The Prime Minister: “We can argue about each one of those vetoes in the past and whether they were reasonable, but I define an unreasonable veto as follows. In resolution 1441 we said that it was Saddam’s final opportunity and that he had to comply. That was agreed by all members of the Security Council. What is surely unreasonable is for a country to come forward now, at the very point when we might reach agreement and when we are – not unreasonably – saying that he must comply with the UN, after all these months without full compliance, on the basis of the six tests or action will follow. For that country to say that it will veto such a resolution in all circumstances is what I would call unreasonable.”

Mr Alex Salmond (Banff and Buchan): The Prime Minister says that the French have changed position, but surely the French, Russians and Chinese always made it clear that they would oppose a second resolution that led automatically to war. [interruption] Well, they publicized that view at the time of resolution 1441. A month ago he said that the only circumstances in which he would go to war without a second resolution was if the inspectors concluded that there had been no more progress, which they have not; if there were a majority on the Security Council, which there is not; and if there were an unreasonable veto from one country, but there are three permanent members opposed to the Prime Minister’s policy. When did he change his position, and why?

The Prime Minister: “First the honourable gentleman is absolutely wrong about the position on resolution 1441. It is correct that resolution 1441 did not say that there would be another resolution authorising the use of force, but the implication of resolution 1441 – it was stated in terms – was that if Iraq continued in material breach, defined as not co-operating fully, immediately and unconditionally, serious consequences should follow. All we are asking for in the second resolution is the clear ultimatum that if Saddam continues to fail to co-operate, force should be used. ...

... Of course, in a sense, any fair observer does not really dispute that Iraq is in breach of resolution 1441 or that it implies action in such circumstances. The real problem is that underneath, people dispute that Iraq is a threat, dispute the link between terrorism and weapons of mass destruction and dispute in other words the whole basis of our assertion that the two together constitute a fundamental assault on our way of life. ... The possibility of the two coming together – of terrorist groups in possession of weapons of mass destruction or even of a so-called dirty radiological bomb – is now, in my judgment, a real and present danger to Britain and its national security.”

In responding to Alex Salmond, Tony Blair not only wrongly contradicted him and reinforced the deceptions associated with SCR 1441 and the legality of the use of force, but yet again tried to put the frighteners on MPs and the public by falsely claiming that there is a real and present danger to Britain and its national security. Alex Salmond was correct about the position of France, China and Russia in relation to SCR 1441. They had always made it clear that they would oppose a second resolution that led automatically to war. They knew as did most of the rest of the world that an ultimatum was not only unreasonable, but it violated the UN Charter.

35. In responding to a question from Jeremy Corbyn, the Prime Minister said

“I have never put the justification for action as regime change. We have to act within the terms set out in resolution 1441 – that is our legal base. But it is the reason why I say frankly that if we do act, we should do so with a clear conscience and a strong heart.”

This statement sums up the deception over the legality of the war with Iraq. The Prime Minister implies that we are acting within the terms set out in resolution 1441 and that it is legal. We now know, thanks to the release of the secret legal advice of March 7th, that Tony Blair knew two weeks in advance of the debate that it wasn't legal and that if he went ahead with the war that he could be prosecuted for committing the crimes of 'murder' and 'waging a war of aggression'. How anyone, who is about to start a war of aggression that will kill and injure tens of thousands of innocent men, women and children, can do so with 'a clear conscience and a strong heart' is totally inexplicable.

War Law Omissions

36. The major deception employed by the Prime Minister, the Attorney General and the Government over the war with Iraq is the omission of the legal bases against war and the use of armed force. Unless decision makers possess a clear understanding of the laws and rules of war and the actions and behaviours that are forbidden in law, they cannot make legitimate decisions on the use of armed force. The legal advice provided to Parliament prior to the debate on March 18th should at the very least have drawn attention to the following 12 international and domestic laws governing the declaration and conduct of war.

37. **1. The General Treaty for the Renunciation of War (1928).** This treaty which is known as the Pact of Paris or the Kellogg-Briand Pact was the result of a decade of international negotiations to prevent war and was motivated by the horror and tragedy of World War I. Eventually signed by 61 nations including Britain, America, France and Germany, the Pact unconditionally condemned and renounced recourse to war as an instrument of national policy, and promised that henceforth all international disputes whatever their nature would be settled peacefully. This treaty is still in force and together with the Nuremburg Charter provided the legal basis for the Nuremburg war crimes trials.

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.

ARTICLE III The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

38. **2. The Judgement of the Nuremburg War Crimes Tribunal.** This is the customary international law formulated during the trial of Germany's leaders after the Second World War. They were convicted of crimes against peace and humanity for initiating wars of aggression in contravention of the Kellogg-Briand Pact. The judgement included the following statements which are now held to be two of the main tenets underpinning customary international war law:

“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.”

“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.”

Justice Robert Jackson, Nuremburg War Crimes Tribunal

39. **3. The United Nations Charter.** The UN was set up in 1945 at the end of the Second World War and its Charter is considered to be the world’s premier law against the use of armed force. The UN was set up:

“to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.”

By signing and ratifying the Charter each member state, including Britain, America and Iraq, made a firm and binding commitment to abide by its terms. It is important to note that both Britain and America agreed to settle international disputes by peaceful means and not to threaten or use force against the territorial integrity or political independence of any state.

2.2 “All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

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.”

Under no stretch of the imagination can the armed invasion and occupation of Iraq by Coalition forces be seen as complying with these obligations, and to most of the rest of the world, including a majority of British citizens and the Secretary General of the United Nations, the war with Iraq is seen as illegal and a violation of these international laws.

40. **4. The Nuremberg Principles.** These are the seven Principles of international war law derived from the Nuremberg Charter and Tribunal by the International Law Commission which were affirmed and adopted 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.

41. **5. The Rome Statute of the International Criminal Court 1998.** 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 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.

Article 25

Individual criminal responsibility

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime [of 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;**
- (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;**

Article 27 of the Rome Statute makes it quite clear that this new criminal law is aimed at the political, civil and military leaders who order or commission such crimes rather than the rank and file servicemen and women who normally shoulder the blame.

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, 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."

This means that the Queen, the Prime Minister, Members of Parliament and others, who try to escape culpability for their crimes by claiming protection under the Royal Prerogative or Parliamentary privilege, cannot do so.

42. **6. The International Criminal Court Act.** In 2001 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 law whilst ceding ultimate authority over these crimes to the International Criminal Court in The Hague. In legal terms everything changed in 2001. By ratifying the Rome Statute and enacting the ICC Act, Parliament blocked the legal loopholes that have enabled past British leaders to commit such crimes with impunity. Criminal responsibility for waging war now lies with those who commission it, and they can be held to account for their crimes in court.

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 jurisdiction².

43. **7. The Geneva Conventions.** Britain enacted The Geneva Conventions Act in 1957 and the Geneva Conventions Amendments Act in 1995. These two Acts of Parliament incorporate the obligations and responsibilities contained in the Geneva Conventions into UK domestic law. They are the international rules governing military affairs in times of conflict, and they cover such things as the treatment of civilians and prisoners of war, the treatment of wounded, sick and shipwrecked persons, free passage for the Red Cross and Red Crescent, obligations to record deaths and inform relatives, prohibitions on attacks on water supplies and water treatment plants, the types of weapons that may or may not be used etc. Most of the prohibitions contained in the Conventions are now treated as ‘war crimes’ and have been incorporated as such in the Rome Statute and The International Criminal Court Act 2001.
44. **8. The Chemical, Biological and Toxin Weapons Conventions.** These international treaties were ratified by Britain with the enactment of The Biological Weapons Act in 1977 and The Chemical Weapons Act in 1997. These two Acts of Parliament forbid the possession and use of chemical, biological and toxin weapons.
45. **9. The Landmines Act of 1998.** Stimulated by Princess Diana and the horrific deaths and injuries inflicted on children in the third world, the International Landmines Convention was agreed in 1997 forbidding the manufacture, possession or use of landmines and anti-personnel explosives. This was ratified by Britain in 1998 with the enactment of the Landmines Act. Seemingly it has had no effect on the Ministry of Defence who together with American forces have dropped over one million cluster bomblets on Iraq during the recent conflict causing innumerable injuries to civilians especially children.
46. **10. The International Convention against Torture and other Cruel Inhuman and Degrading Treatment.** This treaty came into effect in 1985 and was incorporated into British legislation in the Criminal Justice Act 1988.

² This is a summary. For the full definition of the offences see sections 51 and 52 of the ICC Act 2001.

47. **11. The Criminal Law Act 1977** introduced the crime of conspiracy into domestic law.

Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which if the agreement is carried out in accordance with their intentions, either (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question.

Anyone involved in planning these crimes is guilty of conspiracy to commit the offence and will be dealt with as a principal offender. Conspiracy applies to all criminal offences and therefore applies to waging a war of aggression, genocide, crimes against humanity, war crimes, murder and any of the other crimes associated with war and military conflict. It also applies to the shoot-to-kill policy introduced by the Metropolitan Police which in English law is a crime of ‘conspiracy to murder’.

48. **12. 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.”

“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.”

Justice Robert Jackson, Nuremburg War Crimes Tribunal

Summary

49. That the Attorney General and the Department of Government responsible for providing legal advice to Parliament deceived the nation over the legality of the war and failed to draw attention to the world's main war laws when they were called upon to do so, is a scandal of epic proportions and a major failure of Government in Britain. All decision makers must possess a clear understanding of the laws and rules of war and the actions and behaviours that are forbidden in law, before they make decisions on behalf of the electorate over the use of armed force.
50. As a direct result of the Law Officers' failure to provide correct, complete and impartial legal advice, Parliament and the British Government involved the nation in an illegal war of aggression in which tens of thousands of totally innocent men, women and children have been massacred and many more injured.
51. Waging war is the most important decision leaders ever have to take. It inevitably leads to the death or injury of thousands of innocent men, women and children. During the twentieth century 100 million people lost their lives as a result of decisions taken by no more than 50 individuals. That is why the world made solemn and binding agreements never to wage war and never to threaten or attack another country. Why then is Britain at the forefront of the world's warmongers? Why is it that Britain has waged more wars since 1945 than any other nation? Why does Britain renege on international treaties and violate international laws? Isn't it time that we abjured warfare once and for all and stood by the agreements that we made with the rest of the world?
52. This is a plea to both Houses of Parliament to force the Prime Minister and the British Government to halt the war, to end the illegal occupation of Iraq, to disassociate itself from the illegal activities of the Bush Administration, to initiate a criminal inquiry into the war and to review the systems, structures and processes of Government that led to this breakdown in the rule of law and the violation of international treaties. We must ensure that Britain never again wages an illegal war of aggression, and that all those responsible for the deaths of innocent people are prosecuted for their crimes in court.

“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 ‘For the Sake of Peace’