

Australian legal experts declare an invasion of Iraq a war crime

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Forty-three Australian experts in international law and human rights legislation have issued a declaration that an invasion of Iraq will be an open breach of international law and a crime against humanity, even if it takes place with the authorisation of the UN Security Council. The statement concisely argues that any Australian participation in a war on Iraq—as part of the Bush administration’s “coalition of the willing”—will make the government of Prime Minister John Howard and Australian military personnel liable for prosecution in the International Criminal Court.

Submitted as an open letter to Australian newspapers and published yesterday by the *Sydney Morning Herald*, the signatories include Professor Chris Sidoti of the Human Rights Council of Australia; Sir Ronald Wilson, a former High Court judge and the President of the Human Rights Commission; Simon Rice, the president of Australian Lawyers for Human Rights; the directors of several university centres for human rights law; prominent barristers; and lecturers at Australia’s most prestigious law schools.

The legal experts reject outright the justifications for war being made by the American, British and Australian governments as a violation of the UN Charter, under which there are only two grounds for the use of force in international conflicts. As they explained: “The first, enshrined in Article 51 of the United Nations Charter, allows force to be used in self-defence. The attack must be actual or imminent.

“The second basis is when the UN Security Council authorises the use of force as a collective response to the use or threat of force. However, the Security Council is bound by the terms of the UN Charter and can authorise the use of force only if there is evidence that there is an actual threat to the peace (in this case, by Iraq) and that this threat cannot be averted by any

means short of force (such as negotiation and further weapons inspections).”

Having outlined the legal basis for war, the declaration concluded: “Members of the ‘coalition of the willing’, including Australia, have not yet presented any persuasive arguments that an invasion of Iraq can be justified at international law.” Moreover, as the authors pointed out, the doctrine of “pre-emptive strike” elaborated by the Bush administration represents a fundamental repudiation of the UN Charter.

“This doctrine contradicts the cardinal principle of the modern international legal order and the primary rationale for the founding of the UN after World War II—the prohibition of the unilateral use of force to settle disputes.

“The weak and ambiguous evidence presented to the international community by the US Secretary of State Colin Powell to justify a pre-emptive strike underlines the danger of a doctrine of pre-emption. A principle of pre-emption would allow particular national agendas to completely destroy the system of collective security contained in Chapter 7 of the UN Charter and return us to the pre-1945 era, where might equaled right.”

In fact, although the lawyers chose not to raise the issue, the indictment of the German Nazi leaders at the 1945-1949 Nuremberg War Crimes Trials was precisely for carrying out preemptive military strikes against neighbouring countries. They were tried and convicted of “planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances”.

The letter goes on to note that there is a “further legal dimension” that would form the basis for a war crimes indictment of those responsible for any invasion of Iraq—the likely extent of Iraqi civilian casualties: “Even

if the use of force can be justified, international humanitarian law places significant limits on the means and methods of warfare.

“The Geneva Conventions of 1949 and their 1977 protocols set out some of these limits: for example, the prohibitions on targeting civilian populations and civilian infrastructure and causing extensive destruction of property not justified by military objectives. Intentionally launching an attack knowing that it will cause ‘incidental’ loss of life or injury to civilians ‘which would be clearly excessive in relation to the concrete and direct military advantage anticipated’ constitutes a war crime at international law.”

The international media has already carried a number of reports of the “shock and awe” tactics that the US military intends to use to intimidate and terrorise the Iraqi military and population into submission. These include the destruction of power plants, electricity grids, sewerage treatment facilities, water reservoirs, bridges and roads. Washington has specifically warned that it has not ruled out the use of nuclear weapons.

The letter concluded: “The military objective of disarming Iraq could not justify widespread harm to the Iraqi population, over half of whom are under the age of 15. The use of nuclear weapons in a preemptive attack would seem to fall squarely within the definition of a war crime...”

“Estimates of civilian deaths in Iraq suggest that up to quarter of a million people may die as a result of an attack using conventional weapons and many more will suffer homelessness, malnutrition and other serious health and environmental consequences in its aftermath. From what we know of the likely civilian devastation caused by the coalition’s war strategies, there are strong arguments that attacking Iraq may involve committing both war crimes and crimes against humanity.”

The fact that 43 eminent members of Australia’s legal establishment felt the need to issue such a public statement is a sign of the breadth of the opposition among many social strata to the Howard government’s support for the Bush administration and its planned war on Iraq. The letter confines itself to pointing out that Australian government leaders, officials and military personnel may find themselves in front of the International Criminal Court. But the comments clearly reflect a far broader public outrage at the criminal

character of the war that is about to be launched.

Despite all the efforts of Canberra and Washington and the media, a majority of the population does not accept the government’s claims that war is necessary to eliminate “weapons of mass destruction” and are profoundly disturbed about the consequences of invading Iraq. The largest demonstrations in the country’s history took place on February 14-16, appealing to the government to withdraw the 2,000 Australian troops that Howard has deployed to the Persian Gulf without even a vote in parliament.

Just as the government dismissed the sentiments of the demonstrations—with Howard referring to them as a “mob”—so too it has rejected the statement by the legal experts. The office of Attorney General Daryl Williams issued a perfunctory statement that no Australian could be sent to the International Criminal Court without its approval, and that the court’s jurisdiction did not cover “the legal basis for an armed conflict”.

But neither Williams, nor any other government minister, has attempted to answer the charge that there is no basis in international law for the planned war on Iraq and that those responsible for launching it will be the authors of war crimes.



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