GlobalResearch
Center for Research on Globalization

The Long Road to The Hague: Prosecuting Former Prime Minister Tony Blair

Part I

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Global Research, August 23, 2010
23 August 2010

Region: Europe
Theme: Law and Justice
In-depth Report: CRIMINALIZE WAR

Ex-Prime Minister and post-Downing Street millionaire Tony Blair, to celebrate the publication of his book *A Journey*, is holding a 'signing' session at Waterstones, Piccadilly on 8 September. That this man, responsible for taking us into an illegal war, playing his part in the ruination of an ancient country because he 'believed he was right', should advertise himself in this way has caused outrage. Time, I think, to look at where we, and Blair, actually stand in terms of what we can and cannot do to call him to account.

What hope for international law?

We have spent years constructing that body of treaties, statutes and conventions known as international law only to ignore it when it is most needed. How often has any state or rather, how many powerful Western states have been brought to account for breaching international law? And how many exempt themselves from the laws while insisting others abide by them?

The world's record at upholding its own laws is poor. The United Nations passes Resolutions where states have breached international law, demanding compliance. It imposes sanctions, hoping to force compliance. But beyond that what is done, except to threaten belligerence? What other routes are available?

When the UN was set up, the International Court of Justice (ICJ) also came into being. It can settle disputes between states and it can give advisory opinions on legal matters when asked by recognised bodies or coalitions of such. A good example of the latter is the opinion they delivered in 1996 for the World Court Project on the legality of the use of nuclear weapons. In neither case does this really result in accountability.

Of the permanent Security Council members only the United Kingdom has made a declaration accepting the jurisdiction of the Court. Nevertheless, they all have judges sitting on the Court's bench, and one of them, Sir Christopher Greenwood, aided the Attorney General Lord Goldsmith with his legal opinion okaying the Iraq invasion in March 2003.

But – the UN Charter authorises the Security Council to enforce the Court's rulings. Security Council members can thus veto any judgement that interferes with the political agendas of those states or their allies. Political interests always seem to override the rule of law.

Why is it necessary to get someone like Tony Blair into court? It is the only way to

demonstrate to those in power that no one is above international law, and we cannot, regardless of what statements we issue or pieces of paper we sign (or in America's case, 'unsign') simply decide we are exempt in every case where it could be proved we are guilty. To get just one of the West's leaders into court and thereby create a legal precedent, will make all the world's leaders sit up and take note.

Prosecuting Blair

In 1998, the Rome Statute of the International Criminal Court (ICC) was adopted, opening the way to establishing the ICC. When the Court was proposed, its importance was such that 60 rather than the usual 30 ratifications were required. Considering that the Convention on Cluster Munitions took four years to reach 30 ratifications allowing it to pass into law, support for the ICC was obviously keen in that the Rome Statute gained twice the number of ratifications in the same amount of time. Clearly, many countries felt the need for such a Court, but of the Security Council's big 5, only the UK and France are fully signed up.

Following the illegal invasion of Iraq in 2003, many British campaigners attempted to get Tony Blair into court. Encouraged by Chris Coverdale of Legal Action Against War, (LAAW), we approached our county police forces and asked them to act. The reasoning behind this was that any British citizen, believing that a crime has taken place, has the duty to inform the police and ask them to investigate. In this case we used the International Criminal Court Act 2001, which Blair's own government had incorporated into British domestic law.

In November 2003 Peacerights held a Legal Inquiry to examine aspects of the invasion and occupation of Iraq, and their panel of international lawyers then compiled a full report on the evidence from eye and expert witnesses, together with their legal opinion that war crimes had been committed in Iraq. This was presented to the Attorney General and the ICC, which was unable to act.

The ICC cannot consider a prosecution unless it can be proved that efforts to prosecute in the home country have failed. To do that one needs to demonstrate why. And we didn't know why, only, unofficially, that the Crown Prosecution Service (CPS) had told the Metropolitan Police Force (the Met) that no prosecution would be allowed. And by 'we', I do not mean just campaigners. The lawyers also did not know and could not find out – which is where the Dorset Police came in.

In September 2003 I wrote a letter to Dorset 's Chief Constable, requesting that Dorset Police investigate Mr Blair and members of his government for war crimes with a view to prosecuting them under the ICC Act 2001. Unlike Chris Coverdale who, in the template letter he sent round to campaigners, was accusing Blair of genocide, I decided to go for war crimes and crimes against humanity, these being much easier to prove under the definitions of the Act (cluster munitions and depleted uranium weapons cause disproportionate harm to civilians, constituting war crimes). Also, rather than swamping Dorset Police with what I thought was evidence, I simply sent them a copy of the relevant part of the Act, knowing full well that it would have been unread by the majority of the British police.

I received a letter from the Chief Constable saying that the matter was under consideration. That in itself was a major difference between Dorset and other UK police forces. The difficulty was that any complaint of illegal behaviour by members of the government comes

under the jurisdiction of the Met, so any requests to investigate with a view to prosecution go through them to the CPS, the body that decides which public prosecutions go ahead. All other police forces simply refused any such requests made of them.

It took weeks, plus letters and phone calls to the Met from the Chief Inspector who was trying to further my request, before the Met informed him that the CPS had refused permission for a prosecution some months back. This was in answer to LAAW's application, the CPS having instructed the Met at the end of November 2003, but the Met not informing LAAW until sometime in January 2004. My local force must have felt both insulted and angry at being treated in such an offhand manner by the Met, and this may explain why I ended up achieving more than I hoped.

In late March I finally met the Chief Inspector who had with him a copy of the CPS letter, detailing why the prosecution was refused. Forbidden to show me the letter, give me a copy or read it out to me, he managed in one short meeting to give enough information about the CPS reasons for refusal to allow us to prove we could not go further in this country (one reason being that 'the ICC Act was not detailed enough to allow for prosecution').

I informed Professor Nick Grief, from Peacerights' Legal Inquiry panel, Phil Shiner (Public Interest Lawyers) took a witness statement from me, and that joined the Peacerights report in The Hague . Where it sits, gathering dust.

Well, you didn't think it was going to be that easy, did you?

The ICC and the Crime of Aggression

The crime of aggression (then known as 'crimes against peace') was said at Nuremburg to be the supreme international crime, and when the ICC was brought into being, it was clear that many saw the crime of aggression as integral to the crimes that would come under its jurisdiction. So the most pressing subject for discussion at the Rome Statute Review Conference that took place earlier this year was the defining of this crime and how a prosecution would be brought at the Court (the so-called 'trigger' mechanism).

One of the main blocks to progress is that the decision allowing a prosecution to take place lies with the Security Council, placing it under the control of politicians rather than judiciary. Former judge Richard Goldstone, speaking on the BBC World Service, said one couldn't put the crime of aggression into the hands of the ICC. It would be very 'political' to make judgements on the decision to go to war. But the ICC prosecution would not be for the decision to go to war. That decision is always political. Even in civil wars, the propaganda that drives neighbour to attack neighbour is mostly politically driven. It is the act of waging war that is the crime to be prosecuted, and the decision is only part of that act. While the 'trigger' allowing a prosecution to take place remains under the control of the Security Council it is impossible for any of the permanent members of the Council to be prosecuted for a crime they show an unhealthy willingness to commit. Indeed, three of them are able to control an international body they do not support.

A letter I received from the Foreign Office states "A provision on aggression that does not make reference to the Security Council would also be bad for the Court. We want to avoid the ICC being politicised… The Prosecutor needs to know that, before he embarks on an investigation, he has behind him the political support of the international community and

that can only be expressed through the Security Council." That political support would be more honestly and democratically expressed through the General Assembly, where all nations can have their say. And the best way to avoid the ICC being 'politicised' is to keep it well away from the Security Council.

How successful was the Review Conference in resolving this conundrum? Amendments have been incorporated which include both the definition of the crime of aggression (identifying the decision and initiation processes, preparations for war and the various actions that, as a whole or in part, constitute a crime of aggression), and a set of conditions for the exercise of jurisdiction by the court in relation to that crime. The conditions make no reference to the exclusive need of the Security Council for predetermination before allowing the ICC to investigate and prosecute. Instead, if after 6 months the Council has not acted, the Prosecutor can seek a formal authority to investigate from 6 judges of the Court itself.

The amendments agreed at Kampala have to go through the same ratification process as the original Statute, although only 30 states are required this time, and this must be completed by January 1st 2017. Everyone, including the UK government says that this means nothing will happen until 2017 and, according to the Foreign Office, "ICC States parties now have a seven-year period before making a further decision on the conditions under which the Court will exercise its jurisdiction". But look at it another way. They have seven years to obtain half the ratifications they originally achieved in four. 110 countries have ratified the Statute, and a further 35 have signed but not ratified. Even with behind-the-scenes arm twisting, surely 30 states will step forward and clear the way for prosecuting the crime of aggression? They must do it by January 2017 to get the crime of aggression onto the books. But it is entirely possible they will fulfil that condition before then.

However – read the Kampala resolution carefully and you will see that this clause has been added to Article 15 of the Rome Statute:

'The Court may exercise jurisdiction only with respect to crimes of aggression committed one year *after* the ratification or acceptance of the amendments by thirty States Parties."

So if and when the crime of aggression is incorporated into our domestic law, we can forget about seeing Blair prosecuted for it.

But is this the only way to bring him to account?

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