

Legal Opinion on the launching and conduct of the War on Iraq

Treasa Dunworth, LLB(Hons) LLM(Harv)
Senior Lecturer, University of Auckland

1. The invasion of Iraq by the United States, the United Kingdom and their allies in 2003 was unlawful under international law. All of the leading commentators and many senior judges have expressed this consensus view, including the late Lord Bingham,¹ Lord Steyn,² Rt Hon Sir Edmund Thomas,³ and Professor Phillippe Sands QC.⁴ In the lead-up to the invasion, international law professors in England,⁵ Australia,⁶ and Canada⁷ all expressed this view. The then Secretary-General of the United Nations, Kofi Annan confirmed the war's illegality in an interview with the BBC News in September 2004.⁸
2. In authorizing the deployment of troops to launch the invasion of Iraq in 2003, Tony Blair has committed the crime of aggression, recognised as a crime in customary international law since the Nuremberg trials.
3. It is a matter of public record that thousands of civilians were killed during the invasion and in its immediate aftermath, due to indiscriminate targeting practices and use of indiscriminate weapons such as cluster munitions. These breaches of international humanitarian law have been documented by Human Rights Watch⁹ and Amnesty International.¹⁰ The Congressional Research Service of the US Library of Congress reports on a Lancet study that calculates the civilian death toll at between 426,369 to 793,663 in the period 2003 to 2006.¹¹
4. Being the Prime Minister of the United Kingdom during that period, Tony Blair has responsibility as a superior for failing to exercise his de facto and de jure authority in preventing and repressing those breaches of international humanitarian law or to ensure that there has been proper inquiries into those deaths.¹²

¹ Tom Bingham, *The Rule of Law* (2011), at 124.

² Lord Steyn, "The legality of the invasion of Iraq" 107 *Spokesman* 31 at 37.

³ Rt Hon Sir Edmund Thomas (LLB(NZ), LLD(VUW), NZOM, QC), "An indictment of Tony Blair, and the failure of the political process" 95 *Spokesman* 12 at 33.

⁴ Phillippe Sands, *Lawless World: The whistle-blowing account of how Bush and Blair are taking the law into their own hands* (2006) at 268.

⁵ Letter: *War would be illegal*, *The Guardian*, 7 March 2003, at 29.

⁶ Letter: *Howard must not involve us in an illegal war*, *The Age*, 26 February 2003 and Letter: *Coalition of the Willing? Make that war criminals*, *The Sydney Morning Herald*, 26 February 2003.

⁷ *Canadian Law Professors Declare US-led War Illegal*, 22 March 2003 at www.wsws.org.

⁸ "Iraq war illegal, says Annan" (2004) BBC News.

⁹ Human Rights Watch, *Off Target: The Conduct of the War and Civilian Targets in Iraq* (2003).

¹⁰ Amnesty International, *Iraq: Civilian Casualties* (25 March 2003)

¹¹ Congressional Research Service, CRS Report for Congress: *Iraqi Civilian Deaths Estimates* (27 August 2008) at 3.

¹² Article 28(b) Rome Statute 1998.

5. New Zealand has compelling obligations at international law to ensure respect for international humanitarian law and to punish grave breaches of that law. These obligations are founded in the Geneva Conventions 1949, Article 1 of which requires states to “respect and *ensure respect* for” the Conventions. Article 146 of the Fourth Geneva Convention 1949 imposes a duty on states to punish those suspected of grave breaches of the law. It says that each State Party is under the obligation “to search for persons alleged to have committed, or to have order to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts” unless it hands such persons over for trial to another state. Further, under international law states are under a general duty not to render aid or assistance to a state engaging in unlawful conduct.¹³
6. New Zealand thus has a responsibility to hold Tony Blair to account for his responsibility for the unlawful invasion of Iraq as well as the breaches of international humanitarian law that subsequently occurred.
7. While there is generally immunity for heads of states and heads of government, that immunity narrowed in 1999 with the *Pinochet* decision in the House of Lords,¹⁴ where the Lords found that Pinochet was not protected by immunity for acts of torture carried out when he was in office. Similarly, former Prime Minister Blair should not be shielded by immunity for his wrongful acts in office.

¹³ Article 41, International Law Commission’s Articles on State Responsibility (2001).

¹⁴ *R v Bow Street Magistrate, ex parte Pinochet (No 3)* ([1999] 2 WLR 827 (HL)).