

**IN THE MATTER OF A LEGAL INQUIRY INTO ASPECTS OF THE
MILITARY OPERATIONS AGAINST AND SUBSEQUENT OCCUPATION
OF IRAQ DURING 2003**

**BRIEFING PAPER FOR
PANEL OF EXPERTS**

Contents	page
1. Introduction	1
2. Terms of Reference	3
3. The Evidence to be Presented	6
4. The Legal Environment	10
5. The Issues for Discussion	12

1. Introduction

1.1 On the 20th March 2003, the USA, the UK and supporting nations (‘the Coalition’) commenced a full-scale military invasion of Iraq. The attack followed a period of intense political and diplomatic activity designed to force Iraq to comply with various UN Security Council Resolutions dating back to the 1991 Gulf War. Despite attempts to resolve issues through UN Security Council Resolution 1441 and the introduction of weapons inspectors to Iraq, the Coalition ultimately concluded that military intervention was necessary to enforce disarmament. “Regime change” although touted as a necessary result of such action, was not identified as the legal objective of the war. Rather, the enforcement of UN Security Council Resolutions 678, 687 and 1441 and the prevention of Iraq using or continuing to hold Weapons of Mass Destruction (WMD) provided the immediate rationale for intervention.¹

1.2 The conflict lasted in the region of six weeks. During that time the Coalition engaged in levels of aerial bombing and ground attack that were designed to overwhelm the Iraqi armed forces and eliminate the civilian and military command structures of the regime. The campaign was eventually hailed as a success. Civilian casualties were expected and acknowledged by the Coalition forces as a necessary consequence of the action.

¹ See Ministry of Defence statement entitled ‘Iraq: Military Campaign Objectives’ published during March 2003 <http://www.operations.mod.uk/telic/objectives.pdf>

- 1.3 The military campaign culminated in the occupation of Iraq and the overthrow of the Saddam Hussein regime. Since April 2003, military and civilian personnel appointed by the US have occupied the country. UN Security Council Resolution 1483 acknowledged the authority of the occupying powers but reminded them of their related obligations under international law.
- 1.4 This inquiry has been called to examine certain legal issues arising from both the military intervention and subsequent occupation of Iraq. It acknowledges that there is a real possibility of other matters being subject to scrutiny. The discovery, for instance, of numerous mass graves in Iraq during May and August 2003, believed to contain the bodies of thousands of murdered Iraqis, is likely to lead to the prosecution of those responsible within Saddam Hussein's regime. Human rights groups² as well as the Coalition powers have already called for such measures provided sufficient evidence can be preserved to sustain a prosecution. Whether a prosecution will be the subject of an international tribunal or reserved for the state of Iraq to pursue within its own legal system remains to be seen. Nevertheless, any action that aims to bring members of the Hussein regime to account for genocide, crimes of aggression, crimes against humanity and war crimes are likely to be well supported by the international community.
- 1.5 However, there are other important legal matters that should not be overlooked amidst the legitimate clamour for justice in Iraq. The central issue this Panel has been called to consider is whether the Coalition powers, and in particular the UK, have also breached aspects of international law in the conduct of the military operations against Iraq and in the management of the subsequent occupation.
- 1.6 In this respect a preliminary matter must be noted. The initial decision to embark upon military action against Iraq was subjected to intense legal scrutiny prior to the conflict and remains a live issue. The opposing positions suggest that in the absence of a judgement by an authoritative body such as the International Court of Justice the point will remain moot for some time. Of crucial importance in this respect is that the International Criminal Court (ICC) is not yet authorised to examine crimes of aggression. Consequently, given the limited time available to this Inquiry, and the core question for the Panel set out below, it is not intended to revisit this aspect of legality *other than* in one key respect. Namely, in determining the context of possible crimes against humanity and/or war crimes (both within the current jurisdiction of the ICC) the legality of the commencement of the war by the Coalition should be considered.
- 1.7 Having referred to the importance of this preliminary matter, the specific question for this Inquiry may now be identified. It is as follows:

“Is there sufficient cause and evidence for the International Criminal Court prosecutor to investigate members of the UK government for breaches of the ICC Statute in relation to crimes against humanity and/or war crimes committed during the Iraq conflict and occupation in 2003?”

² For example Indict has campaigned since 1996 to bring members of the Iraqi regime to justice. See <http://www.indict.org.uk/>

1.8 From this core question emanate three inter-related legal themes. These frame the proceedings and provide the basis for the particular issues the Panel will be asked to address. The three themes are as follows:

- 1) Did the Coalition powers, through its military operations and the use of certain weapon systems, tactics of warfare, targeting of civilian or non-military objectives, breach international humanitarian law or international criminal law?
- 2) Have the Coalition powers breached international humanitarian law or international criminal law in the conduct of their occupation of Iraq (either through action taken or by omission)?
- 3) If a breach is found as described in 1) or 2) above, what would be the legal prospects of a prosecution in the ICC or other International Tribunal of members of the UK government, as civilian leaders of the military action and subsequent military occupation?

1.9 The Panel will be presented with evidence that relates to each theme. Documentary evidence obtained from a variety of sources will be accompanied by oral testimony provided by eye-witnesses and experts with relevant technical and military knowledge. Details are set out in section 3 of this paper. The Panel will also be requested to review the relevant legal materials that might be applicable to each of the themes of the Inquiry. The materials are referred to in section 4 of this paper.

1.10 Finally, the Panel will be requested to review and reach judgement upon specific and general issues a range of which is identified in section 5. These are designed to focus debate to ensure the three key themes are addressed. Given the scope of the Inquiry particular emphasis is placed on the operation of the ICC. However, the Panel will be at liberty to bring other issues to the attention of the Inquiry should they so wish.

2. Terms of Reference

The Purpose of the Inquiry

2.1. This Inquiry has been called to enable a Panel of experts to examine certain legal issues regarding the conduct of military operations against the Republic of Iraq and the subsequent occupation of that state in 2003. Its particular focus is to examine the role played by the UK as one of the coalition powers. Its terms of reference are set out below.

The Panel Members

2.2 The members of the Panel are:

- **Professor William Schabas**

William Schabas is Professor of Human Rights Law at the National University of Ireland, Galway and Director of the Irish Centre for Human Rights.

- **Professor Christine Chinkin**

Christine Chinkin is Professor of International Law at the London School of Economics Department of Law.

- **Professor Bill Bowring**

Bill Bowring is Professor of Human Rights and International Law at London Metropolitan University.

- **Professor René Provost**

René Provost is Associate Professor Faculty of Law McGill University.

- **Professor Paul Tavernier**

Paul Tavernier is a Professor at the *Faculté Jean Monnet*, and Director of the *Centre de recherches et d'études sur les droits de l'Homme et le droit humanitaire* at the *Université de Paris Sud*.

- **Professor Nick Grief**

Nick Grief is the Steele Raymond Professor of Law and Head of the School of Finance and Law at the University of Bournemouth.

- **Professor Guy Goodwin-Gill QC**

Guy Goodwin-Gill is Professor of International Refugee Law at the University of Oxford.

- **Professor Upendra Baxi**

Upendra Baxi is Professor of Law at the University of Warwick.

The Inquiry Procedure

2.3 The Inquiry will take the form of an examination of evidence and the related legal issues. Counsel appointed to the Inquiry will conduct proceedings.

2.4 Counsel will:

On Presentation

- (a) present this discussion paper to the Panel in open session
- (b) guide the Panel through the evidence of fact by presenting and summarising documentary evidence included in the bundle and examining witnesses invited to the Inquiry
- (c) present the legal environment relevant to the issues under review
- (d) identify and explain the issues for Panel discussion and judgement

On Preparation of Panel Report

- (a) note comments and judgements of the Panel members
- (b) prepare the draft Panel Report
- (c) finalise the Panel Report with the Panel members (this may take place after the open sessions have concluded and through correspondence where necessary)

2.5 The Inquiry will take place over two days on the 8th and 9th November 2003.

2.6 Day One of the Inquiry will consist of three parts:

Part 1: the Panel will examine the evidence set out in section 3 below. It consists of documentary evidence, in the bundle, and oral evidence provided by eye-witnesses and/or technical experts. Counsel will answer any questions the Panel may wish to raise during the presentation of the material. The Panel will also be invited to question the witnesses after each examination by Counsel. On completing the presentation of the evidence members of the audience will be invited to ask questions of either the witnesses and/or Counsel.

Part 2: the relevant legal environment will be identified as laid out in section 4 below. The Panel will then consider and discuss the legal issues identified in section 5. It is envisaged that a basic determination of opinion on each issue will be reached during this part albeit with detailed reasoning reserved for Day Two's discussions and/or the final report.

Part 3: on completion of the deliberations the Panel will be asked to respond to any questions from the audience. To conclude the event, each Panel member will be requested to provide a preliminary brief opinion on the issues raised during the day and to identify the matters he/she considers to be of particular importance for the continuing reflection on the subject matter of the Inquiry.

2.7 Day Two will consist of a closed/open session discussion between the Panel members, assisted by Counsel, on the judgements raised on Day One and to be recorded in the final Panel Report.

2.8 The Panel Report will be completed by Counsel to record the work of the Inquiry and the conclusions reached by the Panel. However, individual members of the Panel may be requested to act as *rapporteur* on specific issues within their expertise. Dissenting opinions of individual Panel members will also be included. It is envisaged that the Report will be ready for the Panel members' final approval within 14 days of the Inquiry.

2.9 The Panel members will be requested to agree to the publication and dissemination of the final report.

3. The Evidence

3.1 The evidence the Panel is requested to consider prior to its legal deliberations comprises written documentation (contained in the annexed bundle) and oral presentation. The evidence is organised into two main sections that relate to the first two of the three central questions addressed by this Inquiry, namely: (1) the conduct of military action; and (2) the conduct of the occupation. Documentary evidence largely consists of publicly available material, which, although limited in its verifiability, represents the best information currently at hand. Particularly significant texts are identified by an asterisk (*).

(1) The Conduct of Military Action

A. Targeting

3.2 Both the UK and USA military authorities were adamant that the identification of targets during the conflict were based on military considerations and taking into account the need to keep civilian casualties to a minimum. Legal advice was reportedly available to the UK military forces in identifying targets.

3.3 A number of targets attacked that led to civilian casualties are to be examined in this context. Several sources have provided the information to be considered. They include the data supplied by Iraq Body Count, Spanish Brigade Against the War, Human Rights Watch, the Crimes of War Project and various press and news agencies, all of which is incorporated into the bundle.

3.4 The specific targets causing concern, however, are set out in Part 1 of the Evidence referred to below.

EVIDENCE – Part 1		
Target	Source	Document No.
1. Syrian Bus attack (24.03.03)	BBC News	1
2. Iraqi TV Station (26.3.03)	Human Rights Watch	2
3. Market/parade of shops (26.3.03)	BBC News	3
	Amnesty International Report	4 *
4. Palestine Hotel (10.4.2003)	Asia Times	6
5. Various press reports on restaurant attack (21.4.03)	various	7
7. General civilian damage (26.4.03)	Spanish Brigade Report p20.	8 *

8. Al-Jazeera and Abu Dhabi TV (8.4.2003)	Guardian	9	
General			
9. Iraq: First Reflections (July 2003) extracts	Ministry of Defence (UK)	10a	*
10. Legal Advice for targeting (20.3.2003)	Guardian	10b	

B. Civilian Casualties

3.5 There is no dispute that civilian casualties resulted from the Coalition forces’ bombing and military campaigns. The number of those casualties is, however, unclear, although the Iraq Body Count Project suggests between 6000 and 7800 deaths and 20000 injuries had occurred by August 2003.³

3.6 Part 2 of the Evidence will seek to determine the scale of casualties and where they took place as this may be of importance when considering the legal issues of the Coalition forces’ conduct of the military action.

3.7 A number of sources will be referred to, details of which are listed below. None can be independently verified. However, the sources remain the only information on casualties available, although testimony may be presented to the Panel.

EVIDENCE – Part 2			
Source		Document No.	
1. The Iraq Body Count Project (12.6.2003) ⁴		11	
2. Amnesty International Report (8.4.2003)		4	*
3. Report by the Spanish Brigade Against the War 26 th April 2003 compiled by observers in Baghdad.		8	*
4. Iraq Peace Team: diaries		12	
5. Reuters Press Report (9.7.2003)		13	

³ http://www.iraqbodycount.net/editorial_aug0703.htm

⁴ See <http://www.mapbureau.com/usersites/donalda/iraqbodycount/container.html> for a mapping of casualties and http://www.iraqbodycount.net/editorial_june1203_print.htm for a review of IBC’s work.

C. Weapons Systems and their Deployment

3.8 A number of weapons systems that are considered potentially suspect under international law were used by Coalition forces in the conflict. Although not banned these weapons have been the foci of opposition for a number of years.

3.9. Part 3 of the Evidence will provide both documentary and oral reports on the nature and effect of the suspect weapons and the occasions when they were deployed during the conflict by the Coalition forces. Reported casualties from these weapons will also be noted. Document details are set out in the box below.

3.10 Oral testimony will be provided by experts on the following issues:

Cluster bombs
Depleted uranium

EVIDENCE – Part 3		
Explosive Remnants of War - Reports	Document No.	
1. ICRC press release (25.6.2003)	14	
2. ICRC press release (20.6.2003)	15	
3. Landmines Action Report on Cluster Bombs (Rae McGrath 2000)	16	*
4. Landmines Action: Briefing ‘Indiscriminate Attack?’ (2003)	17	*
Casualties from Cluster Bombs and other weapons		
1. Iraq Body Count report (6.5.2003)	18	
2. Independent press report (2.4.2003)	19	
3. Mirror press report (3.4.2003)	20	
4. Amnesty Report (8.4.2003)	4	*
5. Human Rights Watch press release (16.4.2003)	21	*
6. Radio Free Europe press report (20.5.2003)	22	
7. UNICEF press release (17.7.2003)	23	
8. Hansard: extracts on parl. Questions (April/June 2003)	24	*
9. Various press releases on cluster bomb use (May-August 2003)	25	

Toxic Bullets/Depleted Uranium

1. Friends of the Earth press release (29.4.2003)	26
2. Christian Science Monitor press report (15.5.2003)	27
3. UN Wire press report (30.5.2003)	28
4. Various reports on depleted uranium use	29

(2) The Conduct of Occupation

3.11 It is readily acknowledged that international law imposes duties and responsibilities on forces from one state occupying the territory of another during a conflict or after the conclusion of hostilities. The Coalition is therefore subject to scrutiny for its actions notwithstanding the overthrow of the previous regime.

3.12 Various incidents and conditions are raised before the Inquiry in this context as Part 4 of the Evidence. They may be considered under four separate headings outlined in the box below. The main sources of information relied upon are Amnesty International, the International Humanitarian Law Research Initiative, and the International Committee of the Red Cross as well as a number of press and media organisations and agencies.

EVIDENCE – Part 4

Maintenance of Law and Order	Document No.	
1. Human Rights Watch report (3.6.2003)	30	*
2. Human Rights Watch press release (12.4.2003)	31	
3. Amnesty International report (4.7.2003)	32	*
4. Geoff Hoon: replies to questions on looting (7.4.2003)	33	
5. Amnesty International press release on failure to uphold human rights (23.7.2003)	34	
6. Amnesty International Memorandum on Concerns relating to law and order (23.7.2003)	35	*
7. Various press reports on civilian casualties in hunt for Saddam (June/July 2003)	36	

Public Welfare

- | | | |
|--|----|---|
| 1. Centre for Economic and Social Rights report (8.4.2003) | 37 | * |
| 2. Human Rights Watch press release (27.4.2003) | 38 | |

Preservation of Heritage Assets

- | | | |
|------------------------------|----|--|
| 1. UNESCO report (13.3.2003) | 39 | |
| 2. Press report (14.4.2003) | 40 | |
| 3. Various press reports | 41 | |

Preservation of Evidence of Iraq War Crimes

- | | | |
|---|----|---|
| 1. Physicians for Human Rights report (11.4.2003) | 42 | * |
| 2. Various press releases (April 2003) | 43 | |

General Sources:

Amnesty UK report on Iraq at:

<http://web.amnesty.org/web/web.nsf/pages/irq-faq-eng#2>

International Humanitarian Law Research Initiative

<http://www.ihlresearch.org/iraq/feature.php?a=20>

4. The Legal Environment

4.1 This section identifies a number of important sources of international law relevant to the issues to be presented to the Panel. Other sources will be relevant (particularly in relation to customary international law as well as international human rights law) and may be referred to at the Inquiry.

4.2 Given the mandate of this Inquiry the Statute of the International Criminal Court and related documents provide the specific legal environment. However, the rules and principles of international law including established principles of the international law of armed conflict are explicitly relevant to the ICC by virtue of Article 21 ICC.

Source

ICC Statute

<http://www.un.org/law/icc/statute/romefra.htm>

ICC Elements of Crimes (EOC)

ICC Rules of Evidence and Procedure

Geneva Conventions I-IV 12 August 1949

<http://www.icrc.org/ihl.nsf/WebFULL?OpenView>

Protocol Additional to the Geneva Conventions of 12 August 1949 and related to the protection of Victims of International Armed Conflicts (Protocol I) 8 June 1977

<http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/f6c8b9fee14a77fdc125641e0052b079?OpenDocument>

Charter of the United Nations

<http://www.un.org/aboutun/charter/>

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects Geneva 10 October 1980

<http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/ea805b1d46112374c125641e004ac0a3?OpenDocument>

Hague Conventions 8 October 1907

<http://www.icrc.org/ihl.nsf/WebFULL?OpenView>

Definition of Aggression (14Dec. 1974), A/RES/3314 (XXIX)

<http://ods-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement>

Convention for the Protection of Cultural Property in the event of Armed Conflict 1954

<http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/ea805b1d46112374c125641e004ac0a3?OpenDocument>

Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Oct. 1970), A/RES/2625 (XXV)

<http://ods-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>

Manila Declaration on the Peaceful Settlement of International Disputes, A/RES/37/10

<http://www.un.org/documents/ga/res/37/a37r010>

Declaration on the Enhancement of the Principle of Refraining from the Threat or Use of Force in International Relations (18 Nov. 1987), A/RES/42/22
<http://www.un.org/documents/ga/res/42/a42r022.htm>

Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (5 Dec. 1988), A/RES/43/51
<http://www.un.org/documents/ga/res/43/a43r051.htm>

Final Report to the Prosecutor by the Committee Established to Review the Nato Bombing Campaign Against the Federal Republic of Yugoslavia
<http://www.un.org/icty/pressreal/nato061300.htm>

International Criminal Court Act 2001
<http://www.hms.o.gov.uk/acts/acts2001/20010017.htm>

The *Corfu Channel* case, I.C.J. Reports, p. 22
<http://www.icj-cij.org/icjwww/idecisions.htm>

Nicaragua v. USA case, 27 June 1986 I.C.J., p. 14 at p.112
<http://www.icj-cij.org/icjwww/idecisions.htm>

Kupreskic Judgment (Case No: IT-95-16-T 14 Jan 2000)
<http://www.un.org/icty/kupreskic/trialc2/judgement/index.htm>

Formulation of the Nuremberg Principles: Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and the Judgement of the Tribunal, report, which also contains commentaries on the principles, appears in the Yearbook of the International Law Commission, 1950, vol. II
<http://www.un.org/law/ilc/texts/nurnfra.htm>

Draft Code of crimes Against Peace and Security of Mankind, 1996
<http://www.un.org/law/ilc/texts/dcodefra.htm>

Draft articles on the Responsibility of States for Internationally Wrongful Acts
http://www.un.org/law/ilc/texts/State_responsibility/responsibilityfra.htm

5. The Issues

The range of questions the Panel may consider are framed by the three central themes and core question for this Inquiry as set out in paragraph 1.7 above. In its review of these themes and question, particular attention is paid to the application of the ICC. The Panel is asked to consider the following specific matters:

(1) The Conduct of Military Action

A. Crimes Against Humanity

1. Does the evidence suggest that a “widespread or systematic attack” under Article 7 ICC, was directed at the civilian population of Iraq by the Coalition forces?
2. If so, should the civilian deaths and injuries sustained warrant consideration for investigation as (a) acts of murder under Article 7(1)(a) ICC, and/or (b) inhumane acts under Article 7(1)(k)?

B. War Crimes

3. Does the wording of Article 8(1) ICC preclude an investigation into war crimes that cannot be construed as “committed as part of a plan or part of a large-scale commission of such crimes”?
4. Does the evidence suggest that the Coalition forces wilfully killed civilians in the terms of Article 8(2)(a)(i) ICC?
5. Can military necessity be employed as a justification for the wilful killing of civilians under Article 8(2) ICC?
6. Does the evidence suggest that the Coalition forces intentionally directed attacks against the Iraqi civilian population or against individuals not taking direct part in hostilities under Article 8(2)(b)(i) ICC?
7. Does the evidence suggest that the Coalition forces intentionally directed attacks against civilian objects which were not military objects under Article 8(2)(b)(ii) ICC?

For the purposes of this question the Panel is asked to have regard in particular to Article 52 Additional Protocol 1 and EOC and consider whether:

- (i) *there is sufficient evidence to suggest that the objects referred to in Part 1 of the Evidence (above) were making an effective contribution to military action*
 - (ii) *there is sufficient evidence to suggest that the destruction of those objects offered a definite military advantage*
 - (iii) *there is sufficient evidence to suggest that civilian objects were the intended objects of attack.*
8. Does the evidence suggest that the Coalition forces intentionally launched attacks in the knowledge that such attack would cause incidental loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated under Article 8(2)(b)(iv)?

For the purposes of this question the Panel is asked to consider:

- (i) the appropriate definition of proportionality*
- (ii) the relevance of the weapons and munitions (specifically cluster bombs) deployed in causing loss of life or injury to civilians suggested by the evidence*
- (iii) the correct standard to be applied in determining whether a military objective has been legitimately identified and military advantage anticipated*
- (iv) the party who possesses the burden of proof in relation to the above matters*
- (v) whether the cumulative nature of attacks causing civilian casualties should be taken into account and thus the NATO FRY Bombing Campaign Report (para. 52) should be ruled incorrect or distinguished with regard to its reading of Kupreskic paragraph 526.*

9. Does the evidence suggest that the Coalition forces attacked or bombarded undefended places that were not military objectives within the meaning of Article 8(2)(b)(v)?
10. Does the evidence suggest that the Coalition forces employed poisoned weapons within the meaning of Article 8(2)(b)(xvii) ICC?

For the purposes of this question the Panel is asked to pay regard to the EOC and consider whether weapons containing depleted uranium qualify as weapons that release a substance as a result of their employment and that substance causes death or serious damage to health in the ordinary course of events through its toxic properties.

(2) The Conduct of Occupation

A. Maintenance of Law and Order

1. Did the approach revealed by the Coalition indicate an ignorance and lack of concern for responsibilities under Article 43 Hague Regulations 1907?

B. Public Welfare

2. Does the evidence suggest that the Coalition in general breached Article 56 Geneva Convention IV regarding the failure to provide adequate health and sanitation facilities?
3. Is there sufficient evidence for the Prosecutor to investigate the UK for breaches of Articles 27-33 and/or 79-135 Geneva Convention IV in relation to the treatment of civilian detainees?

C. Preservation of Heritage Assets

4. Is there any case to be answered for the failure of the Coalition to protect the heritage assets of Iraq?

E. Preservation of Evidence of War Crimes

5. Could the failure by Coalition forces to preserve the evidence of Iraqi war crimes sites amount to a breach of international law?

(3) Procedural Issues in the International Criminal Court

If a breach of the ICC Statute under (1) or (2) above is held to have taken place on the basis of the available evidence, the Panel is then requested to consider the legal requirements for a possible prosecution in the ICC of civilian leaders of the UK government. In particular the Panel is requested to consider the following questions:

A. Official Responsibility

1. Given the nature of the crimes under examination is there any bar to the prosecution of UK government leaders responsible within the meaning of the ICC?
2. On the basis of the evidence presented is the Panel of the opinion that UK government leaders possessed actual or constructive knowledge of the crimes committed as required by Article 28 ICC?

B. Investigation by the Prosecutor

3. In carrying out an assessment of the “seriousness” of the issues raised by this Inquiry under Article 15(2) ICC should the Prosecutor consider whether the military action undertaken by the Coalition could be construed as a crime of aggression?
4. Article 53 ICC requires the Prosecutor to consider whether there is a reasonable basis to proceed with an investigation. In the opinion of the Panel does the evidence suggest
 - (a) there is a reasonable basis to believe crimes within the jurisdiction of the ICC have been perpetrated
 - (b) the case against the UK leaders is of “sufficient gravity” to justify further action within the meaning of Article 17(1)(d) ICC
 - (c) there is no reason why a prosecution would not serve the interests of justice
 - (d) and thus an investigation by the Prosecutor under Article 53(1) was warranted?
5. Given the enactment of the International Criminal Court Act 2001 in the UK would the Prosecutor be obliged to wait until any domestic proceedings were concluded before considering ICC investigations against UK government figures? Would the fact that the prosecutions under the ICC Act 2001 require instigation by the Attorney General, who may be in a position of conflict of interest in these circumstances, be crucial?

C. Supplementary Issues

6. To what extent would the ICC have jurisdiction over the UK for actions taken by US forces under the provisions of Article 25(3)(c) ICC?
7. If any breach is held to have taken place under the terms of the ICC would any prosecuted UK leader possess any valid defences within Articles 31-33 ICC?
8. Would any other general defences available under international law be applicable?
9. To what extent would a determination of whether the Coalition action amounted to a crime of aggression be relevant for the ICC in considering an argument of anticipatory self-defence?