



# UK calls for 'greater clarity' on ICC's new crime of aggression

Britain among four countries looking to block court's jurisdiction which could protect likes of Tony Blair from prosecution

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The UK government is lobbying to block the international criminal court from activating the war crime of aggression, according to campaigners, in a move that could protect Tony Blair and other British politicians from the risk of future prosecution.

A three-page position paper circulated by the UK, Canada, France, Japan and Norway earlier this year, and seen by the Guardian, argues that the offence should not yet be operated within the court's jurisdiction on the grounds that there is a need for "greater clarity".

There has been growing international pressure to hand the ICC greater powers to pursue those deemed responsible for starting wars. In 2010, at a conference in Kampala, Uganda, an assembly of state parties that have signed up to the ICC agreed "to activate the court's jurisdiction over the crime of aggression as early as possible".

It was delayed until 2017 and is subject to reapproval of the extension of the ICC's jurisdiction. In December, representatives from the 123 member states of the ICC will gather at the United Nations' headquarters in New York to decide whether to finally activate the court's jurisdiction. The agenda item is listed as "activation of the court's jurisdiction over the crime of aggression".

Earlier this year a one-time Iraqi general attempted to launch a private prosecution against Tony Blair in the London courts for the former prime minister's role in the 2003 invasion of Iraq on the grounds that he had committed the crime of aggression.

Michael Mansfield QC argued in the July hearing that the crime had been accepted by Sir Hartley Shawcross QC, the UK's attorney general in the 1940s, at the time of the Nuremberg trials of Nazi war crimes.

There is already, therefore, an international crime of aggression involving any invasion or military occupation by one country using force illegally against another, Mansfield maintained.

The high court judges disagreed. The then lord chief justice Lord Thomas of Cwmgiedd and another senior judge, Mr Justice Ouseley, ruled in July that there was no such crime in English law under which Blair could be charged.

There has been no suggestion that the new ICC crime could be enforced retrospectively, so Blair is unlikely to be affected, but the position paper circulated by the UK and four other states pleads for greater clarity about the precise reach and remit of the offence.

"The court cannot exercise jurisdiction over nationals of a state or on the territory of a state unless that state accepts or ratifies the aggression amendments," it argues. "It is essential that this point is clarified."

It adds: "Any agreement to amend the crimes set out in the [ICC's] statute may not bind state already party to the statute which does not become party to the agreement ...What we seek is clarity on the interpretation of jurisdiction."

One of the leading campaigners for a change is Don Ferencz, an academic at Oxford University who runs the Global Institute for the Prevention of Aggression. His father was a prosecutor at the Nuremberg trials.

"After a 71-year effort to effectively criminalise aggression, you would think that the nations which sat in judgment in Nuremberg would be pleased to see that it's finally about to happen, but they are not," Ferencz said.

Britain and France, he said, had failed to ratify the Kampala amendments on aggression. "You'd think that, of all people, the nations which sat in judgment at Nuremberg would be embarrassed, if not ashamed, by the utter hypocrisy of failing to lead by example in accepting the court's aggression jurisdiction," he added. "Countries which do ratify the Kampala amendments send a clear signal that they don't intend to hide from the law."

The Foreign Office said: "We require clarity on the ICC's jurisdiction prior to any decision to include the crime of aggression within the court's remit."

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