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Will Tony Blair end up in the Hague? Will he share a cell with Slobodan Milosevic?" comedian Mark Thomas asked of CND's lawyer Phil Shiner as they walked away from 10 Downing Street at the end of last month. The unlikely pairing had just delivered a letter before action on Blair, warning that if the UK is involved in the use of force against Iraq, he could be investigated and prosecuted for war crimes. "Do you think his wife might take his case on?" added Thomas.

Among the acres of banners at last September's anti-war demo in London, one bore the legend 'Lawyers Against the War'. It is a measure of the nature of the brewing conflict that such an organisation makes sense, in the way that a coalition such as, for example, 'Plumbers For Peace' or maybe even 'Accountants Against Armageddon' might not. So why have lawyers come to the fore in the new peace movement?

"This is a highly legalised conflict, and of course the law plays an enormous part in the arguments for and against the war," answers Michael Mandel, a Canadian professor of law and co-chair of Lawyers Against the War. "The whole of the war against terror has been fought on a legal terrain." The million-plus turnout at the anti-war march on 15 February this year shows a UK public that is familiar and deeply concerned about the legalistic workings of UN resolutions. "Whatever we do, we'll do in line with international law," Blair promised when quizzed about the legal basis for striking at Saddam. It remains to be seen whether it is a promise that the Prime Minister will honour. If he does not, there is a growing legal movement determined to bring any war in the Middle East to account back at home in the West.

That informal grouping upped the ante at the end of last month, with a transatlantic initiative moving the legal debate away from the usual interminable hair-splitting over UN charter resolutions to serving papers on the perceived warmongers.

On the same day that Shiner, founder of the Birmingham-based Public Interest Lawyers and campaigning group PeaceRights, delivered his letter before action, Mandel was serving papers on Canadian Prime Minister Jean Chretien. Canada's defence minister had recently pledged Canadian support without the need for UN Security Council authorisation. Lawyers in the US were repeating the exercise.

As Mandel points out, the latest initiative packs a real punch for his country's
parliamentarians. "Our governments are planning to commit nothing short of mass murder. They're planning to kill Iraqi civilians without any lawful justification or excuse," he argues. "That's a crime in England and in Canada and under international law."

Alongside Shiner and Mandel, another leading anti-war lawyer is Michael Ratner, president of the New York-based Centre for Constitutional Rights (CCR). In one day he secured the signatures of 100 leading law professors in the US to back his letter to George Bush warning of the legal ramifications of a potential war on Iraq.

"The law is playing a more important role than in any prior war," Ratner reckons. "It's not like Saddam invading Kuwait, where there was a clear violation of international law. To many people in the world this is an unwarranted war and one in which inspections can probably continue doing their job, so legal questions are important in articulating the deeper philosophical and moral point that war is to be used as a last resort and only when compelled by absolute necessity."

The CCR led the legal objections in the US to the treatment of the detainees in Guantanamo Bay in Cuba. Ratner says he has plenty of experience of being yelled at on television shows and is the recipient of many "why don't you invite the Taliban into your house and let them eat your children?" - type emails. Even in the US, where the public mood is more resolved in favour of war, he reckons that arguments of international law are increasingly persuasive. "It's a complex issue, and sure, there isn't 100 per cent support, but people are willing to listen," he says.

Nor are such arguments confined to a peace-loving minority in the profession - they appear to be receiving more mainstream credibility. The Bar Council recently wrote to The Guardian saying that a Security Council resolution authorising war on Iraq would not be "self-evidently sufficient in international law to make that war lawful". According to Peter Carter QC, chairman of the Bar Human Rights Committee, nor was it able to "confer legitimacy on conduct which is in reality an act of aggression or is unjustified because it is a disproportionate response to a threat to peace". He concluded that members of the armed forces and their political masters could be open to prosecution through the International Criminal Court (ICC) even if there was a UN resolution.

Phil Shiner, together with Rabinder Singh QC of Matrix Chambers, can be credited with starting the debate about the legality of a war on Iraq. It was their idea for the CND-sponsored challenge which stated that the Government would be acting illegally if it used armed force against Iraq without a fresh Security Council resolution. Singh, together with Matrix colleague Alison MacDonald, delivered a legal opinion last year, arguing that a pre-emptive strike would be unlawful and that the present resolutions, including UN Security Council Resolution 1441, did not implicitly or explicitly contain an authorisation of the use of force.

Unsurprisingly, the case was not successful, but it did make legal history. The Court of Appeal ruled that, even if CND lost, its liability to pay the Government's costs should be limited to GBP 25,000. There has never been such a pre-emptive costs order and Shiner hopes that the ruling will prove to be a useful precedent for public interest litigation in the future.

At any rate, it was an extraordinary decision given what was at stake. "The judges felt that the Government could effectively bully us," says Shiner. "But the court also felt that we were being very reasonable, so that was a real victory for us." Shiner has been behind a number of anti-nukes actions, including a Court of Appeal challenge concerning the manufacture of nuclear weapons at Aldermaston and a complaint to the European Court of Human Rights (ECHR) on the deployment of Trident II strategic weapons systems.
Shiner believes that the CND challenge changed the Government's mind. "We think we won the argument anyway because even Tony Blair now accepts he does need a second resolution," Shiner continues. "Up to that point, there'd been a lot of talk about the UK going on an offensive strike, and the debate was switched overnight. I think that we were instrumental in that." CND was given leave to appeal the failed judicial review; however, the costs protection was then removed, so the group and its lawyers decided unanimously to call it a day. "You have to know when to stop and we felt we'd been warned of the consequences," he says.

Shiner has also recently released another anti-Government opinion on the interplay between resolutions 678 and 687. Resolution 678 permits member states "to use all necessary means" to implement a previous resolution demanding Iraqi withdrawal from Kuwait and to implement "all subsequent relevant resolutions". States are also authorised to "restore international peace and security in the area". Resolution 687 (introduced after the 1991 Gulf conflict) requires Saddam to give up his weapons and provide for inspections. The argument goes that, as 687 has not been complied with (since Saddam stopped cooperating with the UN in 1998), the UK is entitled to restore international security in the area without the need for further authorisation. Shiner says he is "still trying hard to stop force being used", but also "turning my attention to what we're going to do if forced is used".

Hence the recent attempt to bring the Prime Minister before the dock of the new ICC in the Hague. The pro-peace lawyers are not prepared to wait for the bombs to fall before they begin assembling the case. "We're going to set up a people's tribunal to determine whether, as a matter of law, the weapons systems are in breach of international humanitarian law," Shiner explains.

As potential evidence, Shiner would rely on the Allies' track record in the 1991 conflict and the subsequent wars in Kosovo and Afghanistan - in particular their use of indiscriminate weapons systems (such as cluster bombs and fuel-air explosives), attacks on Iraq's infrastructure and attacks on electricity supplies that could cause the death of thousands of innocent civilians because of failed water sanitation plants.

The people's tribunal, comprising international lawyers drawn from throughout the world, will judge if these methods of attack are 'war crimes'. "We'll then gather all the evidence that's available through Human Rights Watch, Amnesty and the UN; and if we can we'll get our own first-hand evidence from those people who are acting as human shields," Shiner continues. "The tribunal will reconvene and it will decide whether there have been violations and, if there has, it will report with the evidence to the prosecutor." As long as there is a reasonable doubt as to whether there have been violations, the ICC is bound to have to investigate.

Shiner says: "You never promise something that you can't deliver, and that letter we've sent to Tony Blair promises them there'll be a process to hold them to account - and I've got to make sure that's exactly what happens."

Any conflict without a specific resolution from the UN could represent a shattering of international law. As Mandel puts it: "There's so little plausible legal argument in favour of this war, that it's a test of the very idea of international law."

Many people believe that this is a conflict waiting to happen whatever the law says. "I don't take that fatalistic view. I think this is all finely balanced and has been throughout, and it's our job to make it as difficult as possible to go to war," comments Shiner.

Such arguments of international law appear to hold little sway with the Bush administration anyway. For a start, the US has shunned membership of the ICC. Of course, the US's track record is pretty poor, having abandoned the Anti-Ballistic Missile Treaty with Russia and rejected the Kyoto Global Warming Treaty.
The US pro-peace lawyers claim that, while the US did not ratify the ICC treaty, their leaders may nevertheless be held responsible under principles of universal jurisdiction and the War Crimes Act. Do the US leaders care for such arguments? "Maybe they don't, but it gives people another handle to be able to articulate their frustration about the war," responds Ratner.

"But also it's making the US stand naked before the world as a violator of the basic UN charter. So if war takes place despite the understanding of international law since the late 1940s, the US will really be exposed as an imperialist or law-breaker, and when you put that with all the other violations of international law, you're essentially talking about a rogue state."

The lawyer also has little time for our own prime minister's apparent lack of respect for the clear spirit of the law. "People who play with these little legal arguments remind me of the judges in Germany in the 1930s who were working on arguments as to why they could pass laws against the Jews," he says. "When you look at the use of force, you have to look at the spirit of the UN charter, the spirit of the Nuremberg principles, and that's where Tony Blair goes right off at the deep end."

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