

War Crimes: Complaint against Australia's Former Prime Minister John Howard to the International Criminal Court

By [Global Research News](#)

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Australia's former Prime Minister John Howard has been accused of war crimes before the International Criminal Court in The Hague.

A document titled [Complaint against John Howard to the International Criminal Court](#) has been sent to The AIMN by a member of the [SEARCH Foundation](#) - an on-line copy of the document can be found [here](#). Permission has been given by one of the authors to reproduce the document, but due to its length (75 pages) we have reproduced a summary.

Early in 2012 the Committee of the SEARCH Foundation resolved to submit a complaint to the International Criminal Court (the ICC) in The Hague, Netherlands, against John Howard, former Prime Minister of Australia, for his decision to send Australian forces to invade and wage war against Iraq.

The ICC is a permanent international tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and for the crime of aggression. The Court was set up through the Statute of Rome which was drafted and signed on 17 July 1998, and came into force on 1 July, 2002.

Australia signed the Statute on 9 December 1998, ratified it on July 1 2002, so as to be bound as from 1 September 2002.

Article 17 of the Statute, which deals with 'Issues of admissibility' prescribes that every step of the domestic jurisdiction of a country be exhausted before the Court may take jurisdiction over a complaint.

The SEARCH Foundation believes that it has satisfied the preconditions for admissibility.

Here are the steps taken

On 16 March 2012 the Search Foundation sent complaint to Commissioner Tony Negus APM, the head of the Australian Federal Police. The complaint is substantially the same as the one which would be sent to the Court. As far as the domestic jurisdiction is concerned, the complaint was based on Mr Howard's violation of Division 268 of the *Australian Criminal Code Act 1995*. That Division 'received' the substance of Article 6: Genocide; Article 7: Crimes against humanity, and Article 8: War crimes, as contained in the Statute of Rome.

The Office of the AFP Commissioner replied to the effect that the complaint had been sent

'for assessment' and the subsequent response concluded that:

. . . An assessment by the AFP Legal Branch, of the information you have supplied, does not disclose an offence against Division 268 of the Code, and therefore the matters raised cannot be investigated by the AFP. You may wish to seek further independent legal advice to clarify this.

The SEARCH Foundation took time to reconsider the matter, to seek further legal advice, and resolved to submit a similar complaint to the Commonwealth Director of Public Prosecutions.

The complaint was sent on 9 May 2013 to Mr Robert Bromwich SC, Commonwealth Director of Public Prosecutions.

The reply contained the following:

. . . The CDPP has considered the material you have provided and will not initiate a prosecution of Mr Howard based on this material. The material is not a brief of evidence, containing admissible evidence against Mr Howard. I also note that the allegations set out in your letter do not appear to fall within the terms of any offence contained in Division 268 of the Criminal Code.

The SEARCH Foundation resolved that as all avenues of domestic jurisdiction having been attempted without success, time had come to approach the International Criminal Court.

The complaint

I have the honour hereby to file with you and your office the Complaint against Mr John Winston Howard, former Prime Minister of Australia, who is responsible for sending Australian military personnel into war, and into waters of, the Republic of Iraq, pursuant to a 17 March 2003 decision of the Australian Cabinet to join in the invasion of the Republic of Iraq.

As a result of this decision, I believe that offenses were committed, and that these offenses are punishable under Article 6 Genocide, Article 7 Crimes against Humanity, and Article 8 War Crimes of the Rome Statute.

I ask you initiate an investigation under Article 15, with a view to issuing a warrant of arrest for Mr John Winston Howard.

Australia's ratification of the Rome Statute came into force on 1 September 2002, and these crimes were committed after that date. The offenses we enumerate are most serious.

On 16 March 2012, our organisation made a complaint in these same terms to both the Australian Federal Police, which is the primary agency responsible for investigating breaches of the Commonwealth Criminal Code 1995 which was amended to implement Australia's ratification of the Rome Statute i.e. Chapter 8 - Offences against humanity and related offences, Division 268 - 'Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court'. That Division of the Code 'receives' the provisions of the Rome Statute of 1998, as amended.

On 23 March 2012, the Office of the Australian Federal Police Commissioner acknowledged receipt of our complaint and on May 3 2012, the AFP Operations Coordination Centre stated that our information did not disclose an offence against Division 268 and so declined to investigate.

On 9 May 2013, after consulting with many lawyers about how to proceed, we sent our complaint to the Commonwealth Director of Public Prosecutions (DPP), the other agency which can consider a prosecution under Division 268.

On 18 June 2013, the DPP replied that it would not initiate a prosecution of Mr Howard, noting that information provided was not a 'brief of evidence' and that the allegations we made did not appear to fall within the terms of any offence under Division 268.

Under Article 17(b) of the Rome Statute, the Prosecutor cannot investigate if:

“The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute”

However, we have demonstrated that the Australian State has not investigated this complaint. We argue that this is because the Australian State is unwilling to prosecute a former Prime Minister, since it is very clear to us that the invasion of Iraq directly produce breaches of Articles 6, 7 and 8 of the Rome Statute, as we set out below.

Therefore we consider that this complaint is open to your investigation under Article 17.

(A brief summary of) The Facts

On 11 September 2001 Mr Howard was in Washington DC. USA, on a state visit while the terrorists on the Twin Towers in New York and the Pentagon were taking place. The day after the attacks he is reported as having declared support for the USA in retaliation: “We will help them. We will support actions they take to properly retaliate in relation to these acts of bastardry against their citizens and against what they stand for”.

Five days later the Australian Government, with the support of the Opposition Labor Party, passed a motion in the Australian Parliament invoking the ANZUS military alliance with the United States on the ground that the criminal actions of Al Qaeda, the terrorist organisation responsible for the attacks of 11 September 2001, were the equivalent to a state “attack on the United States”.

...

In January 2002 Mr. Howard was in Washington and endorsed former President George W. Bush’s State of the Union speech, in which the President labelled Iran, North Korea and Iraq as an “axis of evil”, on the grounds that the three countries possessed “weapons of mass destruction” (WMDs).

In June 2002 Mr. Howard returned to Washington to declare support for the Bush doctrine of “pre-emptive strike”, a doctrine which repudiated the entire framework of post-second world

war international relations and asserted that the United States had the right to attack any country it deemed a threat.

...

On 17 September 2002 Mr. Howard presented the ONA report to Parliament and asserted that, unless Iraq was “disarmed”, its weapons of mass destruction would pose “a direct, undeniable and lethal threat to Australia and its people.”

...

On 26 February 2003 forty-three Australian international law experts publicly warned that:

“The weak and ambiguous evidence presented to the international community by the U.S. Secretary of State, Colin Powell, to justify a pre-emptive strike underlines the practical danger of a doctrine of pre-emption. A principle of pre-emption would allow national agendas completely to destroy the system of collective security contained in Chapter Seven of the UN Charter and return us to the pre-1945 era, where might equalled right.”

They further warned that:

“The International Criminal Court now has jurisdiction over war crimes and crimes against humanity ... It attributes criminal responsibility to individuals responsible for planning military action that violates international humanitarian law and those who carried it out. It specifically extends criminal liability to heads of state, leaders of governments, parliamentarians, government officials and military personnel.”

The Australian Government, led by Mr. Howard, defied legal opinion. Parliament was adjourned on 8 March 2003. In the late hours of 17 March 2003, Mr. Howard and his Cabinet voted to authorise Australian air, land and naval personnel to attack Iraq. US Assistant Secretary of State Richard Armitage made an official request for the involvement of Australian troops late on the night of March 20. It later became known that Australian special operations troops, with Cabinet authorisation, had entered Iraq as much as 30 hours before the outbreak of war.

...

The House of Representatives Official Hansard records later that day, at 2.03pm, that Prime Minister Howard moved a resolution asking parliament to support the Cabinet decision. The record reads in part:

“This morning I announced that Australia had joined a coalition, led by the United States, which intends to disarm Iraq of its prohibited weapons of mass destruction.”

The ‘facts’ - and they are comprehensive with links provided to the ‘evidence’ - continue for over a dozen pages and conclude with:

As a result of the 20 March 2003 invasion of Iraq, there have been at least 105,439 – 115,149 civilians killed, and the Wikileaks war logs suggest a further 13,750, according to Iraq Body Count.

Nature of the complaint

The establishment of a permanent International Criminal Court with the capacity to investigate and prosecute genocide, the crime of aggression, war crimes and crimes against humanity, was a long standing human rights and foreign policy objective of the Australian Government.

The Commonwealth of Australia signed the Rome Statute, establishing the International Criminal Court ‘the I.C.C.’, on 9 December 1998. It deposited its instrument of ratification on 1 July 2002.

Australia’s instrument of ratification includes a declaration affirming the primacy of Australia’s criminal jurisdiction in relation to crimes within the jurisdiction of the Court. It outlines the conditions under which a person in Australian custody or control would be surrendered to the Court and clarifies Australia’s interpretation of the crimes within the Statute. The declaration has full effect in Australian law and is not a reservation. It reinforces safeguards already built into the Statute to preserve Australian sovereignty over its criminal jurisdiction.

The provisions of the Rome Statute have been ‘received’ into Australian domestic legislation, which must be read in a way consistent with that Statute; and that includes the provisions of the Commonwealth Criminal Code Act [No. 12 of] 1995, particularly those of Chapter 8 – Offences against humanity and related offences, Division 268 – Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court.

The provisions referred to hereafter are, in order of their appearance in this complaint, reproduced seriatim in ANNEX 26.

By the operation of Art. 12 (1) Australia has accepted the jurisdiction of the International Criminal Court.

The Accused is a subject of the Commonwealth of Australia.

The Accused’s criminal policy and practice could be characterised as an “act of aggression”, the “supreme international crime” as early defined by the International Military Tribunal at Nuremberg” (hereafter IMT), and thus in violation of the United Nations Charter’s Art. 2 (3) which prescribes the use of peaceful means to settle international disputes between Members, Art.2 (4) which proscribes the use of force against sovereign states, Art. 33 which sets down the duty to exhaust peaceful settlement of disputes and Art. 39 which states that the power to determine threats to peace or acts of aggression rests with the Security Council. [ANNEX 26]

The Accused knew or was in a position to know that no chemical, biological or nuclear weapons of mass destruction had been found in Iraq.

The Accused had no legal justification to participate in the “coalition of the willing” in a war against Iraq under Security Council Resolution 1441, because that Resolution could not

“reasonably be interpreted [as the Davids Commission found] as authorising individual member states to use military force against Iraq to comply with the Security Council’s Resolutions.”

The Accused rendered himself liable of endangering the international peace and security of the people of Iraq by causing the death of untold numbers of Iraqi people, by authorising the destruction, burning and looting of priceless historical treasures including those of two ancient civilisations which are the common inheritance of entire humanity.

The Accused is responsible for:

- acts of aggression, as defined in United Nations G. A. Res. 3314, Art. 1 (1974),
- breaches of international humanitarian law and human rights,
- crimes against peace, as defined in Art. 6(a) of the Charter of the IMT at Nuremberg and Art. 16 of the Draft Code of Crimes Against the Peace and Security of Mankind (1996),
- war crimes, as defined in Art. 6 (b) of the Charter of the IMT at Nuremberg and in Art. 8 of the I.C.C. Statute,
- crimes against humanity, as defined in Art. 6(c) of the Charter of the IMT at Nuremberg and Art. 7 of the I.C.C. Statute,
- crimes against Prisoners of War, including acts in contravention of the Article 8, and against the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and Arts. 13 and 14 of the Geneva Conventions Relative to the Treatment of Prisoners of War (1949), and their 1977 Protocols,
- crimes against civilians in contravention of Article 7 and Article 8, including the targeting of civilian populations and civilian infrastructure such as markets and residential areas, causing extensive destruction of property not justified by military objectives, using cluster bombs, using depleted uranium weapons; and acting in violation of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) and the relative Protocol 1, Art. 54 on the protection of objects indispensable to the survival of the civilian population, and Art. 55 on protection of the natural environment.

The International Criminal Court has jurisdiction. Subject to any other ground that you may find in the course of your investigation, the Accused is responsible for flagrant, repeated and longstanding violation of the provisions of the I.C.C. Statute Arts. 5 (a) (b), (c) and (d), Article 6 (a), (b), (c), Article 7 (d), (i), (j), (k), and Article 8.

Request

I respectfully request that you as the Prosecutor of the International Criminal Court initiate an investigation with a view to issuing a warrant of arrest for Mr. John Winston Howard, on the basis of the information that I have provided and which is in my view sufficient for that purpose.

At the time of publication of the document - August 2014 - there had not yet been a response.

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