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The Legal Advice to Wage War on Iraq was not just "sexed-up", it was concocted

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C. Stephen Frost, Mary Bedworth, Christopher Burns-Cox and David Halpin co-signed this article, in response to an article by Richard Norton Taylor in The Guardian and a Guardian editorial (see Annex below).

Background on the scandal of the twice-changed legal advice of the British Attorney General, which purported to allow the United Kingdom, and thereby the United States (together with Australia, Denmark and Poland), to wage an aggressive and illegal war on Iraq. This war is the "supreme international war crime" according to the the Nuremberg Protocol and the Geneva Conventions.

Look, it is this simple – the Intelligence was not just sexed-up, it was concocted – further, the legal advice was not just sexed-up, it was also concocted – so, "the supreme international war crime" (according to the Geneva Conventions) of waging aggressive war on a sovereign state, was indeed committed by Blair, Goldsmith, Straw, Hoon, Falconer, Morgan and others.

The British war criminals knew that Iraq posed no threat to the United Kingdom, and that a pre-emptive invasion of Iraq could not be claimed to be necessary in self-defence, which was why there was a need for the Intelligence to be sexed-up, nay concocted. Furthermore, because the British war criminals knew that they could not obtain the further United Nations resolution required (if they were not acting in self-defence, as they knew they were not), it was necessary to sex-up/concoct the legal advice.

Further, the then Chief of the British Armed Forces, Sir Michael Boyce, asked on 13 March 2003 for assurances from the Government that the proposed invasion was legal and that his forces would not be committing a war crime by invading Iraq. That was why the Goldsmith 7 March 2003 written legal advice (which itself represented Goldsmith's first change of mind), with all its caveats, had to be so drastically changed (with a little help from Lord Falconer and Baroness Morgan who had an unminuted meeting with Goldsmith at 10 Downing Street on 14 March 2003, at which the latter conveyed his "verbal view") to the infamous 17 March 2003 Parliamentary Answer on a single sheet of A4, devoid of all previous caveats, purporting as it did at the time to be the definitive legal advice, when it was no such thing. In any case, it was not for Goldsmith to decide whether Iraq had or had not complied with a combination of previous United Nations resolutions – that was always something for the United Nations to decide.

The "legal advice" on the single sheet of A4 (which we are not even sure was written by Goldsmith) was what was shown to Sir Michael Boyce and the Cabinet. Robin Cook (former

Foreign Secretary) resigned on 17 March 2003, and the second most senior lawyer at the Foreign Office, Elizabeth Wilmshurst, resigned the following day. Those two, Robin Cook and Elizabeth Wilmshurst, were alone in resigning – the rest, who could have made a difference, just sat on their hands.

As has previously been mentioned upthread there is no point in having a public inquiry, because the Public Inquiries Act 1921 was quietly repealed in the dying days of the last government and replaced by the odious Inquiries Act 2005.

It is unlikely that we will see the British war criminals on trial at the ICC in the Hague, but it is not beyond the bounds of possibility that any one of them could at any time be arrested in a foreign country and put on trial in that country using its own laws. So, for the rest of their lives, they will have to be careful where they travel.

Our suggestions are:

1) A list should be drawn up of suspected war criminals – the usual suspects would be on that list, but the list could become rather long if one were to include those who were complicit by their inaction (for example, the Conservatives inexplicably as far as I have understood were not concerned about the existence or otherwise of WMD – they wanted regime change regardless (which of course is illegal). So, to isolate the worst culprits, it would probably be best to keep the list as short as possible, confined to the worst culprits, numbering say 10 to 15.

2) A fresh inquest into the death of Dr David Kelly should be secured – this could and should be secured using Section 13 of the 1988 Coroners' Act, and would represent the best chance of getting the war criminals into a court of law giving evidence this time (unlike at the Hutton Inquiry) under oath – the Hutton Inquiry purported to be an inquest, but it was no such thing – Hutton was not granted any of the statutory powers which a coroner would automatically possess – for example, he did not even hear evidence under oath, and he had no powers of subpoena – further, a coroner can call a jury and he can have witnesses aggressively cross-examined (Hutton possessed no such powers). Further, suicide must be proved beyond reasonable doubt (ie a criminal level of proof, which is a very high standard of proof) before a verdict of suicide can be returned – Hutton did not even hear evidence under oath, so it was never possible that he could be satisfied that suicide had been proved to the required standard. So, David Kelly's death has not been subjected to the rigours of a proper inquest, and that is in flagrant contravention of English (and European) law. So, due process of law was subverted in the investigation of arguably the most important death to have occurred in the United Kingdom in our lifetimes, inextricably linked as Kelly's death was to the United Kingdom's highly dubious reasons for going to war with Iraq. The necessary urgent correction of this incontrovertible subversion of due process of law would provide the perfect excuse to get the war criminals in a court of law giving evidence under oath, under threat of charges of perjury were they to lie. The Coroner would have the power to subpoena any British citizen.

Here is the 7 March 2003 legal advice (which represented Goldsmith's first change of mind):

http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/28_04_05_attorney_general.pdf

Here is the 17 March 2003 legal advice (which represented Lord Goldsmith's second change of mind);

http://news.bbc.co.uk/1/hi/uk_politics/vote_2005/frontpage/4492195.stm

"Here is the full text of the 17 March 2003 response:

Authority to use force against Iraq exists from the combined effect of Resolutions 678, 687 and 1441.

All of these resolutions were adopted under Chapter VII of the UN Charter which allows the use of force for the express purpose of restoring international peace and security:

In Resolutions 678, the Security Council authorised force against Iraq, to eject it from Kuwait and to restore peace and security in the area.

In Resolution 687, which set out the ceasefire conditions after Operation Desert Storm, the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area. Resolution 687 suspended but did not terminate the authority to use force under Resolution 678.

A material breach of Resolution 687 revives the authority to use force under Resolution 678.

In Resolution 1441, the Security Council determined that Iraq has been and remains in material breach of Resolution 687, because it has not fully complied with its obligations to disarm under that resolution.

The Security Council in Resolution 1441 gave Iraq "a final opportunity to comply with its disarmament obligations" and warned Iraq of the "serious consequences" if it did not.

The Security Council also decided in Resolution 1441 that, if Iraq failed at any time to comply with and co-operate fully in the implementation of Resolution 1441, that would constitute a further material breach.

It is plain that Iraq has failed so to comply and therefore Iraq was at the time of Resolution 1441 and continues to be in material breach.

Thus, the authority to use force under Resolution 678 has revived and so continues today.

Resolution 1441 would in terms have provided that a further decision of the Security Council to sanction force was required if that had been intended. Thus, all that Resolution 1441 requires is reporting to and discussion by the Security Council of Iraq's failures, but not an

express further decision to authorise force."

ANNEX

Top judge: US and UK acted as 'vigilantes' in Iraq invasion

by Richard Norton-Taylor

Former senior law lord condemns 'serious violation of international law'

18 November 2008, The Guardian

One of Britain's most authoritative judicial figures last night delivered a blistering attack on the invasion of Iraq, describing it as a serious violation of international law, and accusing Britain and the US of acting like a "world vigilante".

Lord Bingham, in his first major speech since retiring as the senior law lord, rejected the then attorney general's defence of the 2003 invasion as fundamentally flawed.

Contradicting head-on Lord Goldsmith's advice that the invasion was lawful, Bingham stated: "It was not plain that Iraq had failed to comply in a manner justifying resort to force and there were no strong factual grounds or hard evidence to show that it had." Adding his weight to the body of international legal opinion opposed to the invasion, Bingham said that to argue, as the British government had done, that Britain and the US could unilaterally decide that Iraq had broken UN resolutions "passes belief".

Governments were bound by international law as much as by their domestic laws, he said. "The current ministerial code," he added "binding on British ministers, requires them as an overarching duty to 'comply with the law, including international law and treaty obligations'."

The Conservatives and Liberal Democrats continue to press for an independent inquiry into the circumstances around the invasion. The government says an inquiry would be harmful while British troops are in Iraq. Ministers say most of the remaining 4,000 will leave by mid-2009.

Addressing the British Institute of International and Comparative Law last night, Bingham said: "If I am right that the invasion of Iraq by the US, the UK, and some other states was unauthorised by the security council there was, of course, a serious violation of international law and the rule of law.

"For the effect of acting unilaterally was to undermine the foundation on which the post-1945 consensus had been constructed: the prohibition of force (save in self-defence, or perhaps, to avert an impending humanitarian catastrophe) unless formally authorised by the nations of the world empowered to make collective decisions in the security council …"

The moment a state treated the rules of international law as binding on others but not on itself, the compact on which the law rested was broken, Bingham argued. Quoting a comment made by a leading academic lawyer, he added: "It is, as has been said, 'the difference between the role of world policeman and world vigilante'."

Bingham said he had very recently provided an advance copy of his speech to Goldsmith

and to Jack Straw, foreign secretary at the time of the invasion of Iraq. He told his audience he should make it plain they challenged his conclusions.

Both men emphasised that point last night by intervening to defend their views as consistent with those held at the time of the invasion. Goldsmith said in a statement: "I stand by my advice of March 2003 that it was legal for Britain to take military action in Iraq. I would not have given that advice if it were not genuinely my view. Lord Bingham is entitled to his own legal perspective five years after the event." Goldsmith defended what is known as the "revival argument" – namely that Saddam Hussein had failed to comply with previous UN resolutions which could now take effect. Goldsmith added that Tony Blair had told him it was his "unequivocal view" that Iraq was in breach of its UN obligations to give up weapons of mass destruction.

Straw said last night that he shared Goldsmith's view. He continued: "However controversial the view that military action was justified in international law it was our attorney general's view that it was lawful and that view was widely shared across the world."

Bingham also criticised the post-invasion record of Britain as "an occupying power in Iraq". It is "sullied by a number of incidents, most notably the shameful beating to death of Mr Baha Mousa [a hotel receptionist] in Basra [in 2003]", he said.

Such breaches of the law, however, were not the result of deliberate government policy and the rights of victims had been recognised, Bingham observed.

He contrasted that with the "unilateral decisions of the US government" on issues such as the detention conditions in Guantánamo Bay, Cuba.

After referring to mistreatment of Iraqi detainees in Abu Ghraib, Bingham added: "Particularly disturbing to proponents of the rule of law is the cynical lack of concern for international legality among some top officials in the Bush administration."

Iraq war: Time for a full inquiry

Editorial

19 November 2008, The Guardian

More than five years after the event, how much does it matter that a retired law lord now believes the government's legal advice on the invasion of Iraq was unlawful?

From one perspective the answer is: not very much. Seen from 2008, after all, the Iraq war is history. With the Iraqi government's backing this week, the troops will soon be on the way out. Chastened by the whole experience, no western leader is likely to go down the Bush-Blair route any time soon. Like it or not, the original advice was sincerely offered and sincerely acted on. And Lord Bingham is in any case no longer a lord of appeal. In short, his Grotius lecture this week may be a powerful piece of legal reasoning. But it is a footnote to a decision that cannot now be reversed.

Some of this scepticism is well-founded. But not all of it. In the first place, Lord Bingham is not just any old lawyer. He is the most senior judge of the modern era. He is regarded by

many as its finest legal mind. Though Lord Bingham only retired a few weeks ago, he has been at the pinnacle of English law-making for a decade and a half and has clearly been pondering the war's legality for years. It may raise some eyebrows that he should be so quick to engage on this supremely divisive issue so soon after leaving the bench – but if the issue is so important, why not? The simple fact is that, when Lord Bingham speaks on the law, it is always a good idea to listen.

Just because it is now more than five years since the attorney general, Lord Goldsmith, advised that an invasion would be lawful, it does not follow that his advice or the decision are less controversial or momentous now than they were in 2003. It is hard to think of a more serious decision than one to go to war. Particularly in circumstances other than national self-defence, it is essential to know what is lawful and what is not. In a world increasingly and rightly regulated by international law, all nations need to be clear about the lawfulness of war and the obligation to obey that law.

Lord Bingham's conclusion that the Iraq invasion was "a serious violation of international law and the rule of law" – which ministers are required to uphold – has already been vigorously challenged by Lord Goldsmith and Jack Straw. Yet this is such a serious subject, with such immense implications for Britain's standing, that the argument cannot be allowed to rest there. When such senior figures of the legal establishment are at odds in this way, it enhances the case for a full public inquiry into the lessons of the Iraq war. That inquiry should have been established long ago. But when someone of Lord Bingham's stature says the war was unlawful, the case for such a scrutiny, already compelling, becomes irresistible.

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