

Britain: Illegality of Iraq war dominates Chilcot inquiry

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The former attorney general, Lord Goldsmith, has defended his position that the Iraq war was legal, following dissenting testimony to the Chilcot inquiry from two top government lawyers.

Goldsmith, the government's senior legal adviser in the period leading up to the Iraq war in 2003, stated that he had believed that it would have been "safer" to get a second United Nations resolution until a month before the invasion. But he changed his mind prior to issuing his March 13, 2003, advice to the cabinet that war was justified by United Nations resolution 1441, approved in November 2002, which gave Saddam Hussein a "final opportunity" to comply with UN resolutions dating back to the first Gulf War in 1991. War began three days later.

Goldsmith expressed serious reservations about the legality of military action in a draft opinion given to then Prime Minister Tony Blair in January 2003, but he told Chilcot that he had been "overly cautious." On February 27, he met with Sir Jeremy Greenstock, the British ambassador to the UN, and senior US lawyers. He then told Blair's chief of staff, Jonathan Powell, and other government advisers that specific authorisation from the United Nations for war was not required. Iraqi non-compliance with resolution 1441 would reactivate UN resolution 678, passed in 1991, authorising "all necessary means to restore international peace and security" in the region. "That was, on past precedent, sufficient to constitute the green light," he said.

On March 7, 2003, Lord Goldsmith presented Blair with a 13-page legal opinion in which he said a "reasonable case" could be made for launching an attack without specific Security Council approval. Ten days later he stated without reservation that resolution 1441 provided the necessary authorization for war. Asked why he left it so late to issue such a definitive statement, he said that it was because the armed forces required an "unequivocal" judgment before troops went into battle.

Goldsmith was forced to repeatedly deny that he had come under political pressure from the government or Washington to change his opinion.

He said he had disagreed at the time with Foreign Office lawyers Sir Michael Wood and Elizabeth Wilmshurst that war would be a "crime of aggression" without explicit UN approval. Both have testified to the Chilcot inquiry. Wood, who was a senior legal adviser to the Foreign Office, said that he "considered that the use of force against Iraq in 2003 was contrary to international law."

Wilmshurst, his deputy at the Foreign Office, resigned when her advice that the invasion of

Iraq would be illegal was ignored. She told the inquiry that not a single lawyer at the Foreign Office believed that a legal case could be made for the war.

She contradicted the evidence given by former Foreign Secretary Jack Straw last week, who claimed that he supported military action only “very reluctantly.” “Whatever the aims of the US, regime change was off the agenda as far as the UK was concerned,” Jack Straw told Chilcot last week. It “could not be a lawful objective” and would have been “improper and unlawful,” he said. He claimed that his “decision to support military action in respect of Iraq was the most difficult decision I have ever faced in my life.”

Wood, in contrast, portrayed Straw as a man eager to avoid prosecution but entirely cavalier about the law. In a memo, Straw had asked government lawyers to provide “an urgent note about the practical consequences of the UK’s acting without international legal authority in using force against Iraq.”

Straw’s private secretary at the time, Simon McDonald, asked in a memo, “Could HMG [Her Majesty’s Government] or individual service personnel be vulnerable in the UK or other courts to charges relating to unlawful use of force and would the issue of legality of our actions therefore be determined in our domestic courts?”

Straw’s response to Wood’s advice that an invasion would be an illegal act of aggression was to say that international law was very vague. He accused Wood of being “dogmatic.” He then boasted of his past record of defying the law. “When he had been at the Home Office, he had often been advised things were unlawful but he had gone ahead anyway and won in the courts,” Wood said.

Wood’s account was supported by a Foreign Office cable detailing a meeting between Straw and US Secretary of State Colin Powell in March 2002, in which Straw told Powell that he felt “entirely comfortable making a case for military action to deal with Iraq’s WMD [weapons of mass destruction]”. This meeting was a month before Prime Minister Tony Blair’s visit to President George Bush’s Crawford ranch, at which it has been suggested that Blair agreed to participate in the invasion.

In January 2003 Straw told US Vice President Dick Cheney that while the UK would “prefer” a second UN resolution, they would go ahead without one “a la Kosovo.” He was referring to the bombing of Belgrade in 1999, which was also conducted without a UN mandate.

Wood responded by writing a letter to Straw warning him that such an action “would amount to the crime of aggression.”

Just before Straw gave evidence at the Chilcot inquiry, a letter he wrote to Blair was conveniently leaked and presented as an attempt to warn Blair that the war would be illegal. What the letter actually did was to advise Blair how to avoid falling into what he called the “two potential elephant traps” under international law—justifying war by reference to regime change and going ahead in the absence of a “fresh UN mandate.” What Straw suggested was that Blair should argue that regime change was necessary in order to eliminate Iraq’s WMDs.

The British government was from the outset fully prepared to back the US invasion of Iraq, with or without a second resolution, as they had done in the Balkans. But even had they secured such a resolution, the war still would have constituted a criminal war of

aggression—albeit one hidden behind the false legitimacy provided by the UN.

The Chilcot inquiry has now heard two experienced international lawyers say that the Iraq war was illegal and that the entire legal team at the Foreign Office agreed with this opinion. It is an opinion shared by the leading European jurists who sat on the Davids Commission, which investigated the Dutch role in the Iraq war. This body of legal opinion represents a prima facie case for war crimes charges against Blair, Straw and other leading members of the British government, as well as the highest echelons of the Bush administration.

Instead, all those involved in instigating war with Iraq are still going about their business. Blair himself is raking in money from lucrative speaking engagements and consultancies, while Straw is Lord Chancellor, the head of the legal system, and Secretary of State for Justice. It is a state of affairs that expresses the character of a government that operates as a criminal clique dedicated to enriching its friends in the City at the expense of ordinary people.

Blair gives evidence before Chilcot tomorrow. But whether or not he faces awkward questions, he can do so without fear that he may be indicted for the war crimes of which he is so clearly guilty. The Chilcot inquiry was specifically set up in order to avoid the possibility of a war crimes trial. It has no remit to determine whether the war was legal or not. Its members have no legal training or experience and they sit without legal advice. Sir John Chilcot made it clear when the inquiry began that he did not see his task as one of determining guilt. Witnesses are not under oath and none of them are cross examined as they would be in a court of law. They have been allowed to give long, self-serving statements that have gone entirely unchallenged.

The contempt in which the inquiry is held by those whose actions it is supposed to investigate was epitomised by Blair's former spokesman Alistair Campbell, who used his own appearance to declare that he stood by every word of the UK government dossier on Iraq's supposed WMDs that has been demonstrated to be false in every respect. Campbell, who chaired the meetings of intelligence officers that produced the dossier, said, "I defend every single word of the dossier. I defend every single part of the process."

Its limitations were only highlighted by an exchange between Chilcot and Goldsmith. At one point, Goldsmith said he did not agree with the decision not to publish some documents relating to the legal basis for the war, to which Chilcot replied, "Can I just say that the frustration is shared."

The fact remains that the government determines which documents the inquiry can see and which can be discussed by those giving evidence, up to and including the man whose legal advice provided the immediate justification for going to war. Whatever Chilcot's "frustration," the members of the inquiry are representatives of the British political establishment who sit on the Privy Council. Their task is to provide the illusion of an accounting for the Iraq war that is no less part of an ongoing whitewash and cover-up than previous such inquiries under the likes of Lords Hutton and Butler.

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