

The Epic Crime that Dares Not Speak its Name

Royal Air Force officer to be tried before a military court for refusing to return to Iraq

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Theme: [Crimes against Humanity](#)

In-depth Report: [IRAQ REPORT](#)

A Royal Air Force officer is about to be tried before a military court for refusing to return to Iraq because the war is illegal. Malcolm Kendall-Smith is the first British officer to face criminal charges for challenging the legality of the invasion and occupation. He is not a conscientious objector; he has completed two tours in Iraq. When he came home the last time, he studied the reasons given for attacking Iraq and concluded he was breaking the law. His position is supported by international lawyers all over the world, not least by Kofi Annan, the UN secretary general, who said in September last year: "The US-led invasion of Iraq was an illegal act that contravened the UN Charter."

The question of legality deeply concerns the British military brass, who sought Tony Blair's assurance on the eve of the invasion, got it and, as they now know, were lied to. They are right to worry; Britain is a signatory to the treaty that set up the International Criminal Court, which draws its codes from the Geneva Conventions and the 1945 Nuremberg Charter. The latter is clear: "To initiate a war of aggression... is not only an international crime, it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole."

At the Nuremberg trial of the Nazi leadership, counts one and two, "Conspiracy to wage aggressive war and waging aggressive war", refer to "the common plan or conspiracy". These are defined in the indictment as "the planning, preparation, initiation and waging of wars of aggression, which were also wars in violation of international treaties, agreements and assurances". A wealth of evidence is now available that George Bush, Blair and their advisers did just that. The leaked minutes from the infamous Downing Street meeting in July 2002 alone reveal that Blair and his war cabinet knew that it was illegal. The attack that followed, mounted against a defenceless country offering no threat to the US or Britain, has a precedent in Hitler's invasion of Sudetenland; the lies told to justify both are eerily similar.

The similarity is also striking in the illegal bombing campaign that preceded both. Unknown to most people in Britain and America, British and US planes conducted a ferocious bombing campaign against Iraq in the ten months prior to the invasion, hoping this would provoke Saddam Hussein into supplying an excuse for an invasion. It failed and killed an unknown number of civilians.

At Nuremberg, counts three and four referred to "War crimes and crimes against humanity". Here again, there is overwhelming evidence that Blair and Bush committed "violations of the laws or customs of war" including "murder... of civilian populations of or in occupied territory, murder or ill-treatment of prisoners of war".

Two recent examples: the US onslaught near Ramadi this month in which 39 men, women and children – all civilians – were killed, and a report by the United Nations special rapporteur in Iraq who described the Anglo-American practice of denying food and water to Iraqi civilians in order to force them to leave their towns and villages as a “flagrant violation” of the Geneva Conventions.

In September, Human Rights Watch released an epic study that documents the systematic nature of torture by the Americans, and how casual it is, even enjoyable. This is a sergeant from the US Army’s 82nd Airborne Division: “On their day off people would show up all the time. Everyone in camp knew if you wanted to work out your frustration you show up at the PUC [prisoners’] tent. In a way it was sport... One day a sergeant shows up and tells a PUC to grab a pole. He told him to bend over and broke the guy’s leg with a mini Louisville Slugger that was a metal [baseball] bat. He was the fucking cook!”

The report describes how the people of Fallujah, the scene of numerous American atrocities, regard the 82nd Airborne as “the Murdering Maniacs”. Reading it, you realise that the occupying force in Iraq is, as the head of Reuters said recently, out of control. It is destroying lives in industrial quantities when compared with the violence of the resistance.

Who will be punished for this? According to Sir Michael Jay, the permanent under-secretary of state who gave evidence before the Parliamentary Foreign Affairs Committee on 24 June 2003, “Iraq was on the agenda of each cabinet meeting in the nine months or so until the conflict broke out in April”. How is it possible that in 20 or more cabinet meetings, ministers did not learn about Blair’s conspiracy with Bush? Or, if they did, how is it possible they were so comprehensively deceived?

Charles Clarke’s position is important because, as the current British Home Secretary (interior minister), he has proposed a series of totalitarian measures that emasculate habeas corpus, which is the barrier between a democracy and a police state. Clarke’s proposals pointedly ignore state terrorism and state crime and, by clear implication, say they require no accountability. Great crimes, such as invasion and its horrors, can proceed with impunity.

This is lawlessness on a vast scale. Are the people of Britain going to allow this, and those responsible to escape justice? Flight Lieutenant Kendall-Smith speaks for the rule of law and humanity and deserves our support.

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