

The War was Illegal, PM Blair Misled Parliament and the Country

Report of UK Attorney General

By [Global Research](#)

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Theme: [Law and Justice](#), [US NATO War Agenda](#)

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What the Attorney General said: leaked legal advice

This is the text of the document released by Channel 4 News and reported to be an extract from Attorney General Lord Goldsmith's advice to Prime Minister Tony Blair on March 7, 2003.

Summary

26. To sum up, the language of resolution 1441 leaves the position unclear and the statements made on adoption of the resolution suggest that there were differences of view within the Council as to the legal effect of the resolution.

Arguments can be made on both sides. A key question is whether there is in truth a need for an assessment of whether Iraq's conduct constitutes a failure to take the final opportunity or has constituted a failure fully to cooperate within the meaning of OP4 such that the basis of the cease-fire is destroyed. If an assessment is needed of that situation, it would be for the Council to make it.

A narrow textual reading of the resolution suggests that sort of assessment is not needed, because the Council has predetermined the issue. Public statements, on the other hand, say otherwise.

27. In these circumstances, I remain of the opinion that the safest legal course would be to secure the adoption of a further resolution to authorise the use of force. [...] The key point is that it should establish that the Council has concluded that Iraq has failed to take the final opportunity offered by resolution 1441, as in the draft which has already been tabled.

28. Nevertheless, having regard to the information on the negotiating history which I have been given and to the arguments of the US Administration which I heard in Washington, I accept that a reasonable case can be made that resolution 1441 is capable in principle of reviving the authorisation in 678 without a further resolution.

29. However, the argument that resolution 1441 alone has revived the authorisation to use force in resolution 678 will only be sustainable if there are strong factual grounds for concluding that Iraq has failed to take the final opportunity. In other words, we would need to be able to demonstrate hard evidence of non-compliance and non-cooperation. Given the structure of the resolution as a whole, the views of UNMOVIC and the IAEA will be highly

significant in this respect. In the light of the latest reporting by UNMOVIC, you will need to consider very carefully whether the evidence of non-cooperation and non-compliance by Iraq is sufficiently compelling to justify the conclusion that Iraq has failed to take its final opportunity.

30. In reaching my conclusion, I have taken account of the fact that on a number of previous occasions, including in relation to Operation Desert Fox in December 1998 and Kosovo in 1999, UK forces have participated in military action on the basis of advice from my predecessors that the legality of the action under international law was no more than reasonably arguable. But a “reasonable case” does not mean that if the matter ever came before a court I would be confident that the court would agree with the view.

I judge that, having regard to the arguments on both sides, and considering the resolution as a whole in the light of the statements made on adoption and subsequently, a court might well conclude that OPs 4 and 12 do require a further Council decision in order to revive the authorisation in resolution 678. But equally I consider that the counter view can be reasonably maintained.

However, it must be recognised that on previous occasions when military action was taken on the basis of a reasonably arguable case, the degree of public and Parliamentary scrutiny of the legal issue was nothing as great as it is today.

31. The analysis set out above applies whether a second resolution fails to be adopted because of a lack of votes or because it is vetoed. As I have said before, I do not believe that there is any basis in law for arguing that there is an implied condition of reasonableness which can be read into the power of veto conferred on the permanent members of the Security Council by the UN Charter. So there are no grounds for arguing that an “unreasonable veto” would entitle us to proceed on the basis of a presumed Security Council authorisation.

In any event, if the majority of world opinion remains opposed to military action, it is likely to be difficult on the facts to categorise a French veto as “unreasonable”. The legal analysis may, however, be affected by the course of events over the next week or so, eg, the discussions on the draft second resolution. If we fail to achieve the adoption of a second resolution we would need to consider urgently at that stage the strength of our legal case in the light of circumstances at the time.

Blair accused of ‘gross deception’ as Goldsmith’s advice is published

By Colin Brown, The Independent April 2005

The Attorney General’s doubts about the legality of the Iraq war were finally laid bare after his secret advice to the Prime Minister was leaked.

The publication of Lord Goldsmith’s report last night could prove to be the “smoking gun” that shows Tony Blair misled Parliament and the country over the war.

Last night, Mr Blair – unaware that the report was about to be leaked – was caught out still claiming on Sky News that the advice from the Attorney General “didn’t change”.

Professor Peter Hennessy, an expert on constitutional affairs, said: “The whole thing reeks.”

Dominic Grieve, the Tory legal affairs spokesman said: "There has been a gross deception."

Families of some of the British soldiers killed in Iraq said they were preparing a legal case against the Prime Minister, based on the leaked document.

The Attorney General rushed out a statement, defending his role. He made clear that he changed his view because the Prime Minister had assured him that Saddam was in breach of UN resolutions. However, it has become clear that the assurance was based on intelligence that Saddam was building up an arsenal of WMD that has proved false. Lord Goldsmith said: "What this document does, as in any legal advice, is to go through the complicated arguments that led me to this view. Far from showing I reached the conclusion that to go to war would be unlawful, it shows how I took account of all the arguments before reaching my conclusion.

"The document also makes it clear that the legal analysis might be altered by the course of events over the next week or so.

"Between 7th March and 17th March, 2003, I asked for and received confirmation of the breach of UN Security Council resolutions. It was also necessary to continue my deliberations as the military and civil service needed me to express a clear and simple view whether military action would be lawful or not.

"The answer to the question was it lawful, yes or no, was, in my judgement, yes. And I said so to Government, to the military, to Cabinet and publicly."

In his report to Mr Blair, Lord Goldsmith warned in the document that British troops involved in any invasion of Iraq might face prosecution in the international courts and said the "safest legal course" would be to secure a new Security Council resolution authorising war.

Lord Goldsmith said he believed the UK and US would need "strong factual grounds" and "hard and compelling evidence" of Iraqi breaches of United Nations resolutions before taking military action.

The six key arguments used by Lord Goldsmith to question the legality of the war were leaked at the weekend, but the full report strips away the last vestiges of defence by Mr Blair for his claim, repeated this week, that he had clear advice that the war was legal.

In the advice, Lord Goldsmith also challenged the Prime Minister's assertion that the war was justified because Saddam Hussein had flouted UN resolution 1441 on weapons of mass destruction.

Lord Goldsmith said he believed the wording of the resolution left it "unclear" whether it authorised war. "In these circumstances, I remain of the opinion that the safest legal course would be to secure the adoption of a further resolution to authorise the use of force," he said.

The advice said "a reasonable case" could be made that resolution 1441 permitted the use of military action. But it added: "However, the argument that resolution 1441 alone has revived the authorisation to use force ... will only be sustainable if there are strong factual grounds for concluding that Iraq has failed to take the final opportunity [to disarm].... We would need to be able to demonstrate hard evidence of non-compliance and non co-operation. Given the ... resolution as a whole, the views of Unmovic and the IAEA will be

highly significant ... You will need to consider very carefully whether the evidence of non-cooperation and non-compliance by Iraq is sufficiently compelling to justify the conclusion that Iraq has failed to take its final opportunity." The document, leaked to Channel 4 News, states that the UK had previously gone to war in Kosovo in 1999 and taken part in air strikes against Iraq in 1998's Operation Desert Fox on the basis of advice that the legality of the action was no more than "reasonably arguable".

But he warned: "A 'reasonable case' does not mean that if the matter ever came before a court I would be confident that the court would agree with the view." 28 April 2005 06:04

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