

Britain: New Statesman publishes government report on illegality of Iraq war

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A leaked memo from British Attorney General Lord Goldsmith confirms the charge levelled by International Development Secretary Clare Short when she resigned on May 12 that Prime Minister Tony Blair had been warned that the occupation of Iraq by the US and Britain may be illegal.

The document from Blair's chief legal advisor is published in the *New Statesman* magazine, alongside a lead article by political editor John Kampfner.

The article states that six days into the Iraq war, Blair asked the attorney general on what terms British forces would be able to operate in Iraq once victory had been assured.

Goldsmith had said previously that it was his belief that military action was lawful, even though a second United Nations resolution had not been secured and this had been used by the prime minister in his efforts to minimise the size of a parliamentary rebellion against his support for a US-led war.

Goldsmith issued his advice to Blair's war cabinet on March 26. It was presented by Blair, but according to Kampfner he did not invite questions: "Later that day, Goldsmith decided he had to put his thoughts into a memorandum addressed to Blair and circulated to a small number of key Whitehall departments."

The *New Statesman* states that Goldsmith told Blair that all US and British activity in Iraq from the end of the war, beyond essential maintenance of security, would be unlawful without specific authorisation from the UN.

It quotes the memorandum as saying, "My view is that a further Security Council resolution is needed to authorise imposing reform and restructuring of Iraq and its government."

Goldsmith then cites the two main pillars of international law, the Geneva Conventions of 1949 and

the Hague Regulations of 1907, which list the "limitations placed on the authority of an Occupying Power," including attempts at "wide-ranging reforms of governmental and administrative structures"; "any alteration in the status of public officials or judges" except in exceptional cases; changes to the penal laws; and "the imposition of major structural economic reforms".

Goldsmith was also concerned about the way that "regime change" had become an official aim of the war itself. According to Kampfner, in Goldsmith's conclusion he refers to the UN resolution authorising the use of force against Saddam Hussein when he invaded Kuwait in August 1990. He insisted that it was this resolution which provided a legal mandate for both the first and second Gulf war. But precisely because of this spurious claim, the attorney general insisted that any military action must be limited to what is necessary to achieve the stated objectives of that resolution—namely "Iraqi disarmament".

He wrote, "The government has concluded that the removal of the current Iraqi regime from power is necessary to secure disarmament, but the longer the occupation of Iraq continues, and the more the tasks undertaken by an interim administration depart from the main objective, the more difficult it will be to justify the lawfulness of the occupation."

Short had accused Blair of concealing the substance of Goldsmith's advice and of lying to her when he promised that the UN would be given the leading role in the postwar administration of Iraq. She told parliament in her resignation speech, "I believe the UK could and should have respected the attorney general's advice, told the US this was a red line for us and worked for international agreement to a proper UN-led process to establish an interim Iraqi government, just as

was done in Afghanistan.”

Moreover, according to Kampfner’s account, “time and again at the war cabinet and in other meetings, Short challenged him to tackle the issues contained in Goldsmith’s briefing. In fact, I am told that so concerned did senior officials at the Foreign Office and Ministry of Defence become about the legality of the reconstruction plans that they asked the attorney general to obtain some form of memorandum of understanding with the Americans. Goldsmith tried, but was unable to get any such undertaking.

“Blair, too, pressed the Americans ... Though he tried to finesse the language with the Americans, he did not get very far.”

Despite this, Blair, Goldsmith and Foreign Secretary Jack Straw had all essentially rejected Short’s claims. Blair told parliament, “There is no possibility of our acting in a way inconsistent with international law,” while Goldsmith said, “In relation to the current situation in Iraq, I am satisfied that the government is acting in accordance with international law”—in clear contradiction to his earlier memorandum.

Jack Straw said that the resolution being proposed in consultation with the Bush administration, “as already drafted, would allow for that vital role for the United Nations.” As such, the UK’s actions in Iraq were “strictly in accordance with legal advice.”

In response to the *New Statesman*’s revelations, the government is hoping that the capitulation by Germany, France and Russia in agreeing to a slightly modified version of the draft US resolution for the UN Security Council will limit the damage done. A Downing Street spokesman declared, “We do not comment on leaks. But the attorney general has said on the record that the government was acting on a sound legal basis and we hope to have an agreed UN resolution on this by the end of the week.”



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