

# British government abandons trial of whistleblower who said Iraq war was illegal

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The trial of Katharine Gun, the British intelligence officer who leaked a secret memo about joint United States/United Kingdom spying at the United Nations last year, has collapsed.

Addressing Judge Michael Hyam at the Central Criminal Court on February 25, the prosecution said it could “offer no evidence” against Gun and that it was “not appropriate to give reasons” why it had abandoned the case.

Gun said she leaked the memo because it “exposed serious illegality and wrongdoing on the part of the US Government who attempted to subvert our own security services” and hoped that she could “prevent wide-scale death and casualties among ordinary Iraqi people and UK forces in the course of an illegal war.”

The memo came from the US National Security Agency and asked the British government to help with covert operations against six United Nations Security Council (UNSC) delegations—Angola, Cameroon, Chile, Mexico, Guinea and Pakistan—that were undecided on a draft resolution authorising war with Iraq. The resolution was supported by four UNSC countries—the US, Britain, Spain and Bulgaria—and opposed by five countries—Russia, China, France, Germany and Syria.

That the British government was forced into such a humiliating climb down can only mean that Gun’s claims are true.

There are a number of political considerations that are central to why the trial has been abandoned. Most importantly, it would have raised questions regarding the legality of the war and the pretext on which the American and British governments justified beginning unprovoked hostilities against Iraq.

The last thing the British government could contemplate is a trial in which more evidence would come out confirming that its war against Iraq was illegal. James Welch, Gun’s lawyer who works for the civil rights organisation Liberty, said the final decision to abandon the case was taken after they had warned the prosecution that they would demand the disclosure of Attorney-General Lord Goldsmith’s advice on

the legality of the war.

Goldsmith is the government’s top legal official and a cabinet minister. He had suggested that United Nations Resolution 678, which authorised force to remove Iraqi troops from Kuwait in 1990, could be used to justify a new war against Iraq. The government has insisted that it will not publish Goldsmith’s advice “in view of a longstanding convention, adhered to by successive governments, that advice of law officers is not publicly disclosed.”

It was Goldsmith who directed the Crown Prosecution Service to abandon the prosecution—several weeks after giving consent for it. He has a clear interests in not allowing a discussion on the veracity of his legal advice, but he is not alone.

Prime Minister Tony Blair’s own position is threatened by a verdict that the war against Iraq was carried out illegally. Politically it would be extremely damaging, given that the war was hugely unpopular and repeated attempts to defuse criticism—such as Lord Hutton’s inquiry into the death of Dr David Kelly and the upcoming inquiry into supposed “intelligence failures” under Lord Butler—have failed to do so. Also there have been several efforts to bring a prosecution in the International Criminal Court against Blair and his entire government for war crimes in relation to Iraq.

In the House of Lords Goldsmith denied any “political interference” in the decision to drop the case, but acknowledged that their problem was Gun’s “defence of necessity”. He told the Lords that although they believed they could prove the Official Secrets Act had been breached, they had concluded they could not disprove Mrs Gun’s defence “of necessity”.

Reinforcing the government’s difficulties, the February 26 edition of the *Guardian* leads on what it describes as “Dramatic new evidence pointing to serious doubts in the government about the legality of the war in Iraq” that was “passed to government lawyers shortly before they abandoned the prosecution of the GCHQ whistleblower Katharine Gun.”

The *Guardian* cites a document that was to be used by the

defence and was presented to the prosecutors shortly before they decided to abandon the case. It shows that the Foreign Office (FO) had questioned the legality of the Iraq war.

Sensitive passages have been blacked out, but one cited by the newspaper says, “The defence believes that the advice given by the Foreign Office Legal Adviser expressed serious doubts about the legality (in international law) of committing British troops in the absence of a second [UN] resolution.”

The FO legal team was reportedly particularly concerned about the lack of a second UN resolution authorising the use of force and pre-emptive military action.

The report adds, “Elizabeth Wilmshurst, a former deputy head of the legal team at the FO, has confirmed publicly for the first time that she resigned last year because she was unhappy with the attorney general, Lord Goldsmith’s legal advice to the government on the legality of the Iraq war.”

She told the *Guardian*, “Some agreed with the legal advice of the attorney general. I did not.”

The second major political consideration in determining the decision to abort the prosecution was that a trial would have risked revealing embarrassing details about whether Britain had responded to the US request, what spying campaign was conducted and by whom.

After Gun’s release Barry Hugill of Liberty told a press conference that the US/UK spying operation was “clearly unlawful, a clear breach of the Vienna Convention [regulating diplomatic behaviour].”

He said that the Mexican and Chilean governments have since confirmed that they knew their diplomatic missions were bugged. Hugill said that we still didn’t know if the British government had acted on the US government’s request. However, according to the *Observer* newspaper, “sources close to the intelligence services confirmed that the request from the security agency was ‘acted on’ by the British authorities” and that “an operation of this kind would almost certainly” have been authorised by David Pepper, director-general of the Government Communications Headquarters where Gun worked as a Chinese mandarin translator.

Evidence of Britain spying on behalf of the US would reveal that whilst Blair was claiming to be seeking a compromise resolution, the British and American governments were deliberately sabotaging attempts to find one that would prevent war and give weapons inspectors more time to search for weapons of mass destruction.

Such evidence is already beginning to emerge. The former Mexican ambassador to the United Nations, Adolfo Aguilar Zinser, recently told reporters, “It was very obvious to the countries involved in the discussion on Iraq that we were being observed and that our communications were probably

being tapped.”

Mexico’s Foreign Relations Department said it had sent a letter to the British and American governments expressing “concern about the alleged espionage case, which, if real, would affect the confidence that should exist between nations.”

The most immediately damaging fall-out from the collapse of the case against Gun was the claim by Labour MP Claire Short that she had seen transcripts of conversations involving UN General Secretary Kofi Annan.

Short, who resigned from Blair’s cabinet due to her opposition to war, was interviewed on BBC Radio Four’s “Today” programme by John Humphreys. After describing Goldsmith’s advice as “very, very odd” and “fishy”, she spoke of her concerns that Britain would illegally threaten to withhold aid in order to secure support for war. Short commented that “enormous pressure was brought to bear, Valerie Amos, Lady Amos, went round Africa with people from our intelligence services trying to press them.”

When Humphrey’s pressed her on why she had such fears, Short blurted out, “I mean the UK in this time was also spying on Kofi Annan’s office and getting reports from him about what was going on.”

Humphreys pushed her on the question of spying and she replied, “Well indeed, but these things are done. And in the case of Kofi’s office it’s been done for some time.... Well I know, I have seen transcripts of Kofi Annan’s conversations. Indeed, I have had conversations with Kofi in the run-up to war thinking ‘Oh dear, there will be a transcript of this and people will see what he and I are saying’.”

Humphreys asked, “So in other words British spies—let’s be very clear about this in case I’m misunderstanding you—British spies have been instructed to carry out operations inside the United Nations on people like Kofi Annan?”

Short replied, “Yes, absolutely... I read some of the transcripts of the accounts of his conversations.”



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