

Britain: Former government legal advisor says Iraq war was illegal act of “aggression”

Richard Tyler
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Former British Foreign Office deputy legal adviser Elizabeth Wilmshurst told the *Independent* newspaper this week, “It could be alleged that the use of force in Iraq was aggression.”

She criticised the Bush administration’s policy of pre-emptive self-defence, which the *Independent* said, “she believed is illegal under international law.”

Attacking the justification given for the war by President George W. Bush and Prime Minister Tony Blair—that Saddam Hussein possessed vast stocks of weapons of mass destruction, ready to be deployed at a moment’s notice—she told the newspaper, “What people are worried about is just assertions that there is an imminent threat.”

Wilmshurst, with a 30-year civil service career mainly at the Foreign Office, resigned shortly after the US-UK invasion of Iraq. She said at the time, “I left my job as a deputy legal adviser in the Foreign and Commonwealth Office because I did not agree that the use of force against Iraq was lawful.”

Interviewed on July 5, 2004, Wilmshurst told the *Independent*, “The kinds of abusive treatment of Iraqi prisoners that have been alleged could amount to war crimes.”

She was also critical of the “very, very wide” immunity granted to US and British civilians by the occupying powers, which was “not what you would expect.”

“A host state, certainly so far as I know, has never given such wide immunities,” she said.

“Contractors have immunity in respect of anything done under their contracts. So if they have a very large contract to build a hospital and there is an argument as to whether they have dropped a brick on a passing Iraqi, or they are driving their vehicles around Iraq in the course of their duties and they run somebody over or they default with the money they cannot be prosecuted or claimed against in the civil courts for such actions.”

Questioning the vast numbers of US and British “diplomats” to be found on Iraqi soil following the handover to the supposedly independent Interim Iraqi Government, Wilmshurst said, “One obviously wants to know what these embassies will be doing—particularly this huge American embassy.”

“One can only think that the Americans are going to be having, let’s say, quite an advisory role,” she added.

Bush’s claim that Iraq was now fully sovereign did not square with the “unclear” powers of detention the US still maintains over Iraqi civilians, she continued. “The whole question of their powers of detention is an interesting one. You wouldn’t normally expect them to have that.”

According to Wilmshurst, the detention of Afghans in Guantanamo Bay without any formal assessment of their status as possible prisoners of war was a breach of the Geneva Conventions. She also questioned whether members of the Taliban could be categorised as illegal combatants or detained indefinitely.

Wilmshurst is no radical. She has provided legal advice to successive governments and was once described as the “United Kingdom’s veteran negotiator.”

Wilmshurst now heads the international law programme at the Royal Institute of International Affairs (RIIA), a right-wing think tank also known as Chatham House. The RIIA web site lists her expertise as including “the use of force, international criminal law including the international criminal court, the law of the United Nations and its organs, consular and diplomatic law, state and sovereign immunity, international humanitarian law.”

In her interview with the *Independent*, she expresses some sharp criticisms of UK and US policy in Iraq and Afghanistan. However, ever the loyal civil servant, she has studiously refrained from divulging the full extent of her disagreements or the detailed reasons for her sudden resignation in March 2003.

For its part, the British state has also sought to prevent

her being placed on oath in court and probed regarding her views on the war against Iraq and any legal advice she or others gave to the government. She was never called to give testimony in two trials where her “insider” information could have seriously exposed the illegal nature of the war against Iraq.

On March 10, 2003, in a trial of 14 Greenpeace activists charged with aggravated trespass for chaining themselves to tanks at a military facility near Southampton in the run-up to the Iraq war, the judge rejected a defence application to call her as a witness.

In February of this year, the trial of Katharine Gun, a translator at the GCHQ spy centre, was halted. She had been charged under the Official Secrets Act for revealing a secret US e-mail asking British officers to tap phones of nations voting on war against Iraq. Gun’s legal team had served documents on the government demanding to see any advice given to ministers about the legality of the war, and Wilmshurst was included as a potential defence witness.

Gun walked free when the prosecution suddenly offered no evidence.

The same week Wilmshurst resigned, two former Foreign Office legal advisers also expressed their concern about the legal advice on which basis the British government supported the US invasion of Iraq. In a letter to the *Times*, Sir Franklin Berman, a Foreign Office legal adviser from 1991 to 1999, and Sir Arthur Watts, a legal adviser from 1987 to 1991, “regretted” that the search for a second UN resolution had been abandoned. They said the government had to account “for their actions to the international community in whose name they claim to act.”

Wilmshurst is not alone in the echelons of the establishment in being concerned that the Blair government’s blatant disregard for due process and international legal conventions might yet unravel and undermine the façade that is called “the rule of law.”



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