

Britain: Blair was advised that Iraq invasion could be illegal

Rick Kelly
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Fresh revelations have emerged describing the frenetic efforts of the Blair government prior to the launching of the Iraq war to find a legal pretext for its participation in the US-led attack. Just two weeks before the invasion began, the attorney general, Lord Goldsmith, warned Prime Minister Tony Blair that a war could violate international law.

On Wednesday, February 23, the *Guardian* published extracts from a soon to be published book, *Lawless World: America and the making and breaking of global rules*. The author is Phillippe Sands, a professor of international law at University College London.

Sands has used his connections in senior legal circles to provide a detailed account of the Labour government's manoeuvres to secure legal advice giving official imprimatur to the war.

The war's legality was an issue for the Blair government not due to any respect for international law, but because it feared future prosecution. The published extracts reveal that the prime minister was conscious that the invasion, as an act of preemptive aggression, had little or no basis in international law but was determined to proceed regardless.

Having decided on this course of action, Sands discloses that to protect itself against any potential consequences, the government "took steps to put together a legal team to prepare for possible international litigation."

The government's concerns were shared by Britain's senior military leaders. "I spent a good deal of time recently in the Balkans making sure Milosevic was behind bars," the *Guardian* reported General Sir Mike Jackson, head of the army, as saying. "I have no intention of ending up next to him in the Hague."

The chief of defence staff, Admiral Sir Michael Boyce, sought a clear assurance from the attorney general on March 10, 2003, as to the war's legality. According to Sands, Boyce wanted to be sure that British soldiers

would not be "put through the mill" at the International Criminal Court (ICC). Britain, unlike the US, is a signatory to the ICC.

Under the government's ministerial code of conduct, the attorney general is to be consulted "in good time before the government is committed to critical decisions involving legal considerations." Attorney General Goldsmith was first asked about the legality of an invasion of Iraq at a meeting with several government ministers in July 2002.

"They were reminded," Sands's book states, "that the prime minister had told President Bush that the UK would support military action to bring about regime change, so long as a coalition had been created and UN weapons inspectors had been given a further opportunity to eliminate Iraq's weapons of mass destruction."

Goldsmith informed the ministers that a war could not be justified on self-defence or humanitarian grounds, and that the goal of regime change would be unlawful. This opinion was again confirmed after the attorney general considered legal advice with the Foreign Office and Ministry of Defence.

The Blair government subsequently decided to base its case for war on the issues of weapons of mass destruction and the Iraqi government's alleged noncompliance with UN resolutions.

In November 2002, the UN Security Council approved resolution 1441, which threatened Iraq with "serious consequences" if it did not fulfil various obligations. This measure did not, however, include a provision for invasion. The Foreign Office provided the government with what Sands describes as "crystal clear" advice that without an additional UN resolution, Britain could not legally use force against Iraq.

Blair deliberately avoided asking the attorney general for his formal opinion until March 7, 2003, 12 days before the war began. In a 13-page memo, Goldsmith warned the

prime minister that the government's case for invasion could be declared illegal if it ever came before a court of law. He nevertheless advised that while a second UN resolution would be safer, in his opinion it was legal to go to war on the basis of resolutions 1441, 678, and 687.

The Blair government has stonewalled repeated attempts by media outlets, members of parliament, and others to have this document released under Freedom of Information laws.

On March 13, Goldsmith met with Baroness Morgan, Blair's director of political and government relations, and Lord Falconer, a Home Office minister. At this meeting, he dropped all of his previous warnings and approved the legality of the government's line. This capitulation has been interpreted as a result of massive pressure placed on the attorney general by the government, as well as by the Bush administration's legal team.

Four days later, Goldsmith's opinion was presented to parliament, with no reference to any of his previous warnings and equivocations. According to the *Guardian*, transcripts of evidence from last year's Butler inquiry suggest that the attorney general did not even write the public statement that was issued in his name. The newspaper alleged that it was penned by Morgan and Falconer, two of Blair's closest associates. Goldsmith has denied this, saying that the transcripts were incorrect.

Cabinet ministers received a summary of the attorney general's advice the same day as it was publicly presented. The opinion was submitted on just two pages. As Sands describes it: "The ministerial code of conduct requires the full text of any advice to be made available in papers to the cabinet. None was provided. There was no discussion, and no minister raised any question as to the basis upon which the prime minister had decided that Iraq was in material breach of resolution 1441."

The cabinet's silence was indicative of the general closing of the ranks that occurred within the Labour Party once it was clear that Blair was committed to the US-led invasion. No serious opposition emerged to oppose the path to war, and no genuine efforts were made to investigate the potential illegality of an invasion.

Tactical criticisms of the war from within the political establishment have since intensified, with the occupation widely recognised as a debacle for American and British imperialism. In the light of the new revelations, a number of politicians from the three major parties have distanced themselves from their support for the invasion by claiming that the government misled them on the question of the war's legality. According to the *Guardian*, "Some

Labour and Conservative MPs have made it clear that the [March 17] statement helped to sway their vote in favour of military action."

These self-serving protests are ludicrous. The war's illegality was widely recognised by international law experts before the invasion. The Blair government's case rested on the assertion that authority for war derived from UN resolutions 678, 687, and 1441. This ignored the fact that the Security Council deliberately refused to include a provision for military action in 1441, while the former two resolutions, passed in 1990 and 1991, dealt with Iraq's invasion of Kuwait.

More fundamentally, by March 2003, it was readily apparent that the questions of Iraq's alleged weapons of mass destruction and noncompliance with UN demands were merely pretexts for a pre-prepared US-led attack. Blair committed his government to this criminal war of choice to further Britain's own imperialist interests.

Some of these issues were even recognised within the Foreign Office. On March 18, the office's deputy legal adviser, Elizabeth Wilmhurst, resigned in protest against the government's claim that invasion was legal. "I cannot in conscience go along with advice within the office or to the public or parliament—which asserts the legitimacy of military action without such a resolution, particularly since an unlawful use of force on such a scale amounts to the crime of aggression; nor can I agree with such action in circumstances which are so detrimental to the international order and the rule of law," she wrote.

The Nuremberg trials, convened after World War II to prosecute surviving Nazi leaders, established that the knowing commission of an aggressive war was the principal war crime. The demand must now be intensified that Tony Blair and his conspirators within the Labour Party take their place in the dock for their crimes of intent against the Iraqi people.



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