

Britain: Blair forced to publish legal advice on Iraq war

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As the general election campaign enters its final stages, the issue that all the main parties have sought to suppress—the Iraq war—has finally reared its head.

On Thursday, April 28, the government was forced to publish a 13-page memo from the attorney general, Lord Goldsmith, advising on the legality of war against Iraq. The content of the March 7, 2003, memo has long been contested, but it was thought to have contradicted the legal *carte blanche* for military action that Goldsmith gave to parliament 10 days later, just days in advance of the US-led attack on Iraq.

Prime Minister Tony Blair's past refusal to publish the advice had become untenable due to a series of partial leaks of the memo to the media. Faced with the prospect that the attorney general's full report would soon find its way into the public domain, potentially derailing Labour's election campaign, Blair decided to release the memo himself. His aim was to fight off charges that he had lied over the legality of the Iraq war and pressured Goldsmith into changing his legal advice to suit the government's political objectives.

At a press conference flanked by Chancellor Gordon Brown and Trade Minister Patricia Hewitt, Blair insisted that all the relevant information had been set before cabinet and parliament, denouncing claims to the contrary as a "damp squib." Brown insisted that the war had been correct and that he would have taken exactly the same course as Blair.

However, there is no disguising the damaging character of the memo.

Advised that the goal of regime change was in itself unlawful, the government sought to base its case for war on Iraq's alleged refusal to dispose of its weapons of mass destruction. It argued that this had placed Iraq in material breach of United Nations Security Council resolution 1441, which had given Baghdad "a final opportunity to comply with its disarmament obligations" and warned of "serious consequences" if it did not.

Goldsmith's March 7 advice was on the legality of using existing UN resolutions as authorisation for waging war. Whilst not taking a definite position, his memo raised a number of questions and placed several caveats on military action.

First, any assessment of Iraq's compliance or otherwise with UN resolutions would have to be decided by the UN Security Council itself, he cautioned. He further queried whether a failure to comply with weapons inspections established by resolution 1441 placed Iraq in breach of international obligations, and if so, whether this was enough to authorise war.

Given that the language of 1441 suggested "differences of view within the [security] council," Goldsmith wrote, a court might find it insufficient basis for war. Thus, "the safest legal course would be to secure the adoption of a further resolution to authorise the use of force."

The memo warned Blair that should a second resolution be vetoed by France or any other country on the Security Council, there would be no legal grounds for arguing that this action was "unreasonable" and therefore legitimised recourse to war.

In the event that the government had to base its course of action on 1441 alone, then a "reasonable case can be made" that it is capable "in principle of reviving the authorisation in 678 [which authorised the Gulf war in 1990] without a further resolution." But then, "we would need to demonstrate hard evidence of non-compliance and non-cooperation," and the views of UN weapons inspectors and the International Atomic Energy Agency "will be highly significant in this respect."

Finally, Goldsmith warned that without a second resolution, the UK could be subject to legal action. "Given the strength of opposition to military action against Iraq, it would not be surprising if some attempts were made to get a case of some sort off the ground," he warned. "We cannot be certain that they would not succeed."

Should another UN resolution not be forthcoming, "we would need to consider urgently at that stage the strength of our legal case in the light of circumstances at the time," he wrote on March 7.

Ten days later, Goldsmith came down firmly in defence of military action. In a written parliamentary answer on March 17, he specified, "Authority to use force against Iraq exists from the combined effect of resolution 678, 687, and 1441." Iraq was in "material breach" of resolution 1441, and "all it requires is reporting to and discussion by the Security Council of Iraq's failures, but not an express further decision to authorise force."

On March 20, war began.

Whatever Goldsmith's intentions, the March 7 memo points to the illegality of the war against Iraq and the desperate efforts by the Blair government to cover over this fact. Iraq could never have complied with demands to hand over its weapons of mass destruction because it did not have any.

The Bush and Blair administrations were well aware of this. Their plans for war against Iraq had nothing to do with any threat it supposedly posed to international security. Rather, it was motivated by the efforts of US imperialism to establish its unchallenged hegemony in a geo-politically strategic and oil-rich region of the world, and Britain's hopes to carve out a niche for itself within this neo-colonial framework.

The apparent contrast between Goldsmith's March 7 advice and the testimony he gave on March 17 has led to claims that he was "leant on" to change his opinion. In a public statement, Goldsmith rejected this charge and insisted that his earlier memo "stands up the case that the government has been making all along."

"Contrary to the allegations that have persistently been made, it does not say the war was unlawful but confirms the conclusion I reached was that a sufficient basis for the use of force was established without a second resolution," he said.

At any rate, the discrepancies in Goldsmith's advice can be accounted for by the lies and manoeuvres that the US and Britain had to resort to in order to press their predetermined agenda for war.

On March 7, London and Washington were in the last phases of their efforts to secure UN backing for the use of military force against Iraq. The

previous month, US Secretary of State Colin Powell had presented what he claimed was evidence of Iraq's weapons of mass destruction before the Security Council. Powell's claims were fraudulent, as were the British government's so-called intelligence dossiers purporting to prove that Iraq constituted a grave danger to world security.

The US and Britain were unable to overcome opposition in the Security Council. Their case was made all the more difficult by the report delivered by chief weapons inspector Hans Blix finding that Iraq had taken significant steps to comply with the UN and requesting further time to complete his task.

Faced with the possibility that the case for war would be exposed by any further investigations, the US and Britain decided to press ahead.

Having lost its best option of a second resolution, Blair moved to reassure the British military and civil service that war would still be legal. On March 15, Goldsmith received written assurances from Blair that "it is indeed the prime minister's unequivocal view that Iraq is in further material breach of its obligations."

The attorney general's March 17 statement met demands for a categorical legal statement in support of military action. That day, the cabinet voted in favour of war, and on March 18, parliament supported military action by vote of 412 to 149, with 52 abstentions.

There is no question that Blair trampled over all democratic conventions and international law to get the war he wanted. His claims that Iraq was in breach of its international obligations were false, and the prime minister stands exposed as a war criminal who should be arraigned for trial alongside President Bush.

In addition, the US and Britain should be made to pay billions in war reparations for the murder of countless Iraqis, the devastation of Iraq's infrastructure, and their ongoing, illegal occupation of the country with the objective of looting its resources.

But this does not imply that responsibility in Britain for the Iraq war falls solely upon Blair. The cabinet and parliament were not merely unwitting dupes.

Following the leak of Goldsmith's memo, Conservative leader Michael Howard complained that MPs had been "tricked" into voting for war, whilst Liberal Democrat leader Charles Kennedy claimed the parliament would never have backed war if it had seen Goldsmith's full advice.

Given the general election, the focus on Blair's personal integrity has an immediate political purpose for the opposition parties. Their aim is to divert popular hostility to the Iraq war and the subverting of the democratic process into a movement to "punish" the prime minister at the polls. The effect is to politically disarm working people on the fundamental issues posed by the war. It is striking that neither of the main opposition parties have demanded Blair resign for his actions, much less that he be held accountable in a court of law.

The claim that, in the absence of access to Goldsmith's March 7 memo, Labour backbenchers and the main opposition parties were unaware of war's questionable legality does not hold water. The issue was the subject of bitter disputes within legal circles in Britain and internationally.

In March 2003, prior to the outbreak of war, two bodies of legal experts publicly condemned military action as illegal. The International Commission of Jurists in Geneva expressed "deep dismay that a small number of states are poised to launch an outright illegal invasion of Iraq, which amounts to a war of aggression." And 31 Canadian professors of international law at 15 law faculties issued an open letter warning that an attack "would be a fundamental breach of international law."

Goldsmith's advice notwithstanding, millions of people rejected the war as illegal and took to the streets to denounce it. In London, these protests were directed not only against Blair and his government, but against the majority in parliament who endorsed it.

Howard has openly admitted that, even if he had been aware of Goldsmith's March 7 memo and all subsequent events, he would still

have voted in favour of war. Given that the justifications made for launching the attack have been exposed, he can only hope to justify his stance on the grounds of "regime change." As Goldsmith's memo makes clear, this policy is every bit as illegal as the spurious grounds which Blair used to justify the war.

As for the parliamentary opponents of war—the Liberal Democrats and some Labour MPs—the wording of the amendment they proposed at the time was indicative of the tactical and unprincipled nature of their opposition. Whilst stressing "that the case for war against Iraq has not yet been established, especially given the absence of specific United Nations authorisation," it hastened to pledge "in the event that hostilities do commence...total support for the British forces engaged in the Middle East," and expressed the hope "that their tasks will be swiftly concluded with minimal casualties on all sides."

Following the formal end of hostilities, all the major parties have rallied to the defence of the Iraqi occupation, with only the Liberal Democrats proposing a withdrawal of British troops by December at the earliest.

Even if legal opinion has decided unreservedly that the war was legitimate, this would not change matters one iota. Wars may be deemed legal from the standpoint of bourgeois jurisprudence, but be criminal from the standpoint of moral and democratic criteria.

Even had Iraq possessed weapons capabilities, this would not justify military action. The fact remains that the war constituted an attack by the world's foremost military power and its allies against a largely defenceless and impoverished country with the objective of subjecting its peoples to colonial-style enslavement.

The criminality of this war was a product of its imperialist character. It is this central question that the current row over Goldsmith's advice is aimed at obscuring.

Widespread hostility towards Blair and the possibility of a record level of abstentions on May 5 have caused sections of the bourgeoisie to consider the dangers posed to the viability of the entire parliamentary setup should a Labour government secure a third term in office by default, but without any significant basis of support.

By focussing on Blair's personal role, they hope it may be possible to create the grounds for moving him to one side, probably to be replaced by Brown, and thereby bring "closure" to an issue that has undermined the integrity and viability of the entire parliamentary setup.



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