Britain: Law Lords reject mothers' appeal for Iraq war inquiry

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The Law Lords, Britain's highest court, has rejected an appeal by the mothers of two 19-year-old soldiers killed in Iraq to force the Brown government to hold a public inquiry into the war.

The April 9 ruling was made all the more poignant by it coming just one day after the conclusion of a £10 million inquest into the death of Diana, Princess of Wales, and her lover Dodi Fayed.

For 90 days, no expense was spared in investigating their deaths in a car accident in Paris on August 31, 1997. Some 270 witnesses, including 11 members of Britain's secret service MI6, were called to give evidence specifically relating to the spurious allegations by billionaire Egyptian businessman Mohamed Al Fayed that Diana and his son were the victims of an establishment assassination plot, headed by Prince Phillip.

In contrast, the Law Lords' rejection of the appeal by Beverley Clarke and Rose Gentle means that the mothers have exhausted all legal avenues within the UK to press their demand for a public inquiry into the Iraq war.

Trooper David Clarke from Staffordshire was killed by "friendly fire" in March 2003 west of Basra. Fusilier Gordon Gentle, from Glasgow, died 13 months later in a roadside bomb attack, also in Basra.

The mothers were challenging a 2006 ruling by the Court of Appeal that the government was not obliged to hold an inquiry under Article Two of the European Convention on Human Rights (ECHR), protecting the "right to life."

So important was the mothers' challenge considered that their appeal was heard by a panel of nine Law Lords, instead of the usual five, headed by Lord Bingham, Britain's senior law lord.

Top of Form Bottom of Form Clarke's and Gentle's case, against Prime Minister Gordon Brown, Defence Secretary Des Browne and Attorney General Baroness Scotland, argued that the ECHR's provision on the right to life "extends to the lives of soldiers. Armed conflict exposes soldiers to the risk of death. Therefore a state should take timely steps to obtain reliable legal advice before committing its troops to armed conflict."

"Had the UK done this before invading Iraq in March 2003," they contended, "it would arguably not have invaded. Had it not invaded, Fusilier Gentle and Trooper Clarke would not have been killed." Rabinder Singh QC, acting for Clarke and Gentle, told the hearing that the government owed a duty "to soldiers who are under the unique compulsory control of the state and have to obey orders.

"They have to put their lives in harm's way if necessary because their country demands it. There is what some people call a military covenant between the state and those who are literally prepared to put their lives at risk for the sake of their country."

The appeal also challenged the legal basis for the war in international law, querying why 13 pages of "equivocal" advice from Lord Goldsmith, then attorney general, on March 7, 2003 had been reduced to just one page of unequivocal advice that the invasion would be legal 10 days later.

Singh argued that the overwhelming body of legal advice given to the government had strongly indicated that an invasion would be unlawful without a further resolution from the United Nations Security Council, in addition to Resolution 1441, passed in November 2002.

But Goldsmith had twice changed his mind on the issue and his advice of March 7, 2003 was not shown to the full Cabinet, Singh said.

The nine law lords unanimously rejected the mothers' appeal, although Baroness Hale queried the government's argument as to the legality of the invasion.

The panel agreed that there was nothing in the provisions of the ECHR's "right to life" covering the holding of the inquiry being demanded.

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Lord Hope stated, “It is a hard thing for a court to say to the mothers of two young soldiers who lost their lives in the service of their country that it can do nothing for them in their campaign to have the circumstances that led up to these tragedies investigated.

“Had there been an issue which was capable of being reviewed by the courts—even arguably so—its duty would have been clear, and this application would have been successful.”

The ECHR did not provide “an absolute guarantee that nobody will be exposed by the state to situations where their life is in danger, whatever the circumstances,” he continued.

“Those who serve in the emergency services risk their lives on our behalf to protect the lives of others. Those who serve in the armed forces do this in the knowledge that they may be called upon to risk their lives in the defence of their country or its legitimate interests at home or overseas.”

Lord Bingham stated, “The lawfulness of military action has no bearing on the risk of fatalities.” The obligations of European states under the Convention were territorial, he continued, and the two soldiers’ deaths were “clearly not within the jurisdiction of the UK.”

Furthermore, he found it “impossible to conceive” that the framers of the ECHR “could ever have contemplated binding themselves legally to establish an independent public inquiry into the process by which a decision might have been made to commit the state’s armed forces to war.”

Lord Hoffman said that “Unless Article 2 creates a duty not to go to war contrary to the United Nations Charter, I cannot see how there can be an independent duty to use reasonable care to ascertain whether the war would be contrary to the Charter or not.”

While finding with the majority, Baroness Hale questioned the legal basis on which the decision to go to war was taken, and said she was ruling against the case “with sorrow.”

Goldsmith’s initial legal advice was “very far from clear and unambiguous,” she said, although it had been firmed up 10 days later to provide legal authority for war.

“If my child had died in this way ... I would want to feel that she had died fighting for a just cause, that she had not been sent to fight a battle which should never have been fought at all, and that if she had, then someone might be called to account,” she said.

Afterwards Rose Gentle said she was “bitterly disappointed” with the outcome: “It is not the result we wanted, but I was expecting it because anything we want we do not seem to get.

“I will never accept that Gordon did die for a just cause and I will never stop fighting for those responsible to be held to account.”

Gentle called on the government to do the “right thing” and hold an inquiry.

Brown has promised an inquiry into the Iraq war, but at a time of his choosing. He has argued that it would be impermissible to hold an inquiry while British soldiers remain in Iraq. However, in recent weeks the government has agreed that the scale-down of British troops promised for next month will now be delayed indefinitely.

In addition it has made clear that any inquiry would be strictly limited to operational matters. This is in line with opposition complaints that operational “failures” as to the post-invasion strategy have compromised future military action.

Writing in the *Times*, Peter Riddell opined that the Law Lords’ rejection of Clarke’s and Gentle’s appeal would not make the pressure for an inquiry into the Iraq war “disappear.”

The government was resisting this course “because it could be embarrassing before a general election,” he continued, as it “would expose the fraught relations between London and Washington, and on the ground between British and American commanders and diplomats, about operations in Iraq after the capture of Baghdad five years ago.” This “would be bound to be very damaging for British-American relations.”

Such claims obscure the essential issue involved in the government’s opposition to a public inquiry into the Iraq war. Namely, that the invasion was commissioned on the basis of lies and that then Prime Minister Tony Blair and his Labour government, backed by the Conservative Party, systematically set out to deceive the British public in order to wage an illegal war of aggression.

Whatever other “damaging” revelations may or may not be revealed by an inquiry regarding Anglo-American relations, they are nothing compared to the fact that the vast bulk of the British establishment are guilty of war crimes.

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