

Britain: Lord Bingham says Iraq invasion was a violation of international law

Robert Stevens

27 November 2008

Lord Bingham used the occasion of his first major speech since his retirement as a senior law lord to describe the 2003 invasion of Iraq as “serious violation of international law”.

Bingham, a former Lord Chief Justice, gave the annual Grotius Lecture at the British Institute of International and Comparative Law on November 17. His speech was a devastating judicial refutation of the lies concocted by the British government and its legal advisors in order to justify the illegal invasion of a sovereign nation.

His legal stance directly contradicts that of the attorney general at the time, Lord Goldsmith, and Jack Straw, now Justice Secretary and then Foreign Secretary.

Bingham has been Britain’s most authoritative legal figure over the past 15 years. Even as he stated his disagreement with Bingham’s speech, Straw felt forced to acknowledge that he was the “finest jurist of his generation”.

Bingham also condemned some of the atrocities that have been carried out by the United States and British occupying powers in Iraq. He said the British occupation had been, “sullied by a number of incidents, most notably the shameful beating to death of Mr. Baha Mousa [a hotel receptionist]”.

He added that whereas he felt that such crimes were not a result of deliberate British government policy, “This contrasts with the unilateral decisions of the US government that the Geneva Conventions did not apply to the detention conditions in Guantanamo Bay, Cuba, or to trial of Al-Qaeda or Taliban prisoners by military commissions, that Al-Qaeda suspects should be denied the rights of both prisoners of war and criminal suspects and that torture should be redefined, contrary to the Torture Convention and the consensus of international opinion, to connote pain, where physical, ‘of an intensity akin to that which accompanies serious physical injury such as death or organ failure’.”

“Particularly disturbing to proponents of the rule of law is the cynical lack of concern for international legality among some top officials in the Bush administration”.

Bingham stated that, in his opinion, the invasion of Iraq was carried out in violation of international law established following the end of the Second World War and the downfall of the Nazi regime in Nazi Germany.

Bingham said, “If I am right that the invasion of Iraq by the US, the UK, and some other states was unauthorised by the [United Nations] Security Council there was, of course, a serious violation of international law and the rule of law.

“For the effect of acting unilaterally was to undermine the foundation on which the post-1945 consensus had been constructed:

the prohibition of force (save in self-defence, or perhaps, to avert an impending humanitarian catastrophe) unless formally authorised by the nations of the world empowered to make collective decisions in the Security Council.”

He continued, “The current ministerial code, binding on British ministers, requires them as an overarching duty to ‘comply with the law, including international law and treaty obligations’.”

Commenting on this “serious violation of international law”, he said, “The moment that a state treats the rules of international law as binding on others but not on itself, the compact on which the law rests is broken”.

Bingham cited a comment made by a leading academic lawyer, Professor Vaughan Lowe QC, in relation to the consequences of this tearing up of established international law. “It is, as has been said, ‘the difference between the role of world policeman and world vigilante’.”

In his remarks, Bingham gave a careful rebuttal of the legal arguments made by Lord Goldsmith immediately prior to the invasion of Iraq. He described Goldsmith’s arguments as “flawed in two fundamental respects”.

Bingham quoted from the conclusion to Lord Goldsmith’s parliamentary written answer on March 17, 2003.

The extract Bingham read from Goldsmith’s answer states:

“Resolution 1441 would, in terms, have provided that a further decision of the Security Council to sanction force was required if that had been intended. Thus, all that resolution 1441 requires is reporting to and discussion by the Security Council of Iraq’s failures, but not an express further decision to authorise force.”

Answering this argument Bingham replied, “First, it was not plain that Iraq had failed to comply in a manner justifying resort to force and there were no strong factual grounds or hard evidence to show that it had: Hans Blix and his team of weapons inspectors had found no weapons of mass destruction, were making progress and expected to complete their task in a matter of months.”

Goldsmith’s arguments were also flawed, said Bingham, as they had not said that military action had to be authorised by the United Nations Security Council.

“Secondly, it passes belief that a determination whether Iraq had failed to avail itself of its final opportunity was intended to be taken otherwise than collectively by the Security Council.”

Bingham also rebutted the written legal advice Goldsmith sent to Tony Blair on March 7, 2003. This advice was not made public at the time.

In that communication Goldsmith stated that he considered resolution 1441 could, in principle, revive the authority to use force

against Iraq contained in resolution 678.

Answering Goldsmith's reasoning, Bingham said, "A reasonable case could be made that resolution 1441 was capable in principle of reviving the authorisation in resolution 678, but the argument could only be sustainable if there were 'strong factual grounds' for concluding that Iraq had failed to take the final opportunity. There would need to be 'hard evidence'."

Bingham also cited three senior legal figures who had opposed Goldsmith's line of argument. Lord Alexander QC had described it as "unconvincing". Professor Philippe Sands QC, as a "bad argument" and Professor Vaughan Lowe QC said it was "fatuous".

Bingham sent copies of his speech to Goldsmith and Straw before he spoke in order to allow them to respond.

Straw said, "I do not accept Lord Bingham's conclusions, which do not, I am afraid, take proper account of the text of Security Council Resolution 1441, nor its negotiating history".

Goldsmith attempted to downplay the significance of Bingham's comments stating, "I stand by my advice of March 2003 that it was legal for Britain to take military action in Iraq. I would not have given that advice if it were not genuinely my view. Lord Bingham is entitled to his own legal perspective five years after the event, but at the time and since then many nations other than ours took part in the action and did so believing that they were acting lawfully."

Goldsmith's comments are an attempt to whitewash the historical record.

The illegality of the war was widely recognised by many international legal experts before the invasion. The *World Socialist Web Site* consistently drew attention to the perfidious nature of the war preparations and detailed in many statements and articles how the US and Britain were determined to carry out their criminal agenda of war at all costs. (See "WSWS Chairman David North denounces Iraq war at Dublin debate" and "The war against Iraq and America's drive for world domination".)

Goldsmith was well aware of such international opinion at the time. As far back as July 2002, Goldsmith himself warned cabinet ministers that a war against Iraq could not be justified on self-defence or humanitarian grounds, and that the goal of regime change would be unlawful.

On March 7, 12 days before the war against Iraq started, Goldsmith authored a 13-page memo in which he advised Prime Minister Tony Blair that the government's case for invasion could be declared illegal if it ever came before a court of law on as many as six counts.

Despite this advice he stated 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.

Finally, on March 13, Goldsmith met with two Blair government officials—Baroness Morgan, Blair's director of political and government relations, and Lord Falconer, a Home Office minister. It was at this meeting that Goldsmith abandoned all his previous warnings and approved the legality of the government's position.

Goldsmith's stance was attributed by a number of opposition politicians, commentators and political analysts as being the result of massive pressure placed on him by the Blair government. His written answer to parliament on March 17 contained no reference to any of his previous ambivalent legal advice to the government.

The full truth is yet to emerge about the preparation and instigation of the war against Iraq. Those responsible, the US and British governments, are continuing to utilise every possible means to ensure they are not brought to justice for a war of aggression. The

Information Tribunal in Britain is presently hearing the government's appeal against the information commissioner's ruling that it should release cabinet minutes covering when the legality of the Iraq invasion was discussed.

Cabinet Secretary Sir Gus O'Donnell, Britain's most senior civil servant is representing the government in seeking to overturn Richard Thomas's order to disclose because of the "gravity and controversial nature" of the subject and the controversy over the attorney general's advice.

The government appealed to the Information Tribunal, where O'Donnell is expected to argue that the release of the minutes would prevent ministers from having frank discussions and would undermine the principle of collective cabinet responsibility.

Thomas has argued that cabinet minutes are not automatically withheld from the Freedom of Information Act.

While Bingham was able to dismantle the legal arguments of Goldsmith and the British government, he was doubtful that there would be any prosecution of those responsible. He concluded that, although these states had not been "hailed before the International Court of Justice or any other tribunal to answer for their actions, they have been arraigned at the bar of world opinion, and been judged unfavourably, with resulting damage to their standing and influence."

This is not enough. In the conclusion of a three part statement published on May 22, 2007, "The US war and occupation of Iraq—the murder of a society", the *World Socialist Web Site* insisted, "The premeditated destruction of an entire society carried out on the basis of lies and in pursuit of the financial and geo-strategic interests of America's ruling elite constitutes a war crime of historic proportions, punishable under the same statutes and on the basis of the same principles as those used to condemn leading figures of Germany's Third Reich at Nuremberg..."

"For these crimes to go unpunished and those responsible to continue acting with impunity would have fatal implications for the political, social and indeed moral life of the US and indeed the world. It would only render the next round of war crimes and atrocities that much easier and more inevitable.

"The struggle against the war in Iraq must be waged on the basis of the demand for the immediate and unconditional withdrawal of all US troops, the implementation of a massive program of humanitarian and economic aid to the Iraqi people, and the prosecution of all those responsible for this war before an independent and international tribunal".



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact