UK: Jack Straw blocks release of cabinet minutes on Iraq

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The UK Justice Secretary Jack Straw has vetoed a ruling made under the Freedom of Information Act instructing the government to release the minutes of two key cabinet meetings on March 13 and 17, 2003, when the decision to go to war against Iraq was discussed.

This is the first time that the government has used its veto to prevent the release of information under the Act, which came into force in 2005.

"It is a necessary decision to protect the public interest in effective cabinet government," Straw told the House of Commons. He asserted that "to permit the commissioner's and tribunal's view of the public interest to prevail would in my judgement risk serious damage to cabinet government; an essential principle of British parliamentary democracy. That eventuality is not in the public interest."

The request for the minutes was made in December 2006, and the Cabinet Office refused to release them. An appeal hearing of the Information Tribunal opened in November 2008. In January of this year it ruled by a majority that it was in the public interest to release the minutes.

"We have decided that the public interest in maintaining the confidentiality of the formal minutes of two cabinet meetings at which ministers decided to commit forces to military action in Iraq did not, at the time when the Cabinet Office refused a request for disclosure in April 2007, outweigh the public interest in disclosure."

The minutes of cabinet meetings that decided on such a momentous question as going to war presented, the tribunal concluded, "an exceptional case," which would not create a precedent. Other cabinet minutes and confidential government papers that are normally kept secret for 30 years before being released to the National Archives would not have been affected by the ruling.

Under these circumstances, Straw's response underlines the determination of the UK government to keep the process by which it decided to launch a predatory war of aggression entirely secret. Straw has used his veto conscious of the fact that he and other government ministers may yet face war crimes charges for their actions.

It was at the cabinet meeting on March 17 that the Attorney General Lord Goldsmith gave his opinion that the war against Iraq was legal, after maintaining for the previous year that it would be illegal. Initially, Goldsmith did not believe that United Nations resolution 1441 provided an automatic trigger for war and thought that a second resolution would be necessary if the war was to legal.

Goldsmith was not alone in this view. The entire Foreign Office legal team had made it clear to Straw, who was then foreign secretary that without a second resolution the war would be illegal. They appealed to Goldsmith for support, and he gave them no indication that he thought 1441 was an adequate basis for war. According to the journalist John Kampfner, Goldsmith sent Prime Minister Tony Blair a memo in January 2003 in which he expressed his concerns.

Weeks later Goldsmith went to Washington where he met with the US Attorney General John Ashcroft and John Bellinger, senior associate counsel to the president and legal adviser to the National Security Council. On his return from Washington, Goldsmith prepared a 13-page report on the legal case for war. When it was sent to the Chief of Defence Staff Admiral Sir Michael Boyce, he found it equivocal and demanded a more definitive ruling on the legality of the war before he agreed to commit troops.

On March 17 Goldsmith was called to the cabinet to give his view on the legality of the war. According to accounts leaked to the press by those present, he made a brief statement saying that the war was legal. No questions were permitted and Blair moved on to next business. On the same day a statement was made in the Commons.

When the attorney general's advice was later published, it amounted to one A4 sheet of paper declaring the war legal without a second resolution. It contained no explanation of the legal reasoning behind this dramatic change in Goldsmith's views.

Guardian journalist Martin Kettle, a long time supporter of Blair, has defended Straw's decision to veto the disclosure of the minutes of this and the previous meeting. He maintained:

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"Cabinet meetings must be confidential. If they were not, ministers would say what they wanted to be published, not what they believe."

The cynicism is breathtaking. On these grounds, of protecting politicians from any exposure of their own hypocrisy and double-dealing, one could argue against the publication of the proceedings of Parliament in Hansard. What Kettle is claiming is the right of ministers to take decisions on grounds that are concealed from the public and that would not stand up to public scrutiny.

He claims that the publication of the minutes from two cabinet meetings would "have the precisely opposite effect to the one that the supporters of so-called openness affect to support; it would push all important conversations into the margins and the corridors, unminuted and unminutable."

This was precisely what the Blair government was already doing by the time it launched its war against Iraq. The Butler Committee, which Blair himself appointed to cover up the failure to discover weapons of mass destruction in Iraq, warned Blair against the practice of "sofa government." In the run up to the Iraq war too many decisions had been taken in unminuted, informal meetings, outside the official structures, the committee found. This group of hand-picked parliamentarians and security professionals recognized that the government could not maintain the facade of parliamentary rule if it ignored procedures established over generations to ensure the formalities of democracy.

Kettle proceeds to undermine his own argument for confidentiality by declaring, "Even if the minutes had been published, they would not have told the critics what they want to know. Cabinet minutes name the minister who introduces a discussion, but they do not give details of who then said what."

If that is the case there is no reason to suppose that ministers would be inhibited from candidly expressing their views in cabinet meetings even if all the minutes of every cabinet meeting were routinely made available to the public.

Kettle cannot forbear to crow. The details of who said what, he writes:

"...remain in the cabinet secretary's notebooks, which were not covered by the information tribunal's decision and which the applicants claimed (a claim I doubt) never to want to see. So the minutes would not find the man with the smoking gun, even if there were one."

So what is all the fuss about? Straw has resorted to the unprecedented measure of a veto to protect documents that are supposedly worthless to anyone wanting to prove that the government had launched an illegal war.

If it is indeed the case that there was such a lack of discussion in cabinet, this would itself be a telling piece of evidence. It would mean that, faced with the decision of whether to launch a war, which the majority of expert opinion said was illegal, Labour ministers did not care to probe the reasoning behind a brief opinion from the attorney general that stood in stark contrast to the view he had expressed over the previous year.

Every minister and civil servant in the cabinet room would have laid themselves open to war crimes charges by failing to query what the attorney general was telling them on March 17. So conscious of this threat were Elizabeth Wilmshurst, of the Foreign Office legal team, and Robin Cook, the leader of the House of Commons, that they resigned rather than be implicated in the government's action.

In any event no one can now say for certain what was said at the two meetings because the record, both the cabinet minutes and the cabinet secretary's notebooks, which should both be made public, instead remain secret.

Equally conscious of what is involved in Straw's suppression of the cabinet minutes is the Tory opposition. They were uncharacteristically acquiescent when Straw made his announcement to the Commons. Dominic Grieve, the opposition spokesman, made a few token criticisms for the sake of appearances before admitting that Straw was right to veto the release of the minutes.

There has been a closing of ranks in Parliament and the media, because the British political elite want to draw a line under Iraq, the millions of dead and maimed, and move on. Reiterating uncritically the very justification for war employed by Blair, Kettle insisted in the *Guardian*, "What part of the decision to go to war in Iraq do the critics not understand? The war was a decision taken by Tony Blair, his ministers and officials, and backed by the cabinet and the House of Commons. It was taken because Blair wanted to be in lockstep with the Americans, and because he believed that the overthrow of Saddam Hussein would be good for Iraq and would prevent Iraqi use of weapons of mass destruction. Blair was wrong. But we know that. At some stage, we need to stop scratching the itch."

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