

Dutch inquiry finds Iraq war illegal

Ann Talbot
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A Dutch commission of inquiry has concluded that the US-led 2003 Iraq war was illegal under international law. The conclusion has far-reaching implications. Potentially, it could open up leading politicians and military figures in the US and Britain to prosecution for war crimes.

Prime Minister Jan Peter Balkenende of the Netherlands set up the Davids Commission in order to avoid a full parliamentary inquiry into the Dutch role in the invasion of Iraq. He headed the caretaker government at the time of the invasion and has rejected the report's findings. The fact that a commission which was set up with the intention of producing a whitewash has had to come to such damning conclusions points to the weight of evidence that exists for the illegality of the war.

The attempt to maintain the lie that the war was legal is becoming increasingly difficult. The Dutch report entirely rejects the central argument used to justify the actions of the British government and claim that there was a legal basis for the invasion.

“The [UN] Security Council Resolutions on Iraq passed during the 1990s did not constitute a mandate for the US-British military intervention in 2003,” the report concludes. “Despite the existence of certain ambiguities, the wording of Resolution 1441 cannot reasonably be interpreted (as the government did) as authorizing individual Member States to use military force to compel Iraq to comply with the Security Council's resolutions, without authorization from the Security Council.”

The report goes on: “The Dutch government's often repeated view that a second resolution was ‘politically desirable, but not legally indispensable’ is not easy to uphold. The wording and scope of Resolution 1441 cannot be interpreted as such a second resolution. Hence, the military action had no sound mandate under

international law.”

Unlike the ongoing Chilcot inquiry in Britain on the war, the Dutch team included legal experts. As Professor Philippe Sands QC, an expert on international law, has pointed out, their conclusion is significant for that reason:

“There has been no other independent assessment on the legality of the war in Iraq and the findings of this inquiry are unambiguous. It concludes that the case argued by the Dutch and British governments, including the then-attorney general, Lord Goldsmith, could not reasonably be argued.

“This is the authoritative view of seven commissioners, including the former president of the Dutch Supreme Court, a former judge of the European Court of justice, and two legal academics.”

The Dutch report will inevitably raise once again the question of the advice that Lord Goldsmith gave to the British government. Elizabeth Wilmshurst, deputy legal adviser to the Foreign Office, resigned in March 2003, claiming that Goldsmith had told lawyers at the Foreign Office that war against Iraq would be illegal. According to leaked documents, Goldsmith told Blair in July 2002 that regime-change was “not a legal basis for military action.”

In March 2003, Goldsmith warned Blair that he could be indicted under international law if he invaded Iraq without a second resolution. But days later, just before the invasion began, he made a statement in the House of Lords in which he claimed that the war was legal.

Speaking at the Chilcot inquiry this week, Lord Trumbull, who was cabinet secretary at the time of the invasion, confirmed that Goldsmith had changed his mind about the legality of the war. Trumbull attempted to lay the blame on Blair, who, he said, had “bullied” Goldsmith into backing the war. Trumbull's behaviour was as thoroughly hypocritical as that of previous witnesses who have attempted to excuse their own

actions, or inaction, and claim that Blair alone was responsible for an illegal war.

The British political establishment is becoming increasingly uneasy about the application of international law to them and to their allies. That is why the government intends to bring in legislation that will override the principle of universal jurisdiction in Britain. This follows the issue of an arrest warrant for former Israeli foreign minister Tzipi Livni, who was due to visit Britain.

“The government is looking urgently at ways in which the UK system might be changed to avoid this situation arising again,” current attorney general Baroness Scotland assured an audience at the Hebrew University of Jerusalem last week. “Israel’s leaders should always be able to travel freely to the UK.”

Universal jurisdiction is the well established legal principle that some crimes can be tried outside of the boundaries of the country in which they were committed, if they can be considered crimes against humanity or war crimes. It was expressed in the Nuremberg Trials of Nazi war criminals at the end of the World War II.

The Nuremberg judges concluded that the trials were “not an arbitrary exercise of power on the part of victorious nations,” but were “the expression of international law.” This principle was confirmed by the United Nations in 1946 and it was expressed in the trial of Adolf Eichmann in Israel for his part in the Holocaust. In 1998, the House of Lords upheld the principle in the case of former Chilean president Augusto Pinochet, who had been arrested in London.

With regard to war crimes, the Geneva Conventions require signatory nations, such as Britain and the US, to pass the necessary laws and “provide effective penal sanctions” for persons “committing, or ordering to be committed” any “grave breaches” of the Conventions. Crucially, Article 129 goes on to state that each signatory “shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”

Following the Davids Commission report, the Dutch government should therefore feel itself obliged to issue arrest warrants--not only for Balkenende, but for Blair and his cabinet, as well as all the senior members of the

Bush administration, including the former president. Naturally, it has no intention of doing so. But that is far from being the end of the matter.

In its modern form, universal jurisdiction is a democratic principle that arises historically from the bourgeois revolutions of the late 18th century, when it was established that sovereignty resides in the people and not the state. It implies that no one is above the law and that a minister, civil servant or military officer cannot claim immunity from prosecution for crimes committed against humanity because he was acting on behalf of a state. That is why individuals and groups can, at present, apply, as Palestinians have done in the UK, for an arrest warrant against even the most senior representative of a government or the armed forces.

This situation is becoming intolerable for the international league of war criminals who head the governments of the world’s major powers. It has led to repeated efforts to curtail universal jurisdiction by the US, Israel Belgium, Spain and now Britain. In doing so, these governments and their representatives only place themselves more firmly on a collision course with the mass of the world’s population, who continue to believe that those responsible for the crimes committed in Iraq, Afghanistan, Palestine and elsewhere must be brought to justice.

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