

COMMENTS ON ISSUES RE LEGAL BASIS FOR WAR IN IRAQ

1. Under the UN Charter the only basis on which one State can lawfully attack another sovereign State is either in self-defence under Article 51 or with the authority of the UN Security Council. There may also be a ground based on extreme humanitarian crisis, but this is not relevant here.

2. Iraq had not attacked the UK nor threatened to do so. Although the famously “sexed up” Intelligence dossier suggested that Iraq possessed WMDs posing a threat to International peace and security, we now know this was not the case. No WMDs were found. Eliza Manningham-Buller in her evidence rated the threat from Iraq as lower than several other countries. Sir Michael Wood’s evidence also dismissed Self-defence as a possible legal justification for military invasion. It seems disgraceful that Jack Straw should have rejected the unanimous advice of the FO legal department and even more disgraceful that he should have suppressed it and kept it back from the Cabinet.. His political loyalty to Tony Blair prevailed over all else.

3. It is generally accepted that “regime change” is not a justifiable basis for military action. I am sure all international lawyers would be agreed on that point. Again Sir Michael Wood’s evidence refers. However, regime change might possibly occur as an incidental result of a legally valid intervention. Tony Blair in his evidence rather gave the impression that he believed that getting rid of Saddam was of itself sufficient justification. He had no regrets. In his evidence, he said that he would not have taken the country to war if it had not been legal. This seemed disingenuous to me but clearly he desperately needed his good friend and colleague “Peter” the Attorney –General to be brought on side if only to satisfy the Army chiefs.

4. The Government’s case really stands or falls on whether the military invasion was carried out with the authority of the UN Security Council.

5. Lord Goldsmith relied heavily on UN Resolution 678. This was passed by the UN in 1990 and authorised George Bush Senior and the Coalition of that time to expel the Iraqis from Kuwait. Both George Bush Senior and John Major took the view then that it fell short of authorising them to enter Baghdad or invade Iraq. For Lord Goldsmith then Attorney –General to pin his argument for the use of force on it 12 years later, in a quite different situation, seems contrary to the wording and spirit of the Resolution. It was a desperate attempt almost scraping the barrel to justify the war legally. Lord Goldsmith’s evidence reminded me of nothing so much as a QC defending a man on a murder charge determined as a professional advocate to present the best possible case for the defence despite knowing his client is guilty as charged.

6. UNSCR 1441 was drafted very cleverly by Sir Jeremy Greenstock and others to allow those Member States opposed to military action to support it in the fond belief that it kept the whole issue within the jurisdiction of the UN, whilst at the same time giving the “Coalition of the Willing” some semblance of a fig leaf of UN authority to go ahead with the military action they planned to take anyway. This is why Sir Jeremy Greenstock was thought by some in Whitehall to “have played a blinder.” It was a

diplomatic triumph for him. This is also why in his evidence he said in his witty way that the war was legal although lacking legitimacy. By which I think he indicated that he meant it lacked the backing of other members of the UN Security Council. Really this was a subtlety too far. In truth, it was both illegal and illegitimate.

7. The word “consider” in Operative Paragraph 12 of UNSCR 1441 helped foster the view that the UN was fully seized of the issue. The fact that the word “consider” was used rather than the word “decide” strikes me as a very flimsy basis upon which to justify a military invasion. However, Sir Jeremy Greenstock may have used this as part of his subtle arguments to help persuade Lord Goldsmith to change his legal opinion on his trip to USA.

8. It is perfectly obvious that a Second UNSC Resolution was required. Unfortunately for the UK it just was not obtainable largely because of the attitude of France, Russia and other countries opposed to military action.. There is some confusion about the anticipated French Veto, but it seems a complete certainty that UNSC would **not** have authorised military action at least at that stage. Clearly then it was for the UN to judge whether Saddam Hussein was in material breach of UNSCR 1441 or not and, if so, what action should be taken. The UN might in theory have explicitly authorised military action. But it might, on the other hand, have imposed further delay to give Hans Blix more time to report on the existence or otherwise of WMDs. Alternatively, the UN might have imposed so-called “smarter sanctions”. What is abundantly clear is that was for the UN to decide if there was “a material breach “of UNSCR 1441. For Lord Goldsmith to think this was something Tony Blair could decide upon passes belief. The PM’s office deliberately discouraged the A-G from giving any advice until it was too late to make any difference and thereafter political expediency prevailed. He was not going to stand in Tony Blair’s way.

9. The only reason the UK did not seek a Second Resolution is that it knew perfectly well it would not get one authorising invasion. That judgment was correct.. It was therefore thought better not to ask than to be refused which would have made the illegality of invasion even more glaringly obvious.

10 .As to the correct approach to the interpretation of UN Security Council resolutions, the evidence of Elizabeth Wilmshurst is in my opinion faultless.

11. Likewise I agree with Elizabeth Wilmshurst in taking issue with Lord Goldsmith’s evidence that a “reasonable case” was a sufficient basis for taking military action. Before any future UK Government embarks upon aggressive military action to invade another country, I think the public is entitled to expect a more cast iron legal basis in full conformity with International law. I also think we would expect our Cabinet to take a little more interest in the issue of legality rather than as Lord Prescott testified they just wanted to know whether it was legal or not. According to his evidence the Cabinet was apparently not concerned or perhaps were not given the opportunity to see the full legal opinion from Lord Goldsmith, still less to know what the legal advice was from the FCO. In this connection, the traditional civil service convention that everybody must fall in behind the A-G once he has given his opinion perhaps needs to be looked at again. Also another look needs to be taken at the position in which the Government’s chief legal adviser is also a politician and member of the Government he is supposed to be impartially advising.

12. In conclusion, the legal advice consistently given by the FCO civil servants Sir Michael Woods and Elizabeth Wilmshurst was completely correct and proper. Initially Lord Goldsmith had agreed with it too but eventually came round to what he mistakenly called a “better view” that a reasonable case could be made enabling him to pronounce the war legal. The political pressures he was under must have been immense .

13. Outside of the Inquiry, some valuable opinions are as follows-

- Kofi Annan UN Secretary General said on 16th September 2004 “From our point of view, from the Charter point of view, it was illegal.
- The late Lord Alexander QC Chairman of Justice said that “without a Second Resolution ... the Coalition did not have the legal basis for going to war”
- Lord Bingham , a distinguished Law Lord and Master of the Rolls said in a public lecture in November 2008 “**the War was a serious violation of International Law .**”
- Nick Clegg Deputy Prime Minister in PMQs in July 2010 condemned the war as illegal

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