
Part V:**AFTERMATH****14. OPINION OF OF RABINDER SINGH QC &
CHARLOTTE KILROY ON THE LEGALITY OF THE
USE OF FORCE AGAINST IRAQ, 6 JUNE 2003****In the Matter of the Legality of the Use of Force against Iraq
and the Alleged Existence of
Weapons of Mass Destruction**

OPINION

1. Further to our previous advices on whether the United Kingdom (**UK**) could rely either on United Nations Security Council Resolution 1441 (**Resolution 1441**) (**OP1441**), or on Resolutions 678 and 687 (**OP678**) to use force against Iraq, we are asked to advise the Campaign for Nuclear Disarmament and Peacerights on the implications of the absence to date of discovery of weapons of mass destruction in Iraq since its invasion on 20 March 2003.

Summary of advice

2. In summary our view is that the allegations made by former members of the Cabinet in the recent past, that the evidence of the existence of weapons of mass destruction was exaggerated by the UK and the US prior to the invasion of Iraq in March 2003, call into question the factual foundation for the Attorney-General's view that the invasion was lawful in international law. In our view there is therefore a strong case for establishing a judicial inquiry to examine that legal question.

The Attorney-General's Statement of 17 March 2003

3. In OP1441 and OP678 we concluded as follows:
 - (1) Security Council Resolution 1441 did not authorise the use of force by member states of the UN.
 - (2) The UK would be in breach of international law if it were to use force against Iraq in reliance on Resolution 1441 without a further Security Council Resolution.
 - (3) The UK could not rely on the authorisation to use force in Resolution 678 to take military action against Iraq.

4. However, the Attorney-General, the Rt. Hon. Lord Goldsmith QC, set out a different view in his statement of 17 March 2003. He stated that “*authority to use force exists from the combined effect of resolutions 678, 687 and 1441.*” It is instructive that even he did not state that Resolution 1441 itself authorised the use of force. It is important to set out the steps of his argument:
 1. In resolution 678 the Security Council authorised force against Iraq, to eject it from Kuwait and to restore peace and security in the area.
 2. In resolution 687, which set out the ceasefire conditions after Operation Desert Storm, **the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area.** Resolution 687 suspended but did not terminate the authority to use force under resolution 678.
 3. A material breach of resolution 687 revives the authority to use force under resolution 678.
 4. **In resolution 1441 the Security Council determined that Iraq has been and remains in material breach of resolution 687, because it has not fully complied with its obligations to disarm under that resolution.**
 5. **The Security Council in resolution 1441 gave Iraq "a final opportunity to comply with its disarmament obligations"** and warned Iraq of the "serious consequences" if it did not.
 6. The Security Council also decided in resolution 1441 that, if Iraq failed at any time to comply with and cooperate fully in the implementation of resolution 1441, that would constitute a further material breach.
 7. **It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach.**
 8. **Thus, the authority to use force under resolution 678 has revived and so continues today. (emphasis added)**
5. The Attorney-General’s statement of 17 March 2003 (“**the Statement**”) was not his detailed legal opinion, but a short summary setting out a legal conclusion. The statement does not set out the factual basis for his argument, nor does it fully explain his legal reasoning or provide an assessment of the strength of the argument he has put forward or of counter-arguments (as was well-publicised at the time, many professors of international law and others in this country took the view that the

resolutions relied on by him did not authorise the invasion of Iraq in March 2003). It is fair to assume therefore that this Statement was based on a formal legal opinion which has not been published.

6. The Statement does, however, give a strong indication of the factual evidence on which the Attorney-General was relying. He states at paragraphs 7: *“It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach.”*
7. In his leaked Confidential Note to the Prime Minister of 26 March 2003, there is a further hint of what the Attorney-General had advised in his formal legal opinion on the legality of an invasion of Iraq. He states at paragraph 6:

“Finally and in any event, it must be borne in mind that the lawfulness of any occupation after the conflict has ended is still governed by the legal basis for the use of force. **As you know, any military action pursuant to the authorisation in resolution 678 (1990) must be limited to what is necessary to achieve the objectives of that resolution, namely Iraqi disarmament, and must be a proportionate response to that objective. The Government has concluded that the removal of the current Iraqi regime from power is necessary to secure disarmament,** but the longer the occupation of Iraq continues, and the more tasks undertaken by an interim administration depart from the main objective, the more difficult it will be to justify the lawfulness of the occupation. So in the absence of a further Security Council resolution, in addition to the issues raised in paragraph 2 above, it is likely to be difficult to justify the legality of the continued occupation of Iraq once the disarmament requirements of the relevant Security Council resolutions have been completed.” (emphasis added)
8. This paragraph makes two points very clear:
 - (1) the Attorney-General had advised that military action was only lawful to the extent that it was necessary to achieve disarmament;
 - (2) the Attorney-General had been told that the removal of the current Iraqi regime from power was necessary to secure disarmament. In other words, it was the Attorney General’s view (and we think that view was correct) that “regime change” could not be an end in itself; it could only be achieved by force as a necessary means to achieve the end of disarmament.

Allegations of misuse of intelligence

9. In September 2002 the UK Government published a dossier entitled: “Iraq’s Weapons of Mass Destruction: the Assessment of the British Government.” (“**The September Dossier**”)
10. In his foreword to the September Dossier, the Prime Minister, the Rt. Hon. Tony Blair MP, stated as follows:

The document published today is based, in large part, on the work of the Joint

Intelligence Committee (JIC). The JIC is at the heart of the British intelligence

machinery.

Its work, like the material it analyses, is largely secret. It is unprecedented for the Government to publish this kind of document. But in light of the debate about Iraq and Weapons of Mass Destruction (WMD), I wanted to share with the British public the reasons why I believe this issue to be a current and serious threat to the UK national interest.

In recent months, I have been increasingly alarmed by the evidence from inside Iraq that despite sanctions, despite the damage done to his capability in the past, despite the UN Security Council Resolutions expressly outlawing it, and despite his denials, Saddam Hussein is continuing to develop WMD, and with them the ability to inflict real damage upon the region, and the stability of the world...

What I believe the assessed intelligence has established beyond doubt is that Saddam has continued to produce chemical and biological weapons, that he continues in his efforts to develop nuclear weapons, and that he has been able to extend the range of his ballistic missile programme. ...

The picture presented to me by the JIC in recent months has become more not less worrying. It is clear that, despite sanctions, the policy of containment has not worked sufficiently well to prevent Saddam from developing these weapons.

I am in no doubt that the threat is serious and current, that he has made progress on WMD, and that he has to be stopped.

Saddam has used chemical weapons, not only against an enemy state, but against his own people. Intelligence reports make clear that he sees the building up of his WMD capability, and the belief overseas that he would use these weapons, as vital to his strategic interests, and in particular his goal of regional

domination. And the document discloses that his military planning allows for some of the WMD to be ready within 45 minutes of an order to use them.”

11. In his introduction to the debate held in the House of Commons on 18 March 2003, the Prime Minister Tony Blair made the following statement:

“...what is the claim of Saddam today? Why, exactly the same as before: that he has no weapons of mass destruction. Indeed, we are asked to believe that after seven years of obstruction and non-compliance, finally resulting in the inspectors' leaving in 1998-seven years in which he hid his programme and built it up, even when the inspectors were there in Iraq-when they had left, he voluntarily decided to do what he had consistently refused to do under coercion.

*When the inspectors left in 1998, they left unaccounted for 10,000 litres of anthrax; a far-reaching VX nerve agent programme; up to 6,500 chemical munitions; at least 80 tonnes of mustard gas, and possibly more than 10 times that amount; unquantifiable amounts of sarin, botulinum toxin and a host of other biological poisons; and an entire Scud missile programme. **We are asked now seriously to accept that in the last few years-contrary to all history, contrary to all intelligence-Saddam decided unilaterally to destroy those weapons. I say that such a claim is palpably absurd.***

*... this much is accepted by all members of the UN Security Council: the 8 December declaration is false...Iraq continues to deny that it has any weapons of mass destruction, **although no serious intelligence service anywhere in the world believes it.***

12. On 1 June 2003 the Rt. Hon. Clare Short MP, the former Secretary of State for International Development who resigned from the Cabinet on 12 May 2003 told the *Sunday Telegraph* that the Prime Minister Tony Blair had “duped” the public over the threat posed by Saddam Hussein in order to ensure that Britain invaded Iraq.

13. Clare Short stated in her interview:

“I have concluded that the PM had decided to go to war in August sometime and he duped us all along. He had decided for reasons that he alone knows to go to war over Iraq and to create this sense of urgency and drive it: the way the intelligence was spun was part of that drive.

There was political spin put on the intelligence information to create a sense of urgency. It was a political decision that came

from the Prime Minister. We were misled: I think we were deceived in the way it was done...

The suggestion that there was a risk of chemical and biological weapons being weaponised and threatening us in a short time was spin...That didn't come from the security services."

14. In an article published in the *International Herald Tribune* on 4 June 2003, the Rt. Hon. Robin Cook MP, the former Leader of the House of Commons who resigned from the Cabinet on 17 March 2003, stated as follows:

"When the cabinet of Prime Minister Tony Blair's government discussed the dossier on Saddam's weapons of mass destruction, I argued that I found the document curiously derivative. It set out what we knew about Saddam's chemical and biological arsenal at the time of the Gulf War. It rehearsed our inability to discover what had happened to those weapons. It then leaped to the conclusion that Saddam must still possess all those weapons. There was no hard intelligence of a current weapons program that would represent a new and compelling threat to our interests. .

Nor did the dossier at any stage admit the basic scientific fact that biological and chemical agents have a finite shelf life. Nerve agents of good quality have a shelf life of about five years and anthrax in liquid solution of about three years. Saddam's stocks were not of good quality. The Pentagon itself concluded that Iraqi chemical munitions were of such poor standard that they were produced on a "make-and-use" regimen under which they were usable for only a few weeks. Even if Saddam had destroyed none of his arsenal from 1991 it would long ago have become useless. .

It is inconceivable that no one in the Pentagon told Rumsfeld these home truths, or at the very least tried to tell him. So why did he build a case for war on a false claim of Saddam's capability? .

Enter stage right - far right - his deputy, Paul Wolfowitz, a man of such ferociously reactionary opinion that he has at least the advantage to his department of making Rumsfeld appear reasonable. He has now disclosed: "For bureaucratic reasons we settled on weapons of mass destruction because it was the one issue everyone could agree on."

15. In an article dated 6 June 2003, the *Guardian* newspaper carried the following report by Simon Jeffery:

"The United Nations' chief weapons inspector, Hans Blix, has hit out at the quality of intelligence given to him by the United States and Britain on Iraq's alleged chemical and biological weapons programmes.

As the prime minister, Tony Blair, continued to be dogged by claims he had exaggerated the threat posed by Saddam Hussein, Mr Blix said today he was disappointed with the tip-offs provided for his inspection teams.

"Only in three of those cases did we find anything at all, and in none of these cases was there any weapons of mass destruction, and that shook me a bit, I must say," he told BBC News 24.

"I thought, my God, if this is the best intelligence they have and we find nothing, what about the rest?"

The BBC also reported last night that British intelligence services were asked at least six times to rewrite the controversial dossier on Iraq's weapons of mass destruction.

A source, described as "close to British intelligence", said Mr Blair was at one stage personally involved in the decision to get the document redrafted.

The new claim appears to back up the allegation, originally made by the BBC's defence correspondent Andrew Gilligan on Radio 4's Today programme, that intelligence services were told by Downing Street to "sex up" the dossier to boost support for the war.

The final version claimed Iraq could launch chemical or biological weapons within 45 minutes of Saddam giving the order.

In a valedictory appearance in front of the UN security council yesterday, Mr Blix, who retires this month, criticised Britain for "jumping to conclusions" that Iraq posed a serious threat to world security.

He said Saddam's regime might have hidden weapons of mass destruction in Iraq, or destroyed them ahead of the US-British invasion, but stressed that neither evidence of the "continuation or resumption of programmes of weapons of mass destruction or significant quantities of proscribed items" had been unearthed by his inspectors.

"As I have noted before, this does not necessarily mean that such items could not exist," he said. "They might -- there remain long lists of items unaccounted for - but it is not

justified to jump to the conclusion that something exists just because it is unaccounted for."

16. In another article in the *Guardian* dated 6 June 2003, Nicholas Watt, John Hooper and Richard Norton-Taylor also reported on Hans Blix's remarks made to the UN Security Council on 5 June 2003:

"As a UN official, Mr Blix did not name Britain and the US. But there was no doubt who he had in mind when he said there was no evidence that Saddam had continued with his banned weapons programme after the 1991 Gulf war. This contradicted Mr Blair's warning last year that Iraq's banned weapons programme was "active, detailed and growing".

A former UN inspector, Bernd Birkicht, 39, said he believed the CIA had made up intelligence on weapons of mass destruction to provide a legal basis for the war. He told the Guardian how supposedly top-secret, high-quality intelligence had led the inspectors on an absurd wild goose chase.

"We received information about a site, giving the exact geographical coordinates, and when we got there we found nothing. Nothing on the ground. Nothing under the ground. Just desert."

He said the so-called decontamination trucks which figured in satellite photographs presented to the security council were fire engines."

17. Richard Norton-Taylor in an article published in the *Guardian* on 4 June 2003, made the following comments on the September dossier:

"The dossier contains four references to the claim that Iraq could deploy chemical and biological weapons within 45 minutes of an order to do so. A senior British official told the BBC this was one of several claims added against the wishes of intelligence agencies. Adam Ingram, the armed forces minister, admitted the claim was made by an uncorroborated, single, source.

The dossier said Iraq was seeking uranium from Africa - a reference to Niger. Colin Powell, US secretary of state, omitted it from his speech to the UN security council on February 5. "It turned out to be untrue; that happens a lot in the intelligence business," he said this week.

The dossier said aluminium tubes Iraq tried to buy could be for nuclear weapons. The US energy and state departments dismissed the claim. That very month, the US defence

intelligence agency concluded: "There is no reliable information on whether Iraq is producing and stockpiling chemical weapons."

18. On 3 June 2003, the BBC reported that a full-scale Congressional inquiry had been ordered in the United States on the use and possible abuse of intelligence information on weapons of mass destruction in Iraq. The inquiry - being conducted by the Senate Armed Services and Intelligence Committees - is expected to compare comments made by the US administration in the run-up to war with what it was given in terms of intelligence briefing and to decide whether or not there was a deliberate attempt to exaggerate intelligence material. In the UK there are to be inquiries by the Foreign Affairs Select Committee and the Parliamentary Intelligence and Security Committee.

Issue

19. The issue which we will consider in this advice is to what extent the allegations made by former Cabinet ministers and intelligence officials that intelligence material has been exaggerated and misused affect the argument set out in the Attorney-General's Statement, on which the UK Government relied to justify the legality of the invasion of Iraq.

Advice

20. As highlighted above the Attorney-General's argument that the invasion of Iraq was lawful depended on the assumption that this invasion was necessary to achieve the disarmament of Iraq. It was only on the basis of this assumption that the Attorney-General could argue that the authority to use force contained in Resolution 678, which had been adopted by the UN Security Council in 1990, and which authorised the use of force in order to ensure the withdrawal of Iraq from Kuwait and to restore peace and security to the area, had been revived. This was because the Attorney-General's argument depended on the following premises:
- (1) The cease-fire contained in Resolution 687 was only a suspension of the authorisation to use force contained in Resolution 678.
 - (2) Resolution 687 had as its objective the restoration of international peace and security in the area in conformity with Resolution 678.
 - (3) In Resolution 1441 the Security Council determined that Iraq was in breach of the provisions of Resolution 687 relating to disarmament of Iraq's nuclear, chemical and biological weapon capability (paragraphs 8 to 13), which provisions were designed to restore international peace and security in the area in accordance with Resolution 678.

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- (4) Iraq failed to take to final opportunity afforded to it by Resolution 1441 to comply with its disarmament obligations under Resolution 687.
21. Any reliance on Resolution 678 to authorise the use of force was therefore restricted to what was necessary to enforce the disarmament provisions of Resolution 687 (and Resolution 1441) with the objective of restoring international peace and security to the area. It follows that the quality, reliability and strength of the evidence which was made available to the Government, in particular to the Attorney-General, are essential for an assessment of whether in fact there was any lawful basis for the invasion of Iraq even on the Attorney-General's legal view.
22. Furthermore, the quality, reliability and strength of that evidence are essential for an assessment of whether the invasion had to take place when it did on 20 March 2003 because there was insufficient time to allow the UN inspectors, including Dr Blix, any more time, as they had requested. If, as the Government now suggest, it will take time before weapons of mass destruction are discovered in Iraq, this raises the question why it was not possible to allow Dr Blix more time and calls into question the proportionality of the invasion and use of force to effect regime change in March-April 2003. As we have noted above, the Attorney-General himself was acutely aware of the need for any use of force to comply with the legal principle of proportionality.
23. In our view the allegations made in the media over the past week call into question the factual foundation of the Attorney-General's legal advice to the Government. If those allegations are well-founded they mean that it was far from plain that Iraq had not complied with its disarmament obligations, and far from certain that invasion and/or regime change was necessary in order to secure disarmament.

Conclusion

24. Without any disrespect to the two Parliamentary inquiries which are to take place, we consider that there is a strong case for establishing a judicial inquiry to examine what are essentially legal questions about:
- (1) the basis in international law for the Government's participation in the invasion of Iraq and the use of force to effect regime change there; and
 - (2) the quality, reliability and strength of the evidence which was relied on to lay the factual foundation for any such basis in law.
25. It is quintessentially the task of independent judges to decide questions of law and to assess evidence. We conclude that there is a strong case for those two questions to be the subject of a judicial inquiry.

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6 June 2003