

# Legality of Iraq War Challenged in Britain

by Mark Burdman

With the end-of-March first anniversary of the launching of the Iraq war approaching, and Britain absorbed in months of intense controversy over Prime Minister Tony Blair's wildly exaggerated pre-war allegations about Iraq's weapons of mass destruction, Blair has been fervently hoping, as his 10 Downing Street spokesmen put it, to "draw a line" under the Iraq issue, and to "move on" to other matters of pressing concern. But alas for Blair, this has not come to pass. Not only has the gruesome news from "postwar Iraq" grabbed international headlines. Simultaneously, in Britain, the alleged legal foundation on which Britain went to war, has come under attack.

The main event catalyzing this new assault on the edifice of Blair's brief for war, was the case of Katharine Gun, an employee at the top-secret Government Communications Headquarters (GCHQ) surveillance complex in Cheltenham, the British counterpart of, and collaborator with the National Security Agency (NSA) in the United States. Gun was charged with violating the Official Secrets Act, for having, in March 2003 as the invasion of Iraq was beginning, passed on to the London *Observer* newspaper, secret intelligence about U.S. and British spying operations at the United Nations. This was at a time when there was an intense battle, at the UN, over Anglo-American efforts to procure a new UN Security Council resolution authorizing war with Iraq.

Almost one year later, on Feb. 25, British Attorney-General Lord Goldsmith and the Crown Prosecution Service (CPS), in a surprising move, shut down the case against Gun, and she walked off free.

To some extent, the Gun case was quickly upstaged, when former International Development Secretary Clare Short, who had resigned from the Blair cabinet in protest at the Iraq invasion, told a British television interviewer that Britain had regularly spied on the office of UN Secretary-General Kofi Annan.

As sensational and important as this may be, the Gun case brought to the surface something even more devastating: that Britain, and the United States, went to war in defiance of international law.

## 'This Is an Illegal Pre-emptive War'

The main defense of Gun's lawyers was the argument of "necessity," that she acted with the intent of preventing

British casualties in a war that she believed to be illegal. The defense was ready to demonstrate that Gun's view, on this point, was in accordance with the body of official British legal opinion available at the time. To this end, the defense was reportedly prepared to call, as witness, Elisabeth Wilmschurst.

Wilmschurst resigned as deputy legal advisor in the Foreign Office, on the eve of the war, in disagreement with the March 17, 2003 judgment of Attorney-General Lord Goldsmith, that launching war would be in accordance with international law, and that existing UN resolutions, at the time, were sufficient legal ground for military action.

That gets to the nub of the matter which has now become a new challenge to the Blair government's participation in the war policy of Dick Cheney and the neo-conservatives in Washington. Beyond Wilmschurst's projected testimony, the defense was prepared to raise questions about Lord Goldsmith's judgment. As per British convention, his full argumentation has never been made public. Informed sources claim, that as soon as Gun's legal team indicated it was prepared to move into this highly charged matter, the case was shut down by Goldsmith and the CPS.

Obviously, a neuralgic point had been touched. The dismissal of the Gun case opened up a national furor.

In the end-February/early-March period, it has been revealed by such reliable sources as London *Guardian* security affairs editor Richard Norton-Taylor, that in the run-up to the war, the vast majority of legal opinion in the official Whitehall establishment—including in the Foreign Office and Ministry of Defence—as well as in the British legal profession, was that launching an Iraq invasion would be in violation of international law. The main line of thinking involved one of, or a combination of three factors: that Iraq did not represent a clear and present threat to Britain; that there was not United Nations authorization for war; and that launching a pre-emptive war would set a dangerous precedent.

Explosive reports in the Sunday, Feb. 29 *Observer* and *Independent on Sunday* revealed that, only days before the war began, Chief of the Defence Staff Lord Boyce was refusing to commit his forces, based in Kuwait, to war against Iraq. He was concerned that the war would not be legal, and that his troops might be found guilty of war crimes, should they engage in conflict. At that point, Lord Goldsmith came forward with his decision, that the war would be legal. The papers allege, that this was a change from an earlier Goldsmith position, that an explicit UN authorization for war, codified in a new resolution, would be required.

There are widespread suspicions that Goldsmith was "leaned on" by the Blair government to alter his opinion; which, if proven, would almost certainly be an impeachable offense.

Clare Short has pointed in the direction of some kind of behind-the-scenes manipulation, stressing that Goldsmith is a close associate of Blair, and was appointed to his position,

as well as to a peerage, by the Prime Minister.

A number of voices have been raised, demanding that precedent be tossed aside, and that the full text of Lord Goldsmith's judgment on the war be published. Former British Prime Minister John Major stated, on Feb. 29, that the controversy was "poisoning the whole political atmosphere," and that "this poison needs to be let out of the system" by its publication. Lord Alexander, chairman of the legal organization Justice and a past chairman of the Bar, has demanded publication, asserting "this was the most important legal opinion given in the last quarter of a century" in Britain.

Speaking to *EIR* Feb. 29, Labour Party parliamentarian Tam Dalyell, longest-serving member of the House of Commons, proclaimed that the Goldsmith decision must be published, because "this is a vital matter, of war and peace. . . . The fundamental issue brought to the fore by the Gun case, is that the Iraq war is an illegal pre-emptive war."

Indeed, at the time, the Goldsmith decision of mid-March 2003 was a key factor in swinging a hesitant portion of the British Parliament and the British public behind going to war. The other key factor in shifting sentiment was the hyped-up claims about the Iraqi weapons threat—claims which have, since then, been thoroughly debunked as bogus.

### **Another Cheney Dirty Deed?**

Yet another angle to the story has been introduced by Labour peer, Baroness Helena Kennedy of The Shaws, herself a prominent barrister. In a new book released in early March, *Just Law*, she writes: "In the weeks before the war, the British Government conveyed to Washington its concerns about the war, explaining that the preponderance of its legal opinion was that war would be unlawful without a second resolution of the Security Council." The response from Washington to the British government, she reports, was "get yourself some different lawyers."

In a Feb. 29 interview with Britain's GMTV, Baroness Kennedy questioned the way in which Attorney General Lord Goldsmith came up with his advice that the war would be legal. She told GMTV, based on information from a Whitehall source, that after receiving Washington's view, Lord Goldsmith turned to one lawyer of "hawkish" views, outside the "circle" of the majority of legal opinion, Professor Christopher Greenwood of the London School of Economics, and based his opinion on that one lawyer's view. "It was interesting," she noted, "that out of, probably, only two [British] lawyers who would have argued for the legality of going to war, one of those was the person to whom the attorney general turned."

The relevant question to be asked, is whether the "Washington" view reported by Baroness Kennedy, originated from Vice President Dick Cheney, or from one of Cheney's staff or neo-conservative circle. As *EIR* has extensively documented, Cheney is no stranger to flouting the law.