

Tribute

Before offering my testimony, I would like to pay tribute to a man who should have been here to give his account. His testimony would have been authoritative, rigorous and honest, for these were his qualities. At the UK Mission in New York, we relied considerably on David Kelly as one of the few experts able to interpret and convey, with a scientist's discipline and objectivity, the complex and uncertain picture of Iraq's WMD. I hope that this inquiry will do all it can to restore the values which David's work exemplified.

Introduction

1. I was the First Secretary responsible for the Middle East at the UK Mission to the United Nations 1997-2002. While my work covered all aspects of the Middle East as they arose at the UN, my particular responsibility was Iraq. Specifically, I was responsible for liaison with the UN weapons inspectors (UNSCOM and later UNMOVIC), for reporting on discussion of Iraq at the UN, and the UN Security Council in particular, and for managing negotiations of Security Council resolutions on Iraq, which related to sanctions and weapons inspections. As part of my responsibilities, I oversaw the 3rd or 2nd Secretary who represented the UK on the 661 Iraq sanctions committee, which I also often attended. I had occasional contact with members of the Iraqi mission to the UN: New York, like Amman, was designated by the FCO as one of the UK's very limited official contact points with the Iraqi government during those years.
2. I attach the testimony I sent to the Butler inquiry in 2004 (annex A). This still represents my overall views. In this testimony, I want to address the questions the inquiry has asked me to consider (in particular on British policy on Iraq at the UN), go into more detail on some of the issues mentioned in my Butler testimony and try to offer some lessons from my experience.

Iraq at the UN 2001-2

3. During 2001-02, the UK's position on Iraq was under considerable pressure. Our goal was to maintain international support for implementation of the resolutions (SCRs) which provided the legal basis for the UK/US policy of containment. There was unceasing pressure, mainly from Iraq's allies at the UN Security Council, for sanctions to be eased to reward Iraq for past progress in disarming itself of its WMD (as required under SCR 687) and to incentivize Iraq to cooperate once more with the weapons inspectors. There was also significant concern over the humanitarian impact of sanctions (on which, see below). There was also a broader complaint, particularly in the Arab world, that the UK/US practiced double standards in demanding the full implementation of resolutions on

Iraq, but ignoring Israel's failure to implement resolutions demanding that it leave the occupied Palestinian territories.

4. In response to this pressure, the UK sought to maintain international unity behind the resolutions with measures including the introduction of a revised sanctions resolution (the Goods Review List (GRL) approach) and a readiness to negotiate within the P5 a clarification of SCR 1284, the resolution establishing UNMOVIC which also set out, in rather tortuous fashion, the terms for sanctions suspension. We had some success. Despite opposition, above all from Russia, the Security Council passed the new sanctions arrangements in May 2002¹. We had begun to discuss with the US the possibility of clarifying SCR 1284, and had shared with them a paper outlining post-suspension controls to limit Iraq's potential to rearm. We had also begun to discuss with the US reducing the scope and frequency of patrols in the No-Fly Zones. Certain operations outside the NFZs, for instance into central Iraq, had threatened to end regional support for containment² (though allied operations in NFZs in general provided for surprisingly little debate in the UN Security Council).
5. New York was in effect the front line of the UK's work to sustain international support for controls on Iraq. Although this diplomacy was difficult and contentious, it was not our view in New York that containment was collapsing either through the ineffectiveness of sanctions or the deterioration of international support. While there were serious sanctions breaches, it was not the UK judgement that these permitted significant rearmament, which was our major concern³. Politically, we noted a renewed French willingness to reunite the Council to pressurize Iraq to comply with the SCRs. In New York, the French ambassador spoke with enthusiasm about a new "package" to reaffirm the Council's position that Iraq must fulfill all its disarmament obligations. It remained our view, which we explained to all at the UN, that the best method to control the WMD danger was through inspections, and Iraq's compliance with its SCR obligations⁴.
6. The UK did not judge that Iraq had the means substantially to rearm, which was the key test of the effectiveness of the containment policy. It is therefore inaccurate to claim, as some earlier witnesses have done, that containment was failing and that sanctions were collapsing (and thus to claim that there was little alternative to military action to deal with the Iraqi threat). Although it required a substantial diplomatic effort, Security Council support for the resolutions had not

¹ SCR 1409 (2002)

² One particular so-called RO4 operation in February 2001 was controversial in that US/UK aircraft attacked air defence sites (used to coordinate, sometimes by remote-control, AAA and missile defences *inside* the NFZs) well outside the NFZs in central Iraq and indeed Baghdad.

³ One earlier FCO witness described sanctions as "leaking all over the place" and that "people had little faith [in them]": this was not the official assessment at the time and is a judgement that is not borne out in the relevant policy documents.

⁴ Among many examples, the Policy Advisory Board (PAB) at the FCO considered on 23 February 2001 that "inspectors were the best way to limit Iraq's WMD programme"

collapsed. Indeed, had there been more diplomatic effort, above all from the US, this position could have been maintained for some time longer. But as 2002 drew on, it became clear that the US had a different agenda and had waning interest in negotiating a diplomatic way forward at the UN.

UNMOVIC

7. The inquiry asked me about the role of UNMOVIC. UNMOVIC was set up under SCR 1284, which I helped negotiate from 1998-99, a year-long negotiation. It was the UK view that UNMOVIC was a robust inspection body; its mandate in SCR 1284 made clear that Iraq was required to provide its inspectors access at any time, anywhere. The UK and US had chosen Hans Blix as their preferred candidate for chairman, believing that he would be robust in dealing with Iraq but also carry more international credibility than the chairman of the UN Special Commission (UNSCOM), which preceded UNMOVIC. Indeed, it was the US and UK who engineered Blix's appointment (we did not publicly advocate for him, as to do so would have undermined his candidacy, but nonetheless we were instrumental behind the scenes in his selection⁵).
8. SCR 1284 makes clear that UNMOVIC required lengthy periods to conduct inspections inside Iraq before reaching any conclusions about the state of Iraq's disarmament of its WMD. This is because the task to "baseline" and inspect all relevant sites in Iraq was considerable. SCR 1284 is a complex resolution but these periods in total add up to a minimum 9 months⁶ before UNMOVIC could reach a credible judgement that Iraq had sufficiently disarmed. During the negotiation of SCR 1284, the UK and US were adamant in insisting on a period long enough to establish credible and comprehensive knowledge of Iraq's potential WMD sites. By contrast, negotiated in the run-up to the 2003 invasion, SCR 1441 gave UNMOVIC only 60 days after starting work before it was required to "update" the Security Council⁷. This discrepancy has not been mentioned by previous witnesses, even though they were asked about the time period for inspections by UNMOVIC in 02/03. The comparison of the inspection periods in the two resolutions suggests that the purpose of SCR 1441 was different from that of SCR 1284, which was to use inspectors credibly to verify Iraq's disarmament and prevent any rearmament.

⁵ As far as I can see, no previous witness has mentioned that Blix's appointment was in fact engineered by the UK/US.

⁶ SCR 1284 (1999) makes clear that UNMOVIC cannot effectively report on Iraq's progress in disarmament until it has fully established its reinforced system of ongoing monitoring and verification (ROMV): the system of monitors, both human and technical, and regular and "no-notice" inspections at the many hundreds of sites of potential WMD concern. In 2001/2, and before SCR 1441, UNMOVIC told us that such a system would take at least 6 months to establish; others such as the US estimated a longer period. This period was mis-described by earlier witnesses to the inquiry, who suggested that SCR 1284 meant that sanctions could be suspended 120 days after inspectors began work; this is inaccurate: the 120-day "test" period would begin only after ROMV had been fully established: a total of at least 9 months if not more.

⁷ OP5 of SCR 1441(2002)

The Alternative to War

9. In just war theory and international law, any country must exhaust all non-violent alternatives before resorting to force. It's clear in this case that the UK government did not adequately consider let alone pursue non-military alternatives to the 2003 invasion.
10. The alternative that existed requires some explanation. For all the years that Iraq was subjected to comprehensive economic sanctions following the 1991 Gulf War, the Saddam regime succeeded in sustaining itself and its core military capabilities by engaging in illegal oil smuggling via its neighbours, Jordan⁸, Turkey, Syria and the Gulf (interestingly, Iran did not significantly assist these efforts). These breaches of sanctions were a cause of continual concern to the UK and US; they amounted, according to our estimates at the time, to perhaps \$1-2 bn per year (post-war estimates of the smuggling, such as in the Volcker report on the oil-for-food scandal, were much higher). Such sanctions "busting" provided me and my colleagues at the UK Mission with continual work at the UN, and in particular the 661 Iraq sanctions committee, where we battled Iraq's allies, France and Russia, for sanctions breaches to be addressed.
11. On repeated occasions, I and my colleagues at the mission (backed by some but not all of the responsible officials in London) attempted to get the UK and US to act more vigorously on the breaches. We believed that determined and coordinated action on sanctions breaches, led by us and the US, would have had a substantial effect in particular to pressure Iraq to accept the weapons inspections and would have helped undermine the Iraqi regime. We proposed on several occasions the establishment of a multinational body (a UN body, if we could get the Security Council to agree it) to police sanctions enforcement. I proposed coordinated action with Iraq's neighbours to pressure them to help, including by controlling imports into Iraq. I held talks with a US Treasury expert on financial sanctions, an official who had helped trace and seize Milosevic's illegal financial assets. He assured me that, given the green light, he could quickly set up a team to target Saddam's illegal accounts. This was never done.
12. The resolutions provided already robust and unanimously-agreed legal coverage for the interception and seizure of both illegally-smuggled goods, including oil, and financial assets. We could for instance have seized the illegal bank accounts held by Saddam in Amman, Jordan⁹. Instead, this egregious breach of sanctions was ignored. Likewise, we could have intercepted Syria's illegal exports of Iraqi oil from Baniyas (on which, see below); no such attempt was made.
13. One episode illustrates that such efforts were not futile and that the collapse of effective sanctions was not a foregone conclusion, as some witnesses have

⁸ Jordan's oil "protocol" with Iraq, allowing it to import through barter substantial quantities of oil, was de facto tolerated by the US/UK, and was not addressed in the 661 Committee.

⁹ FOOTNOTE 9 REDACTED ON GROUNDS OF INTERNATIONAL RELATIONS

misleadingly suggested. In early and mid-2001, we undertook in New York sustained and detailed work in the 661 Iraq sanctions committee to end Iraq's manipulation of the official price of its oil exports, so that it could extract an illegal "surcharge" from the purchasers of Iraq's oil¹⁰. Iraq deliberately pressured the UN to set the price much higher than the market price, leaving a margin in which it could demand illegal cash payments from purchasers, amounting to a significant source of illegal revenue for the regime. We knew about this practice, and through detailed technical work and diplomacy, we succeeded in ending it¹¹. We achieved this result with little support from ministers or senior officials in London, or from our allies. Indeed, for some time the US failed to support our initiative in New York, and were only brought on board after we deliberately leaked this failure to the *Washington Post* which wrote up the story (see Annex B). This public embarrassment had more effect than the low-level remonstrations of British officials in Washington¹². In another example, we made considerable headway in reducing Russian objections to the Goods Review List (the "narrower and deeper sanctions" we had designed to maintain international support as well as controls upon Iraq) when, for once, before a meeting in New York the Foreign Secretary was briefed in detail on the proposed measures and was able to take his Russian opposite number (Ivanov) through the arguments, and defeat Russian objections, point by point. But such occasions were the exception, not the rule.

14. Inertia in the FCO and the inattention of key ministers combined to the effect that the UK never made any coordinated and sustained attempt to address sanctions busting. Earlier witnesses have downplayed or failed to mention the successes that we had e.g. on the GRL and oil surcharge¹³. This echoes the lack of attention the issue received at the time. The US, despite its professed concern about breaches, was never engaged at senior level to organise such a campaign. There were instead sporadic and half-hearted initiatives. Our bilateral embassies in Iraq's neighbours would always find a reason to let their hosts off the hook (the most egregious example was the embassy in Ankara). Official visitors to the neighbours always placed other issues higher on the agenda.
15. One example illustrates the point. According to media reports from the region and elsewhere, Syria had re-opened an illegal pipeline in November/December 2000 which transported Iraqi oil to the Syrian port of Baniyas for export. The reconstruction and then re-opening of the pipeline caused us at official level considerable concern: this was a major and egregious breach of sanctions. The Prime Minister visited Syria in October 2001. At the UK Mission, we sent a telegram beforehand urging him to press Assad on the illegal pipeline carrying

¹⁰ We learned about the surcharge from reports in the oil and energy press; it apparently amounted to a charge to purchasers of some 25-30 cents per barrel.

¹¹ Through the mechanism of retroactive pricing

¹² In New York, we were surprised that our efforts to secure US support enjoyed no attention from the British ambassador in Washington, nor senior officials or ministers in London.

¹³ One relevant FCO witness claimed to the inquiry that there were only "minor successes" in tackling sanctions breaches and mentions activity with Jordan and Turkey. He made no mention of the oil surcharge issue.

Iraqi oil through Syria. Despite requests for the relevant documents, I have seen no evidence that the subject was mentioned. In October 2001 the UK ambassador to the UN expressed surprise to the Prime Minister's National Security Adviser at the lack of UK/US activity on the pipeline. This episode is revealing of the failure at the highest level to address smuggling as a means of controlling or undermining the Saddam regime.

16. The subject of sanctions breaches was repeatedly raised at official-level contacts with the US, but it was never done so with the same energy and coordination as the preparation for war, or regularly at a senior level. There is no evidence of senior official level, let alone ministerial, discussion of this or any other alternatives to war in the period leading up the 2003 invasion (eg in the form of Cabinet discussion, or Cabinet Office or JIC discussion). Coordinated, determined and sustained action to prevent illegal exports and target Saddam's illegal revenues would have consumed a tiny proportion of the effort and resources of the war (and fewer lives), but could have provided a real alternative. It was clearly justified under existing Security Council resolutions. It was never properly considered, let alone attempted.

The assessment of Iraq's threat

17. It remains my view that the internal government assessment of Iraq's capabilities was intentionally and substantially exaggerated in public government documents during 2002 and 2003. Throughout my posting in New York, it was the UK and US assessment that while there were many unanswered questions about Iraq's WMD stocks and capabilities, we did not believe that these amounted to a substantial threat. At no point did we have any firm evidence, from intelligence sources or otherwise, of significant weapons holdings: most of the unanswered questions derived from discrepancies in Iraq's accounting for its past stocks and the destruction of these stocks.
18. The UK believed that the Iraqi threat had been effectively contained. Indeed, at many of the UK/US FCO/State Department bilateral discussions of Iraq policy which I attended between 1998-2002, discussion would often begin with an overall assessment of whether containment was working or not. Invariably, the conclusion, shared by both the US and UK, was positive. The last of these discussions that I attended took place in June 2002.
19. Before I took the New York post in late 1997, I was briefed by relevant departments in the FCO. At Non-Proliferation Department (NPD), which was responsible for the Iraq disarmament issue, I was told that the UK did not believe that Iraq possessed *any* substantial stocks of CW, BW or nuclear weapons or the means to deliver them. None of the intelligence I saw subsequently in the 4 ½ years that I covered the issue, where I read on most days a thick folder of

“humint” and “sigint”¹⁴ relating to Iraq, or the Joint Intelligence Committee assessments, during this period, substantially changed this assessment.

20. In all the policy documents I reviewed in preparation for this testimony, there is no mention prior to 9/11 of any increase in the threat assessment for Iraq. Instead, these documents discuss the difficulty in maintaining support for sanctions in the absence of clear evidence of WMD violations by Iraq. Post 9/11, the prevailing FCO view is summed up in a minute from the Political Director to the Foreign Secretary on 22 March 2002 to the effect that the assessment of Iraq’s WMD capability had not changed over recent years, but that the UK *reaction* to that assessment had changed¹⁵. This minute explains that there had been “not much” advance in Iraq’s WMD programmes over recent years and that they had not been stepped up. The minute adds that there was no evidence whatsoever of any connection between Al Qaida terrorists and the Saddam Hussein regime. This judgement is repeated in many different documents during this period¹⁶.
21. What changed however was the presentation of that evidence, notably in the WMD dossier published in September 2002. In these public documents, of which there were several, the nuanced judgements contained in the internal JIC assessments, for instance, were massaged into more robust and frightening statements about Iraq’s WMD capability. For instance, in all the years of my work on Iraq, it was the UK assessment that Iraq might have a “handful” or *up to* 12 dismantled Scud missiles remaining of its originally many hundreds of imported Scud missiles. This estimate was based on a careful accounting, corroborated with UNSCOM and Iraqi records, of the numbers of missiles imported, minus those expended in warfare or destroyed by UNSCOM’s inspectors after the 1991 Gulf War. In the September dossier, up to 12 Scuds became up to 20 Al-Hussain variant extended range Scud missiles, a significant increase, for which there was no corresponding basis in the intelligence data. These Scud missiles were apparently the basis for the government’s claim that Iraq could launch WMD within 45 minutes, although the dossier offered no explanation for the 45 minute claim. This claim also had no basis in firm intelligence¹⁷. There were in fact no dismantled Scud missiles, of any variant, found in Iraq after the 2003 invasion.
22. In another illustration of this process of deliberate public exaggeration, in March 2002, a paper on Iraq’s WMD was sent to the Parliamentary Labour Party (PLP) which included the claim that “if Iraq’s weapons programmes remain unchecked, Iraq could develop a crude nuclear device in about five years”¹⁸. This was not

¹⁴ “Humint” is intelligence derived from human sources such as defectors or agents in-country. “Sigint” is derived from the interception and decryption of Iraqi electronic signals, and was generally regarded as a more reliable source.

¹⁵ quoted in his testimony

¹⁶ FOOTNOTE 16 REDACTED ON GROUNDS OF INTERNATIONAL RELATIONS

¹⁷ The 45-minute claim is fundamentally unclear but seems to relate to the time required to prepare a Scud missile for launch. I prepared a briefing document on this subject in advance of the 1991 Gulf War.

¹⁸ Such a claim, by the way, would be true of almost any moderately-industrialized country.

and had not been the government's assessment hitherto which was instead more or less the opposite, that "if controls [ie sanctions] are lifted, then Iraq could develop a crude nuclear device in about five years". In other words, it had been the government's assessment that sanctions were effectively *preventing* Iraq from developing a nuclear capability. The head of Non-Proliferation Department sent a minute to the Foreign Secretary's Special [Political] Adviser of 13 March 2002 drawing attention to this discrepancy (the Head of NPD had not been consulted on the preparation of the PLP paper) which pointed out that the UK's public formulation ("if controls were lifted..") was based on JIC assessments. The minute was apparently ignored; the PLP paper was not corrected: indeed, it was later circulated as briefing for the Cabinet¹⁹. (This episode was not mentioned by earlier witnesses, as far as I have seen.) The September '02 dossier uses an even starker formulation, namely that,

"if Iraq obtained fissile material and other essential components from foreign sources the timeline for production of a nuclear weapon would be shortened and Iraq could produce a nuclear weapon in between one and two years."

This statement is purely hypothetical, and was as true in 1991 as it was in 2002; there was no evidence at either point that Iraq was close to obtaining the necessary material. On the contrary, it remained the UK assessment in 2002 that sanctions had successfully prevented this possibility.

23. Notably, the WMD dossier and other public statements on the alleged threat said very little about the *means* of delivery of WMD, apart from dubious and exaggerated statements like that about the alleged number of Scud missiles. Yet any coherent threat assessment would include such, as no WMD can be delivered except by missile, aircraft, rocket or artillery shell (unless by terrorists and there was no evidence of Iraqi collusion with such). In fact, Iraq's conventional military capabilities, in terms of armies, air force and naval forces, were far less than they had been at the time of the 1991 Gulf War. In particular, Iraq's air force was reduced to the point of almost total ineffectiveness and presented no plausible match for allied air assets based in the region, as allied activity in the NFZs had amply demonstrated over many years. Thus, short of the alleged Scud missiles, Iraq had scant available means to deliver any WMD against its neighbours or anyone else. It is striking that this crucial element of the overall assessment was absent in the dossier and other public statements about the alleged threat.
24. This process of exaggeration was gradual, and proceeded by accretion and editing from document to document, in a way that allowed those participating to convince themselves that they were not engaged in blatant dishonesty. But this process led

¹⁹ The PLP paper was sent by the Foreign Secretary to be shared with the Cabinet. This paper also contains such scare-mongering claims as "less than a teaspoon of anthrax can kill over a million people" without explaining the extremely difficult process for anthrax to be weaponized and delivered in an effective method.

to highly misleading statements about the UK assessment of the Iraqi threat that were, in their totality, lies.

Sanctions

25. On another note, and given the absence of any other opportunity, there is one further crucial lesson from the experience of sanctions on Iraq. Comprehensive economic sanctions on Iraq did enormous damage to the Iraqi people and economy, damage which is still evident today in Iraq's dilapidated infrastructure and weakened middle class, many of whom remain outside the country, further hindering economic recovery. UK officials and ministers were well aware of the negative effects of sanctions, but preferred to blame them on the Saddam regime's failure to implement the oil-for-food programme.
26. While the UK put in place measures to ameliorate these effects, in the form of the oil-for-food (OFF) programme, these were insufficient and were also manipulated by the Saddam regime to reinforce its control of the population (for instance, the regime used the programme to control food distribution). The effects of sanctions were one of the main reasons for the unpopularity of containment among the international community. UK efforts to narrow the scope of sanctions and target them more effectively on goods of dual-use concern began in late 2001 and were a case of "too little, too late". With targeted sanctions and aggressive measures to control illegal smuggling, arms imports and illegal financial holdings, effective containment was feasible without humanitarian damage.
27. One earlier witness characterised sanctions in 2001 as comprising measures against only dual-use goods and military exports. This is a very minimalist way of describing measures that, even after the Goods Review List revision of sanctions, controlled *all* exports from and imports into Iraq. All revenues from Iraq's legal oil sales were controlled in a UN escrow account. All Iraqi purchases, including of humanitarian goods, had to be notified and approved by the UN in order to trigger the release of funds from the escrow account. This created a vast bureaucracy, which both stifled any private business and gave enormous power to the Iraqi state apparatus in purchasing and distributing goods of all kinds.
28. Today, Israel is widely criticised for prohibiting the export of many categories of goods into Gaza, yet these measures are very similar to those which the UK was instrumental in imposing for many years upon Iraq's people. One lesson from this episode is that comprehensive sanctions should not be considered in future upon any subject country: the only likely victims will be the civilian population. As in Iraq, the regime is likely to evade their worst effects.

Lessons

29. As a former mid-level official who worked extensively on conflict, including Iraq and Afghanistan, and who was in New York at the time of the September 11th attacks²⁰, I am very aware of the forces at work inside government in times of crisis, and particularly in wartime. These forces are very powerful and militate against measured and objective judgement and decision-making. There is enormous pressure upon officials to go along with the choices of ministers, and the political mood of the day, whatever their own convictions. The era of “sofa government”, where even more decision-making power is concentrated in the hands of a tiny few, has made these pressures worse. I have consulted retired and senior officials, who tell me that in the past there was a much stronger culture within the FCO, and government in general, of questioning ministerial choices and offering alternative views of policy. Such questioning was celebrated and encouraged; in the years that I worked on the Middle East, it was discouraged. In myriad subtle ways it was made clear that even mildly critical views were unwelcome. The culture of questioning, of debate, was little in evidence in the years and months leading up to the Iraq war. There was in effect a deep politicization of the civil service; contrary opinion was suppressed.
30. The Iraq war sheds light on a broader problem of government. It is not sufficient to censure or point fingers at particular individuals, even though there are several who should be strongly condemned for the irresponsibility, incompetence and mendacity of their actions. Nor is it sufficient to rely upon parliament or the press to hold the government to account. Both institutions largely failed to do so in the run-up to the Iraq war, and largely aped and were led by the mendacities of those in government²¹. If government is to retain the responsibility to decide and wage war, it is essential to create in government a structure, and restore a culture, that will ensure in future a place for serious consideration of alternative courses, for contrary voices, and ultimately to foster disinterested, objective and measured policy-making. It is not sufficient simply to ordain the resumption of such a culture; specific measures must be taken to institute it more robustly.
31. Measures that should be considered include that individual officials should be held personally and legally accountable for their actions in government. There is little such accountability today; instead officials are protected by anonymity, the secrecy cloaking so much of their work, and the legal immunity largely accorded to civil servants, including in conducting actions of such enormous import as sanctions or wars. If officials like me or my colleagues know that one day they might personally be held legally accountable for these actions, it should, one

²⁰ I negotiated on behalf of the UK the Security Council resolution (SCR 1368 (2001)) of 12 September 2001 condemning the attacks of the day before.

²¹ It would take a further essay to explain why but in summary – places like Iraq and issues like WMD are now too complex for parliament or the press effectively to offer expertise that can compete with the enormous and intimidating resources of government.

- hopes, instill in them a greater sense of responsibility and integrity than that which is sometimes evident in the Iraq case. It goes without saying that the same legal accountability should also be applied to the political masters who make such decisions. The UK accepted this principle in recent negotiations on the powers of the International Criminal Court whose parties, including the UK, have recently agreed that the crime of aggression should be a prosecutable offence, including for heads of state.
32. Processes such as this inquiry are rare indeed and only instituted for the most egregious cases. And even here, a process devoted only to “learning lessons” does not provide for proper legal accountability, including the possible prosecution of those who may have committed criminal offences. Moreover, there is no legal measure to prevent perjury, just as there is no cross-examination to uncover facts that might otherwise be too easily concealed²². It is striking that in my preparations for this testimony, I found several documents germane to the inquiry whose existence was not revealed by earlier witnesses, including those who authored them. Other documents by certain officials contradicted the testimony they have given at this inquiry and yet these witnesses were not questioned about these contradictions.
33. In parallel, the prevailing culture of secrecy in government feeds upon and permits a culture of unaccountability and, sometimes, dishonesty. Before appearing here today, I was informed by the inquiry staff that I was not in public session to refer to or reveal the contents of classified documents which I reviewed in preparing my testimony. But I saw very little in any document that could not withstand the light of day. Few would dispute the requirement to protect certain intelligence sources, such as the technical methods of “signals intelligence”. But a remarkably small amount of the relevant documents in this case require such protection. Most relate to the internal policymaking processes inside government, and as such deserve to be openly examined and released to the public, in whose name and with whose consent government operates. I therefore urge that with very limited exceptions, this inquiry coincide with the full release of documents relating to the Iraq war.
34. More generally, much more needs to be done to open up government. I have reflected long and hard on my experience of policymaking on Iraq, Afghanistan²³ and other subjects on which I worked. It is not plausible that such complex places and events can be arbitrated successfully and accurately by small groups of people, often far distant, discussing policy largely in secret. Yet the whole Whitehall foreign policy machine rests on such a premise – that the world can be

²² It is striking to compare the Saville inquiry into the “Bloody Sunday” killings, which investigated an event which cost 14 lives, with this process which refers to a war that cost tens of thousands of lives. No one would wish a repeat of an inquiry lasting 12 years and costing hundreds of millions of pounds, but the principle of legal accountability did not need to be sacrificed in the attempt to avoid repetition of these costs.

²³ I was appointed the UK’s Afghanistan “expert” at the UN Security Council after September 11th, 2001, and also briefly served in the British Embassy, Kabul, after the 2002 invasion.

successfully and accurately interpreted by such groups. The case of the '03 invasion, but also other cases, including the justified but misconceived invasion of Afghanistan suggest this conclusion. What is to be done instead? One answer is to establish much broader mechanisms to involve and consult outside expertise than currently exist. There might be standing forums of consultation with academic experts, journalists, NGOs – above all those in the field who have an on-the-ground understanding of the local realities, an understanding woefully lacking in the preparation for the Iraq invasion, and indeed Afghanistan. Perhaps the public too, whose sons and daughters are sacrificed by government in the public's name, should be deliberately consulted at such moments. The Iraq war episode makes clear that there is no monopoly on wisdom.

35. But would even this be enough if similar circumstances were to arise again? We can hope that for a generation at least, as for Suez, the Iraq war will serve as a lesson on how not to conduct policy. But what about thereafter? It seems that there is something more fundamental at work here, a state of mind and of attitude which is all too evident in the actions of the officials and ministers who conducted the war, and which is also embodied in the *form* of government and policymaking we see today. That is an unstated belief in the understanding and right of government to explain the world (Iraq and its threats) and deal with them, and generally without scrutiny. The evidence of the invasion of Iraq and its aftermath, and Afghanistan too, suggests that henceforward those engaged in such policymaking should do so with a greater humility to the complexity, intrinsic uncertainty and unknowability of such endeavours, and eschew forever the hubris that states, “we know, we understand, trust us”.

Carne Ross
12 July 2010

Annex A:

Submission to Butler Review

I am in the Senior Management Structure of the FCO, currently seconded to the UN in Kosovo. I was First Secretary in the UK Mission to the United Nations in New York from December 1997 until June 2002. I was responsible for Iraq policy in the mission, including policy on sanctions, weapons inspections and liaison with UNSCOM and later UNMOVIC.

During that time, I helped negotiate several UN Security Council resolutions on Iraq, including resolution 1284 which, inter alia, established UNMOVIC (an acronym I coined late one New York night during the year-long negotiation). I took part in policy debates within HMG and in particular with the US government. I attended many policy discussions on Iraq with the US State Department in Washington, New York and London.

My concerns about the policy on Iraq divide into three:

1. The Alleged Threat

I read the available UK and US intelligence on Iraq every working day for the four and a half years of my posting. This daily briefing would often comprise a thick folder of material, both humint and sigint. I also talked often and at length about Iraq's WMD to the international experts who comprised the inspectors of UNSCOM/UNMOVIC, whose views I would report to London. In addition, I was on many occasions asked to offer views in contribution to Cabinet Office assessments, including the famous WMD dossier (whose preparation began some time before my departure in June 2002).

During my posting, at no time did HMG assess that Iraq's WMD (or any other capability) posed a threat to the UK or its interests. On the contrary, it was the commonly-held view among the officials dealing with Iraq that any threat had been effectively contained. I remember on several occasions the UK team stating this view in terms during our discussions with the US (who agreed). (At the same time, we would frequently argue, when the US raised the subject, that "régime change" was inadvisable, primarily on the grounds that Iraq would collapse into chaos.)

Any assessment of threat has to include both capabilities and intent. Iraq's capabilities in WMD were moot: many of the UN's weapons inspectors (who, contrary to popular depiction, were impressive and professional) would tell me that they believed Iraq had no significant matériel. With the exception of some unaccounted-for Scud missiles, there was no intelligence evidence of significant holdings of CW, BW or nuclear material. Aerial or satellite surveillance was unable to get under the roofs of Iraqi facilities. We therefore had to rely on inherently unreliable human sources (who, for obvious reasons, were prone to exaggerate).

Without substantial evidence of current holdings of WMD, the key concern we pursued was that Iraq had not provided any convincing or coherent *account* of its past holdings. When I was briefed in London at the end of 1997 in preparation for my posting, I was told that we did not believe that Iraq had any significant WMD. The key argument therefore to maintain sanctions was that Iraq had failed to provide convincing evidence of destruction of its past stocks.

Iraq's ability to launch a WMD or any form of attack was very limited. There were approx 12 or so unaccounted-for Scud missiles; Iraq's airforce was depleted to the point of total ineffectiveness; its army was but a pale shadow of its earlier might; there was no evidence of any connection between Iraq and any terrorist organisation that might have planned an attack using Iraqi WMD (I do not recall any occasion when the question of a terrorist connection was even raised in UK/US discussions or UK internal debates).

There was moreover no intelligence or assessment during my time in the job that Iraq had any intention to launch an attack against its neighbours or the UK or US. I had many conversations with diplomats representing Iraq's neighbours. With the exception of the Israelis, none expressed any concern that they might be attacked. Instead, their concern was that sanctions, which they and we viewed as an effective means to contain Iraq, were being delegitimised by evidence of their damaging humanitarian effect.

I quizzed my colleagues in the FCO and MOD working on Iraq on several occasions about the threat assessment in the run-up to the war. None told me that any new evidence had emerged to change our assessment; what had changed was the government's determination to present available evidence in a different light. I discussed this at some length with David Kelly in late 2002, who agreed that the Number 10 WMD dossier was overstated.

2. Legality

The legality of the war is framed by the relevant Security Council resolutions, the negotiation and drafting of which was usually led by the UK.

During the negotiation of resolution 1284 (which we drafted), which established UNMOVIC, the question was discussed among the key Security Council members in great detail how long the inspectors would need in Iraq in order to form a judgement of Iraq's capabilities.

The UK and US pushed for the longest period we could get, on the grounds that the inspectors would need an extensive period in order to visit, inspect and establish monitoring at the many hundreds of possible WMD-related sites. The French and Russians wanted the shortest duration. After long negotiation, we agreed the periods specified in 1284. These require some explanation. The resolution states that the head of UNMOVIC should report on Iraq's performance 120 days once the full system of ongoing monitoring and verification had been established (OMV, in the jargon). OMV

amounts to the “baseline” of knowledge of Iraq’s capabilities and sites; we expected OMV to take up to six months to establish. In other words, inspectors would have to be on the ground for approximately ten months before offering an assessment. (Resolution 1441, though it requested Blix to “update” the Council 60 days after beginning inspections, did not alter the inspection periods established in 1284.) As is well-known, the inspectors were allowed to operate in Iraq for a much shorter period before the US and UK declared that Iraq’s cooperation was insufficient.

Resolution 1441 did not alter the basic framework for inspections established by 1284. In particular, it did not amend the crucial premise of 1284 that any judgement of cooperation or non-cooperation by Iraq with the inspectors was to be made by the Council not UNMOVIC. Blix at no time stated unequivocally that Iraq was not cooperating with the inspectors. The Council reached no such judgement either.

Resolution 1441 did not authorise the use of force in case of non-cooperation with weapons inspectors. I was in New York, but not part of the mission, during the negotiation of that resolution (I was on Special Unpaid Leave from the FCO). My friends in other delegations told me that the UK sold 1441 in the Council explicitly on the grounds that it did not represent authorisation for war and that it “gave inspections a chance”.

Later, after claiming that Iraq was not cooperating, the UK presented a draft resolution which offered the odd formulation that Iraq had failed to seize the opportunity of 1441. In negotiation, the UK conceded that the resolution amounted to authority to use force (there are few public records of this, but I was told by many former colleagues involved in the negotiation that this was the case). The resolution failed to attract support.

The UN charter states that only the Security Council can authorise the use of force (except in cases of self-defence). Reviewing these points, it is clear that in terms of the resolutions presented by the UK itself, the subsequent invasion was not authorised by the Security Council and was thus illegal. The clearest evidence of this is the fact that the UK sought an authorising resolution and failed to get it.

There is another subsidiary point on the legality question. During my spell at the UN, the UK and US would frequently have to defend in the Security Council attacks made by our aircraft in the No-Fly Zones (NFZs) in northern and southern Iraq. The NFZs were never authorised by the Security Council, but we would justify them on the grounds (as I recall it, this may be incorrect) that we were monitoring compliance with resolution 688 which called for the Iraqi government to respect the human rights of its people. If our aircraft bombed Iraqi targets, we were acting in self-defence (which was in fact the case as the Iraqis would try to shoot down our aircraft).

Reading the press in the months leading up to the war, I noticed that the volume and frequency of the attacks in the NFZs considerably increased, including during the period when UNMOVIC was in country inspecting sites (ie before even the UK/US declared that Iraq was not complying). I suspected at the time that these attacks were not in self-

defence but that they were part of a planned air campaign to prepare for a ground invasion. There were one or two questions in Parliament about this when the Defence Secretary claimed that the NFZ attacks were, as before, self-defence. His account was refuted at the time by quotations by US officials in the press and by later accounts, including Bob Woodward's "Plan of Attack", which confirmed that the attacks did indeed comprise a softening-up campaign, of which the UK was an active part.

3. Alternatives to war

I was responsible at the UK Mission for sanctions policy as well as weapons inspections. I had extensive contacts with those in the UN responsible for the oil-for-food programme, with NGOs active in Iraq, with experts in the oil industry and with many others who visited Iraq (I tried to visit on several occasions but was denied a visa by the Iraqi government). I read and analysed a great deal of material on Iraq's exports, both legal and illegal, sanctions and related subjects, such as the oil industry.

Much of my work and that of my close colleagues was devoted to attempting to stop countries breaching Iraqi sanctions. These breaches were many and took various forms.

The most serious was the illegal export of oil by Iraq through Turkey, Syria and Iranian waters in the Gulf. These exports were a substantial and crucial source of hard currency for the Iraqi regime; without them the regime could not have sustained itself or its key pillars, such as the Republican Guard. Estimates of the value of these exports ranged around \$2bn a year.

In addition, there were different breaches, such as Iraq's illegal and secret surcharge on its legal sales of oil through the UN. Iraq would levy illegal charges on oil-for-food contracts. The regime also had substantial financial assets held in secret overseas accounts. The details of these breaches and our work to combat them are complicated.

On repeated occasions, I and my colleagues at the mission (backed by some but not all of the responsible officials in London) attempted to get the UK and US to act more vigorously on the breaches. We believed that determined and coordinated action, led by us and the US, would have had a substantial effect in particular to pressure Iraq to accept the weapons inspections and would have helped undermine the Iraqi regime.

I proposed on several occasions the establishment of a multinational body (a UN body, if we could get the Security Council to agree it) to police sanctions busting. I proposed coordinated action with Iraq's neighbours to pressure them to help, including by controlling imports into Iraq. I held talks with a US Treasury expert on financial sanctions, an official who had helped trace and seize Milosevic's illegal financial assets. He assured me that, given the green light, he could quickly set up a team to target Saddam's illegal accounts.

These proposals went nowhere. Inertia in the FCO and the inattention of key ministers combined to the effect that the UK never made any coordinated and sustained attempt to address sanctions busting. There were sporadic and half-hearted initiatives. Bilateral embassies in Iraq's neighbours would always find a reason to let their hosts off the hook (the most egregious example was the Embassy in Ankara). Official visitors to the neighbours always placed other issues higher on the agenda. The Prime Minister, for example, visited Syria in early 2002. If I remember correctly, the mission sent a telegram beforehand urging him to press Assad on the illegal pipeline carrying Iraqi oil through Syria. I have seen no evidence that the subject was mentioned. Whenever I taxed Ministers on the issue, I would find them sympathetic but uninformed.

Coordinated, determined and sustained action to prevent illegal exports and target Saddam's illegal monies would have consumed a tiny proportion of the effort and resources of the war (and fewer lives), but could have provided a real alternative. It was never attempted.

Carne Ross
Pristina, Kosovo
9 June 2004

U.S., Ally Part Ways on Iraqi Oil British Pricing Plan's Disruption of Global Markets Feared

By Colum Lynch

Special to The Washington Post

UNITED NATIONS, Aug. 21 -- The United States declined this week to back a British proposal to tighten U.N. procedures for pricing Iraqi oil, citing concern that the proposal might disrupt global oil markets, according to U.N. diplomats and oil analysts.

Over the past year, Iraq has tried to set artificially low prices on its oil and to force buyers to make up the difference through secret payments that would circumvent U.N. sanctions, according to U.S. and European diplomats.

The British proposal seeks to stop the back-door payments by reducing Iraq's ability to sell oil below market value. It would require that Iraq and the United Nations jointly set prices every 10 days rather than every 30 days, hewing closely to world levels. It also would deprive the Iraqis of the right to request reductions whenever the market price drops.

"We are trying to reduce the gap between the market price and the prices being set [at the United Nations] for Iraqi crude," said a British official. "The excess margin allows unscrupulous buyers to make excessive profits and pay a cash surcharge to the Iraqi government."

U.S. officials are in favor of clamping down on Iraq's illicit revenue, which they suspect is used to purchase prohibited weapons and luxury goods for President Saddam Hussein's inner circle. But the United States, the largest consumer of Iraqi oil, is concerned that the British proposal could disrupt trade.

"We are certainly sympathetic to the intent of [the British proposal], but we're just not sure yet whether it's the right thing to do," a senior U.S. official said.

Under the United Nations' "oil for food" deal, Iraq is permitted to export as much oil as it wants. But the revenue -- which amounted to more than \$17 billion last year -- must go into U.N. accounts and must be used only to purchase humanitarian supplies and to repair Iraq's civilian infrastructure.

Some industry analysts warned that the British proposal might not provide enough lead time for oil traders to charter tankers and identify buyers. Most major producers price their oil every month, said Larry Goldstein, president of the Petroleum Industry Research Foundation.

[After the publication of the story on 22 August, the US climbed down:]

U.S. Supports Britain in Move To Tighten Pricing of Iraqi Oil

By Colum Lynch

Special to The Washington Post

UNITED NATIONS, Aug. 24 -- The United States today threw its weight behind a British proposal to tighten procedures for pricing Iraqi oil, raising prospects for a new clash with Baghdad at the United Nations.

Iraq and Russia, its chief ally on the U.N. Security Council, oppose any effort to impose changes in a system that diplomats allege has allowed Baghdad to rake in an illegal 10- to 15-cent surcharge on every barrel of oil it sells.

"In principle, we don't like any change in the existing scheme," said Gennady Gatilov, Russia's deputy representative to the United Nations. "Oil exporters will experience difficulties in signing and fulfilling contracts."

Under the United Nations' "oil for food" program, Iraq is allowed to export as much oil as it desires. But the revenue must go into a U.N. account and be spent under U.N. supervision, primarily to purchase humanitarian supplies.

According to diplomats, Iraq has tried to set artificially low prices on its oil and to favor buyers who are willing to pay secret surcharges into offshore bank accounts, circumventing the United Nations' control over Iraqi oil revenue. U.S. and British officials say they suspect the illicit proceeds have been used to purchase weapons and luxury items for Iraq's ruling elite.

At present, Iraq and the United Nations jointly set oil prices every 30 days. But Baghdad also has been permitted to negotiate reductions in its prices whenever the world price for oil drops, ensuring that traders can earn enough of a profit to pay kickbacks.

Britain proposed last week that Iraq and the United Nations set prices every 10 days, making it more difficult for Baghdad to exploit fluctuations in the market. Britain also used its veto power on the U.N. committee that monitors Iraqi oil sales to prevent Iraq from setting new prices.

The United States initially balked at supporting its most important ally, citing concerns that the British plan would disrupt the global oil trade. But the Bush administration assured Britain today that it would back a compromise plan to set prices for 15-day periods.

The allies are expected to inform the Security Council on Monday that they will test the new policy beginning with September prices. "We have agreed to allow current August prices to be extended to the end of this month in order to avoid an immediate or short-

term disruption," said a British official. "But henceforth we will insist on prices being submitted every 15 days."